



# The State Bar of California

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## **OPEN SESSION**

### **AGENDA ITEM**

#### **50-2 NOVEMBER 2019**

**DATE:** November 14, 2019

**TO:** Members, Board of Trustees

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

**SUBJECT:** Annual Recommendation to Supreme Court for Expungement of Suspensions of Licensees Delinquent in Payment of License Fees, Penalties and Charges

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### **EXECUTIVE SUMMARY**

California Rule of Court 9.8(b) authorizes the Board of Trustees to recommend to the California Supreme Court annually the expungement of nondisciplinary suspensions satisfying specified criteria. Staff have identified approximately 200 licensees that appear likely to meet the eligibility requirements for expungement as of December 31, 2019. If the Board approves this recommendation, a list of eligible attorneys will be transmitted to the Supreme Court for its order of expungement.

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### **BACKGROUND**

Since 2007, California Rule of Court 9.8(b) [formerly 9.6(b)] allows the State Bar to expunge expungement of a State Bar of California licensed attorney's record of having been suspended for failure to pay licensee fees if all conditions are met. The current conditions for eligibility are as follows:

1. The attorney has not on any previous occasion obtained expungement under the terms of Rule 9.8(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 the expungement is sought; and

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

Staff last presented this item to the Board in 2017. This year's list includes suspensions that would have been eligible for expungement at the end of 2018, but due to administrative backlog, were not brought forward to the Board for approval.

## **DISCUSSION**

State Bar staff have identified just over 200 licensees with suspensions that would qualify for expungement as of December 31, 2019, under the criteria of Rule 9.8(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 a list of eligible attorneys to the Supreme Court during the first week of January 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 9.8(c) requires that the State Bar of California maintain the records that would be necessary to demonstrate the applicability of Rule 9.8(b) and to report to appropriate governmental entities an attorney's eligibility for a judgeship pursuant to article VI, section 15 of the California Constitution.<sup>1</sup> State Bar staff has developed a process and protocol to meet this requirement.

## **FISCAL/PERSONNEL IMPACT**

Staff resources needed to implement this are already accounted for in the budget.

## **RULE AMENDMENTS**

None

## **BOARD OF TRUSTEES POLICY MANUAL AMENDMENTS**

None

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<sup>1</sup> Article VI, sec. 15 of the California Constitution provides that "[a] person is ineligible to be a judge of a court of record unless for 10 years immediately preceding selection, the person has been a member of the State Bar or served as a judge of a court of record in this State."

## **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: None - core business operations

## **RECOMMENDATIONS**

**It is recommended that the Board of Trustees approve the following resolution:**

**RESOLVED**, that the Board of Trustees direct staff to submit the annual recommendation to the California Supreme Court that licensees that meet the criteria for expungement of suspensions for failure to pay fees, as set forth in California Rule of Court 9.8, have their suspensions 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**

None