



THE STATE BAR  
OF CALIFORNIA

INTER-OFFICE  
COMMUNICATION

**DATE:** May 26, 2006

**TO:** Members of the Board Committee on Regulation, Admissions,  
and Discipline Oversight

**FROM:** Scott J. Drexel, Chief Trial Counsel

**SUBJECT:** Proposed Addition of Rules 286 and 291, Rules of Procedure Re:  
Consequences of Default Upon Discipline Cost or Client Security  
Fund Payment Plans and Due Date for CSF Reimbursement  
Obligations -- Request for Shortened 60-Day Public Comment Period

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*ISSUE*

The issue presented by this agenda item is whether the Board Committee on Regulation, Admissions and Discipline Oversight (“RAD Committee”) should authorize the release, for a 60-day public comment period, of the proposed addition of rules 286 and 291 of the Rules of Procedure of the State Bar of California (“Rules of Procedure”). If ultimately adopted, proposed rule 286 would provide that a disciplined attorney’s failure to make timely payments of discipline costs or Client Security Fund reimbursements pursuant to a court-ordered installment payment plan will result in the unpaid balance becoming immediately due and payable unless relief is granted. Proposed rule 291 would require the State Bar Court, in any disciplinary recommendation or order, to include an order or recommendation that the respondent reimburse the Client Security Fund to the extent that the misconduct found in the proceeding results in the payment of funds by CSF. Proposed rule 291 would also provide that any reimbursement to the Client Security Fund ordered by the State Bar Court or the Supreme Court must be paid within 30 days following the effective date of the order, unless otherwise ordered by the Court or unless relief has been granted. Each of these rules is needed to effectively implement the State Bar’s statutory authority to enforce discipline cost orders and CSF reimbursement obligations as money judgments.

*RECOMMENDATION*

The Office of the Chief Trial Counsel recommends that the RAD Committee authorize the release of proposed rules 286 and 291, in the form attached hereto as Attachment A, for a shortened 60-day public comment period. The shortened comment period is requested so that the RAD Committee and the Board of Governors can consider the proposed rules at their August 2006 meeting.

## *DISCUSSION*

### **Proposed Rule 286, Rules of Procedure**

Business and Professions Code sections 6086.10, subdivision (a) and 6140.5, subdivision (d) provide, in relevant part, that Supreme Court orders requiring a disciplined attorney to pay discipline costs or to reimburse the Client Security Fund for payments made as a result of the attorney's dishonest conduct may be enforced as money judgments. Generally speaking, discipline costs and CSF assessments, including processing costs and applicable interest, must be paid as a condition of the disciplined attorney's reinstatement to the practice of law or return from actual suspension. (Bus. & Prof. Code, §§ 6140.5, subd. (c) and 6140.7.)

In appropriate cases, where the disciplined attorney has made a sufficient showing of financial hardship or other good cause, the attorney may be permitted by order of the State Bar Court or the Supreme Court to make installment payments of discipline costs and/or CSF reimbursement. As long as the disciplined attorney makes those installment payments on a timely basis, the State Bar would not seek to enforce the discipline cost assessment or CSF obligation as a money judgment. However, if the disciplined attorney misses one or more installment payments, he or she has violated the terms of the court order and the State Bar has the right to enforce the unpaid obligation as a money judgment. It would be extremely expensive, burdensome and time-consuming to require the State Bar to either (a) enforce each missed installment payment as a separate money judgment; or (b) wait until the attorney misses a significant number of installment payments before enforcing the missed payments as a single money judgment.

As an alternative to the above-referenced options, the Office of the Chief Trial Counsel recommends that the disciplined attorney's violation of the Supreme Court or State Bar Court's order for installment payments should result in the immediate acceleration of the due date of the entire unpaid balance. At that point, unless the State Bar Court grants relief, the State Bar can seek to enforce the entire obligation as a money judgment.

Proposed rule 286 of the Rules of Procedure, if ultimately adopted, would require the State Bar Court, in any disciplinary recommendation or order for the installment payment of discipline costs or Client Security Fund reimbursement, to include a provision stating that the unpaid balance of costs or CSF reimbursement will become immediately due and payable if the disciplined attorney fails to make a timely installment payment. However, rule 286 also recognizes that the Court may, in an appropriate case, grant relief from this acceleration clause.

### **Proposed Rule 291, Rules of Procedure**

In cases involving the restitution by a respondent attorney of unearned fees or of misappropriated or converted funds to the attorney's victim(s), the State Bar Court's disciplinary recommendation or order typically require the attorney to make restitution directly to the victim(s). However, the Court's recommendation or order further provides that, if the Client Security Fund has reimbursed the victim(s)

for all or some of the loss(es), then the respondent attorney must make restitution to the Client Security Fund for the amount(s) paid, together with the processing costs for the CSF claim(s) and applicable interest on the amount(s) paid by CSF.

