



# The State Bar of California

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**OPEN SESSION**  
**AGENDA ITEM**  
**54-141 MAY 2021**  
**FINANCE COMMITTEE III.A**

**DATE:** May 13, 2021

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

**FROM:** Wallace Tang, Chief Financial Officer  
Suzanne Grandt, Assistant General Counsel  
Gagandeep Kaur, Assistant General Counsel

**SUBJECT:** Annual Review of Debt Collection Efforts and Approval of Proposed Debt Collection Policy

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## EXECUTIVE SUMMARY

This item was presented at the March Finance Committee meeting. The committee decided to postpone its vote to further review the updated Collection Policy for Delinquent Debt and it is now being presented again for approval of that policy.

Attorneys subject to the State Bar of California discipline are required to pay the cost of that discipline and are also required to reimburse the Client Security Fund (CSF) for payments made to victims who were harmed by their conduct. This item provides a report on the effectiveness of the State Bar's collection efforts and requests the Finance Committee and the Board of Trustees approve changes to the State Bar's collection methods.

This item also seeks approval of an updated State Bar's Collection Policy for Delinquent Debt. A Collection Policy was approved by the State Bar Board of Governors in July 2007 and was last amended in November 2010. Since then, the State Bar's collection practices have changed, and new legislation has been enacted authorizing the State Bar to participate in two debt collection programs through the Franchise Tax Board. Staff has rewritten the 2010 Collection Policy to reflect these legal changes and to memorialize the State Bar's current collection practices.

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## 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 from the CSF shall reimburse the CSF for all moneys paid out as a result of their conduct, with interest. For the above-described amounts owed to the State Bar, the State Bar has only taken collection efforts against disbarred and resigned attorneys. The State Bar has not been undertaking any collection efforts against nondisbarred and nonresigned attorneys, which consist of attorneys who are eligible to practice law, inactive or suspended.

This report provides a detailed evaluation of the 2020 collection results, including information about new collection efforts, and recommends modifications to the State Bar's collection practices. This evaluation and the recommendations are pursuant to the Collections Program Evaluation Policy that was adopted by the Board in May 2018 (see Attachment A) to evaluate annually the effectiveness of the various collection methods used to recover funds from attorneys, and consider any changes recommended by staff as a result of such evaluation. The recommendations related to the collection practices are codified in the updated Collection Policy for Delinquent Debt which also reflects legal changes since 2010 (see Attachment B) <sup>1</sup>.

## DISCUSSION

### OUTSTANDING DEBT

Outstanding debt falls into the following four categories:

- 1. Discipline Cost Debt:** Discipline costs are costs assessed against attorneys who are found culpable of misconduct and represent a reimbursement to the State Bar for part of the costs of conducting the disciplinary proceeding. All Supreme Court orders imposing discipline and State Bar Court orders imposing public reproof result in an assessment of these costs. (Bus. & Prof. Code, § 6086.10). The cash collected is recorded in the General Fund.
- 2. Client Security Fund Reimbursement, Court-Ordered:** In some cases, a discipline 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 as set out in Business and Professions Code section 6140.5(c). The cash collected is recorded in the Client Security Fund.

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<sup>1</sup> In July 2007, a Collection Policy was approved by the Board of Governors following the enactment of legislation that authorized the State Bar to enforce court-ordered disciplinary costs and CSF restitution obligations through the filing of money judgments. (Bus. & Prof. Code, §§ 6086.10, 6140.5). The Collection Policy was amended in November 2010 to provide for collection of disciplinary costs and court ordered CSF restitution obligations through collection service agencies, and to provide a process to classify debt as "uncollectible." (see Attachments C and D).

3. **Client Security Fund Reimbursement, Not Court-Ordered:** The CSF Commission may make nonrestitution CSF payments to the victims of attorney misconduct who have suffered a monetary loss even when the attorney has not been disciplined, when a disciplined attorney has multiple victims but is only disciplined in one or two matters and therefore, there is no court order for the other matters, or if the attorney is disciplined on the victim's matter but the court does not order restitution be paid to the victim. If the CSF Commission has made a payout to a victim in such a case, the State Bar may seek CSF reimbursement from the attorney as set out in Business and Professions Code section 6140.5(c). The cash collected is recorded in the Client Security Fund.
4. **Superior Court Money Judgments:** Since 2007, the State Bar has been authorized to enforce all discipline cost debt and court-ordered CSF reimbursement debt as money judgments. To do so, the State Bar requests entry of the Supreme Court or State Bar Court order as a money judgment and records an abstract of judgment in the county in which the attorney last resided. Recent amendments to Business and Professions Code section 6140.5, effective January 1, 2021, allow the State Bar to also enforce non-court-ordered CSF reimbursement debt, as well as interest and processing costs, as money judgments. The cash collected is recorded 90 percent in the General Fund and 10 percent in the CSF.

Table 1 provides information about the total outstanding debt for disbarred and resigned attorneys in each of the above categories as of December 31, 2020, and indicates the age of the outstanding debt:

**Table 1. Outstanding Debt for Disbarred and Resigned Attorneys  
December 31, 2020**

Type of Debt	Ordered Debt	Total Outstanding Debt*	Outstanding Debt*			
			1–2 years	2–5 years	5–10 years	10+ years
Discipline	\$12,590,710	\$11,983,084	\$325,855	\$2,700,516	\$5,159,698	\$3,797,015
CSF Court Ordered	15,253,288	24,117,169	1,558,767	4,437,053	14,387,520	3,733,829
CSF Non-Court Ordered	92,723,279	170,514,839	7,087,129	24,080,293	44,415,624	94,931,793
Judgments**	12,146,713	18,571,289	1,083,874	10,474,227	2,595,884	4,417,304
<b>Total</b>	<b>\$132,713,990</b>	<b>\$225,186,381</b>	<b>\$10,055,625</b>	<b>\$41,692,089</b>	<b>\$66,558,726</b>	<b>\$106,879,941</b>

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

\*\* Consists of discipline costs and court-ordered CSF that has been converted to money judgments.

Table 2 provides information about the total outstanding debt for nondisbarred and nonresigned attorneys as of December 31, 2020. As indicated above, the State Bar has not been taking any collection efforts on this group of attorneys. As such, the State Bar has not been filing judgments on nondisbarred and nonresigned attorneys.

**Table 2. Outstanding Debt for Nondisbarred and Nonresigned Attorneys  
December 31, 2020**

Type of Debt	Ordered Amount	Current Balance
Discipline Costs*	\$4,703,476	\$4,703,476
CSF, Court-Ordered**	1,422,968	1,422,968
CSF, Non-Court-Ordered**	3,237,056	3,237,056
<b>Total</b>	<b>\$9,363,500</b>	<b>\$9,363,500</b>

\* Due to limitations on how various debt is accounted this number is an estimate.

\*\* Includes interest accrued on CSF reimbursements

## **COLLECTION EFFORTS**

During 2020, the State Bar's efforts to collect outstanding debt for disbarred and resigned attorneys included: (1) participating in the Franchise Tax Board's (FTB) Court-Ordered Debt Collection (COD) program; (2) participating in the FTB Interagency Intercept Collection (IIC) program; and (3) obtaining superior court judgments resulting in liens against real property for discipline costs and court ordered CSF reimbursements.

Each of the collection methods used by the State Bar is described in detail below:

### **1. FTB Court-Ordered Debt Collection Program**

As authorized by the 2018 fee bill, the State Bar began sending outstanding court ordered debt to the FTB's COD program. Revenue & Taxation Code section 19280 authorizes the FTB to pursue collection for all debt included in a Supreme Court discipline order, which encompasses all disciplinary costs and victim restitution paid out by CSF (i.e., court-ordered CSF reimbursement as described above). Under this program, the FTB issues wage garnishments and bank levies to collect delinquent court ordered debt.

