



The State Bar *of California*

OPEN SESSION
AGENDA ITEM
54-141 JANUARY 2019
FINANCE AND PLANNING COMMITTEE III.A

DATE: January 25, 2019

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

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

SUBJECT: Annual Review of Debt Collection Efforts and Request to Modify Debt Collection Process

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. This item 1) provides a report on the effectiveness of collections efforts in 2018, pursuant to Board of Trustees' (Board) policy; 2) provides information regarding new collections efforts; and 3) requests that the Finance and Planning Committee and Board approve a staff recommendation to modify activities related to filing superior court judgments.

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.

In May 2018, the Board of Trustees adopted a policy to evaluate annually the effectiveness of the various collections methods used to recover funds from disciplined attorneys, and consider any changes recommended as a result of the evaluation. This report provides a detailed evaluation pursuant to that policy, including information about new collections efforts to be undertaken, and recommends modifications with regard to procedures to secure superior court judgments.

DISCUSSION

Outstanding Debt

Discipline-related debt falls into the following four categories:

Discipline Cost Debt

Discipline costs are costs assessed by the Supreme Court against attorneys who are found culpable of misconduct, and represent a reimbursement to the Bar for part of the costs of conducting the disciplinary proceeding. All Supreme Court orders imposing discipline result in an assessment for the State Bar's cost of bringing disciplinary proceedings. The authority for this is set out in Business & Professions Code, section 6086.10.

Client Security Fund Reimbursement (CSF), Court-Ordered

In some cases, a Supreme Court order imposing discipline includes an order that the disciplined attorney make restitution to a victim of his or her misconduct. If the CSF Commission has made a payout to a victim for restitution in such a case, the State Bar may seek CSF reimbursement from the disciplined attorney. Business & Professions Code section 6140.5(d) allows the State Bar to collect the restitution paid out as an "automatic" money judgment in these limited cases where there exists both a Supreme Court order for restitution and a related CSF payout.

Client Security Fund (CSF) Reimbursement, Not Court-Ordered

Business & Professions Code section 6140.5(c) provides that if the CSF Commission decides to make a payment out of the fund as a result of attorney theft or dishonesty, the attorney who caused the payout is liable to the State Bar for the amount paid out. The State Bar cannot get an "automatic" money judgment in these cases; a court case would have to be filed and potentially litigated in order to get a money judgment. As this course of action has been determined not to be cost-effective, it has not been pursued.

Superior Court Money Judgments

As mentioned above, the State Bar may collect all Discipline Cost debt and Court-Ordered CSF debt as "automatic" money judgments. The State Bar files these matters as money judgments, and records abstracts of judgment in the county where the attorney last resided.

Table 1 provides information about the total outstanding debt in each of the above categories:

Table 1: Current Total Outstanding Debt

Type of Debt	Ordered Amount	Current Balance*
Discipline Costs	\$15,155,851	\$14,580,159
CSF, Court-Ordered	\$15,204,032	\$21,346,310
CSF, Not Court-Ordered	\$131,357,901	\$174,739,898
Judgments	\$16,906,300	\$26,110,659
Total	\$178,624,084	\$236,777,027

*Includes interest accrued on CSF payouts and judgments;
discipline costs do not accrue interest.

Collections Efforts

The State Bar has long engaged in efforts to collect outstanding debt. In the past several years, the State Bar has redoubled those efforts through the following methods: 1) participating in the Franchise Tax Board (FTB) tax intercept program, which allows the FTB to intercept tax refunds and lottery winnings 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^{1,2}; and 3) hiring a private collections vendor to pursue outstanding debt. Table 2 provides information about the amount of debt collected using each of these methods.

