



The State Bar *of California*

OPEN SESSION AGENDA ITEM MARCH 2019 REGULATION AND DISCIPLINE COMMITTEE III.D

DATE: March 14, 2019

TO: Members, Regulation and Discipline Committee

FROM: Dag MacLeod, Chief of Mission Advancement & Accountability
Carolina Almarante, Program Analyst, Mission Advancement & Accountability

SUBJECT: Update on Implementation of Fingerprinting Requirement

EXECUTIVE SUMMARY

This agenda item provides a status update to the Regulation and Discipline Committee on the implementation of California Rule of Court 9.9.5.

BACKGROUND

On June 1, 2018, the Supreme Court of California adopted Rule of Court 9.9.5 requiring the re-fingerprinting of active attorneys in California. The Rule of Court directed the State Bar to “enter into a contract with the California Department of Justice for subsequent arrest notification services for attorneys whose license is on active status with the State Bar” (CRC 9.9.5(a)(1)). The Rule of Court further directed the Bar to “develop a schedule for implementation that requires all attorneys subject to fingerprinting ... be fingerprinted by December 1, 2019” (CRC 9.9.5(f)(1)).

In anticipation of the new Rule of Court, the Board of Trustees approved a new State Bar Rule in May 2018 granting the Bar the authority to enroll an attorney as inactive for failing to submit fingerprints to the Bar by the deadline established in CRC 9.9.5. At that time the Board also adopted a schedule of penalties to ensure full compliance by December 1, 2019. Attorneys who are not re-fingerprinted by May 1, 2019, will be fined \$75; attorneys who remain out of compliance by August 1, 2019, will be fined an additional \$100.

Beginning in June, 2018, notification was sent to all active and inactive attorneys alerting them of the fingerprinting requirement. The initial notification was followed by a series of monthly email reminders to non-compliant attorneys. An average of 40,000 emails reminders were sent weekly during the early phases of implementation. Due to the decrease in the number of attorneys who are out of compliance, the number of email reminders has decreased considerably.

This agenda item provides an update to the Regulation and Discipline Committee on the status of the implementation of CRC 9.9.5.

DISCUSSION

Compliance with CRC 9.9.5

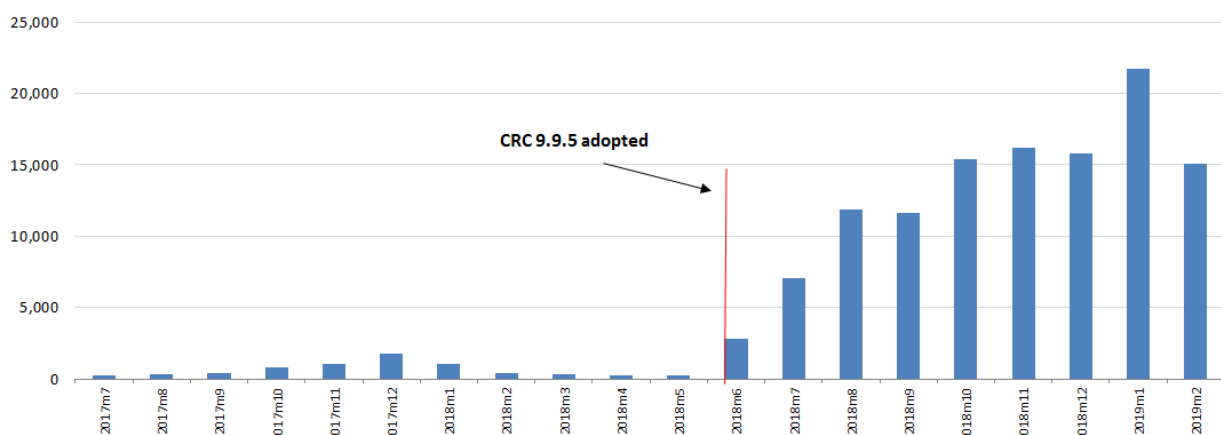
As of March 1, 2019, there were almost 190,000 attorneys in active status in California. Of these, almost two thirds had been fingerprinted in compliance with CRC 9.9.5 (Table 1).

Table 1 – Compliance with CRC 9.9.5

	n	%
Active Attorneys	189,641	100.0
In Compliance	125,471	66.2
Not in Compliance	64,170	33.8

Initial fingerprinting of attorneys actually began prior to the adoption of CRC 9.9.5. In July of 2017, the State Bar entered into a contract with the Department of Justice (DOJ) to receive Subsequent Arrest Notification for attorneys who were fingerprinted as part of their application to the Bar. The small numbers of attorneys coming into compliance prior to June 2018 were primarily new attorneys who had only recently been fingerprinted. Since June of 2018, an average of just over 13,000 attorneys per month have come into compliance.

Figure 1 – Number of Attorneys in Compliance by Month



Projecting out to the deadline for compliance with CRC 9.9.5, if we simply took the average number of attorneys who become compliant each month since June, 2018, and assumed that this number will continue to be fingerprinted for the remaining months of this year, then all 190,000 attorneys in California would be in compliance with the policy by early August, more than three months prior to the December 1 deadline.