As reported to the Board in September 2019, the State Bar remitted its first file to the FTB's COD program in July 2019. This first submission included over 3,000 accounts originating between July 1, 2009 and July 1, 2017, representing \$36.4 million of outstanding debt from resigned or disbarred attorneys.

In July 2020, the State Bar remitted its second file to the FTB, which included accounts that originated before July 1, 2009. Staff research and consultation with the FTB determined that court-ordered debt does not have a statute of limitations for collection. Four hundred fifty six accounts representing \$3.4 million of outstanding debt from resigned or disbarred attorneys were submitted to the FTB's COD program.

Effective January 1, 2021, Revenue and Taxation Code 19280 was amended to allow the State Bar to transmit to the FTB COD program monetary sanctions and CSF reimbursements that are not part of a court order.

Non-court-ordered CSF are the bulk of debt owed to the State Bar. 1,122 cases representing \$158.7 million are being prepared for submission to the FTB in March 2021.

The FTB provides a monthly status report to the State Bar on the collection results of the FTB's COD Program. As of December 31, 2020, the FTB has 4,382 cases with an outstanding balance of \$45.2 million. During 2020, the first full year of the State Bar's participation in the program, amounts collected totaled \$597,183. There are 1,060 installment payment agreements established between debtors and the FTB as of December 31, 2020.

## **2. FTB Interagency Intercept Collection Program**

The State Bar also refers all debt owed (including non-court-ordered CSF reimbursements) by disbarred and resigned attorneys to the FTB's IIC program. Under this program, the FTB pursues collection by intercepting tax refunds, lottery winnings and unclaimed property owed to individuals. All revenue from participation in the IIC program is allocated to Legal Services programs, as required by Business and Professions Code section 6034.

The State Bar received \$3,490 on two cases in 2020. The program was suspended by the FTB from March 2020 until at least June 30, 2021, due to the COVID-19 pandemic. For comparison purposes, we collected \$148,450 on 150 cases in 2019.

## **3. Superior Court Money Judgments**

The Office of General Counsel (OGC) requests entry of a money judgment in superior court for discipline costs and court-ordered CSF reimbursements, and records abstracts of judgment with County Recorders. Once staff obtains a judgment, a lien is recorded on the debtor's property, requiring the debtor to pay off the lien in order to transfer, refinance or sell the property. This means that the State Bar typically does not get paid unless property is sold or refinanced. Moreover, money judgments may only be entered on debt accrued within the last 10 years, while the FTB programs have no statute of limitations. Accordingly, in January 2019, the Finance Committee approved limiting the entry of money judgments to only those debtors who own real property.

In 2020, OGC focused on debtors with the Supreme Court orders filed from 2010 to 2018. OGC has conducted property searches for approximately 500 debtors in the last year. Of the 500 debtors, OGC identified 98 debtors with real property. After the property search is complete and real property has been identified, OGC moves forward with tracking the property search information; collecting the appropriate records from the Office of Finance, the State Bar Court, and CSF; confirming there are no State Bar Court holds or collection holds; preparing, filing and serving the new judgment; and recording the abstract. Accordingly, OGC moved forward with filing 98 new judgments, and filed and recorded 98 abstracts for these new judgments in the counties in which such real property is located<sup>2</sup>.

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<sup>2</sup> Due to COVID-19, OGC did not file any judgments, renewals, or satisfactions of judgments from March 2020 to July 2020, although OGC prepared numerous records for filings.

OGC also developed and refined the processes and procedures for preparing judgments and other judgment related work.

OGC has also filed and served approximately 110 renewals to renew the judgments filed in 2009 and 2010, and has prepared, filed, and recorded approximately 45 satisfactions of judgments for matters where there has been a payoff.

## AMOUNTS COLLECTED AND COLLECTION COSTS

Table 3 provides the amounts collected in 2020 via each of the collection methods described above, as well as the estimated costs of collection for each payment source.

**Table 3. Amounts Collected in 2020 by Collection Method**

Collection Method	Amount Collected	Estimated Collection Costs	Type of Costs
FTB Court Ordered Debt Program	\$597,193	\$152,000	Staff costs, FTB fees of 15% of amount collected
FTB Interagency Intercept Collection Program*	148,450	74,000	Staff costs, FTB fees of \$2 per debtor name submitted
Satisfactions of Judgments	355,907	172,000	Staff costs
Self Pay	440,000**	18,000	Staff costs
<b>Total</b>	<b>\$1,541,550</b>	<b>\$416,000</b>	

\* \$3,490 was collected in 2020 before the FTB temporarily suspended the program in March 2020. For purposes of this analysis, we are using the \$148,450 collected in 2019. Collection costs are also based on activity levels in 2019.

\*\* Due to limitations on how debt is accounted, this number is an estimate.

Table 3 demonstrates that each of the collection methods used by the State Bar is cost beneficial (i.e., amount collected exceeds collection costs). “Self-pay” represents amount collected directly from attorneys and the related collection costs represent staff time to record and deposit those collections.

## RECOMMENDED CHANGES TO COLLECTION PRACTICES

After reviewing the results of the State Bar’s collection practices and results for 2020, staff recommends the below revisions. These revised practices are incorporated into the attached proposed Collection Policy for Delinquent Debt.

### 1. Collection of Delinquent Debt Owed by Nondisbarred and Nonresigned Attorneys

While the 2007 Collection Policy defined a “debtor” to include any licensee who is delinquent in paying specified debt, in practice the State Bar only initiates collection actions on attorneys who are disbarred or who have resigned. While a licensee must pay back disciplinary costs,

monetary sanctions, and CSF reimbursements as a condition of continued practice, many attorneys choose not to or are unable to pay this money back and remain suspended or inactive indefinitely. Currently nondisbarred and nonresigned attorneys owe \$4.7 million for overdue CSF and \$4.7<sup>3</sup> million in overdue disciplinary costs. This is a total of approximately \$9.4 million for which the State Bar has not undertaken any collection actions. Accordingly, staff recommends utilizing the above-described collection practices on all licensees, regardless of status, who are delinquent in paying their outstanding debt.

## **2. Non-Court-Ordered CSF Reimbursements and Monetary Sanctions**

Due to recent statutory amendments, the State Bar is now able to enter money judgments on non-court-ordered CSF reimbursements and money sanctions. Pursuant to the Finance Committee's January 2019 resolution, OGC recommends also limiting entry of money judgments for these types of debt to those who own real property, resulting in liens that require payment of debt prior to any property transfer or refinance.

### **COLLECTION POLICY UPDATE**

The Collection Policy has not been updated since 2010 and thereby reflects outdated information which does not conform to the current State Bar practices and new legislation. Staff has drafted an updated Collection Policy for Delinquent Debt that memorializes current collection practices and accounts for recent legal changes. A copy of the updated Collection Policy for Delinquent Debt is provided as Attachment D.

Below is a summary of the key items in the Collection Policy for Delinquent Debt:

- It sets forth the categories of debt for which the State Bar may undertake collection efforts. This includes disciplinary costs (Bus. & Prof. Code § 6086.10); payments owed to CSF, whether or not court-ordered (Bus. & Prof. Code § 6140.5); and monetary sanctions (Bus. & Prof. Code § 6086.13);
- It sets forth the State Bar's proposed collection mechanisms: (1) participation in the FTB's IIC program, (2) participation in the FTB's COD program and (3) the entry of money judgments;<sup>4</sup>
- It sets forth the circumstances in which the State Bar may place a temporary collection "hold" on a debtor's account and cease debt collection. These circumstances include when the debtor has been making timely payments pursuant to an approved State Bar Court or California Supreme Court ordered payment plan;

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<sup>3</sup> This number is approximate as it may also include other overdue costs, such as licensing fees, owed by these attorneys.

