

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM NUMBER: December 2016 – O-302

DATE: November 28, 2016

TO: Subcommittee on Operations and Management

FROM: Gayle Murphy, Senior Director, Admissions

SUBJECT: Retention and Reporting of Applicant Information by the Department of Justice

BACKGROUND

Every applicants submitting a moral character determination application must submit their fingerprints. The application instructions say:

State law mandates that the State Bar of California "...require that an applicant for admission or reinstatement to the practice of law in California...be fingerprinted in order to establish the identity of the applicant and in order to determine whether the applicant or member has a record of criminal conviction...." An Application for Determination of Moral Character or Application for Extension of Determination of Moral Character will not be considered complete without the appropriately processed fingerprints.

Live Scan Processing:

- Applicants who reside in California must submit fingerprints via **Live Scan technology**. Please see **Fingerprint Instructions for California Residents**.

Fingerprint Card Processing:

- Applicants residing outside of the State of California must submit prints on **fingerprint cards (FD-258) with a Request for Exemption from Mandatory Electronic Fingerprint Submission Requirement form**. Please see Fingerprint Instructions for Out-of-State Residents.

All fingerprints submitted by the Live Scan Process are processed by the California Department of Justice. Fingerprint cards may be sent to the FBI for processed in accordance with certain protocols.

A review of the historical records indicates that in 1979-1978, after a discussion with the American Civil Liberties Union, the information would not be maintained in the databases of the DOJ or the FBI, which is communicated to applicants in the instructions as follows:

An applicant's fingerprints will be used solely to determine whether or not the applicant has a prior criminal record. The Committee will request that the criminal justice agencies return the fingerprints of all applicants and that the agencies neither copy the fingerprints nor disseminate them to others nor use them for any other purpose. Pursuant to Business and Professions Code Section 6054, the fingerprint cards of applicants who are admitted to practice law in California are retained for the limited purpose of criminal arrest notification.

DISCUSSION

During the November 2016 meeting of the Board of Trustees' (BOT) Committee on Regulation and Discipline, Dag MacLeod, made a presentation to the Committee on whether the State Bar should enter into a "Contract for Subsequent Arrest Notification" with the DOJ. Attached is a memorandum for the State Bar's General Counsel's office on the subject, which was attached to the BOT's public agenda.

The item was informational only at this time. Mr. MacLeod will be at the Subcommittee's December 2, 2016 meeting to discuss the matter in more detail.

RECOMMENDATION

It is recommended that the report be received and filed.

PROPOSED MOTION

If the Committee agrees with this recommendation, the following motion is suggested:

Move, that the report on the Retention and Reporting of Applicant Information by the Department of Justice be received and filed.