

AGENDA ITEM

JUL 121

DATE: June 26, 2012.

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

FROM: Gayle Murphy, Senior Executive, Admissions;
Dina DiLoreto, Managing Director, Member Records

SUBJECT: AB 1424 (Stats. 2011, Chapter 455), proposed new California Rules of Court and State Bar rule regarding tax delinquency - request approval of proposal for transmission to the California Supreme Court

EXECUTIVE SUMMARY

AB 1424 (Stats. 2011, Chapter 455) is a comprehensive bill directed at the 500 largest state tax delinquents who owe over \$100,000. AB 1424 enacted new Business and Professions Code section 494.5, effective July 1, 2012, to provide for denying a license to or suspending the professional or occupational license of a taxpayer who is among the 500 largest state tax delinquencies. The State Bar, its members and applicants for admission are covered by AB 1424.

Since the Supreme Court of California has inherent authority and power over admissions, discipline and regulation of attorneys in California, a new California Rule of Court on refusal of admission, a new California Rule of Court on suspension, and a new State Bar rule on suspension are proposed to complement Business and Professions Code section 494.5.

This agenda item brings the proposal back from 30 days of public comment. No comments were received.

It is recommended that the board committee and the Board approve the proposal for transmittal to the California Supreme Court for consideration and final action.

Board members with any questions may contact Gayle Murphy at (415) 538-2322 or Gayle.Murphy@calbar.ca.gov, or 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

AB 1424 (Stats. 2011, Chapter 455) is directed at taxpayers who are named on publicized lists of the Franchise Tax Board (“FTB”) and the State Board of Equalization (“BOE”) as the 500 largest tax delinquents who owe over \$100,000. AB 1424 enacted Business and Professions Code section 494.5 (“section 494.5”), effective July 1, 2012, to provide for denying the issuance of a professional or occupational license to a named tax delinquent and suspending the license of a named tax delinquent. Section 494.5 contains notice and timeline provisions; conditions for reinstatement and re-suspension; and a process by which a tax payer may submit a challenge to the FTB or BOE if the taxpayer contests being named on the lists.

Section 494.5 is patterned after Family Code section 17520, which provides for suspension or denial of a professional or occupational license to a person who is delinquent in child support. In 1993, the California Supreme Court adopted the predecessor to California Rule of Court 9.22 [Suspension for failure to pay child or family support] to complement the then-newly enacted predecessor to Family Code section 17520. In adopting the rule of court, the Supreme Court acted on its inherent and primary constitutional authority over attorney admissions, discipline, and regulation of the practice of law in this State,¹ including the power to suspend a member.²

In light of the Supreme Court’s inherent authority over admission and suspension of members, this agenda item proposes 1) a new California rule of court for refusal-of-admission due to tax delinquency under section 494.5 or support delinquency under Family Code section 17520; 2) a new California rule of court for suspension due to tax delinquency under section 494.5; and 3) a new State Bar rule for suspension due to tax delinquency. In order to place the new State Bar rule with other suspension rules, it is recommended that two existing State Bar rules be renumbered.

The proposal returns from a 30-day public comment period authorized by the board committee at the May 2012 meeting. The period expired on June 14, 2012. No comments were received.

ISSUE

Whether to approve proposed new California Rule of Court 9.___ regarding refusal-of-admission; proposed new California Rule of Court 9.24 and new State Bar rule 2.36 regarding suspension; and renumbering existing State Bar rule 2.36 to 2.40 and rule 2.37 to 2.45; and instruct staff to transmit the proposal to the California Supreme Court.

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.

DISCUSSION

The FTB and BOE publicly disclose lists of the largest state tax delinquencies over \$100,000. AB 1424 increased the number of names on the lists from 250 to 500. The FTB publishes its list twice a year; the BOE publishes its list quarterly.

