

WASHINGTON STATE
B A R A S S O C I A T I O N

Board of Governors Meeting
Late Late Materials

September 23-25, 2021
Hilton Vancouver Washington, Vancouver, WA
Zoom and Teleconference

TO: WSBA Board of Governors
FROM: Renata de Carvalho Garcia, Chief Regulatory Counsel
DATE: September 14, 2021
RE: Suggested Amendments to Guidelines for Waiver and Appeals of Late Fees and Reinstatement Fees

ACTION: The Regulatory Services Department submits suggested amendments to the Guidelines for Waiver and Appeals of Late Fees and Reinstatement Fees for approval by the Board of Governors.

BACKGROUND & PURPOSE:

Adopted by the Board of Governors in 2010, the Guidelines for Waiver and Appeals of Late Fees and Reinstatement Fees (“Fee Waiver Policy”) describes circumstances, if any, when WSBA employees are permitted to waive or reduce the annual license fees, the late payment fees, and the reinstatement fees (only in the case of reinstatement from administrative suspension for failure to pay license fees). This official Board of Governors policy has not been revised or amended since it was adopted eleven years ago.

The Regulatory Services Department (RSD) is suggesting amendments now to bring the Fee Waiver Policy up to date with changes in financial administration and technology, as well as changes to methods of communication that the WSBA has with its members. In addition, the amendments attempt to define clear, objective criteria for determining when extraordinary personal circumstances apply. Importantly, the policy was evaluated under an equity lens to identify and attempt to mitigate or eliminate any implicit or explicit bias and inequity. Finally, the structure of the policy was evaluated and edited in parts to make it easier to understand and to remove repetitive language.

EXPLANATION OF KEY AMENDMENTS

Extraordinary Personal Circumstances. There are two significant amendments to the definition of extraordinary personal circumstances. First is a change from “death in the immediate family” to “death of a close family member or close friend”. This change recognizes that people may have close relationships with people other than those traditionally included in the immediate family. In fact, some people have no immediate family but have close friends who they consider to be their “family”. Second is the addition of “extreme financial hardship” as a possible extraordinary circumstance for the waiver or reduction of late fees or reinstatement fees. The standard to assert an extreme financial hardship is the same as that used for the financial hardship exemption for the active license fee under the WSBA Bylaws—less than 200% of the federal poverty level. Not that there weren’t people in this situation before, but these past 18 months or so during the pandemic have really highlighted the need for relief to people who are trying to keep or reinstate their license under difficult financial situations.

Under the proposed amendments, members would be required to submit a form requesting a waiver or reduction for reasons of extraordinary personal circumstances, and the WSBA could require documented proof of such circumstances. RSD will develop a form for this purpose if the amendments are approved.

To-Active Investigation/Application Fee. When a member wants to return to active status from any other status, the member must pay an investigation/application fee to cover the administrative costs of processing the

application. This fee, which is currently \$100, was implemented after the adoption of the Fee Waiver Policy. These amendments include this fee and make clear that it cannot be waived or reduced under any circumstances.

Appeals of Staff Decisions. The current guidelines have several appeal sections with more or less the same language. The suggested amendments will combine all appeal procedures into one section at the end of the policy. Substantive changes to the appeal section include clarifying that, although the appeal before the Board of Governors is on the written record only, Bar staff may attend the executive session in which the appeal is going to be discussed in order to answer procedural questions from the governors. Bar staff is not to advocate its position in person before the Board of Governors. In addition, the amendments clarify that the issue on appeal is whether the member qualifies for a waiver or reduction under that member's circumstances as the policy and Bylaws exist at that time.

CONCLUSION

For the foregoing reasons, RSD is asking the Board of Governors to approve the suggested amendments to the policy.

