



# THE STATE BAR OF CALIFORNIA

## CLIENT SECURITY FUND

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### MEMORANDUM

**DATE:** June 26, 2009

**TO:** Board Committee on Regulation, Admissions and Discipline Oversight

**FROM:** Colin Wong, Administrative Officer State Bar Court

**SUBJECT: PROPOSED CLIENT SECURITY FUND RULES:  
REQUEST TO RELEASE FOR PUBLIC COMMENT**

### EXECUTIVE SUMMARY

The Rules of Procedure, Client Security Fund Matters have been revised as part of ongoing efforts of The State Bar of California to clarify the organization and language of its rules. The revisions are not intended to change current general requirements for reimbursement or determination of eligibility for reimbursement. This memorandum requests that the committee approve circulation of the proposed new Client Security Fund rules for a forty-five day public comment period. If the Board of Governors subsequently adopts the proposed rules, they would become part of Title 3 of the Rules of the State Bar, which deals with Programs and Services.

### Question

Whether the Board should circulate for public comment the proposed Client Security Fund rules, which if adopted would replace the current Rules of Procedure, Client Security Fund Matters.

### Background

In 2006 the State Bar undertook a rules revision project to integrate the organization's more than two dozen sets of rules into a comprehensive structure of seven titles and to make the rules simpler, clearer, and more uniform. Of the seven titles, the board has adopted three in their entirety and two in part. At its July 2009 meeting, staff will request that the Board adopt new rules for the Commission on Judicial Nominees Evaluation, which would become Title 7.

Titles adopted or pending adoption

Title 1: Global Provisions

Title 2: Member Rights and Responsibilities

Title 4: Admissions and Educational Standards

Title 7: Miscellaneous (Judicial Nominees Evaluation)—pending

Titles adopted in part

Title 3: Programs and Services

Title 6: Governance

The Rules of Procedure, Client Security Fund Matters were originally adopted by the Board of Governors in 1986 and have since been amended on occasion, most recently in 2009. The Client Security Fund rules proposed here, which were drafted by State Bar rules revision staff working closely with counsel for the Client Security Fund and the Office of General Counsel, would be in the Consumers Division of Title 3, Programs and Services.

Copies of the current and the proposed rules are attached. To enable readers to compare current and proposed rules, source rules are footnoted in italics. These footnotes are drafting devices that would be deleted in a Board-adopted version. Footnotes in Roman type, which are citations or cross-references to other rules, would be retained.

Changes to the proposed rules are summarized below. The proposals do not intend to change the substance of State Bar rules on Client Security Fund Matters, since those rules to a significant extent implement requirements set forth in Section 6140.5 of the Business and Professions Code.

**Organizational and stylistic changes**

- The proposed rules would be called the Client Security Fund rules. Current rules are designated Rules of Procedure, Client Security Fund Matters. The new title reflects the fact that the rules prescribe not only procedure but also substantive eligibility requirements for reimbursement.
- To assist readers in locating a topic of interest, the proposed rules have been organized into five articles. The first article deals with general issues; the next three track the lifecycle of a request for reimbursement; and the last deals with records.
- Usage has been modernized. In addition to updating general conventions, such as expressing obligation by “must” rather than “shall,” the proposed rules modernize dated expressions, saying for instance that the money or property at issue in an application for reimbursement was “received by” an attorney [Proposed Rule 3.430(A)] and not that it came “came into the hands” of the attorney [current rule 2].

- Language has been recast for simplicity. For example, “The extent to which the fact that there was an attorney-client relationship overcame the normal prudence of the applicant” [current rule 10(b)] has been changed to “whether normal prudence of the applicant was unduly affected by the attorney-client relationship” [proposed rule 3.436(B)(7)].

### **Clarifications**

- Rule 6(b) currently requires reimbursement of advance fees for the “refusal” of an attorney to refund the fees when insignificant or no services were performed. Proposed Rule 3.431(B) speaks instead of a “failure” to refund that “constitutes a wrongful taking or conversion.”
- Proposed Rule 3.440(G) continues to encourage attorneys who represent applicants before the Fund to do so on a *pro bono publico* basis, while clarifying that applicants need not be represented by a lawyer in seeking reimbursement.
- Proposed Rules 3.443(B) and 3.444(A) governing the Commission’s consideration of applications more clearly reflect the existing practice of affording the Commission an option to grant an oral hearing *after* it has issued a Tentative Decision.
- Proposed Rule 3.450 would require that an applicant request superior court review of a Commission decision no more than ninety days after service of the Final Decision. Current rules have no time limit for filing such a request.
- Current rule 5(b) requires that “Interest payable shall be simple interest at a rate set by the Commission or Board from time to time, not to exceed the maximum legal rate.” Proposed Rule 3.451 provides that “An attorney must repay the Fund for any reimbursement, with simple interest and an assessment of processing costs. The rate of interest, set forth in the Schedule of Charges and Deadlines, is adopted by the Board of Governors upon the recommendation of the Commission and may not exceed the maximum legal rate.” The Schedule provides a means of specifying the rate and keeping it current.

### **Length of public comment period**

Because the proposed rules do not change general requirements for reimbursement from the Fund or the manner in which Fund staff and the Commission conduct business, the standard forty-five day comment period is requested. The comment period would run from July 20, 2009 through September 4, 2009. If comments do not require substantive changes necessitating another comment period, the Board would be asked to adopt the proposals at its November 2009 meeting.

### **Effective date of proposal**

If the Board adopts new Client Security Fund rules, staff proposes that the rules be adopted effective January 1, 2010 and apply to applications for reimbursement received on or after January 1, 2010. Since none of the proposed rules is retroactive, current rules would continue to apply to applications received before that date.<sup>1</sup>

### **Fiscal impact**

The only expense anticipated is that of printing the new Client Security Fund rules and updated consumer pamphlets.

### **Board Book impact**

None.

### **Proposed Board Committee action**

The Client Security Fund recommends that the Regulation, Admissions and Discipline Oversight Committee authorize the circulation of the proposed new version of Client Security Fund rules for a forty-five day public comment period. If the Board Committee agrees, adoption of the following resolution would be appropriate.

**RESOLVED**, that the Board Committee on Regulation, Admission and Discipline authorizes for publication, in the form attached, for a forty-five day comment period from July 20, 2009 through September 4, 2009 the proposed Client Security Fund rules to replace the Rules of Procedure, Client Security Fund Matters and, if subsequently adopted by the Board, to become Chapter 1 of Division 4 of Title 3 of the Rules of the State Bar.

**FURTHER RESOLVED**, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed item.

### **Attachments**

A: Title 3 Proposed Client Security Fund rules

B: Rules of Procedure, Client Security Fund Matters (adopted 1986 and revised as noted through 2006)

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<sup>1</sup> State Bar Rule 1.20(H) provides that “A rule is not retrospective unless if specifically says it is.”