

AGENDA ITEM

JULY 131

DATE: July 8, 2011

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,
Return from Public Comment

EXECUTIVE SUMMARY

The Board of Governors is authorized by law to waive any portion of the annual membership fee or related penalty. State Bar rule 2.16 is the Board's discretionary fee waiver rule. 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 demonstrates that he or she meets any of six reasons.

In January 2011, the Member Oversight Committee ("MOC") authorized a 45-day period of public comment for a proposal to delete four of the reasons for fee waiver listed in subdivision (C). The 45-day period expired on February 28, 2011.

This agenda item returns the proposal from public comment for consideration by MOC and the Board.

Board members with any questions on this proposal may contact Peggy Van Horn at (415) 538-353 or peggy.vanhorn@calbar.ca.gov, or Dina DiLoreto at (415) 538-2121 or dina.diloreto@calbar.ca.gov or, or Mary Yen at (415) 538-2369 or mary.yen@calbar.ca.gov.

BACKGROUND

Business and Professions Code section 6141.1, subdivision (a), is a permissive fee waiver 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.”¹

State Bar rule 2.16 is the Board’s rule for discretionary waiver of membership fees. 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 returns a proposal to amend subdivision (C)(3) from a 45-day period of public comment. The proposal would delete four of the reasons listed in provision (C)(3) as grounds for a fee waiver by the Secretary.

ISSUE

Whether to delete four of the reasons stated in State Bar rule 2.16, provision (C)(3), as grounds for a membership fee waiver by the Secretary.

CONCLUSION

If your board committee and the Board concur with the proposal, action at the July 2011 Board meeting would allow sufficient time to implement the change for the 2012 fee statement and billing cycle.

DISCUSSION

State Bar rule 2.16, subdivision(C), states 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 the following six reasons:

- 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;

¹ Subdivision (b) is a mandatory waiver provision, 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.”

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.

At the January 2011 meeting, MOC authorized public comment for a proposal to delete these four reasons from provision (C)(3): 1) the medical hardship reason; 2) the \$20,000 income reason; 3) the staff error reason; and 4) the one-time only reason.²

The reasons for deleting the four reasons were: There is no practical or fiscal consequence to eliminating the staff error provision. Erroneous assessments will continue to be corrected. The medical hardship reason, which is essentially a financial reason, and the \$20,000 income reason are discretionary waivers that the Board, at its option, can delete. Even with their deletion, a statutorily mandated waiver of twenty-five percent of the annual membership fee pursuant to section 6141.1(b) will be available under the fee scaling rule, 2.15. 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.

In January 2011, the 2010 year-to-date financial data indicated that three of the grounds were reason for waiving roughly \$560,000 in annual membership fees. The \$20,000 income reason was grounds for waiving approximately \$330,000. The one-time only reason and the medical hardship reason were the basis for waiving roughly \$230,000 in membership fees. Although \$230,000 is not a huge amount, requests for these two waivers had grown significantly over the prior 4 year period, and it was projected that the greatest fiscal advantage to eliminating the waivers would occur in future years.

As of June 15, 2011, the 2011 year-to-date financial data shows that approximately \$554,000 in fees have been waived under the same provisions: \$363,000 has been waived due to financial hardship, \$134,000 has been waived under the one-time only provision, and \$57,000 has been waived due to medical hardship.

² The agenda item for the January meeting noted that amendment of another fee waiver provision, subdivision (F), was explored but was not part of the proposal. Subdivision (F) authorizes fee waivers for inactive members who are 70 years of age on February 1. Increasing the age requirement to 75 years could not be proposed because 70 years of age is set by statute. (Bus. and Prof. Code section 6141(b).)

PUBLIC COMMENTS RECEIVED

The proposal was published for a 45-day comment period ending on February 28, 2011. As a supplement to normal publication, the Member Service Center sent an email inviting comments from members who were applying for a fee waiver under rule 2.16(C) and members who had received a fee waiver under rule 2.16(C) in recent years.

Over 175 comments were received, predominantly from members who received the email invitation and have benefitted from a fee waiver. Several commenters had never utilized a waiver. The vast majority of commenters opposed elimination of specific waivers or opposed the proposal all together.

Summarized below are recurrent themes and other notable comments:

1. The vast majority of commenters oppose elimination of the financial hardship reason and medical hardship reason.

Many think that eliminating the waivers will force members to resign, will force active members to go inactive, or will result in more suspensions for nonpayment of dues.

Many believe that the low-income bracket of members, and those who need financial assistance the most, should not bear the costs of raising revenue.

Many believe the financial hardship waiver is important for recent graduates who are unemployed when entering the Bar. Some of these graduates do volunteer work to gain experience. Many graduates have no monies saved or have large loans.

Some believe that eliminating the waivers is inhumane, mean-spirited, punishes those undergoing a hardship, and unnecessary.

Some keep active status in order to do pro bono legal work. Eliminating the waivers will prevent attorneys from providing pro bono work.

Some suggest doing better screening, or changing the criteria, or granting partial waivers in place of complete deletion.

Several express that financial waivers during these economically hard times have been a godsend.

A few fear that eliminating these waivers will give members no hope of returning to the practice of law once their medical and financial hardships subside.

