

Potential Increase to Attorney Licensing Fee

California Lawyers Association Fact Sheet

June 26, 2019

I. Current licensing fee

The current mandatory licensing fee for active attorneys is \$383. The \$383 is calculated by adding different components and subtracting optional deductions, as set by statutes and other authority. The detail is shown below because some of the different statutory components are relevant to the State Bar's potential fee increase.

The licensing fee is currently calculated as follows:

2019 Licensing Fee for Active Attorneys

- \$315 - Basic Fee (Bus. & Prof. Code § 6140)
- \$ 40 - Client Security Fund (Bus. & Prof. Code § 6140.55)
- \$ 25 - Discipline System (Bus. & Prof. Code § 6140.6)
- \$ 10 - Lawyer Assistance Program (Bus. & Prof. Code § 6140.9)
- \$ 40 - Legal Services Assistance (Bus. & Prof. Code § 6140.03)

TOTAL \$430

2019 Optional Deductions

- \$ 5 - For attorneys who do not want to fund the State Bar's lobbying and other legislative activity. (Bus. & Prof. Code § 6140.05)
- \$ 2 - For attorneys who do not want to fund programs that address concerns of access and bias in the legal profession and the justice system. (*Keller v. State Bar of California* (1990) 496 U.S. 1)
- \$ 40 - For attorneys who do not want to fund legal services assistance. (Bus. & Prof. Code § 6140.03). This is the same \$40 shown above as part of the licensing fee, but the structure of including the amount and then providing for a deduction is statutorily mandated. Under Business and Professions Code section 6140.03, the State Bar is required to increase the annual licensing fee by \$40, to fund legal services, but the fee statement is also required to provide each attorney with the option of deducting the \$40.

TOTAL \$47

TOTAL MANDATORY LICENSING FEE

\$430 - licensing fee
- \$ 47 - optional deductions
\$383

II. Potential increase to the licensing fee

A. Initial State Bar proposal

The State Bar has proposed three potential increases:

- An ongoing increase to the basic licensing fee
- A one-time special assessment for capital and technology investments
- A one-time increase in the amount paid for the Client Security Fund

At its meeting on March 15, 2019, the State Bar Board of Trustees authorized staff to pursue an ongoing licensing fee increase of up to \$100 plus an annual CPI adjustment; a one-time special assessment of up to \$250; and a one-time Client Security Fund assessment of up to \$80, effective January 1, 2020.

With the proposed increases, the 2020 licensing fee for active attorneys would have been:

\$415 - Basic Fee (Bus. & Prof. Code § 6140)
\$120 - Client Security Fund (Bus. & Prof. Code § 6140.55, \$40 plus \$80 one-time special assessment)
\$ 25 - Discipline System (Bus. & Prof. Code § 6140.6)
\$ 10 - Lawyer Assistance Program (Bus. & Prof. Code § 6140.9)
\$ 40 - Legal Services Assistance (Bus. & Prof. Code § 6140.03)
\$250 - special assessment for capital and technology investments

TOTAL \$860
- \$ 47 - optional deductions
\$813

B. California State Auditor's report

Every two years, the State Bar is required to contract with the California State Auditor's Office to conduct a performance audit of the State Bar's operations for the respective fiscal year. (Bus. & Prof. Code § 6145(b)). In past years, the statute has not specified topics the audit should address, and those topics have varied. For the audit that was

due in 2019, Business and Professions Code section 6145(c) added specific requirements so the audit could be reviewed in conjunction with the legislation authorizing the State Bar's licensing fee for 2020.

On April 30, 2019, the California State Auditor released its report on the State Bar, available here

<https://www.auditor.ca.gov/reports/2018-030/index.html>

The State Auditor's report contains an extensive analysis of the State Bar's proposed fee increases for 2020. The report concludes that the proposed fee increases are higher than necessary, and includes specific recommendations for lower fee increases.

C. State Bar's response to the State Auditor's report

On May 17, 2019, the State Bar Board of Trustees met and evaluated the State Auditor's recommendations. The material presented to the Board of Trustees is available here

<https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000024194.pdf>

The material states, in part: "Overall, the State Bar is in agreement with all of the State Auditor's recommendations, with the caveat that the State Bar believes that one, a fee holiday for the Lawyer Assistance Program should be postponed. The audit, which included a careful review of the State Bar's multi-year Forecast which delineated one-time and on-going funding needs, supports a substantial fee increase and a multi-year fee bill. The State Auditor's recommendations would have an unprecedented positive impact on the State Bar's ability to meet its public protection mission."