Attachments:

1. Suggested Amendments to Guidelines for Waiver and Appeals of Late Fees and Reinstatement Fees (blackline copy (9/14/2021))
2. Suggested Amendments to Guidelines for Waiver and Appeals of Late Fees and Reinstatement Fees (clean copy (9/14/2021))



WSBA

WASHINGTON STATE BAR ASSOCIATION

Guidelines Policy for Waiver or Reduction of, or Extension of Payment for ~~and Appeals of~~ Annual License ~~Late Fees~~ and Reinstatement Fees

Approved by the Board of Governors on July 23, 2010 and amended on ***. ~~October 2010~~

Annual License Fees

Requests to Waive, Reduce or Extend Payment of License Fees

WSBA members must pay license fees in order to maintain a license to practice law in Washington. In general, license fees cannot be waived or reduced, nor can the time to pay be extended. Other than the Executive Director's ability to grant a hardship exemption as set forth in the WSBA Bylaws, WSBA employees are not authorized to waive, reduce or extend the time to pay the license fee.

~~The Bylaws do provide, however, for a one time exemption from payment of the annual license fees and assessments by any Active member. The member must meet the conditions set forth in the WSBA Bylaws.~~

Late Fees re Annual License Fees

Requests to Waive, Reduce or Extend Payment of the Late Payment Fee

WSBA employees are not authorized to extend the time to pay the late payment fee. Staff has WSBA employees have limited discretion in waiving late payment fees. Late payment fees are not waived in the following circumstances:

1. If members claim they did not receive their license packets or email notifications, without evidence that this actually occurred and was due to WSBA error (see below).
2. If a members pays by a check that is returned by the bank for non-sufficient funds (NSF) and ~~the member does~~ subsequently do not pay by the deadline.
3. If members ~~claim financial hardship~~ submit a timely request through their bank to send a check and the bank does not send the check by the deadline.

~~Staff~~ WSBA employees will waive the late payment fee for the following reasons:

1. If WSBA error was the cause, such as failure to correctly process a member's change of address-contact information.
2. If members ~~are able to~~ provide reasonable proof that they made their payments in time even though WSBA has no record of receiving it.
3. If members ~~have had~~ notify the WSBA of extraordinary personal circumstances which that prevented them from handling their mail and financial matters and the timing of these circumstances supported the inability of the members to make making their payments by the due date. Extraordinary personal circumstances ~~would~~ include

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a serious medical emergency, a death ~~in the immediate~~ of a close family member or close friend, or a significant health problem, and extreme financial hardship. Extreme financial hardship is defined as annual household income equal to or less than 200% of the federal poverty level as determined based on the member's household income for the calendar year immediately preceding the calendar year for which the member is seeking the request. Members must submit a written request for a waiver under this section on a form provided by the WSBA. The WSBA may require reasonable documented proof of the extraordinary personal circumstances.

4. ~~If the member pays by credit card and the member can show that the bank declined the card in error after a second submission, which resulted in the member owing a late fee.~~
5. ~~In rare instances, if members claim they did not receive their license packets and can demonstrate compelling reasons for not being aware of the license fee deadline.~~

Appeals of License Fees

~~License fees must be paid in order to maintain WSBA membership. There are no provisions in the Bylaws for appeals. Staff is not authorized to waive, reduce or extend the time to pay the license fee. Only the Executive Director can grant the one-time hardship exemption if the member meets the criteria. There is no appeal of denial of the hardship exemption.~~

Appeals of Late Payment Fees

~~If the member's request to waive late payment fees is denied by staff, the member's last resort is to appeal the decision to the Board of Governors. Written appeals should be submitted to Regulatory Services for inclusion in the Board of Governors meeting materials and must include full documentation and assertion of claims.~~

~~The Board of Governors will only accept documented appeals of staff decisions. The standard for granting the appeal is "documented, exigent circumstances." The Board of Governors will review the petition using the criteria listed below for consideration of waivers of late payment fees.~~

1. ~~Is there a compelling circumstance for the member to not have been aware of the license payment deadline and/or not been able to meet the deadline;~~
2. ~~Is there a reasonable connection between the compelling circumstance and the missed deadline; and,~~
3. ~~Is the documentation adequate to the cause?~~

~~The decision of the Board of Governors is final.~~

Reinstatement Fees after Suspension for Non-payment of License Fees

Reinstatement Class and Calculation of Reinstatement Fees

~~A member's license can be reinstated from suspension to any membership class status after meeting the requirements for that membership class class changing status after suspension as set~~

forth in the WSBA Bylaws Art. III Sec. K, which includes paying the current license fee and assessments. Reinstatement after suspension for non-payment of license fees has additional reinstatement fees.

