

# **OPEN SESSION AGENDA ITEM**

**54-133 MAY 2018  
Programs III.C.**

**DATE:** May 17, 2018

**TO:** **Members, Programs Committee  
Members, Board of Trustees**

**FROM:** Dina DiLoreto, Program Director, Attorney Regulation and Consumer Resources  
Robert McPhail, Program Manager, Attorney Regulation and Consumer Resources

**SUBJECT:** Recommendation re Licensees in Minimum Continuing Legal Education (MCLE)  
Non-Compliance

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## **EXECUTIVE SUMMARY**

Pursuant to California Rules of Court, rule 9.31, State Bar staff are proposing to administratively enroll all licensees in MCLE Compliance Group 2 (last names H-M) who have not complied with the MCLE requirement by July 2, 2018, as involuntary inactive and place them on "Not Eligible to Practice" status, effective July 3, 2018.

In addition, staff are proposing to enroll as involuntarily inactive any other Group 1, Group 2, or Group 3 attorneys who were granted extensions of time for a prior period and who have not complied by their extended deadlines.

This agenda item also seeks the Board's authorization for staff to remove attorneys from involuntary inactive status once the attorney has provided proof of compliance and payment of all non-compliance fees.

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## **BACKGROUND**

The Supreme Court delegated to the Bar the authority to administratively enroll California attorneys who fail to comply with the MCLE requirement on involuntary inactive status. Rule 9.31 of the California Rules of Court provides that any licensee who fails to satisfy the requirements of the State Bar's Minimum Continuing Legal Education program be enrolled as involuntarily inactive under rules adopted by the Board.

Pursuant to Rule 9.31, the Board adopted the MCLE Rules and Regulations, which are now incorporated within the Rules of the State Bar ("Rules"). The Rules establish the procedures for noncompliance with the MCLE requirement. Rule 2.32(A) of the Rules provides that "[a] member who fails to meet requirements for Minimum Continuing Legal Education (MCLE) will be involuntarily enrolled as inactive." Rule 2.92 of the Rules 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."

Unlike the procedure for suspending licenses for non-payment of fees, which requires action by the Supreme Court, placing individual on involuntary inactive status for noncompliance with MCLE requirements needs only approval by the Board of Trustees.

The Rules define noncompliance to include failure to report compliance or claim exempt status, and/or failure to pay all noncompliance fees (Rule 2.90.) As attorneys bring themselves into compliance, staff removes them from the noncompliance list. Only those attorneys who do not bring themselves into compliance by the final deadline are placed on involuntary inactive status. (An attorney placed on inactive status for failure to comply with the MCLE requirement is not eligible to practice law while on such status.)

## **DISCUSSION**

On May 2, 2018, staff mailed MCLE Noncompliance 60-Day Notices to the attorneys of Compliance Group 2 (last names beginning with H-M when assigned to the compliance group) who have not complied with their MCLE requirement. Prior to this May notice, these attorneys were contacted by email on at least two separate occasions between December 8, 2017 and the initial deadline of February 1, 2018. Those attorneys formally exempt from providing the State Bar an email address pursuant to Rule of Court 9.9(e) were mailed a paper notice and compliance card in December. A third email was sent in April, and at least two more email reminders will be sent before the July 2, 2018 deadline.

On June 8, 2018, staff will send a "Final Notice" by certified mail to the Group 2 attorneys who remain out of compliance with MCLE reporting requirements. Subject to the Board's approval of this item, those who have still not complied by July 2, 2018, will be moved to "Not Eligible to Practice" status, effective July 3, 2018.

In addition, staff followed-up with attorneys in Compliance Groups 1, 2 and 3 who were granted good cause modifications to their compliance deadlines (as authorized by Rule 2.55), for a prior period and who have not complied by their modified (extended) deadlines. These attorneys were mailed "60-Day Notices" and, if need be, will be mailed "Final Notices." If they have still not complied with their modified MCLE requirement by July 2, 2018, subject to the Board's approval of this item, they will be moved to "Not Eligible to Practice" status effective July 3, 2018.

## **FISCAL/PERSONNEL IMPACT**

None

## **RULE AMENDMENTS**

None

## **BOARD BOOK AMENDMENTS**

None

## **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: None - core business operations

## **RECOMMENDATION**

**It is recommended that the Programs Committee and Board of Trustees approve the following resolution:**

**RESOLVED**, pursuant to California Rule of Court 9.31 and the Rules of the State Bar, that the Board hereby authorizes that those attorneys in MCLE Compliance Groups 1, 2 and 3 who do not bring themselves into compliance with their MCLE requirements by July 2, 2018, be enrolled as inactive and placed on “Not Eligible to Practice” status, effective July 3, 2018; and it is

**FURTHER RESOLVED**, that the Board hereby authorizes staff to remove individual attorneys from inactive status once they have provided proof of compliance and paid all noncompliance fees.

## **ATTACHMENT(S) LIST**

None