

6.1 Approval of Offer and Compromise Program, Related Contractual Expenditures and Delegations; Proposed New State Bar Rule and Proposed Amendments to California Rules of Court (Rule 9.23): Request to Circulate for Public Comment



The State Bar of California

OPEN SESSION

AGENDA ITEM

6.1 SEPTEMBER 2024

BOARD OF TRUSTEES

DATE: September 19, 2024

TO: Members, Board of Trustees

FROM: Aracely Montoya-Chico, Chief Financial Officer
Suzanne Grandt, Assistant General Counsel

SUBJECT: Approval of Offer and Compromise Program, Related Contractual Expenditures and Delegations; Proposed New State Bar Rule and Proposed Amendments to California Rules of Court (Rule 9.23): Request to Circulate for Public Comment

EXECUTIVE SUMMARY

This item seeks the formal approval to establish a one-time program in 2025 to increase debt collection efforts, referred to as an Offer and Compromise Program, delegate authority to the Board chair and executive director to finalize the design of the program and to execute contracts necessary to advance it, and approve a 30-day public comment period for rule amendments necessary to carry out the program.

RECOMMENDED ACTION

That the board approves the Offer and Comprise Program policy parameters described herein, approves to make available for public comment a new State Bar rule and amendments to a California Rule of Court to implement the program, and delegates authority to the Board Chair and the executive director to execute contracts necessary to implement the program, in an amount not to exceed \$750,000.

DISCUSSION

In light of the significant financial challenges facing the State Bar, the Board began considering initiating a one-time debt settlement initiative earlier this year. The initiative, proposed to be called the Offer and Compromise Program, would allow current and former attorneys to settle their State Bar debt, consisting of discipline costs, monetary sanctions, and Client Security Fund (CSF) reimbursements, for a fraction of the amount owed. The benefit of the program for the

State Bar is equally significant; currently, less than \$2.5 million in outstanding debt is collected annually State Bar-wide. A thoughtfully structured program should exponentially increase this amount. As of 2024, approximately \$168 million is owed by (disbarred resigned, ineligible, and active attorneys). Low-end estimates of the amount that could be realized by the program are \$9 to \$11 million.

Assembly Bill 3279, which was passed by the Legislature and signed by the governor on September 12, 2024, provides new authority for the State Bar to reduce or waive CSF reimbursement, including interest and processing costs. The bill also included language that allows for 50 percent of the funds collected to be deposited into the General fund for 2025 only. This is significant given that the majority of outstanding debt owed stems from CSF reimbursements. To take advantage of the limited-term General Fund benefit of the program afforded by the 2025 fee bill, it is important that the program launch as early in 2025 as possible and that all related payments are remitted to the State Bar by December 31, 2025.

The Board is asked to formally approve the establishment of the program at its meeting today. It is important that there be some flexibility in finalizing the program design; research conducted since the last Board meeting for example, suggests that the State Bar should consult with behavioral design experts in the design finalization process, to ensure that potential participants are maximally motivated to take advantage of the program. As such, the Board is asked to approve policy parameters for the program, while affording the Board chair and executive director the delegated authority to finalize program design and execute related contracts without having to return to the Board. Following the adoption of State Bar Rule 3.1000, discussed later in the report, will align with relevant effective dates of Assembly Bill 3279.

Specific policy parameters recommended to the Board include:

Eligibility: Staff recommends that all attorneys that owe debt to the State Bar, including those with disbarred and resigned, ineligible to practice, and/or active status, be eligible to participate.

Initial Settlement Offer Amount: Staff recommends that the initially offered discount amount be set at range of between 50 and 90 percent. The primary factors to be considered in setting the initial settlement offer amount will be the total amount owed and the proportion of balance comprising interest versus principal.

Opportunity to Seek Additional Reductions: Staff recommends that the program design include a process for participants to seek reductions in excess of the initial settlement offer amount, up to the capped discount rate of 90 percent. Factors to be considered in the determination process would include the participant's financial circumstances as well as their status; participants, for example, who but for outstanding State Bar debt could return to active practice, may be prioritized for additional reductions.

The Board may want to consider alternative parameters for this aspect of the program including a dollar amount cap on the settlement offer, for example, \$10,000 or \$20,000. This option might incentivize those with higher debt balances to settle.

To illustrate the impact of such an approach, in total, there are over 2,200 individual disbarred/resigned debtor attorneys that owe approximately \$164 million to the State Bar from CSF, discipline, judgments, and monetary sanctions. Out of this debtor population, over 50 percent (1,400 debtors) have an outstanding balance of \$25,000 or less. Establishing a cap of \$10,000, as an example, and assuming that half of the debtors with balances under \$25,000 participate in the program, would result in close to \$7 million in generated revenue from this population.

PROPOSED RULES

Proposed State Bar Rule 3.1000: State Bar Rules of Procedure already provide a process for the reduction, waiver, and extension of time for payment of discipline costs and monetary sanctions by filing a motion in State Bar Court (see e.g., State Bar Rules of Procedure rules 5.130 and 5.137.) As such, a new rule is necessary to provide an alternative process for licensees to seek reductions of such debt, as well as first-time process to reduce CSF debt by way of participation in the program, notwithstanding these established procedures.

