



The State Bar of California

OPEN SESSION AGENDA ITEM 702 APRIL 2020

DATE: April 16, 2020

TO: Members, Board of Trustees

FROM: James J. Chang, Assistant General Counsel

SUBJECT: Emergency Rule Changes Necessitated by COVID-19

EXECUTIVE SUMMARY

This item proposes to grant staff the authority to waive late payment penalties for licenses impacted by the COVID-19 emergency, to extend certain compliance deadlines, and to allow electronic service of process in fee arbitration and State Bar Court proceedings. These proposed changes are intended to mitigate the impact of the COVID-19 emergency on licensees, program participants, members of the public, and State Bar staff.

Waivers

1. **Waiver of Licensing Fee Late Payment Penalty.** Staff would be granted authority to waive licensing fee late payment penalties for licensees impacted by the COVID-19 Emergency.

Deadline Extensions – Licensees

2. **Nonpayment of License Fees.** Staff recommends delaying from June 30 to September 30 the final deadline for licensees to pay outstanding license fees before being suspended by the Supreme Court.
3. **MCLE Compliance.** Staff recommends delaying from June 30 to September 30 the final deadline for licensees to report MCLE compliance before being administratively enrolled on involuntary inactive status.
4. **Fingerprinting Compliance for Certain Licensees.** Staff recommends delaying from June 30 to September 30 the final deadline for certain licensees to comply with the fingerprinting requirement before being enrolled on involuntary inactive status.

Deadline Extensions – Programs

5. **MCLE Provider Renewal.** Staff recommends delaying from June 30 to September 30 the final deadline for MCLE multiple activity providers to renew their status.
6. **Law Corporation Renewal.** Staff recommends extending from May 3 to June 30 the penalty deadline for law corporation renewal.

Rule Changes to Permit Electronic Service

7. **Electronic Service in Fee Arbitration Proceedings.** Staff recommends adoption of an interim amendment to Rule 3.513 of the Rules of the State Bar of California to expressly permit electronic service in fee arbitration proceedings.
8. **Electronic Service in State Bar Court Proceedings.** Staff recommends adoption of interim Rule 5.26.1 of the Rules of Procedure of the State Bar of California to expressly permit electronic service in State Bar Court proceedings.

BACKGROUND

On March 4, 2020, Governor Gavin Newsom issued a Proclamation of a State of Emergency due to the COVID-19 Pandemic (COVID-19 Emergency).

Effective March 17, 2020, the State Bar closed the San Francisco and Los Angeles offices to the public temporarily and made telecommuting mandatory for most employees, limiting to essential personnel only those who are coming in to the office. The State Bar continues to perform its essential public protection services, although there have been some operational impacts due to the mandatory telework arrangement.

On March 19, 2020, Governor Newsom issued Executive Order N-33-20, requiring all California residents to stay home except as needed for authorized necessary activities. Many businesses are temporarily closed due to this order.

Rule 1.10(C) of the Rules of the State Bar of California allows the Board, in case of an emergency, to amend or suspend State Bar Rules, including the Schedule of Charges and Deadlines,¹ without public comment on an interim basis.

¹ See Rule 1.20(L) of the Rules of the State Bar of California [“If a rule refers to the Schedule of Charges and Deadlines, the referenced date or amount is part of the rule.”].

DISCUSSION

1. Waiver of Licensing Fee Late Payment Penalty For Licensees Impacted by the COVID-19 Emergency.

Business and Professions Code section 6141.1 authorizes the Board of Trustees to waive the annual license fee, any portion thereof, or any penalty thereon, as the Board may provide by rule. Pursuant to that statutory authority, the Board has enacted Rule 2.16 of Title Two of the Rules of the State Bar, which specifies certain circumstances where staff may grant a licensee's request for waiver of up to \$1,000 in annual licensing fees and penalties without Board approval.

Rule 2.16(H) reserves to the Board the authority to consider requests that fall outside of the categories for which staff is currently authorized to grant waivers without Board approval.

Annual license fees were due on February 1, 2020, and late penalties have now been assessed.

Staff seeks approval by the Board to consider and grant on a case-by-case basis requests for waiver of 2020 late payment penalties for licensees who can prove that they have been financially impacted by the COVID-19 Emergency. Staff also requests authorization to adopt reasonable measures to address other payment issues raised by licensees impacted by the COVID-19 Emergency.

2. Extend from June 30 to September 30 the Final Deadline for Payment of License Fees.

Business and Professions Code section 6143 provides that any licensee who fails to pay any fees, penalties, or costs shall, after due notice of delinquency, have their license suspended.

