



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 5.1 SEPTEMBER 2024 BOARD OF TRUSTEES**

**DATE:** September 20, 2024

**TO:** Members, Board of Trustees

**FROM:** Steven Moawad, Special Counsel, Regulation

**SUBJECT:** Proposed Amendments to Rule 2.31 Relating to the Deadline for Submission of the Transfer to Inactive Status Form and the Effective Date of the Transfer: Return from Public Comment and Request for Adoption

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### **EXECUTIVE SUMMARY**

Proposed amendments to rule 2.31 of the Rules of the State Bar change the date by which a licensee must submit a Transfer to Inactive form to pay the inactive license fee rate for the subsequent year from February 1 to December 1 with an effective date of their transfer to inactive status set as December 31 or earlier of the year they filed the form.

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### **RECOMMENDED ACTION**

This item requests Board adoption of amendments to rule 2.31 of the Rules of the State Bar relating to transfer to inactive status.

### **DISCUSSION**

Current State Bar rules provide that licensees can transfer to inactive status by submitting the Transfer to Inactive Status Form by February 1, the deadline to pay licensing fees for the calendar year. Because the last day to transfer to inactive status and still pay the annual fees of an inactive licensee is February 1, many licensees choose to submit their Transfer to Inactive Status Form in late January or on February 1.

The large number of requests to transfer to inactive submitted in late January and on February 1 are particularly burdensome for staff because staff must review and process the request, adjust the active rate licensing fee previously assessed to the licensee at the beginning of the

renewal cycle, and communicate to the licensee that they can pay the reduced fee prior to the February 1 deadline.

Further, given that the annual licensing fee is for a calendar year (e.g., 2024, 2025), there is no reason to permit licensees to practice law until February 1 and still pay the inactive rate for that calendar year.

Therefore, to be eligible for the inactive rate, staff recommends requiring licensees to submit the Transfer to Inactive Status on or before December 1 and that the effective date of the transfer be on or before December 31. This change, in conjunction with delaying the start of the renewal cycle until after December 31 will permit staff to update the status of licensees prior to the beginning of the renewal cycle and will eliminate the work to adjust the active rate previously assessed.

At the July 2024 meeting, the Board approved a 45-day public comment period for the proposed rule change that would effectuate this due date change (rule 2.31). The 45-day public comment period ends after the deadline to post this agenda item. Therefore, staff will update the Board with any new public comments received between posting of this item and the meeting.

#### **PUBLIC COMMENT**

Proposed amendments to rule 2.31 relating to the deadline for submission of the transfer to inactive status for and the effective date of the transfer were posted for public comment. In addition to the normal circulation seeking public comment, the public comment opportunity was also sent to inactive attorneys because they have been through the transfer to inactive status process.

The public comment period remains open until the early morning of September 20, 2024. As of this writing (September 13), 1,497 participated in the public comment process. While only those comments submitted by September 13 were included in the statistics and themes below, all comments received before the deadline will be added to the [compilation of all comments](#).

<b>Please indicate whether you are an attorney</b>	<b>Total Responses - 1,497</b>
Attorney	1401
Nonattorney	33
Decline to State	63

Of the 1,497 participants, 1,437 people provided a position on the proposal to amend rule 2.31.

<b>From the choices below, we ask that you indicate your position on a proposal to amend rule 2.31 to change the deadline for submission of the Transfer to Inactive Status form and the effective date of the transfer.</b>	<b>Total Responses – 1,437</b>	
AGREE with the proposed recommendations	573	40%
DISAGREE with the proposed recommendations	539	38%
AGREE ONLY if Modified	223	16%
NO POSITION	102	7%

## Common Themes<sup>1</sup>

Common themes reflected in the comments of those who agreed with the proposal reflected a need to notice attorneys as soon as possible of the new deadline and to establish some sort of exception process for unforeseen circumstances.

There were 494 participants who responded that they disagree with the proposed recommendations. Of those, 402 left comments. Common themes include:

**Perceived Money Grab.** Many participants who disagree with the proposed recommendations feel that the proposed change is a tactic to collect an extra year of active membership dues from attorneys who might miss the new December 1st deadline. They believe this is financially motivated rather than for administrative efficiency.

- "This is plainly a strategy to capture more in annual fees and nothing more. I see no justification for moving the deadline to earlier than the renewal deadline."
- "This proposal is just a shakedown for more money. Let people be free and quit trying to take all of their hard-earned money."
- "This is a money grab by you by delaying transfer to inactive status for a year. Of course, no attorney will have the foresight or knowledge to apply before billed."

