

AGENDA ITEM

MARCH 2008 MOC III E

Revisions to the Membership List Policy - Request for Public Comment

DATE: February 22, 2008

TO: Members of the Board Committee on Member Oversight

FROM: Dina DiLoreto, Director of Administration, Member Services

SUBJECT: Revisions to the Membership List Policy- Further Amendments - Request for Additional Public Comment

ATTACHMENTS: Appendix A: The State Bar of California Membership List Policy (with proposed amendments)
Appendix B: Updated Chart of Member Label/List Requests 2005/2006/2007
Appendix C: Updated Chart of Growth in "Opt-outs" Includes All Members in Active & Inactive Classes
Appendix D: Summary of Public Comment Received to Date

EXECUTIVE SUMMARY

Staff submits **further** proposed amendments to the Membership List Policy ("MLP") as a necessary and appropriate response to Assembly Bill ("AB") 3080 (Ch 356, Stats 2004).

AB 3080 amended the State Bar Act to ensure member awareness about the choice of opting-out of third party mailings generated from the State Bar membership list. The use of the membership list is restricted by the MLP first approved by the Board of Governors in 1981 and amended several times, most recently in response to AB 3080 in 2005.

The State Bar's compliance with AB 3080 has been successful. Since beginning compliance with AB 3080 in August 2004, the percentage of members' opting-out has risen from 6.7% to the current 19.76%. The steady growth in opt-outs threatens the efficacy of the membership list as a primary communication and marketing tool with members about member services and benefits. Opting-out by members is **permanent** and precludes any contact generated by the membership list except official State Bar and other judicial branch entity mailings.

The MLP amendments submitted to the Board Committee on Member Oversight ("MOC") last February 20, 2007, reduced the frequency of access to the membership list. The reduction in requests was mostly complied with voluntarily, except in the case of private commercial MCLE providers who continue to make up the majority of the total requests. An updated chart of the requests is attached as Appendix B. Staff submits further amendments for public comment that will eliminate commercial MCLE providers from the MLP, provide State Bar sponsored programs with two no cost lists in return for targeted and coordinated mailings, and reduce the minimum costs for local and specialty bars.

MOC is requested to circulate the proposed MLP amendments to the membership list policy for a ninety-day (90) public comment period. MOC will receive and review comments and any further proposed amendments at its July 2008 meeting.

Board members with questions or concerns may contact Dina DiLoreto at (415) 538-2121 or dina.diloreto@calbar.ca.gov.

BACKGROUND

The State Bar Act (Bus. & Prof. Code § 6000 et seq.) provides for the licensing and regulation of attorneys by the State Bar of California. All attorneys practicing in the state must register with and be active members of the State Bar of California. As part of the registration process, members are required to provide a current office address and telephone number “to be used for State Bar purposes” (Bus. & Prof. Code § 6002.1).

One of the purposes of the address requirement is for notification of State Bar proceedings and other regulatory information—which may be mailed to members’ current office address. (Bus. & Prof. Code § 6002.1(c).) In addition, the office address is a public record available to courts, public agencies, clients, and others for regulatory purposes and, thus, discloses vital information that serves an important public policy. (See, *Mack v. State Bar of California*, 92 Cal.App.4th 957, 962, 112 Cal.Rptr.2d 341 (2002), citing *Lorig v. Medical Board*, 78 Cal.App.4th 462, 467, 92 Cal.Rptr.2d 862 (2002).)

In addition, the Board of Governors has established a Membership List Policy,¹ which it has revised several times, most recently in 2005. The MLP describes the use of the membership list by qualified outside entities providing services, information, or products that further the public policies of the State Bar (e-mail addresses are *not* included).

Assembly Bill 3080 (Ch. 356, Stats of 2004)

AB 3080 amended §6001 of the Business & Professions Code (Section 6001), to provide members with a notice of the State Bar’s practices, and the opportunity to “opt-out” of inclusion of their member information.² Although AB 3080 did not go into effect until January 1, 2005, the State Bar has been actively working to implement its provisions since August 31, 2004 (the online opt-out was live August 4, 2004). The following steps have been taken:

¹ See Appendix A

²Section 6001(g) provides as follows: “The State Bar shall conspicuously publicize to its members in the annual dues statement and other appropriate communications, including its Web site and electronic communications, that its members have the right to limit the sale or disclosure of member information not reasonably related to regulatory purposes. In those communications the State Bar shall note the location of the State Bar’s privacy policy, and shall also note the simple procedure by which a member may exercise his or her right to prohibit or restrict, at the member’s option, the sale or disclosure of member information not reasonably related to regulatory purposes.”

- 1) The State Bar requires every piece of mail sent by a qualified entity under the MLP (e.g., Mandatory Continuing Legal Education (“MCLE”) providers, local bar associations, and Foundation sponsors) to include the following language:

If you do not wish to have your name included in the State Bar membership lists the Bar shares, at cost, to the limited group of outside entities specifically designated in the Bar’s membership list policy, please e-mail memrec@calbar.ca.gov or call the Membership List Coordinator with the State Bar of California at 415-538-2577 to have your name removed. For a copy of the State Bar Membership List Policy, go to the homepage of the State Bar web site at www.calbar.ca.gov and click “Opt-Out of List Sales” in the center of the page, or go to “*My State Bar Profile*,” and select “Update My Mailing Preferences.”

