



## THE STATE BAR OF CALIFORNIA

## OFFICE OF THE CHIEF TRIAL COUNSEL

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

FROM: Jayne Kim, Acting Chief Trial Counsel

DATE: October 19, 2011

RE: OCTC Status Report to RAD

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On September 14, 2011, I began serving as Acting Chief Trial Counsel. Within my first 30 days, I began implementing measures to eliminate OCTC's backlog, increase productivity, and ensure quality performance. These measures include identifying and addressing specific performance problems/issues, developing training program for staff, and providing additional resources to achieve our year-end goals.

Additional resources include the authorization of overtime for hourly employees, such as investigators, and the hiring of contract/temp staff (attorneys and investigators) to assist with the handling of our 2011 backlog cases. In addition, I have been working with RAD Chair Lowell Carruth, RAD Vice Chair Karen Goodman, and State Bar Budget Director John Chiappetta to develop a reporting system to RAD that sufficiently and accurately reflects OCTC's progress in eliminating its current backlog inventory and preventing new cases from rolling into backlog. This reporting system includes the weekly distribution to RAD of OCTC's backlog inventory, roll-over projections, and overall volume of complaints moving through investigations into the State Bar Court system. This weekly distribution is in the form of a weekly report entitled "RAD Committee Weekly Dashboard," which is also distributed to the State Bar President and the Chair of the Task Force on Discipline System Metrics and Monitoring. A copy of the RAD Committee Weekly Dashboard for week 41, ending Friday October 14, 2011, is attached as Exhibit 1 and addressed further below.

### **Understanding Backlog**

As explained in the State Bar of California Attorney Discipline Report for Year Ending December 31, 2010 ("2010 Annual Discipline Report"), state law establishes specific benchmarks for the speed of complaint resolution. Business and Professions Code section 6094.5 sets one benchmark for closing or completing investigations of complaints within six months after receipt of the complaint and within 12 months for cases designated as complex. The broader backlog, however, defined in Business and Professions Code section 6086.15 and mandated as a goal in Business and Professions Code section 6140.2, includes all complaints that have not been resolved (dismissal, admonition, or filing of formal charges) within six months of receipt of the complaint. Business and Professions Code section 6140.2 states: "The State Bar shall set as a goal the improvement of its disciplinary system so that no more than six months will elapse from the receipt of complaints to the time of dismissal, admonishment of the attorney involved, or the filing of formal charges by the State Bar Office of Trial Counsel." Business and Professions Code section 6086.15, subdivision (a)(1), defines the existing backlog of cases to include the number of "complaints as of December 31 that were pending beyond six months after receipt without dismissal, admonition, or the filing of a notice to show cause..."

OCTC's instant backlog reporting to RAD uses the broader definition of backlog (all complaints more than six months old) and includes both investigative backlog, which refers to cases still being investigated by OCTC, and notice open backlog, which refers to cases where the investigation is complete and the matter is ready for the filing of formal charges or other resolution.

### **Exhibit 1: RAD Committee Weekly Dashboard**

The weekly Dashboard includes eight charts reflecting OCTC's inventory and progress in the following areas: (1) Progress Toward Backlog Elimination by Year End; (2) Snapshot of Current Backlog; and (3) OCTC Case Flows.

#### **1. Progress Toward Backlog Elimination by Year End**

The first set of charts track the inventory of all complaints received by OCTC as of July 1, 2011. In other words, these are the complaints that could be in backlog if not resolved via dismissal, admonishment, filing of stipulated discipline, or filing of formal charges by December 31, 2011. The first "Investigations" chart demonstrates OCTC's progress in reducing our potential Investigations backlog inventory. There has been a steady and consistent decline in potential inventory since July 1, 2011. Not surprisingly, this productivity at the investigation level has resulted in an increased inventory of Notice Open (NTS OPN) cases because once an investigation is complete, the matter moves to Notice Open unless it was closed, abated, or otherwise disposed.

#### **2. Snapshot of Current Backlog**

The second set of charts track OCTC's current backlog numbers. In other words, the charts reflect what the actual backlog numbers were at the end of week 41, October 14, 2011. The investigative backlog stood at 814, while the notice open inventory stood at 665.

#### **3. OCTC Case Flows**

The third set of charts show the week by week case volume flow from one operational stage to another. For example, the charts demonstrate the number of complaints moving from Intake to Investigation, the number of complaints moving from Investigations to Notice Open, and the number of complaints moving out of Notice Open (either by filing of charges or disciplinary stipulations in State Bar Court or other resolution).

