

VIRGINIA STATE BAR PRESENTATION TO
THE GENERAL GOVERNMENT SUBCOMMITTEE
JANUARY 25, 2011

The Virginia State Bar is an administrative agency of the Supreme Court of Virginia. It was created in 1938 by the General Assembly to regulate the practice of law in Virginia. Its creation unified Virginia's lawyers in a mandatory state bar. There are thirty-three mandatory bars in the United States.

Today, the VSB has 29,411 active members who pay \$275 for the privilege of practicing law in Virginia. In addition, 12,027 associate members pay \$125 to maintain their Virginia licenses. The dues and fees are mandatory and set by statute and rule of court. Virginia's dues are among the lowest in the nation, among the thirty- three mandatory bars, Virginia ties for 30th place.

In 1940, the General Assembly created the State Bar Fund as a special fund in the state treasury and ordered that: "All fees collected from the members of the Virginia State Bar ... shall be paid into the State treasury...and credited to the State Bar Fund. All moneys so paid into the said fund are hereby appropriated to the Virginia State Bar for the purpose of administering the provisions of this act." The same language is codified today in Va. Code §54.1-3913.

In addition, the appropriations act recognizes the State Bar Fund's special status. The act prohibits the governor from transferring money from the State Bar Fund to the General Fund in fiscal emergencies.

The State Bar Fund is the VSB's operating account and its savings account. As of January 23, 2011, the fund had \$9.3 million in it.¹ The bar's operating expenses for the last five months of the fiscal year will be approximately \$4,800,000. The governor proposes to transfer \$5 million from the State Bar Fund to the General Fund to help support executive branch priorities. This would completely wipe out the bar's cash reserve and would be an unprecedented tax on Virginia lawyers.

¹ The bar starts collecting dues from lawyers for the upcoming fiscal year once it mails out its dues notice in May. Accordingly, in June every year the Commonwealth Accounting and Reporting System (CARS) may show more money in the State Bar Fund than is indicated by the VSB numbers. However, since the money is not yet earned for accounting purposes, it is not shown on the VSB books as being revenue until after the start of the new fiscal year, July 1.

Keller v. State Bar of California

The governor's proposal could give rise to a First Amendment challenge under the principles of *Keller v. State Bar of California*, 496 U.S. 1(1990). In that case the United States Supreme Court recognized that the state bar was different from other government agencies because its principal funding came from dues levied on its members. The Court held that the state bar could constitutionally fund activities germane to its purpose of regulating the legal profession, but could not fund activities that are political or ideological with which the member disagreed.

VSB Governance

The Virginia State Bar is governed by an eighty-one member council elected with terms limits by the lawyers of each judicial circuit or appointed by the Supreme Court. The council meets three times a year, and its twelve-member executive committee meets five times a year. They regularly review the bar's financial statements and approve its budget. In addition, the Standing Committee on Budget and Finance oversees the bar's budget and finances. Other standing committees, special committees, specialty law sections, and boards guide the bar's activities through use of more than a thousand member volunteers.

Operation and Finance

The VSB receives no General Fund dollars for its operations. It is supported entirely by member dues, other self-generated income, and thousands of hours of volunteer service. Indeed, volunteers traveled over 250,000 miles in 2010 in service of the bar and its activities on behalf of the public and its members. The daily operations are carried out by a staff of eighty-nine, forty-seven of whom are directly involved in prosecuting disciplinary cases. Sixty-five percent of the VSB budget is personnel expenses, salary, wages and benefits.

Currently, the VSB receives approximately \$11.5 million in revenue and has approximately the same amount in budgeted expenditures. Monthly operating expenses are \$960,000. If there are savings at the end of the year, they create cash balances that are used for unexpected expenses, capital expenditures, and system improvements. Unspent cash is the bar's only source of funding for unpredictable costs incurred by court-ordered receiverships of lawyers' practices, online legal research for members, employee benefits, leave balance payouts, unemployment compensation, attorney's fees, and litigation expenses. The cash balances will fund salary increases when permitted, technology improvements, and additional staff in the discipline department. Attachment I is a chart showing the projected uses for the cash balance reserve.

