



The State Bar *of California*

OPEN SESSION

AGENDA ITEM

50-9 NOVEMBER 2019

DATE: November 14, 2019

TO: Members, Board of Trustees

FROM: Robert G. Retana, Deputy General Counsel, Office of General Counsel

SUBJECT: Proposed Correction to Changes to State Bar Rule 2.16 Adopted in January of 2019

EXECUTIVE SUMMARY

In January of 2019, the Board of Trustees approved changes to the State Bar Rules and Rules of Procedure of the State Bar. Those nonsubstantive changes were needed to conform the rules to recent statutory changes. However, there was an unintended change to Rule 2.16(E) which needs to be corrected to reflect the actual nonsubstantive change intended by the BOT's resolution approving the rule changes.

BACKGROUND

At the January 2019 Board of Trustees (Board) meeting, the Office of General Counsel proposed nonsubstantive changes to the State Bar Rules of Procedure and Rules of the State Bar to conform to specific changes in the law. The changes were needed to conform these rules to revisions made to the Business and Professions Code resulting from the passage of Senate Bill 36, effective January 1, 2018 (2018 Stats., ch. 422) , and Assembly Bill 3249, effective January 1, 2019 (2019 Stats., ch. 659). The proposed changes were adopted by the Board.

Changes relevant to this agenda item include updated references in the Business and Professions Code reflective of the separation of the sections, such as replacing the terms "members" and "membership" with "licensees" and "license," and replacing "dues" with "fees."

The agenda item submitted to the Board at that time is voluminous, so it is not attached hereto. However, it can be located at:

<http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000023511.pdf>.

State Bar Rule 1.10 provides that public comment is not required to update references to conform to specific changes in law. Thus, the proposed nonsubstantive changes were approved without a public comment period. Recently, it was determined that one of the subject changes resulted in an unintended change to Rule 2.16, as described below.

DISCUSSION

Rule 2.16 (E) allows a waiver of licensing fees for judicial officers in the year they leave the bench and return to licensee status. The change adopted by the Board in January was as follows:

- (E) Annual ~~membership~~ license fees are waived for the year in which a judicial officer leaves office and returns to ~~membership~~ active status in the State Bar.

By changing “membership” to “active status,” the adopted amendment unintentionally eliminated the rule’s applicability to judges who leave the bench and go to inactive status.

The rule should therefore be corrected to read as follows:

- (E) Annual license fees are waived for the year in which a judicial officer leaves office and returns to active or inactive status with the State Bar.

The proposed correction is underlined as shown above.

Attachment A shows the current version of Rule 2.16(E) with changes that were adopted by the BOT in January of 2019.

Attachment B shows the redlined version of the rule with the proposed correction.

Attachment C shows the corrected version of the rule.

This correction accurately reflects the nonsubstantive changes needed to conform to changes in the law. Therefore, public comment is not required. See Board Rule 1.10.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

Title 1, Division 2, Rule 2.16(E)

BOARD OF TRUSTEES POLICY MANUAL AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 1. Successfully transition to the “new State Bar” — an agency focused on public protection, regulating the legal profession, and promoting access to justice.

Objective b: Implement and pursue governance, composition, and operations reforms needed to ensure that the Board’s structure and processes optimally align with the State Bar’s public protection mission.

RECOMMENDATIONS

IT IS RECOMMENDED THAT THE BOARD OF TRUSTEES APPROVE THE FOLLOWING RESOLUTION:

RESOLVED, that the Board of Trustees approve the recommended correction to nonsubstantive changes made to State Bar Rule 2.16(E) as reflected in Attachments B and C; and it is

FURTHER RESOLVED, that the revisions are effective November 14, 2019.

ATTACHMENT(S) LIST

- A.** Current version of Rule 2.16(E).
- B.** Redlined version of the proposed rule showing changes needed to correct unintended changes to the rule.
- C.** Clean version of the proposed rule.

TITLE 2. RIGHTS AND RESPONSIBILITIES OF LICENSEES

Adopted July 2007

DIVISION 2. ANNUAL LICENSE FEES AND PENALTIES

Rule 2.10 Definitions

- (A) “Annual license fees” are those fees that any licensee must pay to maintain active or inactive status in a calendar year. These fees may include additional assessments and costs prescribed by law.¹
- (B) “Penalties” are the surcharges assessed any licensee who fails to pay annual license fees on time.

Rule 2.10 adopted effective June 17, 2006; amended effective January 25, 2019.

