



THE STATE BAR
OF CALIFORNIA

INTER-OFFICE
COMMUNICATION

DATE: November 7, 2008

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

FROM: Scott J. Drexel, Chief Trial Counsel

SUBJECT: Proposed Amendments to Rule 4 of the Rules of Procedure for the
Client Security Fund re Increasing Maximum Reimbursement Amount --
Request for Authorization to Release for Public Comment

ISSUE

The maximum reimbursement payment from the Client Security Fund to individuals who have suffered a loss as the result of the dishonest act or acts of a member of the State Bar has been fixed at \$50,000 since January 1, 1982. Additionally, since at least 1992, an application for reimbursement from the Fund filed by a husband and wife has been regarded as having been made by one person and, therefore, subject to the \$50,000 limitation.

The proposed amendments, if ultimately adopted, would increase the maximum reimbursement from \$50,000 to \$75,000 and would eliminate the "marriage penalty," thereby allowing the application of a husband and wife to be considered as the application of two persons and allow a recovery for the actual loss up to a total of \$150,000 (\$75,000 per applicant).

The purpose of this agenda item is to request the authorization of the Board Committee on Regulation, Admissions and Discipline Oversight to release the proposed amendments to Rule 4 of the Rules of Procedure for the Client Security Fund, in the form attached hereto as Appendix A, for a 45-day public comment period.

RECOMMENDATION

The Client Security Fund and the Office of the Chief Trial Counsel recommend that the RAD Committee authorize the release of the proposed amendments to the Rules of Procedure for the Client Security Fund, in the form attached as Appendix A, for a 45-day public comment period.

DISCUSSION

As indicated above, since January 1, 1982, the maximum reimbursement payment from the Client Security Fund to individuals who have suffered a loss as the result of the dishonest act or acts of a member of the State Bar has been fixed at \$50,000. The present value of a \$50,000 loss in 1982 is approximately \$107,000 in today's dollars. In addition, since at least 1992, the Client Security Fund rules have treated a loss suffered by a husband and wife as a joint loss and have limited recovery for that loss to a total of \$50,000.

The State Bar commissioned an actuarial study to determine the impact that the elimination of the "marriage penalty" and an increase in the maximum payment from the Fund would have upon the financial viability of the Client Security Fund. That actuarial study, which was performed by Milliman, Inc., concludes that it is financially feasible, without threatening the immediate financial viability of the Fund, to increase the maximum reimbursable amount from \$50,000 to \$75,000. The actuarial study also indicates that the elimination of the "marriage penalty" would have only a minor financial impact on the Fund.

A copy of the actuarial study will be provided to you separately and a representative of Milliman, Inc. will be available to answer any questions that you may have about the study and about the viability of the Fund. However, in short, the actuarial study projects that, if the marriage penalty is eliminated and the reimbursement cap is increased to \$75,000, the Fund balance will continue to reflect a surplus of revenue over expenses until 2012 and that the positive cash balance of the Client Security Fund will remain at over \$6 million in 2017 without the necessity of seeking any increase in the \$40 annual assessment or otherwise limiting the amount of recovery to applicants.¹

Based upon the foregoing, the Office of Finance recommends that the maximum reimbursement from the Client Security Fund be increased to no more than \$75,000 per claim.

In accordance with that recommendation, the proposed amendments to Rule 4 of the Rules of Procedure for the Client Security Fund would increase the maximum payment allowed from the Fund from \$50,000 to \$75,000 for all losses occurring on or after January 1, 2009. The proposed amendments to Rule 4 would also allow applications for reimbursement submitted by a husband and wife to be treated as the applications of two individuals and would allow reimbursement for the actual loss up to a maximum of \$150,000 (i.e., a maximum of \$75,000 per applicant).

¹ By contrast, if the reimbursement cap were increased to \$100,000, the "cross-over point" (i.e., the point at which expenses exceed revenue) would occur in 2010 and the Client Security Fund's cash balance in 2017 would be less than \$4 million.

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PROPOSED RESOLUTION

The Office of Finance, the Client Security Fund and the Office of the Chief Trial Counsel recommend that you approve the release for public comment of the proposed amendments to the Rules of Procedure for the Client Security Fund. If you agree, your adoption of the following resolutions would be appropriate:

“**RESOLVED** that the Board Committee on Regulation, Admissions and Discipline Oversight hereby authorizes the release of the proposed amendments to Rule 4 of the Rules of Procedure for the Client Security Fund, in the form attached hereto as Appendix A, for a 45-day public comment period; and it is

FURTHER RESOLVED that the release of the aforementioned proposed amendments to the Rules of Procedure for the Client Security Fund does not constitute, and shall not be considered, as approval by the Board of Governors of the State Bar of California of the matters published.”

SJD:dim
Attachment