

AGENDA ITEM

JULY 136

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

DATE: June 30, 2009

TO: Members of the Board of Governors
Members of the Board Committee on Member Oversight
Members of the Board Committee on Planning, Program Development and Budget (FYI)

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

SUBJECT: Proposed Amnesty for Members Suspended for Nonpayment of Fees,
Request for Adoption of New Provision (J) of State Bar Rule 2.16 following
Public Comment (Amnesty Program)

ATTACHMENTS: A - Fee Waiver Rule 2.16 with Proposed New Provision (J);
B - Proposed Addition to Schedule of Charges and Deadlines; and
C - Public Comment

EXECUTIVE SUMMARY

A State Bar member must pay an annual membership fee, unless the member is on inactive status and over 70 years of age. (Bus. & Prof. Code §§ 6140-6141.1.) A member who fails to pay the annual membership fees is suspended from membership in the State Bar but 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 and any related penalty. State Bar rule 2.16 contains various provisions for fee waiver.

This agenda item requests adoption of new fee waiver provision (J) in rule 2.16, following public comment. The waiver provides an amnesty period during which the State Bar Secretary may waive a portion of accrued delinquent annual membership fees and penalties owed by members suspended for nonpayment of fees.

The agenda item also requests approval of the formula for the fee waiver, which will be added to the Schedule of Charges and Deadlines.

DISCUSSION

Currently, approximately 8,300 members are suspended for nonpayment of annual fees. These members represent over \$21,000,000 in uncollected membership fee revenue. Fees at the active status rate are accruing for approximately 2,700 members and at the inactive status rate for approximately 5,000 members. Approximately 600 of the inactive members are not accruing additional fees because they are now over 70 years of age. Approximately 2,000 members suspended for nonpayment of fees are also on involuntary inactive status because of MCLE noncompliance.

The proposed Amnesty Program offers two benefits. First, recovery of membership fees not otherwise collected. Second, outreach efforts planned for the Program will help MSC staff clean up the membership database as updated addresses are processed and deceased attorneys are identified.

SUMMARY OF THE PROPOSAL

Under a new provision (J) of State Bar rule 2.16, the Secretary of the State Bar will be authorized to waive unpaid fees and penalties for members who comply with the amnesty provision. The waiver will 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 a member's annual fees and penalties accruing for 2008 and earlier. The Amnesty Program extends until December 31, 2010. The waiver amount will be added to the Schedule of Charges and Deadlines, as shown, in italics and underlined, in the attached relevant part of the Schedule.

The Amnesty Program includes only annual membership fees and penalties. It does not remove a member's suspension for nonpayment of annual fees. Nor does the waiver forgive any involuntary inactive status due to MCLE noncompliance. MCLE reinstatement requires members to comply with State Bar Rule 2.93.

The examples below illustrate how the program will work.

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

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

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

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 be reinstated upon payment of \$426.87 in 2009:

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

Guidelines for estimating the waiver will be posted on the State Bar Web site.

PUBLIC COMMENT

At its meeting in May, MOC authorized a thirty-day public comment period for proposed new provision (J) of State Bar rule 2.16. Public comment ended on June 17, 2009. The State Bar received 38 comments that are provided in Attachment C and summarized below.

Of the 38 comments, 34 members wrote to express support of the Amnesty Program. Four, used this opportunity to complain about the public status of administrative suspensions and the accrual of fees while on suspension.

Of the 34 supportive comments, 22 members stated upfront that they would take advantage of the Amnesty Program. Two others would be more likely to participate if ALL past dues were forgiven. One comment suggested that the program be extended through 2012 to give members sufficient time to amass the funds necessary to take advantage of the program. Another comment suggested placing a cap on the maximum payment required (ex. \$500) and asked that the bar consider reducing ongoing membership fees for attorneys on active status but who do not practice in California or work for non-profits or governments.

Several individuals stated that the accrual of membership fees at the active rate while they were suspended was particularly burdensome and unfair, suggesting that if fees had accrued at the inactive rate while they were ineligible to practice, it would have been easier for them to regain their financial footing and they would have already reinstated.

Overall, the comments support the Amnesty Program. Staff recommends the approving proposed provision (J). The proposal of a 50% waiver, appears to strike a good balance and the proposed sunset date of December 31, 2010, gives members 17 months to return to good standing.

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 proposal adds a provision (J) to State Bar rule 2.16 in Title 2, Division 2.

SCHEDULE OF CHARGES AND DEADLINES IMPACT

Subject to Board adoption of proposed provision (J) of rule 2.16, the Board should approve the amount of fee waiver for addition to the Schedule of Charges and Deadlines.

PROPOSED BOARD COMMITTEE RESOLUTION

Should the Board Committee on Member Oversight concur with the recommendation to approve the Amnesty Program for unpaid annual membership fees and penalties as proposed in attached provision (J) of rule 2.16, the following resolution would be appropriate:

RESOLVED, following publication for comment and consideration of comments received, the Board Committee on Member Oversight recommends that the Board of Governors of the State Bar of California adopt, in the form attached, new provision (J) of State Bar rule 2.16 to waive fifty percent of unpaid annual fees and penalties accruing for years 2008 and earlier, the waiver provision to sunset December 31, 2010 unless extended by the Board.

PROPOSED BOARD OF GOVERNORS' RESOLUTION

Should the Board of Governors concur with the recommendations of the Board Committee on Member Oversight to approve the Amnesty Program for unpaid annual membership fees and penalties as proposed in attached provision (J) of State Bar rule 2.16 and to set the amount of the fee waiver, the following resolution would be appropriate:

RESOLVED, following publication for comment and consideration of comments received, and upon recommendation of the Board Committee on Member Oversight, the Board of Governors of the State Bar of California hereby adopts new provision (J) of State Bar rule 2.16, in the form attached, to waive fifty percent of unpaid annual fees and penalties accruing for years 2008 and earlier, the waiver provision to sunset December 31, 2010 unless extended by the Board.