

AGENDA ITEM

July 122

DATE: July 2, 2012

TO: Members, Board of Trustees
Members, Regulation, Admissions and Discipline Oversight

FROM: Dina DiLoreto, Managing Director, Member Records

SUBJECT: Proposed Amendments to California Rule of Court 9.22 and State Bar rule 2.34 regarding suspension for failure to pay court-ordered child or family support - recommendation of approval

EXECUTIVE SUMMARY

California Rule of Court 9.22 governs suspension of a member who fails to comply with court-ordered child or family support. State Bar rule 2.34 is the companion implementation rule.

This agenda item proposes amendments to these rules in order to make the process of suspension and reinstatement more effective and efficient. The proposal was published for a 30-day public comment period ending June 14, 2012. No comments were received.

It is recommended that the proposal be approved and staff directed to transmit it to the California Supreme Court for consideration and final action.

Board members with any questions may contact Dina DiLoreto at (415) 538-2121 or Dina.DiLoreto@calbar.ca.gov or Mary Yen at (415) 538-2369 or Mary.Yen@calbar.ca.gov.

BACKGROUND

State Bar members may be suspended from the practice of law for failure to pay court-ordered child or family support. In 1992, the Legislature enacted the predecessor to Family Code section 17520 (Welfare and Institutions Code section 11350.6) to provide for enforcement of court-ordered child or family support through the suspension or denial of the issuance of a professional or occupational license of a person who is delinquent in support payments. As a complement to the statute, in 1993 the Supreme Court exercised its inherent authority and power over admissions, discipline and

regulation of the practice of law,¹ including suspensions,² by adopting former California Rule of Court 962, which authorized the State Bar to transmit annually a recommendation of suspension of delinquent members and to provide for their reinstatement. In 1996 the former rule was amended to provide for additional suspension of a member who becomes noncompliant again. In 2007 the former rule was redrafted and renumbered as Rule of Court 9.22.

This proposal would amend California Rule of Court 9.22 in two ways. First, it would authorize the State Bar to transmit a recommendation of suspension to the Court twice a year instead of annually, and second, it would authorize the State Bar to reinstate a suspended member who becomes compliant with his or her support obligation without returning to the Court for a reinstatement order. Delegation of reinstatement authority is also proposed for a new Rule of Court 9.24 concerning suspension for state tax delinquency, which is the subject of a separate agenda item. The two agenda items contain a package of proposals intended for transmittal to the Supreme Court for consideration and final action.

The proposal was published for 30-day public comment period ending June 14, 2012. No comments were received.

It is now recommended that the board committee and Board approve the proposal and direct staff to transmit it to the California Supreme Court for consideration and final action.

ISSUE

Whether to approve the proposed amendments to California Rule of Court 9.22 [Suspension for failure to pay court-ordered child or family support] and State Bar rule 2.34 for recommendation to the California Supreme Court.

DISCUSSION

In California Rule of Court 9.22, subdivision (a) authorizes the State Bar to make an annual recommendation for suspension of members who are delinquent in court-ordered support payments under Family Code section 17520 (“section 17520”); subdivision (b) states the condition for reinstatement; subdivision (c) authorizes

¹ *In Re Attorney Discipline* (1998) 19 Cal.4th 582 [79 Cal. Rptr.2d 836, 967 P.2d 49].

² *In re Shattuck* (1929) 208 Cal. 6 [279 P. 998], suspension for disciplinary reasons; *Carpenter v. State Bar of California* (1931) 211 Cal. 358 [295 P. 23], suspension for nonpayment of dues.

additional suspension; and subdivision (d) authorizes the Board of Trustees to adopt rules.

