

OPEN SESSION AGENDA ITEM

54-145 MAY 2018

FINANCE AND PLANNING COMMITTEE III.E.

DATE: May 17, 2018

TO: Members, Finance and Planning Committee
Members, Board of Trustees

FROM: Linda Katz, Principal Program Analyst, Research and Institutional
Accountability

SUBJECT: Collections Review Policy

EXECUTIVE SUMMARY

Attorneys subject to State Bar discipline are required to pay the cost of that discipline, and are also required to reimburse the Client Security Fund for payments made to victims who were harmed by their conduct. The State Bar's efforts to collect this debt has been met with limited success; while attorneys whose discipline falls short of disbarment are required to pay outstanding debt to regain active status, those who are disbarred or resign with charges pending have little incentive to do so. The State Bar has undertaken various collections efforts, and has not conducted a regular evaluation of those efforts. This item requests that the Finance and Planning Committee and the Board of Trustees: 1) adopt a policy to evaluate annually the effectiveness of the various collections methods used to recover funds from disciplined attorneys; and 2) direct staff to report to the Board the results of the evaluation, as well as any changes recommended as a result of the evaluation.

BACKGROUND

Business and Professions Code section 6086.10 provides that attorneys subject to discipline are required to pay for the cost of their discipline. Section 6140.5 provides that an attorney whose actions have caused the payment of funds to a claimant to the Client Security Fund (CSF) shall reimburse the fund for all moneys paid out as a result of his or her conduct, with interest.

Discipline costs and CSF payouts are added to annual licensing fee statements for attorneys whose discipline is limited to reproof or suspension. However, efforts to collect debt from attorneys who are disbarred or resign with charges pending have been less successful. Collections efforts have included referring accounts to a collections vendor and to the Franchise Tax Board's tax intercept program, as well as obtaining superior court judgments and recording abstracts of these judgments with county Records offices, in order to establish liens against any property transfers.

DISCUSSION

The State Bar has long engaged in efforts to collect outstanding debt. In the past several years, the State Bar has redoubled those efforts, by the following methods: 1) participating in the Franchise Tax Board's (FTB) tax intercept program, which allows the FTB to intercept tax refunds of State Bar debtors and forward those funds to the State Bar; 2) assigning staff to obtain superior court judgments and record abstracts of judgment with county Recorders, resulting in liens that require payment of debt prior to any property transfer; and 3) hiring a collections vendor to pursue outstanding debt.

The State Bar has included in its 2018 legislative agenda proposed statutory amendments that would further enhance its collections program. One proposed amendment would allow the State Bar to share debtor attorneys' social security numbers with the State Bar's collections vendor, which would expand the tools available for collections. The second proposed amendment would allow the State Bar to participate in the FTB's court-ordered debt program, which would allow the FTB to collect outstanding State Bar debt as if it were delinquent taxes.

While staff has reviewed the results of its collections activities on an ongoing basis, this review has not included an in-depth analysis of the success of each of the particular activities, the relative collectability of different types of debt, or the total cost of collections activities relative to the total amount recovered. Such an analysis may find that it is not cost effective to expend significant resources in efforts to collect certain categories of debt or to engage in some types of collections activities. A thorough analysis may also result in recommendations for alternative activities, such as those that would be available if the Legislature enacts the amendments proposed by the Bar.

In its report issued May 2016, the State Auditor recommended adoption of a policy to annually evaluate the effectiveness of collections methods. Staff recommends adopting such a policy, adding a new section to the Office of Finance Policies and Procedures Manual, Section 12. Collections Program Evaluation, as provided in the attachment. This section requires an annual review of the costs and results of collections activities, in order to consider their effectiveness and any recommended changes to the collections program.

FISCAL/PERSONNEL IMPACT

None.

RULE AMENDMENTS

None.

BOARD BOOK AMENDMENTS

None.

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

Objective: f. Support adequate funding of the Client Security Fund.

Goal: 3. Improve the fiscal and operational management of the State Bar, emphasizing integrity, transparency, accountability, and excellence.

Objective: g. No later than January 31, 2019, evaluate current collection efforts and determine what might be necessary to improve the Bar's ability to collect discipline and CSF costs.

RECOMMENDATION

It is recommended that the Finance and Planning Committee and Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees adopt a policy to annually evaluate the effectiveness of efforts to collect debt owed by attorneys subject to discipline, as specified in the attached new section 12 for the Office of Finance Policies and Procedures Manual; and it is

FURTHER RESOLVED, that the Board of Trustees will conduct its first review of the collections program no later than its December 2018 meeting.

ATTACHMENT(S) LIST

- A. Office of Finance Policies and Procedures Manual Section 12. Collections Program Evaluation

**The State Bar of California
Office of Finance**

Collections Program Evaluation Policy

May 2018

Article 1
COLLECTIONS PROGRAM EVALUATION

I. POLICY STATEMENT

It is the policy of the State Bar of California to evaluate on an annual basis the effectiveness of efforts to collect debt owed by attorneys subject to discipline.¹

II. COLLECTIONS ACTIVITIES

The State Bar assigns staff to conduct collections activities to collect debt owed to the State Bar by attorneys subject to discipline, including participating in the Franchise Tax Board's Tax Intercept Program; securing superior court judgments and recording abstracts of judgments; and, entering into contracts with private vendors that provide collections services.

III. COLLECTIONS PROGRAM EVALUATION REPORT

The Board of Trustees shall annually review a report that provides the results of the State Bar's collections activities in order to assess the effectiveness of these activities; to consider changes and alternatives to these activities; and, to determine whether they are cost effective. The Board of Trustees shall review a report that includes the following information:

1. The total amount of outstanding debt, itemized in the following categories:
 - Court ordered discipline costs;
 - Court ordered restitution reimbursable to the Client Security Fund; and
 - Client Security Fund reimbursement (not included in court-ordered restitution).
2. An analysis of the relative collectability of debt, by amount, based on the following categories:
 - Court-ordered vs. non-court ordered; and
 - Age of debt.
3. Total amount collected from each collections activity:
 - Franchise Tax Board Tax Intercept Program;
 - Property liens; and
 - Private collections vendors.
4. Cost of collections activities including:
 - Franchise Tax Board charges;
 - Private collection vendor costs;
 - Staff resources; and
 - Other costs (e.g., postage, copying, etc.).
5. Recommended changes to the collections program, including:
 - Alternative collections activities; and
 - Elimination of some collections activities.

¹ Business and Professions Code section 6086.10 provides that attorneys subject to discipline are required to pay for the cost of their discipline. Section 6140.5 provides that an attorney whose actions have caused the payment of funds to a claimant to the Client Security Fund shall reimburse the fund for all moneys paid out as a result of his or her conduct, with interest.