



The State Bar of California

OPEN SESSION AGENDA ITEM 50-3 NOVEMBER 2019

DATE: November 14, 2019

TO: Members, Board of Trustees

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

SUBJECT: Annual Recommendation for Expungement of Administrative Inactive Status for Minimum Continuing Legal Education (MCLE) Noncompliance in Accordance with Rule 9.31

EXECUTIVE SUMMARY

California Rule of Court 9.31 authorizes the Board of Trustees (Board) to expunge records of inactive enrollment for failure to comply with MCLE requirements for licensees who satisfy specified criteria. Staff have identified approximately 90 records that appear likely to meet the eligibility requirements for expungement as of December 31, 2019. If the Board approves staff's recommendation, those eligible inactive enrollments will be expunged.

BACKGROUND

Since 2017, California Rule of Court 9.31(g) allows the State Bar to expunge, on a one-time only basis, a State Bar of California licensed attorney's record of having been enrolled as administratively inactive for failure to comply with MCLE requirements if all conditions are met. The current conditions for eligibility for expungement are as follows:

1. The attorney has not on any previous occasion obtained an expungement under the terms of rule 9.31 or rule 9.8 (formerly 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 the expungement is sought; and

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

Staff presented the first related expungement recommendation to the Board in late 2017. This year's list includes inactive enrollments 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

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 provisions of Rule 9.31, also requires only Board action.

State Bar staff have identified just over 90 licensees with past inactive enrollments 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 inactive enrollments, if approved.

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

Rule 9.31(g) requires that the State Bar of California maintain the records that would be necessary to demonstrate the applicability of Rule 9.31(f) and to report to appropriate governmental entities an attorney's eligibility for a judgeship pursuant to article VI, section 15 of the California Constitution.¹ 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

¹ 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."

BOARD OF TRUSTEES POLICY MANUAL AMENDMENTS

None

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 directs staff to determine which records of inactive enrollment for failure to comply with MCLE requirements qualify for the annual expungement pursuant to California Rule of Court 9.31(f); and it is

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

ATTACHMENT(S) LIST

None