In April 2012, the FTB updated its list. As of April 17, 2012, the FTB list named 15 active State Bar members, 1 inactive member, and 3 people who are not eligible to practice or disbarred. The second largest income tax delinquent is a State Bar member who owes over \$6,000,000.00 and the total amount owed by the 15 other active and inactive members is over \$6,500,000.00

In light of the above information, there is a need for new Rules of Court and a new State Bar rule authorizing the suspension and denial of admission provided under section 494.5.

1. New Rule of Court 9. on Refusal of Admission

As of July 1, 2012, there are two statutes that provide for denying a professional license to a person who is delinquent in either state taxes or child support. Accordingly, it is appropriate to propose a new rule of court on refusal of admission of an applicant who is delinquent under section 494.5 or Family Code section 17520, as follows:

[Proposed] Rule 9. Refusal of admission of an applicant for failure to pay state taxes or for failure to comply with judgment or order for child or family support

(a) Refusal of admission for failure to pay state taxes

An applicant whose name is on a list of the State Franchise Tax Board or the State Board of Equalization of the 500 largest tax delinquencies under Business and Professions Code section 494.5 may not be admitted to the practice of law. Upon receipt of notification from the State Franchise Tax Board or the State Board of Equalization releasing the applicant, the State Bar may recommend that the Supreme Court admit the applicant if the applicant has met all other requirements for admission.

(b) Refusal of admission for failure to comply with child or family support order or judgment

An applicant whose name is listed by the State Department of Child Support Services as delinquent in the payment of court-ordered child or family support under Family Code section 17520 may not

be admitted to the practice of law. Upon receipt of notification from the State Department of Child Support Services that the applicant's name has been removed from its list, the State Bar may recommend that the Supreme Court admit the applicant if the applicant has met all other requirements for admission.

(C) Authorization for 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.

2. New Rule of Court 9.24 on Suspension

Proposed new Rule of Court 9.24 authorizes the suspension, reinstatement and re-suspension of members named on a list of the FTB or BOE as delinquent in taxes. The proposed rule is patterned after Rule of Court 9.22 (child or family support suspension), with slight variations due to the different nature of the delinquent obligation and different provisions for reinstatement and subsequent re-suspension. It is proposed that transmittal of a recommendation for suspension be authorized on a quarterly basis for members listed by the BOE and twice a year for members listed by the FTB. The Board is authorized to adopt rules necessary to comply with the rule.

Proposed new Rule of Court 9.24 reads as follows:

[Proposed] California Rule of Court 9.24 Suspension of members of the State Bar for failure to pay state taxes

(a) State Bar recommendation for suspension of delinquent members

The State Bar is authorized to transmit to the Supreme Court twice a year the names of those members who are on a list of the State Franchise Tax Board of the 500 largest tax delinquencies under Business and Professions Code section 494.5, and on a quarterly basis the names of those members who are on a list of the State Board of Equalization of the 500 largest tax delinquencies under Business and Professions Code section 494.5, with a recommendation for the members' 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 the State Bar receives a notification from the

State Franchise Tax Board or the State Board of Equalization releasing the member.

(c) Additional recommendation for suspension by the State Bar

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 Franchise Tax Board or the State Board of Equalization as delinquent in their payment of state taxes, who obtained releases under Business and Professions Code section 494.5(h), and who have subsequently been identified by the State Franchise Tax Board or the State Board of Equalization under Business and Professions Code section 494.5(j) as failing to comply with an installment payment plan that the member entered into with the State Franchise Tax Board or the State Board of Equalization.

(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 Business and Professions Code section 494.5.

The State Bar's reinstatement authorization in subdivision (b) would allow the State Bar to reinstate a member immediately upon receiving a release notification from the FTB or BOE without returning to the Supreme Court for a reinstatement order and then implementing the order. Section 494.5 has a 5-day processing provision for reinstatements³ and reinstating a member who is released by the FTB or BOE is not discretionary. The reinstatement authorization will streamline the reinstatement process so that a member is reinstated as soon as possible and within the 5-day window. Over time, the reinstatement authorization will have a cumulative effect of conserving resources of the Supreme Court and 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 Supreme Court has authorized

³ Business and Professions Code section 494.5(j).

