

AGENDA ITEM

54-133 NOVEMBER

DATE: October 24, 2012

TO: Members, Member Oversight Committee
Members, Board of Trustees

FROM: Dina DiLoreto, Managing Director, Member Records & Compliance

SUBJECT: Annual Recommendation Regarding Members in Noncompliance with the MCLE Audit

ATTACHMENTS: List of members in noncompliance (available at meeting)

EXECUTIVE SUMMARY

Pursuant to California Rules of Court, Rule 9.31, Member Records and Compliance staff request permission to administratively enroll all members of MCLE Compliance Group 2 (last names H-M) who have not complied with MCLE Audit requirements by December 3, 2012, as involuntary inactive members and place them on “Not Eligible to Practice” status effective December 4, 2012. Please note that unlike the procedure for suspending members for non-payment of fees, this action only requires approval by the Board of Trustees. This item also authorizes staff to remove members from involuntary inactive status once the member has provided proof of compliance and paid all non-compliance fees.

Questions on this item should be directed to Dina DiLoreto at (415) 538-2121 or Dina.DiLoreto@calbar.ca.gov.

BACKGROUND

On July 17, 2012, 2600 members of MCLE Compliance Group 2 who had reported MCLE compliance in 2012 were mailed a notice of MCLE Audit. This number of members represents just over 5% of the original compliance group. The initial deadline to satisfy the Audit was set forth as August 31, 2012. Members who failed to satisfy the Audit by that date were assessed a \$75 noncompliance fee. On or before October 3, 2012, MCLE Noncompliance 60-Day Notices were mailed to any members of the original group who had still not satisfied the Audit. By November 15, 2012, members who still have not complied will be sent a Final Notice by certified mail.

By the date of the Board meeting, those members of Compliance Group 2 who have provided The State Bar of California with a current e-mail address will have also received e-mailed reminders on three separate occasions. In addition, courtesy phone calls will have also been placed to all members' telephone numbers of record.

Those members of Compliance Group 2 that have still not complied with the MCLE Audit requirements as of December 3, 2012, will be moved to “Not Eligible” status effective December 4, 2012.

BOARD AUTHORITY

The Supreme Court has delegated to the Bar the authority to administratively enroll members of the State Bar who fail to comply with the MCLE requirement on involuntary inactive status. Rule 9.31, California Rules of Court, provides that “A member of the State Bar who fails to satisfy the requirements of the State Bar’s minimum continuing legal education program must be enrolled as an inactive member of the State Bar under rules adopted by the Board of Governors of the State Bar.”

Pursuant to Rule 9.31, the Board of Trustees adopted the MCLE Rules and Regulations, which are now incorporated within the Rules of the State Bar (“Rules”). The Rules establish the procedures for noncompliance with the MCLE requirement. Rule 2.32(A) of the Rules provides that “A member who fails to meet requirements for Minimum Continuing Legal Education (MCLE) will be involuntarily enrolled as inactive.” Rule 2.92 of the Rules provides that “A member who fails to comply with a notice of noncompliance is enrolled as inactive and is not eligible to practice law. The enrollment is administrative and no hearing is required.”

Please note that the procedure for placing members on involuntary inactive status for failure to comply with the MCLE requirement is unlike the procedure for suspending members for non-payment of membership fees. For MCLE, the Supreme Court has delegated to the Bar the authority to change members’ status. In the case of non-payment of membership fees, the Board submits a list to the Supreme Court for action.

The Rules define noncompliance to include failure to complete the required education during the compliance period or an extension of it, failure to report compliance or claim exempt status, failure to keep a record of MCLE compliance, or failure to pay all noncompliance fees (Rule 2.90.) A member’s record of MCLE compliance is defined to include providers’ certificates of attendance, a detailed record of self-study credit, or proof of exempt status (Rule 2.73). The Rules also state that for one year after reporting compliance, a member must retain and provide these records upon demand and to the satisfaction of the State Bar (Rule 2.73).

As members bring themselves into compliance, staff removes them from the noncompliance list. Only members who do not bring themselves into compliance by the final deadline of December 3, 2012, will be placed on inactive status. (A member placed on inactive status for failure to comply with the MCLE requirement is not eligible to practice law while on such status.)

A list of members in noncompliance with the MCLE Audit requirements will be available upon request at the board meeting.

FISCAL / PERSONNEL IMPACT:

These actions are included in the 2012 budget and personnel planning.

RULE AMENDMENTS:

None

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:

None

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Member Oversight Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, pursuant to California Rule of Court 9.31 and the Rules of the State Bar, that the Member Oversight Committee recommends that the Board of Trustees authorize that those members of MCLE Compliance Group 2 who were audited and who do not bring themselves into compliance with their MCLE requirement by December 3, 2012, shall be enrolled as inactive members of the State Bar of California and placed on "Not Eligible to Practice" status, effective December 4, 2012; and it is

FURTHER RESOLVED, that the Member Oversight Committee recommends that the Board of Trustees authorize staff to remove a member from administrative inactive status once the member has provided proof of compliance and paid all noncompliance fees.

PROPOSED BOARD RESOLUTION:

Should the Board concur with the Member Oversight Committee's recommendation, the following resolutions would be in order:

RESOLVED, pursuant to California Rule of Court 9.31 and the Rules of the State Bar, and upon recommendation of the Member Oversight Committee, that the Board of Trustees hereby authorizes that those members of MCLE Compliance Group 2 who were audited and who do not bring themselves into compliance with their MCLE requirement by December 3, 2012, shall be enrolled as inactive members of the State Bar of California and placed on "Not Eligible to Practice" status, effective December 4, 2012; and it is,

FURTHER RESOLVED, that the Board of Trustees hereby authorizes staff to remove a member from administrative inactive status once the member has provided proof of compliance and paid all noncompliance fees.