

OPEN SESSION AGENDA ITEM

54-131 NOV 2017

DATE: October 19, 2017

TO: Members, Programs Committee
Members, Board of Trustees

FROM: Dina DiLoreto, Program Director, Attorney Regulation & Consumer Resources

SUBJECT: Annual Recommendation to the Supreme Court for Expungement of
Suspensions for Nonpayment of Fees 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. There are approximately 75 licensed attorneys who have one fee suspension that occurred more than 7 years ago, for 90 days or less, have no other record of suspension or involuntary inactive enrollment for discipline or otherwise and whose eligible fee suspensions have not already been expunged. 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 this year's recommendation, a list of eligible attorneys 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

Since 2007, California Rule of Court 9.6(b) allows the State Bar to recommend a one-time only expungement of a State Bar of California licensed attorney's record of fee suspension if all conditions are met. These are the current conditions of eligibility:

- 1) The attorney has not on any previous occasion obtained expungement under the terms of Rule 9.6(b) or Rule 9.31;
- 2) The suspension was for 90 days or less;
- 3) The suspension ended at least seven years before the date of submission of the attorney's name to the Supreme Court; and
- 4) The attorney has no other record of suspension or involuntary inactive enrollment for discipline or otherwise.

The board has authorized the recommendation of such expungements every year since 2007.

DISCUSSION

As of the date of this memo, State Bar staff has reviewed a list of 78 suspensions that currently qualify for expungement under the criteria of Rule 9.6(b). The list has been extensively checked and a process exists to expunge these suspension records, if approved.

If the Board decides to recommend expungement of eligible attorneys' suspension for nonpayment of fees, staff will transmit the list of eligible attorneys to the Supreme Court with a recommendation that each of these attorneys' public record of suspension for nonpayment of fees be expunged. Upon issuance of the Court's order, eligible attorneys 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 an attorney'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 an attorney's duty of disclosure under these circumstances.

Staff recommends 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 attorney licensing records of the State Bar, and that the Board delegate to staff the function of making the determination of eligible suspensions and the recommendation.

FISCAL/PERSONNEL IMPACT

These actions were included in the 2017 budget and personnel planning; therefore, there will be no additional fiscal or personnel impact.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

STRATEGIC PLAN GOALS & OBJECTIVES 2017-2022

N/A.

RECOMMENDATION

The Programs Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees hereby approve staff to make 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 licensed attorneys' records and notify each attorney of the Court's order and the expungement.

ATTACHMENT(S) LIST

A. None