



# The State Bar of California

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## **OPEN SESSION**

## **AGENDA ITEM**

**50-8 NOVEMBER 2021**

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

**DATE:** November 18, 2021

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

**FROM:** George Cardona, Chief Trial Counsel

**SUBJECT:** Proposed Amendment to Consumer Alert Policy to Clarify That It Applies to  
Felony Charges in All Courts: Request for Adoption

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### **EXECUTIVE SUMMARY**

In November 2018, the Board of Trustees amended the Board's policy on consumer alerts to authorize posting of several new consumer alerts to an attorney's State Bar profile page. One of the new alerts was to be posted when there are pending felony charges against that attorney. While the language of the alert was generic, the title of the alert and the text of the November 2018 Board resolution referred to felony charges "pending in Superior Court."

As a result, there have been several occasions when the Office of Chief Trial Counsel (OCTC) has declined to post the alert in cases where there are felony charges pending against an attorney in Federal Court. In addition, OCTC has received a number of calls requesting additional information about the pending charges. Often, OCTC does not have additional information about the pending charges.

OCTC is seeking: (1) a clarification that the pending felony consumer alert applies to felonies pending in California, the United States Federal Courts, or any state or territory of the United States, and (2) authorization to revise the alert language to refer the public directly to the jurisdiction in which the felony case is pending

## BACKGROUND

In May 2011, the Board determined that some disciplinary matters warrant conspicuous notices about pending disciplinary actions. On May 13, 2011, the Board approved posting a high-visibility consumer alert that contained general information about the allegations, and a disclaimer, at the top of the State Bar Profile page of any attorney against whom a notice of disciplinary charges (NDC) or a petition for involuntary inactive enrollment pursuant to Business and Professions Code section 6007(c) is filed in which a major misappropriation of client funds is alleged.

On July 22, 2011, the Board approved posting a high-visibility consumer alert that contained general information about the allegations, and a disclaimer, at the top of the State Bar Profile page of any attorney against whom an NDC or a petition for involuntary inactive enrollment pursuant to Business and Professions Code section 6007(c) is filed in which 15 or more cases of misconduct related to loan modification are alleged.

In 2018, the Board, following a 60-day public comment period, approved the addition of several more consumer alerts and two notifications to the attorney's profile page. The 2018 changes to the Board's Consumer Alert policy were sent out for public comment due to the significant changes to this policy and controversial nature of some consumer alerts, including the addition of the pending felony alert. However, public comment on a Board policy is not required. See [rule 1.10, Rules of the State Bar of California](#).

## DISCUSSION

During the November 2018 Board meeting, the Board approved a change to the Board policy on consumer alerts to add a consumer alert that said:

CONSUMER ALERT: This attorney has been charged with a felony. For more information, contact the State Bar. The State Bar posts consumer alerts online when lawyers are charged in court with felonies. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.

DISCLAIMER: The filing of criminal charges does not constitute a finding of guilt or professional misconduct. Criminal defendants are presumed to be innocent until proven guilty in a court of law.

As set out in the Board policy, this alert is to be posted “[w]hen the State Bar learns that an attorney has been charged in court with a felony” and will be “removed from the licensee’s State Bar profile page: (1) upon verification of notice to the State Bar that the charges have been dismissed or reduction from a felony to a misdemeanor, or (2) upon the filing of a decision or order of the State Bar Court adjudicating a disciplinary proceeding based upon the facts underlying the felony prosecution.”

Despite the language in the alert itself that applies to a felony in general (regardless of jurisdiction), the language used in the agenda item made reference, in several places, including

in the resolution itself, to “Felony Charges Pending in Superior Court.” As a result, OCTC has declined to post this alert on the profiles of several attorneys who have felony charges pending in Federal Court. OCTC is now seeking to clarify that the Board’s Consumer Alert policy applies to pending felony charges whether the felony charges are filed in California, United States Federal Courts, or any state or territory of the United States. See [Business and Professions Code 6102\(a\)](#).