- 2) The 2004 Annual Dues Statement mailed on November 15, 2004, included an insert containing language similar to the language listed above. Under the heading, “Your Right to Opt-Out of the Membership Mailing List for Non-Regulatory Purposes,” pages 5 and 6 of the three-fold material contains information on how to opt-out on the Web, by e-mail and by telephone. In addition, the Statement includes the following language, which gives members notice that opting-out does not mean that a member’s information is not public:

“Official membership information will still be available on the State Bar’s Web site with other public records, as required by section 6002.1 of the California Business & Professions Code. Opting-out simply means that a member’s name and address will no longer be included on the membership list that the State Bar provides to approved entities under its Membership List Policy.”

- 3) “Opt-Out of List Sales” is listed on the State Bar’s home page and it links to a summary of the “Membership List Policy”³ as well as the Bar’s “Privacy Policy”. In addition, clicking on “Member Services” on the home page will take a State Bar member directly to a page with a list of features in *My State Bar Profile*, including the opportunity to “opt-out” of the promotional mailing list.
- 4) Members who elect to register with *My State Bar Profile* (same as the “Member Login” item listed in #3) are given the clear option to:

Change my address, phone numbers, and opt-out preference

In the section titled “**Opt-Out Preference**,” bar members are then given the option to check (or not) a box that says:

Yes, send me promotional mail from Bar-approved entities (Policy)

The word “Policy” is linked to a page that summarizes the Bar’s Promotional Mailing List Policy, as well as links to Business & Professions Code Section 6001, the Web Privacy Policy and the complete Membership List Policy.

³ See Appendix A.

- 5) Subdivision (d) of Article 2 of the Rules and Regulations of the State Bar, relating to “Public Communications,” has been revised as follows:

d. At the time of admission, each member of the State Bar shall be advised of this policy and of the purposes for which the member's name and address may be released. At that time, or at any time thereafter, the member may elect to have his or her name deleted from all lists released to outside entities under this policy if the member so chooses. *In addition, notice of this policy and the member's right to remove his or her name from the membership lists under this policy, shall be provided to each member in the annual dues statement and other appropriate communications, including the State Bar's Web site and other electronic communications. The notice shall note the simple procedure by which a member may exercise his or her right to prohibit or restrict, at the member's option, the sale or disclosure of member's name and address under this policy.*

Number of Members Opting Out

Since the implementation of AB 3080 in August of 2004, the number of members' opting out has increased from **13,432 (6.9%)** prior to August 31, 2004, to the most recent tally of **42304 (19.8%)** on February 1, 2008. Appendix C details the consistent growth in member opt-outs since the implementation of AB 3080.

Conclusion

In short and in sum, the State Bar has gone the extra mile to comply with the intent of AB 3080. The State Bar must further limit its MLP to preserve the efficacy of the membership list to assist the State Bar's purposes. The proposed amendments is a first step to reducing the amount of mail generated by the MLP. Moreover, the amendments will require development of alternative strategies to contact members about services and benefits.

The proposed MLP additional amendments represent a significant change in eliminating commercial MCLE providers as MLP entities. It is anticipated that some MCLE providers will strongly resist the proposed MLP amendment. However, the availability of other list sources for MCLE providers –local bars, legal directories, and their own internal lists reduces the need for the State Bar member list. Moreover, when MCLE was implemented in 1992 as a new program, the use of the membership list to solicit programs may have been justified. Today there are over 1300 State Bar approved MCLE providers, all of whom can request the membership list.

The proposal to grant up to two no cost lists to the State Bar sponsored insurance and affinity partners is contingent on agreement by the partners to coordinate mailings as part of a agreed upon marketing strategy designed to minimize the amount of mail sent to members, develop new strategies for member contact, and maximize revenue and benefits to the State Bar and its members.

Finally, the reduction of the minimal cost of electronic lists from 400.00 to 40.00 will benefit local and specialty bars that often send request smaller numbers of member information.

The proposed MLP amendments also vests discretion with the Executive Director or her designee to grant exceptions to and restrictions of access to the membership list.

FISCAL IMPACT

No fiscal impact is anticipated at this time.

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT

There is no board book impact at this time.

RECOMMENDATIONS AND RESOLUTIONS

Should the Board Committee determine to adopt the recommendation of staff it would be appropriate to adopt the following resolution:

RESOLVED, that the Board Committee on Member Oversight (MOC) approves the proposed amendments to the State Bar Member List Policy in the form attached to these minutes and made a part thereof for a ninety-day (90) public comment period; and it is

FURTHER RESOLVED, that this authorization for release for public comment is not, and shall not be construed as, a statement or recommendation of approval of the proposed item.