<sup>4</sup> The Policy specifies that the State Bar only enters judgments for debtors with real property pursuant to the 2019 Finance Committee resolution.

when a debtor file is returned from the FTB and the State Bar needs to take steps to determine whether the debt is still collectible; when a debtor files for bankruptcy; or for other good cause as determined by OGC; and

- It sets forth circumstances in which the State Bar may determine debt is “uncollectible” and thus should be written-off. Debt is considered uncollectible and should be written-off if that debt is no longer legally owed to the State Bar due to a court order, bankruptcy discharge, CSF double payment, death of the debtor, or due to any administrative adjustments made by staff.

## **FISCAL/PERSONNEL IMPACT**

By referring \$9.4 million of debt owed by nondisbarred and nonresigned attorneys to the FTB’s programs and entering money judgments as appropriate, the State Bar may collect several hundred thousand dollars in 2021 and smaller amounts thereafter.

The State Bar’s 2021 Budget includes \$500,000 of new revenue expected to be generated by the initiation of the State Bar’s participation in the FTB’s COD program for non-court-ordered debt. This amount is in addition to \$350,000 budgeted for court-ordered debt.

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

None

## **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.

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.



## **RECOMMENDATIONS**

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

**RESOLVED**, that the Finance Committee recommends that the Board of Trustees approves the recommended revised collection practices, and it is

**FURTHER RESOLVED**, that the Finance Committee recommends that the Board of Trustees adopts the new Collection Policy for Delinquent Debt.

**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 Finance Committee approves the recommended revised collection practices, and it is

**FURTHER RESOLVED**, that the Board of Trustees, upon recommendation of the Finance Committee adopts the new Collection Policy for Delinquent Debt.

## **ATTACHMENT(S) LIST**

- A.** Collections Program Evaluation Policy (May 2018)
- B.** Collection Policy for Delinquent Debt (March 2021)
- C.** Pursuit Policy for Court-Ordered Discipline Costs and CSF Obligations (July 2007)
- D.** Collection Policy for Court-Ordered Discipline Costs and CSF Obligations (November 2010)

**The State Bar of California  
Office of Finance  
Collections Program Evaluation Policy**

May 2018

**Article 1**  
**COLLECTIONS PROGRAM EVALUATION**

**I. POLICY STATEMENT**

It is the policy of the State Bar of California to evaluate on an annual basis the effectiveness of efforts to collect debt owed by attorneys subject to discipline.<sup>1</sup>

**II. COLLECTIONS ACTIVITIES**

The State Bar assigns staff to conduct collections activities to collect debt owed to the State Bar by attorneys subject to discipline, including participating in the Franchise Tax Board's Tax Intercept Program; securing superior court judgments and recording abstracts of judgments; and, entering into contracts with private vendors that provide collections services.

**III. COLLECTIONS PROGRAM EVALUATION REPORT**

The Board of Trustees shall annually review a report that provides the results of the State Bar's collections activities in order to assess the effectiveness of these activities; to consider changes and alternatives to these activities; and, to determine whether they are cost effective. The Board of Trustees shall review a report that includes the following information:

1. The total amount of outstanding debt, itemized in the following categories:
  - Court ordered discipline costs;
  - Court ordered restitution reimbursable to the Client Security Fund; and
  - Client Security Fund reimbursement (not included in court-ordered restitution).
2. An analysis of the relative collectability of debt, by amount, based on the following categories:
  - Court-ordered vs. non-court ordered; and
  - Age of debt.
3. Total amount collected from each collections activity:
  - Franchise Tax Board Tax Intercept Program;
  - Property liens; and
  - Private collections vendors.
4. Cost of collections activities including:
  - Franchise Tax Board charges;
  - Private collection vendor costs;
  - Staff resources; and
  - Other costs (e.g., postage, copying, etc.).
5. Recommended changes to the collections program, including:
  - Alternative collections activities; and
  - Elimination of some collections activities.

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<sup>1</sup> 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 shall reimburse the fund for all moneys paid out as a result of his or her conduct, with interest.

## **Collection Policy for Delinquent Debt**

### **1. Purpose**

This is an internal policy intended to provide guidelines with regard to the collection of Debt. Nothing in this policy may be construed as relieving a Debtor from their obligation to pay the outstanding Debt or extending the time to make a payment except as may be ordered by the California Supreme Court or the State Bar Court.

### **2. Definitions**

2.1. "Court-Ordered CSF Reimbursements" mean any amounts that are reimbursed by CSF to a victim of a licensee's misconduct that are part of a court order requiring such licensee to reimburse the victim. The State Bar is authorized to collect interest and processing costs on the outstanding Court-Ordered CSF Reimbursements. (Bus. & Prof. Code § 6140.5.) The interest rate is approved annually by the Board of Trustees (CSF Rule 3.45), and has been set at ten percent per year, calculated from the date of disbursement.

2.2. "CSF" means the State Bar's Client Security Fund.

2.3. "Debt" means delinquent amounts owed and payable by Debtor to the State Bar such as Discipline Costs, Court-Ordered CSF Reimbursements, Non-Court-Ordered CSF Reimbursements, Monetary Sanctions or Other Costs.

2.4. "Debtor" means:

2.4.1. a licensee who has been disbarred or who resigned with disciplinary charges pending and owes any Debt; or

2.4.2. a licensee who has been publicly or privately reprimanded, or suspended and who is delinquent in: (1) paying any Debt that has been added to licensee's license fee, (2) making a payment under a court approved payment plan or an installment agreement, or (3) paying any other Debt owed to the State Bar.

2.5. "Discipline Costs" mean costs in any Supreme Court order imposing discipline or accepting a resignation with disciplinary charges pending, or costs in any State Bar Court order imposing public reprimand that a licensee must pay pursuant to California Business and Professions Code section 6086.10. Discipline Costs do not initially accrue

any interest. However, once Discipline Costs are converted to a money judgment, interest will accrue on the unpaid judgment amount at the legal rate of ten percent (10%) per year from the date of entry of the money judgment. (Cal. Civ. Proc. Code § 685.010.) Upon renewal of a money judgment, the interest begins to accrue on the day the renewed judgment is entered.

2.6. “Finance” means the State Bar’s Office of Finance.

2.7. “FTB” means the California Franchise Tax Board.

2.8. “FTB’s COD Program” means FTB’s Court Ordered Debt Collection Program.

2.9. “FTB’s IIC Program” means FTB’s Interagency Intercept Collection Program.

2.10. “Monetary Sanctions” mean sanctions as may be ordered pursuant to the Business and Professions Code section 6086.13.

2.11. “Non-Court-Ordered CSF Reimbursements” mean any amounts that are reimbursed by CSF to a victim of a licensee’s misconduct but that are not also part of a court order requiring reimbursement to CSF. The licensee must nevertheless pay the reimbursed amounts to the State Bar pursuant to Business and Professions Code section 6140.5. The State Bar is authorized to collect interest and processing costs on any outstanding Non-Court-Ordered CSF Reimbursements. (Bus. & Prof. Code § 6140.5.) The interest rate is approved annually by the Board of Trustees (CSF Rule 3.45), and has been set at ten percent (10%) per year, calculated from the date of disbursement.

2.12. “OCTC” means the State Bar’s Office of Chief Trial Counsel.

2.13. “OGC” means the State Bar’s Office of General Counsel.

2.14. “Other Costs” mean any unpaid amounts owed by the Debtor to the State Bar, including any fine, penalty, assessment, cost, or reimbursement imposed under applicable law.

2.15. “RevQ” means Revenue Results, a program used by Finance to manage outstanding Debt.

- 2.16. "State Bar" means The State Bar of California.
- 2.17. "Written Off" means that the Debtor account status in RevQ has been changed to "cancelled" or the Debt amount has been adjusted to zero because the amount is no longer owed to the State Bar as set forth in Section 5 below.

