



The State Bar of California

OPEN SESSION AGENDA ITEM 50-7 JULY 2020

DATE: July 16, 2020

TO: Members, Board of Trustees

FROM: Dina DiLoreto, Program Director, Attorney Regulation & Consumer Resources

SUBJECT: Annual Recommendation Regarding Licensees Not in Compliance with Minimum Continuing Legal Education (MCLE) Requirements

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 3 (last names N-Z) who have not complied with the MCLE requirement by September 30, 2020, as involuntary inactive and place them on "Not Eligible to Practice" status, effective October 1, 2020.

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 noncompliance fees.

BACKGROUND

The Supreme Court delegated to the State 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 MCLE 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. The Rules establish the procedures for noncompliance with the MCLE requirement. Rule 2.32(A) of the Rules provides that “[a] licensee 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 licensee 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 nonpayment of fees, which requires action by the Supreme Court, placing individuals 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

At its April 16, 2020, meeting, the Board of Trustees delayed the final MCLE compliance deadline from June 30 to September 30, as part of a collection of changes intended to mitigate the impact of the COVID-19 emergency on licensees and others.

On or before July 31, 2020, staff will mail MCLE Noncompliance 60-Day Notices to the attorneys in Compliance Group 3 (last names beginning with N-Z when assigned to the compliance group) who have not complied with their MCLE requirement. Prior to this July notice, these attorneys were contacted by email on at least four separate occasions before the initial deadline of February 3, 2020. Those attorneys formally exempt from providing the State Bar an email address pursuant to Rule of Court 9.9(d) were mailed a paper notice and compliance card in December. Four more email reminders were sent since February 3, and at least two more will be sent before the September 30, 2020 deadline.

During the last week of August 2020, staff will send a “Final Notice” by certified mail to the Group 3 attorneys who remain out of compliance with MCLE reporting requirements. Subject to the Board’s approval of this item, those who still have not complied by September 30, 2020, will be moved to “Not Eligible to Practice” status, effective October 1, 2020.

In addition, staff have been following-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 will be 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 September 30, 2020, subject to the Board’s approval of this item, they will be moved to “Not Eligible to Practice” status effective October 1, 2020.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES OF THE STATE BAR

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal: None - core business operations

RECOMMENDATIONS

Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:

RESOLVED, pursuant to California Rule of Court 9.31 and the Rules of the State Bar, that the Board of Trustees 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 September 30, 2020, be enrolled as inactive and placed on “Not Eligible to Practice” status, effective October 1, 2020; and it is

FURTHER RESOLVED, that the Board of Trustees 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