The annual license fee is due February 1 of each year, as set forth in the Schedule of Charges and Deadlines. Because February 1, 2020 fell on a Saturday, this year's deadline was February 3, 2020. Historically, in May of each year, the Board has passed a resolution recommending to the Supreme Court the suspension of licensees who remain delinquent as of June 30. Essentially the period from the payment deadline to June 30 serves as a grace period to make payment before facing suspension.

This year, due to the COVID-19 Emergency and stay-at-home order, even though the payment deadline preceded the stay-at-home orders, licensees who were in the grace period for payment may now have difficulty complying with their license payment obligations.

In addition to the expanded authority to grant waivers of late fees as provided in item 1 above, staff recommends that, in recognition of the hardship caused by the COVID-19 Emergency and to afford licensees a reasonable period of time to comply before facing suspension, the Board approve a delay from June 30 to September 30 of the final deadline for licensees to pay outstanding fees.

3. Extend from June 30 to September 30 the Final Deadline for MCLE Compliance.

Rule 9.31 of the California Rules of Court provides that any licensee who fails to satisfy the requirements of the State Bar's Minimum Continuing Legal Education (MCLE) program shall be enrolled as involuntarily inactive under rules adopted by the Board.

The deadline to comply with the MCLE requirement for attorneys in Compliance Group 3, as set forth in Rule 2.71(A) of the Rules of the State Bar of California, was February 3. Historically, in May of each year, staff has brought to the Board a resolution to administratively enroll noncompliant licensees to "Not Eligible to Practice" status if they have not complied with their MCLE requirement by June 30.

As with the license fee payment deadline, even though the MCLE compliance deadline preceded the stay-at-home orders and MCLE requirements can be partially completed online, licensees who were in the grace period for MCLE compliance may nonetheless have difficulty complying with their MCLE requirements at this time.

Due to the COVID-19 Emergency, staff proposes to delay the annual recommendation regarding licensees not in compliance with MCLE requirements to allow until September 30 to come into compliance.

4. Extend from June 30 to September 30 the Final Deadline for Fingerprinting Compliance for Certain Licensees.

In November 2019, pursuant to its authority under Rule 9.9.5 of the California Rules of Court and Rule 2.46 of the Rules of the State Bar of California, the Board adopted a schedule for fingerprinting compliance requiring certain licensees² to comply with the fingerprinting requirement by February 1, 2020, to avoid penalties, and by June 30, 2020, to avoid involuntary inactive enrollment.

Staff has learned that the majority of LiveScan fingerprinting vendors are currently closed due to the COVID-19 Emergency, making it difficult for remaining noncompliant licensees to comply with the fingerprinting requirement. In recognition of this hardship, staff proposes a 3-month extension of time to comply, extending the deadline from June 30 to September 30.

² This item applies only to certain licensees who were exempt from earlier requirements to comply with the fingerprinting requirement as explained in Agenda Item 704 November 2019. Specifically, this item impacts four groups of noncompliant licensees: Group 1 [Newly admitted to the State Bar and passed moral character before July 2017 subsequent arrest notification contract when into effect.]; Group 2 [Newly transferred from not eligible to practice to active status.]; Group 3 [Newly transferred from judge to active status.]; Group 4 [Pending confirmation after the State Bar received proof of re-fingerprinting]. Other licensees who were subject to the fingerprinting requirement were already placed on involuntary inactive status if they had not complied by February 1, 2020. Agenda Item 704 November 2019 is available at <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000025088.pdf>.

5. Extend from June 30 to September 30 the Deadline for MCLE Multiple Activity Providers to Renew Status.

Rule 3.621 of the Rules of the State Bar of California requires MCLE Multiple Activity Providers (MAPs) to submit renewal applications by a deadline set by the State Bar. The Board previously set June 30 as the annual renewal deadline. See Agenda Item 143 July 2017.³

Due to the COVID-19 Emergency, MAPs may have difficulty timely gathering the necessary documentation required to submit their applications. Specifically, MAPs must provide logs of attendees for four courses offered during the course of their prior registration. For some, this information is available only in hardcopy form and may not be accessible as staff is adhering to various stay at home requirements. As a result, staff proposes, for 2020 only, to extend the deadline from June 30 to September 30 for MCLE Multiple Activity Providers to submit their renewal applications.

6. Extend from May 3 to June 30 the Penalty Deadline for Law Corporation Renewal (Rule 3.156(B)).

Business and Professions Code sections 6161 and 6163 require law corporations to submit annual registration fees and applications for renewal pursuant to rules established by the State Bar. Rule 3.156 of the Rules of the State Bar of California provides that a law corporation that fails to timely submit a renewal application by the deadline in the Schedule of Charges and Deadlines shall pay a penalty and be suspended. The current annual renewal and penalty deadline in the Schedule of Charges and Deadlines is May 3.

