

# **AGENDA ITEM**

**May 121 10 2013**

## **Modification of Board Policies Regarding Posting of Consumer Alerts**

**DATE:** April 17, 2013

**TO:** Members, Regulation, Admissions and Discipline Oversight  
Members, Board of Trustees

**FROM:** Jayne Kim, Chief Trial Counsel

**SUBJECT:** Modification of Board Policy Regarding Posting of Consumer Alerts

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### **EXECUTIVE SUMMARY**

The State Bar's existing policy authorizes the posting of a consumer alert only where the State Bar has filed a notice of disciplinary charges (NDC) or petition for involuntary inactive enrollment, pursuant to Business and Professions Code section 6007(c), alleging either a misappropriation of \$25,000 or more of client funds ("major misappropriation cases") or 15 or more cases of loan modification misconduct ("loan modification cases").

This agenda item seeks modification to the State Bar's existing policy to expand the State Bar's authority to post a consumer alert based upon any public proceeding initiated by the State Bar against a member involving allegations of professional misconduct or seeking court assumption of an attorney's law practice

The modification will help promote public protection, fulfill the State Bar's duty to inform the public about the work of the State Bar and promote its policy of making public records more readily available to interested members of the public and the profession.

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### **BACKGROUND**

During its May 2011 meeting and upon recommendation by the Board Committee on Regulations, Admissions and Discipline Oversight (RAD), the Board of Governors of the State Bar of California (Board) approved the State Bar's existing policy authorizing the posting of a consumer alert related major misappropriation allegations filed in State Bar Court. The Board determined that, although a NDC is posted on a member's State Bar online profile page, filed charges of major misappropriation of client funds in a NDC or included in a petition for involuntary inactive enrollment under Business and

Professions Code section 6007(c) warranted stronger measures to adequately protect clients and the public.

During its July 2011 meeting and upon recommendation by RAD, the Board approved posting of a consumer alert related to loan modification cases filed in State Bar Court where filed charges of 15 or more cases of loan modification misconduct in a NDC or a petition for involuntary inactive enrollment under Business and Professions Code section 6007(c) based in whole or in part on loan modification misconduct warranted stronger measures to adequately protect clients and the public.

As a result of these two measures, the State Bar's current policy limits the ability to post consumer alerts for major misappropriation and loan modification cases only.

## **ISSUE**

Should the Board approve, upon recommendation by RAD, expansion of the State Bar's Policy Re Posting of Consumer Alerts, as set forth herein in Attachment A.

## **CONCLUSION**

Staff recommends that the Board approve, upon recommendation by RAD, expansion of the State Bar's Policy Re Posting of Consumer Alerts as set forth herein in Attachment A.

## **DISCUSSION**

### Current Policy for Major Misappropriation Cases

1. Contemporaneously with posting online a notice of disciplinary charges which includes a charge of misappropriation involving \$25,000 or more of client funds, whether as a single charge or an aggregate of charges, the State Bar will post a Consumer Alert above the respondent member's name, including informational text and disclaimer, on the member's profile page.
2. Upon the filing of a decision or order of the State Bar Court adjudicating the disciplinary proceeding, the Consumer Alert, informational text and disclaimer will be removed from the member's profile page immediately.
3. The State Bar Court will post a true and correct copy of a petition filed pursuant to Business & Professions Code section 6007(c)[threat of harm] to enroll a member involuntarily inactive on the respondent member's profile page when the verified application upon which the petition is based relies on, in whole or part, misappropriation of client funds involving \$25,000 or more, whether as a single charge or an aggregate of charges, and a true and correct copy of any response.
4. Contemporaneously with the posting of a filed petition under Business and Professions Code section 6007(c), which meets the criteria set forth in paragraph

number 3 above, the State Bar will post a Consumer Alert above the member's name, including informational text and disclaimer. That text will be modified to relate to the filing of a petition rather than a notice of disciplinary charges on the respondent's member profile page.

