

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 40 (Umberg)
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Fiscal: No
Urgency: No
AM

SUBJECT

State Bar: annual license fees

DIGEST

This bill authorizes the State Bar of California (State Bar) to collect an unspecified amount of annual license fees for active licensees for 2024.

EXECUTIVE SUMMARY

The State Bar of California (State Bar) is a public corporation and the largest state bar in the country. Attorneys who wish to practice law in California generally must be admitted and licensed in this state and must be members of the State Bar. (Cal. Const., art. VI, § 9.) This bill is the annual State Bar licensing fee bill. The State Bar has been embroiled in scandal over its handling, or lack thereof, of investigation and discipline of once prominent trial attorney Thomas Girardi (*hereafter* Girardi). This year the State Bar released redacted versions of the two audits or investigations they commissioned. The first was an audit of all closed disciplinary cases pertaining to complaints filed with the State Bar against Girardi (*hereafter* Lazar audit). The second was an independent investigation into whether the State Bar's handling of past discipline and complaints against Girardi was affected by his connections and influence at the State Bar (*hereafter* May report). The revelations disclosed in these reports were astounding and raise very troubling questions about the ability of the State Bar to perform its core mission of protection of the public through disciplining attorneys licensed in this state.

The bill is author sponsored. There is no known support or opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Requires all attorneys who practice law in California to be licensed by the State Bar and establishes the State Bar, within the judicial branch of state government, for the purpose of regulating the legal profession. (Cal. const., art. VI, § 9; Bus. & Prof. Code § 6000 et seq.)
 - a) The Legislature sets the annual fees. (Bus. & Prof. Code § 6140, 6141.)
 - b) The State Bar is governed by the Board of Trustees of the State Bar (Board). (Bus. & Prof. Code § 6010 et seq.; § 6016.)
- 2) Establishes that protection of the public, which includes support for greater access to, and inclusion in, the legal system, is the highest priority for the State Bar in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public is to be paramount. (Bus. & Prof. Code § 6001.1.)
- 3) Authorizes the State Bar to collect the following fees from active licensees for the year 2023:
 - a) \$39 annual license fee, except that if the State Bar has entered into a contract to sell its San Francisco office building by October 31, 2022, the sum is not to exceed \$386. (Bus. & Prof. Code § 6140.)
 - b) \$40 fee for the Client Security Fund. (Bus. & Prof. Code § 6140.55.)
 - c) \$25 fee for the costs of the disciplinary system. (Bus. & Prof. Code § 6140.6.)
 - d) \$10 fee for the attorney diversion and assistance program. (Bus. & Prof. Code § 6140.9.)
- 4) Authorizes the State Bar to collect the following fees from inactive licensees for the year 2023:
 - a) \$97.40 annual license fee, except that if the State Bar has entered into a contract to sell its San Francisco office building by October 31, 2022, the sum is not exceed \$96.40. (Bus. & Prof. Code § 6141(a).)
 - b) \$10 fee for the Client Security Fund. (Bus. & Prof. Code § 6140.55)
 - c) \$25 fee for the costs of the disciplinary system. (Bus. & Prof. Code § 6140.6.)
 - d) \$5 fee for the attorney diversion and assistance program. (Bus. & Prof. Code § 6140.9.)
 - e) An inactive licensee who is 70 years old or older is not required to pay an annual license fee. (Bus. & Prof. Code § 6141(b).)
- 5) Requires the State Bar to charge a \$45 fee in addition to the annual license fee for active and inactive licensees for the purposes of funding legal services for persons of limited means, as provided, unless a licensee elects not to support those activities in

which case the licensee can deduct the amount from the annual license fee. Requires \$5 of the \$45 fee to be allocated to qualified legal services projects or qualified support centers, as defined, to hire law school graduates with a temporary provisional license issued by the State Bar, as provided. (Bus. & Prof. Code § 6140.03.)

- 6) Requires the State Bar to contract with the California State Auditor's Office to conduct a performance audit of the State Bar's operations every two years. (Bus. & Prof. Code § 6145 (b).)
- 7) Provides that the Chief Trial Counsel (CTC, with or without the filing or presentation of any complaint, may initiate and conduct investigations of all matters affecting or relating to: the discipline of the licensees of the State Bar; the acts or practices of a person whom the CTC has reason to believe has violated or is about to violate any provision of Articles 7 (commencing with Section 6125) and 9 (commencing with Section 6150) of the State Bar Act; and any other matter within the jurisdiction of the State Bar. (Bus. & Prof. Code § 6044.)
- 8) Provides that it shall be the goal and policy of the State Bar to dismiss a complaint, admonish the attorney, or forward a completed investigation to the Office of Chief Trial Counsel (OCTC) within six months after receipt of a written complaint. As to complaints designated as complicated matters by the chief trial counsel, it shall be the goal and policy of the State Bar to dismiss, terminate by admonition, or forward those complaints to the OCTC within 12 months. (Bus. & Prof. Code § 6094.5(a).)

