

AGENDA ITEM

54-121 JUL 19 2013

DATE: June 18, 2013

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

FROM: Dina DiLoreto, Director of Member Records and Compliance

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 - request for approval
following public comment

EXECUTIVE SUMMARY

California rule of court 9.22 and State Bar rule 2.34 govern suspension of a member who is delinquent in paying court-ordered child or family support.

In May 2013, the Regulation, Admissions and Discipline Oversight Committee authorized 30 days of public comment on proposed amendments to rule of court 9.22 and State Bar rule 2.34. The rule amendments that are intended to make suspension and reinstatement more effective and efficient. No public comment was received.

This agenda item recommends that the proposed amendments to the rule of court and the State Bar rule be approved for transmittal to the Supreme Court for 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 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 suspension of the professional license of a person who is delinquent in support payments. In 1993, as a complement to the statute, the California Supreme Court adopted former rule of court 962 to authorize suspension of members delinquent in court-ordered support payments and their reinstatement.

The Court's adoption of the rule of court was an exercise of its inherent authority and power over admissions, discipline and regulation of the practice of law, including suspensions, (In Re Attorney Discipline (1998) 19 Cal.4th 582 [79 Cal. Rptr.2d 836, 967 P.2d 49], inherent authority of the Court; 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). In 1996 the former rule was amended to provide for additional suspension of a member who is noncompliant again. In 2007 the former rule was redrafted and renumbered as rule of court 9.22.

In July 2012, the Board of Trustees approved amendments to rule of court 9.22. In August 2012, the proposed amendments were transmitted to the California Supreme Court for final action. It now appears that the Court would prefer the two amendments to rule of court 9.22 that are proposed in this agenda item.

First, this proposal would amend rule of court 9.22 (a) [annual recommendation for suspension] to authorize the State Bar to transmit a recommendation of suspension to the Court twice a year instead of annually. This amendment was in the August 2012 transmittal and is unchanged.

Second, rule of court 9.22(b) [condition for reinstatement] would be amended to add a new condition of reinstatement requiring a member to submit a declaration under penalty of perjury stating whether the member practiced law while suspended. The new reinstatement condition was not in the August 2012 filing. A comparable reinstatement declaration is also proposed for a new California rule of court 9.24 concerning suspension for state tax delinquency, which is the subject of a separate agenda item.

Also regarding rule of court 9.22(b), this agenda item deletes a delegation of reinstatement authority that had been requested in the August 2012 filing. It appears that the Court is not inclined to grant the request. The changes in the proposal for rule of court 9.22(b) are the primary differences between the August 2012 filing and the current proposal.

A third set of amendments make editorial revisions. These revisions were also requested in the August 2012 transmittal.

This item follows a 30-day public comment period. No public comment was received.

It is recommended that the Board approve the proposal and instruct staff to transmit the recommended amendments to the Supreme Court for final action.

ISSUE

Whether to approve 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, in the form attached.

DISCUSSION

California rule of court 9.22, paragraph (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”); paragraph (b) states the conditions for reinstatement; paragraph (c) authorizes additional suspension; and paragraph (d) authorizes the Board of Trustees to adopt rules.

Section 17520 provides for suspending the professional license of a person who fails to pay court-order child or family 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 member is delinquent. (Family Code section 17520(f).) The licensing agency notifies the member that suspension will take place after 150 days if the member does not become compliant with the support obligation. Members who remain noncompliant after the 150 days expire are suspended. Following suspension, when the DCSS or a local child support agency notifies the licensing agency that the member became compliant, the member is reinstated. If the member becomes noncompliant again, a notification from DCSS to the licensing agency triggers additional suspension that will take place no longer than 30 days after the licensing agency notifies the member that his or her license will be suspended. (Family Code section 17520(l).) The process of reinstatement and additional suspension continues as often as applicable.

In actuality, the DCSS provides delinquency notifications for approximately 30-40 State Bar members per month. Bar staff asks each member’s local support agency whether the member is still delinquent. The vast majority of members become compliant before the 150 days expire. In past years, approximately 20 members do not become compliant and are suspended as part of the annual transmittal. The number of members suspended in the annual transmittal process has increased in recent years.