### **3. Debt Collection: FTB & Money Judgments**

3.1. Debt not designated as on "hold" as set forth in Section 4 below or as "uncollectible" as set forth in Section 5 below, and for which the Debtor has received notice, will be referred for collection to FTB as set forth below. All Debt, with the exception of Other Costs, is referred to FTB's IIC Program and FTB's COD Program. Other Costs are only referred to FTB's IIC Program.

3.1.1. FTB's IIC Program intercepts tax refunds, unclaimed property claims, and lottery winnings owed to individuals. FTB redirects these funds to pay the individual's debts. (Cal. Gov. Code §§12419.2, 12419.7, 12419.9, 12419.10, 12419.11, and 12419.12.) Finance will refer all outstanding Debt to FTB's IIC Program pursuant to Business and Professions Code section 6034. The State Bar is authorized to participate in FTB's IIC Program for the "collection of any unpaid amount owed to the State Bar of California, including any fine, penalty, assessment, cost, or reimbursement imposed under sections 6806.10, 6140.5(c), and any other applicable law." (Bus. & Prof. Code § 6034.) There is no applicable statute of limitations in Business and Professions Code sections 6086.10, 6140.5 or 6034 to limit the collection of outstanding Debt.

3.1.2. FTB's COD Program issues wage garnishment, bank levies, and seizes real and personal property or other assets to collect specified delinquent debt for participating courts and agencies. (Rev. & Tax Code § 19280-19283.) Finance will refer Discipline Costs, Court-Ordered CSF Reimbursements, Monetary Sanctions and Non-Court-Ordered CSF Reimbursements to FTB's COD Program. The State Bar is authorized to participate in FTB's COD Program for "any amounts due pursuant to Section 6086.10, 6086.13 or 6140.5 of the Business and Professions Code." (Rev. & Tax Code § 19280.) There is no applicable statute of limitations in Business and Professions Code sections 6086.10, 6086.13 or 6140.5, or in the Revenue and Taxation Code to limit the collection of the above referenced types of Debt.

- 3.1.3. If an installment payment agreement is entered into between the Debtor and FTB, the State Bar will accept installment payments pursuant to such an agreement.
- 3.1.4. Finance will not agree to enter into a payment plan with the Debtor to avoid transmission of any Debt to FTB. Finance will consult with OGC if the Debtor claims that the State Bar previously agreed to a payment plan.
- 3.1.5. Finance will periodically update FTB on each Debtor's account. Examples of updated information include accrued interest, holds, any new Debt or any other changes to the Debtor's account.
- 3.1.6. When a Debtor's account has been returned as "uncollectible" by FTB, Finance will investigate the reason behind such designation and, if determined to be collectible, the Debtor's account will be resubmitted to FTB for collection.
- 3.2. Debts not designated as on "hold" as set forth in Section 4 below or as "uncollectible" as set forth in Section 5 below will be enforced as a money judgment as set forth below.
  - 3.2.1. OGC will request an entry of a judgment and record an abstract of the judgment against a Debtor with title to real property for Discipline Costs, Court-Ordered CSF Reimbursements and Monetary Sanctions that must be paid to the State Bar pursuant to court orders that are less than ten 10 years old. (Bus. & Prof. Code §§ 6086.10, 6140.5; Cal. Civ. Proc. Code § 337.5; State Bar Rule of Procedure, Rule 5.137(G); Board of Trustee's January 25, 2019 Resolution (54-141).) OGC will also request an entry of judgment and record an abstract of the judgment against a Debtor with title to real property for Non-Court-Ordered CSF Reimbursements that are part of a final determination by CSF that is less than ten 10 years old. (Bus. & Prof. Code § 6140.5; Cal. Civ. Proc. Code § 337.5.)
  - 3.2.2. A money judgment is enforceable for ten 10 years after the date of entry of the judgment. (Cal. Civ. Proc. Code § 683.010.) If a money judgment has not been paid off by its expiration date, OGC will renew such judgment for another ten 10 years. (Cal. Civ. Proc. Code 683.020.) All money judgments will be renewed regardless of whether the Debtor has any real property. All renewals will be recorded with the Recorder's Office where the abstracts of the judgments were filed.

- 3.2.3. When the Debtor has paid a judgment amount in full, OGC will prepare and record with the Recorder's Office an acknowledgment and satisfaction of judgment for every county where OGC recorded an abstract of the judgment.

#### **4. Hold on Collection of Debt**

- 4.1. Finance generally does not have the discretion to Write-Off Debt except as set forth below in Section 5; however, Finance does have the discretion to place a "hold" on collection of certain Debt and not take any further action against the Debtor to collect such Debt if:

- 4.1.1. The Debtor is making timely payments under an installment payment plan approved by the State Bar Court or the Supreme Court and is not in default on such installment payment plan. Finance will set the account status in RevQ to "payment plan hold." If the Debtor misses a payment, the "payment plan hold" will be removed and collection efforts must resume;
- 4.1.2. FTB identifies a Debtor as deceased and returns the Debtor's account, or the State Bar learns that the Debtor is deceased. Finance will: (1) confirm the deceased status through public records in LexisNexis or obtain a copy of the death certificate, (2) place a hold on all the Debtor's accounts and (3) follow the steps set forth in Section 5.4 below to determine if the Debt is uncollectible;
- 4.1.3. OGC informs Finance that the Debtor's accounts should be placed on "bankruptcy hold" due to the Debtor's bankruptcy; or
- 4.1.4. Other good cause as determined by OGC.

- 4.2. Finance will not make discretionary calls to place a "hold" on collection of any Debt based on hardship allegations by a Debtor.

- 4.3. A "hold" status will be removed, and collection efforts will resume, if the reason for the "hold" is no longer applicable.

#### **5. Uncollectible Debt**

Debt is uncollectible and will be Written-Off if that Debt is no longer owed to the State Bar such as due to a court order, bankruptcy discharge, CSF double payment, death of the Debtor or any administrative adjustments by the State Bar as set forth below.



## 5.1. Court Orders

- 5.1.1. State Bar Court Order Granting Cost Relief: The State Bar Court is authorized to grant motions for full or partial relief from Discipline Costs and Monetary Sanctions, and compromise money judgments (which may include both Discipline Costs and Court-Ordered CSF Reimbursements). (Bus. & Prof. Code §§ 6086.10; 6140.5; State Bar Rule of Procedure, Rules 5.130-5.133; 5.137.) If the State Bar Court only reduces this Debt, Finance will change the amount, but not cancel the account. If the State Bar Court grants full relief from this Debt, the amount on the Debtor's account will be adjusted to zero.
- 5.1.2. California Supreme Court Orders Granting Cost Relief: The Supreme Court retains inherent authority over licensees' discipline, including Discipline Cost orders. The Supreme Court also has authority to compromise money judgments for both Discipline Costs and Court-Ordered CSF Reimbursements. (Bus. & Prof. Code § 6140.5; Cal. Rules of Court, Rule 9.23.) If the Supreme Court only reduces this Debt, Finance will reduce the amount, but not cancel the account. If the Supreme Court grants full relief from this Debt, the amount on the Debtor's account will be adjusted to zero.
- 5.1.3. California Superior Court Orders Granting CSF Cost Relief: The Superior Court has jurisdiction to hear appeals of final determinations by CSF (i.e., Court-Ordered CSF Reimbursements and Non-Court-Ordered CSF Reimbursements). (*Saleeby v. State Bar* (1985) 702 P.2d 525.) Accordingly, if the Superior Court only reduces this Debt, Finance will reduce the amount, but not cancel the account. If the Superior Court grants full relief from this Debt, the amount on the Debtor's account will be adjusted to zero.
- 5.1.4. Other Court Orders or Stipulation with OCTC: To the extent there are other court orders or stipulations with OCTC (State Bar Rule of Procedure, Rule 5.132) that mandate the reduction or waiver of a Debt, Finance will accordingly reduce the amount or adjust the Debtor's account to zero, respectively.

