

AGENDA ITEM

JUL 134

DATE: June 26, 2012

TO: Members, Board of Trustees
Members, Member Oversight Committee

FROM: Peggy Van Horn, Chief Financial Officer
Dina DiLoreto, Managing Director, Member Records

SUBJECT: Proposed Membership Fee Waiver, State Bar Rule 2.16
Return from Public Comment

EXECUTIVE SUMMARY

The Board of Trustees 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 May 10, 2012, meeting, the Member Oversight Committee (MOC) reviewed a proposal to reestablish a waiver of membership fees for extremely low income attorneys, and approved its release for public comment.

This item returns, from a 30 day public comment period, proposed changes to Rule 2.16 (C) that would provide for a 50% waiver of membership fees for attorneys whose total gross annual household income from all sources is less than \$20,000 per year. No comments were received.

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.

At the March 2, 2012, meeting, Trustee Elsbernd requested that the Committee consider reestablishing a waiver for extremely low income attorneys. The Committee then directed State Bar 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. Staff did so, and at the May meeting, the Committee authorized the proposal be released for a 30 day public comment period.

DISCUSSION

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 gross annual household income from all sources is \$20,000 or below and would set the amount of the waiver at 50%. This proposed waiver differs from the previous financial hardship waiver in that it clarifies that total gross household income from all sources 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).)

PUBLIC COMMENT

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

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

It is recommended that the proposed changes to Rule 2.16 (C) that would provide for a 50% waiver of membership fees for attorneys whose total gross annual household income from all sources is less than \$20,000 per year be approved.

PROPOSED BOARD COMMITTEE RESOLUTION:

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

RESOLVED, that following public comment and no comments being received, the Member Oversight Committee recommends that the Board approve 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

annual household income from all sources is \$20,000 or less, effective immediately.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Member Oversight Committee's recommendation, the following resolutions would be in order:

RESOLVED, that following public comment and no comments being received, and upon the recommendation of the Member Oversight Committee, the Board hereby approves 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 annual household income from all sources is \$20,000 or less, effective immediately.

ATTACHMENT: A - Proposed Amendments to State Bar Rule 2.16, subdivision (C)