



# The State Bar of California

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## **OPEN SESSION**

## **AGENDA ITEM**

**MAY 2021**

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

**DATE:** May 13, 2021

**TO:** Members, Regulation and Discipline Committee

**FROM:** Gagandeep Kaur, Assistant General Counsel  
Suzanne Grandt, Assistant General Counsel

**SUBJECT:** Proposed Amendments to Rule 9.23 of the California Rules of Court: Request to Circulate for Public Comment

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### **EXECUTIVE SUMMARY**

The State Bar of California (State Bar) Regulation and Discipline Committee (RAD) is asked to authorize a 45-day public comment period for proposed amendments to Rule 9.23 of the California Rules of Court (rule 9.23). (See Attachment A.)

The proposed amendments to rule 9.23 are necessary to: (1) implement the recent statutory changes to California Business and Professions Code section 6140.5 allowing the State Bar to enforce final determinations of the Client Security Fund (CSF) as money judgments; (2) implement Rule 5.137 of the Rules of Procedure of the State Bar (rule 5.137) allowing the State Bar to enforce monetary sanctions as money judgments; and (3) provide a process for the State Bar and debtor to amend, vacate, or stay the enforcement of a money judgment.

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### **BACKGROUND**

On January 1, 1988, Business and Professions Code section 6140.5 was amended to allow the State Bar to enter money judgments on CSF reimbursements that were part of a final order imposing discipline or an order accepting a resignation with a disciplinary matter pending. Most

CSF reimbursements, however, are not part of a discipline order.<sup>1</sup> As such, the State Bar was unable to enforce most CSF final reimbursement determinations as money judgments, impairing its collection abilities with respect to such reimbursements. In Assembly Bill 3362 (2020), the California State Legislature amended Business and Professions Code section 6140.5 to allow the State Bar to enter CSF reimbursements that are not part of a discipline order as money judgments.

The recent amendments also remove the State Bar Court's authority to compromise money judgments for CSF reimbursements to be consistent with the California Supreme Court's determination that CSF is distinct from the attorney discipline system. (*Saleeby v. State Bar* (1985) 702 P.2d 525.) As the California Supreme Court lacks original jurisdiction over challenges to CSF reimbursements, it does not have the authority to compromise amounts owed to CSF in the first instance. Any challenges to the final reimbursement determinations must be made in the superior court pursuant to Rule 3.450 of the Rules of the State Bar of California.

Additionally, on March 23, 2020, the California Supreme Court approved rule 5.137, "Imposition and Payment of Monetary Sanctions." Rule 5.137 provides guidelines for the State Bar Courts' recommendation of monetary sanctions pursuant to Business and Professions Code section 6086.13. It also provides that monetary sanctions are "enforceable as a money judgment and may be collected through any means provided by law." (See rule 5.137(G).)

The current version of rule 9.23 only authorizes the State Bar to enforce disciplinary costs and CSF reimbursements that are part of a disciplinary order as money judgments. It also provides a process for requesting entries, as well as compromises, of such money judgments. The proposed amendments to rule 9.23 implement the State Bar's new authority to enter money judgments on all CSF reimbursements as well as monetary sanctions. This will enhance the State Bar's collection efforts.

Staff also recommends amending rule 9.23 to add a process for the State Bar and debtor to amend, vacate, or stay the enforcement of a money judgment within 180 days of the entry or service of the money judgment. This is necessary because there is no rule or statute that provides a process for such relief, so the State Bar has to rely on civil rules applicable to default and small claims court judgments when defending a motion to amend, vacate, or stay the enforcement of a money judgment. Staff also recommends adding a process to allow the State Bar to file this type of motion for the benefit of a debtor at any time to correct an error that is discovered after 180 days or to halt collection efforts after 180 days.

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<sup>1</sup> While all CSF reimbursements are made pursuant to a final determination of the CSF Commission, certain reimbursements are also specifically ordered by the State Bar Court or California Supreme Court in connection with a discipline order.