The COVID-19 Emergency is impacting the ability for law corporations to timely comply with the May 3 deadline. The individualized renewal forms were sent by the State Bar to law corporations in mid-March, shortly before the stay-at-home orders were issued. The renewal process is a manual paper-based process, requiring the law corporations to print out the renewal form, have it signed by a shareholder, and then mailed back to the State Bar with payment by check. This exchange of paper within the law offices may be slowed during the current emergency. Staff is also processing applications more slowly due to the delays in transmission of mail and the constraints of the mandatory telecommute situation. Staff therefore proposes to extend the annual renewal and penalty deadline until June 30 for 2020 only.

7. Interim Amendment to Rule 3.513 of the Rules of the State Bar of California to Permit Electronic Service in Mandatory Fee Arbitration Proceedings.

Current State Bar rules regarding service of process in fee arbitration proceedings do not explicitly permit electronic service. Due to the COVID-19 Emergency and the resulting difficulties in sending and receiving mail for some individuals, staff recommends temporarily amending the rule to explicitly allow electronic service between parties by mutual agreement,

³ Available at <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000018783.pdf>.

and to allow the State Bar to serve documents electronically upon parties with the parties' consent.

Rule 1.10(C) of the Rules of the State Bar of California allows the Board to amend a rule on an interim basis without first circulating it for public comment in the case of an emergency. No interim measure may remain in effect for more than 120 days. Staff will consider whether to separately propose that this interim amendment be recommended for permanent adoption.

8. Interim Rule 5.26.1 of the Rules of Procedure of the State Bar of California to Permit Electronic Service in State Bar Court Proceedings.

Current Rule 5.26 of the Rules of Procedure of the State Bar of California does not explicitly permit electronic service of later pleadings (e.g., pleadings subsequent to the Notice of Disciplinary Charges) in State Bar Court proceedings.

Due to the extraordinary circumstances posed to public health and safety relating to the COVID-19 Emergency, the Chair of the Board of Trustees and Chair of the Regulation and Discipline Committee had authorized the State Bar Court to temporarily ease the requirements of Rule 5.26 of the Rules of Procedure of the State Bar by permitting electronic service in the manner referenced in State Bar Court General Order 20-04, Order re Electronic Service, issued on April 3, 2020.

General Order 20-04 has provided stopgap relief, but does not address the absence of explicit authorization for electronic service in the current Rules of Procedure. Business and Professions Code section 6086 authorizes the Board of Trustees to enact Rules of Procedure governing disciplinary proceedings. Staff recommends that the Board adopt an interim rule explicitly permitting electronic service during the COVID-19 Emergency.

Rule 1.10(C) of the Rules of the State Bar of California allows the Board to amend a rule on an interim basis without first circulating it for public comment in the case of an emergency. No interim measure may remain in effect for more than 120 days.

Staff will consider whether to separately propose that a rule change permitting electronic service be recommended for permanent adoption.

FISCAL/PERSONNEL IMPACT

No significant fiscal or personnel impact.

AMENDMENTS TO RULES OF THE STATE BAR

Title 3, Division 4, Chapter 2, Rule 3.516 of the Rules of the State Bar of California is proposed to be amended on an interim basis as set forth in Resolution 7 below.

Title 5, Division 2, Chapter 1 of the Rules of Procedure of the State Bar of California is proposed to be amended on an interim basis to add interim Rule 5.26.1 as set forth in Resolution 8 below.

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

1. Waiver of Licensing Fee Late Payment Penalty For Licensees Impacted by the COVID-19 Emergency.

RESOLVED, that the Board of Trustees, pursuant to Rule 2.16(H) of the Rules of the State Bar of California, hereby approves the waiver of any 2020 licensing fee late payment penalty where the requestor has provided proof, to the satisfaction of staff, that their ability to pay has been impacted by COVID-19 Emergency, and that the Board of Trustees hereby delegates to staff the authority to adopt reasonable measures to similarly address other payment issues that may be raised by licensees impacted by the COVID-19 emergency.

2. Extend from June 30 to September 30 the Final Deadline for Payment of License Fees.

RESOLVED, that the Board of Trustees approves of a modified schedule setting September 30, 2020, as the final deadline for licensees to pay outstanding fees or be recommended for suspension by the Supreme Court.

3. Extend from June 30 to September 30 the Final Deadline for MCLE Compliance.

RESOLVED, that the Board of Trustees approves of a modified schedule setting September 30, 2020, as the final deadline for licensees in Compliance Group 3 to comply with their MCLE requirements or be administratively enrolled on Involuntary Inactive status.

