



The State Bar *of California*

OPEN SESSION

AGENDA ITEM

54-142 SEPTEMBER 2019

FINANCE AND PLANNING COMMITTEE II.A

DATE: September 19, 2019

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

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

SUBJECT: Proposed 2020 Changes to Schedule of License Fees, Penalties, Charges and Deadlines

EXECUTIVE SUMMARY

This item recommends the level of fees, costs, and penalties to be set for 2020, consistent with the statutory authority in the currently pending licensing fee legislation, Senate Bill (SB) 176. The recommended 2020 annual licensing fee is \$544 for active licensees and \$183 for inactive licensees. This item also seeks approval for updates the State Bar's Schedule of Charges and Deadlines regarding 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 Business and Professions Code section 6140.55.) Under SB 176², the total annual fees at the active and inactive rates may not exceed \$544 and \$183, respectively.

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

² As of the writing of this item, SB 176 was approved by the legislature. It will become law upon signature by the Governor, effective January 1, 2020. Cal. Const. art. IV, §10(b)(2). For purposes of this agenda item, it is assumed that the Governor will sign SB 176.

DISCUSSION

ANNUAL LICENSING FEES

Under SB 176, effective January 1, 2020, the State Bar will be authorized to assess annual fees of \$544 and \$183 for active and inactive licensees respectively. Unlike in prior years, SB 176 aggregates all the approved increases into the base fee set forth in Business and Professions Code section 6140. However, uncodified language found in subdivision (c) of Section 1 of SB 176 sets forth the intent of the Legislature that “[T]he State Bar of California use license fees for active and inactive licensees in a manner that is consistent with the California State Auditor’s Report released on April 30, 2019, and the Legislative Analyst’s Office report released on June 26, 2019. As delineated in SB 176, the annual fees for 2020 are as follows:

Active Fee		
Source	Purpose	\$ Amount
§6140	General	438*
§6140.03	Legal Services Assistance	40
§6140.55	Client Security Fund	40
§6140.6	Discipline	25
§6140.9	Lawyer Assistance Program	1
Total Active Fee		544

* Consistent with the direction of the California State Auditor and the Legislative Analyst, this number includes a one-time assessment of an additional \$40 to support the Client Security Fund, \$5 for technology projects, \$4 for building improvements, and \$3 for the reserve fund.

Inactive Fee		
Source	Purpose	\$ Amount
§6141	General	108**
§6140.03	Legal Services Assistance	40
§6140.55	Client Security Fund	10
§6140.6	Discipline	25
§6140.9	Lawyer Assistance Program	0
Total Inactive Fee		183

** Consistent with the direction of the California State Auditor and the Legislative Analyst, this number includes a one-time assessment of an additional \$10 to support the Client Security Fund, \$1 for technology projects, \$1 for building improvements, and \$1 for the reserve fund.

The active and inactive fees may be reduced as follows:

\$5 Deduction for Legislative Activity

Business and Professions Code section 6140.05 provides that the invoicing of annual fees will provide attorneys with the option to deduct \$5 from the 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 2020 invoice as an optional deduction.

\$40 Legal Services Assistance

Business and Professions Code section 6140.03 provides that \$40 will be added to and allocated from the annual fees for the purposes established pursuant to section 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 section 6141.1, an attorney on active status who has a total gross annual individual income from all sources of less than \$60,478.35 (an increase from the previous threshold of \$40,000) may request to scale or reduce annual licensing fees by 25 percent.

Optional Donations Presented on Annual Fee Statement

Section 6031.5(c) expressly authorized the State Bar to collect voluntary donations for the Conference of Delegates of California Bar Associations (CCBA). Pursuant to last year's fee bill, the authority to collect donations for CCBA terminated with the 2019 annual fees. The CCBA donation option will be removed from the 2020 fee statement. Other donation options (Justice Gap Fund, California ChangeLawyers, and the California Supreme Court Historical Society) remain in effect for 2020.

PENALTIES

Late Payment Penalties

Under section 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 license 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. By statute, the annual due date is February 1. Since February 1, 2020 is a Saturday, the payment deadline will be February 3, 2020. For 2020, staff recommends that a penalty be assessed in the amount of \$100 for active fees and \$30 for inactive fees if full payment is not received by February 10, 2020. Staff recommends a reinstatement fee to terminate a suspension for nonpayment in the amount of \$100. These amounts are unchanged from 2019.