The new rule, as set forth in Attachment A, indicates that there is good cause for the establishment of the program in order to afford licensees financial relief and to increase State Bar revenue. This language is necessary because the relevant statutes indicate that the State Bar's discretion to reduce or waive discipline costs and CSF must be based on "hardship, special circumstances, or other good cause." The rule also specifies that licensees may participate in the program notwithstanding any other relevant State Bar Rule or State Bar Rules of Procedures. The rule leaves the criteria for participation in the program, as well as logistics of implementation, for guidelines to be authorized by the executive director. Lastly, the rule makes clear that this is a one-time program for debt that was accrued on or before January 1, 2025.

Proposed Amendments to California Rule of Court, rule 9.23: California Rules of Court, rule 9.23 (rule 9.23) governs the process for the entry of money judgments for discipline costs, monetary sanctions, and CSF reimbursement in Superior Court pursuant to the State Bar's statutory authority. Entry of money judgments allows the State Bar to collect interest and undertake collection efforts, including placement of property liens. Consistent with the current State Bar Rules of Procedure relating to debt reduction, rule 9.23 specifies that motions for compromise of judgments for discipline costs and monetary sanctions must be made in State Bar Court. Since this settlement program will be outside of the purview of State Bar Court, amendments to this rule are necessary to allow licensees with money judgments the ability to satisfy any judgment when participating in the program.

The proposed amendments, as set forth in attachments B and C (clean and redlined version, respectively) remove the section of the rule setting for the process for compromise of money judgments.

DELEGATED AUTHORITY FOR NECESSARY CONTRACT(S)

The State Bar is working diligently to find a vendor to develop a platform to serve as the vehicle for the program. Pursuant to Business and Professions Code section 6008.6, the State Bar shall award no contract for goods, services, or both, for an aggregate amount in excess of \$50,000, or for information technology (IT) goods, services, or both, for an aggregate amount in excess of \$100,000, without board approval. To enable the State Bar to move quickly and efficiently in implementing the program, the Board is asked to approve delegated authority to the executive director and Chair of the Board, to enter into and execute any contract(s) with necessary vendors to implement this program in an amount not to exceed \$750,000.

PREVIOUS ACTION

July 18, 2024, BOT meeting, [Discussion of Offer and Compromise Collection Program Update](#).

FISCAL/PERSONNEL IMPACT

The cost to develop the platform to manage the program is estimated to be \$750,000.

NEW RULE OF THE STATE BAR OF CALIFORNIA

Title 3, Division 5, Chapter 5, Rule 3.1000

AMENDMENTS TO RULES OF COURT

Title 9, Division 2, Chapter 3, Rule 9.23

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.

Goal 4. Protect the Public by Engaging Partners

- d. 1. Collaborate with the legislature and other stakeholders to increase public protection and support the State Bar's mission.

RESOLUTIONS

Should the Board of Trustees concur, it is:

RESOLVED, that the Board of Trustees approves the Offer and Compromise Program policy parameters recommended herein with regards to eligibility, initial settlement offer amount and additional reductions, and delegates authority to the executive director to finalize the exact parameters of the program design to be implemented following the adoption of Rule 3.1000 of the Rules of the State Bar of California; and it is

FURTHER RESOLVED, that the Board of Trustees, authorizes staff to make available for public comment, for a period of 30 days, proposed Rule 3.1000 of the Rules of the State Bar of California as set forth in Attachment A; and it is

FURTHER RESOLVED, that the Board of Trustees, authorizes staff to make available for public comment, for a period of 30 days, proposed amendments to rule 9.23 of the California Rules of Court, as set forth in Attachments B and C; and it is

FURTHER RESOLVED, that the Board of Trustees approves delegated authority to and authorizes the executive director and the chair of the Board to enter into contract or contracts with appropriate vendor(s) for services necessary to implement the Offer and Compromise Program in an amount not to exceed \$750,000.

ATTACHMENTS LIST

- A. Proposed Rule 3.1000 of the Rules of the State Bar of California
- B. Proposed Rule 9.23 of the California Rules of Court (Clean Version)
- C. Proposed Rule 9.23 of the California Rules of Court (Redline Version)

Title 3

Division 5

Chapter 5 (Offer and Compromise Program)

Rule 3.1000 (Offer and Compromise Program)

- (A) The State Bar finds there is good cause for the establishment of a one-time Offer and Compromise Program to settle overdue debt owed to the State Bar in order to afford licensees financial relief and to increase State Bar revenue.
- (B) Notwithstanding any other relevant State Bar Rule or State Bar Rule of Procedure, the State Bar may reduce and/or waive any overdue discipline costs owed pursuant to Business and Professions Code section 6086.10, monetary sanctions owed pursuant to Business and Professions Code section 6086.13, and/or Client Security Fund reimbursement amounts, including interest and processing costs owed pursuant to Business and Professions Code section 6140.5, assessed against a licensee, including disbarred or resigned, on or before January 1, 2025, through an Offer and Compromise Settlement Program.
- (C) Criteria and implementation of the Offer and Compromise Program shall be established pursuant to Guidelines authorized by the executive director or their designee.
- (D) This Program will not apply to any State Bar debt accrued after January 1, 2025.

