

AGENDA ITEM

702 OCT 2016

DATE: September 20, 2016

TO: Members, Board of Trustees

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

SUBJECT: Annual Recommendation Regarding Members in Noncompliance with MCLE Audit Requirements

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 1 (last names A-G) who have not complied with MCLE Audit requirements by October 31, 2016, as involuntary inactive members and place them on "Not Eligible to Practice" status effective November 1, 2016. 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 or Robert McPhail at (415) 538-2237 or Robert.McPhail@calbar.ca.gov.

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 members who are in MCLE Compliance Group 1 and who reported MCLE compliance for the period ending January 31, 2016. 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, 2016. A detailed analytical report of the final audit results will be provided to the Board at a later meeting.

DISCUSSION

On July 8, 2016, 6500 attorneys in MCLE Compliance Group 1 who had reported MCLE compliance for the period ending January 31, 2016, were mailed a notice of MCLE Audit, requiring them to submit proof of compliance. This number represents approximately 10% of the attorneys who submitted an MCLE compliance declaration by the final reporting deadline. The initial deadline to satisfy the Audit was set forth as August 22, 2016. Members who were not able to provide proof to support their original compliance declaration were assessed a \$200 MCLE Audit deficiency fee and are required to make up the missing MCLE hours. Members who failed to respond to the original Audit notice by the August 22 deadline were further assessed a \$75 noncompliance fee. On September 1, 2016, MCLE Noncompliance 60-Day Notices were mailed to any members of the audit group who had still not satisfied all Audit requirements. During the week of October 3, 2016 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 the October 31, 2016 final deadline. In addition, at least one courtesy phone call will have been placed to all members' telephone numbers of record.

Those members of Compliance Group 1 who have still not complied with the MCLE Audit requirements as of October 31 2016, will be enrolled as administratively inactive and will be deemed "Not Eligible to practice" effective November 1, 2016.

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, 2016, 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. Reinstatement requires that all Audit requirements be satisfied, including the payment of any

outstanding noncompliance or deficiency fees, as well as the payment of an additional \$200 reinstatement fee.

FISCAL/PERSONNEL IMPACT

These actions were included in the 2016 budget and personnel planning.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

RECOMMENDATIONS

Staff recommends that the Board of Trustees approve the following resolution:

RESOLVED, that pursuant to California Rule of Court 9.31 and the Rules of the State Bar, that the Board of Trustees hereby authorizes that those members of MCLE Compliance Group 1 who were audited and who do not bring themselves into compliance with their MCLE Audit requirements by October 31, 2016, be enrolled as inactive members of the State Bar of California and placed on “Not Eligible to Practice” status, effective November 1, 2016; 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.

ATTACHMENT(S) LIST

None.