



The State Bar of California

OPEN SESSION AGENDA ITEM 702 MARCH 2021

DATE: March 18, 2021

TO: Members, Board of Trustees

FROM: Gagandeep Kaur, Assistant General Counsel
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SUBJECT: Proposed State Bar Rule 3.453 Governing Client Security Fund Payment Plans for Non-Disbarred and Non-Resigned Licensees: Request for an Emergency Adoption as an Interim Rule and Request to Circulate for Public Comment for Later Adoption as a Permanent Rule

EXECUTIVE SUMMARY

The State Bar of California's (State Bar) Board of Trustees (Board) is asked to: (1) adopt a proposed Client Security Fund (CSF) Rule¹ on an emergency interim basis and (2) concurrently authorize a 30-day public comment period for later permanent adoption of this Rule. (See Attachment A.)

This proposed Rule allows certain non-disbarred and non-resigned licensees² whose actions have resulted in reimbursements to clients by CSF to request a payment plan for outstanding interest on such reimbursements. Such licensees must meet specified criteria and agree to the terms and conditions set forth in the Rule. One hundred twenty (120) licensees with CSF debt would be eligible to apply for a payment plan under this Rule.

This Rule is proposed to afford equitable relief to such licensees because their outstanding CSF debt has accrued significant interest prior to being added to their State Bar license fees or fee statements. Emergency adoption of this Rule is requested so that eligible licensees may request

¹ All further references to the rules are to the Rules of the State Bar, including Title 1, Global Provisions, and Title 3, Client Security Fund Rules unless otherwise indicated.

² A non-disbarred and non-resigned licensee means a licensee who is eligible to practice law, inactive, or suspended.

a payment plan prior to the State Bar's 2021 deadline to recommend to the California Supreme Court that such licensees should be suspended for non-payment of their license fees and prior to the State Bar undertaking any collections efforts against such licensees.

BACKGROUND

CSF is a victim restitution fund that reimburses clients who have lost money or property due to the theft or dishonest conduct of a California licensee. Reimbursement is ordered after an administrative adjudication in which the licensee has the opportunity to object to the reimbursement and present evidence. If CSF reimburses a client, the licensee must then reimburse CSF for the amount of the reimbursement, plus processing costs and interest (CSF debt). The interest rate is approved annually by the Board (Rule 3.45) and has been set at ten percent (10%) per year, calculated from the date of the disbursement. The State Bar must add any CSF debt to the license fee in the year following the CSF disbursement for a publicly reprovved or suspended licensee. (Cal. Bus. & Prof. Code § 6140.5.)

Because the State Bar was only undertaking collection efforts³ on CSF debt owed by disbarred and resigned licensees, there are 120 non-disbarred and non-resigned licensees who never received subsequent notice of their CSF debt, including updates on accrued interest, after the conclusion of their CSF proceeding. The State Bar also did not add CSF debt to the license fees of those non-disbarred and non-resigned licensees who were publicly reprovved and suspended (79 of 120 licensees). This led to these licensees disregarding their CSF reimbursement obligations for several years. A small number of these licensees (17) were reinstated to active status in violation of California Business and Professions Code section 6140.5.

The State Bar added unpaid CSF debt to the 2021 and 2022 license fees of 79 publicly reprovved or suspended licensees. Going forward, the State Bar will add any outstanding CSF debt to the license fees of publicly reprovved and suspended licensees in the year immediately following the CSF disbursements pursuant to Business and Professions Code section 6140.5. If these licensees do not pay the full amount of their outstanding CSF debt by their respective license fee deadlines, the State Bar will recommend to the Supreme Court that such licensees should be suspended for non-payment of their license fees⁴ and the State Bar will take collection efforts against them.

There are also 41 non-disbarred and non-resigned licensees who were not publicly reprovved or suspended but owe CSF debt. While the State Bar is unable to add the CSF debt to the license

³ The State Bar's collection efforts include referring the outstanding CSF debt to the Franchise Tax Board's Interagency Intercept Collection program, Court-Ordered Debt Collection program, and enforcing this debt as a money judgment.