Rule 9.23. Enforcement of disciplinary orders and final determinations by Client Security Fund as money judgments

(a) Authority to obtain money judgments

Pursuant to Business and Professions Code section 6086.10(a), the State Bar is authorized to enforce as a money judgment any disciplinary order assessing costs. Pursuant to Business and Professions Code section 6086.13(c) and the State Bar Rules of Procedure, Rule 5.137, the State Bar is authorized to enforce as a money judgment any monetary sanctions order. Pursuant to Business and Professions Code section 6140.5(f), the State Bar is authorized to enforce as a money judgment any disciplinary order or final determination by the Client Security Fund requiring reimbursement to the State Bar Client Security Fund.

(b) Duty of clerk of the superior court

The State Bar may file with the clerk of the superior court of any county a certified copy of a final disciplinary order: (1) assessing costs along with a certified copy of the certificate of costs; (2) assessing monetary sanctions; or (3) requiring reimbursement to the Client Security Fund along with any record of interest accrued and processing costs, and a certified copy of the Notice of Payment of the Client Security Fund. The State Bar may also file with the clerk of the superior court of any county a certified copy of the Notice of Payment of the Client Security Fund requiring reimbursement to the Client Security Fund along with any record of interest accrued and processing costs. The clerk must immediately enter a money judgment in conformity with the order or the Notice of Payment.

(c) Amend, vacate or stay the enforcement of a money judgment

The State Bar has 180 days from the date a money judgment is entered by the clerk under this rule to file a motion to amend, vacate, or stay the enforcement of the money judgment in the superior court with jurisdiction. Defendant has 180 days from the date of service of notice of entry of judgment to file a motion to amend, vacate, or stay the enforcement of the money judgment in the superior court with jurisdiction. The State Bar may also file a motion to amend, vacate, or stay the enforcement of a money judgment entered under this rule at any time in the superior court with jurisdiction for the benefit of the defendant.

(d) Power of the Supreme Court

Nothing in this rule may be construed as affecting the power of the Supreme Court to alter the costs, monetary sanctions, or Client Security Fund restitution amounts owed pursuant to any Supreme Court or State Bar Court order.

Rule 9.23. Enforcement of disciplinary orders and final determinations by Client Security Fund as money judgments

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Pursuant to Business and Professions Code section 6086.10(a), the State Bar is authorized to enforce as a money judgment any disciplinary order assessing costs. Pursuant to Business and Professions Code section 6086.13(c) and the State Bar Rules of Procedure, Rule 5.137, the State Bar is authorized to enforce as a money judgment any monetary sanctions order. Pursuant to Business and Professions Code section 6140.5(f), the State Bar is authorized to enforce as a money judgment any disciplinary order or final determination by the Client Security Fund requiring reimbursement to the State Bar Client Security Fund.

(b) Duty of clerk of the superior court

The State Bar may file with the clerk of the superior court of any county a certified copy of a final disciplinary order: (1) assessing costs along with a certified copy of the certificate of costs; (2) assessing monetary sanctions; or (3) requiring reimbursement to the Client Security Fund along with any record of interest accrued and processing costs, and a certified copy of the Notice of Payment of the Client Security Fund. The State Bar may also file with the clerk of the superior court of any county a certified copy of the Notice of Payment of the Client Security Fund requiring reimbursement to the Client Security Fund along with any record of interest accrued and processing costs. The clerk must immediately enter a money judgment in conformity with the order or the Notice of Payment.

(c) Amend, vacate or stay the enforcement of a money judgment

The State Bar has 180 days from the date a money judgment is entered by the clerk under this rule to file a motion to amend, vacate, or stay the enforcement of the money judgment in the superior court with jurisdiction. Defendant has 180 days from the date of service of notice of entry of judgment to file a motion to amend, vacate, or stay the enforcement of the money judgment in the superior court with jurisdiction. The State Bar may also file a motion to amend, vacate, or stay the enforcement of a money judgment entered under this rule at any time in the superior court with jurisdiction for the benefit of the defendant.

(d) ~~Compromise of a money judgment~~

~~Motions for the compromise of any money judgment entered under this rule for costs ordered pursuant to Business and Professions Code section 6086.10(a) and monetary sanctions ordered pursuant to Business and Professions Code section 6086.13(a) must, in the first instance, be filed and heard by the State Bar Court.~~

~~(e)~~(d) Power of the Supreme Court

Nothing in this rule may be construed as affecting the power of the Supreme Court to alter the costs, monetary sanctions, or Client Security Fund restitution amounts owed pursuant to any Supreme Court or State Bar Court order.