

SENATE THIRD READING

SB 211 (Umberg)

As Amended July 14, 2021

Majority vote

SUMMARY

Prevents the State Bar from charging attorneys their annual licensing fees until the Senate confirms a chief trial counsel, requires the State Auditor to audit the State Bar's discipline system, and codifies the Legal Services Trust Fund Commission.

Major Provisions

- 1) Authorizes the Board of Trustees (Board) of the State Bar to collect an annual license fee of no more than \$395 for active licensees for 2022, but prevents the Board from charging the annual licensing fee for 2022 unless and until the Senate confirms the appointment of the State Bar's chief trial counsel. Provides that the annual fee is payable before February 1st or 30 days after the date the Senate confirms the appointment of the chief trial counsel, whichever occurs later.
- 2) Prohibits the Board of the State Bar from charging an annual license fee for inactive licensees unless and until the Senate confirms the appointment of the chief trial counsel, at which time the fee may not exceed \$97.40. Provides that the annual fee is payable before February 1st or 30 days after the date the Senate confirms the appointment of the chief trial counsel, whichever occurs later.
- 3) Removes governance restrictions imposed on the California Lawyers Association (CLA) that required that the bylaws ensure that: a) the governing board include one representative of each of the 16 Sections and one from the California Young Lawyers Association; b) each governing board member have equal voting power on the governing board; and c) the governing board may only terminate an individual Section or add new Sections by a two-thirds vote.
- 4) Directs the State Auditor to conduct an independent audit to determine whether the State Bar's attorney complaint and discipline process adequately protects the public from misconduct by licensed attorneys or those who wrongfully hold themselves out as licensed attorneys; and specifically provides that the audit analyze whether the State Bar takes reasonable steps to determine the existence and extent of alleged misconduct, if the State Bar has sufficient management controls, including conflict of interest policies, to ensure complaint investigations are not compromised by undue influence, and examine any data trends that could suggest racial or gender inequities in outcomes from the discipline process. Also provides that the audit include consideration of possible options for the State Bar to more proactively protect the public, including, to the extent possible, the appropriateness of an independent discipline monitor to more closely review the State Bar's discipline process, an independent ombudsperson to assist the public, and other options to protect the public. Requires that the audit be submitted no later than April 15, 2022 to the Board, the Chief Justice, and the Assembly and Senate Judiciary Committees.
- 5) Provides that notwithstanding the confidentiality of disciplinary investigations provisions, case related findings may be included in the State Auditor's report under 4), provided that the

names of attorneys investigated, any complaining witnesses, and the names of other members of the public associated with complaints are not included in the State Auditor's report.

- 6) Codifies the Legal Services Trust Fund Commission (LSTFC) within the State Bar to administer the distribution of funds to qualified legal services projects and support centers. Specifies that the LSTFC is comprised of 24 members, clarifies the length of terms, and who makes the appointments – ten appointments by the Chair of the Judicial Council, six by the Board, two by the Speaker of the Assembly, two by the Senate Committee on Rules, and four by the LSTFC itself. Sets forth the duties of the LSTFC, including establishing rules, consistent with existing law, to determine an applicant's eligibility and grant making decisions, and monitor and evaluate a recipient's compliance with requirements and grant terms based on criteria established by the LSTFC. Subjects the LSTFC to the California Public Records Act and the Bagley-Keene Open Meeting Act. Requires the LSTFC annually to report on its receipts, expenditures, and disbursements, as provided.
- 7) Removes obsolete provisions of the State Bar Act.

COMMENTS

This is the annual State Bar fees reauthorization and legislative oversight bill. The annual bill allows the Legislature to review the performance and operation of the State Bar in the past year and determine if any statutory changes need to be made to improve its functioning, as well as approve annual licensing fees for attorneys in the state. As is often the case, this bill arrives during another year of controversy for the State Bar. First, the State Auditor discovered that the State Bar's backlog of discipline cases increased by 87% between 2015 and 2020, despite (at least near the end of the time period) the Bar's new case prioritization standards and new discipline staff. Second, the public learned that famed trial attorney Thomas Girardi is accused of stealing millions of dollars from his injured clients over many years; and it now appears that serious and repeated allegations of misconduct against him were reported to the State Bar over decades, but the Bar had, until just the last few months, never taken action against Girardi. The State Bar issued a statement acknowledging that mistakes were made over years in the handling of complaints in this case. It seems likely that if the State Bar had instituted disciplinary proceedings years earlier when allegations of misconduct first surfaced, many clients might have avoided theft of their damage awards. Finally, the State Bar has also been operating without its required, Senate-confirmed chief trial counsel – the head of the State Bar's discipline program – for more than five years.

