

# **OPEN SESSION AGENDA ITEM**

**54-132 NOV 2017**

**DATE:** October 24, 2017

**TO:** Members, Programs Committee  
Members, Board of Trustees

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

**SUBJECT:** Annual Recommendation for Expungement of Administrative Inactive  
Statuses for MCLE Non-compliance in Accordance with Rule of Court 9.31.

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## **EXECUTIVE SUMMARY**

California Rule of Court 9.31 now provides for the expungement of records of inactive enrollment for failure to comply with MCLE requirements, within limited circumstances. There are approximately 409 attorneys who have one such inactive enrollment that occurred more than 7 years ago and lasted for 90 days or less, and who have no other record of suspension or involuntary inactive enrollment for discipline or otherwise, nor any prior expungements. Pursuant to Rule 9.31, they are eligible for a one-time only expungement of the record of inactive enrollment. If the Board approves staff's recommendation, those eligible inactive enrollments will be expunged.

Questions concerning this item should be directed to Dina DiLoreto at 415-538-2121 or [Dina.DiLoreto@calbar.ca.gov](mailto:Dina.DiLoreto@calbar.ca.gov).

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## **BACKGROUND**

Effective August 1, 2017, the Supreme Court adopted the Board's March 2017 recommendation to revise Rules of Court 9.31 ("Minimum continuing legal education") and 9.6 ("Roll of attorneys permitted to practice") in order to permit expungements of administrative inactive enrollments that occurred for failure to comply with MCLE requirements, provided they meet specific conditions. Rule of Court 9.31(f) allows the State Bar to expunge a record of inactive enrollment for failure to comply with MCLE requirements, if:

- (1) The attorney has not on any previous occasion obtained an expungement under the terms of rule 9.31 or rule 9.6;
- (2) The period of inactive enrollment was for 90 days or less;
- (3) The period of inactive enrollment ended at least seven years before the date of expungement;

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

## **DISCUSSION**

Unlike suspensions for nonpayment of fees, which are formal suspensions ordered by Supreme Court, enrollments on administrative inactive status for MCLE noncompliance are authorized by the Board of Trustees. A subsequent expungement of the inactive enrollment, as eligible under the new provisions of Rule 9.31, also requires Board action.

As of the date of this memo, State Bar staff has reviewed a list of 409 records of inactive enrollment that currently qualify for expungement under the criteria of Rule 9.31. The list has been extensively checked, and a process exists to expunge these records, if approved by the Board. Since this is the first time that this annual process is presented, there are a relatively large number of records to expunge, as the list includes all eligible inactive enrollments since the inception of the MCLE program in 1992. The number of inactive enrollments newly eligible for expungement in subsequent years will be smaller.

If the Board approves the recommendation, the records that meet the criteria will be immediately expunged, and the affected attorneys will be notified by mail of this action.

Rule 9.31(g) requires that the State Bar of California maintain such internal records as are necessary to apply the terms of rule 9.31 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 9.31(h) outlines the members' duty of disclosure under these circumstances.

Staff recommends that the board committee and the Board authorize that eligible records of inactive enrollment be expunged from the attorney records of the State Bar, and that the Board delegate to staff the function of making the determination of eligible records, as well as the processing of the expungement of those records.

## **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 delegates to staff the function of determining the records of inactive enrollment for failure to comply with MCLE requirements that qualify for expungement pursuant to California Rule of Court 9.31(f); and it is

**FURTHER RESOLVED**, that staff then immediately expunge the eligible inactive enrollments from the licensed attorneys' records, and notify each attorney of the expungement.

### **ATTACHMENT(S) LIST**

A. None