



The State Bar of California

OPEN SESSION

AGENDA ITEM

54-141 JULY 2020

FINANCE COMMITTEE II.A

DATE: July 6, 2020

TO: Members, Finance Committee
Members, Board of Trustees

FROM: Juan De La Cruz, Sonia Delen, and Ruben Duran, Board of Trustees

SUBJECT: Licensee Requests for Adjustment of Fees, Penalties and Charges

EXECUTIVE SUMMARY

Licensees may request that adjustments be made to their license fees and penalties. Staff are empowered to approve or deny requests based on certain factors delineated in the rules. Title Two, Rule 2.16 (H) of the Rules of the State Bar states that the Board reserves the right for good cause to grant requests for waivers that were denied by staff and to consider all other requests for waivers outside the scope of staff's authority. Each year, staff convene an informal working group of Board members to assist in developing the recommendations on such requests. This agenda item identifies those licensee requests which the working group has determined that good cause does or does not exist to recommend fee adjustments.

Board members with questions or concerns may contact Dina DiLoreto, 415-538-2121 or dina.diloreto@calbar.ca.gov

BACKGROUND

Rule 2.16 of Title Two of the Rules of the State Bar authorizes the waiver of annual license fees and penalties in defined circumstances. 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 percent 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. After confirming with the Chair of the Finance Committee that this structure for consideration of waiver requests remained acceptable, staff secured Trustees Sonia Delen, Juan De La Cruz, and Ruben Duran, as the Board volunteers. Trustee Duran has served in this capacity in prior years.

In assessing what constitutes good cause for purposes of determining whether or not the Board of Trustees should grant a fee waiver, the licensee's justifications for a fee waiver should be weighed against the public policy reasons for imposing annual license fees. The primary public policy reason for imposing State Bar license fees is to provide funding for an effective attorney regulatory system that protects the public. The system is funded solely through the imposition and collection of annual fees. For this reason, license fee waivers should not be granted as a matter of course, but rather should be limited to extraordinary, compelling, and exigent situations.

DISCUSSION

The following table lists all six requests for waivers considered by the informal working group, along with the recommendations of the group to grant or deny the request. The six waiver requests fall into two categories: (1) requests that are outside staff's authority to grant because they exceed \$1,000 or do not meet the parameters of Rule 2.16 (C); and (2) appeals of requests within staff's authority to consider, but which staff denied. The working group's recommendations are based on their review of the full request and supporting information provided by the requesting attorney. For the Finance Committee and the Board of Trustees, the following table summarizes the requests only at a high level. The table is organized to first list those waiver requests recommended for approval by the informal working group, then to list those waiver requests recommended for partial approval, and finally to list those recommended for denial.

| # | Name | Bar #/Admission Year | Status | Request/Comments | Working Group Recommendations |
|----|----------------------|----------------------|--------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------|
| 1. | Robert Craig Katchen | 147438/1990 | Inactive | Attorney has a current balance of \$288. Attorney requests a waiver of his 2020 license fees and late payment penalty. Attorney's request is based on financial and medical hardship. Attorney received a Board waiver in 2019. | Grant – \$213 |
| 2. | Constance J. Berkley | 208288/2000 | Not Eligible | Attorney has a current balance of \$5,496.25. Attorney requests a waiver of her current balance. Attorney's request is based on financial and medical hardship. | Grant – Partial waiver in the amount of \$2,475.75 |
| 3. | William C. Moke | 219065/2002 | Inactive | Attorney has a current balance of \$213. Attorney requests a waiver of his 2020 license fees and late payment penalty. Attorney's request is based on financial and medical hardship. | Deny |
| 4. | Jade Smith | 306461/2015 | Active | Attorney has a current balance of \$1,002.50. Attorney requests a waiver of her current balance. Attorney's request is based on financial and medical hardship. | Deny |
| 5. | Robert T. Swanson | 135178/1988 | Not Eligible | Attorney has a current balance of \$498.00. Attorney requests a waiver of his current balance. Attorney's request is based on financial and medical hardship. | Deny |
| 6. | Ashly Valenzuela | 329986/2019 | Inactive | Attorney has a current balance of \$544.00. Attorney requests a waiver of her 2020 license fees. Attorney's request is based on financial hardship. | Deny |

FISCAL/PERSONNEL IMPACT

This item contains six recommendations for a waiver or adjustment of fees for a total financial impact of \$2,688.75. If the recommended adjustments are approved, the year to date fiscal impact will be \$6,770.50, which includes \$2,450 in late payment penalties waived for licensees negatively affected by the COVID-19 pandemic, as approved at the April 2020 Board meeting.

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

None – core business operations

RECOMMENDATIONS

Should the Finance Committee concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Finance Committee recommends that the Board of Trustees approves the fee adjustments for the State Bar licensees as presented this day, and on file in the San Francisco office of the State Bar.

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees, upon recommendation of the Finance Committee approves the fee adjustments for the State Bar licensees as presented this day, and on file in the San Francisco office of the State Bar.

ATTACHMENT(S) LIST

None