PPFC'S COMMENTS FOR RULE 55(4) CHANGE

Public Protection Fund Committee Proposal to Amend Supreme Court Rule 55(4)

Background: In 1998, the Supreme Court adopted Rule 55 which established the Public Protection Fund (PPF). As the rule states, the PPF was established as a "public service and to promote public confidence in the administration of justice and the integrity of the legal profession by providing some measure of reimbursement to victims who have lost money or property caused by the defalcation of lawyers admitted to practice law in New Hampshire . . . ."

The rule also provided for the creation of the Public Protection Fund Committee (PPFC) to administer the fund.

Current monetary limits on claims:

Paragraph 4 of Rule 55 establishes the following monetary limits for claims against the PPF:

1. The maximum amount payable to all claimants in respect to all conduct of a single lawyer is $250,000.
2. The maximum amount payable to a single claimant is $250,000.
3. The maximum amount payable in a single fund year (June 1 to May 31) to all claimants against the fund in respect to the conduct of all claimants (with respect to all lawyers against whom claims have been filed) is $1,000,000.

Proposed Change:

The change proposed by the PPFC would increase the maximum amount that could be paid by the PPF to all claimants **with respect to an individual lawyer** from $250,000 to $500,000. (See 1 above.)

The proposal would **not** change the amount that could be paid to a single claimant, which would remain $250,000.

The proposal would **not** change the maximum amount that the PPF would pay in a single fund year to all claimants with respect to all lawyers against whom claims were made. This would remain $1,000,000.

Reason for the change:

The PPFC believes that the current limit payable for claims against a single lawyer should be increased to ensure that the PPF continues to be viewed as providing a measure of reimbursement for attorney defalcation. The current $250,000 limit on claims against a single lawyer took effect on January 1, 2010.

In the ten years following the adoption of the $250,000 per attorney limit, claims against the fund were significantly below this limit and the annual limit for all claims of $1,000,000. Since 2020, the total of claims against the PPF, which have been determined by the committee to be valid, has increased. In three of the last five years, the current per lawyer limit has significantly limited the amount paid to claimants to such an extent that the PPFC is concerned that the fund will not continue to be viewed as meaningful reimbursement, and therefore, that the PPF will not fulfill the

goal of promoting public confidence in the administration of justice and the integrity of the legal profession.

For example, for the fund year running from June 1, 2023 to May 31, 2024, the committee determined that the claims payable with respect to the conduct of John Allen totaled $2,561,258.15. Due to the $250,000 per lawyer limit, this resulted in an award per claimant of $0.0975 per dollar. In two other years during this five-year period, the per lawyer limit has significantly limited payments by the PPF on valid claims.

Effect of Proposed Change on Attorney Assessment

For the past 3 years, active and inactive lawyers have been assessed $30 per year to fund the PPF. This generates approximately $225,000 per year. The PPF currently has assets of approximately $2,000,000.

The PPFC recognizes that increasing the per lawyer limit could increase the total amount paid by the fund during a single fund year, and that this could require an increase in the annual assessment. The committee believes that a potential increase in the assessment is justified for the PPF to continue to serve its important public purpose.

The PPFC generally knows well in advance the approximate amount of payment that may be made by the fund as required at the end of the fund year. As such, the PPFC should be able to start "phasing in" a requested change in the annual assessment should it appear to be needed.