As a result of these events, this legislation conditions the State Bar's ability to charge licensing fees to California attorneys upon Senate confirmation of the State Bar's chief trial counsel position. The bill also, at this point, leaves the maximum fees that may be charged blank. This bill also seeks an outside, independent audit of the State Bar's discipline system to understand both what went wrong and how to ensure that those missteps do not happen again. Specifically, the bill directs the State Auditor, by April 15, 2022 – in time for next year's attorney fee bill – to conduct an independent audit to determine whether the State Bar's attorney complaint and discipline process adequately protects the public from misconduct by licensed attorneys or those who wrongfully hold themselves out as licensed attorneys. Additionally, in order to better support the state's legal services organizations that provide civil legal assistance to low-income Californians across the state, the bill seeks to codify the Legal Services Trust Fund Commission and give it greater autonomy in operations. Finally, the bill deletes unnecessary governance

restrictions on the California Lawyers Association, the attorney trade association which separated from the State Bar as the result of SB 36 (Jackson), Chapter 422, Statutes of 2017.

No Senate-confirmed Chief Trial Counsel for the last five years and the bill makes licensing fees contingent on confirmation. The chief trial counsel position at the State Bar, which requires Senate confirmation, has been open for over five years, with an acting person currently in the position. The chief trial counsel is the top prosecutor in the State Bar's discipline system, which reviews complaints of attorney misconduct and the unauthorized practice of law, conducts investigations, files discipline charges, and prosecutes cases in the State Bar Court. In frustration at the length of the vacancy and the failure of the State Bar to obtain Senate confirmation of the critical position – and significant concerns about the State Bar's discipline program, discussed below – the current version of the bill, which passed the Senate on a 37-0 vote, prohibits the State Bar from charging an annual license fee for active and inactive licensees for 2022 and beyond, unless and until the Senate confirms the appointment of a chief trial counsel.

State Auditor's biennial report on the State Bar's performance reveals significant concerns with its discipline program, including an 87% increase in the backlog of discipline cases. The State Bar's highest priority is the protection of the public. To the extent that protection of the public means quickly rooting out dishonest or incompetent attorneys, the State Bar is falling behind at its key mission, according to the State Auditor. The Auditor is required by law to conduct a performance audit every two years of the State Bar's operations. (Business and Professions Code Section 6145(b).) In its latest biannual audit of the State Bar, the State Auditor found that changes made to improve the State Bar's discipline system actually significantly reduced its efficiency and that its annual discipline report does not provide all required information and is of less value to its stakeholders, including the Legislature. (California State Auditor, *The State Bar of California: It Is Not Effectively Managing Its System for Investigating and Disciplining Attorneys Who Abuse the Public Trust* (April 2021).) The State Auditor found that the State Bar's backlog grew by fully 87% from the end of December 2015 to the end of June 2020, and the average duration for conducting discipline investigations during that time increased by 56%.

Numerous questions have been raised about the management of the State Bar's discipline process, in particular about its handling of decades of complaints against attorney Thomas Girardi. Near the end of 2020, the legal career of prominent trial attorney Thomas Girardi imploded after a federal judge accused him of stealing at least \$2 million from his clients. The judge referred the case to federal prosecutors for criminal investigation, froze Girardi's assets, and ordered a trustee be appointed to oversee whatever assets Girardi's law firm had in order to repay the victims' families the money that was wrongfully taken from them. (Matt Hamilton and Harriet Ryan, *Judge freezes assets of famed L.A. Lawyer Tom Girardi, citing million unpaid to clients*, Los Angeles Times (Dec. 14, 2020).)

