

OPEN SESSION AGENDA ITEM

54-144 SEPTEMBER 2018 FINANCE & PLANNING COMMITTEE ITEM III.E.

DATE: September 13, 2018

TO: **Members, Finance and Planning Committee
Members, Board of Trustees**

FROM: Dina DiLoreto, Program Director, Attorney Regulation & Consumer Resources
Robert McPhail, Program Manager, Attorney Regulation & Consumer Resources

SUBJECT: Proposed 2019 Schedule of Fees, Penalties, Charges and Deadlines

EXECUTIVE SUMMARY

This item recommends the level of fees, costs, and penalties to be set for 2019, consistent with the statutory authority in the currently pending licensing fee legislation, AB 3249. The recommended 2019 annual licensing fees is \$430 for active licensees and \$155 for inactive licensees. The item also updates the State Bar's Schedule of Charges and Deadlines with the associated fees, penalties and deadlines (Rules of the State Bar, Appendix A).

BACKGROUND

The California Business and Professions Code requires that each year the Board of Trustees fix the amount of the annual fees for licensed attorneys, not exceeding the base amounts specified in section 6140¹ for those eligible for the active rate, and in section 6141 for those eligible for the inactive rate, plus other specified amounts in related provisions (such as \$40 per active licensee to support the Client Security Fund. See Bus. & Prof. Code §6140.55.) Under AB 3249², the total annual fees at the active and inactive rates may not exceed \$430 and \$155, respectively.

DISCUSSION

Annual Licensing Fees³

Under AB 3249, effective January 1, 2019 upon signature by the Governor, the State Bar will be authorized to assess and include as part of the annual fee for 2019, the following amounts:

¹ All statutory references are to the California Business and Professions Code unless otherwise indicated.

² The Legislature passed AB 3249 on August 29, 2018, and it will become law upon signature by the Governor. Cal. Const. art. IV, § 10(b)(2).

³ This agenda item does not address optional donations, which are unchanged from 2018.

Active Fee		
Source	Purpose	\$ Amount
§ 6140	General	315
§ 6140.03	Legal Services Assistance	40
§ 6140.55	Client Security Fund	40
§ 6140.6	Discipline	25
§ 6140.9	Lawyer Assistance Program ⁴	10
Total Active Fee		430

Inactive Fee		
Source	Purpose	\$ Amount
§ 6141	General	75
§ 6140.03	Legal Services Assistance	40
§ 6140.55	Client Security Fund	10
§ 6140.6	Discipline	25
§ 6140.9	Lawyer Assistance Program	5
Total Inactive Fee		155

The active and inactive fees may be reduced as follows:

\$5 Deduction for Legislative Activity

Business and Professions Code § 6140.05 provides that the invoicing of annual fees will provide attorneys with the option to deduct \$5 from their fee if they elect not to support State Bar lobbying and related activities.

\$2 Deduction for Elimination of Bias Programs

Staff recommends that \$2 of the annual fee continue to be dedicated to funding the State Bar's Elimination of Bias programs, and be listed on the 2019 invoice as an optional deduction.

\$40 Legal Services Assistance

Business and Professions Code § 6140.03 provides that \$40 will be added to and allocated from the annual fees for the purposes established pursuant to § 6033, except to the extent that an attorney elects not to support those activities. The financial support is for nonprofit organizations that provide free legal services to persons of limited means. Attorneys electing not to support the funding of legal services to persons of limited means may deduct the \$40 from his or her annual fees.

Waiver of Annual Fees ("Scaling")

Under § 6141.1, an attorney on active status who has a total gross annual individual income from all sources of less than \$40,000 may request to scale or reduce annual licensing fees by 25%.

⁴ New for 2019: AB 3249 provides that \$1 of this \$10 fee paid by each active licensee to support the Lawyer Assistance Program be transferred by the State Bar to a statewide nonprofit corporation, established by attorneys that has, for the last 25 years or more, provided peer support to attorneys recovering from alcohol and substance abuse in a confidential and anonymous manner, to fund the support of recovery efforts of the nonprofit corporation.

