

AGENDA ITEM

135 MAY 2016

DATE: May 11, 2016

TO: Members, Admissions and Education Committee
Members, Board of Trustees

FROM: Dina DiLoreto, Managing Director, Member Records and Compliance

SUBJECT: MCLE Audit Recommendation

EXECUTIVE SUMMARY

At the joint March 2016 meeting of the Admissions & Education and Regulation and Discipline committees, staff was instructed to prepare a specific proposal regarding MCLE Compliance Audit financial penalties. This item proposes the setting and implementation of a \$200 MCLE Deficiency Fee that would apply to deficient Audit Submissions.

BACKGROUND

Pursuant to California Rule of Court 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).

MCLE Compliance Audits are performed annually. A percentage of members who reported compliance with MCLE requirements are selected for audit and are required to submit proof of compliance in order to support their original attestation.

DISCUSSION

Currently, members who are deficient in being able to prove that their attestation of compliance was truthful, or who submit their audit materials after the initial audit deadline, are penalized with a \$75 noncompliance fee and are required to make up any missing hours by the final audit deadline. Those who do not bring themselves into compliance with the audit by the final audit deadline are placed on Administrative Inactive status and are further assessed a \$200 reinstatement fee.

Direct costs associated with the MCLE Compliance Audit are estimated at \$160,000 annually. Revenue earned from penalties and reinstatement fees totals approximately \$100,000.

Staff proposes that the \$75 noncompliance fee be reserved for late audit submissions, and that an additional \$200 "MCLE Audit Deficiency Fee" be assessed to those members whose documentation of compliance is deficient. Staff is asking that the Board also consider whether to assess the \$200 MCLE Audit Deficiency fee to all deficient audit submissions, or to reserve this penalty for those audit submissions that are deficient by more than 12.5 hours (half of the 25 hour MCLE requirement). In the case of the latter option, staff proposes that the original \$75 noncompliance fee be applied to late audit submissions and/or submissions that are deficient by 12.5 hours or less.

Regardless of the number of hours deficient, all members will continue to be required to bring themselves into compliance by the final audit deadline or be placed on Administrative Inactive status and further assessed the usual \$200 reinstatement fee.

FISCAL/PERSONNEL IMPACT

Assessment of the proposed fees would help offset the direct costs (estimated at \$160,000 per year) of administering the annual MCLE Compliance Audit.

RULE AMENDMENTS

This agenda item proposes a revision to the Schedule of Charges and Deadlines, Appendix A of the Rules of the State Bar.

BOARD BOOK IMPACT

None.

BOARD COMMITTEE RECOMMENDATIONS

NOTE: There are two sets of resolutions to choose from:

The Admissions and Education Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve the assessment of the standard MCLE noncompliance fee of **\$75** to those members selected for MCLE Audit whose audit

submission is deficient by 12.5 hours or less, or whose complete audit submission is filed after the initial audit deadline; and it is

FURTHER RESOLVED, that the Board of Trustees approve and set an additional MCLE Audit Deficiency Fee of **\$200** to be applied to those members selected for MCLE Audit whose audit submission is deficient by more than 12.5 hours.

OR

The Admissions and Education Committee recommends that the Board of Trustees approve the following resolution:

RESOLVED, that the Board of Trustees approve the assessment of the standard MCLE noncompliance fee of **\$75** to those members selected for MCLE Audit whose audit submission is filed after the initial audit deadline; and it is

FURTHER RESOLVED, that the Board of Trustees approve and set an additional MCLE Audit Deficiency Fee of **\$200** to be applied to those members selected for MCLE Audit whose audit submission is deficient by any number of hours.

ATTACHMENT(S) LIST

None