## DISCUSSION

Staff proposes amending rule 9.23 as follows:

1. Adding the State Bar's authority to enforce all CSF final reimbursement determinations and monetary sanctions as money judgments;
2. Adding a new provision regarding the State Bar and debtor's right to file a motion to amend, vacate, or stay the enforcement of the judgment within a specified timeframe;
3. Adding a new provision allowing the State Bar to vacate, amend, or stay the enforcement of a judgment at any time for the benefit of a debtor to correct an error or halt collections efforts;
4. Clarifying the State Bar Court's authority to compromise only money judgments entered for disciplinary costs and monetary sanctions to be consistent with *Saleeby*; and
5. Clarifying the California Supreme Court's authority to alter the court-ordered amounts (i.e., disciplinary costs, monetary sanctions, and court-ordered restitution) to be consistent with *Saleeby*.

A redlined version of rule 9.23 is attached hereto as Attachment B.

Rule 1.10(A) of the Rules of the State Bar of California allows the Board to make available for public comment its proposed amendments to the California Rules of Court. Therefore, staff requests RAD to authorize a 45-day public comment period for the proposed amendments to rule 9.23.

## FISCAL/PERSONNEL IMPACT

If adopted, this rule will allow the State Bar to collect several hundred thousand dollars through enforcing as a money judgment any final determination by CSF and any monetary sanction order.

Adoption of this rule could also necessitate additional resources in the Office of General Counsel to request entries of money judgments and manage these money judgments.

## AMENDMENTS TO RULES OF THE STATE BAR

None

## NEW 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.

### **RECOMMENDATIONS**

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

**RESOLVED**, that the Regulation and Discipline Committee authorizes staff to make available for a 45-day public comment period the proposed amended rule 9.23 of the California Rules of Court, attached hereto as Attachment A

### **ATTACHMENT(S) LIST**

- A.** Amended Rule 9.23 of California Rules of Court
- B.** Redlined Version of Rule 9.23

**Cal. Rules of Court, Rule 9.23**

**Rule 9.23. Enforcement of disciplinary orders and final determinations by Client Security Fund as money judgments**

**(a) Authority to obtain money judgments**

Pursuant to Business and Professions Code section 6086.10(a), the State Bar is authorized to enforce as a money judgment any disciplinary order assessing costs. Pursuant to Business and Professions Code section 6086.13(c) and the State Bar Rules of Procedure, Rule 5.137, the State Bar is authorized to enforce as a money judgment any monetary sanctions order. Pursuant to Business and Professions Code section 6140.5(f), the State Bar is authorized to enforce as a money judgment any disciplinary order or final determination by the Client Security Fund requiring reimbursement to the State Bar Client Security Fund.

**(b) Duty of clerk of the superior court**

The State Bar may file with the clerk of the superior court of any county a certified copy of a final disciplinary order: (1) assessing costs along with a certified copy of the certificate of costs, (2) assessing monetary sanctions, or (3) requiring reimbursement to the Client Security Fund along with any record of interest accrued and processing costs, and a certified copy of the Notice of Payment of the Client Security Fund. The State Bar may also file with the clerk of the superior court of any county a certified copy of the Notice of Payment of the Client Security Fund requiring reimbursement to the Client Security Fund along with any record of interest accrued and processing costs. The clerk must immediately enter a money judgment in conformity with the order or the Notice of Payment.

**(c) Amend, vacate or stay the enforcement of a money judgment**

The State Bar has 180 days from the date a money judgment is entered by the clerk under this rule to file a motion to amend, vacate, or stay the enforcement of the money judgment in the superior court with jurisdiction. Defendant has 180 days from the date of service of notice of entry of judgment to file a motion to amend, vacate, or stay the enforcement of the money judgment in the superior court with jurisdiction. The State Bar may also file a motion to amend, vacate, or stay the enforcement of a money judgment entered under this rule at any time in the superior court with jurisdiction for the benefit of the defendant.