Waiver or Reduction of Investigation/Application Fee

Members must pay an investigation/application fee to apply to return to active status. Investigation fees cannot be waived or reduced.

Calculation of Reinstatement Fees after Suspension for Non-payment of License Fees

The In accordance with the WSBA Bylaws, the reinstatement fee assessed to a member depends on when the member is reinstated.

1. Reinstatement to the same ~~class~~ status prior to suspension:
 - a. If the member requests to be reinstated in the same calendar year that ~~he~~ the license is suspended, the member will need to pay two times the sum of the annual license fee and the late payment fee (as well as and the LFCP Client Protection Fund (CPF) Assessment fee for assessment if returning to Active members status).
 - b. If the member requests to be reinstated in a calendar year subsequent to the year in which ~~he~~ the license was suspended, the member will need to pay:
 - i. Two times the sum of the annual license fee and the late payment fee for the year of the suspension (Active members also need to pay the annual LFCP Assessment fee and the CPF assessment for the year of suspension if Active at time of suspension-); and
 - ii. The license fee for the current year (as well as the LFCP Assessment fee for active members and the CPF assessment if returning to Active status).
2. Reinstatement to a ~~class~~ status other than Active when the member's license was Active prior to suspension:
 - a. If the member requests to be reinstated in the same calendar year that ~~he~~ the license is suspended, the member will need to pay two times the sum of the Active license fee and the late payment fee, and the LFCP CPF assessment. The member will not have to pay an additional license fee for the new membership class status, because that fee will be covered by the amount of the Active license fee.
 - b. If the member requests to be reinstated in a calendar year subsequent to the year in which ~~he~~ the license was suspended, the member will need to pay:
 - i. two times the sum of the Active license fee and late payment fee for the year of suspension;
 - ii. the LFCP Assessment fee CPF assessment for the year of suspension; and,
 - iii. the license fee for the current year.

Circumstances for Reducing Reinstatement Fees

~~Staff has~~ WSBA employees have limited discretion in waiving reinstatement fees.

Reinstatement fees are not waived in the following circumstances:

1. If a member did not understand, at the time of suspension, that the fees would be high.
2. If a member was unaware that the member's license had been suspended for non-payment.

~~Staff~~ WSBA employees will reduce the reinstatement fee for the following reasons:

1. If WSBA error was the cause, such as failure to correctly process a member's change of ~~address~~ contact information.
2. If members ~~have documented~~ notify the WSBA of extraordinary personal circumstances ~~which that~~ prevented them from handling their mail and financial matters and the timing of these circumstances supported the inability of the members to paying license fees ~~and/or applying~~ for reinstatement in a timely manner. Extraordinary personal circumstances ~~would~~ include a serious medical emergency, a death ~~in the immediate~~ of a close family member or close friend, or a significant health problem, ~~and~~ extreme financial hardship. Extreme financial hardship is defined as annual household income equal to or less than 200% of the federal poverty level as determined based on the member's household income for the last 12 months or the immediately preceding calendar year. Members must submit a written request for a waiver under this section on a form provided by the WSBA. The WSBA may require reasonable documented proof of the extraordinary personal circumstances.

The amount of the reduction in the reinstatement fee will be considered on a case by case basis, based on ~~the number of years~~ length of time in suspended status, the duration of the extraordinary personal circumstances, ~~the length of the emergency~~, and other pertinent factors.

