



The State Bar of California

OPEN SESSION

AGENDA ITEM

54-141 SEPTEMBER 2021

FINANCE COMMITTEE II.A

DATE: September 10, 2021

TO: Members, Finance Committee
Members, Board of Trustees

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

SUBJECT: Proposed 2022 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 2022, consistent with the statutory authority in the currently pending licensing fee legislation, Senate Bill (SB) 211. The recommended 2022 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 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 211², the total annual fees at the active and inactive rates may not exceed \$515 and \$182.40, respectively.

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

² As of the writing of this item, the deadline for further amending legislation having passed, this is the fee amount that will be voted on by the Legislature the week of September 6. We anticipate both the Senate and Assembly will

DISCUSSION

ANNUAL LICENSING FEES

Under SB 211, effective January 1, 2022, 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

Business and Professions Code 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.

approve the fee bill and it will be signed by the Governor. For purposes of this agenda item, it is assumed that SB 211 will become law, effective January 1, 2022. Cal. Const. art. IV, §10(b)(2).

\$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 to be listed on the 2022 invoice as an optional deduction. This amount is unchanged from 2021.

\$45 Legal Services Assistance

Business and Professions Code 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. The legislation requires \$5 of the \$45 to be allocated, pursuant to a competitive grant process, to qualified legal services projects or qualified support centers to hire law school graduates with a temporary provisional license issue by the State Bar. Attorneys electing not to support the funding of legal services to persons of limited means may deduct the \$45 from their annual fees. This is unchanged from 2021.

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

Donation options presented on the fee statement, and remaining in effect for 2022, 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 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. For 2022, 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, 2022. Staff recommends a reinstatement fee to terminate a suspension for nonpayment in the amount of \$100. This timeline and these amounts are unchanged from 2021.

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 2022, consistent with the timeline for paying licensing fees, staff recommends that penalties be assessed to those attorneys with a February 1, 2022 due date if they have not reported compliance by February 10, 2022. 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 2022.

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 2022. The CSF reimbursement amount, plus any applicable interest rates and costs, become part of the annual fee. This is unchanged from 2021.

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 2022 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 2022, consistent with State Bar Rule 2.12, staff proposes that they be charged full annual fees (\$515) if admitted between January 1 and May 31, 2022; one-half the annual fee (\$257.50) if admitted between June 1 and November 30, 2022, and that 2022 fees be waived if admitted in December 2022. Staff recommends that a late payment penalty for new admittees in 2022 be assessed as follows: \$100 for those admitted between January 1 and May 31, 2022, and \$50 for those admitted between June 1 and November 30, 2022. These proposed penalty amounts are unchanged from 2021.

Timing of Nonpayment Suspension Process

For the 2022 billing year, staff recommends that the initial billing notice be emailed to attorneys during the first two weeks of December 2021, setting forth the statutory February 1, 2022 due date, and that attorneys whose payments are not received by February 10, 2022, be assessed the late payment penalty. A final delinquent notice will be mailed in hard copy to all unpaid attorneys on March 18, 2022. Any recommendation for suspension due to nonpayment of fees will be presented to the Board at its May 2022 meeting.

Charge for Returned Payments

Staff continues to recommend that the charge applied when a payment is returned by the bank due to insufficient funds, or other qualifying reasons, be set at \$20. This fee partially defrays costs incurred by the State Bar when handling any returned payment.

These proposed amounts would only take effect should SB 211 be signed into law.

FISCAL/PERSONNEL IMPACT

The 2022 projected budget will be based on the assumption that the active fee will be \$515 (reduced to \$257.50 for those admitted between June 1 and November 30, 2022) and that 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 OF CALIFORNIA

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 the Finance Committee recommends that the Board of Trustees approve and set, subject to AB 3362 becoming law, the annual licensing fee for 2022 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 2022 annual fees for new attorneys admitted in 2022 be set as follows: fees of \$515 for those admitted between January 1 and May 31, 2022, and \$257.50 for those admitted between June 1 and November 30, 2022; and it is

FURTHER RESOLVED, that the deadlines and penalties as proposed on the attached Appendix A: Schedule of Charges and Deadlines for 2022 (Attachment A), be applied to delinquent 2022 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.

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

RESOLVED, that the Board of Trustees, upon recommendation of the Finance Committee and subject to AB 3362 becoming law, approve and set the annual licensing fee for 2022 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 2022 annual fees for new attorneys admitted in 2022 be set as follows: fees of \$515 for those admitted between January 1 and May 31, 2022, and \$257.50 for those admitted between June 1 and November 30, 2022; and it is

FURTHER RESOLVED, that the deadlines and penalties as proposed on the attached Appendix A: Schedule of Charges and Deadlines for 2022 (Attachment A), be applied to delinquent 2022 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 LIST

- A.** Appendix A: Schedule of Charges and Deadlines for 2022

RULES OF THE STATE BAR OF CALIFORNIA
APPENDIX A: SCHEDULE OF CHARGES AND DEADLINES FOR 2022
ANNUAL FEES

Adopted July 2007; Revised September 23, 2021

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	\$515.00	February 1
	Annual fees at inactive rate	\$182.40	February 1
2.12	(A) Admitted between January 1 and May 31	\$515.00	45 days from invoice date
	(B) Admitted between June 1 and November 30	\$257.50	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 \$463.00)	\$399.25	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 \$463.00)	\$399.25	February 1
2.31	(A) Transfer to active status	\$515.00	For transfer at any time
	(B) Transfer to inactive status	\$182.40	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 10; August 31
2.90	MCLE audit deficiency	\$200.00	August 31
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 and Professions Code section 6143 provides that the reinstatement fee may not exceed double the amount of delinquent dues, penalties, or costs.