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. For 2020, consistent with the timeline for paying licensing fees, staff recommends that penalties be assessed to those attorneys with a

February 3, 2020 due date if they have not reported compliance by February 10, 2020. 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 2019.

Interest on Client Security Fund Reimbursements

Under section 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 percent and CSF staff requests that the 10 percent annual interest rate be retained and calculated from the date of disbursement in 2020. The CSF reimbursement amount, plus any applicable interest rates and costs, become part of the annual fee. This is unchanged from 2019.

Penalty for Noncompliance with Mandatory Fee Arbitration Awards

Also unchanged, the Board is authorized under section 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 percent 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 noncompliance penalty and costs become part of the annual fee for the following calendar year.

Fees and Late Payment Penalties for 2020 New Admittees

All newly licensed attorneys, when first admitted to the practice of law, are enrolled on active status. (See section 6004 and Rules of the 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 2020, consistent with State Bar Rule 2.12, staff proposes that they be charged full annual fees (\$544) if admitted between January 1 and May 31, 2020; one-half the annual fee (\$272) if admitted between June 1 and November 30, 2020, and that 2020 fees be waived if admitted in December 2020. Staff recommends that a late payment penalty for new admittees in 2020 be assessed as follows: \$100 for those admitted between January 1 and May 31, 2020, and \$50 for those admitted between June 1 and November 30, 2020. These proposed penalty amounts are unchanged from 2019.

Timing of Nonpayment Suspension Process

For the 2020 billing year, staff recommends that the initial billing notice be emailed to attorneys during the first two weeks of December 2019, setting forth the statutory February 3, 2020 due date, and that attorneys whose payments are not received by February 10, 2020 be assessed the late payment penalty. A final delinquent notice will be mailed in hard copy to all unpaid attorneys on March 13, 2020. Any recommendation for suspension due to nonpayment of fees will be presented to the Board at its May 2020 meeting.

Introduction of New Charge for Returned Payments

Staff recommends the introduction of a new charge to the Schedule of Charges and Deadlines in the amount of \$20, related to the handling of payments that are returned due to insufficient funds. This fee would partially defray costs incurred by the State Bar for insufficient funds payments.

These proposed amounts would only take effect should SB 176 be signed into law.

FISCAL/PERSONNEL IMPACT

The 2020 proposed fee increase in SB 176 does not represent the State Bar's total needs and will require the five-year forecast and the 2020 projected budget to be revised based on the assumption that the active fee will be increased to \$544 and that the inactive fee will be \$183. The forecast and budget will take 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

RECOMMENDATIONS

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 SB 176 becoming law, the annual licensing fee for 2020 at \$544 for active status and at \$183 for inactive status; and it is

FURTHER RESOLVED, that, as required by Business and Professions Code section 6140.05, a \$5 deduction from annual fees be available for any 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 available for any 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 2020 annual fees for new attorneys admitted in 2020 be set as follows: fees of \$544 for those admitted between January 1 and May 31, 2020, and \$272 for those admitted between June 1 and November 30, 2020; and it is

FURTHER RESOLVED, that the deadlines and penalties as proposed on the attached Appendix A: Schedule of Charges and Deadlines for 2020 (Attachment A), be applied to delinquent 2020 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 percent annually calculated from the date of disbursement as set forth by the Board, pursuant to Business and Professions Code section 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 percent 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 2020

RULES OF THE STATE BAR OF CALIFORNIA
APPENDIX A: SCHEDULE OF CHARGES AND DEADLINES FOR 2020
ANNUAL FEES

Adopted July 2007; Revised September 19, 2019

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	\$544.00	February 3
	Annual fees at inactive rate	\$183.00	February 3
2.12	(A) Admitted between January 1 and May 31	\$544.00	45 days from invoice date
	(B) Admitted between June 1 and November 30	\$272.00	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 <i>after February 10</i> .		
	Billed at active rate	\$100.00	February 10
	Billed at inactive rate	\$30.00	February 10
	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 \$497.00)	\$419.75	February 3 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 \$497.00)	\$419.75	February 3
2.31	(A) Transfer to active status	\$544.00	For transfer at any time
	(B) Transfer to inactive status	\$183.00	February 3
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 10; August 28
2.90	MCLE audit deficiency	\$200.00	August 28
2.71; 2.93	Reinstatement fee to terminate MCLE inactive enrollment	\$200.00	At time reinstatement is requested
	Penalty for payments returned due to Insufficient Funds	\$20.00	

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.