

# AGENDA ITEM

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**DATE:** July 8, 2011

**TO:** Members, Member Oversight Committee

**FROM:** Dina DiLoreto, Director of Administration, Member Services

**SUBJECT:** Report on the Auditing of MCLE Compliance and Proposed Penalties for Non-compliance with MCLE Audit Requirements

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## EXECUTIVE SUMMARY

The Member Services Center (MSC) will be conducting an MCLE compliance audit. In conjunction with the compliance audit, staff will attempt to gather statistical, demographic and trend information requested by the Chair of the Member Oversight Committee (MOC). Board members with questions or concerns may contact Dina DiLoreto (415) 538-2121 or [Dina.DiLoreto@calbar.ca.gov](mailto:Dina.DiLoreto@calbar.ca.gov).

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## BACKGROUND

The Chair of the Member Oversight Committee of the Board of Governors has requested information about the minimum continuing legal education (MCLE) that California's 172,000 active attorneys choose, including: 1) how much ethics education they take; 2) the frequency and timing of their MCLE; and 3) the types of courses they take. He requested that this information be gathered as part of an MCLE compliance audit.

The Bar has conducted two MCLE audits in the past 8 years and are on track to perform an audit of a sample of members whose compliance period was 2011. As in past audits, the main focus of this evaluation will be determining compliance with MCLE Rule 2.72. However, this audit will also be structured to gather additional statistical data. To collect this data in a timely and efficient fashion, Member Services and the Office of Information Technology are coordinating an effort to incorporate an electronic element into the data collection process. Over the last few weeks, staff has developed an online tool to facilitate the collection of data that will enable Member Services to view and aggregate the information within a database tool. This process should effectively accomplish the goals of a traditional MCLE compliance audit while providing the additional benefit of data analysis relating to attorney compliance patterns.

## **DISCUSSION**

### Sample Selection:

The MCLE audit will be conducted on a random sample of 1% of members in Compliance Group 3 (last Names N-Z) who reported compliance in 2011. This represents approximately 625 attorneys. The audit is a compliance monitoring tool, establishing whether the sample pool of attorneys have fulfilled their MCLE requirements. Although the goal of the audit process is not traditionally to analyze the courses taken in comparison with the other attorneys in the group, staff will attempt to produce statistics with the data collected. The audit will also reveal the compliance pattern of these particular attorneys.

### Audit Process:

The audit group will be sent an email and letter on August 1<sup>st</sup> notifying them that they have been selected for the audit. The letter will contain a link to the online MCLE compliance log where members will be asked to input their compliance details. They will also be asked to submit their actual certificates of attendance by mail or email. Members will have 30 days to complete the audit.

The online compliance logs will then be downloaded into a database. Key points to be automatically checked on each compliance log include:

- Do the total number of hours completed satisfy the 25 hour (or the proportional) requirement?
- Have the specific requirements of Legal Ethics, Elimination of Bias, and Substance Abuse hours been completed?
- Are the dates for all courses within the compliance period? Were any hours completed after compliance was originally reported? (late hours may be acceptable but should be flagged for penalty.)
- Is the proportion of Self-study hours acceptable? (up to half is allowed)

In addition, claimed exemptions and proportional submissions will be evaluated.

After the September 1<sup>st</sup> deadline (see Timeline below), the aggregated MCLE compliance reports will be used to provide the MOC Chair with the analytical information requested. Staff will examine the following factors:

- Time frames in which attorneys take classes throughout the period
- Amount of ethics hours attorneys take (as well as hours within the other special requirements)
- How many hours are satisfied through Self-study credit vs. Participatory credit
- Which are the most popular classes

This data will be examined manually and also by using the Excel Statistics Package to see if any relevant trends emerge. It should be noted that staff does not have complete information on variables that might correlate to MCLE behavioral patterns (i.e. practice area and practice type). Without knowing these variables, the data analysis may not be statistically relevant.

Proposed Noncompliance Penalty:

Prior audits have focused primarily on assisting members to come into compliance and some members have seemed to initially view audit requests as voluntary. Without a penalty in place to force members to respond to audit requests, it has been difficult to get all auditees to comply timely. To address this problem, staff recommends that the normal noncompliance penalty of \$75 be assessed against members who fail to respond and who are non compliant by the initial audit deadline. Those members who miss the final audit deadline will be assessed an additional \$200 reinstatement fee when they are placed on Administrative Inactive status.

Going forward staff intends to conduct MCLE audits on an annual basis. If the 2011 audit cycle reveals a pattern of severe noncompliance, a new penalty structure may be proposed for 2012. Staff recommends that the membership be made aware of any changes through the CalBar Journal and other electronic communication methods.

Audit Timeline:

- 1) Aug 1<sup>st</sup>: Send Audit Notices by mail and email
- 2) Aug 22<sup>nd</sup>: Send emailed reminder notices to members who have not submitted response
- 3) Sept 1<sup>st</sup>: Audit Submission Deadline
- 4) Sept 1<sup>st</sup> -Oct 1<sup>st</sup>: Complete Review of Audit Submissions
- 5) Oct 1<sup>st</sup>: Mail 60 day notices
- 6) Nov BOG meeting: Present noncompliance list with request to place on Administrative Inactive status effective December 2. Provide report on demographic findings
- 7) December 2<sup>nd</sup>: Suspend members who did not respond or failed to pass audit

**FISCAL / PERSONNEL IMPACT:**

Administrative and personnel resources will be covered by the existing 2011 budget.

**RULE AMENDMENTS:**

None

**BOARD BOOK IMPACT:**

None

**PROPOSED BOARD COMMITTEE RESOLUTION:**

This item is informational only and does not require Board action. Board action will be required at the November 2011 meeting in order to enroll any non-compliant members on administrative inactive status, for failure to satisfy the MCLE audit.