



The State Bar *of California*

OPEN SESSION AGENDA ITEM 704 JANUARY 2019

DATE: January 25, 2019

TO: Members, Board of Trustees

FROM: Donna Hershkowitz, Chief of Programs
Dina DiLoreto, Program Director, Office of Attorney Regulation & Consumer Resources

SUBJECT: Waiver of Licensing Fee Late Payment Penalty for Federal Employees Impacted by the Partial Federal Government Shutdown

EXECUTIVE SUMMARY

The Office of Attorney Regulation & Consumer Resources has received several inquiries from federal employees impacted by the partial federal government shutdown about the ability to delay payment or waive fees or late payment penalties associated with annual licensing fees from federal employees, and we anticipate more as the February 1 payment deadline approaches. This item proposes a plan for proactively addressing the unanticipated temporary loss of wages by California attorneys impacted by the shutdown. This will assist federal employees in meeting their obligations, and streamline the administrative procedures that would typically have the Board consider waiver requests after a penalty has already been imposed. Adoption of the recommendations in this item will also instill confidence that the State Bar will act swiftly and appropriately to address unforeseen issues. Title Two, Rule 2.16 provides specific guidelines for approved waiver categories, and Rule 2.16 (H) specifically provides that the Board reserves the right for good cause to consider all other requests for waivers. This agenda item also recommends delegation to staff to take reasonable measures to address payment issues related to other fees for those impacted by the partial federal government shutdown.

BACKGROUND

Rule 2.16 of Title Two of the Rules of the State Bar of California provides for waiver of annual license fees and penalties. Rule 2.16 (C) specifies three circumstances where staff may grant a licensee's request for waiver of up to \$1,000 in annual licensing fees and penalties for the year

in which they are due: (1) the licensee serves full-time as a magistrate, commissioner, or referee for a state or federal court of record; (2) the licensee is a retired judge who accepts assignments from the Chief Justice in the assigned judges' program; or 3) the licensee's total gross annual household income from all sources is \$20,000 or less, in which case the waiver is 50% of the annual license fees.

Rule 2.16 (D) – (G) also allow staff to grant waivers for licensees serving in the National Guard or in one of the military Reserve units for at least 30 days, judicial officers who are leaving office, inactive licensees over 70 years of age, and licensees enrolled in the State Bar of California Pro Bono Practice Program.

Rule 2.16 (H) reserves to the Board of Trustees the authority, for good cause, (1) to grant requests for waivers denied by staff and (2) to consider requests that fall outside of staff's authorization for granting a waiver of fees and penalties. Traditionally, a small group of Board members volunteer to meet with staff, review the waiver requests that come under Rule 2.16 (H) and then make recommendations to the appropriate Board committee and the Board of Trustees on whether good cause is present to grant the waiver requests.

DISCUSSION

Annual licensing fees are due February 1, 2019. Thereafter, late payment penalties of \$100 for Active licensees and \$30 for Inactive licensees will be assessed.

As a result of the partial federal government shutdown, which started December 22, 2018, and was still in effect during the drafting of this memo, many impacted federal employees have already contacted the Bar with concerns about being able to timely pay their annual fees. Those federal employees are currently being assured that the immediate consequence for lack of payment by Feb 1 is strictly a financial penalty and that there will be no impact to their license status. The final deadline to pay any outstanding fees and penalties will be July 1, after which they would be potentially subject to administrative suspension. As a result, attorneys have until July 1 to resolve their outstanding balance. Those licensees who anticipate requesting a waiver of any late payment penalty are being instructed to submit their written request for consideration by the Board, as provided by Rule 2.16 (H). Staff is prepared to collect and submit such requests for board consideration in the same way we handled waiver appeals in 2018.

However, the State Bar has the opportunity to proactively address the issue and provide assurance to federal employees that if they supply the requisite proof, they will not be obligated to pay a late payment penalty for missing the February 1 deadline. As such, staff is seeking the advance approval by the Board to grant requests for waiver of 2019 late payment penalties for licensees who can prove that they are federal employees who have been financially impacted by the shutdown. We expect this proof may come from the individual federal employees, or by federal bureaus or departments who would normally pay licensing fees for a group of employees through our Agency Billing system. Because we cannot know at this time how long the shutdown might continue, staff are proposing that this advance

approval for the waiver apply for all federal employees who submit the requisite proof in advance of the March Board meeting. Staff will return at the March Board meeting to provide an update and seek further direction.

There are, of course, others who might be financially impacted by the shutdown, including federal contractors or vendors or employees thereof, or spouses of federal employees impacted by the shutdown. However proof of the impact could be more difficult to interpret, as they may have multiple contracts or sources of income that the Board would want to consider in granting a waiver. As a result, staff is not recommending altering the process for these individuals. They will be permitted to request a waiver of their fees or penalties in the same manner as all others, and the Board will consider these in due course, as they do in all other years.

Staff also received a request from a bar exam applicant to waive or defer the exam fee for the to allow the applicant to meet the registration deadline. We anticipate, depending on the length of the shutdown, similar requests could be made by applicants and attorneys in a variety of other contexts. This item also therefore requests that the Board delegate to staff the authority to take reasonable measures to address other issues that may be raised by applicants and attorneys impacted by the partial federal government shutdown as they may arise. Staff will provide regular updates to the Chair of the Finance and Planning Committee on such measures adopted so as to receive timely feedback and direction.

FISCAL/PERSONNEL IMPACT

Based on the number attorneys with California licenses on Active status who claim a federal employee exemption when reporting MCLE compliance, we roughly estimate that 4,000 Active attorneys work for the federal government. (There are certainly some federal government employees on Inactive status that would also benefit by this proposal, but we believe that the vast majority are Active.) The late payment penalty for Active licensees is \$100. Typically federal employees pay these fees timely. State Bar revenue estimates therefore do not anticipate late payment by this group of licensees; waiving the payment penalty will therefore not impact anticipated State Bar revenues.

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATIONS

It is recommended that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve the waiver of any 2019 licensing fee late payment penalty where the requester has provided proof, prior to the March 2019 Board meeting, to the satisfaction of staff that they are a federal employee impacted by the partial government shutdown; and it is

FURTHER RESOLVED, that the Board of Trustees hereby delegate to staff the authority to adopt reasonable measures to similarly address other payment issues that may be raised by applicants and attorneys impacted by the partial federal government shutdown; and it is

FURTHER RESOLVED, that the Board of Trustees direct staff to report regularly to the Chair of the Finance and Planning Committee on any measures adopted to address these other payment issues; and it is

FURTHER RESOLVED, that staff continue to monitor the partial federal government shutdown and report back to the Board in March with any further recommendations.

ATTACHMENT(S) LIST

None