



The State Bar *of California*

OPEN SESSION AGENDA ITEM 50-8 NOVEMBER 2019

DATE: November 14, 2019

TO: Members, Board of Trustees

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

SUBJECT: Recommendation Regarding Licensees Not in Compliance with Fingerprinting Requirement

EXECUTIVE SUMMARY

Pursuant to California Rules of Court, rule 9.9.5, and Business and Professions Code section 6054 (d), State Bar staff are proposing to administratively enroll as involuntarily inactive all active licensees who were subject to the December 1, 2019 fingerprinting requirement compliance deadline and who have still not complied by Monday, December 2, 2019. As of December 3, 2019, these individuals will be placed on "Not Eligible to Practice" status.

This agenda item also seeks authorization from the Board of Trustees (Board) for staff to remove attorneys from involuntary inactive status once the attorney has provided proof of compliance.

BACKGROUND

California Rules of Court, rule 9.9.5 requires active licensed attorneys, with limited exception, to be fingerprinted pursuant to the procedure identified by the State Bar, and requires the State Bar to enter into a contract with the State Department of Justice so the State Bar will receive information about arrests and convictions on an ongoing basis.

Rule 9.9.5 requires the State Bar to develop a schedule for the required fingerprinting. The Board adopted such a schedule in May 2018, setting forth progressive penalty deadlines of April 30, 2019 and July 31, 2019, with a final compliance deadline of December 1, 2019. Rule 9.9.5

provides the State Bar with the authority to administratively enroll California attorneys who fail to comply with the fingerprinting requirement on involuntary inactive status, as described in Business and Professions Code section 6054 (d).

Rule 2.46 of the Rules of the State Bar specifies that failure to submit proof that fingerprints have been taken in accordance with State law and State Bar procedures will result in a licensee being enrolled as inactive and not eligible to practice law. Rule 2.46 also requires licensees to receive notices of noncompliance at least 60 days prior to the State Bar enrolling them involuntary inactive.

DISCUSSION

Starting in June 2018, licensees on active status were emailed notices related to the fingerprinting requirement, setting forth the initial April 30, 2019 compliance deadline.

Between June 2018 and April 2019, licensees who remained noncompliant were sent an average of eight emailed notices and two hard copy notices related to the deadline. A \$75 penalty was assessed to those licensees who remained on active status, had not obtained a formal extension of time to comply (due to medical or other hardship, or due to geographic challenges resulting from living outside of the country), and who had still not been fingerprinted by April 30, 2019.

Through May 31, 2019, most newly licensed attorneys, attorneys newly transferred from judge status to active status, and attorneys transferred from not eligible status to active status were added to the list of those licensees subject to the fingerprint requirement and to the December 1, 2019 final compliance deadline. (Attorneys newly subject to the requirement *after* May 31, 2019, will be given a later compliance deadline which is addressed in the November 2019 Board Item 704.)

At least three more emails and another hard copy letter were mailed prior to the July 31, 2019 secondary deadline, upon which a \$100 penalty was assessed to those who remained noncompliant.

Since August 2019, weekly email reminders have been initiated, and two hard copy mailings were sent, including a “60-Day Notice” mailed in September 2019, and a “Final Notice” mailed at the end of October 2019 with a Certificate of Mailing. These notices confirmed the final deadline for compliance as December 1, 2019, consistent with Rule 9.9.5, but because this date falls on a Sunday, only those attorneys who still have not provided proof of compliance by day’s end on Monday, December 2, 2019 should be enrolled as involuntarily inactive, effective December 3, 2019.

As of November 1, 2019, the number of licensees at risk of being enrolled as involuntarily inactive for fingerprinting noncompliance effective December 3, 2019, was 1,575. This number is expected to decrease significantly before the final deadline.

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

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATIONS

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

RESOLVED, pursuant to California Rule of Court 9.9.5 and the Rules of the State Bar, that the Board hereby authorizes that those licensees subject to the December 1, 2019, fingerprinting deadline who do not bring themselves into compliance with the fingerprinting requirement by December 2, 2019, be enrolled as inactive and placed on "Not Eligible to Practice" status, effective December 3, 2019; and it is

FURTHER RESOLVED, that the Board hereby authorizes staff to remove individual attorneys from inactive status once they have submitted proof of compliance.

ATTACHMENT(S) LIST

None