

IN RE: BAR of ARKANSAS LICENSEE FEES

____ S.W.3d ____

Supreme Court of Arkansas
Delivered November 1, 2001

PER CURIAM. THE ANNUAL LICENSE FEES FOR THE BAR OF ARKANSAS WERE LAST INCREASED COMMENCING JANUARY 1995. *SEE IN RE BAR OF ARKANSAS LICENSE FEE*, 317 ARK. 686, 878 S.W. 2D 409 (1994). AT THAT TIME, THE BASE FEE WAS INCREASED TO \$100.00 (\$75 FOR NEW ENROLLEES AND \$10 FOR ATTORNEYS OVER SIXTY-FIVE YEARS OF AGE) IN ORDER TO COVER THE FIVE-YEAR PROJECTED OPERATIONAL BUDGET OF THE BAR OF ARKANSAS.¹ IT IS ALMOST SEVEN YEARS LATER, AND OUR FIVE-YEAR PROJECTION HAS BEEN MET AND MORE. THE COURT HAS AGAIN REVIEWED ITS EXISTING AND PROJECTED NEEDS FOR THE NEXT FIVE YEARS, AND IN DOING SO, WE CONSIDERED ONGOING EXPENSES PLUS THOSE NEW COSTS RELATED TO THE IMPLEMENTATION OF THE ARKANSAS LAWYER ASSISTANCE PROGRAM, RESTRUCTURE AND EXPANSION OF THE OPERATIONS OF THE OFFICE OF PROFESSIONAL CONDUCT, AND THE NEED FOR ADDITIONAL RESOURCES FOR THE CLIENT SECURITY FUND. THESE NEW AND REVISED PROGRAMS AROSE FROM THE RECOMMENDATIONS MADE BY THE ARKANSAS BAR ASSOCIATION, THE AMERICAN BAR ASSOCIATION, AND INDIVIDUAL MEMBERS OF THE BAR. THESE REASONS AND OTHERS WILL BE MORE THOROUGHLY DISCUSSED BELOW.

WHILE WE REMAIN IN SOUND FISCAL SHAPE, THE COURT WILL BE REQUIRED TO INCREASE LICENSE FEES TO ASSURE IT CAN MEET INCREASED EXPENSES. WE INTEND TO IMPLEMENT THE FEE INCREASE IN TWO PHASES. THE FIRST PHASE OF THE INCREASE WILL NOT BEGIN UNTIL JANUARY 1, 2003. WHILE WE ANNOUNCE THE INCREASE IN LICENSE FEES TODAY, WE ARE ABLE TO DELAY THE IMPLEMENTATION DATE OF THE FIRST PHASE UNTIL JANUARY 1, 2003, BY USING OUR RESERVES. OUR DEFICIT FOR THE 2000-2001 FISCAL

¹ BAR OF ARKANSAS BUDGET INCLUDES: OFFICE OF PROFESSIONAL PROGRAMS, CONTINUING LEGAL EDUCATION BOARD, BOARD OF LAW EXAMINERS, COMMITTEE ON PROFESSIONAL CONDUCT, COMMITTEE ON THE UNAUTHORIZED PRACTICE OF LAW, LAWYER ASSISTANCE PROGRAM, CLIENT SECURITY FUND, AND GENERAL ADMINISTRATIVE EXPENSES.

YEAR WAS \$92,398. WE CAN FUND THE INCREASED EXPENSES AT THE CURRENT LICENSE FEE RATES, BY USING OUR RESERVES, FOR APPROXIMATELY ANOTHER YEAR. AT THE END OF THAT TIME, WE PROJECT A DEFICIT IN EXCESS OF \$300,000, AND OUR RESERVES WILL NOT HAVE SUFFICIENT EXCESS FUNDS TO FUND AN ADDITIONAL YEAR.

