



The State Bar of California

OPEN SESSION AGENDA ITEM 702 MAY 2020

DATE: May 14, 2020

TO: Members, Board of Trustees

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

SUBJECT: Consideration of Options for Licensees Not in Compliance with Fingerprinting Requirement

EXECUTIVE SUMMARY

Pursuant to California Rules of Court, rule 9.9.5, Business and Professions Code section 6054 (d), Rule 2.64 of the Rules of the State Bar, and prior resolutions of the Board of Trustees, certain licensees who were subject to the February 3, 2020, fingerprinting requirement compliance deadline and still have not complied are currently scheduled to be placed on involuntary inactive status if they do not comply by June 30, 2020. Unless the Board modifies the schedule, as of July 1, 2020, these individuals will be enrolled as inactive and their licensee status will be changed to "Not Eligible to Practice."

At the April 16, 2020, Board of Trustees meeting, the Board deferred consideration of a proposal to extend the final compliance deadline from June 30 to September 30, opting to see if the COVID-19 restrictions would have eased by the time of May meeting. The Board requested that staff present options for consideration. This item presents 2 options:

- Option 1 – Extend the deadline for final compliance from June 30 to September 30.
- Option 2 – Maintain the current June 30 deadline for compliance.

Under either option, this agenda item seeks authorization for staff to proceed with involuntary inactive enrollment of attorneys based upon the schedule the Board selects and seeks authorization from the 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 exceptions, 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 (DOJ) 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 an initial schedule in May 2018, setting forth progressive penalty deadlines and a final compliance deadline of December 1, 2019. This first phase brought the vast majority of active licensed attorneys into full compliance. In November, 2019, the Board further adopted an annual schedule for the year 2020 and onwards, for active attorneys newly subject to the requirement. This annual schedule set forth an initial penalty deadline as the first business day in February, and a final deadline as the last business day in June.¹ 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

Licensees who were due to comply with the fingerprinting requirement by February 3, 2020, include the following:

1. Licensees newly admitted to the State Bar between June 1, 2019, and October 31, 2019;
2. Licensees newly transferred from not eligible to practice to active status between June 1, 2019 and October 31, 2019;
3. Licensees newly transferred from judge to active status between June 1, 2019 and October 31, 2019; and
4. Licensees who attempted to comply with a previous deadline but whose fingerprints were rejected or not received by the DOJ/FBI.

Affected licensees were emailed several notices of the pending deadline prior to February 3, 2020. Since February 3, 2020, 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 the country) and who remained noncompliant were sent at least one more email. They have also been sent two hard copy notices since their initial deadline, including one on April 27, 2020, confirming the final June 30, 2020 deadline.

¹ See Agenda Item 704 November 2019, available at <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000025088.pdf>.

At the April 16, 2020 Board of Trustees meeting, staff proposed that Board extend the final compliance deadline from June 30, 2020, to September 30, 2020, due to the unavailability of fingerprinting services as a result of the COVID-19 Emergency.² The Board deferred consideration of the item and requested that staff provide additional detail.

The following additional information regarding licensees not in compliance with the fingerprinting requirement is provided to assist in the Board's consideration of this item.

- As of April 27, 2020, 353 licensees remained noncompliant and subject to being enrolled as involuntarily inactive effective July 1, 2020.
- Of those 353 licensees, 316 (90 percent) previously attempted compliance, but their initial submissions were rejected due to technical issues such as system rejection of their fingerprints or use of invalid transaction identifier numbers. Those licensees must successfully resubmit their fingerprints to comply with the requirement.
- The remaining 37 licensees (10 percent) have not previously attempted compliance, either because they were previously granted an extension of time as a hardship accommodation, or because they became newly subject to the fingerprinting requirement after a previous compliance window had already concluded.

This item suggests 2 options for Board consideration:

Option 1 – Extend the deadline for final compliance for this population of 353 licensees from June 30 to September 30.

Staff originally proposed extending the compliance deadline for this population of 353 licensees due to the inaccessibility of fingerprinting services as a result of the COVID-19 Emergency, as only 30 percent of LiveScan fingerprint vendors were reported to be open as of mid-April. Staff has not been able to obtain an updated estimate of the current number of LiveScan fingerprint vendors that are currently open, but believes that access to LiveScan fingerprinting remains limited due to the COVID-19 emergency.

Staff proposes that the Board consider whether this exigency warrants a three-month extension of the compliance deadline. If the Board approves an extension, staff will modify the schedule so as to enroll on involuntary inactive status any remaining noncompliant licensees if they have not complied by September 30, instead of June 30, as currently scheduled. This item will also serve as the Board's approval for that ultimate action on September 30.

² See Agenda Item 702 April 2020, available at <http://board.calbar.ca.gov/Agenda.aspx?id=15562&tid=0&show=100024603&s=true#10032594>.

Option 2 – Maintain the current June 30 deadline for compliance.

If the Board chooses not to extend the compliance deadline from June 30 to September 30, then staff will proceed with the current schedule for involuntary inactive enrollment of noncompliant licensees. Staff will continue sending email reminders and will also send a “Final Notice” with proof of service during the first week of June to those licensees who remain out of compliance. Those who still have not complied by June 30, 2020, will be enrolled as inactive and moved to “Not Eligible to Practice” status, effective July 1, 2020.

FISCAL/PERSONNEL IMPACT

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

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATIONS

Should the Board of Trustees concur that the deadline should be extended, passage of the following resolutions is recommended:

RESOLVED, that the Board of Trustees, pursuant to Rule 2.46 of the Rules of the State Bar, 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; and it is

FURTHER RESOLVED, that the Board of Trustees hereby authorizes, pursuant to California Rule of Court 9.9.5 and Rule 2.46 of the Rules of the State Bar, that those licensees subject to the September 30, 2020, fingerprinting deadline who do not bring themselves into compliance with the fingerprinting requirement by September 30, 2020, be enrolled as inactive and placed on “Not Eligible to Practice” status effective October 1, 2020; 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.

Should the Board of Trustees concur that the deadline should not be extended, passage of the following resolutions is recommended:

RESOLVED, that the Board of Trustees hereby authorizes, pursuant to California Rule of Court 9.9.5 and Rule 2.46 of the Rules of the State Bar, that those licensees subject to the June 30, 2020, fingerprinting deadline who do not bring themselves into compliance with the fingerprinting requirement by June 30, 2020, be enrolled as inactive and placed on “Not Eligible to Practice” status effective July 1, 2020; 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