## 5.2. Bankruptcy Discharge

- 5.2.1. Certain Debt may be dischargeable in bankruptcy. This depends on the type of Debt, the chapter of bankruptcy and the timing of the bankruptcy.

5.2.2. OGC will inform Finance when such Debt has been discharged in bankruptcy. Finance will not Write-Off any Debt following bankruptcy without first consulting with OGC.

5.2.3. If FTB sends back a Debtor's account due to bankruptcy, Finance will forward that Debtor's information to OGC as soon as possible. OGC will provide guidance to Finance based on the chapter of bankruptcy.

### 5.3. CSF Double Payments

5.3.1. In rare cases, CSF may approve reduction or waiver of Court-Ordered CSF Reimbursements or Non-Court-Ordered CSF Reimbursements if it has been established that the victim of licensee's misconduct has received or is receiving a double payment. This may occur when the victim received a payment from CSF and the Debtor also paid the amount directly to the victim, such as through the licensee's criminal case as part of their probation.

5.3.2. OGC and CSF will inform Finance when such Debt may be Written-Off. Finance will not Write-Off any Court-Ordered CSF Reimbursements or Non-Court-Ordered CSF Reimbursements without consulting with CSF and OGC.

### 5.4. Deceased Licensee

5.4.1. For Debtors listed as "Dead" or "Presumed Dead" in RevQ, Finance will consult with OGC to confirm whether a collection action will be filed against the deceased Debtor's estate. If OGC confirms that no probate action will be filed, Finance will Write-Off the Debt.

5.4.2. If FTB returns an account due to the deceased status of the Debtor, Finance will notify OGC as soon as possible to confirm whether a collection action will be filed against the deceased Debtor's estate. If OGC confirms that no probate action will be filed, Finance will Write-Off the Debt.

### 5.5. Administrative Adjustments

5.5.1. Finance will Write-Off the Debt if such Debt was incorrectly added to RevQ or where the Debtor provides proof that they have paid-off the Debt.

- 5.5.2. If a money judgment has expired or has been vacated, Finance will consult with OGC to determine whether: (1) such judgment should be canceled in RevQ, and (2) the original Discipline Costs ordered by the Supreme Court should be reinstated as the State Bar can no longer collect any accrued interest but can still collect on the original Discipline Costs.

**(Source: Board of Governors' Resolution, July 2007, amended in November 2010, as further amended in \_\_\_\_\_ 2021.)**

# AGENDA ITEM

**JULY 113**

Proposed Pursuit Policy for  
Collection of Court-Ordered  
Disciplinary Costs and Client  
Security Fund Obligations

DATE: June 29, 2007

TO: Board Committee on Operations  
Members of the Board of Governors

FROM: Marie M. Moffat, General Counsel  
Lawrence C. Yee, Chief Assistant General Counsel  
Tracey L. McCormick, Assistant General Counsel

RE: Proposed Pursuit Policy for Collection of Disciplinary Costs and  
Client Security Fund Obligations

## **Executive Summary**

In April 2007, the Supreme Court amended the California Rules of Court to set forth the procedure for the State Bar to obtain money judgments in the Superior Courts to enforce court-ordered disciplinary cost and Client Security Fund restitution obligations under statutory amendments enacted in Statutes of 2004, Chapter 334. The California State Auditor's 2007 report on the State Bar also included a recommendation that in its enforcing disciplinary obligations under the new procedures that the State Bar adopt and implement a "policy for pursuing debtors." In this item, Staff now seeks the Board of Governors' approval of a pursuit policy to efficiently direct the State Bar's limited resources in seeking judgments against those Respondents with existing obligations and going forward.

## **BACKGROUND:**

Effective January 1, 2004, the State Bar obtained statutory amendments to the Business and Professions Code that allow the State Bar to enforce court-ordered disciplinary cost and Client Security Fund restitution obligations as money judgments. In order to implement the legislation, it was necessary to seek approval of an amendment to California Rule of Court 9.23. In April 2007, the Supreme Court amended the California Rules of Court to set forth the procedure for obtaining these money judgments in the Superior Courts. In the California State Auditors biennial audit of the State Bar (Bus. & Prof. Code, § 6145, subd. (b)), the final report issued on April 26, 2007, included a review of the State Bar's efforts to implement the statutory

amendments and a recommendation that the State Bar adopt a “policy for pursuing debtors.” (California State Auditor Report 2007-030, pp. 26-28, 30.)

The State Bar now seeks to establish a Pursuit Policy to efficiently direct the State Bar’s use of its resources in seeking judgments against Respondents to enforce these existing and future obligations imposed in disciplinary proceedings.

#### Disciplinary Cost Obligations

Business and Professions Code section 6086.10, subdivision (a), provides that final Supreme Court disciplinary orders or orders accepting a resignation with disciplinary charges pending shall include a direction that the member pay costs. This subdivision also requires that costs be awarded in any State Bar Court order imposing a public reproof on a member. Before January 1, 2004, these disciplinary costs were collected either by adding the assessed costs to the member’s annual membership fee or as a condition of the member’s reinstatement to active membership. (Bus. & Prof. Code, § 6140.7.) Statutes 2003, chapter 334, section 4, amended Business and Professions Code section 6086.10, subdivision (a), to provide: “An order pursuant to this subdivision is enforceable both as provided in Section 6140.7 and as a money judgment.”

#### Client Security Fund Obligations

Similarly, Business and Professions Code section 6140.5, subdivision (d), requires an attorney whose misconduct has caused the payment of funds to a claimant from the State Bar’s Client Security Fund (CSF) to “reimburse the fund for all moneys paid out.”<sup>1</sup> Before January 1, 2004, the amount of restitution—like the disciplinary costs—was either added to the attorney’s annual membership fee or paid as a condition of reinstatement of membership. (Bus. & Prof. Code, § 6140.5, subd. (c).) The law now provides that this assessment “may also be enforced as a money judgment” if it has been included in any final order of the Supreme Court imposing discipline or accepting a resignation with disciplinary charges pending or in any State Bar Court order imposing a public reproof on the member. (Bus. & Prof. Code, § 6140.5, added Stat. 2003, ch. 334, § 7.)

#### Rule of Court, Rule 9.23 - Procedure for Obtaining Money Judgments

Following the amendments to the Business and Professions Code, the State Bar sought amendments to the Rules of Court to set forth the procedure and venue for filing these judgments. In April 2007, the Supreme Court adopted Rule of Court, Rule 9.23 (hereinafter “Rule 9.23”). Rule 9.23, subd. (b) provides that the State Bar may present certified copies of a final disciplinary order, certificate of costs and a record of the Client Security Fund payment to the clerk of any Superior Court to obtain an immediate judgment. Subdivision (c) provides that motions for compromise of these judgments

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<sup>1</sup> Business and Professions Code section 6140.5 requires the State Bar to establish and administer the CSF, which is funded by an assessment paid by California attorneys as part of the annual bar membership fee, to compensate clients injured by the misconduct of members of the legal profession. (*Saleeby v. State Bar* (1985) 39 Cal.3d 547, 555 [216 Cal.Rptr. 367, 702 P.2d 525].)

must be heard in the State Bar Court. Often, in the case of attorneys who are suspended from the practice of law, assessments of disciplinary costs are broken down into three or more yearly payment obligations as a condition of continued practice. The State Bar Court allows other payment plans or relief as it deems appropriate (Bus. & Prof. Code, § 6086.10, subd. (c); Rules Proc. State Bar, rule 282) and Rule 9.23 confirms that after a judgment has been filed in the superior court, it is the State Bar Court that is the appropriate venue for seeking approvals of any compromise to the obligations that a Respondent must pay.

