

# AGENDA ITEM

## JUNE 54-131

Member Request for Adjustment to Fees and Penalties that Has Been Considered by the Membership Liaisons, Who Deemed that Good Cause Exists to Grant the Request

**DATE:** July 10, 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 Adjustment to Fees and Penalties that Has Been Considered by the Membership Liaisons, Who Deemed that Good Cause Exists to Grant the Request

### EXECUTIVE SUMMARY

Members may request that adjustments be made to their membership fees and penalties. Title Two, Rule 2.16 (l) of the Rules of the State Bar requires the Board to find that good cause exists to grant requests for waivers that were denied by staff and authorizes the Board to consider all other requests for waivers. This item contains a member's request for which the Membership Liaisons have determined that good cause exists to recommend fee adjustment. Board members with questions or concerns may contact Starr Babcock, 415/538-2070 or [starr.babcock@calbar.ca.gov](mailto:starr.babcock@calbar.ca.gov).

### ISSUE

Do the Committee on Member Oversight and the Board of Governors agree with the recommendation of the Membership Liaisons that good cause exists to grant the request for fee adjustment for the State Bar member listed below? The Committee on Member Oversight and the Board of Governors may deny or agree in whole or in part with the Liaisons' recommendation.

## **BACKGROUND**

Rule 2.16 of Title Two 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 up to \$1,000 in annual membership fees and penalties for the year in which they are due. Rule 2.16 (I) provides that the Board of Governors reserves the right to grant requests for waivers denied by staff if good cause exists, and to consider requests that fall outside of staff's authorization for granting a waiver of fees and penalties. Traditionally, Board members who are appointed as Membership Liaisons have reviewed the waiver requests that come under Rule 2.16 (I) and have made recommendations to the Board Committee on Member Oversight and the Board of Governors where the Liaisons determined that good cause exists to recommend adjustments.

In assessing what constitutes good cause for purposes of determining whether or not the Board of Governors should grant a fee waiver, the member's justifications for a fee waiver should be weighed against the public policy reasons for imposing annual membership fees. The primary public policy reason for imposing State Bar membership fees is to provide funding for 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 did not contribute to the cause of the failure to pay full fees.

## **MEMBERSHIP LIAISONS' RECOMMENDATION**

The following member has requested an adjustment to her annual State Bar membership fees. Staff has reviewed the request and established that it does not meet the qualifications for a staff waiver (See Rule 2.16 (C)), or the amount is greater than \$1,000. The Membership Liaisons have determined that good cause exists to recommend the adjustment.

**Mark Abram Posner** (#94714). Admitted December 16, 1980. Member is currently "Not Eligible" to practice law. He was suspended for non-payment of fees on August 16, 1993, and was reinstated on September 7, 1993. He was subsequently suspended for non-payment of fees on July 31, 1995 and was also placed on administrative inactive for MCLE non-compliance on August 12, 1996. Member states that he submitted a letter requesting a transfer to inactive status on November 15, 1994, however the bar has no record of this request. He would like to clear up his record, however, he is unable to pay the full outstanding membership fees and penalties. Member requests an adjustment of his accrued active fees and penalties to the lower inactive rate. Member has submitted a financial declaration in support of his request.

**Recommendation: Contingent on payment of \$1,206.25 within 60 days of notice to member, waiver of the difference between active and inactive fees and penalties for 1995-2008; total waiver of \$5,872.75.**

## **FISCAL IMPACT**

This is the first Membership Liaison request submitted for membership year 2008. This item contains one recommendation for a total adjustment of \$5,872.25. If the recommended adjustment below is approved, the year to date fiscal impact will be \$5,872.25

## **BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT**

There is no impact on the Board Book/Administrative Manual.

## **RECOMMENDATION AND RESOLUTION**

Should the Board Committee on Member Oversight concur with the recommendation of the Membership Liaisons, it would be in order to adopt the following resolution:

**RESOLVED**, that the Board Committee on Member Oversight hereby recommends that the Board of Governors approve the fee adjustment for the following State Bar member as noted below:

**Mark Posner:** Contingent on payment of \$1,206.25 within 60 days of notice to member, waiver of the difference between active and inactive fees and penalties for 1995-2008; total waiver of \$5,872.25.

## **PROPOSED BOARD RESOLUTION**

Should the Board of Governors concur with the recommendation of the Board Committee on Member Oversight, it would be in order to adopt the following resolution:

**RESOLVED**, upon recommendation of the Board Committee on Member Oversight, that the Board of Governors hereby approves the fee adjustment for the following State Bar member as noted below:

**Mark Posner:** Contingent on payment of \$1,206.25 within 60 days of notice to member, waiver of the difference between active and inactive fees and penalties for 1995-2008; total waiver of \$5,872.25.