Penalties

Late Payment Penalties

Under § 6143, the Board is authorized to impose penalties on any licensed attorney, active or inactive, for failing to pay any fees, penalties or costs after they become due. Rule 2.13 of the Rules of the State Bar provides that “[l]ate payment of annual membership fees is subject to the penalties set forth in the Schedule of Charges and Deadlines.” (Attachment A). Rule 2.33(C) further imposes a reinstatement fee—in addition to accrued fees, penalties, and costs—that a suspended attorney must pay in order to terminate the suspension for nonpayment. For 2019, staff recommends that one penalty be assessed on February 2 (the day following the statutory due date of February 1) in the amount of \$100 for active fees and \$30 for inactive fees. These amounts are unchanged from 2018.

MCLE Noncompliance and Reinstatement from MCLE Inactive Enrollment

Rule 2.71 of the Rules of the State Bar pertaining to attorney compliance with Minimum Continuing Legal Education requirements provides that “[f]ees for noncompliance are set forth in the Schedule of Charges and Deadlines.” These include fees set by the Board for MCLE noncompliance, for failure to prove compliance when selected for MCLE audit, and for reinstatement to terminate MCLE inactive enrollment. The amount recommended for the MCLE noncompliance fee is \$75. The amount recommended for the MCLE audit deficiency fee is \$200. The amount recommended for the reinstatement fee is \$200. These fee amounts are unchanged from 2018.

Interest on Client Security Fund Reimbursements

Under § 6140.5(c), the Board is authorized to set an applicable interest rate for Client Security Fund (CSF) reimbursement costs. The Board has set this interest rate at 10% and CSF staff requests that the 10% annual interest rate be retained and calculated from the date of disbursement in 2019. The CSF reimbursement amount, plus any applicable interest rates and costs, become part of the annual fee. This is unchanged from 2018.

Penalty for Non-Compliance with Mandatory Fee Arbitration Awards

Also unchanged, the Board is authorized under § 6203(d)(3) to impose an administrative penalty on an attorney who, in a fee dispute with a client, has failed to comply with a binding arbitration award, judgment, or agreement, not to exceed 20% of the amount ordered refunded to the client or \$1,000, whichever is greater. The Board in its discretion may also require an attorney to pay the reasonable costs of the arbitration. The non-compliance penalty and costs become part of the annual fee for the next calendar year.

Fees and Late Payment Penalties for 2019 New Admittees

All newly licensed attorneys, when first admitted to the practice of law, are enrolled on active status. (§ 6004; Rules of State Bar, Rule 2.12.) Within 45 days of the invoice date from the State Bar, new admittees must pay initial active fees. For new admittees in 2019, staff proposes that, consistent with 2018 full annual fees (\$430) if admitted between January 1 and May 31, 2019; one-half the annual fee (\$215) if admitted between June 1 and November 30, 2019. Staff recommends that a late payment penalty for new admittees in 2019 be assessed as follows: \$100 for those admitted between January 1 and May 31, 2019, and \$50 for those admitted between June 1 and November 30, 2019. These proposed penalty amounts are unchanged from 2018.

Timing of Non-Payment Suspension Process

For the 2019 billing year, staff recommends that the initial billing notice be emailed to attorneys during the first week of December 2018, and attorneys who have not paid as of the statutory deadline of February 1, 2019, be assessed the late payment penalty. A final delinquent notice will be mailed in hard copy to all unpaid attorneys on March 15, 2019. Any recommendation for suspension due to nonpayment of fees will be presented to the Board at its May 16-17, 2019 meeting.

These proposed amounts would only take effect should AB 3249 be signed into law.

FISCAL/PERSONNEL IMPACT

The 2019 proposed budget and financial forecasts are based on the assumption that the active fee will be \$430 and that the inactive fee will be \$155. The plan takes into consideration the \$5 legislative activity deduction, the \$2 elimination of bias deduction, and the \$40 legal services assistance deduction available to attorneys.