Current Cash Balance

Three years ago, the VSB was spending more than it was taking in by \$200,000 to \$425,000 each year. The cash balance in 2007 in the State Bar Fund was \$2,554,308 or only 2 ½ months of operating expenses. If the VSB had continued this way, it would have necessitated an increase in dues. To avoid a dues increase, the staff streamlined its operations, leveraged technology, and cut expenses by \$600,000 per year. In addition, the Supreme Court did not approve salary raises for bar employees in FY 2009 and 2010. The total savings over two years added \$2 million dollars to the cash balance, bringing it to \$4,674,995 at the end of FY 2010. *See* Attachment II. Attachment III shows further details of the growth of the cash balance. Attachment IV is a long-range planning tool the bar uses, showing actual data for FY2004-2009 and projected data for FY2010 and FY2011, assuming that the \$5 million is not moved to the General Fund.

Conclusion

On behalf of Virginia's lawyers and the public we protect, the Virginia State Bar respectfully requests that the governor's proposal to move \$5 million from the VSB's dedicated special revenue funds to the General Fund be rejected.

Virginia State Bar

**VIRGINIA STATE BAR
USES FOR \$5 MILLION CASH BALANCE**

Receivership expenses outside of those budgeted (mandated by Va. Code 54.1-3900 & 54.1-3936)	\$	100,000
Two new investigators (salary, benefits and related overhead)	\$	170,000
One new ethics attorney (salary, benefits and related overhead)	\$	75,000
Consulting services for audits of trust accounts	\$	150,000
Replace failed server	\$	12,000
Employee salary raises and related benefits	\$	285,000
Unexpected employee health care increases	\$	70,000
Technology projects	\$	1,000,000
Three-months operating expenses	\$	<u>2,850,000</u>
TOTAL	\$	<u>4,712,000</u>

January 2011

Attachment I

VIRGINIA STATE BAR
EXPLANATION FOR GROWTH OF CASH BALANCE

	FISCAL YEAR		FISCAL YEAR	
	2007/2008	2008/2009	2009/2010	
OPERATING REVENUE				
Current Dues	\$ 8,335,095	\$ 8,544,756	\$ 8,729,072	
Past Dues/Penalties	\$ 611,410	\$ 533,736	\$ 371,065	
MCLE	\$ 676,995	\$ 800,180	\$ 908,438	
Professionalism Course	\$ 221,965	\$ 217,785	\$ 224,620	
Other Sources of Revenue	\$ 1,444,470	\$ 1,523,805	\$ 1,403,162	
TOTAL OPERATING REVENUE	\$ 11,289,935	\$ 11,620,262	\$ 11,636,357	
OPERATING EXPENSES & TRANSFERS				
Salaries/Wages/Benefits	\$ 7,744,630	\$ 7,649,623	\$ 7,323,460	
Receiverships	\$ 513,474	\$ 441,407	\$ 241,980	
Professionalism Course	\$ 173,362	\$ 177,266	\$ 154,723	
Printing, Copying, Postage, Telephone	\$ 522,322	\$ 509,916	\$ 367,335	
Council, Committees, Boards, Sections, Conferences	\$ 683,016	\$ 684,327	\$ 650,883	
Attorney General's Fees	\$ 98,688	\$ 47,593	\$ 37,521	
Other Operating Expenses	\$ 1,769,703	\$ 1,325,393	\$ 1,357,140	
General Assembly Mandated Cash Transfers	\$ 266	\$ 266	\$ 167,099	
TOTAL OPERATING EXPENSES AND TRANSFERS	\$ 11,505,461	\$ 10,835,791	\$ 10,300,141	
REVENUE OVER (UNDER) EXPENDITURES	\$ (215,526)	\$ 784,471	\$ 1,336,216	

