

AGENDA ITEM

MARCH 124

Proposed Amendments to
Rules of Procedure re CSF re
Maximum Reimbursement from
Fund – Adoption After Public
Comment

DATE: February 11, 2009

TO: Members of the Board of Governors
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 to Increase Maximum Reimbursement to
\$100,000 Per Applicant – Request for Adoption Following Public Comment

EXECUTIVE SUMMARY

Since 1982, the maximum amount that can be paid by the Client Security Fund (“CSF”) to any individual who has suffered a loss due to the dishonest conduct of his or her attorney has been \$50,000. In addition, since at least 1992, an application for reimbursement from CSF that is filed by a husband and wife has been regarded as having been made by one person and, therefore, is subject to the \$50,000 reimbursement limitation.

If adopted, the proposed amendments to rule 4 of the Rules of Procedure for the Client Security Fund (“Rules of Procedure”), will increase the maximum reimbursement amount to \$100,000 and will eliminate the “marriage penalty,” thereby allowing the application of a husband and wife to be considered as the applications of two individuals and allow a recovery for the actual loss up to a total of \$200,000 (i.e., \$100,000 per applicant).

No public comments were received during the 45-day public comment period. The Office of the Chief Trial Counsel and the Client Security Fund recommend the adoption of the proposed amendments to rule 4 of the Rules of Procedure.

BACKGROUND

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.

In late Spring 2008, 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 Client Security Fund would have upon the financial viability of the Fund. That actuarial study, which was performed by Milliman, Inc., concluded that it is financially feasible, without threatening the immediate financial viability of the Fund, to increase the maximum reimbursable amount from \$50,000 to \$100,000. 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 was provided to the Board of Governors in November 2008. In summary, the actuarial study projects that, if the marriage penalty is eliminated and the reimbursement cap is increased to \$100,000, the Fund balance will continue to reflect a surplus of revenue over expenses through 2010 and that the positive cash balance of the Client Security Fund will remain at over \$ 4 million until 2017 without the necessity of seeking any increase in the \$40 annual assessment or otherwise limiting the amount of recovery to applicants.

Based upon the foregoing, the Office of the Chief Trial Counsel and the Client Security Fund recommend that the maximum reimbursement from the Client Security Fund be increased from its current level of \$50,000 per claimant to \$100,000.

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 \$100,000 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 \$200,000 (i.e., a maximum of \$100,000 per applicant).

FISCAL AND PERSONNEL IMPACT

Adoption of the proposed amendments to rule 4 would not have any personnel impact upon the State Bar or the Client Security Fund. However, as indicated in the actuarial study prepared by Milliman, Inc., adoption of the proposed amendments to rule 4 will cause the expenses of the Client Security Fund to exceed revenues, commencing in 2011 and would result in a reduction of the Fund’s balance to approximately \$ 4 million in 2017.

PUBLIC COMMENT

No public comments were received during the 45-day public comment period that ended on January 5, 2009.

PROPOSED BOARD COMMITTEE RECOMMENDATION

The Office of the Chief Trial Counsel has recommended to the Board Committee on Regulation, Admissions and Discipline Oversight (“RAD Committee”) that it adopt the following resolution:

RESOLVED, following expiration of the public comment period and no public comments having been received, that the Board Committee on Regulation, Admissions and Discipline Oversight hereby recommends to the Board of Governors that it adopt the proposed amendments to rule 4 of the Rules of Procedure for the Client Security Fund, in the form attached hereto as Appendix A, effective immediately.

This item is on the RAD Committee's agenda for its scheduled meeting on March 5, 2009. The Committee's recommendation will be reported to you at your meeting on Friday, March 6, 2009.

PROPOSED BOARD RECOMMENDATION:

RESOLVED, following expiration of the public comment period with no public comments having been received, and upon recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, the Board of Governors hereby adopts the proposed amendments to rule 4 of the Rules of Procedure, Client Security Fund, in the form attached hereto as Appendix A, effective immediately.

SJD:dim
Attachment