

AGENDA ITEM

IIIC March

DATE: April 20, 2012

TO: Members, Member Oversight Committee

FROM: Peggy Van Horn, Chief Financial Officer
Dina DiLoreto, Director of Administration

SUBJECT: Proposed Membership Fee Waiver, State Bar Rule 2.16
Request to Release for 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. In July 2011, the Board eliminated several fee waiver provisions related to hardship from State Bar Rule 2.16 (C). During its March 2, 2012 meeting, the Member Oversight Committee (MOC) approved in concept a proposal from Trustee Samson Elsbernd that would reestablish a waiver of membership fees for extremely low income attorneys. MOC directed staff to develop proposed language to be incorporated into State Bar Rule 2.16 (C) that could be presented to the committee at its May meeting.

This item presents the proposed changes to Rule 2.16 that would provide for a 50% waiver of membership fees for attorneys earning less than \$20,000 per year, and requests MOC's approval to release the proposal for a 30 day public comment period. The issue would then return to the committee, and the Board, for potential approval at the July 2012 meeting.

Questions on this item should be directed to Peggy Van Horn at (415) 538-2353 or peggy.vanhorn@calbar.ca.gov, or Dina DiLoreto at (415) 538-2121 or dina.diloreto@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."

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 certain criteria are met. The current rule requires the request be in writing, supported by satisfactory documentation, and limits eligibility to those attorneys who serve as full-time magistrates, commissioners, or referees for state or federal courts of records, and to those members who are retired judges sitting on assignment.

Before their elimination in July 2011, Rule 2.16 included several waiver provisions for hardship. Among these was a 100% waiver of fees for attorneys whose gross annual income from all sources was \$20,000 or less. The revenue loss associated with this particular waiver was:

- 2006 - \$26,678
- 2007 - \$46,693
- 2008 - \$71,403
- 2009 - \$162,839
- 2010 - \$330,878
- 2011 - \$391,211

During that six year period, the revenue loss from this waiver increased 1300%. This revenue loss, combined with the fact that the Bar already provides a statutory waiver of 25% for attorneys earning \$40,000 or less, were factors in the Board's decision to eliminate the waiver.

DISCUSSION

At the March meeting, Trustee Elsbernd requested that the Committee consider reestablishing a waiver for extremely low income attorneys. For 2012, the federal poverty guidelines for household earnings for a family of four are approximately \$24,000. The proposal presented in this item would establish a waiver for members whose total household earnings are \$20,000 or below and would set the amount of the waiver at 50%. This proposed waiver differs from the previous waiver in that it clarifies that total gross household income be the threshold for determining eligibility (in place of the previous wording of total annual income from all sources). In the past, the interpretation of income to be included in the calculation was not always consistent. In addition, this fee waiver would allow a 50% reduction in the annual fee in place of the previous waiver of 100% of the annual fee. The exact language is proposed in Attachment A. This option would be proportional to the existing low income scaling criteria that provides a 25% fee reduction for members whose individual annual income from all sources is \$40,000 or less. (The Bar's low income fee scaling rule is mandated by Business & Professions Code 6141.1 (b).)

FISCAL / PERSONNEL IMPACT:

Based on the historical revenue loss associated with this waiver category, approval of this new low income waiver of 50% of the annual fee could reasonably be estimated at \$200,000 per year.

RULE AMENDMENTS:

Approval of this proposal at the July 2012 meeting would amend Rule 2.16, provision (C)(3), in Title 2, Division 2 of the State Bar Rules.

BOARD BOOK IMPACT:

None

RECOMMENDATION

This item provides an opportunity for the Member Oversight Committee to release for public comment the proposed fee waiver rule targeted at extremely low income attorneys, so that any comment may be considered at the July 2012 meeting.

PROPOSED BOARD COMMITTEE RESOLUTION:

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

RESOLVED, that the Member Oversight Committee authorizes a 30-day public comment period on the proposal for new State Bar Rule 2.16 (C) (3) (c), in the form attached, that would provide for a 50% waiver of membership fees for attorneys whose total gross household income is \$20,000 or less, and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be, construed as a statement or recommendation of approval of the proposed item.