BECAUSE OF THIS, WE HAVE DETERMINED THAT, COMMENCING ON JANUARY 1, 2003, THE NEW FEE SCHEDULE FOR THE BAR OF ARKANSAS SHOULD BE AS FOLLOWS : THE ANNUAL LICENSE FEE SHALL BE \$175.00 FOR LAWYERS WHO HAVE BEEN LICENSED FOR THREE OR MORE YEARS. THE ANNUAL FEE FOR NEW ENROLLEES WHO HAVE BEEN LICENSED FOR LESS THAN THREE YEARS SHALL BE \$100.00. LAWYERS WHO ARE SIXTY-FIVE YEARS OF AGE OR OLDER ON OR BEFORE JANUARY 1 OF THE YEAR FOR WHICH LICENSE FEES ARE PAYABLE MAY PAY AT THE REDUCED RATE OF \$15.00 PER YEAR.

OUR FINANCIAL PROJECTIONS INDICATE THAT THE ADDITIONAL REVENUE GENERATED BY THE PHASE-ONE INCREASE WILL MEET OUR FINANCIAL OBLIGATIONS FOR FIVE YEARS. WE PROJECT THAT WE WILL BEGIN TO RUN A DEFICIT IN THE 2006-2007 FISCAL YEAR. AS A RESULT, COMMENCING JANUARY 1, 2008, THE SECOND PHASE OF THE FEE INCREASE WILL BE IMPLEMENTED: THE ANNUAL LICENSE FEE SHALL INCREASE FROM \$175.00 TO \$200.00 FOR LAWYERS WHO HAVE BEEN LICENSED FOR THREE OR MORE YEARS. THE ANNUAL FEE FOR NEW ENROLLEES WHO HAVE BEEN LICENSED FOR LESS THAN THREE YEARS SHALL INCREASE FROM \$100.00 TO \$125.00. THE REDUCED RATE FOR LAWYERS WHO ARE SIXTY-FIVE YEARS OF AGE OR OLDER ON OR BEFORE JANUARY 1 OF THE YEAR FOR WHICH LICENSE FEES ARE PAYABLE SHALL INCREASE FROM \$15.00 TO \$20.00 PER YEAR. OUR GOAL IS FOR THE PHASE-TWO FEE SCHEDULE TO BE IN PLACE FOR AT LEAST FIVE YEARS.

THERE ARE NUMEROUS FACTORS NECESSITATING THIS INCREASE , BUT WE WANT TO OUTLINE THE MOST COMPELLING REASONS AND EXPLAIN HOW THE INCREASED FUNDS WILL BE APPLIED.

1. AT THE RECOMMENDATION OF THE ARKANSAS BAR ASSOCIATION AND AFTER CONSIDERABLE STUDY , ON DECEMBER 7, 2001, WE ESTABLISHED THE ARKANSAS LAWYER ASSISTANCE PROGRAM. *SEE IN RE ESTABLISHMENT OF THE ARKANSAS LAWYER ASSISTANCE PROGRAM*, 343 ARK. APPENDIX (2000). THIS PROGRAM ASSISTS LAWYERS AND JUDGES SUFFERING FROM PHYSICAL OR MENTAL DISABILITIES. DURING PHASE ONE, THIRTEEN DOLLARS OF EACH LICENSE FEE (\$1.00 OF THE OVER SIXTY-FIVE FEE) WILL BE ALLOCATED TO THIS PROGRAM. IN PHASE TWO, THE ALLOCATION WILL BE FIFTEEN DOLLARS OF EACH LICENSE FEE (\$1.50 OF THE OVER SIXTY-FIVE FEE) .

2. THE CLIENT SECURITY FUND EXISTS TO PROTECT CLIENTS FROM LOSSES CAUSED BY THE MISCONDUCT OF MEMBERS OF THE BAR OF ARKANSAS . BECAUSE OF A LACK OF FUNDS IN RECENT YEARS , IT HAS BEEN NECESSARY TO PLACE A CAP ON ELIGIBLE CLAIMS AND TO PAY CLAIMS ON A PRO-RATA BASIS. TO ENSURE THAT THIS FUND HAS SUFFICIENT RESOURCES TO COMPENSATE DESERVING CLIENTS , IT IS NECESSARY TO BOLSTER THE FUNDING. DURING PHASE ONE, SEVENTEEN DOLLARS OF EACH LICENSE FEE (\$1.50 OF THE OVER SIXTY-FIVE FEE) WILL BE ALLOCATED TO THIS FUND. IN PHASE TWO, THE ALLOCATION WILL BE TWENTY DOLLARS OF EACH LICENSE FEE (\$2 OF THE OVER SIXTY-FIVE FEE) .