This bill:

- 1) Authorizes the State Bar to collect an unspecified amount for the annual license fee for active licensees in 2024.

COMMENTS

1. Stated need for the bill

The author writes:

The State Bar's most basic function is to protect California consumers. It is mind boggling that the State Bar as a whole not only utterly failed this task, but also conspired to conceal obvious misconduct on the part of at least one specific lawyer — Tom Girardi. The revelations in the May report show that Tom Girardi's financial web and sphere of influence reached so far within the State Bar, that he was essentially bankrolling an employee in the Office of Chief Trial Counsel and the Executive Director's Office and said employee's family to the tune of close to \$1 million while he was being investigated by the same organization. Every subsequent

report about Tom Girardi and the State Bar's activities over the last two decades seems to be more alarming than the next.

This Committee and the Assembly Committee on Judiciary will be holding an oversight hearing of the State Bar this year to get answers to the troubling questions raised by the May and Lazar reports, and ensure nothing like this can happen again. I will withhold making any decision on what amount, if any, the State Bar's 2024 annual license fees should be. It took the withholding of funds in 2021 in my SB 211 to get the State Bar to finally appoint a Chief Trial Counsel that the California Senate felt comfortable confirming, after nearly five years of that key position being vacant. If this crucial position had not been left vacant for so long, this malfeasance may have been uncovered sooner.

2. State Bar of California functions as the administrative arm of the Supreme Court for the purpose of assisting in attorney admissions and discipline

As a constitutional matter, the judicial power of California is vested in the Supreme Court, Courts of Appeal, and superior courts. (Cal. Const., art. VI, Sec. 1.) (*In re Attorney Discipline System* (1998) 19 Cal.4th 582, 592; *Obrien v. Jones* (2000) 23 Cal.4th 40, 48.) In addressing this inherent authority to regulate the practice of law, the Supreme Court has explained: "The important difference between regulation of the legal profession and regulation of other professions is this: Admission to the bar is a *judicial function*, and members of the bar are *officers of the court*, subject to discipline by the court. Hence, under the constitutional doctrine of separation of powers, the court has inherent and *primary regulatory power*.'" (*In re Attorney Discipline System, supra*, 19 Cal.4th at 593.) The State Bar functions as the administrative arm of the Supreme Court for the purpose of assisting in attorney admissions and discipline, with the court retaining its inherent judicial authority to disbar or suspend attorneys. (*In re Attorney Discipline System, supra*, 19 Cal.4th at 599-600; see *Keller v. State Bar of California* (1990) 496 U.S. 1, 11.)

Attorneys who wish to practice law in California generally must be admitted and licensed in this state and must be members of the State Bar. (Cal. Const., art. VI, Sec. 9.) The State Bar of California is a public corporation. Although originally a creature of statute, the State Bar is now "a constitutional entity within the judicial article of the California Constitution." (*Obrien, supra*, 23 Cal.4th at 48; see Cal. Const., art. VI, § 9; Bus. & Prof. Code, Sec. 6001.) The State Bar's regulatory assistance is an integral part of the judicial function. (*Obrien, supra*, 23 Cal.4th at 48.) Emphasizing the *sui generis* nature of the State Bar as its administrative arm, the Supreme Court has made clear that "express legislative recognition of reserved judicial power over admission and discipline is critical to the constitutionality of the State Bar Act." (*In re Attorney Discipline System, supra*, 19 Cal.4th at 600, citing Bus. & Prof. Code Sec. 6087.)

At the same time, the Legislature's exercise, under the police power, of a reasonable degree of regulation and control over the profession and practice of law in California, is well established. (*Obrien, supra*, 23 Cal.4th at 48.) The Legislature exercises regulatory

authority pursuant to the State Bar Act and has authority to set the amount of license fees necessary to fund the disciplinary system. The Legislature has enacted statutes making protection of the public the highest priority of the State Bar (Bus. & Prof. Code § 6001.1) and subjecting the CTC of the State Bar to Senate confirmation (Bus. & Prof. Code § 6079.5).

