

AGENDA ITEM

54-142 NOV 15 2013

DATE: October 31, 2013

TO: Members, Planning, Program Development and Budget Committee
Members, Board of Trustees

FROM: Mary Lavery Flynn
Director, Office of Legal Services

SUBJECT: Proposed Amendment to State Bar Rule 2.15 re Fee Scaling for
Employees of IOLTA Recipient Organizations – Request for Adoption
Following Public Comment

EXECUTIVE SUMMARY

State Bar Rule 2.15 (Scaling) now provides a 25% reduction in State Bar dues for certain active members who are employed on a continuous full-time basis by an organization that receives Legal Services Trust Fund grants and pays the member's bar dues.

An agenda item was submitted to the Board Committee on Operations at its October meeting that would amend and broaden the application of the 25% reduction to certain part-time employees who work at least half-time and who have no other income-producing employment relating to the practice of law.

At that meeting the Committee authorized a thirty-day public comment period, beginning October 12th and ending November 11th. This agenda item brings the proposal back from public comment. Thus far comments supportive of the amendment have been received from Disability Rights California, the Legal Aid Association of California, the National Senior Citizens Law Center, and OneJustice (attached). Since the deadline for submission of this agenda item precedes the end of the thirty-day public comment period, any additional comments received will be provided after the period closes.

It is recommended that the Planning, Program Development and Budget Committee recommend that the Board approve the Proposed Amendment to State Bar Rule 2.15 re Fee Scaling for Employees of IOLTA Recipient Organizations.

Questions may be directed to Mary Lavery Flynn at Mary.Flynn@calbar.ca.gov or (415) 538-2251.

BACKGROUND

Fee scaling is authorized by Business and Professions Code section 6141.1(b). State Bar rule 2.15 implements the statute.

Because of the chronic lack of funding facing legal services programs receiving funds from the Bar's Legal Services Trust Fund Program, the Bar adopted paragraph (b) of Rule 2.15 to help the programs by allowing them to scale the dues for those attorneys who were full time and for whom the nonprofit paid the dues. However, since many legal aid programs lack adequate funding to keep all their attorneys at a full-time level, the Office of Legal Services is proposing modifying the Rule so that it covered those attorneys employed by legal aid programs who work at least half-time and who do not have other income-producing employment relating to the practice of law and whose dues are paid for by the legal services program.

ISSUE

Whether the Planning, Program Development and Budget Committee should recommend to the Board of Trustees that it adopt the Proposed Amendment to State Bar Rule 2.15 re Fee Scaling for employees of IOLTA recipient organizations.

CONCLUSION

The modification of this Rule to cover legal services program attorneys who are working less than full-time, but are not otherwise obtaining income from the practice of law, is an appropriate extension of the Rule in keeping with the original intent of the Rule.

DISCUSSION

Beginning in the late 1980s, the Board allowed reduced membership dues for attorneys who worked with legal aid programs where the program paid the dues. This reduction seemed appropriate since the State Bar funded these legal aid programs and we were concerned about the chronic lack of funding faced by these nonprofits.

This step has been very much appreciated by legal aid programs over the years. However, with the recent downturn in the economy, many programs cut back some of their attorneys to part-time status. They were then faced with the anomalous situation where they could pay a reduced rate for their full time attorneys, but not for their attorneys who were working only 50% or 60%.

This proposal suggests a change to the wording of Rule 2.15(b). The proposed change would extend the reduced dues rate to attorneys who are working at least half-time for the legal aid program and the attorneys were not otherwise obtaining income from the practice of law.

Because of the minor nature of the proposed change and the fact that it is expected to be noncontroversial, the Bar's Office of Legal Services requests that the Planning, Program Development and Budget Committee recommend to the Board of Trustees that it approve the proposed change so that it may be implemented in time for the 2014 dues year.

With the proposed amendment of paragraph (b), Rule 2.15 would read as follows:

Rule 2.15 Scaling

(A) An active member who has a total gross annual individual income from all sources of less than \$40,000 may request a 25% reduction of annual membership fees. The request must be submitted by the date set forth in the Schedule of Charges and Deadlines and include

(1) the Active Member Fee Scaling Declaration signed under penalty of perjury; and

(2) payment of the reduced fee.

New members admitted after May 31 do not qualify for scaling.

(B) An employer that receives State Bar Legal Services Trust Fund grants and is a qualified legal services project or qualified support center as defined by statute [Business & Professions Code § 6210 et seq.] may request a reduction of annual membership fees by 25% for an active member employed on a continuous full-time basis **or an active member employed on at least a half-time basis who has no income from other employment related to the practice of law.** The request must be submitted by the date set forth in the Schedule of Charges and of Deadlines and include

(1) the Qualified Employer Fee Scaling Declaration signed under penalty of perjury that the employer is qualified and pays annual membership fees on the member's behalf; and

(2) payment of the reduced fee.

(C) Members who scale are subject to audit and upon request must provide the State Bar with past federal and state income tax returns or other acceptable documentation of financial condition.

(D) If the State Bar determines that a member is ineligible to scale, the member must pay full annual membership fees and any late payment penalties.

(Rule 2.15 adopted effective June 17, 2006; amended effective July 20, 2007.)

FISCAL / PERSONNEL IMPACT:

None

RULE AMENDMENTS:

Rules of the State Bar, Title 2, Division 2, Rule 2.15, as shown on Attachment A.

BOARD BOOK IMPACT:

None

RECOMMENDATION

Staff recommends that the Planning, Program Development and Budget Committee recommend to the Board of Trustees that it adopt the Proposed Amendment to State Bar Rule 2.15.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Planning, Program Development and Budget Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Planning, Program Development and Budget Committee recommends that the Board adopt the Proposed Amendment to State Bar Rule 2.15 in the form this day before the committee.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the Planning, Program Development and Budget Committee's recommendation, the following resolutions would be in order:

RESOLVED, that upon the recommendation of the Planning, Program Development and Budget Committee, the Board hereby adopts the Proposed Amendment to State Bar Rule 2.15 in the form this day before the board.

Attachments

Attachment A, State Bar Rule 2.15 with proposed amendment shown in legislative style
Attachment B, Comments Received