

AGENDA ITEM

135 MAY 9 2014

DATE: April 17, 2014

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

FROM: Gayle Murphy, Senior Director, Admissions

SUBJECT: MCLE Providers Audit Program Policies

EXECUTIVE SUMMARY

After a series of public hearings, the Member Oversight Committee (“MOC”) adopted amendments to the Minimum Continuing Legal Education (MCLE) Provider rules in Title 3 of the *State Bar Rules*, which amendments become effective July 1, 2014. In connection with the administration of the amended MCLE Provider rules, there are several administrative details that required attention. To ensure that the Provider community was appropriately advised about the changes to the requirements related to MCLE requirements for California attorneys and MCLE Provider certification and to also receive input from that community in the development of policies and procedures associated with those changes, two meetings (one in Los Angeles and the other in San Francisco) with the Providers were held in February.

Before the policies and procedures are finalized, however, Board of Trustees’ action on two policy issues is being sought. It is recommended that the Board of Trustees adopt policies that would permit MCLE auditors to receive personal MCLE credit for programs they attend on behalf of the State Bar of California and as a general Board policy, Board of Trustees members not participate as auditors.

Board members with questions regarding this item may contact Gayle Murphy at (415) 538-2322; gayle.murphy@calbar.ca.gov.

BACKGROUND

After a series of public hearings, the Member Oversight Committee (“MOC”) adopted amendments to the Minimum Continuing Legal Education (MCLE) Provider rules in Title 3 of the *State Bar Rules*, which amendments become effective July 1, 2014. In connection with the administration of the amended MCLE Provider rules, there are several administrative details that required attention. To ensure that the Provider community was appropriately advised about the changes to the requirements related to MCLE requirements for California attorneys and MCLE Provider certification and to also

receive input from that community in the development of policies and procedures associated with those changes, two meetings (one in Los Angeles and the other in San Francisco) with the Providers were held in February.

The comments received were very helpful in the preparation of a Provider Handbook, which when finalized will be distributed to Providers currently certified to offer MCLE programs and to potential MCLE Providers as part of the application process to receive either Single Activity or Multiple-Activity Provider status.

Before the implementation plan can be finalized, however, Board of Trustees's action on two policy issues is being sought. It is recommended that the Board of Trustees adopt policies that would permit MCLE auditors to receive personal MCLE credit for programs they attend on behalf of the State Bar of California and as a general policy, Board of Trustees members not participate as auditors.

ISSUE

Whether to adopt policies regarding MCLE credit for auditors and whether Board of Trustees members should audit programs.

CONCLUSION

The Board of Trustees should adopt policies that permit MCLE credit for auditors and as a general policy, Board of Trustees member not participate as auditors.

DISCUSSION

The amended rule regarding MCLE Providers, which becomes effective July 1, 2014, establishes an audit program as follows:

Rule 3.603 State Bar MCLE Activity Auditors

A State Bar MCLE Activity Auditor may be a State Bar staff member, Board of Trustees member, California Legal Specialization Board or Commission member, California Young Lawyers Association member or other person designated by the State Bar to conduct an audit of a particular MCLE program or class on behalf of the State Bar. A State Bar MCLE Activity Auditor may not have a business, financial or personal relationship with or oversight responsibility for the provider of the program or class being audited. A State Bar MCLE Activity Auditor may audit the particular MCLE program or class at no cost.

MCLE Credit

The question has been posed as to whether auditors performing services on behalf of the State Bar of California should be able to receive personal MCLE credit.

The Legal Specialization Board and Commission members have been auditing MCLE programs as part of their duties for decades. As part of the process, they receive MCLE credit to meet their personal MCLE requirements. Not only do they check to determine compliance with legal specialization education procedural rules applicable to educational providers, but they also assess the quality of the program to ensure that they adequately meet the enhanced educational requirements for specialists. There is no record or indication that their assessments of the programs they have attended have been biased in any way because they personally received MCLE credit. The Board of Legal Specialization feels quite strongly that this practice should continue.

With the “new” auditing program that is being developed, which will primarily involve members of the California Young Lawyers Association (CYLA), it appears to be appropriate to use the same model currently employed successfully in legal specialization program. There is no evidence that an auditor would be biased as a result of receiving credit and receiving credit provides incentive for young lawyers to participate in the audit program. The programs to be audited will be determined by State Bar staff, CYLA auditors will not be self-selecting courses. The matter was discussed with Counsel, and there does not appear to be any legal reason that would prohibit auditors from receiving credit, as long as the appropriate safeguards are in place to ensure auditor independence and objectivity.

Board Members as Auditors

The issue of whether Board members should participate as auditors was also discussed with Counsel. Again, there is no legal impediment that would prevent Board members from doing so, but there are certain issues they may wish to consider before doing so. It is possible that the Board member would have to report the activity as a gift if the cost was \$50 or more on his/her conflict of interest statement. Additionally, if a Board member participated as an auditor and a matter involving the Provider came before the Board, he/she would have to disqualify himself/herself from any discussion and decision that might occur. In recognition of the complications, it might be best if the Board members did not as a general policy participate as auditors.

FISCAL / PERSONNEL IMPACT:

None

RULE AMENDMENTS:

None

BOARD BOOK IMPACT:

None

RECOMMENDATION

Staff recommends that the Member Oversight Committee recommend to the Board of Trustees that policies that would permit MCLE auditors to receive MCLE credit and that as a general policy, Board of Trustees members not participate as auditors be adopted.

PROPOSED BOARD COMMITTEE RESOLUTION:

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

RESOLVED, that the Member Oversight Committee recommends that the Board adopt a policy that would permit MCLE auditors to receive MCLE credit for programs they audit on behalf of the State Bar of California; and it is

FURTHER RESOLVED, that the Member Oversight Committee recommends that as a general Board policy, Board of Trustees members not participate as auditors.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

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

RESOLVED, that upon the recommendation of the Member Oversight Committee, the Board hereby adopts a policy that would permit MCLE auditors to receive MCLE credit for programs they audit on behalf of the State Bar of California; and it is

FURTHER RESOLVED, that upon recommendation of the Member Oversight Committee, that as a general Board policy, Board of Trustees members not participate as auditors.