However, these restitution recommendations are not normally included in cases in which disbarment has been recommended because, historically, once the disbarment becomes effective, there has been no mechanism for enforcing the restitution order. Additionally, in the vast majority of non-disbarment cases, the final disciplinary order against an attorney is entered before the Client Security Fund determines whether it will reimburse the attorney's victim(s) for all or a portion of their loss(es).<sup>1</sup> In these cases, the Client Security Fund relies upon the State Bar Court to determine whether the victim(s) suffered a reimbursable monetary loss; the date and amount of the loss; and whether the loss was caused by the dishonest conduct of the attorney.

As previously indicated, Business and Professions Code section 6140.5, subdivision (d) provides that a disciplined attorney must reimburse the Client Security Fund for payments made as a result of the attorney's dishonest conduct and that the State Bar may enforce that obligation as a money judgment. While reimbursement to the Client Security Fund is a condition of the disciplined attorney's reinstatement to the practice of law or return from actual suspension (Bus. & Prof. Code, § 6140.5, subd. (c)), the date upon which the reimbursement obligation becomes due and payable is not specified.

Proposed rule 291 of the Rules of Procedure, if ultimately adopted, would require the State Bar Court, in any disciplinary recommendation or order, to include an order or recommendation that the respondent reimburse the Client Security Fund to the extent that the misconduct found in the proceeding results in the payment of funds by CSF. In addition, proposed rule 291 would specify that, unless otherwise ordered by the Supreme Court or unless relief is granted by the State Bar Court, any reimbursement to the Client Security Fund must be paid within 30 days following the effective date of the final disciplinary order or within 30 days following the payment by the Client Security Fund to the disciplined attorney's victim, whichever is later. As indicated above, in the vast majority of cases, the payment to the victim(s) from the Client Security Fund occurs after the final disciplinary order has been filed. Therefore, in most cases, the CSF reimbursement obligation must be paid within 30 days after the Client Security Fund makes payment to the attorney's victim(s).

The implementation of rule 291 would allow the State Bar to enforce the Client Security Fund reimbursement obligation as a money judgment at any time after the obligation has become due and payable.

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<sup>1</sup> Rule 9(b) of the Rules of Procedure for Client Security Fund Matters provides, in pertinent part, that in order to be eligible for reimbursement, the claimant's attorney must have (a) died; (b) been adjudicated to be mentally incompetent; (c) been disciplined; or (d) resigned from the practice of law.

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***GOOD CAUSE FOR SHORTENED PUBLIC COMMENT PERIOD***

The adoption and implementation of proposed rules 286 and 291 of the Rules of Procedure are, in the opinion of the Office of the Chief Trial Counsel, important predicates to the effective implementation of the State Bar's statutory authority to enforce discipline cost and Client Security Fund reimbursement obligations as money judgments.

After its June 16-17, 2006 meeting, the next meeting of the Board of Governors and of the RAD Committee is currently scheduled for August 25-26, 2006. After August, the next regular business meeting of the Board of Governors will not be held until November 17-18, 2006. It is respectfully submitted that a delay in the further consideration of proposed rules 286 and 291 until November 2006 will unduly delay and inhibit the State Bar from effectively implementing its statutory authority to enforce money judgments for discipline costs and CSF payments.

As a result, the Office of the Chief Trial Counsel hereby requests authority to release proposed rules 286 and 291 of the Rules of Procedure for a 60-day public comment period, instead of the usual 90-day public comment period.

***PROPOSED RESOLUTIONS***

If you agree that proposed rules 286 and 291 of the Rules of Procedure should be released for a 60-day public comment period, your adoption of the following resolutions would be appropriate:

**RESOLVED**, that the Board Committee on Regulation, Admissions and Discipline Oversight ("RAD Committee") hereby authorizes the release of proposed rules 286 and 291 of the Rules of Procedure of the State Bar of California, in the form attached hereto as Attachment A, for a public comment period;

**FURTHER RESOLVED**, that the RAD Committee hereby finds good cause for shortening the public comment period relating to proposed rules 286 and 291 of the Rules of Procedure from 90 days to 60 days; and

**FURTHER RESOLVED**, that authorization for release of a matter for public comment is not, and shall not be construed as, a recommendation of approval by the Board of Governors of the materials published."

SJD:dim  
Attachment

***PROPOSED ADDITION OF RULES 286 AND 291,  
RULES OF PROCEDURE OF THE STATE BAR OF CALIFORNIA***

**RULE 286. EFFECT OF DEFAULT ON INSTALLMENT PAYMENTS**

In any disciplinary recommendation or order that provides for installment payments of discipline costs or restitution, the Court must recommend or order that, upon the respondent's failure to timely make any installment payment, the unpaid balance is due and payable immediately unless relief has been granted under these rules.

**RULE 291. REIMBURSEMENT TO CLIENT SECURITY FUND**

In any disciplinary recommendation or order, the Court must include a recommendation or order that the respondent reimburse the Client Security Fund to the extent that the misconduct found in the proceeding results in the payment of funds pursuant to Business and Professions Code section 6140.5. Unless otherwise ordered by the Supreme Court or unless relief has been granted under these rules, any reimbursement so ordered must be paid within 30 days following the effective date of the final disciplinary order or within 30 days following the CSF payment, whichever is later.