

# AGENDA ITEM

## JAN 132 Fee Waivers Proposed Rule Change, State Bar Rule 2.16

**DATE:** December 28, 2010

**TO:** Members, Member Oversight Committee  
Members, Board of Governors

**FROM:** Peggy Van Horn, Chief Financial Officer;  
Dina DiLoreto, Director of Administration, Member Services

**SUBJECT:** Fee Waivers Proposed Rule Change, State Bar Rule 2.16

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### EXECUTIVE SUMMARY

The Board of Governors is authorized by statute to permit waiver of any portion of the annual membership fee or related penalty. The board's fee waiver rule is rule 2.16 of the Rules of the State Bar. Subdivision (C) of rule 2.16 authorizes the Secretary of the State Bar to waive up to \$1,000 in annual membership fees and penalties for the year in which they are due if a member can demonstrate that he or she meets any of six listed reasons.

This agenda item requests emergency adoption, on an interim basis, of amendments to delete four of the reasons listed in State Bar rule 2.16, subdivision (C), an effective date for the interim amendments of February 2, 2011, and authorization to publish the amendments for a 45-day period of public comment.

Provision (J) is a temporary amnesty provision, which sunsetted on December 31, 2010 unless the Board extends the sunset date. The agenda item also memorializes a recommendation to not extend the sunset date in subdivision (J).

Board members with any questions on this proposal may contact Peggy Van Horn at (415) 538-2353 or [peggy.vanhorn@calbar.ca.gov](mailto:peggy.vanhorn@calbar.ca.gov), or Dina DiLoreto at (415) 538-2121 or [dina.diloreto@calbar.ca.gov](mailto:dina.diloreto@calbar.ca.gov) or Mary Yen at (415) 538-2369 or [mary.yen@calbar.ca.gov](mailto:mary.yen@calbar.ca.gov).

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### BACKGROUND

Business and Professions Code section 6141.1 has two subdivisions authorizing the Board of Governors to waive payment of annual membership fees. Subdivision (a) is a permissive provision, which says: "The payment by any member of the annual membership fee, any portion therefore, or any penalty thereon, may be waived by the

board as it may provide by rule. The board may require submission of recent federal and state income tax returns and other proof of financial condition as to those members seeking waiver of all or a portion of their fee or penalties on the ground of financial hardship.” Subdivision (b) mandates a waiver, as follows “The board shall adopt a rule or rules providing that an active member who can demonstrate total gross annual individual income from all sources of less than forty thousand dollars (\$40,000) shall presumptively qualify for a waiver of 25 percent of the annual membership fee.”

Rule 2.16 of the Rules of the State Bar is the Board’s discretionary rule for waiver of membership fees under section 6141.1(a). Subdivision (C) of rule 2.16 permits the Secretary of the State Bar to waive up to \$1,000.00 in annual membership fees and related penalties for the year in which they are due, provided three criteria are met. The third criterion, provision(C)(3), lists six reasons for which the Secretary may grant a member’s request for fee waiver.

This agenda item requests that the Board determine that an emergency exists requiring adoption, on an interim basis without first circulating the proposal for public comment, of amendments to delete four of the reasons listed in provision (C)(3) as grounds for a fee waiver by the Secretary. The fifth and sixth reasons would remain unchanged. It is further requested that the effective date of the interim amendments be February 2, 2011 in order to coincide with the due date for payment of annual membership fees, and that the amendments be circulated for a 45-day period of public comment.

Rule 2.16, subdivision (J), provides that the Secretary may waive unpaid annual membership fees and penalties accrued by a member for years 2008 and earlier if the member pays 2009 and 2010 annual membership fees and related penalties; that the Schedule of Charges and Deadlines gives the amount that may be waived; and that the amnesty sunsets on December 31, 2010 unless the Board extends it. No action is proposed for subdivision (J); this agenda item simply recognizes that subdivision (J) is no longer effective.

## **ISSUE**

Whether an emergency exists requiring adoption, on an interim basis without first circulating the proposal for public comment, of amendments to delete four of the reasons listed in provision (C)(3) as grounds for a membership fee waiver by the Secretary, effective February 2, 2011 and lasting no more than 120 days, and requiring authorization of a 45-day period of public comment on the interim amendments to State Bar rule 2.16, subdivision (C).

## **CONCLUSION**

State Bar rule 1.10 [public comment], subdivision (C), authorizes emergency adoption of amendments to a State Bar rule on an interim basis without first circulating the

amendments for public comment.<sup>1</sup> An effective date of February 2, 2011 for the interim amendments is requested in order to coincide with the February 2, 2011 due date for 2011 membership fees. If your board committee concurs with the request, a 45-day period of public comment is appropriate. It is anticipated that the interim amendments will return at the May 2011 Board meeting for permanent action by the Board.

## **DISCUSSION**

State Bar rule 2.16, subdivision(C), provides that the Secretary may waive up to \$1,000 in annual membership fees and related penalties for the year in which they are due, provided that the request is 1) in writing; 2) supported by satisfactory documentation; and 3) for any of six reasons, which are a) a medical hardship, natural disaster, or family emergency prevents or impairs the member from pursuing a livelihood for a substantial part of the year; b) the member's total annual income from all sources is \$20,000 or less; c) the member is a full-time magistrate, commissioner, or referee of a state or federal court of record; d) the member is a retired judge who accepts assignments from the Chief Justice for a judicial capacity year-round; e) the State Bar has erroneously assessed the annual membership fees or penalties; or f) for any other reason, on a one-time only basis, if the member has no record of discipline, suspension or involuntary inactive enrollment.