Several utilized the waiver once, then were able to get back on their feet and practice law without the waiver. They could not get a job if they were forced to go inactive while looking for a job.

Some are on disability but are able to practice law because of the waivers.

A member who lives on \$20,000 or less annually is in a different financial situation than one who lives on \$40,000 or less annually. Need to keep these waivers separate.

2. Other themes concerning the proposal were as follows:

The timing for eliminating waiver reasons is bad, given the current economy.

The Bar should raise fees instead of eliminating waivers.

The Bar should go to a tiered fee structure tied to income levels of members.

The fiscal impact of the waivers is relatively small or negligible.

Members should not turn away pro bono work because clients cannot afford to pay for legal services, so the Board should not turn away members who can't afford full dues.

As an entity that proclaims to protect access to justice for all, the Bar ought to defend fee waivers for members who are undergoing hardships.

Eliminate the waivers for other judicial officers instead.

3. A few comments concerned the one-time only reason or the staff error reason.

Several members concur with eliminating the one-time only waiver.

A member opposes eliminating the one-time-only waiver.

A member earned over \$40,000 but was laid off and could only use the one-time-only waiver for late fees.

Several members concur with eliminating the staff error reason.

A member would keep the staff errors waiver.

FISCAL / PERSONNEL IMPACT

The fiscal impact is somewhat speculative, but based on 2010 year-to-date data, deletion of the four reasons for a fee waiver might have generated as much as \$560,000 additional revenue in 2010. However, some portion of that increase probably would have been offset by members who might have chosen to take other steps, such as applying for fee scaling under rule 2.15 or making a timely transfer from active to inactive status. The fiscal impact for 2011 is \$554,000 to date (this is close to a final number since we are at the end of the 2011 billing cycle); for future years it is somewhat speculative.

RULE AMENDMENTS

This proposal would amend rule 2.16, provision (C)(3), in Title 2, Division 2 of the State Bar Rules.

BOARD BOOK IMPACT

None Known.

RECOMMENDATION

This proposal provides an opportunity for the Member Oversight Committee and the Board to consider whether to delete four reasons for fee waiver from State Bar rule 2.16, provision(C)(3).

PROPOSED BOARD COMMITTEE RESOLUTIONS

1. Deletion of all four reasons. Should the Board Committee on Member Oversight concur with the deletion of the four reasons for fee waiver stated in provision (C)(3) of State Bar rule 2.16 as shown in the form attached, the following resolution would be appropriate:

RESOLVED, following publication for comment and consideration of the comments received, that the Board Committee on Member Oversight hereby recommends that the Board of Governors amend State Bar rule 2.16, subdivision (C), in the form attached.

2. Deletion of less than four reasons (one, two or three reasons). Should the Board Committee on Member Oversight wish to recommend deletion of less than four reasons (one, two, or three of the reasons) for fee waiver stated in provision (C)(3) of State Bar rule 2.16 as shown in the form attached, the following resolution would be appropriate (select one, two, or three of the reasons stated in the resolution):

RESOLVED, following publication for comment and consideration of the comments received, that the Board Committee on Member Oversight hereby recommends that the Board of Governors amend State Bar rule 2.16, subdivision (C), by deleting the [medical reason in provision (3)(a), the \$20,000 financial hardship reason in provision (3)(b), the staff error reason in provision (3)(e), the one-time only reason in provision (3)(f)] and direct staff to renumber subdivision (C)(3) in accordance with the amendment.

3. No deletions. Should the Board Committee on Member Oversight decline to recommend deletion of the any of the four reasons for fee waiver stated in provision (C)(3) of State Bar rule 2.16 as shown in the form attached, no resolution is needed. Alternatively, the following resolution also would be appropriate:

RESOLVED, following publication for comment and consideration of the comments received, that the Board Committee on Member Oversight hereby declines to recommend to the Board of Governors that the Board amend State Bar rule 2.16, subdivision (C), in the form attached.

PROPOSED BOARD RESOLUTIONS

1. Deletion of all four reasons. Should the Board of Governors concur with the recommendation of the Board Committee on Member Oversight to delete the four fee waiver reasons from provision (C)(3) of State Bar rule 2.16 as shown in the form attached, the following resolution would be appropriate:

RESOLVED, that the Board of Governors, following publication for comment and consideration of the comments received, and upon recommendation of the Board Committee on Member Oversight, hereby amends State Bar rule 2.16, subdivision (C), in the form attached.

2. Deletion of one, two or three reasons. Should the Board of Governors concur with the recommendation of the Board Committee on Member Oversight to delete one, two, or three of the fee waiver reasons from provision (C)(3) of State Bar rule 2.16 as shown in the form attached, the following resolution would be appropriate:

RESOLVED, that the Board of Governors, following publication for comment and consideration of the comments received, and upon recommendation of the Board Committee on Member Oversight, hereby amends State Bar rule 2.16, subdivision (C), by deleting the [medical reason in provision (3)(a), the \$20,000 financial hardship reason in provision (3)(b), the staff error reason in provision (3)(e), the one-time only

reason in provision (3)(f)] and directs staff to renumber provision (C)(3) in accordance with the amendment.

3. No deletions. No Board resolution is needed if MOC declines to recommend any of the four deletions. Attachment:

Attachment: Proposed amendments to State Bar rule 2.16, subdivision (C)