#### 2004 to Present - Pilot Program and Due Diligence Preparations

While awaiting the adoption of this Rule of Court, and at the recommendation of the State Auditor, the State Bar began preparing for the effectuation of this program. The Office of General Counsel instituted a Pilot Program, consisting of the Top 100 discipline debtors and those who incurred discipline obligations in 2003 and 2004. OGC collected the financial data, and, with the assistance of the Finance Department, audited and reconciled the electronic data with that contained in the certified Supreme and State Bar Court orders and CSF documents.<sup>2</sup> OGC sent demand letters to 541 attorneys as part of the Pilot Program. When 40% of the letters were returned as undeliverable, OGC applied and obtained authorization from the Department of Motor Vehicles to obtain otherwise confidential address information. Using this information, new letters were sent out and the Bar obtained voluntary compliance in the amount of \$111,504.34.

During this time, the State Bar also researched analogous procedures used by other regulatory bodies. The State Bar met with representatives of the Administrative Office of the Courts and the Los Angeles and San Francisco Superior Courts. The net result of these efforts was the cooperative development and approval of procedures and forms of judgment to be used in the implementation of the statutory authority once the Rule of Court was approved. The results of OGC's pilot project, consisting of data verification, document collection and work-ups for the Top 100 discipline debtors, resulted in some recommendations for modification to the forms, as did the final language of the Rule of Court. These non-substantive changes to the form of judgment are still pending before the Los Angeles County Superior Court Clerk's Executive Committee, but have been approved for use in the San Francisco Superior Court.

OGC also met with representatives of the Administrative Office of the Courts (AOC) regarding its Court-Ordered Debt Collection Program and worked out an agreement to allow the State Bar to participate in the AOC's Request for Proposal process and, additionally, to include the State Bar's specific collection requirements its next RFP.

Further, OGC planned a meeting with several collection agencies to determine whether their services could meet the State Bar's business needs.

Following the April 2007 adoption of the Rule of Court, the State Bar began filing judgments in the San Francisco County Superior Court on June 8, 2007. This effort will

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<sup>2</sup> Based on the difficulties with this process, OGC recommended that IT develop a new system for housing, compiling and recalling this financial data, which is currently in development.

continue in earnest upon completion of the State Bar's Cost Recovery (CR) module, currently in development by the State Bar's Department of Information & Technology. The module will create, for the first time, a single repository for all disciplinary cost and Client Security Fund information, and will create a place to store new financial data resulting from the State Bar's collections efforts and money judgment enforcement.

## DISCUSSION

### Overview of State Bar Debt

The State Bar may enforce, as money judgments, debts up to ten years old. Nearly \$19 million of the State Bar's total debt is beyond this statute of limitations. The State Bar's disciplinary cost debt, as accumulated over the past ten years is \$8,172,449. Client Security Fund payouts over the past ten years totaled \$48,435,978. It should be noted that, in the past, the State Bar Court rarely imposed a Client Security Fund obligation in orders accepting resignations or imposing disbarment on an attorney. In fact, of the existing Client Security Fund debt obligations, only 2-3% (between \$968,720 - \$1,453,079) have an associated disciplinary order that allows for immediate judgment. Therefore, approximately 97-98% of all existing Client Security Fund obligations may not be enforced as money judgments under the statutory scheme. In order to collect on the majority of these Client Security Fund obligations, the State Bar is required to file a subrogation lawsuit under Business and Professions Code 6140.5, subd. (b) and obtain a judgment via traditional civil litigation processes. Conversely, virtually all disciplinary orders have an associated cost obligation. Only private reprimands, and Agreements in Lieu of Discipline (which are not considered discipline), do not impose costs.

### Proposed Pursuit Policy

The proposed Pursuit Policy, attached hereto in its entirety as Exhibit 1, excludes from collection, as "Do Not Pursue" for any of the following:

- 1) The debtor is making timely payments under an approved payment plan;
- 2) The debt has been discharged in bankruptcy between May 10, 2001 and January 1, 2004;<sup>3</sup>
- 3) The debtor is deceased with no assets;
- 4) The projected costs exceed the likely recovery; or
- 5) Other good cause as determined by the General Counsel.

Under the proposed policy, other debts, not falling within the above guidelines, would be pursued based upon their age and amount, with thresholds set at ten years or \$500. Old or small debts - more than ten years old or less than \$500 - would be sent to collection agencies. New or large debts - less than ten years old or more than \$500 -

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<sup>3</sup> This is the period following the date of the decision *In Re Taggart*, 249 F.3d 987 (9th Cir. 2000), finding that discipline costs were dischargeable in bankruptcy because the California Legislature did not intend the costs to be sanctions and the effective date of the clarifying amendment in Assembly Bill No. 1708 (2003-2004 Regular Session) overruling *Taggart*. *In Re Finley*, 2007 WL 1231621 (Bkrcty.N.D.Cal.), \*3-  
\*4.

would be pursued by docketing of the judgment and recording of abstracts of judgments. Where there is a valid address available for a respondent and assets can be located, additional steps will be taken to enforce the judgment based on a case-by-case cost-benefit analysis.

This proposed Pursuit Policy further acknowledges the State Bar Court's authority to approve compromises the judgments under Rule 292 of the Rules of Procedure of the State Bar and Rule 9.23.

Because the Pursuit Policy is intended to establish guidelines for the Office of General Counsel to manage the filing of judgments, it is exempt from the requirements of public comment as an internal management document. Rules for Public Comment § 3(a).

#### **FISCAL AND PERSONNEL IMPACT:**

The Office of General Counsel has estimated a budget requirement for 2007 of \$145,884 for non-personnel litigation costs to enforce court-ordered discipline costs and Client Security Fund obligations as money judgments.

#### **BOARD BOOK/ADMINISTRATIVE MANUAL UPDATE:**

The Pursuit Policy, if adopted, would be appropriate for inclusion as a new section in the Board Book, under Tab 18 – Staffing – Section 7.5 [NEW] – Pursuit Policy for Court-Ordered Discipline Costs and Client Security Fund Obligations.

#### **RULE AMENDMENTS:**

None.

#### **PROPOSED BOARD RECOMMENDATION:**

Should the Board Committee on Operations agree with the propose recommendation, the following resolution would be in order:

**RESOLVED** that the Board Committee on Operations recommends that the Board of Governors adopt a formal Pursuit Policy for court-ordered disciplinary cost and Client Security Fund obligations, in the form attached hereto.

Should the Board agree with the propose recommendation, the following resolution would be in order:

**RESOLVED** that the Board of Governors hereby adopts a formal Pursuit Policy for court-ordered disciplinary cost and Client Security Fund obligations, in the form attached hereto.



**Article \_\_\_\_**  
**Pursuit Policy for Court-Ordered Discipline Costs and CSF Obligations**

**Section 1 Purpose**

Before April 1, 2007, discipline costs or restitution to Client Security Fund (CSF) ordered against a disciplined lawyer were collected either by including the amount in the billing of the annual membership fees or requiring payment as a condition of reinstatement. On January 1, 2004, changes in the State Bar Act provided that discipline costs and CSF restitution orders could be enforced as money judgments in the civil courts. With the Supreme Court's approval of Rule 9.23 of the California Rules of Court, effective April 1, 2007, the State Bar may now obtain automatic judgments for court-ordered discipline cost and Client Security Fund obligations. The goal of this policy is to have an aggressive, but fair policy to promote resolution of discipline costs and CSF obligations as quickly as possible, to utilize available tools effectively and efficiently collect these debts owed by disciplined California lawyers.

**Section 2 Definitions**

- (a) "Discipline costs" are the amounts that a member must pay to the State Bar under Business and Professions Code section 6086.10.
- (b) "CSF restitution" refers to amounts that a member must pay to the State Bar under Business and Professions Code section 6140.5, subdivision (d).
- (c) "Debtor" means a member of the State Bar of California who must pay discipline cost to the State Bar or CSF restitution under a discipline order by the Supreme Court or the State Bar Court or an order of the Supreme Court accepting the member's resignation with charges pending.
- (d) "Debt" refers to discipline costs, CSF restitution, or both.

