

AGENDA ITEM

JULY - 135

Annual Recommendation
to The Supreme Court for
Expungement of
Suspensions for
Nonpayment of Fees that
meet the Criteria set forth
in Rule of Court 9.6(b)

DATE: June 29, 2007

TO: Members of the Board Committee on Member Oversight
Members of the Board of Governors

FROM: Dina DiLoreto, Director of Administration, Member Services
J. Robert McPhail, Sr. Admin. Supervisor, Member Services

SUBJECT: Recommendation to The Supreme Court for Expungement
of Suspensions for Nonpayment of Fees that meet the
criteria set forth in Rule of Court 9.6(b)

Executive Summary

California Rule of Court 9.6 (b) provides for a Board recommendation of expungement to the California Supreme Court of non-disciplinary suspensions within limited circumstances. Rule 9.6, approved by the Supreme Court on June 1, 2007 will provide expungement relief to approximately 1275 members. If the Board approves the recommendation a list of eligible members will be transmitted to the Supreme Court for its order of expungement. A list of the members who may benefit will be made available at the meeting.

Eligible members have a single fee suspension that occurred more than 7 years ago, for 90 days or less, and have no other record of suspension or involuntary inactive enrollment for discipline. Pursuant to Rule 9.6(b), they are eligible for recommendation that the Supreme Court grant a one-time only expungement.

Questions concerning this item should be directed to Dina DiLoreto at 415-538-2121. or by E-mail to Dina.DiLoreto@calbar.ca.gov.

BACKGROUND

At its August 19, 2006 meeting the Board of Governors recommended that the Supreme Court amend California Rules of Court, rule 9.6¹ to allow for the one-time expungement of a State Bar of California member's record of fee suspension if the following conditions apply:

- 1) The member has not on any previous occasion obtained an expungement of a suspension for nonpayment of fees;
- 2) The suspension was for 90 days or less;
- 3) The suspension ended at least seven years before the date of submission of member's name to the Supreme Court; and
- 4) The member has no other record of suspension of involuntary inactive enrollment for discipline or otherwise.

The Supreme Court adopted the State Bar's recommendation effective June 1, 2007 by approving new expungement provisions for Rule of Court 9.6. Under Rule 9.6, expungement is accomplished by removing or deleting the suspension from the member's record. At your meeting, in a separate agenda item, the Board will also be asked to make the changes necessary to conform the Rules of the State Bar to the new rule of court (July - 112.)

Staff has prepared a list of approximately 1,275 members who qualify under the criteria of Rule 9.6 (b). The list has been extensively checked and a process has been created to expunge these members' records. A list of eligible members will be made available at the meeting.

Should the board recommend expungement of eligible members' suspension for nonpayment of fees, the State Bar will transmit the list to the Supreme Court with a recommendation that each of these members' public record of suspension for nonpayment of membership fees be expunged. Eligible members will be notified by mail about the Board recommendation and submission to the Supreme Court. A copy of the expungement order will be sent to the eligible members.

Rule 9.6(c) requires that the State Bar of California maintain such internal records as are necessary to apply the terms of rule 9.6(b) and to report to appropriate governmental entities the member's eligibility for a judgeship under the California Constitution, article VI, section 15, which requires judicial nominees to report all suspensions within the last 10 years of their judicial application. State Bar staff has developed a process and protocol to meet this requirement. As mentioned above, rule 9.6(d) outlines the members' duty of disclosure under these circumstances.

In the future, Rule 9.6 authorized the Board of Governors, on an annual basis, to request expungement of fee suspensions for eligible members.

¹ At the time this was rule 950.5. On January 1, 2007, rule 950.5 was renumbered as 9.6.

BOARD AUTHORITY

California Rules of Court, rule 9.6(b) authorizes the State Bar to transmit to the Supreme Court, on an annual basis, the names of those members who meet the criteria of rule 9.6(b) along with a recommendation that their public record of suspension for non-payment of membership fees be expunged. To be eligible for expungement, the following criteria must be met:

- 1) The member has not on any previous occasion obtained and expungement under the terms of rule 9.6(b);
- 2) The suspension was for 90 days or less;
- 3) The suspension ended at least seven years before the date of submission of member's name to the Supreme court;
- 4) The member has no other record of suspension of involuntary inactive enrollment for discipline or otherwise.

FISCAL AND PERSONNEL IMPACT

There is no direct fiscal impact to this action. The expungement process requires development and execution, which will be absorbed by the regular operations of the Information Technology and Member Services Divisions.

BOARD BOOK/ADMINISTRATIVE MANUAL

This item has no impact on the Board Book/Administrative manual.

BOARD COMMITTEE RECOMMENDATION

If the Board Committee on Member Oversight wishes to recommend the expungement requested, adoption of the following resolution would be in order:

RESOLVED that the Board Committee on Member Oversight hereby ascertains and determines that each of the persons named in the list this day before the board committee is a member of the State Bar of California who meets the criteria for expungement set forth in California Rule of Court 9.6, and it is

FURTHER RESOLVED that the Board Committee on Member Oversight recommends that the Board of Governors recommend to the California Supreme Court that each such person's suspension for nonpayment of fees be expunged from the membership records of the State Bar; and it is

FURTHER RESOLVED that, upon the Court's order of expungement, staff is directed to immediately expunge the suspension from the membership records and notify the member of the Court's order and the expungement.

PROPOSED BOARD RESOLUTION

If the Board concurs with the recommendation of Board Committee on Member Oversight, adoption of the following resolution would be in order:

RESOLVED that the Board hereby ascertains and determines that each of the persons named in the list this day before the board is a member of the State Bar of California who meets the criteria for expungement set forth in California Rule of Court 9.6, and it is

FURTHER RESOLVED that upon recommendation of the Board Committee on Member Oversight the Board of Governors hereby recommends to the California Supreme Court that each such person's suspension for nonpayment of fees be expunged from the membership records of the State Bar; and it is

FURTHER RESOLVED that upon the Court's order of expungement, staff is directed to immediately expunge the suspension from the membership records and notify the member of the Court's order and the expungement.