3. UPON THE RECOMMENDATION OF THE ARKANSAS BAR ASSOCIATION, THE AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON PROFESSIONAL DISCIPLINE EXAMINED THE STRUCTURE, OPERATIONS, AND PROCEDURES OF OUR LAWYER DISCIPLINARY SYSTEM. ON JULY 9, 2001, WE ANNOUNCED AMENDMENTS TO THE PROCEDURES REGULATING PROFESSIONAL CONDUCT OF ATTORNEYS AT LAW (EFFECTIVE JANUARY 1, 2002) . *SEE IN RE: AMENDMENTS TO THE PROCEDURES REGULATING PROFESSIONAL CONDUCT OF ATTORNEYS AT LAW*, 345 ARK. APPENDIX (2001) . THESE CHANGES IN THE STRUCTURE OF THE OFFICE OF PROFESSIONAL CONDUCT AND THE COMMITTEE ON PROFESSIONAL CONDUCT REQUIRE A MAJOR INCREASE IN THE FINANCIAL SUPPORT FOR THE LAWYER DISCIPLINARY SYSTEM, INCLUDING A NEW STAFF POSITION

FOR AN INVESTIGATOR AND SALARY RAISES FOR THE LEGAL STAFF AND DIRECTOR. THE SYSTEM IS FUNDED FROM THE ANNUAL LICENSE FEES AND RESOURCES HAVE BEEN ADDED TO THE OPERATIONAL BUDGET TO MEET THESE NEEDS.

4. HERETOFORE, BAR ACCOUNT EMPLOYEES HAVE NOT HAD A RETIREMENT PROGRAM. THESE EMPLOYEES INCLUDE THE STAFFS OF THE OFFICE OF PROFESSIONAL CONDUCT AND OFFICE OF PROFESSIONAL PROGRAMS. IN 2000, WE FOLLOWED THE RECOMMENDATION OF THE AMERICAN BAR ASSOCIATION AND INSTITUTED THIS MUCH NEEDED EMPLOYMENT BENEFIT FOR THESE EMPLOYEES. TO INSURE THAT THE PROGRAM IS ACTUARIALLY SOUND, IT IS NECESSARY THAT SUFFICIENT RESOURCES EXIST IN THE BAR ACCOUNT TO MAKE THE REQUIRED CONTRIBUTIONS TO THE PROGRAM. THE INCREASE IN LICENSE FEES WILL PERMIT SUCH CONTRIBUTIONS.

5. BESIDES THESE SPECIAL PROGRAMS, ADDITIONAL REVENUES ARE NEEDED IN ORDER FOR THE COURT TO PROVIDE ADEQUATE FUNDING FOR THE GENERAL ADMINISTRATIVE EXPENSES OF OUR VARIOUS BOARDS AND COMMITTEES INCLUDING: THE UNAUTHORIZED PRACTICE OF LAW COMMITTEE, THE STATE BOARD OF LAW EXAMINERS, AND THE OFFICE OF PROFESSIONAL PROGRAMS.

FOR THESE REASONS AND OTHERS, WE HAVE CONCLUDED THAT THE INCREASE IN THE ANNUAL LICENSE FEES WHICH WE ANNOUNCE TODAY IS NECESSARY. AS STATED ABOVE, THIS NEW SCHEDULE OF ANNUAL FEES SHALL BECOME EFFECTIVE JANUARY 1, 2003. IF OUR FINANCIAL PROJECTIONS ARE ON TRACK, WE HAVE SET OUT A FEE SCHEDULE TO BE IN PLACE FOR MORE THAN TEN YEARS.