D. Senate Bill 176 – the State Bar fee bill

SB 176 is the pending legislation that would authorize the State Bar to collect 2020 attorney licensing fees and set the amount of those licensing fees. The bill was amended on May 22, 2019, and is available here

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB176

The amendments made on May 22 follow the recommendations of the State Auditor for 2020, except that they do not include suspension of the fee for the Lawyer Assistance Program in 2020.

The breakdown of the amendments contained in SB 176 is as follows:

1. Amends Business and Professions Code section 6140 to make the active licensing fee \$460.

- This includes a \$379 licensing fee, \$22 IT fee, \$16 capital Improvement fee, \$3 for general fund reserve, and \$40 for the client security fund.
2. Amends Business and Professions Code section 6141 to make the inactive license fee \$109.
 - This includes the \$88 licensing fee, \$11 for IT, capital improvement, and general fund reserve, and \$10 for the client security fund.

Existing law continues to contain the following fees, in addition to the fees noted above:

1. Business and Professions Code section 6140.6 contains a \$25 fee for the discipline system.
2. Business and Professions Code section 6140.55 contains the following fee for the client security fund:
 - a. A \$40 fee for active licensees.
 - b. A \$10 fee for inactive licensees.
3. Business and Professions Code section 6140.9 contains the following fee for the Lawyer Assistance Program:
 - a. A \$10 fee for active licensees.
 - b. A \$5 fee for inactive licensees.

Fees under the amendments and existing law total:

1. For active licensees \$535
 - $\$460 (6140) + \$25 (6140.6) + \$40 (6140.55) + \$10 (6140.9) = \$535$
2. For inactive licensees \$149
 - $\$109 (6141) + \$25 (6140.6) + \$10 (6140.55) + \$5 (6140.9) = \$149$

III. Fee scaling and hardship waivers

Active attorneys who can demonstrate “total gross annual individual income from all sources” of less than \$40,000 currently qualify for a waiver of 25 percent of the annual licensing fee. (Bus. & Prof. Code § 6141.1(b)). In addition to the legislatively required 25 percent waiver for those with income under \$40,000, State Bar rules afford fee waiver and scaling options. The State Bar provides for 25 percent scaling of licensee fees for attorneys who work at IOLTA-funded legal services organizations. State Bar Rule 2.16 (waivers) allows the State Bar secretary to waive 50 percent of the annual fee for licensees with household incomes below \$20,000.

SB 176 includes an amendment to Business and Professions Code section 6141.1(b) that would increase the \$40,000 income limit to \$60,478.35. The statutory amendment notes that this “is reflective of the previous limit adjusted for 20 years of inflation pursuant to the Consumer Price Index.” Under the amendment, an active licensee who can demonstrate total gross annual individual income from all sources of less than \$60,478.35 would presumptively qualify for a waiver of 25 percent of the annual licensing fee.

On May 17, 2019, the State Bar Board of Trustees met and considered fee scaling options for implementation of the State Bar fee increase. State Bar staff recommended providing fee scaling for attorneys whose income is at or below the statewide middle class income range, noting that if this recommendation is adopted attorneys whose individual income falls below \$90,000 would qualify for fee scaling. An alternative option presented to the Board of Trustees was household income below \$155,000, but staff recommended against using household income to determine fee scaling eligibility. The State Bar also discussed potential, expanded eligibility for fee scaling based on various employment categories, such as attorneys who work for nonprofits. Details are available in the material presented to the Board of Trustees, including the increase that would be required to the attorney licensing fee paid by those above the fee scaling income limit, in order to be revenue neutral under the proposed fee scaling methodology. That material is available here <https://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000024193.pdf>

IV. LAO Report

In 2019, the State Bar will also be subject to an additional report by the Legislative Analyst’s Office (LAO). For each program or division assessed by the State Auditor in its report on the State Bar, the LAO is required to “assess whether the State Bar effectively utilizes licensing fee revenues to maximize efficiencies.” (Bus. & Prof. Code § 6145(c)). The LAO Report was released on June 26, 2019, and is available here <https://lao.ca.gov/Publications/Report/4080>.