



## Alerts

### Ninth Circuit Reverses Prior Decision Based on a Subsequent Statutory Charge and Holds That Lawyer Cannot Discharge in Bankruptcy the Costs Owed to Bar Assessed in Disciplinary Proceeding

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*Lawyers for the Profession® Alert*

*State Bar of California v. Findley (In re Findley)*, 593 F.3d 1048 (9th Cir. 2010)

#### Brief Summary

The Ninth Circuit reversed a prior decision, based on a subsequent change in California statutes, and joined other federal courts in holding that disciplinary costs imposed on attorneys by the California State Bar are intended as penalties and therefore are not dischargeable in bankruptcy.

#### Complete Summary

In disciplining an attorney, the State Bar of California imposed a one-year suspension and ordered the lawyer to pay the \$14,054 cost of the disciplinary proceeding. The attorney filed for Chapter 7 bankruptcy before the cost order became final, but the after his misconduct occurred. The lawyer contended that the bankruptcy court's order discharged his debt to the Bar, and he thus refused to pay the disciplinary cost, which payment was a precondition for reinstatement. The State Bar then brought the present suit, arguing that 11 U.S.C. § 523(a)(7) excepted the disciplinary cost from discharge pursuant to a 2003 change in California law. The bankruptcy court granted the Bar summary judgment, but the Bankruptcy Appellate Panel reversed because, under a prior version of California Business and Professions Code § 6086.10, the Ninth Circuit had held that such costs were dischargeable. See *State Bar of California v. Taggart (In re Taggart)*, 249 F.3d 987 (9th Cir. 2001). The Bar appealed to the Ninth Circuit.

The Ninth Circuit held that the cost award was not dischargeable, thus diverging from its opinion in *Taggart*. The issue under 11 U.S.C. § 523(a)(7) was whether the cost award was either a nondischargeable "fine, penalty, or forfeiture payable to and for the benefit of a governmental unit," or rather a dischargeable "compensation for actual pecuniary loss."

In *Taggart*, the court attempted to discern the legislative intent behind § 6086.10(a), and held that disciplinary costs were compensatory rather than penal. In response to *Taggart*, the California legislature in 2003 added subsection (e) to § 6086.10. According to the present opinion, the express

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wording and legislative history of subsection (e) undermined the result in *Taggart*.

The court noted that subsection (e) now provides expressly that cost awards under § 6086.10 are “penalties” and that such costs are imposed “to promote rehabilitation and to protect the public.” Further, the Enrolled Bill Report for the relevant Assembly Bill twice noted that under this subsection disciplinary cost awards would be non-dischargeable in bankruptcy, and the drafter explained on the record that disciplinary costs are sanctions intended as punishment. The court therefore held that the express purpose of § 6086.10(e) undermined the court’s prior inference of legislative intent in *Taggart*, and that disciplinary cost awards are excepted from discharge in bankruptcy under 11 U.S.C. § 523(a)(7).

### **Significance of Opinion**

This holding brings the Ninth Circuit’s interpretation of California law in line with the holdings of other federal courts, which have addressed discharge of attorney disciplinary costs under other states’ laws. Notably, other courts that have addressed this issue have, for the most part, analogized such costs to criminal restitution awards imposed for the cost of litigation rather than prevailing party fees in civil litigation. Given the growing apparent consensus on this matter, attorneys in jurisdictions that have not yet addressed the subject may be advised to assume that disciplinary costs are non-dischargeable in bankruptcy.

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