Additionally, the text of the alert approved by the Board in November 2018 directed the public to call the State Bar for additional information. Since implementation of the alert, the State Bar has modified the alert to include a phone number and email address to be used to contact the State Bar to inquire about the pending felony alert. However, because OCTC frequently does not have additional information, we recommend that the alert direct the public to contact the jurisdiction in which the felony case is pending.

### **FISCAL/PERSONNEL IMPACT**

None

### **AMENDMENTS TO RULES**

Board policy regarding consumer alerts.

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

None

### **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: None

### **RECOMMENDATIONS**

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

**RESOLVED**, that the Regulation and Discipline Committee recommends that the Board of Trustees adopts the proposed amendments to the Board Policy regarding posting of a consumer alert upon the filing of felony charges against an attorney as set forth in Attachment A; and it is

**FURTHER RESOLVED**, that the Regulation and Discipline Committee recommends that the proposed amendments to the Board Consumer Alerts policy become effective immediately.

**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 Regulation and Discipline Committee, adopts the proposed amendments to the Board Policy regarding posting of a consumer alert upon the filing of felony charges against an attorney as set forth in Attachment A; and it is

**FURTHER RESOLVED**, that the proposed amendments to the Board Consumer Alerts policy become effective immediately.

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

- A.** Proposed Board Policy regarding Posting of Consumer Alerts When Felony Charges Are Pending  
(Clean Version)
- B.** Proposed Board Policy re Posting of Consumer Alerts When Felony Charges Are Pending  
(Redline Version)

**Proposed Board Policy re Posting of Consumer Alerts When Felony Charges Are Pending  
(Clean Version)**

**Pending Felony Charges**

When the State Bar learns that an attorney has been charged in court with a felony, the State Bar will post the following Consumer Alert above the attorney's name on the licensee's State Bar profile page:

"CONSUMER ALERT: The State Bar has been informed that this attorney has been charged with a felony. The Felony matter is [Jurisdiction] [Case Number]. For more information, contact the court in the jurisdiction where the case is pending. The State Bar posts consumer alerts online when lawyers are charged in court with felonies. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.

"DISCLAIMER: The filing of criminal charges does not constitute a finding of guilt or professional misconduct. Criminal defendants are presumed to be innocent until proven guilty in a court of law."

This consumer alert will be removed from the licensee's State Bar profile page: (1) upon verification of notice to the State Bar that the charges have been dismissed or reduced from a felony to a misdemeanor, or (2) upon the filing of a decision or order of the State Bar Court adjudicating a disciplinary proceeding based upon the facts underlying the felony prosecution.

**Proposed Board Policy re Posting of Consumer Alerts When Felony Charges Are Pending  
(Redline Version)**

**Pending Felony Charges ~~Pending in Superior Court~~**

When the State Bar learns that an attorney has been charged in court with a felony, the State Bar will post the following Consumer Alert above the attorney's name on the licensee's State Bar profile page:

"CONSUMER ALERT: The State Bar has been informed that this ~~This~~ attorney has been charged with a felony. The Felony matter is [Jurisdiction] [Case Number]. For more information, contact the ~~Office of Chief Trial Counsel by calling (213) 765-1350 or emailing~~ ConvictionMonitoring@calbar.ca.gov court in the jurisdiction where the case is pending. The State Bar posts consumer alerts online when lawyers are charged in court with felonies. Anyone who believes they have been the victim of attorney misconduct is urged to file a complaint with the State Bar.

"DISCLAIMER: The filing of criminal charges does not constitute a finding of guilt or professional misconduct. Criminal defendants are presumed to be innocent until proven guilty in a court of law."

This consumer alert will be removed from the licensee's State Bar profile page: (1) upon verification of notice to the State Bar that the charges have been dismissed or reduced from a felony to a misdemeanor, or (2) upon the filing of a decision or order of the State Bar Court adjudicating a disciplinary proceeding based upon the facts underlying the felony prosecution.