

AGENDA ITEM

121 NOV 2015

DATE: November 3, 2015

TO: Members, Regulation and Discipline Committee
Members, Board of Trustees

FROM: Colin Wong, Chief Administrative Officer, State Bar Court

SUBJECT: Change of Status of State Bar Court Review Department Judge

EXECUTIVE SUMMARY

The Presiding Judge of the State Bar Court (SBC), Catherine Purcell, is requesting that the one 60% time Review Department Judge position be increased to 100% time.

Currently, three judges serve in the Review Department – two Review judges and the Presiding Judge. The Presiding Judge and one Review judge serve full-time and are compensated at 100% salary. One review judge serves part-time and is compensated at 60% salary. This is a request to increase the current part-time judge's schedule to full-time at 100% salary based on the current workload considerations. This change would take effect on November 1, 2016.

BACKGROUND

State Bar Court Review Department judges are appointed by the Supreme Court to six-year terms under Business and Professions Code (B&P Code) section 6086.65. As Supreme Court appointees, the judges are not State Bar employees in the usual sense, but are compensated by the State Bar with salary and benefits. Business and Professions Code section 6079.1, which is applicable to Review Department judges, mandates that the State Bar “fix and pay reasonable compensation and expenses” to the judges and provide “adequate support staff” to the State Bar Court. By statute, the Presiding Judge and Review Department judges are to be paid the same rate as Superior Court judges. This has been the case since the inception of the full time professionalized SBC in 1989.

A change in the composition of the State Bar Court and/or part time/full time status is not unprecedented. Following an examination of the State Bar Court's workload by state Legislative Analyst's Office (“LAO”), a court reorganization was implemented in 1994. This included adding a judge to the Hearing Department based on the LAO's findings that the workload there was excessive. The LAO report also found that the Review

Department's workload did not support three fulltime Review judges, as its workload had evolved from inception in 1989. Rather than eliminate Review judges, the then Review Department judges asked to voluntarily reduce their work and compensation to 60% time. This was a voluntary act by them, expressly based upon workload considerations at the time. This type of adjustment was contemplated by Section 6086.65, as the statutory language provides for the possibility of reducing Review Department judges to part-time as the workload might allow.

Filings in the Review Department has remained relatively consistent at approximately 50 cases per year for the past five years and therefore having two part-time Review judges did not pose any issues. However, as a result of the large increase in loan modification discipline matters being filed, cases that were processed through the Hearing Department were eventually being appealed to the Review Department. This increase was particularly apparent in 2013 when the Review Department filed 103 cases requesting review. By comparison, in 2012, the Review Department filed 59 cases. As a result of this increase, in October 2013, this Board approved then Presiding Judge Joann Remke's request to increase Review Judge Catherine Purcell from 60% time to 100% time.

With the addition of another 69 cases filed in 2014, current Presiding Judge Purcell requested that the Supreme Court appoint former Presiding Judge Ronald Stovitz as a Pro Tem Review Judge for 18 months. The Supreme Court granted the request and appointed Judge Stovitz as a Pro Tem Review Judge in March 2015. As of October, an additional 36 cases have been filed in the Review Department. Even with the addition of Judge Stovitz, the Review Department had 84 cases pending at the beginning of this year.

Although, the Review Department is processing the additional cases as quickly as possible, Judge Purcell is requesting that the one part-time Review judge be increased to full-time status at the conclusion of the current Review judge's six-year term.

CONCLUSION

The Regulation and Discipline Committee and Board of Trustees should approve the request that the request that the one Review judge position serving 60% part-time status be increased to 100% full-time status effective November 1, 2016. There is no known opposition to the proposal.

DISCUSSION

Currently, there are three judges that serve on the Review Department, two Review Department judges and the Presiding Judge. The Presiding Judge and one Review judge are compensated at 100% of salary, while the other Review judge is compensated at 60% consistent with the 1994 action discussed above. The Presiding Judge is recommending that the remaining part-time Review judge position be increased to full-time, based on current workload considerations.

The increase in budget will be absorbed by the existing budget and is not a material change in general fund costs.

FISCAL / PERSONNEL IMPACT

This will be absorbed by the existing SBC budget and is not a material change in general fund costs. This proposal is within existing fiscal budget standards.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

BOARD COMMITTEE RECOMMENDATION:

The Regulation and Discipline Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, the Board of Trustees approves the change of status of the part-time Review judge position to full-time status in accordance with the governing Rules and Regulations Pertaining to State Bar Court Judge Service and other governing State Bar personnel standards, effective November 1, 2016; and it is

FURTHER RESOLVED, the Board of Trustees directs staff to forward notice of this action to the Supreme Court for its consideration.