Rule 2.11 Due date

A licensee must pay the annual license fees set forth in the Schedule of Charges and Deadlines each calendar year no later than February 1.

Rule 2.11 adopted effective June 17, 2006; amended effective January 25, 2019.

Rule 2.12 New licensees

A new licensee must be enrolled as active and pay initial fees within forty-five days of the invoice date for the fees as follows:

- (A) full annual license fees if admitted between January 1 and May 31;
- (B) half the annual license fees if admitted between June 1 and November 30;
- (C) the administrative fee for admission set forth in the Schedule of Charges and Deadlines if admitted in December.

Rule 2.12 adopted effective June 17, 2006; amended effective July 20, 2007; amended effective January 25, 2019.

Rule 2.13 Late payment penalties

Late payment of annual license fees is subject to the penalties set forth in the Schedule of Charges and Deadlines.

Rule 2.13 adopted effective June 17, 2006; amended effective January 25, 2019.

¹ Business & Professions Code §§ 6140.5, 6140.7.

Rule 2.14 No refund

Unless these rules provide otherwise, a licensee is not entitled to a refund of annual license fees because of death, resignation, disbarment, transfer to inactive status, entering judicial office, or for any other reason.

Rule 2.14 adopted effective June 17, 2006; amended effective January 25, 2019.

Rule 2.15 Scaling

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

- (1) the Active Licensee Fee Scaling Declaration signed under penalty of perjury; and
- (2) payment of the reduced fee.

New licensees 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 statute² may request a reduction of annual license fees by 25% for an active licensee employed on a continuous full-time basis or an active licensee 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 license fees on the licensee's behalf; and
- (2) payment of the reduced fee.

(C) Licensees 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 licensee is ineligible to scale, the licensee must pay full annual license fees and any late payment penalties.

Rule 2.15 adopted effective June 17, 2006; amended effective July 20, 2007; amended effective November 15, 2013; amended effective January 25, 2019.

² Business & Professions Code § 6210 et seq.

Rule 2.16 Waivers

- (A) In this rule, “annual license fees” and “penalties” are construed narrowly and do not include
- (1) disciplinary costs³ or monetary sanctions,⁴
 - (2) Client Security Fund disbursements and costs,⁵
 - (3) mandatory fee arbitration award penalties and costs,⁶
 - (4) Minimum Continuing Legal Education (“MCLE”) noncompliance or reinstatement penalties, or
 - (5) any other charges that may be added to annual license fees for failure to comply with obligations imposed by court order, statute, or rule.
- (B) To be considered for the current year, a request must be submitted by February 1. Requests submitted after February 1 must be accompanied by full payment of any outstanding charges, which will be refunded if the request is granted.
- (C) The Secretary may waive up to \$1,000 in annual license fees and related penalties for the year in which they are due, provided that the request is
- (1) in writing;
 - (2) supported by satisfactory documentation; and
 - (3) for any of the following reasons:
 - (a) the licensee serves full-time as a magistrate, commissioner, or referee for a state or federal court of record;
 - (b) the licensee is a retired judge who accepts assignments from the Chief Justice of California to act in a judicial capacity at least 90% of the calendar year; or
 - (c) the licensee has a total gross annual household income from all sources of \$20,000 or less, in which case the waiver is 50% of annual license fees.

³ Business and Professions Code § 6086.10.

⁴ Business and Professions Code § 6086.13.

⁵ Business and Professions Code § 6140.5.

⁶ Business and Professions Code § 6203(d)(3).

(D) The Secretary may waive annual license fees and related penalties for a licensee serving in the Army National Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, or the Coast Guard Reserve provided that

(1) the licensee has been ordered to report to full-time active duty for more than thirty days;

(2) a request for waiver is submitted in writing by the licensee, licensee's spouse, relative, law partner or associate, or legal representative and accompanied by:

(a) a copy of the order to report for active duty, or

(b) a copy of the order to report for active duty and a certified declaration by a JAG officer that the licensee has served on active duty for more than thirty days.

A licensee granted a waiver under this rule must notify the State Bar within thirty days upon termination of the assignment to active duty.

(E) Annual license fees are waived for the year in which a judicial officer leaves office and returns to active status in the State Bar.

(F) Annual license fees are waived for licensees on inactive status who are 70 years of age on February 1.

(G) Annual license fees may be waived for a licensee who is enrolled in the Pro Bono Practice Program.⁷

(H) The board reserves the right for good cause

(1) to grant requests for waivers denied by the Secretary; and

(2) to consider all other requests for waivers.

