



# The State Bar of California

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## **OPEN SESSION**

## **AGENDA ITEM**

**122 JANUARY 2021**

## **REGULATION AND DISCIPLINE COMMITTEE III.A**

**DATE:** January 21, 2021

**TO:** Members, Regulation and Discipline Committee  
Members, Board of Trustees

**FROM:** Brandon Stallings, Chair, Regulation and Discipline Committee

**SUBJECT:** Proposed State Bar Rule Setting Forth Procedure for Responding to Complaints  
against State Bar Court Judges

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### **EXECUTIVE SUMMARY**

This item proposes to amend the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service to clarify the internal administrative procedure for investigating and addressing allegations of conduct by State Bar Court judges that could result in liability for the State Bar. This proposal is entirely separate and independent of rule 9.11(d) of the California Rules of Court, which reserves to the California Supreme Court the exclusive authority to discipline or retire a State Bar Court judge.

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### **BACKGROUND**

The State Bar Court and its judges are subject to the administrative authority of the Board of Trustees.<sup>1</sup> Only the California Supreme Court has authority to discipline or retire a State Bar Court judge.<sup>2</sup> The Board of Trustees maintains executive authority over the State Bar Court,

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<sup>1</sup> Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service, Section 1-A [“The following Rules and Regulations are adopted to govern the benefits, terms and conditions under which the judges serve the State Bar Court.”]; Section 1-B [“These Rules and Regulations are promulgated by the Board of Trustees of the State Bar and may be amended from time to time by the Board.”].

<sup>2</sup> Rule 9.11(d), California Rules of Court.

including the authority to assure compliance with State Bar policies, procedures, statutory and other mandated duties.<sup>3</sup>

Judges of the State Bar Court are statutory officers and employees of the State Bar of California.<sup>4</sup> Under the Government Claims Act, State Bar Court judges are generally entitled to representation and indemnification in lawsuits filed against them on account of acts or omissions in the scope of their employment on the same basis as other employees of the State Bar.<sup>5</sup> The State Bar may be held vicariously liable for conduct committed by State Bar Court judges.<sup>6</sup>

The State Bar currently has no procedure for the investigation and remediation of allegations of unlawful conduct by State Bar Court judges for which the State Bar would be vicariously liable, nor does the State Bar currently have a procedure for taking any corrective action to limit any potential liability arising from the conduct of State Bar Court judges. This gap exposes the State Bar to potential legal risk that must be managed pursuant to governing law.

## DISCUSSION

This proposed policy addresses only actions by State Bar Court judges for which the State Bar could be held liable and does not purport to exert authority by the State Bar to impose

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<sup>3</sup> Rule 1016 of the Rules of Procedure of the State Bar of California [“The Board of Trustees . . . shall determine, in the proper exercise of its executive and fiscal authority over the State Bar, the staffing levels and facilities required to meet the State Bar Court’s stated priorities and adjudicatory responsibilities. The Board of Trustees shall direct the Executive Director to assign the appropriate staff and resources [ . . . ] The Executive Director may [ . . . ] designate an executive staff member to [ . . . ] Assure compliance with State Bar policies, procedures, statutory and other mandated duties.”]

<sup>4</sup> Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service, Section 4-B [“Judges are not judges of a court of record as defined in California Constitution, article 6, section 1. For salary and benefit purposes, judges are employees of the State Bar.”]; Gov. Code section 810.2 [Under the Government Claims Act, “‘Employee’ includes an officer, judicial officer as defined in Section 327 of the Elections Code , employee, or servant, whether or not compensated, but does not include an independent contractor.”].

<sup>5</sup> Gov. Code section 825(a) [“Except as otherwise provided in this section, if an employee or former employee of a public entity requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity and the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed.”]; Gov. Code section 995 [“Except as otherwise provided in Sections 995.2 and 995.4 , upon request of an employee or former employee, a public entity shall provide for the defense of any civil action or proceeding brought against him, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of the public entity.”].

<sup>6</sup> Gov. Code section 815.2(a) [“A public entity is liable for injury proximately caused by an act or omission of an employee of the public entity within the scope of his employment if the act or omission would, apart from this section, have given rise to a cause of action against that employee or his personal representative.”]

discipline or retirement on State Bar Court judges—which is reserved to the California Supreme Court under rule 9.11(d), California Rules of Court.

The attached proposed policy is intended solely to address the State Bar’s circumstances in which the State Bar may have legal exposure and to assist the judges to mitigate potential personal liability they may incur as a result of the allegations.

The attached proposed policy requires that whenever allegations are made that a State Bar Court judge has engaged in conduct that could create liability on the part of the State Bar, such allegations must be promptly transmitted to the State Bar Executive Director, who will promptly evaluate the allegations to determine whether, if true, they state a claim that could result in liability for the State Bar.

In the event that the executive director determines that the allegations, if true, state a claim that could result in liability for the State Bar, the executive director will report the allegations to the chair of the Regulation and Discipline (RAD) Committee. The RAD chair, assisted by the executive director, will direct and oversee an independent investigation of the allegations.

The RAD chair and executive director will review the investigation findings and take all necessary remedial actions within their authority to address the findings of the investigator’s report, subject to CRC rule 9.11(d), which reserves to the Supreme Court the exclusive authority to discipline or retire a State Bar Court judge.

### **FISCAL/PERSONNEL IMPACT**

None

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

The Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service would be amended to add Section 23 as set forth in Attachment A to this item.

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

None

## **STRATEGIC PLAN GOALS & OBJECTIVES**

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

Objective: a. Improve productivity through performance accountability, training, and professional development.

## **RECOMMENDATIONS**

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

**RESOLVED**, that the Board of Trustees amend the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service to add Section 23 as set forth in Attachment A to this item.

## **ATTACHMENT(S) LIST**

- A.** Proposed New Section 23 of the Rules and Regulations of the State Bar of California Pertaining to the Benefits, Terms and Conditions Governing State Bar Court Judge Service

**Section 23. Procedure for Investigation and Response to Allegations of Misconduct against State Bar Court Judges.**

1. This policy sets forth the State Bar's procedure for responding to allegations regarding conduct by State Bar Court judges that, if true, could create liability on the part of the State Bar. It is independent of Rule 9.11(d) of the California Rules of Court, which reserves to the California Supreme Court the exclusive authority to discipline or retire a State Bar Court judge.
2. Whenever allegations are made that a State Bar Court judge has engaged in conduct that could create liability on the part of the State Bar, such allegations must be promptly transmitted to the Executive Director, who will promptly evaluate the allegations to determine whether if true, they state a claim that could result in liability for the State Bar.
3. In the event that the executive director determines that the allegations, if true, state a claim that could result in liability for the State Bar, the executive director will report the allegations to the chair of the Regulation and Discipline (RAD) Committee. The RAD chair, assisted by the executive director, will direct and oversee an independent investigation of the allegations.
4. The RAD chair and executive director will review the investigation findings and take all necessary remedial actions within their authority to address the findings of the investigator's report, subject to CRC 9.11(d), which reserves to the Supreme Court the exclusive authority to discipline or retire a State Bar Court judge.