5. Upon the filing of a decision or order of the State Bar Court adjudicating the Business & Professions Code section 6007(c) petition, the Consumer Alert, informational text and disclaimer will be removed from the member's profile page immediately

#### Current Policy for Loan Modification Cases

1. Contemporaneously with posting online a notice of disciplinary charges that includes 15 or more cases of loan modification misconduct, the State Bar will post a Consumer Alert above the respondent member's name, including informational text and disclaimer, on the member's profile page.

2. Upon the filing of a decision or order of the State Bar Court adjudicating the disciplinary proceeding, the Consumer Alert, informational text and disclaimer will be removed from the member's profile page immediately.

3. The State Bar Court will post a true and correct copy of a petition filed pursuant to Business and Professions Code section 6007(c)[threat of harm] to enroll a member involuntarily inactive on the member's profile page when the verified application upon which the petition is based relies on, in whole or part, loan modification misconduct, and a true and correct copy of any response.

4. Upon the posting of a State Bar Court decision or order adjudicating the petition, assuming that the petition is granted, the petition and response will be removed from the website. In the event of denial of petition or dismissal of the proceeding, the decision or order will be posted but the petition and response will also remain posted for a period of 60 days, after which all three items relating to the proceeding (petition, response if any, and decision or order) will be removed from the member's page.

5. Contemporaneously with the posting of a filed petition under Business & Professions Code section 6007(c), which meets the criteria set forth in paragraph number 3 above, the State Bar will post a Consumer Alert above the member's name, including informational text and disclaimer. That text will be modified to relate to the filing of a petition rather than a notice of disciplinary charges on the member's profile page.

6. Upon the filing of a decision or order of the State Bar Court adjudicating the Business & Professions Code section 6007(c) petition, the Consumer Alert, informational text and disclaimer will be removed from the member's profile page immediately.

## Need to Expand Current Policy

The existing policies limit consumer alerts to two specific types of cases – major misappropriation cases and loan modification cases. Yet, whenever the State Bar initiates public proceedings involving allegations of professional misconduct by an attorney, there is a public protection need to inform the public. Disciplinary proceeding hearings and records are public, pursuant to Business and Professions Code section 6086.1, and existing State Bar policy already authorizes the posting of initial disciplinary pleadings and responses on an attorney's member profile page.

Moreover, the current policy fails to contemplate public proceedings initiated by the State Bar in superior court, pursuant to Business and Professions Code sections 6180 and 6190, wherein the State Bar has made an application to the superior court for assumption by the court of jurisdiction over the law practice of a license California attorney. Alerting consumers of these public proceedings serves an important public protection purpose.

Pursuant to Business and Professions Code section 6180 *et seq.*, the State Bar will file an application seeking court assumption of a law practice where an attorney has died, resigned, become inactive, been disbarred or suspended and has either left an unfinished client matter for which no other active member has agreed to assume with consent of the client or there is a belief that the interests of one of more clients or interested persons will be prejudiced if the proceeding is not maintained. Pursuant to Business and Professions Code section 6190 *et seq.*, the State Bar will file an application seeking court assumption of a law practice where an attorney has, for any reason, become incapable of devoting the time and attention to, and providing the quality of service for, his or her law practice which is necessary to protect the interest of a client if there is an unfinished matter for which no other active member has agreed to assume responsibility with the consent of the client. Under the State Bar's current policy, no consumer alert is posted on a member's profile page when public proceedings are filed in superior court, pursuant to Business and Professions Code sections 6180 and 6190. In fact, where the State Bar has initiated such public proceedings in superior court against an attorney, there is no notice or other information about the public superior court proceedings available on the State Bar's website.

Consistent with the State Bar's mission to promote public protection, fulfill the State Bar's duty to inform the public about the work of the State Bar and promote its policy of making public records more readily available to interested members of the public and the profession, the current policy regarding posting of consumer alerts should be expanded to authorize posting of consumer alerts whenever the State Bar initiates public proceedings involving allegations of professional misconduct or seeking court assumption of an attorney's law practice.

