

AGENDA ITEM

NOV 112-E
Delegation of Claims
Review to Claims Officer

DATE: November 3, 2010

TO: Board of Governors
Board Committee on Operations

FROM: Dina E. Goldman, Staff Attorney
Office of General Counsel

SUBJECT: Delegation of Claims Review to a Claims Officer

EXECUTIVE SUMMARY

Pursuant to the provisions of the Tort Claims Act, Government Code §§ 900 et seq., any claim against the state or a public entity must be presented in accordance with the procedural requirements set forth in the statute. These requirements include filing within six months after accrual of the cause of action, presenting specific facts related to the claim, the amount claimed, and signing the claim. If these procedural requirements are not met, the claim can be denied as untimely or insufficient. Under current State Bar policy, the Executive Director or his or her designee can deny claims for these reasons.

However, in addition to claims that can be denied for procedural deficits, the Bar receives many claims that are clearly without merit. Under current State Bar policy, each of these claims must be presented to the Board of Governors for review and a determination as to whether the claim should be denied. The Tort Claims Act provides that the Board may delegate responsibility for review of claims to a claims officer. This item proposes that the Board of Governors delegate authority for denial of claims that are clearly without legal merit to a claims officer appointed by the Executive Director. Staff has reviewed this proposal with President Bill Hebert and he recommends delegation to a claims officer in order to streamline the claims process on the condition that the claims officer promptly report any claims denied to the Board of Governors and also provide regular reports to the Board regarding the status of claims pending against the State Bar.

BACKGROUND

Under the Tort Claims Act, Government Code §§ 900 et seq., any claim against the state or a public entity must be presented in accordance with the procedural requirements set forth in the statute. These requirements include specified content, a

signature, and a time limit for presenting the claim within six months after accrual of the cause of action. Cal. Gov. Code §§ 910, 910.2, 911.3. If these procedural requirements are not met, the claim can be denied as untimely or insufficient. Cal. Gov. Code §§ 910.6, 911.3. Under current State Bar policy, the Executive Director or his or her designee can deny claims for these reasons.

However, in addition to claims that can be denied for procedural deficits, the Bar receives many claims that are clearly without merit. Under current State Bar policy, each of these claims must be presented to the Board of Governors for review and determination as to whether the claim should be denied. Under the Tort Claims Act, the Board may, by resolution, delegate authority to a claims officer. Cal. Gov. Code § 935.4.¹

SUMMARY OF PROPOSAL

In order to streamline the process for these clearly meritless claims, this item proposes that the Board delegate to a claims officer appointed by the Executive Director the authority to deny claims for clear lack of legal merit. Staff has discussed this proposal with President Bill Hebert and he recommends this delegation to streamline the claims process. The proposed delegation language clearly states that claims involving issues of significant political or operational importance to the State Bar must be submitted to the Board for disposition. The proposal also recommends that the claims officer would promptly report any claims denied to the Board of Governors and also provide regular reports to the Board regarding the status of claims pending against the State Bar.

RECOMMENDATIONS

Staff recommends that the Board delegate authority to review and deny claims that are clearly without legal merit to a claims officer.

FISCAL IMPACT

None.

BOARD BOOK IMPACT

Tab 18, Section 8.

¹ Section 935.4 states: "A charter provision, or a local public entity by ordinance or resolution, may authorize an employee of the local public entity to perform those functions of the governing body of the public entity under this part that are prescribed by the local public entity, but only a charter provision may authorize that employee to allow, compromise, or settle a claim against the local public entity if the amount to be paid pursuant to the allowance, compromise or settlement exceeds fifty thousand dollars (\$50,000). A charter provision, ordinance, or resolution may provide that, upon the written order of that employee, the auditor or other fiscal officer of the local public entity shall cause a warrant to be issued upon the treasury of the local public entity in the amount for which a claim has been allowed, compromised, or settled."

PROPOSED RESOLUTIONS

Board Committee on Operations

Should the Board Committee accept the recommendation of staff to delegate authority for review and denial of meritless claims to a claims officer, adoption of the following resolutions would be appropriate:

RESOLVED, that the Board Committee on Operations recommends that the Board of Governors delegate authority to review and deny claims against the State Bar that are clearly without legal merit to a claims officer appointed by the Executive Director; and it is

FURTHER RESOLVED, that the Board Committee on Operations recommends that claims involving issues of significant political or operational importance to the State Bar must be submitted to the Board for disposition; and it is

FURTHER RESOLVED, that the Board Committee on Operations recommends that the claims officer will promptly report all claims rejected under this delegation to the Board of Governors; and it is

FURTHER RESOLVED, that the Board Committee on Operations recommends that the claims officer will provide regular reports to the Board of Governors regarding the status of pending claims against the State Bar.

Board of Governors

Should the Board of Governors accept the recommendation to delegate authority for review and denial of meritless claims to a claims officer, adoption of the following resolutions would be appropriate:

RESOLVED, that upon recommendation of the Board Committee on Operations, the Board of Governors hereby delegates authority to review and deny claims against the State Bar that are clearly without legal merit to a claims officer appointed by the Executive Director; and it is

FURTHER RESOLVED, that claims involving issues of significant political or operational importance to the State Bar must be submitted to the Board for disposition; and it is

FURTHER RESOLVED, that the claims officer will promptly report all claims rejected under this delegation to the Board of Governors; and it is

FURTHER RESOLVED, that the claims officer will provide regular reports to the Board of Governors regarding the status of pending claims against the State Bar.