Appeals of Reinstatement Fees

~~If the member's request is denied by staff, the member's last resort is to appeal the decision to the Board of Governors. Written appeals should be submitted to Regulatory Services for inclusion in the Board of Governors meeting materials and must include full documentation and assertion of claims.~~

~~The Board of Governors will only accept documented appeals of staff decisions. The standard for granting the appeal is "documented, exigent circumstances." The Board of Governors will review the petition using the criteria listed below for consideration of waivers of reinstatement fees.~~

1. ~~Is there a compelling circumstance for the member to not have been aware of the member's impending suspension for non-payment of fees and/or not able to pay license fees within 60 days of the mailing of the Pre-suspension Notice;~~
2. ~~Is there a reasonable connection between the compelling circumstance and the missed deadline; and~~
3. ~~Is the documentation adequate to the cause?~~

Appeals of Staff Decisions

If a member's request for a waiver, reduction or extension is denied by staff, the member may appeal the decision to the Board of Governors.

Appeals must be submitted in writing. Appeals must be submitted in writing to the Regulatory Services Department for inclusion in the Board of Governors meeting materials. The standard for granting the appeal is documented, exigent circumstances.

Appeals should be reviewed and decided on the written record. The Board must review the appeal on the written record in executive session. Staff from the Regulatory Services Department may be present to respond to procedural questions from the Board of Governors but not to advocate its position.

Issue on appeal. The issue on appeal before the Board is whether the appellant qualifies for a waiver or reduction under this policy and WSBA Bylaws at the time of the request.

Criteria for review. The criteria for reviewing the request are:

1. Is there a compelling circumstance for the member to not have been aware of the license fee payment deadline, to not have been able to meet the license fee deadline, to not have been aware of the member's impending suspension for non-payment of fees, or to not be able to pay license fees within 60 days of the mailing of the Pre-suspension Notice;
2. Is there a reasonable connection between the compelling circumstance and the missed deadline; and
3. Is the documentation adequate to the cause?

The decision of the Board of Governors is final.

Approved by the Board of Governors on July 23, 2010.

Policy for Waiver or Reduction of, or Extension of Payment for, Annual License and Reinstatement Fees

*Approved by the Board of Governors on July 23, 2010 and amended on ***DRAFT 9-14-2021***.*

Annual License Fees

Requests to Waive, Reduce or Extend Payment of License Fees

WSBA members must pay license fees in order to maintain a license to practice law in Washington. In general, license fees cannot be waived or reduced, nor can the time to pay be extended. Other than the Executive Director's ability to grant a hardship exemption as set forth in the WSBA Bylaws, WSBA employees are not authorized to waive, reduce or extend the time to pay the license fee.

Late Fees re Annual License Fee

Requests to Waive, Reduce or Extend Payment of the Late Payment Fee

WSBA employees are not authorized to extend the time to pay the late payment fee. WSBA employees have limited discretion in waiving late payment fees. Late payment fees are not waived in the following circumstances:

1. If members claim they did not receive their license packets or email notifications, without evidence that this actually occurred and was due to WSBA error (see below).
2. If members pay by check or electronic funds transfer that is returned by the bank for non-sufficient funds (NSF) and subsequently do not pay by the deadline.
3. If members submit a timely request through their bank to send a check and the bank does not send the check by the deadline.

WSBA employees will waive the late payment fee for the following reasons:

1. If WSBA error was the cause, such as failure to correctly process a member's change of contact information.
2. If members provide reasonable proof that they made their payments in time even though WSBA has no record of receiving it.
3. If members notify the WSBA of extraordinary personal circumstances that prevent them from making their payments by the due date. Extraordinary personal circumstances include a serious medical emergency, a death of a close family member or close friend, a significant health problem, and extreme financial hardship. Extreme financial hardship is defined as annual household income equal to or less than 200% of the federal poverty level as determined based on the member's household income for the calendar year immediately preceding the calendar year for which the member is seeking the request. Members must submit a written request for a waiver under this section on a form provided by the WSBA. The WSBA may require reasonable documented proof of the extraordinary personal circumstances.

Reinstatement after Suspension

A member's license can be reinstated from suspension to any membership status after meeting the requirements for changing status after suspension as set forth in the WSBA Bylaws Art. III Sec. K, which

includes paying the current license fee and assessments. Reinstatement after suspension for non-payment of license fees has additional reinstatement fees.

