

# AGENDA ITEM

Referral February

**DATE:** January 26, 2012

**TO:** Members, Board Committee on Operations

**FROM:** Peggy Van Horn, Chief Financial Officer

**SUBJECT:** Referral – Membership Fee Waivers, State Bar rule 2.16

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## EXECUTIVE SUMMARY

Trustee Samson Elsbernd requests that the Board reconsider its July 2011 decision to eliminate financial hardship as a basis for fee waiver under State Bar rule 2.16(c). Mr. Elsbernd asks the Board to reconsider this population (members who earn less than \$20,000 annually) alone, not in combination with the other three waivers that were also deleted by the Board in July 2011.

This item comes before the Board Operations Committee in its role as the control point for all items that appear on the agendas of the other board committees and of the board. Part of Board Operations charter is its responsibility to coordinate the work of the other board committees and oversee the Secretariat function of the board [Tab 9 (Board Committees and Task Forces), Article 2 (Committee on operations)]. Board OPS must “refer” any issue that appears on a committee agenda to that committee for consideration. All issues must first be deemed worthy of consideration by Board operations before the issue may be agendized before a committee.

This item provides background on the recent Board decision to eliminate four reasons for membership fee waivers. At the time the Board made the decision, it was noted that State Bar members with financial hardship may still qualify for fee scaling under State Bar rule 2.15, which provides a 25% reduction in membership fees. For the 2012 billing year, fee scaling reduces active dues by \$100.

## BACKGROUND

In 2011, two presentations were given to the Board regarding the fiscal impact to the State Bar from the various fee waivers that were offered. Of particular concern was the revenue loss from the waiver categories in place at that time. In addition to the

legislatively mandated low income scaling and the waiver for inactive members over 70 years of age, the Bar also offered the following waivers:

1. a medical hardship, natural disaster, or family emergency prevents or impairs the member from pursuing a livelihood for a substantial part of the year;
2. the member's total annual income from all sources is \$20,000 or less;
3. the member is a full-time magistrate, commissioner, or referee of a state or federal court of record;
4. the member is a retired judge who accepts assignments from the Chief Justice for a judicial capacity year-round;
5. the State Bar has erroneously assessed the annual membership fees or penalties; or
6. for any other reason, on a one-time only basis, if the member has no record of discipline, suspension or involuntary inactive enrollment.

The combined revenue loss from all waivers in 2011 was approximately \$3.4 million. Of this amount, almost \$400,000 was from the low income (\$20,000) waiver. The State Bar is an extreme outlier among other state bars and regulatory license agencies in the types and generosity of waivers offered. No other state bar has a legislatively required low income scaling option and staff's survey found no other agency who offered waivers for circumstances other than military status and "extreme hardship". There were no cases where fees were waived in their entirety.

At the January 2011 meeting, MOC authorized public comment for a proposal to delete 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. The staff error category was eliminated because all staff errors are corrected and therefore, are not waivers.

The proposal generated over 175 comments predominantly from members who had benefitted from receiving one or more fee waivers in the past. The vast majority of commenters opposed eliminating the financial hardship reason and the medical reason for a fee waiver. A commenter pointed out that attorneys who earn less than \$20,000 annually are very different from attorneys who earn less than \$40,000 annually.

At the meeting in July 2011, MOC considered the comments and then recommended unanimously to delete all four reasons that were the subject of public comment. The Board concurred with MOC's recommendation and the deletions were made in rule 2.16(c).

## **DISCUSSION**

Trustee Elsbernd requests that the Board consider exploring possibilities that will provide financial relief for extremely low income attorneys. For 2012, the federal poverty guidelines for household earnings for a family of four are approximately \$24,000. Mr. Elsbernd suggests that the Board consider establishing a waiver for

members whose total household earnings are \$20,000 or below and that the amount of the waiver be 50%. 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.

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

Over the past 6 years, the revenue loss from the \$20,000 waiver has grown from approximately \$27,000 in 2006 to almost \$400,000 in 2011. If the low income waiver was reinstated in its previous form, the revenue loss would likely continue to grow at a double digit pace. If a new low income waiver that reduces the fees by 50% rather than waiving the entire fee, was approved by the Board, the annual revenue loss could reasonably be estimated at \$200,000.

#### **RULE AMENDMENTS:**

None

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

None

#### **RECOMMENDATION**

Should the Committee on Board Operations decide to refer this item to the Member Oversight Committee, staff will recommend that the Board uphold its July 2011 decision to eliminate this waiver because the existing fee scaling option provides significant financial relief to low income members. Under the fee scaling criteria, a \$100 reduction is allowed. For 2012, all members are given a onetime fee reduction of \$10 and the opportunity to reduce their fees by the \$30 in optional deductions. Under this set of circumstances, low income members would only pay \$270 for an active license.

Alternatively, members who are not employed in a position that requires active membership status can transfer to Inactive status by Feb. 1 of the year and pay the Inactive rate of \$115. These members can also take the \$30 in optional deductions and bring the Inactive dues down to \$85.