Members who repeat their noncompliance have an existing Supreme Court case number and suspension file, and are additionally suspended without waiting for the next annual transmittal.

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 recommendation to the Court for initial suspension of members. The proposal is made because an annual transmittal has delayed the suspensions of members whose 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.

A second amendment adds a new requirement of reinstatement, a declaration under penalty of perjury stating whether the member practiced law during the suspension. The declaration is proposed because of concern that members who are repeatedly suspended and reinstated soon thereafter might not be complying with the suspension

order. For example, of the members who were initially suspended in 2008 in S165296, as of May 16, 2012 ten of the members have been additionally suspended and reinstated soon thereafter on multiple occasions. A short time gap between their suspensions and reinstatements suggests that these members do not regard suspension for child support delinquency as being a serious matter. The declaration under penalty of perjury is intended to promote compliance and enforcement and emphasize the importance of complying with a suspension order of the Supreme Court, even if the suspension is for a reason unrelated to the practice of law.

A third set of amendments make editorial changes to update the name of the Board of Trustees and the name of the DCSS and delete reference to State Bar "regulations" since rules encompass regulations. The introductory language of provision (b) is also restated in active voice to clarify that it is the Court that reinstates the member.

With the amendments, rule of court 9.22 would read as follows (an attachment to this agenda item shows the changes in legislative style 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) Conditions for reinstatement of suspended members.
The Supreme Court may reinstate a member suspended under this rule only after receipt of notification from the State Bar that the member's name has been removed from the State Department of Child Support Services list and that the member has submitted a declaration under penalty of perjury stating whether the member practiced law during the suspension.

(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 Court amends rule of court 9.22 as proposed, State Bar rule 2.34 would be amended as follows, including the footnote citations shown in the rule in brackets for ease of readability (an attachment to this agenda item shows the amendment, which is in subdivision (C), in legislative style):

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. [Footnote cites “California Rules of Court, Rule 9.22.”]

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

(C) The State Bar will ask the Supreme Court to reinstate a member if it receives statutory notice [Footnote cites “Family Code § 17520.”] that the obligation has been discharged, if the member submits a declaration under penalty of perjury stating whether the member practice law during the suspension and if the member has paid any surcharge authorized by statute. [Footnote cites “California Rules of Court, Rule 9.22; Family Code § 17520(n).”]

(D) If a reinstated member subsequently fails to comply with a judgment or court order for child or family support, [Footnote cites “Family Code § 17520(l).”] 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.

PUBLIC COMMENT

The proposal was published for a 30-day period of public comment ending June 17, 2013. No comments were received.

FISCAL / PERSONNEL IMPACT

None.

RULE AMENDMENTS

Title II, Division 3, amend rule 2.34, subject to California Supreme Court's approval of the amendments to California rule of court 9.22. The effective date of amended rule 2.34 will be determined by the effective date of the amendments to rule of court 9.22.

BOARD BOOK IMPACT

None.

RECOMMENDATION

It is recommended that the Regulation, Admissions and Discipline Oversight Committee recommend 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 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 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; and it is;

FURTHER RESOLVED, that staff be instructed to transmit the proposed amendments to rule of court 9.22 to the California Supreme Court with the Board's recommendation of approval.

PROPOSED BOARD OF TRUSTEES RESOLUTION

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

RESOLVED, that following a period of public comment and no comment being received, and upon the recommendation of the Regulation, Admissions and Discipline Oversight, the Board hereby approves the proposed amendments to California rule of court 9.22 and State Bar rule 2.34, in the form attached; and it is;

FURTHER RESOLVED, that staff is instructed to transmit the proposed amendments to rule of court 9.22 to the California Supreme Court with the Board's recommendation of approval.

ATTACHMENTS:

ATT 1 - California rule of court 9.22, with proposed amendments in legislative style

ATT 2 - State Bar rule 2.34, with proposed amendments in legislative style