



The State Bar of California

OPEN SESSION AGENDA ITEM 54-142 SEPTEMBER 2020 FINANCE COMMITTEE II.B

DATE: September 8, 2020

TO: Members, Finance Committee
Members, Board of Trustees

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

SUBJECT: Proposed 2021 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 2021, consistent with the statutory authority in the currently pending licensing fee legislation, Assembly Bill (AB) 3362. The recommended 2021 annual licensing fee is \$515 for active licensees and \$182.40 for inactive licensees. This item also seeks approval for updates to 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 fixes the amount of the annual fees for licensed attorneys, not exceeding the base amounts specified in section 6140 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 section 6140.55).¹ Under AB 3362, the total annual fees at the active and inactive rates may not exceed \$515 and \$182.40, respectively.²

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

² As of the writing of this item, AB 3362 was approved by the legislature. It will become law upon signature by the Governor, effective January 1, 2021. Cal. Const. art. IV, §10(b)(2). For purposes of this agenda item, it is assumed that the Governor will sign AB 3362.

DISCUSSION

ANNUAL LICENSING FEES

Effective January 1, 2021, under AB 3362, the State Bar will be authorized to assess annual fees of \$515 and \$182.40 for active and inactive licensees respectively, as follows:

Active Fee		
Source	Purpose	Amount
§6140	General	395
§6140.03	Legal Services Assistance	45
§6140.55	Client Security Fund	40
§6140.6	Discipline	25
§6140.9	Lawyer Assistance Program	10
Total Active Fee		\$515

Inactive Fee		
Source	Purpose	Amount
§6141	General	97.40
§6140.03	Legal Services Assistance	45
§6140.55	Client Security Fund	10
§6140.6	Discipline	25
§6140.9	Lawyer Assistance Program	5
Total Inactive Fee		\$182.40

The active and inactive fees may be reduced as follows:

\$5 Deduction for Legislative Activity

Section 6140.05 continues to provide 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 continues to be dedicated to funding the State Bar's Elimination of Bias programs and be listed on the 2021 invoice as an optional deduction. This amount is unchanged from 2020.

\$45 Legal Services Assistance

Section 6140.03 provides that \$45 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. Previously set at \$40, AB 3362 increases the amount to \$45, and pursuant to a competitive grant process, requires \$5 of the \$45 to be allocated to qualified legal services projects or qualified support centers to hire law school graduates with a temporary provisional license issued by the State Bar. Attorneys electing not to support the funding of legal services to persons of limited means may deduct the \$45 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 may request to scale or reduce annual licensing fees by 25 percent.

Optional Donations Presented on Annual Fee Statement

Remaining in effect for 2021, donation options presented on the fee statement include \$100 for the Justice Gap Fund, \$75 for California ChangeLawyers, and \$25 for the California Supreme Court Historical Society.

PENALTIES

Late Payment Penalties

Under section 6143, the Board is authorized to impose penalties on any active or inactive licensed attorney 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). In addition to accrued fees, penalties, and costs, rule 2.33(C) further imposes a reinstatement fee that a suspended attorney must pay in order to terminate the suspension for nonpayment. By statute, the annual due date is February 1. For 2021, staff recommends that a \$100 penalty be assessed for active fees and \$30 for inactive fees if full payment is not received by February 10, 2021. These extra days, which were introduced last year, allow for payment processing. Staff recommends a \$100 reinstatement fee to terminate a suspension for nonpayment. These amounts are unchanged from 2020.

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, failure to prove compliance when selected for MCLE audit, and reinstatement to terminate MCLE inactive enrollment. For 2021, consistent with the timeline for paying licensing fees, staff recommends that penalties be assessed to those attorneys with a February 1, 2021 due date if they have not reported compliance by February 10, 2021. 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 amounts are unchanged from 2020.

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 in the past at 10

percent and CSF staff requests that the 10 percent annual interest rate be retained and calculated from the date of disbursement in 2021. The CSF reimbursement amount plus any applicable interest rates and costs become part of the annual fee. This is unchanged from 2020.

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. In its discretion, the Board 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 2021 New Admittees

When first admitted to the practice of law, all newly licensed attorneys 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. Consistent with State Bar rule 2.12, for new admittees in 2021, staff proposes that they be charged full annual fees (\$515) if admitted between January 1 and May 31, 2021; one-half the annual fee (\$257.50) if admitted between June 1 and November 30, 2021, and that 2021 fees be waived if admitted in December 2021. Staff recommends that a late payment penalty for new admittees in 2021 be assessed as follows: \$100 for those admitted between January 1 and May 31, 2021, and \$50 for those admitted between June 1 and November 30, 2021. These proposed penalty amounts are unchanged from 2020.

