



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 6.3 JULY 2024 BOARD OF TRUSTEES**

**DATE:** July 18, 2024

**TO:** Members, Board of Trustees

**FROM:** Aracely Montoya-Chico, Chief Financial Officer

**SUBJECT:** Discussion of Offer and Compromise Collection Program Update

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### **EXECUTIVE SUMMARY**

Attorneys who have been disciplined are required to reimburse the State Bar for the cost of certain aspects of the investigation and adjudication of disciplinary matters and to reimburse the Client Security Fund (CSF) for payments made to victims harmed by their conduct. The amounts owed comprise outstanding debt subject to the State Bar's collection activity. Historically, the State Bar has collected a small fraction of the total debt outstanding.

This item provides an overview of outstanding debt owed to the State Bar, traditional efforts to recover that debt, and information about options for a one-time program to increase debt collection efforts, referred to as an Offer and Compromise Collection Program (program).

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### **RECOMMENDED ACTION**

Informational item only.

### **DISCUSSION**

Over the years, the State Bar has implemented several strategies to recover outstanding debt resulting from attorney discipline including entering into contracts with third-party collections agencies; these types of third-party collections contracts were terminated several years ago after they were found to be ineffective.

The State Bar currently contracts with the Franchise Tax Board (FTB) with its main debt collection duties. The FTB administers two primary debt collection programs: the Court Ordered Debt (COD) program and the Interagency Intercept (IIC) program. Through the COD program, the FTB collects debts via wage garnishments and bank liens. Additionally, debtors have the

option to settle their debts directly with the FTB, either as a lump sum or through installment plans. The IIC program allows for the interception of tax refunds, lottery winnings, and unclaimed properties to offset debts. Although the State Bar had participated in both programs, its involvement in the IIC program was paused during the COVID-19 pandemic. The State Bar has recently been approved to resume participation and will be sending debt to the IIC in the third quarter of 2024.

The State Bar also engages in debt collection by lien filing pursuant to superior court judgments.<sup>1</sup>

The State Bar has collected only a small fraction of the debt it is owed. Currently, 2,416 disbarred and resigned attorneys owe \$152.6 million to the State Bar; only \$7.9 million has been collected since 2020. The average and median debt per debtor is \$63,233 and \$10,518, respectively. One hundred debtors comprise 48 percent of the total debt owed; these debtors have average amounts owed in excess of \$100,000.

Staff has considered seeking authority to write-off uncollectable debt, a common practice in other government agencies. At this time however, in light of the significant financial challenges facing the State Bar, it would be more appropriate to engage in a one-time debt settlement initiative, the Offer and Compromise program, whereby debtors would be able to settle their debt with the State Bar for a fraction of the amount owed. Such a program would benefit both debtors and the State Bar.

In addition, implementation of an Offer and Compromise Program would align with the broader policy direction set by the Board as related to right-sizing and making more fair the discipline cost structure. The present Board agenda includes an item proposing reduced sanctions and discipline costs, in alignment with the recommendations of the Ad Hoc Commission on the Discipline System, which observed that the State Bar discipline costs far exceed those of peer organizations within the state or nationally. For the State Bar and current debtors, a settlement program affords an opportunity to realize significant one-time revenue quickly while offering relief for a fraction of what is owed. For current licensees who may be subject to discipline, CSF, or sanctions costs, Board adoption of the proposal to reduce discipline costs and sanctions would mean that in the future no attorney would be subject to the high levels of debt existent today.

In evaluating options for such the Offer and Compromise Settlement Program, the State Bar researched other similar ones to inform its design. Three programs were identified: the California courts' MyCitations Program, the California Compromise of Arrears Program, and the Judicial Council's Amnesty Program.

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<sup>1</sup> The State Bar has been authorized to enforce all discipline cost debt and court-ordered CSF reimbursement debt as money judgments since 2007. To do so, the State Bar requests entry of the Supreme Court or State Bar Court order as a money judgment and records an abstract of judgment in the county in which the attorney last resided. Amendments to Business and Professions Code section 6140.5, effective January 1, 2021, allow the State Bar to also enforce noncourt ordered CSF reimbursement debt, as well as interest and processing costs, as money judgments.

