

## MEMBER RECORDS AND COMPLIANCE

### *Functions and Responsibilities*

The Member Records and Compliance (MRC) Department, also known as the Member Services Center, is responsible for collecting, maintaining, verifying and properly disseminating information regarding the membership of the Bar. MRC helps analyze and implement various administrative and compliance issues important to the Bar, its members, and the public. MRC maintains data on Bar members and produces, on request, certificates of standing. MRC also monitors compliance with Minimum Continuing Legal Education (MCLE) Requirements. MRC, as custodian of Bar member records, routinely provides information, sometimes in response to subpoenas, to the SBC and OCTC.

Attorneys may pay fees, update personal information and report MCLE compliance by using an online portal – *My State Bar Profile*, which is maintained by MRC.

While MRC has many responsibilities related to maintaining attorney records, including the operation of a Call Center, this workforce planning analysis covers only its responsibilities related to the disciplinary process. Disciplinary related responsibilities include recording and reporting any changes in an attorney's disciplinary status (e.g., active, inactive, suspended, or disbarred)<sup>37</sup>, issuing certificates of standing, and monitoring compliance with MCLE requirements.

### *The Current Process*

**Reinstatements.** On a daily basis, an MRC associate runs an AS400 report to identify whether an attorney's suspension has reached its end date. For any disciplinary suspensions that are projected to end on that day, MRC must send an e-mail to MRC's liaison at SBC to verify that all conditions of reinstatement (as monitored by the OP) have been met. This frequently results in delays in being able to change the status in AS400. If the attorney is required to pay discipline costs as a condition of reinstatement, MRC also checks with the Billing Department before recommending to the Court that the suspension entry be ended.

**Resignations.** MRC also receives requests for resignations from members. Before accepting a resignation, MRC checks with OCTC to make sure that there are no pending charges.

**Certificates of Standing with Complaint Check.** Attorney members, after providing identification, may request a Complaint Check as part of their request for a certificate of standing. (Certificates of standing are typically public documents and may be requested by

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<sup>37</sup> Members may be suspended or placed on inactive status for failure to complete Mandatory Continuing Education requirements, failure to pay dues, failure to comply with family or child support obligations, failure to pay taxes, or for professional misconduct. Suspensions are ordered by the State Bar Court.

anyone; those with Complaint Checks can only be requested by the attorney member him or herself.) MRC checks the AS400 to learn of any disciplinary complaints. If not, a certificate is mailed after verifying the address and after notarizing, if requested. If the AS400 shows that the attorney has a complaint, MRC sends a packet (an authorization and ID, a cover letter, the formal request, and a certificate of standing form) to OCTC's Intake Unit to investigate. OCTC will then send a verified summary of complaints and Certificate of Standing to the attorney, with notification of mailing to MRC. Most Certificates of Standing are issued on the same day as received. MRC does not now track how long it takes to receive Certificates of Standing back from OCTC.

**Mandatory Continuing Legal Education Compliance.** All active members of the Bar must complete 25 hours of continuing education within a 36-month period of time. Failure to do so will result in the member being placed on inactive status. The 190,000 active Bar members are permanently assigned to one of three 36-month compliance groups on the basis of the first letter of their last name at the date of admission. The three year compliance period begins on the first day of February and ends three years later on the last day of January. A member must report MCLE compliance no later than the day following the end of the compliance period.

MRC receives MCLE affidavits from approximately 60,000 attorneys, 1/3 of the Bar, every year. MRC audits 10 percent of these attorneys annually. MRC contacts attorneys selected for audit and asks for proof of compliance. If proof is provided, the audit ends satisfactorily. If not provided, MRC requires members to make up any deficiency, otherwise the member is administratively enrolled on inactive status. If non-compliance, whether eventually satisfied or not, is not a "significant failure," the audit is ended. If it is significant, whether eventually satisfied or not, MRC refers the matter to OCTC Intake for investigation, sending all documents in a paper file. Approximately 5 percent of audited members' affidavits have problems serious enough for referral to OCTC Intake for further investigation. Over the years, MRC has analyzed audit results and identified high risk groups. In recent years, this data has informed staff on which groups might be audited at a higher percentage rate for the following year's audit cycle. This targeted auditing has translated in more referral files to OCTC.

#### *Organization, Workload and Resources*

MRC is staffed by a Managing Director, two Senior Administrative Supervisors, one Lead Data Analyst, one Senior Administrative Assistant, three Member Services Representatives, seven Member Services Associates and four Administrative Assistant I's. Together, these 21 positions comprise four percent of the Bar's workforce.

