

# AGENDA ITEM

54-133 MAY 9 2014

**DATE:** April 21, 2014

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

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

**SUBJECT:** MCLE – Recommendation re Attorneys in Noncompliance

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## 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 June 30, 2014, as involuntary inactive and place them on “Not Eligible to Practice” status effective July 1, 2014. 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 still not complied.

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](mailto:Dina.DiLoreto@calbar.ca.gov).

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## BACKGROUND

On April 30, 2014, staff will send 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 April notice, these attorneys were contacted by mail on at least two separate occasions: December 2, 2013, and March 7, 2014.

Those Group 3 attorneys who had provided The State Bar of California with an e-mail address also received an e-mail reminder in October 2013 and two more in January 2014. A fourth email reminder will be sent in May 2014.

During the first week of June 2014, staff will send a “Final Notice” by certified mail to the Group 3 attorneys who remain in noncompliance with MCLE reporting requirements. Those attorneys will also receive a courtesy call at their telephone number of record by mid-June. Those who have still not complied by June 30, 2014, will be moved to “Not Eligible to Practice” status effective July 1, 2014.

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 will be mailed “60-Day Notices” and if need be, “Final Notices.” If they have still not complied with their modified MCLE requirement by June 30, 2014, they will be moved to “Not Eligible to Practice” status effective July 1, 2014.

## **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 June 30, 2014, 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 2014 budget and personnel planning; there will be no additional fiscal or personnel impact.

### **RULE AMENDMENTS**

None

### **BOARD BOOK IMPACT**

None

### **RECOMMENDATION**

Staff recommends that those attorneys in MCLE Compliance Groups 1, 2 and 3 who do not bring themselves into compliance with outstanding MCLE requirements by June 30, 2014, be enrolled as inactive members of the State Bar of California and placed on “Not Eligible to Practice” status, effective July 1, 2014.

### **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 Groups 1, 2 and 3 who do not bring themselves into compliance with their MCLE requirements by June 30, 2014, be enrolled as inactive members of the State Bar of California and placed on “Not Eligible to Practice” status, effective July 1, 2014; 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 Groups 1, 2 and 3 who do not bring themselves into compliance with their MCLE requirements by June 30, 2014, be enrolled as inactive members of the State Bar of California and placed on “Not Eligible to Practice” status, effective July 1, 2014; 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.