Timing of Nonpayment Suspension Process

For the 2021 billing year, staff recommends that the initial billing notice be emailed to attorneys during the first two weeks of December 2020, setting forth the statutory February 1, 2021 due date, and that attorneys whose payments are not received by February 10, 2021 be assessed the late payment penalty. A final delinquent notice will be mailed in hard copy on March 12, 2021 to all attorneys who have failed to pay by that date. Any recommendation for suspension due to nonpayment of fees will be presented to the Board at its May 2021 meeting.

Charge for Returned Payments

Staff recommends that the \$20 charge currently applied when a payment is returned due to insufficient funds be expanded to apply to all returned payments. This fee partially defrays costs incurred by the State Bar when handling any returned payment.

These proposed amounts would only take effect should AB 3362 be signed into law.

FISCAL/PERSONNEL IMPACT

The 2021 projected budget will be based on the assumption that the active fee will be \$515 and the inactive fee will be \$182.40. The forecast and budget will take into consideration the \$5 legislative activity deduction, the \$2 elimination of bias deduction, and the \$45 legal services assistance deduction available to attorneys.

AMENDMENTS TO RULES OF THE STATE BAR

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

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATIONS

Should the Finance Committee concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that subject to AB 3362 becoming law, the Finance Committee recommends that the Board of Trustees approves and sets the annual licensing fee for 2021 at \$515 for active status and at \$182.40 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 \$45 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 2021 annual fees for new attorneys admitted in 2021 be set as follows: fees of \$515 for those admitted between January 1 and May 31, 2021, and \$257.50 for those admitted between June 1 and November 30, 2021; and it is

FURTHER RESOLVED, that the deadlines and penalties as proposed on the attached Appendix A: Schedule of Charges and Deadlines for 2021 (Attachment A) be applied to delinquent 2021 annual fees; and it is

FURTHER RESOLVED, that the MCLE noncompliance fee remains set at \$75, the MCLE audit deficiency fee remains set at \$200, and the MCLE reinstatement fee to terminate MCLE inactive enrollment remains 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.

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that upon recommendation of the Finance Committee and subject to AB 3362 becoming law, the Board of Trustees approves and sets the annual licensing fee for 2021 at \$515 for active status and at \$182.40 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 \$45 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 2021 annual fees for new attorneys admitted in 2021 be set as follows: fees of \$515 for those admitted between January 1 and May 31, 2021, and \$257.50 for those admitted between June 1 and November 30, 2021; and it is

FURTHER RESOLVED, that the deadlines and penalties as proposed on the attached Appendix A: Schedule of Charges and Deadlines for 2021 (Attachment A) be applied to delinquent 2021 annual fees; and it is

FURTHER RESOLVED, that the MCLE noncompliance fee remains set at \$75, the MCLE audit deficiency fee remains set at \$200, and the MCLE reinstatement fee to terminate MCLE inactive enrollment remains 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 2021

RULES OF THE STATE BAR OF CALIFORNIA
APPENDIX A: SCHEDULE OF CHARGES AND DEADLINES FOR 2021
ANNUAL FEES

Adopted July 2007; Revised September 8, 2020

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 <u>\$15.00</u>	February 3 <u>1</u>
	Annual fees at inactive rate	\$183.00 <u>\$182.40</u>	February 3 <u>1</u>
2.12	(A) Admitted between January 1 and May 31	\$544.00 <u>\$15.00</u>	45 days from invoice date
	(B) Admitted between June 1 and November 30	\$272.00 <u>\$257.50</u>	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 <u>\$463.00</u>)	\$419.75 <u>\$399.25</u>	February 3 <u>1</u> 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 <u>\$463.00</u>)	\$419.75 <u>\$399.25</u>	February 3 <u>1</u>
2.31	(A) Transfer to active status	\$544.00 <u>\$15.00</u>	For transfer at any time
	(B) Transfer to inactive status	\$183.00 <u>\$182.40</u>	February 3 <u>1</u>
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 <u>27</u>
2.90	MCLE audit deficiency	\$200.00	August 28 <u>27</u>
2.71; 2.93	Reinstatement fee to terminate MCLE inactive enrollment	\$200.00	At time reinstatement is requested
	Penalty for <u>returned</u> 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.