



TO: Members, Committee on Regulation, Admissions and Discipline Oversight

FROM: Jayne Kim, Chief Trial Counsel, Office of the Chief Trial Counsel (OCTC)

DATE: July 6, 2012

RE: OCTC Status Report to RAD

I. Supreme Court Remand Order (June 21, 2012)

On June 21, 2012, the California Supreme Court remanded 24 stipulations back to the State Bar Court for reconsideration. The Supreme Court's global remand order specifically stated: "The above-entitled matters are returned to the State Bar for further consideration of the recommended discipline in light of the applicable attorney discipline standards. (In re Silverton (2005) 36 Cal.4th 81, 89-94; see In re Brown (1995) 12 Cal.4th 205, 220.)" As addressed further below, it is OCTC's belief that the remand order is instructing the State Bar to conduct a more thorough analysis of the applicable Standards for Attorney Sanctions for Professional Misconduct (the "Standards") and to sharpen its focus on the primary purposes of discipline (protection of the public, the courts and legal profession).

A. Understanding of the Remand Order

The remand order appears to be a message to everyone in the discipline system (the State Bar Court, OCTC and Respondents/Respondent's Counsel) that the Supreme Court expects more from the State Bar, greater adherence to the Standards, a more thoughtful analysis regarding the appropriate level of discipline and, perhaps, increased discipline of unethical attorneys.¹ The Supreme Court's remand order is also consistent with what seems to be a renewed level of engagement by the Court in discipline-related matters. Last year, the Supreme Court granted two petitions for review of discipline cases, which are currently pending: the Stephen Glass and Gary Grant matters. In the Glass matter, the State Bar Court Hearing Department and Review Department recommended Glass's admission to the Bar. In the Grant matter, the State Bar Court Review Department reversed the Hearing

¹ In reaching a recommended level of discipline, OCTC and the State Bar Court are to follow established Standards for Attorney Sanctions for Professional Misconduct (which provide level of discipline guidelines) and may rely on case law precedent. The Silverton case cited in the remand order is a 2005 Supreme Court decision wherein the Supreme Court disbarred attorney Silverton, concluding that the Review Department's recommendation of 60 days actual suspension was inadequate given the primary purposes of disciplinary proceedings to be the "protection of the public, the courts, and the legal profession; the maintenance of high professional standards by attorneys and the preservation of the public confidence in the legal profession." Silverton had been previously disbarred and, after reinstatement to the bar, committed new misconduct. In recommending a 60-day period of actual suspension, the Review Department had deviated from the Standards (which called for disbarment) based upon findings of mitigation and reliance on case law from the early 1990s.

Department's disbarment recommendation and recommended two years actual suspension (Grant had been convicted of felony possession of child pornography).

B. Reaction to the Remand Order

Since the June 21st remand order, OCTC management and staff attorneys have been evaluating the remanded cases carefully – individually and collectively. Notably, each of the 24 remanded stipulations had been executed last year prior to OCTC's restructuring and the implementation of improved review and performance checks. Without commenting on individual cases or specific facts (because these matters are re-pending before the State Bar Court), OCTC believes it has identified certain common threads in the remanded stipulations. As examples, some stipulations may have contained too little discussion or recognition of the Standards, an insufficient explanation or justification for deviating from the Standards, or reliance upon pre-Silverton case law that supported a recommended level of discipline which – these days – may be considered inadequate by the Supreme Court.

The State Bar Court has begun ordering the parties to appear for status conferences in the remand cases. OCTC staff will meet with the respondent and State Bar Court to discuss concerns/issues in stipulation and to proceed accordingly in each individual case.

C. Proactive Steps by OCTC

Given OCTC's understanding of the remand order, OCTC conducted a reexamination of other stipulations still pending with the Supreme Court (stipulations that have been approved and transmitted by the State Bar Court but not yet acted upon by the Supreme Court). From that inventory, OCTC identified 24 additional stipulations which appeared to contain certain similarities to the remanded cases. As a result, on July 3, 2012, the Office of General Counsel (OGC) filed a motion with the Supreme Court, on behalf of OCTC, requesting the return of these additional 24 matters to State Bar Court for further reconsideration in light of the June 21st remand order. In similar fashion, OCTC conducted a reexamination of stipulations pending with the State Bar Court that have not yet been transmitted to the Supreme Court and, where appropriate, has been requesting a status conference with Respondent/Respondent's Counsel and the State Bar Court to reconsider certain stipulations in light of concerns reflected by the Supreme Court's June 21st remand order.

This bold and proactive move is consistent with OCTC's belief that the Supreme Court expects the State Bar to reassess and reevaluate attorney discipline across the board.

II. Backlog and Inventories (as of June 30, 2012)

Attached is a copy of OCTC's month-end report to RAD. As reflected in the report, OCTC's backlog and inventory numbers stood as follows:

Complaints	6/3/12	5/31/12	4/30/12	3/31/12	2/29/12	1/31/12
Backlog (Investigations)	42	76	55	46	31	21
Backlog (Notice Open)	200	187	197	249	181	200

As reflected in previous reports, from January through May, OCTC's investigation backlog numbers had been increasing slowly but steadily each month. During that time, OCTC management increased its overall review and supervision of investigations, demanded greater individual oversight and accountability by staff, began utilizing interim Lead Investigators, and implemented new training programs for attorneys and investigative staff.

In May, due to our growing backlog numbers, OCTC management began approving limited overtime to our interim Lead Investigators and specific Intake staff to review backlog and potential backlog matters and to work more closely with investigative staff handling complex or aged cases. As a result, last month, we were able to start reducing our monthly backlog inventory. OCTC management intends to continue utilizing limited overtime through the end of the year and until necessary staffing vacancies are filled.

July 1st also marks the tracking of OCTC's potential backlog inventory (i.e. those complaints in the system which will be more than 6 months old by December 31, 2012, if not completed). On page 2 of the RAD report, you will see that our current potential backlog inventory is 1,293, which means there are 1, 293 complaints pending in investigations (at different stages and ages). Again, of the entire investigation inventory, only 42 complaints are currently in backlog (as of June 30). Going forward, we will continue to track this potential backlog inventory for RAD on a monthly basis.

III. Training and Development

A. Trial Skills Training

On July 27, 2012, OCTC will hold an all-day Trial Skills Seminar for its San Francisco attorney staff. Modeled after the Los Angeles April seminar, seasoned prosecutors from the Alameda County District Attorney's Office will provide lectures/presentations in the morning. The afternoon session will be devoted to working groups (breakout sessions). Volunteers from the San Mateo County District Attorney's office will participate as evaluators/commentators.

OCTC is planning the second phase of its trials skills training in Los Angeles. We will be working again with the Los Angeles County District Attorney's Training Division to continue our training sometime after August 1, 2012.

B. Investigations Training

OCTC continues its training assessment and development of training programs for investigative staff. As an example, this month, OCTC is developing a training summit related to bankruptcy and foreclosure matters in conjunction with various law enforcement and government agencies.

IV. Conclusion

This year remains challenging for OCTC as we continue our efforts to improve overall work performance and to change deficient/problematic practices of the past. We remain, however, committed and optimistic about our future and will continue to keep RAD informed of our progress and productivity.