

AGENDA ITEM

54-133 MAY 10 2013

DATE: May 3, 2013

TO: Members, Member Oversight 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 1 (last names A-G) who have not complied with the MCLE requirement by July 1, 2013, as involuntary inactive and place them on “Not Eligible to Practice” status effective July 2, 2013. Please note that, unlike the procedure for suspending licenses for non-payment of fees, this action only requires approval by the Board of Trustees. This item also authorizes 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

On May 1, 2013, staff sent MCLE Noncompliance 60-Day Notices to the attorneys of Compliance Group 1 (last names beginning with A-G when assigned to the compliance group) who have not complied with their MCLE requirement. Prior to the May notice, these attorneys were contacted by mail on at least two separate occasions: November 30, 2012, and March 8, 2013.

Those Group 1 attorneys who had provided The State Bar of California with an e-mail address also received an e-mail reminder in January 2013. A second email reminder will be sent in May 2013.

During the first week of June 2013, staff will send a “Final Notice” by certified mail to the Group 1 attorneys who have not complied with the MCLE requirement. Those attorneys will also receive a courtesy call at their telephone number of record by mid-June. Those

who have still not complied with the MCLE requirement as of July 1, 2013, will be moved to “Not Eligible” (to practice) status effective July 2, 2013.

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 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 an inactive member 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.”

Please note that 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 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 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 of July 1, 2013, will be placed on involuntary 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.)

FISCAL / PERSONNEL IMPACT:

These actions were included in the 2013 budget and personnel planning; there will be no additional fiscal or personnel impact.

RULE AMENDMENTS:

None

BOARD BOOK IMPACT:

None

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Member Oversight Committee agree with the staff 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 authorize that those attorneys in MCLE Compliance Group 1 who do not bring themselves into compliance with their MCLE requirement by July 1, 2013, shall be enrolled as inactive members of the State Bar of California and placed on “Not Eligible to Practice” status, effective July 2, 2013; and it is

FURTHER RESOLVED, that the Member Oversight Committee recommends that the Board authorize staff to remove individual attorneys from inactive status once they have provided proof of compliance and paid all noncompliance fees.

PROPOSED BOARD OF TRUSTEES 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, that upon the recommendation of the Member Oversight Committee, the Board hereby authorizes that those attorneys in MCLE Compliance Group 1 who do not bring themselves into compliance with their MCLE requirement by July 1, 2013, shall be enrolled as inactive members of the State Bar of California and placed on “Not Eligible to Practice” status, effective July 2, 2013; 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.