RULE AMENDMENTS

Schedule of Charges and Deadlines, Appendix A of the Rules of the State Bar

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATION

It is recommended that the Finance and Planning Committee and Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve and set, subject to AB 3249 becoming law and effective January 1, 2019, the annual licensing fee for active status at \$430 and the annual licensing fee for inactive status at \$155; and it is

FURTHER RESOLVED, that, as required by Business and Professions Code section 6140.05, a \$5 deduction from annual fees be provided to each attorney who elects not to fund State Bar lobbying and other legislative activity; and it is

FURTHER RESOLVED, that a \$2 deduction from annual fees be provided to each attorney who elects not to fund State Bar programs that support the elimination of bias; and it is

FURTHER RESOLVED, that for the Legal Services Assistance Fee under Business and Professions Code section 6140.03, a \$40 deduction from the annual fee be provided to each attorney who elects not to have this amount allocated to support nonprofit organizations that provide free legal services to persons of limited means; and it is

FURTHER RESOLVED, that the 2019 annual fees for new attorneys admitted in 2019 be set as follows: fees of \$430 for those admitted between January 1 and May 31, 2019 and \$215 for those admitted between June 1 and November 30, 2019; and it is

FURTHER RESOLVED, that the deadlines and penalties as proposed on the attached "Appendix A: Schedule of Charges and Deadlines for 2019" (Attachment A), be applied to delinquent 2019 annual fees; and it is

FURTHER RESOLVED, that the MCLE noncompliance fee remain set at \$75, the MCLE audit deficiency fee remain set at \$200, and the MCLE reinstatement fee to terminate MCLE inactive enrollment remain set at \$200; and it is

FURTHER RESOLVED, that the interest on assessed costs for reimbursement to the Client Security Fund be set at 10% annually calculated from the date of disbursement as set forth by the Board, pursuant to Business and Professions Code §6140.5(c); and it is

FURTHER RESOLVED, that the administrative penalty on failure to comply with binding arbitration is charged at a fee not to exceed 20% of the amount ordered refunded to the client or \$1,000 whichever is greater.

ATTACHMENT(S) LIST

- A.** Appendix A: Schedule of Charges and Deadlines for 2019

RULES OF THE STATE BAR OF CALIFORNIA
APPENDIX A: SCHEDULE OF CHARGES AND DEADLINES FOR 2019

ANNUAL FEES

Adopted July 2007
Revised September 13, 2018

The Rules of the State Bar provide that "If a rule refers to the Schedule of Charges and Deadlines, the referenced date or amount is part of the rule."¹ Unrevised rules state such amounts or dates in their text or otherwise indicate what they are.

Charges and deadlines are adopted by the Board of Trustees unless otherwise indicated.

Note: Charges are base amounts that may be increased as specified by rule or otherwise authorized by law.

<i>Rule</i>	<i>Description</i>	<i>Amount</i>	<i>Deadline</i>
2.11	Annual fees at active rate	\$430.00	February 1
	Annual fees at inactive rate	\$155.00	February 1
2.12	(A) Admitted between January 1 and May 31	\$430.00	45 days from invoice date
	(B) Admitted between June 1 and November 30	\$215.00	45 days from invoice date
	(C) Administrative fee for admission in December	None	N/A
2.13	Penalties for late payment of annual fees received at the State Bar or USPS-postmarked <i>after February 1</i> .		
	Billed at active rate	\$100.00	February 1
	Billed at inactive rate	\$30.00	February 1
	Attorneys admitted between Jan. 1 and May 31	\$100.00	45 days from invoice date
	Attorneys admitted between June 1 and Nov. 30	\$50.00	45 days from invoice date
2.15	(A) Scaling deadline for qualified active attorneys (25% reduction of base active fee of \$383.00)	\$334.25	February 1 or 45 days from date of invoice if admitted between January 1 and May 31
	(B) Scaling deadline for qualified employers (25% reduction of base active fee of \$383.00)	\$334.25	February 1
2.31	(A) Transfer to active status	\$430.00	For transfer at any time
	(B) Transfer to inactive status	\$155.00	February 1
2.33	(C)(2) Reinstatement fee to terminate suspension for nonpayment ²	\$100.00	At time reinstatement is requested
2.71; 2.90	MCLE noncompliance	\$75.00	February 1; August 23
2.90	MCLE audit deficiency	\$200.00	August 23
2.71; 2.93	Reinstatement fee to terminate MCLE inactive enrollment	\$200.00	At time reinstatement is requested

¹ State Bar Rule 1.20(L).

² Business & Professions Code § 6143 provides that the reinstatement fee may not exceed double the amount of delinquent dues, penalties, or costs.