(I) A waiver granted under this rule does not remove a court-ordered suspension for nonpayment of fees or penalties.

Rule 2.16 adopted effective June 17, 2006; amended effective July 20, 2007; amended effective July 17, 2009; amended effective July 22, 2011; amended effective March 2, 2012; amended effective July 20, 2012; amended effective January 25, 2019.

⁷ See Rules 3.325-3.330

Rule 2.17 Keller deductions and challenges

- (A) Keller v. State Bar of California (1990) 496 U.S. 1 prohibits the State Bar from charging licensees for State Bar expenses for lobbying and certain other activities deemed political and ideological and unrelated to the Bar's permissible goals. California law authorizes licensees to take a deduction for lobbying activities.⁸ The Board of Trustees may also identify each year additional deductions that it deems to be outside the scope of Keller. The State Bar restricts its spending on lobbying and other activities it deems outside the scope of Keller to fees paid voluntarily by licensees not taking the deductions. The deductions and the Bar's most recent audited expenses charged to mandatory license fees are published as a Statement of Expenditures of Mandatory License Fees on the State Bar Web site when the State Bar mails invoices for annual license fees. Notice is also provided in the California Bar Journal and licensees may request a copy of the statement by mail.
- (B) Licensees who believe that the annual Statement of Expenditures of Mandatory License Fees inappropriately includes an expenditure disallowed by Keller may object to the expenditure. The objection must be filed using the Challenge to Mandatory License Fees. The board may allow the objection or promptly refer it to arbitration. Filing an objection does not relieve a licensee of the obligation of paying the invoiced annual mandatory license fees on time.
- (C) For purposes of this rule, "arbitration" means that the State Bar will refer the challenge to an arbitrator selected by the American Arbitration Association. The State Bar may consolidate multiple challenges. The arbitration procedure is specified in the instructions to the Challenge to Mandatory License Fees.
- (D) If an arbitrator determines that a challenged expense is outside the scope of Keller and is allowable as a deduction, the State Bar will refund the amount of the deduction to any public agency that has paid the amount on behalf of a licensee.

Rule 2.17 adopted effective July 20, 2007; amended effective January 1, 2012; amended effective January 25, 2019.

Rule 2.18 Payment by credit card, debit card, or electronic funds transfer

The State Bar is authorized to charge licensees who choose to pay annual license fees by credit card, debit card, or electronic funds transfer an additional fee to defray the costs incurred by that election. The State Bar's Executive Director or his or her designee is authorized to set the amount of any additional fee the State Bar is authorized to charge licensees under this rule.

Rule 2.18 adopted effective December 6, 2016; amended effective January 25, 2019.

⁸ Business and Professions Code § 6140.05.

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Adopted July 2007

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- (1) the Active Licensee Fee Scaling Declaration signed under penalty of perjury; and
- (2) payment of the reduced fee.

New licensees 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 statute² may request a reduction of annual license fees by 25% for an active licensee employed on a continuous full-time basis or an active licensee 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

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(C) Licensees 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 licensee is ineligible to scale, the licensee must pay full annual license fees and any late payment penalties.

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Rule 2.16 Waivers

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- (1) disciplinary costs³ or monetary sanctions,⁴
 - (2) Client Security Fund disbursements and costs,⁵
 - (3) mandatory fee arbitration award penalties and costs,⁶
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(D) The Secretary may waive annual license fees and related penalties for a licensee serving in the Army National Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, or the Coast Guard Reserve provided that

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- (2) a request for waiver is submitted in writing by the licensee, licensee's spouse, relative, law partner or associate, or legal representative and accompanied by:
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 - (b) a copy of the order to report for active duty and a certified declaration by a JAG officer that the licensee has served on active duty for more than thirty days.

A licensee granted a waiver under this rule must notify the State Bar within thirty days upon termination of the assignment to active duty.

(E) Annual license fees are waived for the year in which a judicial officer leaves office and returns to active or inactive status in the State Bar.

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(G) Annual license fees may be waived for a licensee who is enrolled in the Pro Bono Practice Program.⁷

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- (C) For purposes of this rule, "arbitration" means that the State Bar will refer the challenge to an arbitrator selected by the American Arbitration Association. The State Bar may consolidate multiple challenges. The arbitration procedure is specified in the instructions to the Challenge to Mandatory License Fees.
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