### **Plan of Action 2011**

OCTC's current organizational structure will remain in place for the rest of the year because any significant organization changes would be too disruptive to our backlog goals. With just over two months left in the calendar year, we are still challenged with a significant backlog inventory and my plan to address it is as follows:

- OCTC has a backlog team of attorneys and investigators devoted entirely to eliminating investigative backlog matters. This team is effectively reducing our investigative backlog each week and is on target to zero out by December 31, 2011.

- OCTC has a notice drafting team of attorneys devoted entirely to eliminating our oldest Notice Open inventory (those cases in Notice Open as of July 1, 2011). As reflected in the Dashboard report, the notice drafters have experienced difficulty keeping up with the pace of backlog team and, consequently, our notice open inventory has continued to grow. Resolving a case in Notice Open is frequently time consuming because it involves contacting the respondent to meet about settlement, drafting a disciplinary stipulation for Court approval, and/or attending an early neutral evaluation conference with a settlement judge before formal charges are filed. To address this challenge, we will be separating the old Notice Open inventory (those cases in Notice Open as of July 1, 2011) by keeping those cases with the notice drafting team, while newer Notice Open matters are assigned to other attorneys in order to distinguish the age of our Notice Open inventory.
- We are in the processing of bringing in contract attorneys to join our trials team in order to move some of the experienced trial attorneys to help with notice drafting. We are also bringing in temporary investigators to assist us in preventing further roll-over of backlog matters and to work the more straight forward investigations.
- The State Bar has recently offered a separation incentive to staff effective December 9, 2011. As OCTC determines the extent of staff intending to separate from the State Bar, we will submit requests for additional resources (contract attorneys/investigators) to finish out the year and help the office transition into 2012.

### **Plan of Action 2012**

Since the majority of our focus for the remainder of the year is to wipe out current backlog, OCTC's backlog teams are designed to eliminate themselves. So, once we've successfully managed our backlog inventory, we should no longer need the current backlog teams and may start transferring staff into a more efficient organizational structure.

Special Assistant Jim Fox is in the process of developing a training program for OCTC staff (attorneys, investigators, and paralegals). He is also assisting me with organizational changes within OCTC to increase overall productivity and to ensure quality control.

### **Other Factors to Consider**

Certain cases such as the abated and re-opened matters present an extra challenge to OCTC in terms of managing backlog. For the reasons stated below, I wanted to alert RAD that should any of these matters return to the investigative or notice open backlog inventory late in the year, it may be difficult to resolve the matters before December 31<sup>st</sup>, depending on the status of each individual case.

- Abated cases: Abated matters are those that are, in effect, stayed at a pre-filing phase where such abatement would be appropriate under the Rules of Procedure of the State Bar of California and would preserve limited resources of the office.
  - ✓ Factors to consider for abatement may be found in Rules 5.50 – 5.52. The most common reasons for abatement at a pre-filing phase is the existence of other related proceedings (civil or criminal) that would likely impact the disposition of the disciplinary matter or the likely disbarment of a respondent who is already before the State Bar Court in another disciplinary matter. Other reasons to abate matters include when a court of record has

judicially declared a respondent to be mentally incompetent or when the member is on active duty in the armed forces and unable to participate in the disciplinary proceedings. Abated investigations and notice open matters technically fall under the definition of backlog, although they may be distinguished for the reasons stated above.

- ✓ Backlog challenges arise when the reasons for abatement no longer exist (e.g., the pending civil or criminal proceeding has resolved and OCTC may resume active work on the matter). Since OCTC cannot control when the reason for abatement ends, we cannot control when these abatement matters return to investigations or notice open phase for further action. Unfortunately, the time accrued in abated status is counted against us when determining the backlog age of the cases.
- Re-opened Complaints: Re-opened matters are those that have been re-opened after OCTC had made a determination to close the matters. Through the Audit & Review process, OCTC may determine that the complaint should be re-opened. The complaint is then re-opened under the same complaint number and the time accrued during the A&R process is counted against us in determining the backlog age of the cases. The same is true for those cases closed in Intake due to non-cooperation or non-response of the complaining witness. Currently, should the complaining witness “reappear” at a later stage – within one year of our closing of the complaint – OCTC reopens the complaint under the same complaint number and the time accrued when the complaining witness was non-responsive/non-cooperative is counted against us when determining the backlog age of the case.

### **Attachments**

- Exhibit 1: RAD Committee Weekly Dashboard
- Exhibit 2: Intake Monthly Complaints Inventory
- Exhibit 3: Disciplinary Flow Charts