

# AGENDA ITEM

54-113 SEP 13 2014

**DATE:** September 2, 2014

**TO:** Members, Board Committee on Operations  
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 3 (last names N-Z) who have not complied with MCLE Audit requirements by October 31, 2014, as involuntary inactive members and place them on "Not Eligible to Practice" status effective November 1, 2014. 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 MCLE requirements 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).

In July, the State Bar undertook an audit of randomly chosen members who are in MCLE Compliance Group 3 and who reported MCLE compliance in 2014. This agenda item requests authorization to place on inactive status those members who do not bring themselves into compliance with the MCLE Audit requirements by October 31, 2014. A detailed analytical report of the final audit results will be provided to the Board at a later meeting.

## **ISSUE**

Whether to authorize State Bar staff to place on inactive status, effective November 1, 2014, those members who are being audited for MCLE compliance in 2014 and who have not complied with MCLE audit requirements by October 31, 2014.

## **DISCUSSION**

On July 7, 2014, approximately 5500 attorneys in MCLE Compliance Group 3 who had reported MCLE compliance in 2014 were mailed a notice of MCLE Audit, requiring them to submit proof of compliance. This number represents just over 8.5% of the attorneys who submitted an MCLE compliance declaration in 2014. The initial deadline to satisfy the Audit was set forth as August 21, 2014. Members who failed to satisfy the Audit by that date were assessed a \$75 noncompliance fee. On August 29, 2014, MCLE Noncompliance 60-Day Notices were mailed to any members of the original group who had still not satisfied the Audit. During the week of October 6, 2014, members who are still out of compliance will be 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 October 31, 2014. In addition, at least one courtesy phone call will have also been placed to all members’ telephone numbers of record.

Those members of Compliance Group 3 who have still not complied with the MCLE Audit requirements as of October 31, 2014, will be moved to “Not Eligible” status effective November 1, 2014.

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. Whereas 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 October 31, 2014, will be placed on inactive status. (A member placed on administrative 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.

#### **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 1, 2014, those members of MCLE Compliance Group 3 who were audited and do not bring themselves into compliance with their MCLE Audit requirement by October 31, 2014.

#### **PROPOSED BOARD COMMITTEE RESOLUTION**

Should the Board Committee on Operations 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 Board Committee on Operations recommends that the Board of

Trustees authorize that those members of MCLE Compliance Group 3 who were audited and who do not bring themselves into compliance with their MCLE Audit requirement by October 31, 2014, be enrolled as inactive members of the State Bar of California and placed on “Not Eligible to Practice” status, effective November 1, 2014; and it is

**FURTHER RESOLVED**, that the Board Committee on Operations 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 Board Committee on Operations’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 Board Committee on Operations, that the Board of Trustees hereby authorizes that those members of MCLE Compliance Group 3 who were audited and who do not bring themselves into compliance with their MCLE Audit requirements by October 31, 2014, be enrolled as inactive members of the State Bar of California and placed on “Not Eligible to Practice” status, effective November 1, 2014; 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.