⁴ All non-disbarred and non-resigned licensees receive an annual license fee statement and may be ordered suspended for non-payment of their license fee in addition to any disciplinary suspension or inactive enrollment. Only 17 of 79 impacted licensees currently risk losing their ability to practice law due to this suspension, as the other 62 licensees are currently suspended or inactively enrolled for other reasons.

fee for these 41 licensees (as they were not publicly reprimanded or suspended), the State Bar has informed these licensees of the current amount owed by adding a line item for this debt on their 2021 fee statement. The fee statement includes the license fee as well as other debt owed to the State Bar. If these licensees do not pay the full amount of their outstanding CSF debt in ninety (90) days, the State Bar is authorized to take collection efforts against them.

The Rule is proposed to provide these 120 licensees additional time to pay interest on their CSF debt. As the interest rate is ten percent (10%), the CSF debt owed has risen significantly since the State Bar last informed these licensees of their CSF reimbursement obligation.

DISCUSSION

The proposed Rule 3.453 allows a non-disbarred and non-resigned licensee whose actions have resulted in a reimbursement from CSF to submit a written request to the State Bar for a payment plan for the outstanding interest on such reimbursement, if all of the following criteria are met:

1. the reimbursement occurred on or before December 18, 2020;
2. a request is made prior to the licensee's date of suspension for non-payment of the reimbursement;
3. the licensee has paid to the State Bar the full amount of the reimbursement and the related processing costs prior to making the request; and
4. the outstanding interest owed is more than \$1000.

There are 120 non-disbarred and non-resigned licensees on whose behalf CSF has made reimbursements prior to December 18, 2020. This date was chosen because this was the State Bar's internal deadline for adding the CSF debt to the 2021 and 2022 license fees and fee statements. Prior to this date, the State Bar had not added the CSF debt to the license fees and/or fee statements for these licensees.

The Rule sets forth the key terms and conditions that the licensee must agree to in order to receive a payment plan:

1. a maximum two (2) year term;
2. equal and timely yearly payments;
3. a waiver of any objections to and releases of all claims regarding the CSF debt; and
4. the payment of the entire balance and any fees in the event of default.

The Rule also includes a sunset provision so the Rule will be automatically repealed on October 31, 2023, unless the Board deletes or extends this date. This Rule is only intended to provide a payment plan for each of the 120 non-disbarred and non-resigned licensees for the equitable reasons described above. This Rule will not be necessary after the year 2023, as the State Bar will be timely adding any CSF debt to the license fees or fee statements in the year following the CSF disbursements for any non-disbarred and non-resigned licensees.

Rule 1.10(C) allows the Board, in a case of an emergency, to adopt a new State Bar Rule without public comment on an interim basis while the State Bar awaits public comment for permanent

adoption of the Rule. (See Attachment B.) The 2021 license fee payment deadline has passed, and the deadline to recommend to the Supreme Court that impacted licensees be suspended for non-payment of their license fees is in July 2021, and many of the impacted licensees have yet to make full payment of their CSF debt.

Adoption of the Rule on an emergency basis will allow the impacted licensees enough time to request a payment plan prior to the suspension for non-payment deadline. Therefore, this Rule should be adopted on an emergency interim basis without a public comment while the State Bar awaits public comment before considering its permanent adoption.

FISCAL/PERSONNEL IMPACT

If adopted, this Rule will allow the State Bar to collect several hundred thousand dollars through the payment plans for the outstanding interest on CSF debt.

Adoption of this Rule could also necessitate additional resources in Attorney Regulation & Consumer Resources to oversee and manage the payment plans.

AMENDMENTS TO RULES OF THE STATE BAR

None

NEW RULES OF THE STATE BAR

Title 3, Division 4, Chapter 1, Rule 3.453

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

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.