The 2010 year-to-date financial data indicates that three of the grounds for waiver listed in rule 2.16(C)(3) have caused approximately \$560,000 in annual membership fees to be waived this year. The \$20,000 income reason caused the largest amount to be waived, approximately \$330,000. The one-time only reason and the medical hardship reason caused roughly \$230,000 in membership fees to be waived. Although \$230,000 is not a huge amount, requests for these two waivers have grown significantly over the last 4 years, so the greatest fiscal advantage to eliminating the waivers would occur in future years.

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<sup>1</sup> State Bar Rule 1.10 [Public comment] states, in pertinent part:

(A) Proposals for the Rules of the State Bar of California are circulated for public comment before adoption, amendment, or repeal by the Board of Governors. The State Bar also makes available for public comment its proposals for the California Rules of Court. Proposals are circulated for a forty-five day period, which can be shortened to a minimum of 30 days or extended to a maximum of 90 days, as designated by the board.

(C) The board may determine that an emergency requires it to adopt, amend, or suspend a rule on an interim basis without first circulating it for public comment. No interim measure may remain in effect for more than 120 days.

(D) The adoption, amendment, or repeal of a rule becomes effective as of the date specified by the board. If it specifies no date, the date of its action is the effective date.

In light of the increasingly tight fiscal situation of the State Bar, emergency action to adopt interim amendments deleting four grounds for fee waiver from provision (C)(3) should be considered. The four reasons proposed for deletion are: the medical hardship reason; the \$20,000 income reason; the staff error reason; and the one-time only reason. There is no practical or fiscal consequence to eliminating the staff error provision. A correction will continue to be made for any error resulting from a staff error. The medical hardship reason, which is essentially a financial reason, and the \$20,000 income reason are discretionary waivers. The Board, at its option, can delete these reasons. Mandated waiver of twenty five percent of the annual membership fee pursuant to section 6141.1(b) will remain available under the fee scaling rule, 2.15. Last, the one-time only reason allows fee waivers for reasons other than financial hardship. Eliminating the one-time only reason will bring the State Bar into closer alignment with the financial hardship purpose enunciated in section 6141.1(a) and with the fiscal policies and practices of other regulatory agencies, which are much more restrictive regarding membership fee waivers.

Finally, although this agenda item focuses on amendments to subdivision (C), amendment of subdivision (F) of rule 2.16 was considered. Subdivision (F) provides that annual membership fees are waived for inactive members who are 70 years of age on February 1. However, subdivision (F) is based on Business and Professions Code section 6141(b), which states "An inactive member shall not be required to pay the annual membership fee for inactive members for any calendar year following the calendar year in which the member attains the age of 70 years." Because of section 6141(b), amending subdivision (F) to increase the age requirement to 75 years of age cannot be proposed at this time.

#### **FISCAL / PERSONNEL IMPACT:**

Based on 2010 year-to-date data, deletion of the four reasons for a fee waiver from rule 2.16(C)(3) is expected to generate roughly \$560,000 in additional revenue from membership fees on an annual basis.

#### **RULE AMENDMENTS:**

This proposal would amend rule 2.16 in Title 2, Division 2 of the Rules of the State Bar, effective February 2, 2011 and lasting no more than 120 days.

#### **BOARD BOOK IMPACT:**

None Known.

#### **RECOMMENDATION**

It is recommended that the Member Oversight Board Committee and the Board determine that an emergency requires adoption of amendments to State Bar rule 2.16, subdivision (C), on an interim basis, effective February 2, 2011, without first circulating

the amendments for public comment and the Board should authorize a 45-day period of public comment on the proposed amendments.

**PROPOSED BOARD COMMITTEE RESOLUTION:**

Should the Board Committee on Member Oversight agree with the above recommendation, the following resolution would be appropriate:

**RESOLVED**, that the Board Committee on Member Oversight hereby recommends to the Board of Governors that an emergency requires adoption of amendments to State Bar rule 2.16, subdivision (C), on an interim basis, effective February 2, 2011 and lasting no more than 120 days, and requires Board authorization of a 45-day period of public comment on the proposed amendments, in the form attached.

**PROPOSED BOARD RESOLUTION:**

Should the Board of Governors concur with the recommendation of the Board Committee on Member Oversight, the following resolution would be appropriate:

**RESOLVED**, that the Board of Governors, upon recommendation of the Board Committee on Member Oversight, hereby determines that an emergency requires adoption of amendments to State Bar rule 2.16, subdivision (C), on an interim basis, effective February 2, 2011 and lasting no more than 120 days, and requires authorization of a 45-day period of public comment on the proposed amendments, in the form attached; and it is

**FURTHER RESOLVED**, that following public comment, the interim amendments are to be placed on the agendas of the Board Committee on Member Oversight and the Board of Governors for permanent action on the proposal.

Attachment: Proposed Amendments to rule 2.16(C) of the Rules of the State Bar