



# The State Bar *of California*

## AD HOC COMMISSION ON THE DISCIPLINE SYSTEM

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Date: June 1, 2022

To: Members, Ad Hoc Commission on the Discipline System

From: Justin Ewert, Principal Program Analyst  
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Subject: Adoption of Discipline Costs and Sanctions Recommendations

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### EXECUTIVE SUMMARY

The Ad Hoc Commission on the Discipline System (AHCDS) was created to review the changes that have been proposed and implemented in the Office of Chief Trial Counsel since 2016 and evaluate their impact on public protection. The AHCDS focused on the impact of these reforms on a number of key aspects of the discipline system, including:

- Procedural justice and the experiences and perceptions of the system by complaining witnesses and respondents;
- Workload and operational efficiency of case processing;
- Case prioritization and differentiated case-flow management; and
- The efficacy of the system for preventing future attorney misconduct.

The AHCDS divided into two subcommittees, fairness and effectiveness, and then further into working groups to review specific areas of focus and develop recommendations to be reviewed by the full commission. The four-member Discipline Costs Working Group reviewed discipline costs and sanctions currently collected by the State Bar and examined their fairness and impact on respondents. Due to scheduling conflicts, the working group did not develop recommendations. Instead, the full AHCDS discussed the topic on April 28, 2022. At that time members expressed concern about the high discipline costs respondents incur. The recommendations that follow are reflective of that discussion.

## RECOMMENDATIONS

The working group and AHCDs discussed two types of costs imposed on respondents: discipline costs and monetary sanctions. The narrative below provides background on each and proposed recommendations for the Ad Hoc Commission's consideration.

### COSTS ASSOCIATED WITH DISCIPLINE

In 1986, the Legislature authorized the State Bar to collect costs associated with disciplinary investigation and proceedings. [Business and Professions Code Section 6086.10](#) requires the State Bar to impose costs on disciplined attorneys for various expenses including the "reasonable costs" of investigation, hearing, and review. The Board of Trustees has the authority to define "reasonable costs"; it is not defined in statute. The State Bar's current cost structure is based on a discipline costs study conducted in 2010 by consulting firm Hilton, Farnkopf & Hobson. Costs are updated annually to increase with inflation as recommended by this study.

The current disciplinary cost structure can be found on the [State Bar Court's website](#). Discipline costs range from \$3,693 for original matters that settle prior to the filing of disciplinary charges to \$24,695 for original matters that proceed to the review department after trial. Costs recovered reimburse the general fund to offset the cost of discipline and the 2022 budget for discipline costs to be collected was \$1.5 million. 2022 budgeted expenses for the Office of Chief Trial Counsel and State Bar Court totaled \$75.8 million; discipline costs recovered comprise 1.9 percent of budgeted expenses.

Attorneys who do not pay their discipline costs have their license to practice suspended until the outstanding costs are paid. Statute allows for relief of costs in very narrow circumstances, with most of the relief resulting in an extension of time to pay rather than a reduction in costs. An analysis of 870 attorneys who were suspended or received a public or private reproof between 2014 and 2016 found that 11 percent failed to pay fees and/or filed a petition for relief within the original disciplinary period. The median disciplinary cost associated with this group of attorneys was \$12,800.

A survey of 16 other states found that most states assessed minimal costs, \$3,000 or less, and two states collected no costs at all. [Business and Professions Code section 125.3](#) allows boards within the Department of Consumer Affairs to recoup costs for investigation and minimal pre-filing charges but not for costs related to going to trial. The purpose of excluding trial costs is to avoid discouraging licensees from pursuing their right to a hearing.

The AHCDs expressed support for lowering discipline costs at its April 28, 2022, meeting, based on the following:

- State Bar discipline costs are much higher than those assessed by other state bars, comparable California regulatory boards, and other state attorney regulatory agencies;
- High costs can impact the ability of an attorney to return to practice;
- Costs for matters that proceed to a multi-day trial are more than two times higher than costs for matters that end with a one-day trial;
- Respondents are subject to all costs regardless of outcome. For example, if a respondent gets multiple serious charges dismissed but is convicted of one minor charge, there is no corresponding reduction in the fees assessed; State Bar Court judges do not have the discretion to lower discipline costs in matters where the respondent is successful in getting most charges dismissed; and
- Costs associated with matters that proceed to the Review Department are the highest among all proceedings (\$24,695 for original matters and \$22,136 for criminal referrals in 2022). Respondents must pay full costs even if they are successful at reducing the final level discipline during the review process.

With the foregoing in mind, the Ad Hoc Commission is asked to consider the following recommendation:

**The Ad Hoc Commission on the Discipline System recommends the Board of Trustees reevaluate its current discipline cost model with a focus on reducing costs. This includes, but is not limited to, restructuring the costs structure so that attorneys are not penalized for going to trial and scaling fees when charges are dismissed.**

## **MONETARY SANCTIONS**

Business and Professions Code section 6086.13 requires the State Bar to adopt rules setting for the guidelines for the imposition of monetary sanctions on disciplined attorneys. These rules were adopted and enacted in April 2020. Monetary sanctions collected go directly to the Client Security Fund (CSF), a fund that reimburses clients who have lost money or property due to attorney misconduct. CSF received \$17,000 in sanctions related revenue in 2021 and \$25,000 through the first quarter of 2022; the 2022 CSF budget totals \$8.5 million. Based on projected revenue of \$100,000, the amount received through sanctions will be equivalent to 1.1 percent of the 2022 CSF budget.

The rules provide for sanction recommendations in the follow amounts:

- \$5,000 sanction for disbarment;
- \$2,500 for actual suspension; and
- \$1,000 for resignation with charges pending.

The State Bar Court can increase these recommended amounts up to the statutory limit of \$5,000 per violation and \$50,000 per disciplinary order based on the facts and circumstances of

each discipline case. Eliminating sanctions altogether would require a statutory change. No other state bar appears to assess sanctions in addition to disciplinary costs.

Given that discipline costs alone are high relative to those imposed by comparable agencies, the imposition of sanctions may compound an already overly burdensome set of financial penalties levied on respondents. As such the Ad Hoc Commission is asked to consider the following recommendation:

**The Ad Hoc Commission on the Discipline System recommends that the State Bar seek a statutory amendment to eliminate disciplinary sanctions.**