



The State Bar *of California*

OPEN SESSION

AGENDA ITEM

54-143 SEPTEMBER 2019

FINANCE AND PLANNING COMMITTEE III.B

DATE: September 19, 2019

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

FROM: Vanessa Holton, General Counsel
John Adams, Chief Financial Officer

SUBJECT: Update on Debt Collection Efforts

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 provides an update on the State Bar's new collections efforts with the Franchise Tax Board and our 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. In January 2019, a detailed evaluation pursuant to that policy, including information about new collections efforts and a recommendation to change procedures in securing superior court judgments, was presented to the Board. This report is to provide an update on the changes made since January.

DISCUSSION

Outstanding Debt

Discipline-related debt falls into the following four categories:

1. Discipline Cost Debt
2. Client Security Fund Reimbursement (CSF), Court-Ordered
3. Client Security Fund (CSF) Reimbursement, Not Court-Ordered
4. Superior Court Money Judgments

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	\$15,482,234	\$14,895,488
CSF, Court-Ordered	\$15,712,986	\$22,112,460
CSF, Not Court-Ordered	\$132,777,608	\$177,752,442
Judgments	\$16,844,886	\$26,272,560
Total	\$180,817,715	\$241,032,950

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

Update on Franchise Tax Board Court-Ordered Debt Program

As part of the 2018 fee bill, the State Bar is now allowed to participate in the Franchise Tax Board's Court-Ordered Debt (FTB COD) program. 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.

The FTB COD program can pursue collections for all debt 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 victim restitution. The collections program¹ does not cover CSF payouts that are not included in a Supreme Court discipline order. That type of debt poses the greatest challenge to collection, but is eligible for the FTB Tax Intercept Program, which will continue annually.

In July, the State Bar remitted its first file to the FTB, which included over 3,000 accounts between July 1, 2009 and July 1, 2017 (Group 1), representing \$36.4 million in outstanding debt from resigned or disbarred attorneys. The FTB accepted 2,335 accounts with a total of \$28.1

¹ 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.

million. There were 666 accounts that were rejected that will be resubmitted. With the accepted accounts, the FTB sent 1,769 demand letters to debtors.

The Franchise Tax Board does provide a monthly status report to the State Bar. Attachment A provides a summary as of August 31, 2019. As shown in the summary, the current case count is 2,272 with an outstanding balance of \$27.1 million. During the initial 6 weeks, 24 payments were made for a total of \$23,133. There have been 42 installment agreements established with the FTB. For comparison purposes, for 2018 the State Bar collected \$8,005 from the prior collection agency (2017 - \$14,059) and \$175,061 from the FTB Tax Intercept Program.

In August, for accounts less than 2 years, staff sent 2nd and 3rd (final) notices to 72 debtors. The purpose of the notices is to request payment and provide final notice to each debtor that if payment is not received, the account will be sent to FTB for collections. Here is the timeline for submitting newer accounts to the FTB:

Timeline for Newer Accounts:

1. Accounts from 7/1/17 to 7/1/18 (Group 2) – 3rd notices sent on August 16 with unpaid accounts as of September 30th being sent to FTB after October 1st.
2. Accounts from 7/1/18 to 7/1/19 (Group 3) – 2nd notices sent on August 16. For unpaid accounts, a 3rd notice will be sent within 60 days. Any unpaid accounts as of October 30th will be sent to FTB on November 1st

For future accounts (Group 4), the State Bar has established the following timeline for sending debt collection letters for resigned and disbarred attorneys before forwarding the accounts for collections to the FTB.

Timeline for Future Accounts:

1. Initial notice sent by Attorney Regulation & Consumer Resources within 30 days of receiving the court-order.
2. Second courtesy notice is sent by Finance within 90 days of court-order.
3. Final notice is sent by Finance within 150 days of court-order with a demand to pay within 30 days before account is sent to the FTB.
4. Outstanding accounts are sent to FTB after 180 days.

After consultation with the FTB and extensive research by staff, court-ordered debt does not have a statute of limitations for collections. This allows the State Bar to send accounts that are older than 10 years (Group 5) to the FTB for the collections. Staff is evaluating the accounts older than 10 years and plans to submit the accounts to the FTB in the coming months.

Part of the consideration has been to evaluate the impact of sending the initial 3,000 accounts to the FTB and the workload that has created, not just for Finance and General Counsel, but for Chief Trial Counsel and State Bar Court. With 1,789 demand letters sent, several debtors have contacted the State Bar with questions on how to now request a reduction in the amount owed. California State Bar Rules (Rule 5.130) allow the debtor to file a motion for relief or extension. In the past, these have been limited and the concern is that there may be an increase as FTB

collection efforts will garnish wages or seize bank accounts. Staff will monitor this potential impact prior to sending older accounts to the FTB.