It now appears that serious and repeated allegations of misconduct against Thomas Girardi were reported to the State Bar over a 40-year period, but the Bar had, until just the last few months, never taken action against him. A Los Angeles Times' investigation revealed that Mr. Girardi and his firm had been sued at least 45 times for malpractice or misappropriation of client funds, but the State Bar did nothing. The State Bar commissioned an internal audit to review its handling of the past complaints and released a statement, which acknowledged that the State Bar had made mistakes in the handling of complaints against Mr. Girardi over many decades.

Given the Bar's acknowledged long-standing "mistakes" with respect to complaints against Thomas Girardi, and perhaps unknown others, this bill seeks an outside, independent audit of

the Bar's discipline system to prevent future "mistakes," and acts of corruption and undue influence, and to ensure that the Bar's discipline system treats all attorneys equally. This bill seeks an outside, independent audit of the Bar's discipline system to get answer to those questions. Specifically, the amendments direct the State Auditor, by April 15, 2022, to conduct an independent audit to determine whether the State Bar's attorney complaint and discipline process adequately protects the public from misconduct by licensed attorneys or those who wrongfully hold themselves out as licensed attorneys. This audit will analyze whether State Bar takes reasonable steps to determine the existence and extent of alleged misconduct and if the State Bar has sufficient management controls, including conflict of interest policies, to ensure complaint investigations are not compromised by undue influence. It is hoped that, with the results of the audit next year, the Legislature can take necessary steps to ensure that the State Bar's discipline system protects the public and not well-connected attorneys.

According to the Author

In 2019, after years of requests from the State Bar to increase the annual license fee, the Legislature approved a significant increase in the licensing fee paid by attorneys for 2020. The 2020 fee increase was less than half of what the State Bar originally sought and instead reflected an amount justified by the analysis of the State Auditor and Legislative Analyst's Office. The fee approved for 2021 was \$34 less for active attorneys than it was in 2020.

It is clear from the State Auditor's April 29, 2021 audit report that there are serious issues with how the State Bar has managed its system for investigating and disciplining attorneys. The State Bar has been managing its discipline system without a Senate confirmed chief trial counsel for over five years. In order to ensure that the State Bar actually follows through with the Senate confirmation process as required by statute, SB 211 prohibits the State Bar from charging active and inactive attorneys a licensing fee for 2022 unless and until the Senate confirms the appointment of the chief trial counsel. I also amended out the \$395 active attorney licensing fee for 2022 and \$97.40 inactive attorney licensing fee so the Legislature can reassess what an appropriate licensing fee should be.

Arguments in Support

The Civil Justice Association of California supports the bill, writing:

SB 211 would impose a fee-collection ban until the state Senate confirms the State Bar's choice for chief trial counsel. This ban provides needed oversight for a governing body that has been negligent in their management of disciplinary actions. The Bar's failure to exercise this important role has allowed attorneys operating outside the scope of professional standards to continue in their practice of law to the detriment of their clients. A prime example of this is former attorney Thomas Girardi who misused client funds, leaving his victims out \$23 million dollars, because of delayed action on the part of the State Bar.

It is in the best interest of the public and the legal profession that the regulating body responsible for overseeing disciplinary action of attorneys be held accountable for properly managing their investigative system and removing unethical actors in a timely manner.

Arguments in Opposition

No opposition on file.

FISCAL COMMENTS

None

VOTES

SENATE FLOOR: 37-0-3

YES: Allen, Archuleta, Atkins, Bates, Becker, Borgeas, Bradford, Cortese, Dahle, Dodd, Durazo, Eggman, Glazer, Gonzalez, Grove, Hertzberg, Hueso, Hurtado, Jones, Kamlager, Laird, Leyva, McGuire, Melendez, Min, Newman, Nielsen, Ochoa Bogh, Pan, Portantino, Roth, Rubio, Skinner, Umberg, Wieckowski, Wiener, Wilk

ABS, ABST OR NV: Caballero, Limón, Stern

ASM JUDICIARY: 11-0-0

YES: Stone, Gallagher, Chau, Chiu, Davies, Lorena Gonzalez, Holden, Kalra, Kiley, Maienschein, Reyes

UPDATED

VERSION: July 14, 2021

CONSULTANT: Leora Gershenzon / JUD. / (916) 319-2334

FN: 0001038