**Inconvenience to Attorneys.** Participants who disagree with the proposed recommendations argue that the new deadline is inconvenient and unfair to attorneys, especially those who may face unexpected life changes such as illness, job loss, or retirement. They feel that the current February 1st deadline provides more flexibility for making such significant decisions.

- "The decision to go inactive can be affected by a variety of factors. The date bar should be flexible and nimble to the members it serves and allow for transition to inactive at any time during the calendar year."
- "An attorney that wishes to go inactive should be able to do so at any time, not some predetermined date arbitrarily set by the bar."

**Timing and Awareness Issues.** Many participants who disagree with the proposed recommendations point out that December is a busy month due to holidays and year-end activities, making it easy for attorneys to miss the new deadline. They argue that most attorneys think about their status when they are paying their dues, which is typically around the current February deadline.

- "December is a holiday month with many family events and travels. It is very likely that a deadline of Dec 31 would be missed because of the special time of the year."

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<sup>1</sup> The Common Themes section was compiled with the assistance of the generative AI Advisor in ThoughtExchange, the engagement and feedback tool used by the State Bar to receive public comment. The Advisor was initially asked to filter participants by position on the proposal, asked to identify common themes within each group, and then asked to provide example comments for the themes.

- "December 1 is not a time when people are thinking about life-changing decisions. It will be easy to miss the deadline. The current time is more conducive."
- "People typically don't focus on renewal until the deadline to pay in February. Under this plan, a person renewing membership but who wishes to become inactive and has not paid attention until February would face the choice of dropping membership entirely or paying the full active rate for another year."

There were 211 participants who responded that they agree with the proposed recommendations only if modified. Of those, 206 left comments. Common themes include:

**Deadline Adjustment to December 31/Grace Period or Late Fee Option.** Many participants who agree only if modified suggest that the deadline for submitting a request to go inactive should be moved from December 1 to December 31. A number of participants also suggest implementing a grace period or a late fee option for those who miss the December 1 deadline.

**Exceptions Needed.** Several participants who agree with the proposal only if modified recommend including exceptions for special circumstances such as health issues, catastrophic events, or sudden job changes.

**Adequate Notice and Communication.** Many participants who agree with the proposal only if modified emphasize the importance of providing adequate notice and clear communication about the new deadline.

### **State Bar Response to Common Themes**

**Communication and Awareness:** Staff recognizes the need for extensive communication about the new deadline and the Division of Regulation has been coordinating with the Office of Strategic Communications & Stakeholder Engagement to develop a communication strategy should the Board adopt this proposal.

**Exceptions Needed:** Staff is sympathetic to the need for exceptions, but notes that there is no exception built into the current rule. Under both the current rule and the proposed rule, if someone needs to go on inactive status due to unforeseen circumstances such as illness, disability, etc., they may do so—at any time. The current rules do not permit a refund because of a change to inactive status.

**Adjusting the Submission Deadline to December 31:** Permitting licensees to submit the Transfer to Inactive form on the same date the change is to be effective creates a burden on staff. Further, the December 1 submission deadline does not prevent an attorney from practicing in December provided they put the December 31 effective date on the Transfer to Inactive form. A late fee for submission after the December 1 deadline may encourage submission prior to December 1 and allow licensees to avoid paying full active fees, but amending the rule to allow late fees at this point would require another round of public comment. Staff recommends adoption of the proposal as is and if the Board would like staff to bring further amendments to

this rule to the Board to circulate for public comment, staff can do so and the rule can be amended for the 2026 renewal cycle.

## **PREVIOUS ACTION**

[Proposed Amendments to Rule 2.31 Relating to the Deadline for Submission of the Transfer to Inactive Status Form and the Effective Date of the Transfer: Request to Circulate for Public Comment](#)

## **FISCAL/PERSONNEL IMPACT**

Time savings for staff.

## **AMENDMENTS TO RULES**

Title 1, Division 3, Rule 2.31

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS**

None – Core business operations

## **RESOLUTIONS**

**Should the Board of Trustees, sitting as the Regulation and Discipline Committee, concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that the Board of Trustees, sitting as the Regulation and Discipline Committee, approves and adopts amendments to rule 2.31 of the Rules of the State Bar, as set forth in Attachment A; and it is

**FURTHER RESOLVED**, that these amendments to rule 2.31 shall be effective immediately.

## **ATTACHMENTS LIST**

- A. Proposed Rule 2.31 of the Rules of the State Bar (Clean Version)
- B. Proposed Rule 2.31 of the Rules of the State Bar (Redline Version)