

CLIENT SECURITY FUND

Functions and Responsibilities

The Client Security Fund (CSF) supports the Bar's goal of protecting the public by alleviating injury to legal consumers, and promoting public confidence in the legal profession. The primary objective of the CSF is to promote confidence in the legal profession by reimbursing clients for the dishonest conduct of lawyers that rises to the level of theft, or is tantamount to theft. The State Bar web site identifies CSF as a "public service of the California legal profession."³⁸

The CSF, which is a discretionary fund, reimburses clients up to \$100,000 for losses due to attorney theft or acts tantamount to theft. It does not cover losses caused by attorney incompetence, negligence or malpractice. In recent years most of the applications have requested reimbursement for unearned fees (in 2014 88% of applications paid were for unearned fees).

To qualify for reimbursement, an applicant must establish that the respondent attorney has been disbarred, disciplined, or voluntarily resigned from the Bar.³⁹ The CSF is separate from and does not participate in disciplinary proceedings. The CSF is financed by a \$40 statutory assessment that is part of the annual active attorney membership fee; inactive members pay a \$10 assessment. A seven-person Client Security Fund Commission (CSFC), appointed by the Board of Trustees, administers the CSF and has the final authority to determine whether to grant applications.⁴⁰

Current Process

Clients who assert that they have suffered losses may learn about the CSF from other Bar departments, from telephone inquiries, from participation in the disciplinary process, from Bar public town hall meetings, or from the Bar web site. A client (applicant) may request reimbursement by submitting an application to the CSF at the Los Angeles Office of the Bar. Applications received in the Bar's San Francisco office are forwarded to CSF in Los Angeles.

CSF staff send an acknowledgment letter, perform data entry and then perform an initial screening and review of Bar computer records to determine the disciplinary status of the attorney (respondent). The file is assigned to a paralegal for further research/investigation to determine if the application falls within the CSF's jurisdiction. If not within jurisdiction, a closing letter is sent to the applicant. The application is held as pending until there is final discipline issued by the California Supreme Court, or the discipline complaint is otherwise resolved. Once the discipline is final, the case is assigned to an attorney to conduct further investigation, interviews and document review.

³⁸ <http://www.calbar.ca.gov/Attorneys/LawyerRegulation/ClientSecurityFund.aspx>

³⁹ Client Security Fund rules, Rule 3.432

⁴⁰ Ibid. Rule 3.421

After investigation, the CSF attorney, when there is sufficient proof and when the application meets program criteria, may prepare a Notice of Intention to Pay and serve it on the respondent. If the respondent does not object within 30 days, CSF pays the reimbursement amount to the applicant.⁴¹ If the respondent objects, the CSF attorney drafts a Tentative Decision for the CSF Commission to review at one of its 6 meetings a year. Once the Commission approves the Tentative Decision, the Tentative Decision is served on the applicant and respondent. Both parties are notified of their right to object to the Tentative Decision. If objections are filed, the Commission reviews the objections, and the entire administrative record and any request for an oral hearing. After this review the Commission issues its Final Decision, grants an oral hearing, or requests additional information. Most applications are decided on the documents without an oral hearing. The Final Decision of the Commission is the final action of the State Bar. If a party disagrees with the Final Decision, the party may seek judicial review in the Superior Court.

The Office of Finance issues the actual reimbursement checks after receiving signed check requests from CSF.

Appendix D indicates CSF program steps.

Organization, Workload and Resources

The CSF Department currently records and reports applications received, denied, paid and outstanding, and categories for type of misconduct (misappropriation, loan and unearned fees). The following table provides a comparison of applications and payments from 2010 and 2014:

Client Security Fund Applications and Payments		
	2010	2014
Applications Received and Filed	3,875	1,554
Applications Paid	267	1,152
Applications Pending at Year End	6,112	5,674
Total Amount Paid	\$3,331,124	\$9,031,386

There was an increased number of filings beginning in 2009, fueled by the nation-wide loan modification crisis. Payouts from the increased caseload spiked in 2013, with \$11,054,532 paid to applicants.⁴² The number of filings in 2014 is more aligned with the historical average of annual filings. Payments may be affected by the timing of approval for case payout (after disciplinary action is concluded), the amount and size of payouts (in 2009 the maximum reimbursement amount was raised to \$100,000, up from the prior reimbursement cap of \$50,000), and the amount of funds available in the CSF.

⁴¹ Ibid. Rule 3.442

⁴² Client Security Fund 2014 Activities Report

Phone Calls. CSF staff estimate that 7,800 phone calls were received at the CSF in 2015, an average of approximately 30 per day.

Attorney Caseload. Each CSF attorney, including the Director, maintains a caseload of 300-600 cases, and often more.

