



The State Bar of California

OPEN SESSION AGENDA ITEM 50-4 NOVEMBER 2021

DATE: November 18, 2021

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 to expunge records of inactive enrollment for failure to comply with MCLE requirements for licensees who satisfy specified criteria. Staff have identified 50 records that appear likely to meet the eligibility requirements for expungement as of December 31, 2021. If the Board approves staff's recommendation, those eligible inactive enrollments will be expunged.

BACKGROUND

Since 2017, California Rule of Court 9.31(f) allows the State Bar to expunge—on a one-time-only basis—a 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 licensee has not on any previous occasion obtained an expungement under the terms of rules 9.31 or 9.8 (formerly 9.6);
2. The period of inactive enrollment was for 90 days or fewer;
3. The period of inactive enrollment ended at least seven years prior to the date the expungement is sought; and

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

DISCUSSION

Unlike suspensions for nonpayment of fees, which are formal suspensions ordered by the Supreme Court, enrollments on administrative inactive status for MCLE noncompliance are authorized by the Board of Trustees. As eligible under the provisions of rule 9.31, a subsequent expungement of the inactive enrollment also only requires Board action.

Under the criteria of rule 9.31(f), State Bar staff have identified 50 licensees with past inactive enrollments that are on track to qualify for expungement as of December 31, 2021. The list has been checked extensively, and if approved, a process exists to expunge these inactive enrollments.

If the Board approves the recommendation, the records that meet the criteria as of December 31, 2021, will be expunged during the first week of January, and the affected attorneys will be notified of this action by mail.

Rule 9.31(g) requires that the State Bar of California maintains the records that would be necessary to demonstrate the applicability of rule 9.31(f) and reports an attorney's eligibility for a judgeship to appropriate governmental entities, 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.

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

¹ Article VI, section 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."

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, 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