Section 17520 provides for suspending the license of a person who fails to pay court-order child or family support, and denying a new license to such a person. Section 17520 contains notice and timeline requirements; conditions of reinstatement and re-suspension; and a process by which the person may challenge being named delinquent in paying support. The suspension process starts when the State Department of Child Support Services (“DCSS”) notifies a licensing agency (e.g., the State Bar) that a licensed member is delinquent in paying court-ordered support.³ The licensing agency notifies the member that suspension will take place at the end of 150 days if the member does not come into compliance. If a member is suspended, when the DCSS or a local child support agency notifies the licensing agency that the member is released because he or she became compliant, the licensing agency is to process the member’s reinstatement within five business days of receipt of the release.⁴ If the member becomes noncompliant again, a notification from DCSS to the licensing agency triggers additional suspension that is to take place no longer than 30 days after the licensing agency notifies the member that his or her license will be suspended.⁵

In actuality, the State Bar has been receiving notifications of delinquency for approximately 30-40 State Bar members per month. Bar staff checks with each member’s local support agency to see whether the member is still delinquent. Often, a member has become compliant. At other times, a member becomes compliant after receiving a letter from the State Bar but before being suspended. Sometimes, a member is subject to additional suspension after 30 days; such a member has an existing Supreme Court case number and suspension file and can be re-suspended without waiting for the next annual transmittal. In past years, approximately 20 members per year are suspended by the Supreme Court as part of the annual transmittal. The number of members included in the annual transmittal is expected to increase because the number of delinquent members has been rising.

1. Proposed Amendments to Rule of Court 9.22

The first amendment doubles the number of times per year that the State Bar may transmit a consolidated list of members to the Court for initial suspension after their 150-day periods have expired. The annual transmittal has delayed the suspensions of some members by several months or longer because their 150-day periods ended soon after the prior annual transmittal process took place. By increasing the number of transmittals to twice a year, all members will be suspended much closer to the end of their 150-day periods.

³ Family Code section 17520(f).

⁴ Family Code section 17520(l).

⁵ Family Code section 17520(l).

The second amendment authorizes the State Bar to reinstate a member immediately upon receiving a release notification from DCSS. Currently, after receiving the DCSS's release notification, the State Bar must return to the Supreme Court with a request for a reinstatement order and then implement the order. Since reinstatement is not discretionary, this amendment is intended to streamline the reinstatement process so that members will be reinstated as soon as possible and within five business days of the notification from the DCSS. In addition, since a segment of members are suspended, reinstated and additionally suspended on a frequent basis, over time there will be a cumulative savings in staff resources for the Supreme Court as well as the State Bar. The proposal has precedent in the process utilized for reinstating a member from suspension for nonpayment of dues. In that process, once the member pays the dues and penalties causing the fee suspension, reinstatement is not discretionary and the Court has authorized the State Bar to reinstate the member without returning to the Court for an order.⁶

A third set of amendments are editorial changes. These update the name of the Board of Trustees and the DCSS, and delete reference to State Bar "regulations" since State Bar rules encompass regulations.

Proposed California Rule of Court 9.22 reads as follows (an attachment to this agenda item shows the proposal with additions and deletions noted):

Rule 9.22. Suspension of members of the State Bar for failure to comply with judgment or order for child or family support

(a) State Bar recommendation for suspension of delinquent members

Under Family Code section 17520, the State Bar is authorized to transmit to the Supreme Court twice a year the names of those members listed by the State Department of Child Support Services as delinquent in their payments of court-ordered child or family support with a recommendation for their suspension from the practice of law.

(b) Condition for reinstatement of suspended members

A member suspended under this rule may be reinstated by the State Bar only after receipt by the State Bar of notification from the State Department of Child Support Services that the member's

⁶ The authorization for the State Bar to reinstate members upon payment of their dues is provided in the Supreme Court's order of suspension instead of a rule of court.

name has been removed from the State Department of Child Support Services list.

(c) Additional recommendation for suspension by the State Bar

Under Family Code section 17520(l), the State Bar is further authorized to promptly transmit to the Supreme Court with a recommendation for their suspension from the practice of law the names of those members previously listed by the State Department of Child Support Services as delinquent in their payments of court-ordered child or family support, who obtained releases under Family Code section 17520(h), and who have subsequently been identified by the Department of Child Support Services as again being delinquent.