RECOMMENDATIONS

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

RESOLVED, that the Board of Trustees, having determined pursuant to Rule 1.10(C) of the Rules of The State Bar of California that an emergency justifies an immediate adoption as an interim Rule without public comment, hereby adopt this new Client Security Fund Rule 3.453 of the State Bar of California, attached hereto as Attachment A.

FURTHER RESOLVED, that the Board of Trustees authorizes staff to make available for a 30-day public comment period the proposed new Client Security Fund Rule 3.453 of the State Bar of California for later adoption as a permanent Rule, attached hereto as Attachment A.

ATTACHMENT LIST

- A.** New Client Security Fund Rule 3.453
- B.** Rule 1.10(C) of the Rules of The State Bar of California

New CSF Rule for Payment Plans for Non-Disbarred and Non-Resigned Licensees

Article 4: Superior court review; repayment; collections

Rule 3.453 Payment Plans for Non-Disbarred and Non-Resigned Licensees Owing Reimbursements¹

- (A) A non-disbarred and non-resigned licensee whose actions have resulted in a reimbursement to an applicant from the Fund may submit a written request to the State Bar for a payment plan for any outstanding interest on such reimbursement if the following criteria are met:
 - (1) The reimbursement occurred on or before December 18, 2020;
 - (2) The payment plan request occurred prior to the licensee's date of suspension for non-payment of reimbursement from the Fund;
 - (3) As of the date of the payment plan request, the licensee has paid to the State Bar the full amount of the reimbursement (Principal) and the related processing costs; and
 - (4) The outstanding interest owed to the State Bar is more than \$1,000.
- (B) The State Bar may enter into a payment plan prior to the Sunset Date (defined below) with any licensee who meets the criteria set forth in subdivision (A) of this rule.
- (C) The payment plan will, at minimum, contain all the following terms and conditions, which the licensee requesting a payment plan must agree to:
 - (1) A maximum two (2) year term;
 - (2) Equal yearly payments during the term of the payment plan;
 - (3) A waiver of all objections to and a release of claims regarding licensee's obligation to pay the Fund for the reimbursement plus processing costs and interest;
 - (4) A timely yearly payment will be a condition of the licensee's continued practice of law; and
 - (5) In the event of default, the entire balance of the payment plan plus any fees will be immediately due and payable, and the State Bar may, without notice to the licensee, exercise all available rights and remedies including recommending to the California Supreme Court that such licensee should be suspended for non-payment and undertaking collection efforts with respect to such balance amount.
- (D) This rule shall remain in effect until October 31, 2023 (Sunset Date), and as of the Sunset Date is repealed, unless the Board of Trustees deletes or extends the Sunset Date. The Sunset Date does not affect the validity, enforceability, or the term of the payment plan.

Rule 3.453 adopted effective March _____, 2021.

¹ Business and Professions Code § 6140.5 (a), (c), (d) and (e).

DIVISION 2. PUBLIC COMMENT

Rule 1.10 Public comment

- (A) Proposals for the Rules of the State Bar of California are circulated for public comment before adoption, amendment, or repeal by the Board of Trustees. The State Bar also makes available for public comment its proposals for the California Rules of Court. Proposals are circulated for a forty-five day period, which can be shortened to a minimum of 30 days or extended to a maximum of 90 days, as designated by the board.
- (B) Public comment is not required
 - (1) to correct clerical errors; clarify grammar; improve organization; conform to specific changes in a law; update references or citations; or make similar editorial changes;
 - (2) to modify a proposal that has been circulated for public comment when the board deems the modification non-substantive or reasonably implicit in the proposal; or
 - (3) to add or modify an appendix to these rules.
- (C) The board may determine that an emergency requires it to adopt, amend, or suspend a rule on an interim basis without first circulating it for public comment. No interim measure may remain in effect for more than 120 days.
- (D) The adoption, amendment, or repeal of a rule becomes effective as of the date specified by the board. If it specifies no date, the date of its action is the effective date.

Rule 1.10 adopted effective July 20, 2007; amended effective March 7, 2008; amended effective January 1, 2012.