**Member Records and Compliance Staff**

Position	No. of Positions
Administrative Assistant I	4
Administrative Assistant II	1
Lead Data Analyst	1
Managing Director, MRC	1
Member Services Associate	7
Member Services Representative	3
Senior Administrative Assistant	1
Senior Administrative Supervisor	3
TOTAL	21

**OBSERVATIONS AND RECOMMENDATIONS**

**OBSERVATION. *MCLE Reporting.*** The receipt and auditing of attorney MCLE compliance affidavits creates substantial work for MRC staff in December, January and February of each year. Some MRC staff believe that additional staff, perhaps temporary employees, are needed during those months.

**RECOMMENDATION: *Require approved providers of Continuing Legal Education to electronically certify satisfactory completion of a course or educational program.*** This change will dramatically decrease the time needed to record and audit MCLE compliance.

**OBSERVATION. *MCLE Audits.*** MRC makes approximately 225 referrals to OCTC Intake for further investigation following its own audit of attorney affidavits. When a referral is made, MRC prints out all documents and sends a paper file to the Intake Unit.

**RECOMMENDATION: *MRC should send files to the Intake Unit electronically.*** This change will reduce time used to refer matters for further investigation.

**OBSERVATION. *Tracking Disciplinary Status.*** MRC, OCTC, SBC, the OP and CSF staff spend a significant amount of time attempting to keep track of and responding to inquiries from complainants, CSF applicants, and respondents about current disciplinary status. This includes the status of any pending complaints being investigated by OCTC and the status of any pending cases filed with the SBC.

OP does not consistently notify MRC when a respondent's probationary period has been successfully completed.

**RECOMMENDATION:** *Provide MRC with authority and direction to access AS 400 data in the Office of the Chief Trial Counsel and other departments, and provide training to MRC staff on how to read and interpret the data on the AS400.* This change, in addition to vesting responsibility for tracking reinstatement eligibility with a new SBC administrative position, will reduce the time that MRC staff spends contacting other departments and units to obtain information on the status of disciplinary complaints so that MRC can issue timely Certificates of Standing and reinstatements.

**OBSERVATION. *Certificates of Standing.*** When a request for a Certificate of Standing is received and the AS400 reveals that the attorney has a complaint, MRC now sends a packet to OCTC's Intake Unit with a request to investigate and send a verified summary of complaints and Certificate of Standing to the attorney, with notification of mailing to MRC. MRC does not have a good system to track whether OCTC responds.

**RECOMMENDATION:** *Once system access is provided to MRC staff, the practice of sending packets to OCTC's Intake Unit for investigation and preparation of verified Certificates of Standing should cease; MRC staff should assume this responsibility.*

**OBSERVATION. *Certificates of Standing.*** When a complaint is closed by OCTC's Intake Unit for lack of merit, the attorney is not notified that a complaint was filed. Yet, OCTC includes these complaints in the attorney's record even if it had been closed many years back. The attorney is then surprised to learn of the complaint when he/she requests a Certificate of Standing. Members of the Bar get upset when caught by surprise that they cannot provide a "clean certificate".

**RECOMMENDATION:** *Implement a policy or, if necessary, promulgate a rule, clarifying that attorneys should be notified of closed complaints and outlining when such complaints may be purged from the OCTC file.*

**OBSERVATION. *Reinstatement.*** Based on interviews with MRC and Probation staff, it is not clear who has the authority to reinstate an attorney's license. MRC has been told by "someone at Intake" that MRC can reinstate only with approval by the SBC. This lack of clarity creates confusion and unnecessary delay in attorney reinstatements.

**RECOMMENDATION:** *Implement a policy or, if necessary, promulgate a rule regarding who has authority to reinstate an attorney's license. This change will reduce delays in attorney reinstatement.*

**RECOMMENDATION:** *Upon implementation of a new case management system, require OCTC, the SBC, OP and CSF to electronically notify MRC of every action that impacts the attorney's*

***disciplinary status, including when a complaint is forwarded to the Enforcement Unit, and when it is filed in the SBC.*** The notification should automatically be sent when an entry is made in the department and it should automatically populate the attorney's electronic MRC file, which should capture:

- All continuing education courses completed
- All complaints filed with OCTC and the status of that complaint
- All cases filed with the SBC and the status of the case
- All probation conditions and their status
- All CSF applications filed and their status

***RECOMMENDATION: All persons within the Bar who need access to the attorney file in order to fulfill their job responsibilities should have access to the attorney's MRC file.*** The public should not have access to any information in the MRC file that it does not currently have.