The State Bar of California is the largest state bar in the country. As of April 22, 2023, the total State Bar membership is 288,238, which includes 195,155 active licensees, 2,221 judge members, 16,976 licensees who are “Not Eligible to Practice Law,” and approximately 73,886 inactive members.¹ The State Bar’s programs are financed mostly by annual license fees paid by attorneys as well as other fees paid by applicants seeking to practice law. The State Bar is governed by a Board of Trustees (Board). Pursuant to SB 36 (Jackson, Ch. 422, Stats. 2017), the Board was required to transition to a 13 member board comprised of Governor, Supreme Court, Assembly, and Senate appointees.

3. Audit reports show systemic failure, over decades, of State Bar to fulfill its role as watchdog of the legal profession

The State Bar’s highest priority is the protection of the public, which includes quickly finding and disciplining dishonest or incompetent attorneys. As the May and Lazar reports show, the State Bar has utterly failed at fulfilling its mission. In 2021, Girardi was accused of stealing millions of dollars from his injured clients over many years. As the Lazar report demonstrates, serious and repeated allegations of misconduct against him were reported to the State Bar over decades, but the State Bar did not take action against him until 2021 when he was disbarred by the California Supreme Court after a disciplinary hearing by the State Bar.² This only occurred after a federal court found that he had misappropriated \$2 million that was awarded to victims’ families in the Lion Air flight 610 plane crash of 2018, and referred the matter to federal prosecutors for further investigation. This incident triggered numerous further accusations against Girardi for stealing client funds and the true scope of his malfeasance finally began to materialize. Eventually, Girardi and his law firm, Girardi Keese, were forced into bankruptcy. This year Girardi was indicted by federal grand juries in Los Angeles and Chicago on charges that he embezzled more than \$18 million from his clients.

The State Bar refused to release information about complaints, closed cases, or investigations it had conducted on Girardi citing to confidentiality provisions in Section 6086.1 of the Business and Professions Code. The L.A. Times sued the State Bar and eventually the State Bar agreed to release roughly 40 years of disciplinary records that showed Girardi had over 200 complaints filed against him since 1983, many of which

¹ *Attorney Status*, State Bar of Cal. (current as of April 22, 2023), available at <https://members.calbar.ca.gov/search/demographics.aspx>.

² Lazar report (released Mar. 10, 2023), available at <https://www.calbar.ca.gov/Portals/0/documents/reports/Lazar-Report-and-Attachment-Redacted.pdf>.

alleged misappropriation of client funds. In the wake of this, the State Bar initiated the Lazar and May reports.

a. May report³

The State Bar hired the law firm of Halpern May Ybarra Gelberg LLP to examine how the State Bar handled complaints filed against disbarred attorney Girardi, and whether that process was affected by Girardi's connections, to or influence, at the State Bar. During the 16-month investigation, Aaron May and his team reviewed over 950,000 documents, issued 23 subpoenas, and interviewed, either voluntarily or under compulsion, 74 witnesses. The May report is lengthy and includes numerous revelations that show that Girardi maintained an extensive network of connections at all levels of the State Bar. The report stated:

Our investigation determined that Girardi cultivated contacts on the Board, in the Executive Director's Office, and in the Office of Chief Trial Counsel ("OCTC"), both at the managerial and line prosecutor and investigator level. Girardi's ties to the State Bar spanned decades and appear to have been intentional. We found evidence indicating that Girardi was involved in the appointment of at least one State Bar Court judge and the attempted appointment of a Chief Trial Counsel ("CTC"). And we also found evidence that Girardi made offers of career assistance to people in State Bar leadership, apparently seeking to make additional connections when and where he could. We have evidence – both documentary and testimonial – showing that at least nine former State Bar employees or Board members had connections to or accepted items of value, travel, or meals from Girardi while they were working at the State Bar or State Bar Court or were on the Board, although not all of these individuals were involved in the handling of cases against Girardi. We did not find any connections between Girardi and any current State Bar employees, jurists, or Board members. (at p. 3.)

Highlights of findings from the May report include:

- That two former OCTC employees had conflicts-of-interest at the time they worked on Girardi cases as a result of their connections to Girardi. These employees' conflicts tainted the discretionary decisions they made on behalf of the State Bar and, therefore, the Girardi cases they worked on were improperly handled.
- The report concludes the State Bar had a historical lack of robust conflicts of interest policies and found numerous instances of Form 700s not being filed for employees and/or Board members. When ones were filed they were incomplete,

³ May report (released Mar. 10, 2023), available at <file:///C:/Users/mattsoam/Desktop/2023/State%20Bar%202023/May-Report-and-Addendum-Redacted.pdf>.

unsigned, or indicated no gifts were accepted when evidence clearly shows otherwise.