Criminal Records Processing and Data Security

One of the principal challenges of implementing CRC 9.9.5 has been establishing policies and processes for managing criminal record information. When attorneys are fingerprinted under this new policy, the DOJ transmits an electronic record to the Bar indicating either a) that there is no criminal history contained in the DOJ database, or b) that there is a criminal history, in which case the DOJ transmits the complete Record of Arrest and Prosecution (RAP sheet) for the attorney.¹

Bar staff have been working to develop policies and procedures for the receipt and handling of the RAP sheet data to comply with DOJ policy on the handling of Criminal Offender Record Information (CORI). Staff have also been working to develop policies and procedures for the processing of cases where a RAP sheet alerts the Bar to a criminal record that was previously unknown to the Office of the Chief Trial Counsel (OCTC). These policies were needed not only to ensure data security, but also to ensure that information contained in the RAP sheet that is not relevant to the prosecution of attorney misconduct cases, not be transmitted to OCTC.

A number of processes have been put in place to protect the confidentiality of the DOJ data and also to create a firewall between OCTC and the initial receipt of data that may include information that attorneys are not required to disclose to OCTC – arrests that do not result in either charges or convictions, charges on certain misdemeanors, convictions on infractions.

The initial receipt and storage of RAP sheets is handled by a secure server behind a firewall not accessible directly from the internet. Further, the CORI data assigns a unique identifier to each attorney that is distinct from the attorney's Bar number, requiring access to and merging of several tables to identify the licensee.

Criminal Record Information Uncovered from the Fingerprinting Process

To avoid the inadvertent release of data to OCTC, staff in the Office of Research and Institutional Accountability have developed automated routines for parsing the RAP sheets, capturing a number of essential data elements, and merging with State Bar records to determine the following:

- The date of the criminal history information relative to the licensee's date of admission to the Bar;

¹ Note that this is a simplified description of the fingerprinting process. The DOJ also transmits a code to the Bar indicating when there is a delay in providing a confirmation of a criminal record or that the fingerprints were rejected as unreadable .

- The sequence of events in the criminal history to distinguish between records exclusively related to arrests and those that include corresponding charges and convictions;
- The charge level (infraction, misdemeanor, or felony);
- The status of the attorney's license;
- Whether a match for the attorney is already in OCTC's records.

These data allow for the identification of the cases that will require the most immediate attention from OCTC, specifically:

- Criminal history that occurred post-admission to the Bar;
- Convictions only;
- Misdemeanor and felony only;
- Attorney in active status;
- Cases previously unknown to OCTC.

The total number of attorneys whose fingerprint records led to the receipt of a RAP sheet from the DOJ is 6,389, just over five percent of the attorneys who have been fingerprinted to date.² This number begins declining when we apply the criteria, above, in figure 2, to the data. After removing RAP sheets that contain only arrest information, those that do not contain misdemeanor or felony convictions, a small number for attorneys who are not in active status, and those for which a match was found to a previous OCTC case, the number declines to 2,400 (Table 2).

Table 2 – Number of Attorneys with RAP Sheets – Reduced by Screening Criteria

Agency	n	%
CA DOJ	5,500	86.09
FBI	889	13.91
Total	6,389	100
Less		Running Total³
Arrest Only / No Conviction Information	904	5,485
Pre-admission Records	2,794	2,691
Inactive, Dead, Not Eligible, Resigned Attorneys	25	2,666
Records Matched with OCTC Data	266	2,400

The final electronic parsing of the data, shown in Table 3, below, provides an overview of the remaining RAP sheets.

² All of this data is as-of March 4. Totals are changing daily due to the volume of fingerprints being submitted to the DOJ.

³ This data was obtained from California DOJ RAP sheets and does not include out-of-state FBI RAP sheet information, which is currently under review.

A handful of infractions remained in the data set and were eliminated – shaded in Table 3 – reducing the total number of attorneys with records to review to 2,234. It is noteworthy that the charge level for the vast majority of the attorneys is exclusively Misdemeanor: less than one percent of the attorneys with a RAP sheet has a criminal conviction for a felony. More than half of the attorneys were convicted prior to 2010; almost a third of all attorneys in this pool were convicted prior to 2005.

Table 3 – Date of Conviction and Charge Level of Attorney RAP Sheets

Date of Conviction	Infraction	Felony	Misdemeanor	n	%
Data Unclear				119	5%
Prior to 2005	63	19	636	718	32%
2005-09	26	0	474	500	22%
2010-14	49	1	510	560	25%
2015-19	28	0	309	337	15%
Total	166	20	1,929	2,234*	100%

** Excludes Infractions*

Next Steps on Compliance with CRC 9.9.5

Between March and April 2019, staff will send a series of targeted emails to impacted attorneys confirming their compliance with CRC 9.9.5 or clarifying necessary steps to successfully submit fingerprints to the DOJ before the first penalty phase begins. An interdivisional team of Bar staff is working to develop the process for identifying the target groups who will be assessed for the May penalty.

Attorneys will not be subject to the May penalty if they:

- submitted their fingerprints to the DOJ but had them rejected multiple times due to live scan vendor errors;
- provide the State Bar with fingerprint cards postmarked by April 30, 2019; or
- entered an Automated Transaction Identifier (ATI) number through their My State Bar Profile. An ATI number is obtained by submitting fingerprints to a Live Scan vendor and will need to match the ATI number received from the DOJ.

Next Steps on Transferring RAP Sheet Data to OCTC

The Bar is hiring a new Program Coordinator to manage the data transfer to OCTC and is making an offer in the second week of March. In the meantime, the felonies identified in the first, detailed parsing of the data have been transferred to OCTC for review. Staff will be working to begin transferring the remaining misdemeanor cases as soon as possible. Staff are also working to develop automated processes for data transfer that will initiate a new case in the new case management system .

FISCAL/PERSONNEL IMPACT

None – Status Update

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: 1. Successfully transition to the “new State Bar” — an agency focused on public protection, regulating the legal profession, and promoting access to justice.