

# AGENDA ITEM

54-133 NOV 15 2013

**DATE:** October 29, 2013

**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

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## 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 1 (last names A-G) who have not complied with MCLE Audit requirements by November 21, 2013, as involuntary inactive members and place them on “Not Eligible to Practice” status effective November 22, 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 members from involuntary inactive status once they have 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](mailto:Dina.DiLoreto@calbar.ca.gov) or Robert McPhail at (415) 538-2237 or [Robert.McPhail@calbar.ca.gov](mailto:Robert.McPhail@calbar.ca.gov).

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## BACKGROUND

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 any 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.

Pursuant to Rule 9.31, the Board has adopted MCLE compliance rules for members, which are incorporated in the Rules of the State Bar (“Rules”). The Rules establish the procedures for noncompliance with the MCLE requirement. Rule 2.32(A) provides that

“A member who fails to meet requirements for Minimum Continuing Legal Education (MCLE) will be involuntarily enrolled as inactive.” Rule 2.92 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 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).

Earlier this year, the State Bar undertook an audit of randomly chosen members who are in MCLE Compliance Group 1 and who were required to report MCLE compliance in 2013. This agenda item reports the finding of the audit and requests authorization to place on inactive status those members who do not bring themselves into compliance by November 21, 2013.

## **ISSUE**

Whether to authorize State Bar staff to place on inactive status, effective November 22, 2013, those members who are being audited for MCLE compliance in 2013 and who have not complied with MCLE audit requirements by November 21, 2013.

## **DISCUSSION**

On July 9, 2013, 4700 attorneys in MCLE Compliance Group 1 who had reported MCLE compliance in 2013 were mailed a notice of MCLE Audit, requiring them to submit proof of compliance. This number represents just over 7.5% of the original compliance group. The initial deadline to satisfy the Audit was set forth as August 23, 2013. Members who failed to satisfy the Audit by that date were assessed a \$75 noncompliance fee. On September 20, 2013, MCLE Noncompliance 60-Day Notices were mailed to any members of the original group who had still not satisfied the Audit. On October 28, 2013, members who were still out of compliance were sent a Final Notice by certified mail.

Members in the audit group who have provided The State Bar of California with a current e-mail address will have also received e-mailed reminders on four separate occasions by November 21, 2013. In addition, two courtesy phone calls will have also been placed to all members’ telephone numbers of record.

Those members of Compliance Group 1 who have still not complied with the MCLE Audit requirements as of November 21, 2013, will be moved to “Not Eligible” status effective November 22, 2013.

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.

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 November 21, 2013, 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.)

## **FISCAL / PERSONNEL IMPACT**

These actions are included in the 2013 budget and personnel planning.

## **RULE AMENDMENTS**

None.

## **BOARD BOOK IMPACT**

None.

## **RECOMMENDATION**

It is recommended that the board committee and Board authorize staff to enroll as inactive, effective November 22, 2013, those members of MCLE Compliance Group 1 who were audited and do not bring themselves into compliance with their MCLE Audit requirement by November 21, 2013.

## **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 1 who were

audited and who do not bring themselves into compliance with their MCLE Audit requirement by November 21, 2013, be enrolled as inactive members of the State Bar of California and placed on “Not Eligible to Practice” status, effective November 22, 2013; 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 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, and upon recommendation of the Member Oversight Committee, that the Board of Trustees hereby authorizes that those members of MCLE Compliance Group 1 who were audited and who do not bring themselves into compliance with their MCLE Audit requirement by November 21, 2013, be enrolled as inactive members of the State Bar of California and placed on “Not Eligible to Practice” status, effective November 22, 2013; 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.