



# The State Bar *of California*

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## **OPEN SESSION**

## **AGENDA ITEM**

**113 MARCH 2020**

## **BOARD EXECUTIVE COMMITTEE III.C**

**DATE:** March 12, 2020

**TO:** Members, Board Executive Committee  
Members, Board of Trustees

**FROM:** Linda Katz, Principal Program Analyst, Mission Advancement and  
Accountability Division

**SUBJECT:** Approval of Addition to 2020 Legislative Priorities

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### **EXECUTIVE SUMMARY**

The Board of Trustees approved 2020 legislative priorities at its January meeting. This item requests that the Executive Committee and Board approve two additions to the 2020 legislative priorities.

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### **BACKGROUND**

In 2018, the Board adopted a new legislative program that established criteria for the Board to consider in taking positions on proposed legislation and in advancing legislative proposals. The purpose of the State Bar's legislative program is to monitor legislative activity, and represent and advocate for the State Bar on legislative, policy, and budget matters before the Legislature and the governor. This agenda item sets forth two additions to the legislative priorities for 2020 that were adopted at the January meetings of the Executive Committee and the Board of Trustees.

### **DISCUSSION**

#### **Business and Professions Code section 6090.5**

- Seeks clarification of the prohibition against attorneys discouraging clients from lodging complaints with the State Bar.

Business and Professions Code section 6090.5 provides that:

- (a) It is cause for suspension, disbarment, or other discipline for any licensee, whether as a party or as an attorney for a party, to agree or seek agreement that:
  - (1) The professional misconduct or the terms of a settlement of a claim for professional misconduct shall not be reported to the State Bar.
  - (2) The plaintiff shall withdraw a disciplinary complaint or shall not cooperate with the investigation or prosecution conducted by the State Bar.
  - (3) The record of any civil action for professional misconduct shall be sealed from review by the State Bar.
- (b) This section applies to all settlements, whether made before or after the commencement of a civil action.

In a recent decision, the State Bar Court declined to find a respondent culpable for violating Business and Professions Code section 6090.5, ruling, in part, that “Section 6090.5, subdivision (a)(2), prohibits an attorney, whether as a party or as an attorney for a party, from agreeing or seeking agreement, in a civil matter, that the *plaintiff* will withdraw a disciplinary complaint or will not cooperate with the investigation or prosecution conducted by the State Bar.” [Emphasis in original.]

The State Bar Court agreed that the evidence showed that the Respondent “told” the victim “to cancel her State Bar complaint,” but went on to say that the Respondent did not promise or threaten a particular outcome if she failed to do so, nor did he enter into an agreement with the victim. The State Bar Court also wrote, “Moreover, [the victim] was not a ‘plaintiff’ in a civil action against Respondent.”

Amendments to this section would clarify that attorneys are subject to disciplinary action if they, acting on their own behalf or on behalf of another attorney, seek to discourage or prohibit clients from reporting complaints to the State Bar, or cooperating in the investigation or prosecution conducted by the State Bar, even where a civil lawsuit has not yet been filed and hence, there are no “parties” or “plaintiffs.” Amendments would also clarify that the statute is not limited to “professional misconduct,” but specifically includes all types of misconduct.

#### **Business and Professions Code Section (new)**

- Would allow victims of attorney misconduct additional means of recovering money ordered payable to them by the California Supreme Court.

Under the current statutory scheme, the State Bar has the right to enforce as a money judgment court-ordered restitution assessed against attorneys, if the victim named in the restitution order is awarded payment from the Client Security Fund (CSF) (Bus. & Prof. Code § 6140.5). Restitution is always ordered payable to the victim, and is only payable to the CSF if the CSF subsequently pays out money to the victim. However, there is no mechanism for a victim to directly enforce court-ordered restitution as a money judgment.

The ability to enforce restitution orders as money judgments would allow victims another avenue to collect money ordered payable to them instead of filing a CSF application. This

proposed amendment would assist victims, because CSF reimbursement is limited in a number of ways: it requires a separate application and separate approval process; payments are limited to \$100,000 per claim; and there are frequently lengthy delays between the court order and the CSF payout. Moreover, the CSF does not pay interest on any money a victim may have lost, any incidental or consequential losses, or expenses caused by the attorney. It also does not pay any interest awarded by the Supreme Court to the victim in the Supreme Court Order. The proposed new statute, would allow victims of attorney misconduct additional means of recovering money ordered payable to them by the California Supreme Court.

## **FISCAL/PERSONNEL IMPACT**

None

## **AMENDMENTS TO RULES OF THE STATE BAR**

None

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: None - core business operations

## **RECOMMENDATIONS**

**Should the Board Executive Committee concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that the Board Executive Committee recommends that the Board of Trustees approve the additions to the State Bar's 2020 legislative priorities included in this item.

**Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that the Board of Trustees, upon recommendation of the Board Executive Committee, approve the additions to the State Bar's 2020 Legislative Priorities included in this item.

## **ATTACHMENT(S) LIST**

None