**(d) Compromise of a money judgment**

Motions for the compromise of any money judgment entered under this rule for costs ordered pursuant to Business and Professions Code section 6086.10(a) and monetary sanctions ordered pursuant to Business and Professions Code section 6086.13(a) must, in the first instance, be filed and heard by the State Bar Court.

**(e) Power of the Supreme Court**

Nothing in this rule may be construed as affecting the power of the Supreme Court to alter the costs, monetary sanctions, or Client Security Fund restitution amounts owed pursuant to any Supreme Court or State Bar Court order.

## Cal. Rules of Court, Rule 9.23

Rule 9.23. Enforcement ~~as money judgment of~~ disciplinary orders ~~directing the payment of costs and disciplinary orders requiring reimbursement of the~~ and final determinations by Client Security Fund as money judgments

**(a) Authority to obtain money judgments**

~~Under — Business and Professions Code section 6086.10(a)~~ Pursuant to Business and Professions Code section 6086.10(a), the State Bar is authorized to enforce as a money judgment any disciplinary order assessing costs. ~~Under — Business and Professions Code section 6140.5(d)~~ Pursuant to Business and Professions Code section 6086.13(c) and the State Bar Rules of Procedure, Rule 5.137, the State Bar is authorized to enforce as a money judgment any monetary sanctions order. Pursuant to Business and Professions Code section 6140.5(f), the State Bar is authorized to enforce as a money judgment any disciplinary order or final determination by the Client Security Fund requiring reimbursement of the State Bar Client Security Fund.

**(b) Duty of clerk of the superior court**

The State Bar may file with the clerk of the superior court of any county a certified copy of a final disciplinary order: (1) assessing costs or requiring reimbursement to the Client Security Fund, along with a certified copy of the certificate of costs and any record of, (2) assessing monetary sanctions, or (3) requiring reimbursement to the Client Security Fund payments and costs, along with any record of interest accrued and processing costs, and a certified copy of the Notice of Payment of the Client Security Fund. The State Bar may also file with the clerk of the superior court of any county a certified copy of the Notice of Payment of the Client Security Fund requiring reimbursement to the Client Security Fund along with any record of interest accrued and processing costs. The clerk must immediately enter a money judgment in conformity with the order or the Notice of Payment.

**(c) Amend, vacate or stay the enforcement of a money judgment**

The State Bar has 180 days from the date a money judgment is entered by the clerk under this rule to file a motion to amend, vacate, or stay the enforcement of the money judgment in the superior court with jurisdiction. Defendant has 180 days from the date of service of notice of entry of judgment to file a motion to amend, vacate, or stay the enforcement of the money judgment in the superior court with jurisdiction. The State Bar may also file a motion to amend, vacate, or stay the enforcement of a money judgment entered under this rule at

any time in the superior court with jurisdiction for the benefit of the defendant.

**(ed) Compromise of a money judgment**

Motions for the compromise of any money judgment entered under this rule for costs ordered pursuant to Business and Professions Code section 6086.10(a) and monetary sanctions ordered pursuant to Business and Professions Code section 6086.13(a) must, in the first instance, be filed and heard by the State Bar Court.

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Nothing in this rule may be construed as affecting the power of the Supreme Court to alter the costs, monetary sanctions, or Client Security Fund restitution amounts owed: pursuant to any Supreme Court or State Bar Court order.

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<p align="center"><b>Summary report:</b>  <b>Litera® Change-Pro for Word 10.13.1.5 Document comparison done on</b>  <b>4/13/2021 11:27:13 AM</b></p>	
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<b>Intelligent Table Comparison:</b> Active	
<b>Original filename:</b> Rule 923 Enforcement as money judgment disciplinary orders directing the payment of costs and discip.docx	
<b>Modified filename:</b> Revised Rule 9.23 4.13.2021.docx	
<b>Changes:</b>	
<u>Add</u>	25
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<u>Table moves to</u>	0
<del>Table moves from</del>	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
<b>Total Changes:</b>	<b>54</b>