



The State Bar of California

OPEN SESSION AGENDA ITEM 50-6 MAY 2021

DATE: May 13, 2021

TO: Members, Board of Trustees

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

SUBJECT: Annual Recommendation Regarding Licensees Not in Compliance with Fingerprinting Requirements

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 all licensees who were subject to the fingerprinting compliance deadline of February 1, 2021, and who have not complied with the fingerprinting requirements by the final deadline of June 30, 2021, as involuntary inactive and place them on Not Eligible to Practice status, effective July 1, 2021.

In addition, staff are proposing to enroll as involuntarily inactive any other attorneys who were granted extensions of time to comply with a prior deadline and who have not complied by their extended deadline.

This agenda item also seeks the Board's authorization 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 progressive penalty deadlines of April 30, 2019, and July 31, 2019, with a final compliance deadline of December 1, 2019.

At its November 2019 meeting, the Board adopted a schedule for those attorneys who were not subject to the deadline of December 1, 2019, but who the rule would impact in future years, upon their future admission to the State Bar, or upon a newly reactivated license. Examples of such attorneys include those newly transferred to active status from an unrelated Not Eligible status, and those newly transferred to active status from judge status. (Note that attorneys reactivating their license from a *voluntary* inactive status are excluded from this group, as they must be compliant with the fingerprinting requirement before being eligible to voluntarily transfer to active status.) The annual compliance schedule is consistent with the annual fee cycle, with an initial deadline of February 1, and a final deadline of June 30. With the vast majority of licensees already in full compliance, fewer than 200 attorneys are expected to be newly subject to the fingerprinting deadline annually.

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

On April 26, 2021, staff mailed Fingerprinting Rule Noncompliance 60-Day Notices to the remaining attorneys subject to the 2021 fingerprinting compliance deadline who have not complied with the requirement. Prior to this April notice, these attorneys were contacted by email on at least four separate occasions before the initial deadline of February 1, 2021. Two more email reminders were sent since February 1, and at least two more will be sent before the deadline of June 30, 2021. (Those attorneys formally exempt from providing the State Bar an email address pursuant to Rule of Court 9.9(d) were mailed several paper notices and paper Livescan forms.)

During the first week of June 2021, staff will send a Final Notice, with certificate of mailing, to those attorneys who remain out of compliance with fingerprinting requirements. Subject to the Board's approval of this item, those who have still not complied by June 30, 2021, will be moved to Not Eligible to Practice status, effective July 1, 2021.

In addition, staff have been following up with attorneys who were granted good-cause extensions to past fingerprinting compliance deadlines who have not complied by their new deadlines. These attorneys were mailed 60-Day Notices and, if need be, will be mailed Final

Notices. If they have still not complied with the fingerprinting requirement by June 30, 2021, subject to the Board's approval of this item, they will be moved to Not Eligible to Practice status, effective July 1, 2021.

As of the writing of this agenda item, the total number of licensees who remain at risk of being enrolled as involuntarily inactive for fingerprinting noncompliance in 2021 is fewer than 50. This number is expected to further decrease before the final deadline.

FISCAL/PERSONNEL IMPACT

None

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 in the proposed action, passage of the following resolution is recommended:

RESOLVED, pursuant to California Rule of Court 9.9.5 and the Rules of the State Bar, that the Board of Trustees hereby authorizes that those attorneys subject to the June 30, 2021, final fingerprinting deadline, who do not bring themselves into compliance with fingerprinting requirements by June 30, 2021, be enrolled as inactive and placed on Not Eligible to Practice status, effective July 1, 2021, and it is

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

ATTACHMENT(S) LIST

None