Payments. In 2014, 1,020 payments (88 percent) were made for unearned fees; 127 payments (11 percent) were made for misappropriation; and 5 payments were made for loans and investments (fewer than 1 percent). Since the inception of the CSF in 1972, the Fund has reimbursed approximately \$130 million. As of the end of 2014, the CSF balance was \$2,208,554, down from a total of \$13,943,060 in 2010. CSF payments (payouts) are impacted by the CSF fund balance, and approved payments may be deferred.

Current Staffing Levels

The CSF program is staffed by 9 FTE with one vacancy; all staff persons are located in the Los Angeles office.

Client Security Fund Staff	
Position	No. of Positions
Administrative Assistant II	1
Administrative Secretary	1
Director of CSF	1
Paralegal	2
Records Coordinator*	1
Senior Administrative Supervisor	1
Senior Attorney	2
TOTAL	9

*Currently vacant

OBSERVATIONS AND RECOMMENDATIONS

OBSERVATIONS: *Current processes are inefficient.* CSF work is negatively impacted by heavy reliance on manual processes and the need to wait to receive status information from OCTC before taking action. Current processes are significantly inefficient, with CSF staff conducting a manual inquiry by reviewing OCTC records in the AS400 database every 30 days to determine the status of the disciplinary proceeding. While the number of case filings has dropped 40 percent, and the number of pending cases 20 percent, from five years ago, the time spent on case status checking has not declined.

Staff interview and observation suggested that in addition to OCTC status checks, CSF has many manual processes and staff spend an unusual amount of time on inefficient communications with clients, maintaining and locating paper files on pending cases, and keeping track of documents.

The CSF currently receives about 7,800 calls per year from applicants requesting application materials and inquiring about the status of their applications. While CSF sends a comprehensive acknowledgment letter when an application is filed, it does not proactively provide updates to applicants regarding the status of their applications while disciplinary action is pending and prior to the case proceeding to the CSF Commission.

RECOMMENDATION: *Use one vacant CSF FTE or a portion of to support the creation of an administrative support position for the State Bar Court Presiding Judge.* In addition to supporting the Presiding Judge, this position will be responsible for notifying CSF of final discipline.

RECOMMENDATION: *A protocol for ongoing email interaction from CSF to and from applicants should be established.* This could be managed to ensure that each applicant had an established email account and CSF approved access with CSF staff for email use, and a secured method of contact.

Email should be used to begin providing proactive applicant notification of the status of discipline cases and applications throughout the life of the case, to ensure that applicants are kept informed, improve customer service, and reduce applicant status check calls.

RECOMMENDATION: The current “pending drawer” manual process of holding cases awaiting discipline outcomes should become an electronic file and listing. Prior to that happening, all open CSF cases should be maintained or stored in a single location, whether awaiting discipline, currently in the investigation stage or awaiting CSFC review and approval. Making this change will reduce time maintaining and locating paper files.

RECOMMENDATION: *The current manually-maintained spreadsheet of pending and awaiting cases should be migrated to an automated database with links to data from OCTC.*

RECOMMENDATION: *CSF staff should be given access to the OCTC CMS and files for investigation and documentation purposes.*

OBSERVATION: *There are currently three vacant positions in CSF. After a summary review of CSF operations, the unit does not appear to need additional staff.* In some instances, it appears that there is a second set of clerical hands “touching” work unnecessarily. Examples include doing data entry into the AS400 when it might be done more efficiently and timely by the attorney working on the matter, or document preparation with no real need for clerical assistance.

RECOMMENDATION: *Evaluate the current vacancy in the Records Coordinator position to determine if the tasks can be absorbed by the Administrative Assistant and the Administrative*

Secretary. Review of this position should be coupled with targeted task simplification, cross-training, and redundancy elimination.

OBSERVATIONS: *Metrics and Objectives.* All current reporting should continue, and additional reporting should be considered.

RECOMMENDATION: *Create and publish more detailed reports on pending cases, including:*

- The number of CSF applications pending awaiting disciplinary action by OCTC and/or by the SBC;
- The length of time a case is in the system. Goals/objectives for each stage of the process should be established and compliance with those goals measured, including:
 - Time from filing of the application to completion of initial screening;
 - Time from initial screening to a determination by CSF whether to send a closing letter and the number and percentage of applications closed by a closing letter;
 - Time from filing an application to Notice of Intent to Pay Letter sent to respondent and the number of Intent to Pay Letters sent;
 - Time from filing an application to tentative case decision made by the CSF Commission; and
 - Total time from the filing of an application to closure by the CSF Commission.

OTHER MISCELLANEOUS RECOMMENDATIONS

RECOMMENDATION: *Assess the benefit and timing of proposing an increase in the CSF fee that is assessed as part of annual member fees.* Small incremental increases (e.g., increasing from the current \$40 to \$42) could assist. Interviews indicated that the Bar has already begun consideration of using funding reserves from another area (LAP) to underwrite CSF payment needs.

RECOMMENDATION: *Establish a process whereby data is exported from the AS400 for CSFC meeting preparation and document information.* This will eliminate manual steps in the transmission of files and documents.