

AGENDA ITEM

MARCH 54-131

Member Request for Reconsideration
of Adjustment to Fees

DATE: January 9, 2008

TO: Members of the Board Committee on Member Oversight,
Members of the Board of Governors

FROM: George Davis, Membership Liaison
Richard Frankel, Membership Liaison
John Peterson, Membership Liaison

SUBJECT: Member Request for Reconsideration of Adjustment to Fees

Executive Summary

Members may request that adjustments be made to their membership fees and penalties. Title Two, Rule 2.16 (H) of the Rules of the State Bar requires that the Board of Governors find that good cause exists to grant the requested waivers. Since 1996, the Membership Liaisons have reviewed fee waiver requests as the Board's designee. The Membership Liaisons' recommendations for granting requests are then brought to the Board Committee on Member Oversight and the Board of Governors for approval.

In October of 2007, the Membership Liaisons denied a request from member Sherry Lehr to adjust her membership fees for the year 1994. Ms. Lehr seeks reconsideration of the Membership Liaisons' action.

Board members with questions or concerns may contact Starr Babcock at 415/538-2070 or starr.babcock@calbar.ca.gov.

ISSUE

Does the Committee on Member Oversight recommend and the Board of Governors approve or deny the request of member Sherry Lehr for adjustments to fees and penalties?

BACKGROUND

Title Two, Rule 2.16 of the Rules of the State Bar of California provides for waiver of annual membership fees and penalties. Rule 2.16(C) specifies circumstances where staff may grant a member's request for waiver of annual membership fees. Rule 2.16(H) permits a member whose request for waiver of annual membership fees has been denied by staff to request that the Board review the denial. Specifically, rule 2.16(H) provides that "The Board reserves the right for good cause (1) to grant requests for waivers denied by [staff], and (2) to consider all other requests for waivers." It has been the practice that all pertinent facts and circumstances may be considered in determining whether there is good cause to grant a member's request.

The terms "Membership Liaison" or "Board's designee" are not in rule 2.16(H). Nevertheless, the Membership Liaisons have reviewed fee waiver requests for the Board since 1996, when the Board adopted a rule that authorized the "Board's designee" to grant waiver request. Subsequent revisions to the membership fee waiver rule have not changed the role of the Membership Liaisons. As was stated in an agenda item accompanying revisions adopted in October 2005 "The practice of using Membership Liaisons is not specifically included in the rule, but it is a practice that is intended to continue."

Although the Rules do not define what constitutes good cause for purposes of determining whether or not the Membership Liaisons should grant a fee waiver, historically most Membership Liaisons have interpreted good cause to waive membership fees as restricting fee waivers to truly compelling situations. The Membership Liaisons should weigh the member's justification for a fee waiver against the public policy reasons for imposing annual membership fees.¹ The primary public policy reason for imposing State Bar membership fees is to provide an effective attorney regulatory system that protects the public and eases the burdens on the courts. The system is funded solely through the imposition and collection of annual fees. For this reason membership fee waivers should not be granted as a matter of course, but rather should be limited to compelling, exigent situations where the member presents substantial justification and the member has not caused the asserted need for the exception.

MEMBER REQUEST

The following information was presented to the Membership Liaisons. Staff had reviewed the request and established that it does not meet the qualifications for staff waivers (See Rule 2.16(C)). The Membership Liaisons denied the request in October 2007.

Sherry Lehr (#167811). Admitted December 10, 1993. Member is currently on inactive status. Member was previously granted a waiver by the Board of Governors (August 24, 2006). In that prior waiver, the Board waived and refunded inactive fees for the years 1995 through 2005, for a total waiver of \$395. Member states that, in her 2006 fee waiver request, she also meant to include a request for waiver and refund of her 1994 inactive fee of \$50, but failed to do so due to an oversight on her part. Member also states that she has limited income and may never practice law again due to ongoing health issues and lack of interest. Member is requesting a waiver and refund of the 1994 inactive fee of \$50.

If the request is Denied: The member will not receive a refund for 1994.

If the request is Approved: The member will receive a refund of \$50 for 1994 inactive fees.

RESOLUTIONS

The following resolutions are offered in the alternative, depending on whether the recommendation and action on Ms. Lehr's request is approval or denial.

1. Alternative for Denial of the Request

¹ Although no longer stated in the membership waiver rule, former waiver rules articulated this policy. (e.g. "In reviewing an appeal, the Board must weigh the public policy reason for the imposition of membership fees and penalties against the member's asserted justification for the waiver and determine whether good cause exists to grant the waiver. Waivers should be granted only in very limited circumstances where the reason for the waiver was beyond the member's control." (Former Article 1, section 7 (III) (B), as amended by the Board on October 22, 2005.))

Should the Board Committee on Member Oversight concur with the Membership Liaisons' action denying the member's request, the following resolution is recommended:

RESOLVED that the Board Committee on Member Oversight recommends that the Board of Governors deny the request of member Sherry Lehr for fee waiver for the year 1994; Ms. Lehr will not receive a refund of \$50 for that year.

Should the Board of Governors concur with the recommendation of the Board Committee on Member Oversight to deny the member's request, the following resolution is recommended:

RESOLVED that upon the recommendation of the Board Committee on Member Oversight, the Board of Governors hereby deny the request of member Sherry Lehr for fee waiver for the year 1994; Ms. Lehr will not receive a refund of \$50 for that year.

2. Alternative for Approval of the Request

Should the Board Committee on Member Oversight *not* concur with the Membership Liaisons' action denying the member's request, the following resolution is recommended:

RESOLVED that the Board Committee on Member Oversight recommends that the Board of Governors approve the request of member Sherry Lehr for fee waiver for the year 1994; Ms. Long will receive a refund of \$50.

Should the Board of Governors concur with the recommendation of the Board Committee on Member Oversight, the following resolution is recommended for the Board:

RESOLVED that upon the recommendation of the Board Committee on Member Oversight, the Board of Governors hereby approve the request of member Sherry Lehr waiver for the year 1994; Ms. Lehr will receive a refund of \$50.