Waiver or Reduction of Investigation/Application Fee

Members must pay an investigation/application fee to apply to return to active status. Investigation fees cannot be waived or reduced.

Calculation of Reinstatement Fees after Suspension for Non-payment of License Fees

In accordance with the WSBA Bylaws, the reinstatement fee assessed to a member depends on when the member is reinstated.

1. Reinstatement to the same status prior to suspension:
 - a. If the member requests to be reinstated in the same calendar year that the license is suspended, the member will need to pay two times the sum of the annual license fee and the late payment fee (and the Client Protection Fund (CPF) assessment if returning to Active status).
 - b. If the member requests to be reinstated in a calendar year subsequent to the year in which the license was suspended, the member will need to pay:
 - i. Two times the sum of the annual license fee and the late payment fee for the year of the suspension (and the CPF assessment for the year of suspension if Active at time of suspension); and
 - ii. The license fee for the current year (and the CPF assessment if returning to Active status).
2. Reinstatement to a status other than Active when the member's license was Active prior to suspension:
 - a. If the member requests to be reinstated in the same calendar year that the license is suspended, the member will need to pay two times the sum of the Active license fee and the late payment fee, and the CPF assessment. The member will not have to pay an additional license fee for the new status, because that fee will be covered by the amount of the Active license fee.
 - b. If the member requests to be reinstated in a calendar year subsequent to the year in which the license was suspended, the member will need to pay:
 - i. two times the sum of the Active license fee and late payment fee for the year of suspension;
 - ii. the CPF assessment for the year of suspension; and,
 - iii. the license fee for the current year.

Circumstances for Reducing Reinstatement Fees

WSBA employees have limited discretion in waiving reinstatement fees. Reinstatement fees are not waived in the following circumstances:

1. If a member did not understand, at the time of suspension, that the fees would be high.
2. If a member was unaware that the member's license had been suspended for non-payment.

WSBA employees will reduce the reinstatement fee for the following reasons:

1. If WSBA error was the cause, such as failure to correctly process a member's change of contact information.

2. If members notify the WSBA of extraordinary personal circumstances that prevented them from paying license fees or applying for reinstatement in a timely manner. Extraordinary personal circumstances include a serious medical emergency, a death of a close family member or close friend, a significant health problem, and extreme financial hardship. Extreme financial hardship is defined as annual household income equal to or less than 200% of the federal poverty level as determined based on the member's household income for the last 12 months or the immediately preceding calendar year. Members must submit a written request for a waiver under this section on a form provided by the WSBA. The WSBA may require reasonable documented proof of the extraordinary personal circumstances.

The amount of the reduction in the reinstatement fee will be considered on a case by case basis, based on length of time in suspended status, the duration of the extraordinary personal circumstances, and other pertinent factors.

Appeals of Staff Decisions

If a member's request for a waiver, reduction or extension is denied by staff, the member may appeal the decision to the Board of Governors.

Appeals must be submitted in writing. Appeals must be submitted in writing to the Regulatory Services Department for inclusion in the Board of Governors meeting materials. The standard for granting the appeal is documented, exigent circumstances.

Appeals should be reviewed and decided on the written record. The Board must review the appeal on the written record in executive session. Staff from the Regulatory Services Department may be present to respond to procedural questions from the Board of Governors but not to advocate its position.

Issue on appeal. The issue on appeal before the Board is whether the appellant qualifies for a waiver or reduction under this policy and WSBA Bylaws at the time of the request.

Criteria for review. The criteria for reviewing the request are:

1. Is there a compelling circumstance for the member to not have been aware of the license fee payment deadline, to not have been able to meet the license fee deadline, to not have been aware of the member's impending suspension for non-payment of fees, or to not be able to pay license fees within 60 days of the mailing of the Pre-suspension Notice;
2. Is there a reasonable connection between the compelling circumstance and the missed deadline; and
3. Is the documentation adequate to the cause?

The decision of the Board of Governors is final.