VIRGINIA STATE BAR
EXPLANATION FOR GROWTH OF CASH BALANCE

	<u>FISCAL YEAR</u> <u>2008/2009</u>	<u>FISCAL YEAR</u> <u>2009/2010</u>
Revenue		
MCLE Revenue Increase	\$ 125,000	\$ 15,000
Expenditures		
Salary/Benefits savings - no employee raises FY 2009	\$ 285,000	\$ 285,000
Salary/Benefits savings - no employee raises FY 2010	\$ -	\$ 230,000
Salary/Benefits savings - eliminated/unfilled positions	\$ 75,000	\$ 260,000
Alexandria Office Closure (September 2009)	\$ -	\$ 100,000
Virginia Lawyer/Register Printing	\$ 30,000	\$ 60,000
Other Reductions	\$ 15,000	\$ 35,000
Committee Travel Reduction	\$ -	\$ 55,000
Attorney General Fee Reduction	\$ 50,000	\$ 60,000
Technology Projects	\$ 200,000	\$ 225,000
Total Contribution to Cash Balance	<u>\$ 780,000</u>	<u>\$ 1,325,000</u>

January 2011

Attachment III

**VIRGINIA STATE BAR
LONG RANGE PROJECTIONS
OPERATING PLAN SUMMARY
AS OF DECEMBER 31, 2010**

	FY 2004/2005 ACTUAL	FY 2005/2006 ACTUAL	FY 2006/2007 ACTUAL	FY 2007/2008 ACTUAL	FY 2008/2009 ACTUAL	FY 2009/2010 ACTUAL	FY 2010/2011 PROJECTED	FY 2011/2012 PROJECTED
Operating Revenue (1)	\$ 9,854,556	\$ 10,138,963	\$ 10,396,587	\$ 11,289,935	\$ 11,620,262	\$ 11,636,357	\$ 11,750,000	\$ 11,845,000
Less: Operating Expenditures (1)	\$ 9,731,565	\$ 10,426,224	\$ 10,821,940	\$ 11,505,461	\$ 10,835,791	\$ 10,300,141	\$ 11,000,000	\$ 11,300,000
Contributions To/(From) Operating Reserve	\$ 122,991	\$ (287,261)	\$ (425,353)	\$ (215,526)	\$ 784,471	\$ 1,336,216	\$ 750,000	\$ 545,000
Add: Beginning Operating Reserve Balance	\$ 3,359,457	\$ 3,482,448	\$ 3,195,187	\$ 2,769,834	\$ 2,554,308	\$ 3,338,779	\$ 4,674,995	\$ 5,424,995
Ending Operating Reserve Balance (2)	\$ 3,482,448	\$ 3,195,187	\$ 2,769,834	\$ 2,554,308	\$ 3,338,779	\$ 4,674,995	\$ 5,424,995	\$ 5,969,995
Ending A&F Reserve Balance	\$ 294,509	\$ 296,219	\$ 293,279	\$ 326,452	\$ 349,761	\$ 351,921	\$ 355,000	\$ 350,000
Total Reserve Balance	\$ 3,776,957	\$ 3,491,406	\$ 3,063,113	\$ 2,880,760	\$ 3,688,540	\$ 5,026,916	\$ 5,779,995	\$ 6,319,995

Reserve as a % of the preceding year's
Operating Expenditures (3)

55.93%

52.55%

48.80%

34.04%

25.04%

28.30%

33.49%

38.81%

NOTES:

- Note 1: The Clients' Protection Fund assessment collected pursuant to Paragraph 16 of the Rules of the Supreme Court regarding Organization & Government of the VSB has been deducted from both the Operating Revenue and Operating Expenditures. The net impact of the reduction is \$0. The Operating Revenue and Operating Expenditures are based on anticipated actual results and may not agree with budgeted totals.
- Note 2: The total Operating Reserve balance as of 6/30/2010 includes the Professionalism Course Reserve of \$77,510.
- Note 3: Paragraph 11 of the Rules of the Supreme Court regarding Organization & Government of the VSB provides that "No increase in the annual dues will be authorized by the Court whenever the total combined cash balances of the Operating Reserve and the A&F Reserve exceed 15% of the total annual operating expenditures of the bar for the year preceding the year in which the dues increase is sought."