Update on Superior Court Money Judgments

In January 2019, the State Bar's Finance and Planning Committee and the Board of Trustees (BOT) approved the Office of Research and Institutional Accountability's (ORIA) recommendation to modify procedures related to the filing of superior court judgments. Entry of such judgments are requested for California Supreme Court orders imposing costs pursuant to Business and Professions Code, section 6086.10 (Discipline Costs) and/or orders mandating Client Security Fund (CSF) reimbursement for disbarred or resigned attorneys. ORIA explained that due to the amount of staff resources required to obtain superior court judgments, in comparison to the low amount of money recovered from the judgments, it is not cost effective for staff to obtain judgments.

Following a discussion with the BOT regarding eliminating judgments altogether, ORIA recommended that judgments be filed only after a property search is conducted and it is confirmed that the debtor attorney has identifiable real property. Following the approval of this recommendation, the State Bar's Collections Program was transferred from ORIA to the Office of Finance. Then, in or about April 2019, the task of seeking entry of superior court judgments was transferred from ORIA to the Office of General Counsel (OGC).²

Prior to the filing of any new judgments, it was necessary for OGC staff to organize the large amount of information and hard copy files received from ORIA in order to ascertain the status of judgment filings since 2016, when judgment work was last housed in OGC, and inventory the substantial backlog in judgment filings. This process is taking considerable time due to the high volume and disorganized state of the files, as well as due to OGC staffing shortages. Additionally, before any new judgments can be filed, OGC needed to develop and refine the processes for preparing judgments and other judgment related work.

When judgment work was performed by ORIA, there was a designated paralegal who compiled the documents and filled out the requisite forms for entry of judgment. When the project was transferred to OGC, OGC began the process of hiring its own paralegal. A paralegal was hired on April 29, 2019, but she left the State Bar on July 17, 2019 without making much progress. The position has now been reclassified as Senior Administrative Assistant. OGC is close to filling this position. In the meantime, OGC's current administrative staff, legal secretary, college intern and two attorneys have been devoting a portion of their time to work on the judgments.

Judgment related work includes preparing and filing new judgments for debtors with real property; recording abstracts for new judgments in the counties in which such real property is located; recording abstracts for prior judgments that were missing abstracts; preparing and filing proofs of service for prior judgments that were missing to provide adequate notification

² OGC handled the entry of State Bar judgments from around 2009 through June 2016. Prior to that outside counsel was handling judgment work. In June 2016, this work was transferred to ORIA, but an OGC attorney signed all the court filings.

to debtors; preparing and filing renewal of judgments that are expiring;³ and, preparing and filing acknowledgments of satisfaction of judgment when there has been a payoff. Furthermore, OGC is also tracking judgments that have expired and working with Finance to update Revenue Results accordingly.

For the new judgments, OGC has now set up a process for conducting property searches and has been keeping a close track of how long these searches and analysis are taking in order to determine (1) whether staff time and resources are actually being saved by not filing judgments for all orders and (2) whether the amount of time spent on conducting property searches is justified in comparison to the amount of money collected. OGC began by researching various property search tools – Westlaw, LexisNexis and skip tracing. Based on the State Bar’s license agreement with Westlaw and LexisNexis, and the restrictions placed by the Fair Credit Reporting Act (15 U.S.C. § 1681, et seq.)⁴, OGC concluded that LexisNexis is the best option to use at the moment. As such, OGC uses the debtor attorney’s full name, last reported address to the State Bar, and birthdate in the LexisNexis’ Public Records portal to conduct the property search. OGC downloads various reports for each debtor attorney – asset report, nationwide report and real property report – and reviews these reports to confirm whether the debtor attorney has real property. This property search and review of the reports takes on average about 30 minutes. After the property search is complete and the real property has been identified, OGC moves forward with tracking the property search information; collecting the appropriate records from finance and CSF; confirming there are no State Bar Court holds or collection holds; preparing, filing and serving the new judgment; and, recording the abstract, which on average takes about total of 10 to 12 hours of administrative staff, legal secretary and attorney time.

To ensure that debtor attorney has received sufficient demand payment notices and is delinquent on debt, OGC has focused on preparing new judgments for Supreme Court orders issued between January 1, 2018 and December 31, 2018. There are approximately 229 discipline and court ordered CSF payout matters for which judgments will need to be prepared for 2018. Within the last six weeks, OGC has completed property searches for 45 matters. Of these, only 17 matters do not have any real property in California and thus OGC will not file judgments for those matters. For the remainder matters, OGC is now moving forward with filing judgments for these debtors and has prepared approximately 22 new judgments.

