

AGENDA ITEM

JULY 125

Rules of Procedure of the State Bar – Proposed Amendments to Conform to Current Law

DATE: June 19, 2009

TO: Members of the Board of Governors
Members of the Board Committee on Regulation Admissions & Discipline Oversight

FROM: Colin Wong, Chief Administrative Officer of the State Bar Court

SUBJECT: Proposed Amendments to Rules 661 and 662 of the Rules of Procedure of the State Bar of California to Conform to Current Law Regarding Fingerprint Records and Reinstatement

EXECUTIVE SUMMARY

Currently, a petition for reinstatement under the Rules of Procedure of the State Bar, requires a petitioner to submit two sets of original fingerprints on record cards which are then submitted to the Department of Justice for processing. Beginning July 1, 2005, the California Department of Justice required all applicant fingerprints to be transmitted electronically with certain exceptions for nonresidents of California. Since in most cases, fingerprint cards are no longer being accepted, the rules should be amended to reflect current law for processing fingerprints. Additionally, an issue had arisen regarding when the five year time period began for purposes of calculating when a petition for reinstatement could be filed. This question was settled by a Supreme Court order however, the rule has never been changed to conform to this interpretation. The proposed amendments would conform our Rules of Procedure to the current Department of Justice's practice for processing fingerprints and the Supreme Court's interpretation for calculating the five year time period for reinstatement. Since the rule amendments conform to changes in the law, no public comment period is required.

BACKGROUND:

Rule 661 of the Rules of Procedure of the State Bar requires a petitioner seeking reinstatement to provide two sets of original fingerprints on record cards furnished by the State Bar. Fingerprints are processed by the California Department of Justice. However, since July of 2005, the Department of Justice began requiring all fingerprint submissions to be transmitted electronically. Generally, Live Scan technology has been the method of choice. While exceptions have been made for nonresidents, all California residents are required to submit fingerprints electronically. The current practice of the State Bar Court has already been changed to reflect this requirement.

Rule 662 of the Rules of Procedure governs the earliest time for filing a reinstatement period. No petitions can be filed within five years of the effective date of a petitioner's disbarment. There was a question as to when the five year period began in cases where a petitioner was placed on interim suspension subsequent to a disbarment recommendation. The Supreme Court clarified this issue by Court order.

We are now seeking to formally amend the rules to reflect our current practice and to conform to current law regarding the transmittal of fingerprints to the Department of Justice. In addition, we are also seeking to amend the rules to conform with the Supreme Court's determination regarding the time period begins for a petitioner seeking reinstatement. Since both rule amendments are due to changes in the law, no public comment period is required.

FISCAL AND PERSONNEL IMPACT:

None

BOARD BOOK / ADMINISTRATIVE MANUAL IMPACT:

None

RULE AMENDMENTS IMPACT:

If approved, this item would amend rules 661 and 662 of the Rules of Procedure of the State Bar of California.

PROPOSED BOARD COMMITTEE RECOMMENDATION:

RESOLVED, that the Board Committee on Regulation, Admissions and Discipline Oversight, recommends that the Board of Governors adopt the proposed amendments to rule 661 and 662 of the Rules of Procedure of the State Bar of California, in the form attached hereto as Appendix A, to become effective on January 1, 2010.

PROPOSED BOARD RECOMMENDATION:

RESOLVED, upon the recommendation of the Board Committee on Regulation, Admissions and Discipline Oversight, the Board of Governors of the State Bar hereby adopts the proposed amendments to rule 661 and 662 of the Rules of Procedure of the State Bar of California, in the form attached hereto as Appendix A, to become effective on January 1, 2010.

DISCUSSION:

Rule 661(b) of the Rules of Procedure provides:

The Petitioner shall serve a copy of the petition on the Office of Trials pursuant to the rule for service of initial pleadings (rule 60), accompanied by two (2) sets of original fingerprints on record cards furnished by the State Bar. The fingerprints shall be used and retained for the purposes prescribed in Business and Professions Code section 6054.

All applicants for admission and petitioners for reinstatement have their fingerprints processed through the California Department of Justice. This was previously accomplished with the use of fingerprints record cards. Beginning in July 1, 2005, all applicant fingerprint submissions to the Department of Justice were required to be made electronically. (Penal Code §11077.1.) There are certain exceptions for nonresidents of California, however, the majority of submissions are made through Live Scan technology.

Although, our process has been changed to reflect the current regulations adopted by the Department of Justice, our rules have not been amended to conform to current practice. Therefore, the proposed amendments to rule 661 are intended to reflect the current practice and law pertaining to the submission of fingerprints for applicants.

Rule 662(b) of the Rules of Procedure provides:

“Except as provided in the order of disbarment, no petition for reinstatement shall be filed within five (5) years after the effective date of the petitioner’s disbarment or interim suspension following criminal conviction, or the filing date of the petitioner’s resignation with charges pending, whichever occurred earliest.”

In *In the Matter of Leon Jenkins*, the issue that arose was whether he should be entitled to credit towards the five year waiting period to file a reinstatement petition for the time he was placed on involuntary inactive enrollment under Business and Professions section 6007(c)(4), following the hearing department’s disbarment recommendation. On February 22, 2006, the Supreme Court ordered that the State Bar Court credit Mr. Jenkins with the 14 months while he was on involuntary inactive status prior to his disbarment becoming final. The proposed amendments to rule 662 are intended to conform the rule to the Supreme Court’s order interpreting rule 662.