**Section 3 No Action ("Do Not Pursue" Status)**

The State Bar may designate a matter as "do not pursue" and take no further action against a debtor to enforce a debt under any one of the following reasons:

- (a) The debtor is making timely payments and is not in default under a payment plan approved by the State Bar Court or Supreme Court
- (b) The debtor discharged the obligation in bankruptcy between May 10, 2001 and January 1, 2004, in reliance on *In Re Taggart*, 249 F.3d 987 (9th Cir. 2000)

- (c) The debtor is deceased and the estate has no assets
- (d) The expense to enforce the debt is likely to exceed the amount expected to be collected; or,
- (e) Other good cause as determined by the General Counsel.

#### **Section 4 Pursuit Guidelines**

Debts not designated as “do not pursue” under section 3 will be enforced under the following guidelines.

- (a) Report debtor to credit reporting or collection agencies if:
  - (1) The debt is older than 10 years; or
  - (2) The debt or aggregate debts are less than \$500.
- (b) File judgments, obtain abstracts of judgment, and record liens against debtors who owe discipline costs and CSF restitution and
  - (1) The debt is less than 10 years and
  - (2) The debt or aggregate debt is \$500 or more.
- (c) Pursue further enforcement of judgment mechanisms as appropriate where the judgment debtor and assets have been located.

#### **Section 5 Compromise**

These guidelines do not preclude the State Bar from granting relief under Rules 282 and 285 of the Rules of Procedure and Rule 9.23(c) of the California Rules of Court.

# AGENDA ITEM

**NOVEMBER 112-D**  
**Cost Recovery Pursuit Policy**  
**Proposed Amendments**

**DATE:** October 28, 2010

**TO:** Members of the Board Committee on Operations  
Members, Board of Governors

**FROM:** Starr Babcock, General Counsel  
Lawrence C. Yee, Chief Assistant General Counsel

**RE:** Cost Recovery Pursuit Policy, Proposed Amendments

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## **EXECUTIVE SUMMARY**

This item would amend the State Bar's internal staff policy for the collection of court-ordered disciplinary costs or restitution to the Client Security Fund assessed against disciplined attorneys under Business and Professions sections 6086.10 and 6140.5. (Attachment A.)<sup>1</sup> The amendment reflects changes, as recommended in the California State Auditor's Report of July 21, 2009, (Report No. 2009-030), and provides for the collection of these debts through collection agencies under participating agreements with the Statewide Master Vendor Agreements for Collection Services as part of the Enhanced Collections program of the Judicial Council of California, Administrative Office of the Courts. In addition, the amendment provides that when a debt account has been returned uncollected by a collection agency, the State Bar may designate the debt as "uncollectible" and take no further action to enforce the debt except for the renewal of any judgment and the payment as a condition of any reinstatement or return to membership.

## **DISCUSSION**

The Board of Governor's approved the existing "pursuit policy" in July 2007 following the Supreme Court's adoption of Rule 9.23 of the California Rules of Court permitting the State Bar to enter and enforce in the superior courts as civil money judgments State Bar discipline orders assessing costs of State Bar proceedings or requiring restitution to the Client Security Fund (CSF) against lawyers culpable of professional misconduct. Before 2007, collection of these debts was accomplished (1) by adding the amount to

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<sup>1</sup> Attachment A contains both a redlined version of the existing policy and the policy as amended.

the billing of the annual membership fees if the member received a public reprove or a stayed suspension or (2) by requiring payment as a condition of the member's reinstatement or return to active practice of law if the member was actually suspended, disbarred or resigned with charges pending. Legislative amendments in 2004 and the enactment of Rule 9.23 allowed the State Bar to collect the debts and enforce them as money judgments in the superior court.

Under the existing policy, collections of these debts were conducted by staff, an outside law firm, and a collection agency. Staff prepared the documents and filed the judgments before referring the account to the collection agency. Further, outside collection attorneys were used separately to pursue those disciplined lawyers owing the largest amounts. In its Report of July 21, 2009, the California State Auditor recommended inter alia that the State Bar utilize collection agencies if it determines that the collection agencies would be more cost effective. California State Auditor, Report No. 2009-030, at 48. The State Bar concluded that it would be more cost effective to use collection agencies given the far greater scope of services offered by them and that additional staff would have to be hired and trained in order to perform these same services.

In addition, in January 2010, the law firm of Cook Perkiss & Lew informed the State Bar that it was not cost effective for it to pursue individual debtors and would no longer handle CSF collection cases for the State Bar. Similarly in July 2010, the collection agency of Alliance One stated it would not renew its contract with the State Bar after collecting only 2.4 percent of the disciplinary debt referred to it. With assistance of the Enhanced Collections program of the Judicial Council of California, Administrative Office of the Courts (AOC), the State Bar has selected two new collection agencies with participating agreements under the AOC's [Statewide Master Vendor Agreements for Collection Services](#). Both vendors have indicated that their services include legal services that would be provided by licensed attorneys.

Staff has prepared amendments to the existing internal policy to provide guidelines for the changes in the collection method. The amended policy would provide:

- The title of the policy be renamed from "pursuit" to "collection" policy.
- Absent a hold on enforcement under the policy, disciplinary costs or CSF restitution will be referred to the collection agencies against
  - all attorneys who have been disbarred or who resigned with charges pending and
  - all publicly reprovved or suspended members who are delinquent in paying those debts;
- Installment payments by a debtor to a collection agency will be accepted by the State Bar after notice to the disciplined attorney-debtor that any extensions of time or other relief in the discipline case provided under statute or court rule must be separately sought by motion first filed in the State Bar Court; and
- When a debt account has been returned uncollected by a collection agency, the State Bar may designate the debt as "uncollectible" and take no further action to

enforce the debt except for the renewal of any judgment and the payment as a condition of any reinstatement or return to membership.

### **PROPOSED ACTION**

Staff recommends approval of the amended policy.

### **FISCAL IMPACT**

Some savings in staff expenses anticipated; unclear on whether there will be increased revenues from the collection of disciplinary debts.

### **RULES IMPACT**

None.

### **BOARD BOOK IMPACT**

Tab 18, Article 1, Section 9

### **PROPOSED RESOLUTIONS**

#### ***(By the Committee)***

The Board Committee on Operations recommends that the Board of Governors amends the Pursuit Policy for Court-Ordered Discipline Costs and CSF Obligations in the form attached hereto.

#### ***(By the Board)***

The Board of Governors upon recommendation of the Board Committee on Operations hereby amends the Pursuit Policy for Court-Ordered Discipline Costs and CSF Obligations in the form attached hereto.

# **Pursuit Collection Policy for Court-Ordered Discipline Costs and CSF Obligations**

## **(a) Section 1 Purpose**

~~Before April 1, 2007, discipline costs or restitution to Client Security Fund (CSF) ordered against a disciplined lawyer were collected either by including the amount in the billing of the annual membership fees or requiring payment as a condition of reinstatement. On January 1, 2004, changes in the State Bar Act provided that discipline costs and CSF restitution orders could be enforced as money judgments in the civil courts. With the Supreme Court's approval of Rule 9.23 of the California Rules of Court, effective April 1, 2007, the State Bar may now obtain automatic judgments for court-ordered discipline cost and Client Security Fund obligations. The goal of this policy is to have an aggressive, but fair policy to promote resolution of discipline costs and CSF obligations as quickly as possible, to utilize available tools effectively and efficiently collect these debts owed by disciplined California lawyers.~~

***This is an internal policy intended to provide a standard to State Bar staff in the collection from disciplined lawyers of court ordered discipline costs and restitution to the Client Security Fund. Nothing in this policy may be construed as relieving a disciplined lawyer from those obligations or extending the time to make payments as part of the membership fees or as a condition of reinstatement or the return to the active practice of law except as may be ordered by the Supreme Court or State Bar Court.***

## **(b) Section 2 Definitions**

(1) "Discipline costs" are the amounts that a member ***of the State Bar*** must pay to the State Bar under Business and Professions Code section 6086.10.