the State Bar to reinstate the member without going back to the Supreme Court for an order.⁴

3. New State Bar Rule 2.36

Proposed new State Bar rule 2.36 is patterned after State Bar rule 2.34 for suspension due to child or family support delinquency. If the Supreme Court adopts Rule of Court 9.34 as proposed above, new State Bar rule 2.36 would read as follows, including footnotes citations that are part of the rule:

[Proposed New] State Bar Rule 2.36 Suspension for failure to pay state taxes

(A) A member identified under the terms of Business and Professions Code section 494.5 as delinquent in the payment of state taxes will be suspended from the practice of law by the Supreme Court.^[5]

(B) The State Bar will send a written notice of suspension for failure to pay state taxes 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 reinstate a member if it receives statutory notice^[6] releasing the member and if the member has paid any fee authorized by statute.^[7]

(D) If a reinstated member subsequently fails to comply with an installment payment agreement that the member entered into with the State Franchise Tax Board or the State Board of Equalization,^[8] 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.

⁴ The authority for the State Bar to reinstate members from suspension for nonpayment of dues is provided in the Supreme Court's order of suspension instead of in a rule of court.

⁵ California Rules of Court, [proposed] Rule 9.24.

⁶ Business and Professions Code section 494.5.

⁷ California Rules of Court, [proposed] Rule 9.24; Business and Professions Code section 494.5(f).

⁸ Business and Professions Code section 494.5(j).

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

4. Renumbering Existing State Bar Rules 2.36 and 2.37

In order to place proposed new State Bar rule 2.36 with other suspension rules and to reserve several numbers for the possibility of adding new suspension rules in the future, it is recommended that existing rule 2.36 [Multiple accrual rates for annual membership fees] be renumbered as rule 2.40 and existing rule 2.37 [Voluntary resignation] be renumbered as rule 2.45.

PUBLIC COMMENT

A 30-day public comment period expired on June 14, 2012. The State Bar received no comments.

FISCAL / PERSONNEL IMPACT:

None. Any impact will be absorbed by existing resources.

RULE AMENDMENTS:

Title II, Division 3, add new rule 2.36; renumber existing rule 2.36 as rule 2.40; and renumber existing rule 2.37 as rule 2.45, subject to Supreme Court approval of proposed California Rule of Court 9.24. The effective date of the rule amendments will be determined by the effective date of proposed California Rule of Court 9.24.

BOARD BOOK IMPACT:

None.

RECOMMENDATION

It is recommended that the Regulation, Admissions and Discipline Oversight Committee recommend and the Board approve proposed new California Rule of Court 9.____; proposed new California Rule of Court 9.24 and new State Bar rule 2.36 regarding suspension, and renumbering existing State Bar rule 2.36 as 2.40 and existing rule 2.37 as 2.45 and direct staff to transmit the proposal to the California Supreme Court.

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 proposal for new California Rule of Court 9.____ regarding admission, new California Rule of Court 9.24 and new State Bar rule 2.36 regarding suspension, and renumbering existing State Bar rule 2.36 as rule 2.40 and State Bar rule 2.37 as rule 2.45, in the form attached, and direct staff to transmit the proposal to the California Supreme Court for consideration and final action.

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 the proposal for new California Rule of Court 9.____ regarding admission, new California Rule of Court 9.24 and new State Bar rule 2.36 regarding suspension, and renumbering existing State Bar rule 2.36 as rule 2.40 and State Bar rule 2.37 as rule 2.45, 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 new State Bar rule 2.36 and renumber of existing rule 2.36 as 2.40 and existing rule 2.37 as 2.45 is dependent on the effective date of the California Supreme Court's approval and adoption of proposed new California Rule of Court 9.24.

ATTACHMENTS: A - [Proposed] new Rule of Court 9.____

B - [Proposed] new Rule of Court 9.24;

C - [Proposed] new State Bar rule 2.36; existing State Bar rule 2.36 renumbered as rule 2.40, and existing State Bar rule 2.37 renumbered as rule 2.45