4. Extend from June 30 to September 30 the Final Deadline for Fingerprinting Compliance for Certain Licensees.

RESOLVED, that the Board of Trustees, pursuant to Rule 2.46 of the Rules of the State Bar of California, hereby resets from June 30, 2020, to September 30, 2020, the final deadline for compliance with the fingerprinting requirement for noncompliant licensees identified in Groups 1 through 4 of Agenda Item 704 November 2019 or be administratively enrolled on Involuntary Inactive status.

5. Extend from June 30 to September 30 Deadline for MCLE Multiple Activity Providers to Renew Status.

RESOLVED, that the Board of Trustees, pursuant to Rule 3.621 of the Rules of the State Bar of California, hereby resets from June 30, 2020, to September 30, 2020, the deadline for MCLE Multiple Activity Providers to submit renewal applications.

6. Extend from May 3 to June 30 the Penalty Deadline for Law Corporation Renewal (Rule 3.156(B)).

RESOLVED, that the Board of Trustees, pursuant to Rule 3.156(B) of the Rules of the State Bar of California, hereby modifies the Schedule of Charges and Deadlines to reset from May 3, 2020, to June 30, 2020, the final deadline for law corporations to submit annual registration fees and applications for renewal.

7. Interim Amendment to Rule 3.513 of the Rules of the State Bar of California to Permit Electronic Service in Mandatory Fee Arbitration Proceedings.

RESOLVED, that the Board of Trustees, having determined pursuant to Rule 1.10(C) of the Rules of the State Bar of California that an emergency justifies immediate enactment of this interim measure without public comment, hereby amends Rule 3.513 of the Rules of the State Bar of California to add the following subdivision (F):

(F) Electronic Service. [The following provisions of this subdivision (F) are interim emergency measures adopted by the Board of Trustees pursuant to Rule 1.10(C) of the Rules of the State Bar of California and shall expire on August 14, 2020, unless otherwise ordered by the Board of Trustees.]

- (i) In addition to the methods of service provided for in subdivision (A) of this rule, the parties to an arbitration may consent to electronic service of documents upon each other pursuant to Code of Civil Procedure section 1010.6(a)(1)(A)-(C).
- (ii) The parties to an arbitration may consent to receive electronic service of documents from the State Bar in lieu of service by mail by providing to the State Bar written consent to receive electronic service of documents from the State Bar at the party's designated electronic address.

8. Interim Rule 5.26.1 of the Rules of the State Bar of California to Permit Electronic Service in State Bar Court Proceedings.

RESOLVED, that the Board of Trustees, having determined pursuant to Rule 1.10(C) of the Rules of the State Bar of California that an emergency justifies immediate enactment of this interim measure without public comment, hereby enacts interim Rule 5.26.1 of the Rules of Procedure of the State Bar of California as set forth below:

Interim Rule 5.26.1 Electronic Service of Later Pleadings

[This interim rule 5.26.1 is adopted by the Board of Trustees pursuant to Rule 1.10(C) of the Rules of the State Bar of California and shall expire on August 14, 2020, unless otherwise ordered by the Board of Trustees.]

(A) Electronic Service. In addition to the methods of service of later pleadings permitted by Rule 5.26(F), a party may serve later pleadings by electronic service. The court may electronically serve any document issued by the court to a party's or other person's email address. The court may use the attorney's email address that is reported to the State Bar pursuant to rule 9.9(a) of the California Rules of Court to electronically serve a party or other person.

(B) Definitions. The following definitions apply to this rule:

- (1) "Electronic service" means service of a document, on a party or other person, by electronic transmission. Electronic service may be performed directly by a party or other person, or by an agent of a party or other person, including the party or other person's attorney.
- (2) "Electronic transmission" means the transmission of a document by electronic means to the electronic service address.

(C) Computing Time.

- (1) A pleading or document that is served by electronic service is deemed complete at the time of the electronic transmission of the pleading or document.
- (2) When service is made by electronic transmission, the prescribed period to act or respond is extended by two Court days.
- (3) The provisions of Rule 5.28 otherwise apply to computing time.

(D) Proof of Electronic Service.

- (1) When a party serves a document by electronic service pursuant to this rule, a party must make proof of electronic service under Code of Civil Procedure section 1013b, subdivisions (a) and (b). The proof of electronic

service may include an electronic signature as defined in State Bar Court General Order 20-03.

- (2) For purposes of this rule, a party complies with the electronic service requirements if the party executes the party's own proof of service after completing the electronic transmission.
- (3) The proof of electronic service must be filed with the court pursuant to Rule 5.27(C).

(E) Change of Electronic Service Address. A party or other person whose electronic service address changes while the proceeding is pending must promptly notify in writing, including by email, all other parties and all other persons required to be served of his or her change of electronic service address.