### **The MyCitations Program**

The MyCitations Program is a settlement vehicle for infractions-related debt. Over its seven-year run, the program has processed 65,716 ability-to-pay requests, successfully reducing total debt owed from \$41.5 million to about \$21.5 million. Key results include:

- 61 percent of reduced debt amounts paid in full
  - Compared to 29 percent for unreduced debt
- 42 percent reduction in average debt owed

### **California Compromise of Arrears Program**

The California Compromise of Arrears Program (COAP), initiated in 2004, allows noncustodial parents to reduce their state-owed child support arrears by agreeing to make partial payments. COAP agreements generally result in an 80 percent forgiveness of the debt, including both principal and interest. From 2004 to 2011, COAP calculated repayment plans on over \$266 million in arrears, with agreements typically resulting in repayments totaling 17 percent of the original amount owed. On average, COAP cases involved arrearage settlements of \$16,324. Recovery statistics demonstrate \$1.55 collected for every operational dollar spent, and the program, having proven cost-effective and beneficial, was made permanent by legislation in 2008.

### **Judicial Council's Amnesty Program**

In October 2010, Vehicle Code section 42008.7 was enacted, introducing a one-time mandatory Amnesty Program aimed at collecting delinquent bail and fines, which, after amendments in January 2012, included specified misdemeanors. This six-month initiative, run locally by courts and counties from January to June 2012, allowed eligible individuals to clear their debt by paying 50 percent of outstanding balances. Pursuant to the program 42,245 cases were resolved generating \$14.9 million in revenue.

### **Offer and Compromise Collection Program Features**

Debt settlement programs can result in quick and significant cash inflows. However, the effectiveness of debt settlement programs lowers as the debt becomes older and as the total amount owed increases. Settlement motivation and payment ease are also important considerations in program design.

With these considerations in mind, initial program specifications include:

1. **Automatic reduction of 50 percent of the original amount owed<sup>2</sup>.** Debtors will be given automatic approval and access to a settlement vehicle for an amount equal to 50 percent of the original debt balance.
2. **Request process for reductions in excess of 50 percent.** Debtors will be given the ability to request a reduction greater than 50 percent. Staff anticipates that debtors in this category will be required to provide supporting documentation to the State Bar; applications will be individually approved.

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<sup>2</sup> Staff may recommend an increased reduction percentage for those accounts with very high outstanding balances.

Staff anticipates that a third-party vendor would create a platform whereby both aspects of the program (automatic and requested reductions) could be managed by a debtor in a self-service fashion; a debtor would type in their bar number to access information about outstanding debt, the automatic reduction amount option, and the requested additional reduction process. Current estimates indicate that development of this platform would cost between \$0.6 and \$0.7 million.

The State Bar estimates the Offer and Compromise Program could generate between \$9 to \$11 million in one-time revenue. This range was derived with the assumption that between 30 percent to 50 percent of debtors would participate in the program and would settle their debt for 25 to 50 percent of the total amount owed.

## **PREVIOUS ACTION**

None

## **FISCAL/PERSONNEL IMPACT**

The cost to develop the website to manage the program is estimated between \$0.6 to \$0.7 million.

Revenue estimated to be generated from establishing this program range between \$9 to \$11 million.

## **AMENDMENTS TO RULES**

To implement this program, statutory amendments and new rules would be required. Legislative amendments are included in the State Bar's existing legislative proposal package; rule changes will be brought forward concurrent with a formal request for Board authorization of the program.

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

None

## **STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS**

Goal 1. Protect the Public by Strengthening the Attorney Discipline System  
a. 2. Secure additional funding for the attorney discipline system.

## **RESOLUTIONS**

None

## **ATTACHMENT LIST**

None