- The Executive Director's Office and the Office of General Counsel received multiple reports of Girardi's inappropriate connections at the State Bar that were not investigated.
- Two senior attorneys in OCTC were terminated by the then Executive Director during the same time period when those attorneys were advocating for serious charges to be brought against Girardi in pending State Bar cases.
- The then Acting Executive Director had been ghostwriting case analysis memorandums for conflict cases, which were supposed to be referred out to independent counsel under State Bar Rule 2201, and passing them off as the work product of the independent conflict counsel, including on a Girardi case.

The most egregious example of an inappropriate relationship between a staff person of the State Bar and Girardi uncovered by the May report was in regards to former State Bar employee Tom Layton. Layton worked in the Office of Chief Trial Counsel (OCTC) from 1999 to 2013, but was moved into the Executive Director's office in 2013. The May report did not find any evidence that Thomas Layton worked on any of Girardi cases. But the report did find the following:

- That Layton and his wife Rose received almost \$1,000,000 in gifts or items of value from Girardi.
- Girardi employed two of Layton's children at his firm while Layton worked at the State Bar.
- Girardi Keese paid \$600,000 to Layton and his wife while Layton worked at the State Bar. Some payments were made out directly to Layton and others directly to his wife, while others were to a business entity owned jointly by the Laytons.
- In 2011, Girardi provided Layton with a Girardi Keese American Express credit card, which Layton admitted to using for personal expenses. The report estimates Layton charged \$315,114 to this card between December of 2013 and December of 2020.
- Girardi paid for leased cars for Layton while he was employed by the State Bar, beginning likely in 2011.
- Girardi guaranteed a bank loan of \$150,000 to Layton through his law firm and made payments on the loan.
- Layton ate with Girardi on numerous occasions and Girardi paid for the meals.
- Layton flew on Girardi's private jet for personal travel. In 2011 when Layton was in OCTC. Girardi paid for four rooms for Layton at the Orleans hotel in Las Vegas. Layton admitted Girardi paid for other trips for him as well.
- Layton accepted tickets for box seats at the Staples Center for various concerts and events.
- Layton asked Girardi to pay for his participation in charity events – such as gold tournaments and dinners.

- Girardi represented Layton in four separate legal matters while he worked at the State Bar.
- It was reported that Layton repeatedly introduced State Bar employees to Girardi

b. Lazar report

The Lazar report concluded that there were 130 complaints filed against Girardi with the State Bar from 1982 to January 2021, and 115 of them were reviewed in the audit as 15 older files could not be located in off-site storage. The auditor found no documentation in any files to support a finding of improper influence by Girardi on either State Bar employees or outside examiners in the resolution of these cases. The complaints reviewed involved a myriad of alleged violations: 44 raised possible client trust account issues in violation of Rule of Professional Conduct (RPC) 1.15; 38 alleged failures to competently or diligently perform legal services (RPC 1.1; 1.3), to communicate with the client (RPC 1.4), and/or to take appropriate actions when withdrawing from employment (RPC 1.16). The remainder of the complaints were regarding other ethics violations including dishonesty (RPC 8.4), failing to comply with conflicts rules (RPC 1.7, 1.8.1), violating reporting requirements of Business and Professions Code §6068(o), and interfering with other attorneys' representation of their clients (RPC 3.10; 4.2). The auditor did find numerous errors in the handling of some of these files both by the OCTC staff and by some referred out to independent counsel under State Bar Rule 2201. The auditor concluded that many of these errors appear to be the result of strict compliance with office practices which, in this case, required flexibility in order to properly address patterns of misconduct.

c. Future oversight hearing

In light of the revelations in these two reports, this Committee and the Assembly Judiciary Committee will be holding a joint oversight hearing into the State Bar. Real evidence that the State Bar has addressed the numerous systemic failures outlined in these two reports must be demonstrated before a fee amount will be amended into this bill.

4. Attorney licensee fees

In 2019, based largely on recommendations from the California State Auditor and the Legislative Analyst's Office, the 2020 annual license fee was increased to \$438 for active licensees and \$108 for inactive licensees. This fee increase consisted of a \$71 increase on an ongoing basis and a onetime fee increase of \$52 for active licensees, and a \$20 increase on an ongoing basis and a onetime fee increase of \$13 for inactive licensees. The 2021 annual license fee was decreased to \$395 for active licensees and \$97.40 for inactive licensees through AB 3362 (Committee on Judiciary, Ch. 360, Stats. 2020). The decrease included the cessation of several of the onetime fee increases imposed in 2020. When all fees were added together, excluding the optional legal services fee, the total

license fee for 2021 was \$470 for active licensees and \$137.40 for inactive licensees.⁴ The 2022 annual license fee was the same as the license fee for 2021. (SB 211 (Umberg, Ch. 723, Stats. 2021.) The 2023 annual license fees were the same as 2022, except it provided that the active license fee is to be reduced by \$4 and the inactive licensee fee by \$1 if the State Bar has entered into a contract to sell its San Francisco office building by October 31, 2022.