### **FISCAL / PERSONNEL IMPACT:**

None.

**RULE AMENDMENTS:**

None.

**BOARD BOOK IMPACT:**

None.

**RECOMMENDATION**

OCTC recommends approval of the proposed expansion of the State Bar's policy regarding the posting of consumer alerts on the State Bar's website by the Board, upon recommendation by RAD, as set forth herein in Attachment A.

**PROPOSED BOARD COMMITTEE RESOLUTION:**

Should the Regulation, Admissions and Discipline Oversight Committee agree with the above recommendation, the following resolution would be appropriate:

**RESOLVED**, that the Regulation, Admissions and Discipline Oversight Committee recommends that the Board approve the proposed expansion of the State Bar's Policy Regarding Posting of Consumer Alerts on the State Bar's Website, as set forth herein in Attachment A.

**PROPOSED BOARD OF TRUSTEES RESOLUTION:**

Should the Board concur with the Committee on Regulation, Admissions and Discipline Oversight's recommendation, the following resolutions would be in order:

**RESOLVED**, that upon the recommendation of the Committee on Regulation, Admissions and Discipline Oversight, the Board of Trustees hereby approves the expansion of the State Bar's Policy Regarding Posting of Consumer Alerts on the State Bar's Website, as set forth herein in Attachment A.

**ATTACHMENT A**  
**[PROPOSED]**  
**STATE BAR POLICY REGARDING POSTING OF CONSUMER ALERTS**

Upon the online posting of any public filing by the State Bar involving allegations of professional misconduct against a member or seeking court assumption of a member's law practice, the State Bar shall post a Consumer Alert above the respondent member's name. The Consumer Alert shall include informational text on the member's profile page which states what type of pleading has been filed against the member – notice of disciplinary charges (NDC), conviction transmittal, petition to enroll a member involuntarily inactive, application for court assumption of a law practice, or other initiating document – and a disclaimer stating that where any posted document contains allegations of professional misconduct, the attorney is presumed to be innocent of misconduct warranting disciplinary until the allegations have been proved.

Where the Consumer Alert is based upon a NDC filed, the State Bar will post a true and correct copy of the NDC and of any response. Upon the posting of a State Bar Court decision or order adjudicating the matter, the NDC and response will be removed from the website, along with the Consumer Alert's informational text and disclaimer. In the event of exoneration or dismissal of the proceeding, the decision or order will be posted but the NDC and response will also remain posted for a period of 60 days, after which all three items relating to the proceeding (NDC, response if any, and decision or order) will be removed from the member's page.

Where the Consumer Alert is based upon a petition filed pursuant to Business & Professions Code section 6007(c)[threat of harm] to enroll a member involuntarily inactive, the State Bar will post a true and correct copy of the petition and of any response. Upon the posting of a State Bar Court decision or order adjudicating the petition, assuming that the petition is granted, the petition and response will be removed from the website, along with the Consumer Alert's informational text and disclaimer. In the event of denial of petition or dismissal of the proceeding, the decision or order will be posted but the petition and response will also remain posted for a period of 60 days, after which all three items relating to the proceeding (petition, response if any, and decision or order) will be removed from the member's page.

Where the Consumer Alert is based upon an application filed pursuant to Business and Professions Code sections 6180 *et seq.* or 6190 *et seq.*, the State Bar will post a true and correct copy of the application and of any response. Upon the posting of a superior court decision or order adjudicating the application, assuming the application is granted, the application and response will be removed from the website, along with the Consumer Alert's informational text and disclaimer. In the event of denial of the application or dismissal of the proceeding, the decision or order will be posted but the application and response will also remain posted for a period of 60 days, after which all three items relating to the proceeding (application, response if any, and decision or order) will be removed from the member's page.

This policy is intended to replace any previous policy regarding the posting of consumer alerts on the State Bar's website.