

# AGENDA ITEM

**NOVEMBER 123**

Proposed Client Security  
Fund Rules: Request To  
Adopt

**DATE:** October 19, 2009

**TO:** Members of the Board of Governors  
Members of the Board Discipline Oversight Committee

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

**SUBJECT:** Proposed Client Security Fund Rules: Title 3, Division 4, Chapter 1,  
Request to Adopt Following Public Comment

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## **EXECUTIVE SUMMARY**

As part of a State Bar rules revision project begun in 2006, proposals to clarify the organization and language of The Rules of Procedure, Client Security Fund Matters were presented to the Board Committee on Regulation, Admissions and Discipline Oversight on July 16, 2009. The Committee requested that the Board of Governors authorize a forty-five day public comment period for the proposed revisions, and on July 17, 2009 the board authorized a comment period that began on July 20, 2009 and ended September 8, 2009.

As no comments were received regarding the proposals, staff requests that the Committee now forward the proposed rules to the board for adoption at its November 2009 meeting and that the rules be effective January 1, 2010. The proposed rules would become part of Title 3 of the Rules of the State Bar, Programs and Services, in the form attached.

## **BACKGROUND AND DISCUSSION**

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 four.

Title 1: Global Provisions  
Title 2: Member Rights and Responsibilities  
Title 4: Admissions and Educational Standards

## Title 7: Miscellaneous (Judicial Nominees Evaluation)

The board has adopted two titles in part.

Title 3: Programs and Services

Title 6: Governance

In the first half of 2010, staff anticipates forwarding proposals to complete Title 6 and substantially complete Title 3. Revision of Title 5, Discipline, is expected to begin in 2010.

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 were drafted by State Bar rules revision staff working closely with counsel for the Client Security Fund and the Office of General Counsel.

Copies of the current and the proposed rules are attached.

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” in current rule 10(b) has been changed in proposed rule 3.436(B)(7) to “whether normal prudence of the applicant was unduly affected by the attorney-client relationship.”

### **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.

### **ISSUE**

Whether the board should adopt the proposed Client Security Fund rules effective January 1, 2010, and repeal the current Rules of Procedure, Client Security Fund Matters.

### **FISCAL / PERSONNEL IMPACT:**

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

### **BOARD BOOK/ ADMINISTRATIVE MANUAL IMPACT:**

None.

### **RULES AMENDMENTS**

If adopted, amendments to Title 3, Division 4, Chapter 1 of the State Bar Rules: Client Security Fund.

### **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 are retroactive, current rules would continue to apply to applications received before that date.<sup>1</sup>

### **RECOMMENDATION**

#### **PROPOSED BOARD COMMITTEE RESOLUTION:**

Should the Board Discipline Oversight Committee agree that the proposed rules be adopted, the following resolution would be appropriate:

**RESOLVED**, that the Board Discipline Oversight Committee recommends that the Board of Governors of the State Bar of California adopt the Client Security Fund rules in Title 3, Division 4, Chapter 1, in the form attached to be effective January 1, 2010.

#### **PROPOSED BOARD RESOLUTION:**

Should the Board of Governors concur with the recommendation of the Board Discipline Oversight Committee, the following resolution would be appropriate:

**RESOLVED**, that following publication for comment and no comment having been received, and upon recommendation of the Board Discipline Oversight Committee, the Board of Governors of the State Bar of California hereby adopts the Client Security Fund rules in Title 3, Division 4, Chapter 1, in the form attached to be effective January 1, 2010.

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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."