

AGENDA ITEM

54-132 JULY 2017

DATE: July 6, 2017

TO: Members, Admissions and Education Committee
Members, Board of Trustees

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

SUBJECT: MCLE – Recommendation re Attorneys in Noncompliance

EXECUTIVE SUMMARY

Pursuant to California Rules of Court, Rule 9.31, State Bar staff request permission to administratively enroll all attorneys in MCLE Compliance Group 3 (last names N-Z) who have not complied with the MCLE requirement by August 31, 2017, as involuntary inactive and place them on “Not Eligible to Practice” status, effective September 1, 2017. In addition, we would like to act on any other Group 1, Group 2, and Group 3 attorneys who were granted modifications (extensions of time) for a prior period and who have not complied by their extended deadlines.

Unlike the procedure for suspending licenses for non-payment of fees, this action only requires approval by the Board of Trustees. This approval would also authorize staff to remove attorneys from involuntary inactive status once the attorney 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

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

Pursuant to Rule 9.31, the Board 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.”

The procedure for placing attorneys on involuntary inactive status for failure to comply with the MCLE requirement is unlike the procedure for suspending licenses for non-payment of fees. For MCLE, the Supreme Court has delegated to the Bar the authority to change attorneys’ statuses. In the case of non-payment of fees, the Board submits the names of attorneys to the Supreme Court for action.

The Rules define noncompliance to include failure to report compliance or claim exempt status, and/or failure to pay all noncompliance fees (Rule 2.90.) As attorneys bring themselves into compliance, staff removes them from a noncompliance list. Only those attorneys who do not bring themselves into compliance by the final deadline are placed on involuntary inactive status. (An attorney placed on inactive status for failure to comply with the MCLE requirement is not eligible to practice law while on such status.)

DISCUSSION

On June 30, 2017, staff mailed MCLE Noncompliance 60-Day Notices to the attorneys of Compliance Group 3 (last names beginning with N-Z when assigned to the compliance group) who have not complied with their MCLE requirement. Prior to this June notice, these attorneys were contacted by email on at least four separate occasions between December 1, 2016 and March 1, 2017. Those attorneys formally exempt from Rule of Court 9.7 regarding online access were also mailed a paper notice and compliance card in December.

At least two more email reminders will be sent before August 31, 2017. During the first week of August 2017, staff will send a “Final Notice” by certified mail to the Group 3 attorneys who remain in noncompliance with MCLE reporting requirements. Those who have still not complied by August 31, 2017, will be moved to “Not Eligible to Practice” status effective September 1, 2017.

In addition, we have been following up with attorneys in Compliance Groups 1, 2 and 3 who were granted good cause modifications (as provided by State Bar MCLE Rule 2.55), for a prior period and who have not complied by their modified (extended) deadlines. These attorneys were mailed “60-Day Notices” and if need be, will be mailed “Final Notices.” If they have still not complied with their modified MCLE requirement by August 31, 2017, they will be moved to “Not Eligible to Practice” status effective September 1, 2017.

FISCAL/PERSONNEL IMPACT

These actions were included in the 2017 budget and personnel planning; there will be no additional fiscal or personnel impact.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

BOARD GOALS & OBJECTIVES

2017-2022 Strategic Plan Goals and Objectives:

(2e) Develop and implement an effective mechanism for ensuring compliance with MCLE requirements.

BOARD COMMITTEE RECOMMENDATIONS

The Admissions and Education Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, pursuant to California Rule of Court 9.31 and the Rules of the State Bar, that the Board hereby authorizes that those attorneys in MCLE Compliance Groups 1, 2 and 3 who do not bring themselves into compliance with their MCLE requirements by August 31, 2017, be enrolled as inactive and placed on "Not Eligible to Practice" status, effective September 1, 2017; and it is

FURTHER RESOLVED, that the Board hereby authorizes staff to remove individual attorneys from inactive status once they have provided proof of compliance and paid all noncompliance fees.

ATTACHMENT(S) LIST

None.