

AGENDA ITEM

121 JANUARY 2017

DATE: January 4, 2017

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

FROM: Leah Wilson
Chief Operating Officer

SUBJECT: Voluntary Resignation Form Revision; Request for Approval

EXECUTIVE SUMMARY

The Regulation and Discipline Committee is asked to recommend that the Board of Trustees approve revisions to the Voluntary Resignation form required of those who wish to resign *without* charges pending to include an attestation of compliance with California Rules of Court rule 9.20 ("rule 9.20") prior to submission of the resignation application to the Supreme Court (Court). This change will streamline the process of voluntary resignations and eliminate the need for the Office of Probation (Probation) to monitor compliance with California Rule of Court rule 9.20 without any adverse consequences to public protection. Moreover, approval of the revised form will obviate the need for Supreme Court orders accepting voluntary resignation applications to include rule 9.20 directives. State Bar rule 2.45(B) requires that the Voluntary Resignation form be approved by the Board of Trustees.

The Supreme Court has considered the proposal to revise the process and the Voluntary Resignation form as described herein and has voiced no objections to the changes.

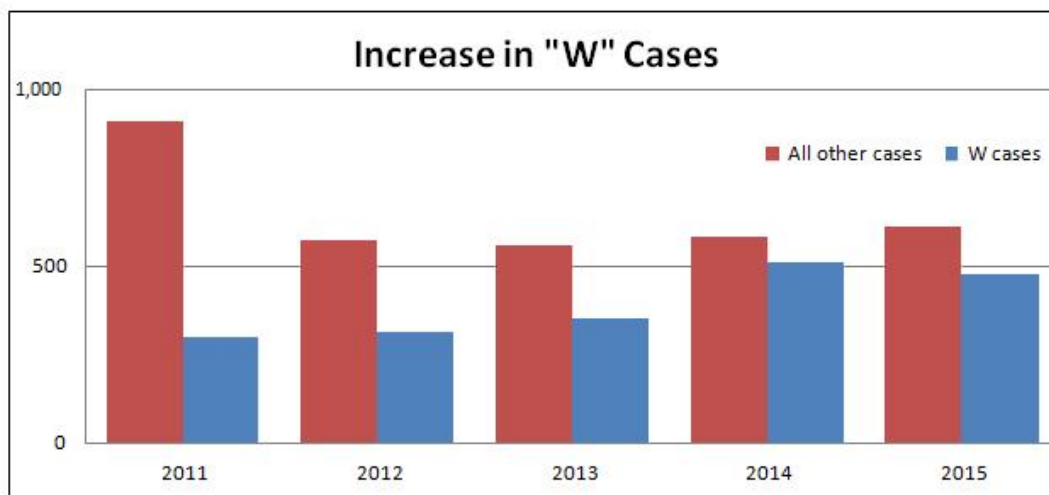
DISCUSSION

To align its resources with its primary mission to protect the public, the Legislature required the State Bar to develop a workforce plan for its discipline system. The report was submitted to the Legislature on May 13, 2016, with recommendations to be implemented by December 31, 2016. Several of these recommendations addressed the Office of Probation, with many stemming from an observation of unnecessarily high Probation caseloads. Specifically, the report suggested that there is no public protection need for Probation to be supervising all of the populations currently under its purview. One such population is comprised of attorneys resigning from the State Bar without charges pending.

Rule 9.20 provides that the Supreme Court may include in an order disbaring or suspending a member of the State Bar, or accepting his or her resignation, a direction that the member must, within such time limits as the Supreme Court may prescribe:

- (1) Notify all clients being represented in pending matters and any co-counsel of his or her disbarment, suspension, or resignation and his or her consequent disqualification to act as an attorney after the effective date of the disbarment, suspension, or resignation, and, in the absence of co-counsel, also notify the clients to seek legal advice elsewhere, calling attention to any urgency in seeking the substitution of another attorney or attorneys;
- (2) Deliver to all clients being represented in pending matters any papers or other property to which the clients are entitled, or notify the clients and any co-counsel of a suitable time and place where the papers and other property may be obtained, calling attention to any urgency for obtaining the papers or other property;
- (3) Refund any part of fees paid that have not been earned; and
- (4) Notify opposing counsel in pending litigation or, in the absence of counsel, the adverse parties of the disbarment, suspension, or resignation and consequent disqualification to act as an attorney after the effective date of the disbarment, suspension, or resignation, and file a copy of the notice with the court, agency, or tribunal before which the litigation is pending for inclusion in the respective file or files.

The Court had routinely ordered rule 9.20 compliance for attorneys resigning *with* charges pending. Sometime in 2011, Probation began receiving Supreme Court orders requiring that attorneys who resigned *without* charges pending also comply with rule 9.20 ("W" matters). This requirement has recently become problematic as the increase in the inactive membership fee appears to have caused an increase in resignations without charges pending. In 2011 there were 299 W cases, which represented 25 percent of the total probation cases opened in that year. By 2015 the number of W cases had increased to 476, 44 percent of the total cases opened, as reflected in the table below:



The task of monitoring compliance with the Court's 9.20 orders rests with the Office of Probation. In attempting to enforce compliance, however, Probation often receives calls from family or friends informing the State Bar that the attorney is unable to comply with the order because of illness or mental incapacity. In addition, many of the resigning attorneys have never practiced law in California or are judges, commissioners, or employees of the federal or state government. The cumbersome resignation process involving ongoing Probation supervision is thus impractical and ineffective.

There will be no detrimental impact on public protection by requiring attorneys who wish to resign without charges pending to attest to pre-compliance with rule 9.20 as a condition of submitting and accepting their resignation form. In fact, public protection may be better served by the proposed process as it will require members who wish to resign without charges pending to more promptly notify clients, the courts and opposing counsel of their pending resignations, and better assure that client files and unearned fees have been returned. Moreover, requiring pre-compliance with rule 9.20 directives will eliminate the need for Probation to monitor compliance of this particular group of members thereby making staff available for more pressing matters.

Request to the Supreme Court

Supreme Court staff was kept apprised of the Bar's proposed change in procedure as it was being developed. The final proposal, including the revised Voluntary Resignation form, was presented to the Supreme Court for its review at its December, 2016, administrative conference. The Court has no objections to implementation of the new procedure.

FISCAL/PERSONNEL IMPACT

Adopting this request will have a positive impact on personnel in the Office of Probation by eliminating the need for staff to monitor compliance with rule 9.20 by members who resign without charges pending.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

BOARD GOALS & OBJECTIVES

Approval of this request is consistent with the mission of the State Bar, as set forth in Section 6001.1 of the Business and Professions Code, which places protection of the public as the highest priority of the Bar and the Board of Trustees. This request also furthers Goal and Objective number 1 of the 2012-2017 Five-Year Plan to "[e]nsure a timely, fair, and appropriately resourced discipline and regulatory system."

BOARD COMMITTEE RECOMMENDATIONS

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

RESOLVED, that the Board of Trustees adopts the revised Voluntary Resignation Form as set forth in Attachment B, effective upon adoption.

ATTACHMENT(S) LIST

- A.** Current Voluntary Resignation Form
- B.** Revised Voluntary Resignation Form