

# 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

---

## **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

---

<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.