

AGENDA ITEM

MARCH 54-131

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

DATE: February 14, 2007

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

FROM: Matthew Butler, Membership Liaison
Holly Fujie, Membership Liaison
Howard Miller, Membership Liaison

SUBJECT: Members' Request for Adjustments to Fees and Penalties that Have Been Considered by the Membership Liaisons and 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 (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 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 (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' 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.

Jeffrey Reed Herbst (#85218). Admitted May 15, 1979. Member is currently "Not Eligible" to practice law. He was placed on administrative inactive for MCLE non-compliance on July 25, 1994, and was suspended for non-payment of fees on August 29, 1994. He has reinstated from the MCLE non-compliance on January 12, 2007, but still remains on non-payment suspension. Member states that he was living out of state since 1994, and only recently he returned to California. He has a non-legal job and earns a minimal salary. He has been experiencing financial hardship. He would like to clear up his record and practice law again, however, he is unable to pay the full outstanding active fees and penalties. Member requests an adjustment of his 1994-2006 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 \$2,023.25 (\$717 active fees and penalties for 1994, \$906.25 inactive fees and penalties for 1995-2006 plus \$400 active fees for 2007) within 60 days of notice to member, waiver of the difference between active and inactive fees and penalties for 1995-2006; total waiver of \$5,172.75.**

Jeff Korber (#77055). Admitted December 21, 1977. Member is currently “Not Eligible” to practice law. He was suspended for non-payment of fees on September 4, 2002, and was placed on administrative inactive for MCLE non-compliance on September 18, 2006. Member states that due to medical reasons, he closed his law practice in 2001. He has not been employed since then, and Social Security has been his only source of income. He wishes to transfer to inactive status. Member requests an adjustment of his 2002-2007 active fees and penalties to the lower inactive rate. He has submitted a financial declaration and medical documentation in support of his request. **Recommendation: Contingent on payment of \$943.75 (\$487.50 active fees and penalties for 2002 plus \$456.25 inactive fees and penalties for 2003-2007) within 60 days of notice to member, waiver of the difference between active and inactive fees and penalties for 2003-2007; total waiver of \$1,900.**

FISCAL IMPACT

This is the first Membership Liaison request submitted for membership year 2007. This item contains two recommendations. If the recommended adjustments below are approved, the year to date fiscal impact will be \$7,072.75.

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:

Jeffrey Reed Herbst: Contingent on payment of \$2,023.25 (\$717 active fees and penalties for 1994, \$906.25 inactive fees and penalties for 1995-2006 plus \$400 active fees for 2007) within 60 days of notice to member, waiver of the difference between active and inactive fees and penalties for 1995-2006; total waiver of \$5,172.75.

Jeff Korber: Contingent on payment of \$943.75 (\$487.50 active fees and penalties for 2002 plus \$456.25 inactive fees and penalties for 2003-2007) within 60 days of notice to member, waiver of the difference between active and inactive fees and penalties for 2003-2007; total waiver of \$1,900.

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:

Jeffrey Reed Herbst: Contingent on payment of \$2,023.25 (\$717 active fees and penalties for 1994, \$906.25 inactive fees and penalties for 1995-2006 plus \$400 active fees for 2007) within 60 days of notice to member, waiver of the difference between active and inactive fees and penalties for 1995-2006; total waiver of \$5,172.75.

Jeff Korber: Contingent on payment of \$943.75 (\$487.50 active fees and penalties for 2002 plus \$456.25 inactive fees and penalties for 2003-2007) within 60 days of notice to member, waiver of the difference between active and inactive fees and penalties for 2003-2007; total waiver of \$1,900.