

AGENDA ITEM

MOC III-D

Proposed Amnesty for Members
Suspended for Nonpayment of Fees
- Request for Public Comment on
New Provision (J) of State Bar Rule
2.16

DATE: May 1, 2009

TO: Members, Board Committee on Member Oversight

FROM: Starr Babcock, Senior Executive for Member Services
Dina DiLoreto, Director of Administration, Member Services

SUBJECT: Proposed Amnesty for Members Suspended for Nonpayment of Fees –
Request for Public Comment on New Provision (J) of State Bar Rule 2.16

ATTACHMENT: Fee Waiver Rule 2.16 with Proposed New Provision (J)

EXECUTIVE SUMMARY

State Bar members must pay an annual membership fee, unless the member is on Inactive status and over age 70 years. (Bus. & Prof. Code §§ 6140-6141.1.) Members who fail to pay their annual membership fees are suspended from membership in the State Bar, and may be reinstated upon payment of accrued fees and penalties. (Bus. & Prof. Code § 6143.)

Business and Professions Code § 6141.1 provides that the Board may adopt a rule to waive all or a portion of unpaid annual fees, or any penalty for unpaid fees. State Bar rule 2.16 contains various provisions for fee waiver.

This agenda item requests public comment on a proposed new fee waiver provision (J) in rule 2.16. The waiver would provide an amnesty period during which the State Bar Secretary may waive a portion of accrued delinquent annual membership fees and penalties owed by members who were suspended for nonpayment of fees. In order to bring the proposal and public comment to the Board for action at the July meeting and timely implementation this year, a shortened thirty-day public comment period is requested. If the Board approves the program, staff expects to launch its outreach in Fall 2009.

DISCUSSION

As of March 6, 2009, approximately 8,342 members were suspended for nonpayment of annual fees. These members represent a total of \$21,639,543 in uncollected membership fee revenue. Fees are accruing for approximately 2,700 members at the Active status rate, and 5,000

members at the Inactive status rate. Approximately 600 of the Inactive members are over 70 years of age, and therefore do not accrue any more fees. Approximately 2,086 of the members suspended for nonpayment of fees are also on involuntary Inactive status because of MCLE non-compliance.

The proposed amnesty program has several beneficial aspects. The program may bring in revenue that would likely not be collected otherwise. Whatever amount is collected is “found money”. The amnesty process also would be an opportunity to bring the membership list up to date regarding unidentified attorneys who are deceased and the official address of record of other members who have not reported their address change. Finally, the program would provide a benefit to these suspended members similar to the 2005 amnesty program that successfully brought retired judges who had not reactivated their status back into the membership.

SUMMARY OF THE PROPOSAL

The Secretary of the State Bar would be authorized to waive unpaid fees and penalties for members who come into compliance in accordance with the amnesty provisions. The waiver would apply to suspended members who have unpaid annual fees and penalties accruing for years 2008 and earlier. The proposed amount of the waiver is fifty percent of accrued fees and penalties, which would be added to the Schedule of Charges and Deadlines upon Board action after public comment. The amnesty period would last until December 31, 2010.

This is an amnesty program for annual fees and penalties only. It does not change the fact of the member’s suspension for nonpayment of annual fees. The approximately 2,086 suspended members who are also on involuntary Inactive status because of MCLE non-compliance must take care of their MCLE obligation separately.

Listed below are examples of how the program would work for several likely scenarios:

Example 1: Inactive member suspended for nonpayment in 1997 and owes \$1311.25. Under the proposed amnesty program, member would get reinstated upon 2009 payment of \$733.12:

Fees and Penalties Owed	Actual	Amnesty Waiver	Amnesty Payment
For Years 1997 through 2008:	\$1,156.25	-\$578.13	\$578.12
For Year 2009:	\$155.00	\$0.00	\$155.00
Total amount owed:	\$1,311.25	-\$578.13	\$733.12

Example 2: Active member suspended for nonpayment in 2003 and owes \$3566.25. Under the proposed amnesty program, member would get reinstated upon 2009 payment of \$2038.12:

Fees and Penalties Owed	Actual	Amnesty Waiver	Amnesty Payment
For Years 2003 through 2008:	\$3,056.25	-\$1,528.13	\$1,528.12
For Year 2009:	\$510.00	\$0.00	\$510.00
Total amount owed:	\$3,566.25	-\$1,528.13	\$2,038.12

Example 3: Inactive member suspended for nonpayment in 2006 and owes \$698.75. Under the proposed amnesty program, member would get reinstated upon 2009 payment of \$426.87:

Fees and Penalties Owed	Actual	Amnesty Waiver	Amnesty Payment
For Years 2006 through 2008:	\$543.75	-\$271.88	\$271.87
For Year 2009:	\$155.00	\$0.00	\$155.00
Total amount owed:	\$698.75	-\$271.88	\$426.87

PERSONNEL/FISCAL IMPACT

No personnel impact is expected. Existing staff will conduct an online search for the suspended members as time permits. The amount of revenue to be generated is unknown.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

None known.

STATE BAR RULES IMPACT

The provision would add a provision (J) to State Bar rule 2.16 in Title 2, Division 2.

SCHEDULE OF CHARGES AND DEADLINES IMPACT

When the Board when it adopts proposed provision (J) of rule 2.16, the Board will also approve the amount of fee waiver, which will be added to the Schedule of Charges and Deadlines.

PROPOSED BOARD COMMITTEE RESOLUTION

Should the Board Committee on Member Oversight concur with the recommendation to authorize a thirty-day public comment period on the amnesty program for unpaid annual membership fees and penalties as proposed in attached provision (J) of State Bar rule 2.16, the following resolution would be appropriate:

RESOLVED, that the Board Committee on Member Oversight authorizes for publication in the form attached, for a thirty-day comment period, proposed new provision (J) of State Bar rule 2.16; and it is

FURTHER RESOLVED that publication of the foregoing is not, and shall not be construed as, a recommendation of approval by the Board Committee.