Table 2: 2018 Amounts Collected by Payment Source

Payment Source	Amount Collected
FTB Tax Intercept	\$175,061
Court Excess Funds (bankruptcy distribution)	\$106,640
Title Company (due to property liens)	\$90,154
Collections Agency	\$8,005
Total	\$379,860

New Program: Franchise Tax Board Court-Ordered Debt Program

As shown in Table 2 above, collections vendors have had limited success in collecting outstanding debt. Private collections agencies acting as third party collectors are limited in their ability to enforce debt absent a writ of execution; agencies have declined to seek these writs, believing that this action is not cost-effective. To improve collections results, pursuant to the Board's 2018 legislative agenda staff sought and obtained a statutory amendment to allow participation in the FTB Court-Ordered Debt (FTB COD) program, which is expected to generate increased revenue. Revenue & Taxation Code section 19280 directs the FTB to collect debt as if it were delinquent personal income taxes, allowing the FTB to issue an order and levy bank accounts and wages pursuant to the California Code of Civil Procedure section 706.070 et seq. Participation in the FTB Tax Intercept program, which is limited to intercepting tax refunds and lottery winnings, will continue; all revenue from participation in the Tax Intercept program must be allocated to Legal Services programs, pursuant to Business and Professions Code section 6034.

¹ As discussed above, "automatic" money judgments can only be obtained for debt included in a Supreme Court discipline order. Judgments are filed for discipline costs, as well as for CSF payouts where a restitution order is included in the discipline order.

² Prior to 2010, the Bar filed superior court money judgments on a limited number of cases. From approximately 2010 to 2014, collections were conducted by an outside collection agency, which did not file superior court money judgments. The practice of filing automatic money judgments in superior court was fully reinstated in 2015.

The FTB COD program will pursue collections for all debt that is included in a Supreme Court discipline order, which encompasses all disciplinary costs and Client Security Fund (CSF) payouts for which the Supreme Court discipline order includes an order to pay restitution to a victim. Their efforts will not include CSF payouts that are not included in a Supreme Court discipline order; the lack of a Supreme Court order renders this debt ineligible for the FTB COD program.³ This debt poses the greatest challenge to collection, as it cannot be automatically reduced to a money judgment. With participation in the FTB COD program, the State Bar will not actively pursue collection of this debt; private collections vendors have indicated that they are not willing to service this debt.

Staff has entered into a contract with the FTB COD, and expects to begin participation in the program during the first quarter of 2019. Work with the private collections agency will be discontinued. The results of this program will be reported to the Board next year.

Cost of Collections

Staff has conducted an analysis of the costs of the current Collections Program. Table 3 provides a summary of costs.

Table 3: 2018 Collections Program Costs

Type of Expense	Cost
FTB Tax Intercept	\$418
Collections Vendor	\$831
Copying and Postage	\$1,037
Staff Resources ⁴	\$188,493
Total	\$190,779

The most costly part of the Collections Program is the work required to secure superior court judgments. The staff resources devoted to the Collections Program are almost entirely spent on this work. Current policy is to obtain superior court judgments for all discipline cases, which has been determined not to be cost effective; the cost of obtaining judgments, approximately \$190,000, far exceeds the amount collected through these efforts, just over \$90,000.

Staff believes that judgment-related work might be more cost-effective if property searches were first conducted in Lexis/Nexis, and judgments were filed only where a debtor's property is identified. Staff recommends that the Finance and Planning Committee approve a resolution to adopt the staff recommendation to implement this change. Next year's report on the Collections Program will include an analysis of this program.

³ Almost ninety percent of the reimbursement owed to the CSF is for payments in which there is no restitution order; victims whose complaints are not included in a discipline case brought by the Office of Chief Trial Counsel may nevertheless qualify for reimbursement from the CSF if the attorney against whom they filed the complaint is disciplined.

⁴ Relevant staff recorded their collections-related activities for a four-week period in 2018. The amount provided in this table reflects annualized staff costs based on this data collection period.

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: d. 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: e. 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.

RECOMMENDATIONS

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

RESOLVED, that the Board of Trustees approve the recommendation that, effective immediately the Collections Program obtain superior court judgments only in cases where property owned by the debtor is identified.

ATTACHMENT(S) LIST

None