(d) Authorization for the Board of Trustees of the State Bar to adopt rules

The Board of Trustees of the State Bar is authorized to adopt such rules as it deems necessary and appropriate in order to comply with this rule. The rules of the State Bar must contain procedures governing the notification, suspension, and reinstatement of members of the State Bar in a manner not inconsistent with Family Code section 17520.

2. Proposed Amendment to State Bar Rule 2.34

If the California Supreme Court amends California Rule of Court 9.22 as proposed, State Bar Rule 2.34 should be amended to read as follows, including the footnote citations that are part of the rule (an attachment to this agenda item shows the proposed amendment, which is in subdivision (C), with additions underlined and deletions noted):

State Bar Rule 2.34 Suspension for failure to comply with a family or child support obligation

(A) A member identified under the terms of Family Code § 17520 as failing to comply with a judgment or court order for child or family support will be suspended from the practice of law by the Supreme Court.^[7]

(B) The State Bar will send a written notice of suspension for failure to pay child or family support to the member's address of

⁷ California Rules of Court, Rule 9.22.

record. The suspension will be effective on the date ordered by the Supreme Court.

(C) The State Bar will reinstate a member if it receives statutory notice^[8] that the obligation has been discharged and if the member has paid any surcharge authorized by statute.^[9]

(D) If a reinstated member subsequently fails to comply with a judgment or court order for child or family support,^[10] the State Bar will request that the Supreme Court suspend the member within thirty days and will send written notice of its request to the member's address of record.

(E) Annual membership fees accrue according to the member's status prior to suspension.

3. Proposed New Rule of Court 9.- - on Refusal of Admission

Section 17520 also provides for denying a professional license to an applicant who is not in compliance with court-ordered child or family support. The State Bar has been complying with this part of section 17520.

A separate agenda item concerning the largest 500 state tax delinquents under Business and Professions Code section 494.5 proposes a new California Rule of Court 9.___ for refusal-of-admission of an applicant who is delinquent in court-ordered child or family support or who is among the 500 largest state tax delinquents. A copy of the rule is attached for information only.

PUBLIC COMMENT

No comments were received. The 30 day comment period ended on June 14, 2012.

FISCAL / PERSONNEL IMPACT:

None.

⁸ Family Code § 17520.

⁹ California Rules of Court, Rule 9.22; Family Code § 17520(n).

¹⁰ Family Code § 17520(l).

RULE AMENDMENTS:

Title II, Division 3, amend rule 2.34, subject to Supreme Court approval of the proposed amendment to California Rule of Court 9.22 to authorize the State Bar to reinstate members. The effective date of amended State Bar rule 2.34 will be determined by the effective date of the corresponding amendment to California Rule of Court 9.22.

BOARD BOOK IMPACT:

None.

RECOMMENDATION

It is recommended that the Regulation, Admissions and Discipline Oversight Committee recommend and the Board approve the proposed amendments to California Rule of Court 9.22 and State Bar rule 2.34.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Regulation, Admissions and Discipline Oversight Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that following a period of public comment and no comments being received, the Regulation, Admissions and Discipline Oversight Committee recommends that the Board approve the proposed amendments to California Rule of Court 9.22 and State Bar rule 2.34, in the form attached.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Regulation, Admissions and Discipline Oversight Committee's recommendation, the following resolutions would be in order:

RESOLVED, that following a period of public comment and no comments being received and upon the recommendation of the Regulation, Admissions and Discipline Oversight Committee, the Board hereby approves proposed amendments to California Rule of Court 9.22 and State Bar rule 2.34, in the form attached, and directs staff to transmit the proposal to the California Supreme Court for consideration and final action; and it is

FURTHER RESOLVED, that the effective date of the amendments to State Bar rule 2.34 is dependent on the effective date of the California Supreme Court's

approval and adoption of the proposed amendments to California Rule of Court 9.22.

- ATTACHMENTS:** A - California Rule of Court 9.22, with proposed amendments;
B - State Bar rule 2.34, with proposed amendment;
C - [Proposed] California Rule of Court 9.___ (for information only)