

AGENDA ITEM

May 54-131

MCLE - Recommendation regarding Members in Noncompliance.

A list of members in compliance group 3 who, if not in compliance by June 30, 2011, will be placed on "Not Eligible to Practice" status effective July 1, 2011.

DATE: April 27, 2011

TO: Members, Member Oversight Committee
Members, Board of Governors

FROM: 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 administratively enroll all members of MCLE Compliance Group 3 (last names N-Z) who have not complied with the MCLE requirement by June 30, 2011, as involuntary inactive members and place them on "Not Eligible to Practice" status effective July 1, 2011. 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

By April 29, 2011, Member Services Center (MSC) staff will have sent MCLE Noncompliance 60-Day Notices to members of 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 the April 2011 notice, members of Compliance

Group 3 were contacted by mail on at least two separate occasions: December 1, 2010, and March 9, 2011.

Those members of Compliance Group 3 who had provided The State Bar of California with an e-mail address also received e-mailed reminders in October 2010 and January 2011. A third email reminder will be sent in May 2011.

Staff will send by certified mail, on or about June 3, 2011, a "Final Notice" to the members of Compliance Group 3, who have not complied with the MCLE requirement. Those members will also receive a courtesy call at their telephone number of record by MSC staff by June 17, 2011. Those members of Compliance Group 3 that have still not complied with the MCLE requirement as of June 30, 2011, will be moved to "Not Eligible" status effective July 1, 2011.

BOARD AUTHORITY

The Supreme Court has delegated to the Bar the authority to administratively enroll members of the State Bar who fail to comply with the MCLE requirement on involuntary inactive status. 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 report compliance or claim 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, 2011, 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 / PERSONNEL IMPACT:

These actions were included in the 2011 budget and personnel planning; there will be no additional fiscal or personnel impact.

RULE AMENDMENTS:

None

BOARD BOOK/ADMINISTRATIVE MANUAL IMPACT:

None

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Member Oversight Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, pursuant to California Rule of Court 9.31 and the Rules of the State Bar, that the Member Oversight Committee recommends that the Board of Governors authorize that those members of MCLE Compliance Group 3 who do not bring themselves into compliance with their MCLE requirement by June 30, 2011, shall be enrolled as inactive members of the State Bar of California and placed on “Not Eligible to Practice” status, effective July 1, 2011; and it is

FURTHER RESOLVED, that the Member Oversight Committee 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.

PROPOSED BOARD RESOLUTION:

Should the Board concur with the Member Oversight Committee’s recommendation, the following resolutions 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 Member Oversight Committee, that the Board of Governors hereby authorizes that those members of MCLE Compliance Group 3 who do not bring themselves into compliance with their MCLE requirement by June 30, 2011, shall be enrolled as inactive members of the State Bar of California and placed on “Not Eligible to Practice” status, effective July 1, 2011; 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.