OGC has also filed approximately 20 judgment renewals. These renewals were given priority to prevent these judgments from expiring. OGC has also prepared, filed and recorded approximately 4 acknowledgments of satisfactions of judgements for matters where there has

³ Judgments expire after ten (10) years if not renewed.

⁴ The Fair Credit Reporting Act (FCRA) limits who is allowed to maintain and see the consumer credit information and credit report and for what purpose. LexisNexis prohibits the use of information it provides through LexisNexis’ Public Records portal for purposes of establishing consumer’s eligibility for credit, insurance, employment, license, government benefits, housing, or any other purpose identified in the FCRA as LexisNexis is not a “consumer reporting agency,” as the term is defined in FCRA and the information LexisNexis provides does not constitute a “consumer report,” as the term is defined in FCRA. Since OGC is only using the information to conduct real property searches and such real property searches are not for the purposes prohibited by LexisNexis, we are in compliance with LexisNexis’ requirements.

been a payoff. Finally, OGC continues to address issues with judgments that have been filed in the past – such as completing the proof of service, recording the abstracts and recording the renewals.

Finally, in addition to the judgments work, OGC has been assisting the Office of Finance with implementing the Franchise Tax Board's (FTB) Court-Ordered Debt (COD) Program. This includes setting up training with FTB, developing policies and procedures for transmitting to and withdrawing accounts from FTB, developing frequently asked questions to respond to debtors, revising notices to debtors, and assisting with responding to inquiries from debtors regarding the FTB-COD program.

Contact Information

We are working on a new FAQ and webpage for collections. Until then, the State Bar has established a dedicated phone number at 415-538-2007 and an email account at Collections@calbar.ca.gov that debtors may contact should they have questions on their accounts.

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 December 1, 2019, evaluate current collection efforts and determine what might be necessary to improve the Bar's ability to collect discipline and CSF costs.

ATTACHMENT(S) LIST

- A. Franchise Tax Board Court Ordered Debt Collections Report for August 2019

FRANCHISE TAX BOARD
COURT ORDERED DEBT COLLECTIONS
THE STATE BAR OF CALIFORNIA

August 2019**Case Inventory Summary**

Received New Cases	0	
Accepted	0	
Rejected	0	
Withdrawn Cases	16	\$ 391,083.18
Returned Cases	6	\$ 0.00
Net Inventory Change	-22	

Collection Action Summary

Demand for Payment Notices	7
Installment Agreements	11
Bank Levies	0
Wage Levies	0
Miscellaneous Levies	0
Total	18

Payment Summary

Demands for Payment	11	\$ 22,727.83
Installment Agreements	6	\$ 341.56
Intent to Terminate IA	0	\$ 0.00
Bank Levies	0	\$ 0.00
Wage Levies	2	\$ 32.47
Miscellaneous Levies	0	\$ 0.00
Dishonored Payments	0	\$ 0.00
Total	19	\$ 23,101.86

<u>Case Balance</u>	<u>Case Count</u>	<u>Cases Sum</u>	<u>%</u>
\$0 - \$500	16	\$ 5,814.45	0.7 %
\$501 - \$1000	19	\$ 13,730.91	0.8 %
\$1001 - \$5000	1,015	\$ 3,289,233.56	44.7 %
> \$5000	1,222	\$ 23,768,483.63	53.8 %
Total	2,272	\$ 27,077,262.55	100 %

Fiscal YTD July, 2019 - August 2019**Case Inventory Summary**

Received New Cases	3,001	
Accepted	2,335	\$ 28,086,770.54
Rejected	666	
Withdrawn Cases	17	\$ 393,782.18
Returned Cases	75	\$ 846,364.36
Net Inventory Change	2,243	

Collection Action Summary

Demand for Payment Notices	1,769
Installment Agreements	42
Bank Levies	1
Wage Levies	0
Miscellaneous Levies	0
Total	1,812

Payment Summary

Demands for Payment	12	\$ 22,757.83
Installment Agreements	10	\$ 342.81
Intent to Terminate IA	0	\$ 0.00
Bank Levies	0	\$ 0.00
Wage Levies	2	\$ 32.47
Miscellaneous Levies	0	\$ 0.00
Dishonored Payments	0	\$ 0.00
Total	24	\$ 23,133.11

<u>Case Age</u>	<u>Case Count</u>	<u>Cases Sum</u>	<u>%</u>
0 - 6 Months	2,272	\$ 27,077,262.55	100.0 %
7 - 12 Months	0		0.0 %
13 - 48 Months	0		0.0 %
> 48 Months	0		0.0 %
Total	2,272	\$ 27,077,262.55	100 %