The State Bar is planning to sell the building it owns and operates out of in San Francisco up for sale sometime this year. Various estimates of revenue from that sale have been predicted; however, the estimates fluctuate broadly due to numerous factors, such as if the State Bar purchases or leases another building and the conditions in the local commercial real estate market. When the license fee was increased in 2020, it provided for a \$4 increase to be used by the State Bar for capital improvements needed at its San Francisco building. If the building is sold, obviously the State Bar will no longer need these funds for capital improvements.

a. State Bar requests a licensing fee increase

The State Bar has requested a licensing fee increase stating it is faced with a structural operating deficit in both the General and Admissions Funds and shrinking reserves. They point to the fact that the licensing fee has only been increased once in the last 25 years. The State Bar assumes that they will close on the sale of the building they own and operate out of San Francisco. They indicate that if the building does not sell this year, they may not be able to sustain their regular operations in 2024.

5. Other issues to address

As the bill continues to move through the legislative process, the author intends to address other issues related to the State Bar's disciplinary process, including, among others, its disparate impact on licensees of color, providing a mechanism for licensees to have records of discipline related to substance abuse issues removed from public view after the completion of an assistance and diversion program and demonstration of no further violations, and reviewing proposed processing case standards submitted by the State Bar and reviewed by the Legislative Analyst's Office. The author also intends to address the confidentiality statutes related to the handling and release of confidential information regarding investigations by the State Bar.

⁴ This amount includes the fee for the Attorney Diversion and Assistance Program of \$10 for active licensees and \$5 for inactive licensees, which last year was only \$1 and \$0, respectively. (Bus. & Prof. Code § 6140.9(a).)

SUPPORT

None known

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: SB 42 (Umberg, 2023) requires a licensee of the State Bar who knows that another licensee has engaged in professional misconduct that raises a substantial question as to that licensee's honesty, trustworthiness, or fitness as an attorney in other respects, to inform the State Bar, except as specified. SB 42 is set to be heard by this Committee on the same day as this bill.

Prior Legislation:

AB 2958 (Committee on Judiciary, Ch. 419, Stats. 2022) authorized the State Bar to collect annual licensing fees of \$395 for active licensees and \$97.40 for inactive licensees and enacted other reforms.

SB 211 (Umberg, 2021, Ch. 723, Stats. 2021) authorized the State Bar to collect annual licensing fees of \$395 for active licensees and \$97.40 for inactive licensees and enacted other reforms. The bill required the Auditor's Office to conduct an independent audit to determine if the discipline process adequately protects the public from misconduct by licensed attorneys or those who wrongfully hold themselves out as licensed attorneys.

AB 3362 (Committee on Judiciary, Ch. 360, Stats. 2020) authorized the State Bar to collect annual licensing fees of \$395 for active licensees and \$97.40 for inactive licensees and enacted other reforms.

SB 176 (Jackson, Ch. 698, Stats. 2019) authorized the State Bar to collect annual licensing fees of \$438 for 2020 and enacted other reforms.

AB 3249 (Committee on Judiciary, Ch. 659, Stats. 2018) authorized the State Bar to collect annual licensing fees of \$390 for 2019 and enacted other reforms, including a strengthening of the attorney discipline system.

SB 36 (Jackson, 2017, Ch. 422, Stats. 2017) authorized the State Bar to collect active membership dues of up to \$390 for the year 2018; reformed the State Bar Act by separating the sections from the State Bar and creating what is now the California Lawyers Association; changed the composition of the State Bar Board; and enacted various reforms to remove politics from the Board.

AB 2878 (Committee on Judiciary, 2016) would have authorized bar dues for 2017 and enacted numerous reforms. The bill died on concurrence on the Assembly Floor.

SB 387 (Jackson, Ch. 537, Stats. 2015) authorized the State to collect active licensee fees of up to \$390 for the year 2016; required the State Bar to develop and implement a specified workforce plan for its discipline system; required the State Bar to conduct a public sector compensation and benefits study, conduct a thorough analysis of its operating costs and develop a spending plan to determine a reasonable amount for the annual membership fee, as specified; required the State Bar to contract with the California State Auditor's Office to conduct an in-depth financial audit of the State Bar; and made the State Bar subject to the Bagley-Keene Open Meeting Act and the California Public Records Act, as specified.
