

AGENDA ITEM

MARCH 54-131

Members' Request for Adjustments to Fees and Penalties that Have Been Considered by the Membership Liaisons, Who Deemed that Good Cause Exists to Grant the Requests

DATE: February 6, 2009

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

FROM: George Davis, Membership Liaison
Paul Kramer, Membership Liaison
Michael Marcus, Membership Liaison

SUBJECT: Members' Request for Adjustments to Fees and Penalties that Have Been Considered by the Membership Liaisons, Who Deemed that Good Cause Exists to Grant the Requests

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 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 consolidates several member requests for which the Membership Liaisons have determined that good cause exists to recommend fee adjustments. Board members with questions or concerns may contact Starr Babcock, 415/538-2070 or starr.babcock@calbar.ca.gov.

ISSUE

Do the Committee on Member Oversight and the Board of Governors agree with the recommendations of the Membership Liaisons that good cause exists to grant the requests for fee adjustments for the State Bar members listed below? The Committee on Member Oversight and the Board of Governors may deny or agree **in whole** or **in part** with any of the Liaisons' recommendations.

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 (H) 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 (H) 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' RECOMMENDATIONS

The following members have requested adjustments to their annual State Bar membership fees. Staff has reviewed these requests and established that they do not meet the qualifications for staff waivers (See Rule 2.16 (C)), or the amounts are greater than \$1,000. The requests that are less than \$1,000 have been reviewed and denied by staff, and the members have appealed to the Membership Liaisons. The Membership Liaisons have determined that good cause exists to recommend the adjustments.

David Kehe (#51932). Admitted January 21, 1972. Member is currently "Not Eligible" to practice law. He was suspended for non-payment of fees on August 16, 2007. Has a prior record of non-payment suspension (August 31, 1987 – March 14, 2006). Member states he has not received any State Bar mailings at his address of record, which is a California address, and that he resides in Iowa. Member states that he does not intend to practice law in the future. Member requests an adjustment of his 2007 and 2008 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 \$300 (inactive fees + penalties) within 60 days of notice to member, waiver of the difference between active and inactive fees and penalties for 2007-2008; total waiver of \$800.**

William Fox (#219227). Admitted May 21, 2002. Member is currently "Not Eligible" to practice law. He was suspended for non-payment of fees and placed on administrative inactive status for MCLE non-compliance on September 16, 2004. Member is in the process of reinstating from MCLE non-compliance. In June 2005, BOG granted member a fee-reduction to the Inactive rate for 2004-2005, contingent on payment of those inactive fees and \$39 2003 late fee. Member did not take contingency offer. Offer was withdrawn in September 2005. Member

requests an adjustment of his 2004-2008 active fees and penalties to the lower inactive rate. His request is based on financial hardship. He wishes to return to the practice of law. He has submitted a financial declaration in support of his request. **Recommendation: Contingent on payment of \$982.50 (\$707.50 inactive fees and penalties plus \$275 in MCLE penalties) within 60 days of notice to member, waiver of the difference between active and inactive fees and penalties for 2004-2008; total waiver of \$1,900.25.**

Kathlyn Rhodes (#148440). Admitted December 4, 1990. Member is currently "Not Eligible" to practice law. She was suspended for non-payment of fees on September 4, 2002, and was placed on administrative inactive for MCLE non-compliance on September 3, 2002. (She completed all MCLE requirements and was reinstated from MCLE suspension on October 22, 2008.) Member requests a waiver of her active fees and penalties. Her request is based on financial hardship. She wishes to return to the practice of law. She has submitted a financial declaration in support of his request. **Recommendation: Contingent on payment of \$555 (inactive fees) within 60 days of notice to member, waiver of the difference between active fees with penalties and inactive fees for 2002-2008; total waiver of \$2988.75.**

FISCAL IMPACT

This is the first Membership Liaison request submitted for membership year 2009. This item contains three recommendations. If the recommended adjustments below are approved, the year to date fiscal impact will be \$5689.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

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

RECOMMENDATIONS AND RESOLUTIONS

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

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

David Kehe: Contingent on payment of \$300 (inactive fees + penalties) within 60 days of notice to member, waiver of the difference between active and inactive fees and penalties for 2007-2008; total waiver of \$800.

William Fox: Contingent on payment of \$982.50 (\$707.50 inactive fees and penalties plus \$275 in MCLE penalties) within 60 days of notice to member, waiver of the difference between active and inactive fees and penalties for 2004-2008; total waiver of \$1,900.25.

Kathlyn Rhodes: Contingent on payment of \$555 (inactive fees) within 60 days of notice to member, waiver of the difference between active fees, with penalties, and inactive fees penalties for 2002-2008; total waiver of \$2988.75.

PROPOSED BOARD RESOLUTIONS

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

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

David Kehe: Contingent on payment of \$300 (inactive fees + penalties) within 60 days of notice to member, waiver of the difference between active and inactive fees and penalties for 2007-2008; total waiver of \$800.

William Fox: Contingent on payment of \$982.50 (\$707.50 inactive fees and penalties plus \$275 in MCLE penalties) within 60 days of notice to member, waiver of the difference between active and inactive fees and penalties for 2004-2008; total waiver of \$1,900.25.

Kathlyn Rhodes: Contingent on payment of \$555 (inactive fees) within 60 days of notice to member, waiver of the difference between active fees, with penalties, and inactive fees penalties for 2002-2008; total waiver of \$2988.75.