

## **AGENDA ITEM**

**MOC - MAY III.H**

**DATE:** April 26, 2012

**TO:** Members, Member Oversight Committee

**FROM:** Larry Yee, Chief Assistant General Counsel  
Cynthia Abramov, Assistant General Counsel

**SUBJECT:** Protocol for Collection of Delinquent Loans Made Under the State Bar of California Lawyer Assistance Program

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### **EXECUTIVE SUMMARY**

At its last meeting, the Member Oversight Committee directed staff to provide a more detailed report on the unpaid and delinquent loans owed by participants in the Lawyer Assistance Program (LAP) Financial Assistance Plan. The Plan was established to loan money to LAP participants who are unable to afford the costs associated with attending the program. In this item, the Office of General Counsel reports on the practices and protocols for the collection of the delinquent LAP loans.

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### **BACKGROUND**

At the last Board meeting in March, questions arose regarding debt collection efforts in connection with the Lawyer's Assistance Program (LAP). The Member Oversight Committee asked for more information about the status of the LAP loan collection process.

### **ISSUE**

What is the protocol for handling the 185 accounts that remain delinquent under the LAP loan program?

### **CONCLUSION**

Delinquent loans are referred to a collection agency participating under the Enhanced Collections Program of the Administrative Offices of the Courts (AOC). The collection agency will attempt to locate and evaluate the assets of delinquent debtors. In particular, the focus will first be on those who are presently in active membership status. In addition to telephone calls, collection letters, and reporting of the debt to credit

reporting agencies, if it is determined these individuals have sufficient available assets, OGC will authorize the collection agency to take appropriate steps, including any legal action, to obtain a judgment against the LAP debtor and seek to enforce that judgment. This process will also be followed with respect to the remaining debtors.

## DISCUSSION

Since 2009, the State Bar has participated in the AOC's Enhanced Collections Program for the collection of delinquent debts owed by disciplined attorneys, including court-ordered disciplinary costs or restitution to the Client Security Fund in attorney discipline cases, as well as delinquent LAP loans. The AOC amended its Master Agreement for statewide vendors of collection services to specifically include the State Bar. The AOC's program implements the debt collection activities specified in Penal Code § 1463.007<sup>1</sup> and in the Judicial Council's approved "Collections Best Practices"<sup>2</sup> for pursuing delinquent court fees, fines and penalties. The scope of work in the Master Agreement incorporates those practices that are applicable to the services to be provided by the State Bar's collection vendor. The State Bar's current agreement for collection services under the AOC's program is with the vendor Wakefield & Associates.

Of the LAP accounts turned over to Wakefield, 185 have not had any repayment. Recovery has been difficult because, unlike discipline and CSF accounts, which involve

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<sup>1</sup> Under Penal Code section 1463.007, "a comprehensive collection program is a separate and distinct revenue collection activity and shall include at least 10 of the following components:

- (a) Monthly bill or account statements to all debtors.
- (b) Telephone contact with delinquent debtors to apprise them of their failure to meet payment obligations.
- (c) Issuance of warning letters to advise delinquent debtors of an outstanding obligation.
- (d) Requests for credit reports to assist in locating delinquent debtors.
- (e) Access to Employment Development Department employment and wage information.
- (f) The generation of monthly delinquent reports.
- (g) Participation in the Franchise Tax Board's Interagency Intercept Collections Program.
- (h) The use of Department of Motor Vehicle information to locate delinquent debtors.
- (i) The use of wage and bank account garnishments.
- (j) The imposition of liens on real property and proceeds from the sale of real property held by a title company.
- (k) The filing of a claim or the filing of objections to the inclusion of outstanding fines and forfeitures in bankruptcy proceedings.
- (l) Coordination with the probation department to locate debtors who may be on formal or informal probation.
- (m) The initiation of drivers' license suspension actions where appropriate.
- (n) The capability to accept credit card payments.
- (o) Participation in the Franchise Tax Board's Court-Ordered Debt Collections Program.
- (p) Contracting with one or more private debt collectors.
- (q) The use of local, regional, state, or national skip tracing or locator resources or services to locate delinquent debtors."

<sup>2</sup> See <http://www.courts.ca.gov/partners/documents/collectbp.pdf>

fees, penalties, fines or reimbursements that are enforceable as judgments under Cal. Rule of Ct., rule 9.10(g), and Cal. Bus. & Prof. Code §§ 6086.10(a) and 6140.5(a), LAP delinquent accounts would require an action by the State Bar to obtain judgments for breach of the promissory notes signed by these LAP participants.<sup>3</sup>

At a meeting with the Acting Director of the LAP and Wakefield, the Office of General Counsel discussed the collection efforts to date. Wakefield indicated that there are two categories of debtors: (a) those making payments; and (b) those 185 debtors that have not made any repayment. Wakefield informed us that, during these economic times, its success in collecting on these debts will be limited without a legally enforceable remedy.

Of those 185 debtors, 71 are on Active member status. It was agreed that these debtors with Active member status may have more incentive to pay. The debt owed by these Active status members collectively amounts to \$635,443.

Therefore, Wakefield has been directed to focus its attention on debtors with Active member status. Consistent with standard collection techniques and requirements under the Master Agreement and the Participating Agreement with Wakefield, the collection agency will undertake to locate these debtors<sup>4</sup> and to determine whether any of them have assets that can be attached.<sup>5</sup> Wakefield will then notify OGC of its findings. If it is determined that the individual has assets that can be attached, OGC will authorize Wakefield to use its in-house attorneys to seek to obtain judgments against these members.<sup>6</sup> Once a judgment is obtained, Wakefield will seek to enforce the judgment.<sup>7</sup>

Once judgments have been obtained on the debtors with Active member status, Wakefield will turn its attention to the remaining 114 delinquent accounts, and a similar process will be undertaken to locate debtors and collect on the debt.

The Participating Agreement with Wakefield allows it to return accounts to the State Bar as uncollectable if Wakefield feels it has exhausted all available avenues for collection. Our discussions with Wakefield indicate that the collection agency will monitor an account for ten years before it might consider the account uncollectable.

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<sup>3</sup> In return for loans to cover program evaluation and participating costs, a participant signs two promissory notes which require him or her to repay the loan when the participant leaves the Program.

<sup>4</sup> Collection agencies will request credit reports to assist in locating delinquent debtors. They also make use of local, regional, state, or national skip tracing or locator resources or services.

<sup>5</sup> In addition to credit reports, collection agencies may have access to other data and information for determining if a debtor has assets warranting the greater expense of filing for wage and bank account garnishments or imposition of liens on real property and proceeds from the sale of real property held by a title company.

<sup>6</sup> The use of in-house attorneys to seek judgments is at no additional cost to the State Bar.

<sup>7</sup> Wakefield's fee for obtaining and enforcing a judgment is 25% of amounts collected.

**FISCAL / PERSONNEL IMPACT:**

None

**RULE AMENDMENTS:**

None

**BOARD BOOK IMPACT:**

None