

AGENDA ITEM

MAY - 54-134

MCLE - Recommendation regarding Members in Noncompliance.

A list of members in compliance groups 1, 2, and 3 who, if not in compliance by June 30, 2009, will be placed on "Not Eligible to Practice" status effective July 1, 2009.

DATE: May 1, 2009

TO: **Members of the Board of Governors,
Members of the Board Committee on Member Oversight**

FROM: Starr Babcock, Senior Executive, Member Services
Dina DiLoreto, Director of Administration, Member Services

SUBJECT: MCLE - Recommendation re Members in Noncompliance

ATTACHMENTS: List of members in noncompliance (available at meeting)

EXECUTIVE SUMMARY

Pursuant to California Rules of Court, rule 9.31, the Member Services Center requests permission to enroll administratively all members of MCLE Compliance Group 2 (last names H-M) who have not complied with the MCLE requirement by June 30, 2009, as involuntary inactive members and place them on "Not Eligible to Practice" status effective July 1, 2009. In addition, we would like to act on any prior Group 1 and Group 3 members who received modifications and have still not complied. Please note that unlike the procedure for suspending members for non-payment of fees, this action only requires approval by the Board of Governors or its designee. This item also authorizes staff to remove members from involuntary inactive status once the member has 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.

BACKGROUND

On April 30, 2009, Member Services Center (MSC) staff sent MCLE Noncompliance 60-Day Notices to members 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 the notice sent on April 30, 2009, members of Compliance Group 2 were contacted by mail on two separate occasions: December 1, 2008, and March 13, 2009.

Those members of Compliance Group 2 who had provided The State Bar of California with an e-mail address also received e-mailed reminders in January 2009 and in early May 2009.

Staff will send by Certified Mail, on or about June 5, 2009, a "Final Notice" to the members of Compliance Group 2, who have not complied with the MCLE requirement. Those members of Compliance Group 2 will also receive a courtesy call at their telephone number of record by MSC staff by June 15, 2009. Those members of Compliance Group 2 that have still not complied with the MCLE requirement as of June 30, 2009 will be moved to "Not Eligible" status effective July 1, 2009.

In addition, members in Compliance Groups 1, 2 and 3 who were granted modifications and who have not yet sent in their attestation of completion for a prior period will be contacted again. These members have also received a "60-Day Notice" and will be mailed a "Final Notice." If they have not complied with their modified MCLE requirement by June 30, 2009, they will be moved to "Not Eligible to Practice" status effective July 1, 2009.

BOARD AUTHORITY

The Supreme Court has delegated to the Bar the authority to administratively enroll on involuntary inactive status members of the State Bar who fail to comply with the MCLE requirement. Rule 9.31, California Rules of Court, provides that "A 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 of Governors of the State Bar."

Pursuant to Rule 9.31, the Board of Governors 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. "

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. In the case of non-payment of membership fees, the Board submits a list to the Supreme Court for action.

The Rules define noncompliance to include failure to provide satisfactory evidence of compliance including proof of exempt status and/or failure to pay all noncompliance fees (Rule 2.90.) 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 June 30, 2009, will be placed on inactive status. (A member placed on inactive status for failure to comply with the MCLE requirement is not eligible to practice law while on such status.)

A list of members in noncompliance with their MCLE requirement will be available upon request at the board meeting.

FISCAL AND PERSONNEL IMPACT

These actions were included in the 2009 budget and personnel planning; therefore, there will be no fiscal or personnel impact.

BOARD BOOK/ADMINISTRATIVE MANUAL

This item has no impact on the Board Book/Administrative Manual.

PROPOSED RESOLUTIONS

If the Board Committee on Member Oversight concurs with the recommendation, adoption of the following resolution would be in order:

RESOLVED: pursuant to California Rule of Court 9.31 and the Rules of the State Bar, that the Board Committee on Member Oversight recommends that the Board of Governors authorize that those members of MCLE Compliance Groups 1, 2 and 3 who do not bring themselves into compliance with their MCLE requirement by June 30, 2009, shall be enrolled as inactive members of the State Bar of California and placed on "Not Eligible to Practice" status, effective July 1, 2009; and it is

FURTHER RESOLVED: that the Board Committee on Member Oversight recommends that the Board of Governors authorize staff to remove members from administrative inactive status once the member has provided proof of compliance and paid all noncompliance fees.

If the Board concurs with the recommendation of Board Committee on Member Oversight, adoption of the following resolution would be in order:

RESOLVED: pursuant to California Rule of Court 9.31 and the Rules of the State Bar, and upon recommendation of the Board Committee on Member Oversight, that the Board of Governors hereby authorizes that those members of MCLE Compliance Groups 1, 2 and 3 who do not bring themselves into compliance with their MCLE requirement by June 30, 2009, shall be enrolled as inactive members of the State Bar of California and placed on “Not Eligible to Practice” status, effective July 1, 2009; and it is,

FURTHER RESOLVED: that the Board of Governors hereby authorizes staff to remove members from administrative inactive status once the member has provided proof of compliance and paid all noncompliance fees.