(2) "CSF restitution" refers to amounts that a member must pay to the State Bar under Business and Professions Code section 6140.5, subdivision (d).

~~(3) "Debtor" means a member of the State Bar of California who must pay discipline cost to the State Bar or CSF restitution under a discipline order by the Supreme Court or the State Bar Court or an order of the Supreme Court accepting the member's resignation with charges pending.~~

***(A) a member who has been disbarred or who resigned with disciplinary charges pending and owes court ordered discipline costs or CSF restitution;***

***(B) a member publicly reproved or suspended who is delinquent in paying court ordered discipline costs or CSF restitution that has***

***been added to his or her membership fee billing or in making payment under a court approved payment agreement.***

(4) "Debt" refers to discipline costs, CSF restitution, or both ***owed by a debtor.***

***(5) "Collection agency" means a vendor providing collection services under a participating agreement with the State Bar under the Statewide Master Vendor Agreements for Collection Services as part of the Enhanced Collections program of the Judicial Council of California, Administrative Office of the Courts.***

(c) Section 3 No Action ("Do Not Pursue" "***Hold***" Status)

The State Bar may designate a matter as ~~"do not pursue"~~ ***on "hold" status*** and take no further action against a debtor to enforce a debt under any one of the following reasons:

(1) The debtor is making timely payments and is not in default under a payment plan approved by the State Bar Court or Supreme Court

(2) The debtor discharged the obligation in bankruptcy between May 10, 2001 and January 1, 2004, in reliance on *In Re Taggart*, 249 F.3d 987 (9th Cir. 2000)

(3) The debtor is deceased and the estate has no assets

(4) The expense to enforce the debt is likely to exceed the amount expected to be collected; or,

(5) Other good cause as determined by the General Counsel.

(d) Section 4 Pursuit Guidelines ***Debt Collections***

~~Debts not designated as "do not pursue" under section 3 will be enforced under the following guidelines.~~

~~(1) Report debtor to credit reporting or collection agencies if:~~

~~(A) The debt is older than 10 years; or~~

~~(B) The debt or aggregate debts are less than \$500.~~

~~(2) File judgments, obtain abstracts of judgment, and record liens against debtors who owe discipline costs and CSF restitution and~~

~~(A) The debt is less than 10 years and~~

~~(B) The debt or aggregate debt is \$500 or more.~~

~~(3) Pursue further enforcement of judgment mechanisms as appropriate where the judgment debtor and assets have been located.~~

***(1) Debts not designated as on “hold” will be referred for collection by one or more collection agencies.***

***(2) The State Bar may accept installment payments by a debtor to the collection agency after notice to the debtor that***

***(A) installment payments to the collection agency do not constitute an extension of time (i) to pay delinquent discipline costs or CSF restitution as part of the membership fees before a suspension for nonpayment or (ii) for payment as a condition of reinstatement or the return to the active practice of law;***

***(B) installment payments to the collection agency do not constitute (i) relief from the court order imposing discipline costs or CSF restitution or (ii) the compromise of any judgment; and***

***(C) an extension of time or relief under Business and Professions Code sections 6086.10 and 6140.7 may be granted only by motion filed in the State Bar Court.***

~~(e) Section 5 Compromise~~

~~These guidelines do not preclude the State Bar from granting relief under Rules 282 and 285 of the Rules of Procedure and Rule 9.23(c) of the California Rules of Court.~~

***(e) Uncollectible debts***

***(1) When a debt account has been returned uncollected by a collection agency, the State Bar should assure that an applicable judgment under Business and Professions Code section 6086.10 or 6140.5 has been entered and recorded for debts less than 10 years old and \$500 or more. The State Bar may then designate the debt as “uncollectible” and take no further action to enforce the debt except for the renewal of any judgment and the payment as a condition of any reinstatement or return to membership .***

***(2) A debt may be removed from “uncollectible” status and referred back to a collection agency if a debtor or assets has been located or if there is other reason to believe that there has been a change in the economic condition of the debtor.***

***(Source: Board of Governors' Resolution, July 2007, amended\_\_\_\_\_, 2010.)***



# **Collection Policy for Court-Ordered Discipline Costs and CSF Obligations**

## **(a) Purpose**

This is an internal policy intended to provide a standard to State Bar staff in the collection from disciplined lawyers of court ordered discipline costs and restitution to the Client Security Fund. Nothing in this policy may be construed as relieving a disciplined lawyer from those obligations or extending the time to make payments as part of the membership fees or as a condition of reinstatement or the return to the active practice of law except as may be ordered by the Supreme Court or State Bar Court.

## **(b) Definitions**

(1) "Discipline costs" are the amounts that a member of the State Bar must pay to the State Bar under Business and Professions Code section 6086.10.

(2) "CSF restitution" refers to amounts that a member must pay to the State Bar under Business and Professions Code section 6140.5, subdivision (d).

(3) "Debtor" means

(A) a member who has been disbarred or who resigned with disciplinary charges pending and owes court ordered discipline costs or CSF restitution;

(B) a member publicly reprimanded or suspended who is delinquent in paying court ordered discipline costs or CSF restitution that has been added to his or her membership fee billing or in making payment under a court approved payment agreement.

(4) "Debt" refers to discipline costs, CSF restitution, or both owed by a debtor.

(5) "Collection agency" means a vendor providing collection services under a participating agreement with the State Bar under the Statewide Master Vendor Agreements for Collection Services as part of the Enhanced Collections program of the Judicial Council of California, Administrative Office of the Courts.

## **(c) No Action ("Hold" Status)**

The State Bar may designate a matter as on "hold" status and take no further action against a debtor to enforce a debt under any one of the following reasons:

(1) The debtor is making timely payments and is not in default under a payment plan approved by the State Bar Court or Supreme Court

(2) The debtor discharged the obligation in bankruptcy between May 10, 2001 and January 1, 2004, in reliance on *In Re Taggart*, 249 F.3d 987 (9th Cir. 2000)

(3) The debtor is deceased and the estate has no assets

(4) The expense to enforce the debt is likely to exceed the amount expected to be collected; or,

(5) Other good cause as determined by the General Counsel.

(d) Debt Collections

(1) Debts not designated as on “hold” will be referred for collection by one or more collection agencies.

(2) The State Bar may accept installment payments by a debtor to the collection agency after notice to the debtor that

(A) installment payments to the collection agency do not constitute an extension of time (i) to pay delinquent discipline costs or CSF restitution as part of the membership fees before a suspension for nonpayment or (ii) for payment as a condition of reinstatement or the return to the active practice of law;

(B) installment payments to the collection agency do not constitute (i) relief from the court order imposing discipline costs or CSF restitution or (ii) the compromise of any judgment; and

(C) an extension of time or relief under Business and Professions Code sections 6086.10 and 6140.7 may be granted only by motion filed in the State Bar Court.

(e) Uncollectible debts

(1) When a debt account has been returned uncollected by a collection agency, the State Bar should assure that an applicable judgment under Business and Professions Code section 6086.10 or 6140.5 has been entered and recorded for debts less than 10 years old and \$500 or more. The State Bar may then designate the debt as “uncollectible” and take no further action to enforce the debt except for the renewal of any judgment and the payment as a condition of any reinstatement or return to membership.

(2) A debt may be removed from “uncollectible” status and referred back to a collection agency if a debtor or assets has been located or if there is other reason to believe that there has been a change in the economic condition of the debtor.

**(Source: Board of Governors' Resolution, July 2007, amended\_\_\_\_\_, 2010.)**