

AGENDA ITEM

54-132 NOV 15 2013

DATE: October 29, 2013

TO: Members, Member Oversight Committee
Members, Board of Trustees

FROM: Dina DiLoreto, Managing Director, Member Records & Compliance

SUBJECT: Annual Recommendation to the Supreme Court for Expungement of Member Records in accordance with Rule of Court 9.6(b)

EXECUTIVE SUMMARY

California Rule of Court 9.6 (b) provides for an annual Board recommendation of expungement to the California Supreme Court of non-disciplinary suspensions within limited circumstances. Annually, there has been an average of 100-150 members who have one fee suspension that occurred more than 7 years ago, for 90 days or less, and who have no other record of suspension or involuntary inactive enrollment for discipline or otherwise. Pursuant to Rule 9.6(b), they are eligible for recommendation that the Supreme Court grant a one-time only expungement. If the Board approves the recommendation, a list of eligible members will be transmitted to the Supreme Court for its order of expungement.

Questions concerning this item should be directed to Dina DiLoreto at 415-538-2121 or Dina.DiLoreto@calbar.ca.gov.

BACKGROUND

California Rule of Court 9.6 (b) allows the State Bar to recommend a one-time expungement of a State Bar of California member's record of fee suspension if all of the following conditions apply:

- 1) The member has not on any previous occasion obtained expungement under the terms of Rule 9.6(b);
- 2) The suspension was for 90 days or less;
- 3) The suspension ended at least seven years before the date of submission of member's name to the Supreme Court; and

- 4) The member has no other record of suspension or involuntary inactive enrollment for discipline or otherwise.

This year, State Bar staff has reviewed a list of approximately 125 members who qualify under the criteria of Rule 9.6 (b). The list has been extensively checked and a process has been developed to expunge these members' records, if approved.

ISSUE

Whether to recommend to the California Supreme Court the expungement of a one-time only suspension for nonpayment of membership fees from the records of members who meet the criteria listed in California Rule of Court 9.6(b).

DISCUSSION

If the Board decides to recommend expungement of eligible members' suspension for nonpayment of membership fees, State Bar staff will transmit the list of eligible members to the Supreme Court with a recommendation that each of these members' public record of suspension for nonpayment of membership fees be expunged. Upon issuance of the Court's order, eligible members will be notified by mail that such record has been expunged and a copy of the expungement order will be included.

Rule 9.6(c) requires that the State Bar of California maintain such internal records as are necessary to apply the terms of 9.6(b) of this rule and to report to appropriate governmental entities the member's eligibility for a judgeship under the California Constitution, article VI, section 15 which requires judicial nominees to report all suspensions within the last 10 years of their judicial application. State Bar staff has developed a process and protocol to meet this requirement. Rule 9.6(d) outlines the members' duty of disclosure under these circumstances.

FISCAL / PERSONNEL IMPACT

These actions were included in the 2013 budget and personnel planning; therefore, there will be no additional fiscal or personnel impact.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

RECOMMENDATION

It is recommended that the board committee and the Board recommend to the California Supreme Court that, pursuant to Rule of Court 9.6(b), eligible suspensions for nonpayment of fees be expunged from the membership records of the State Bar and that the Board delegate to staff the function of making the determination of eligible suspensions and the recommendation.

PROPOSED BOARD COMMITTEE RESOLUTION

Should the Member Oversight Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED: that the Member Oversight Committee recommends that the Board of Trustees delegate to staff the function of making the annual recommendation to the California Supreme Court that eligible suspensions that meet the criteria for expungement set forth in California Rule of Court 9.6 be expunged; and it is

FURTHER RESOLVED: that, upon the Court's order of expungement, staff is directed to immediately expunge the suspensions from the membership records and notify each member of the Court's order and the expungement.

PROPOSED BOARD OF TRUSTEES RESOLUTION

Should the Board concur with the Member Oversight Committee's recommendation, the following resolutions would be in order:

RESOLVED: that upon recommendation of the Member Oversight Committee, the Board of Trustees hereby delegates to staff the function of making the annual recommendation to the California Supreme Court that eligible suspensions that meet the criteria for expungement set forth in California Rule of Court 9.6 be expunged; and it is

FURTHER RESOLVED: that, upon the Court's order of expungement, staff is directed to immediately expunge the suspensions from the membership records and notify each member of the Court's order and the expungement.