



# 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: January 25, 2012

RE: OCTC Status Report to RAD

The Office of the Chief Trial Counsel (OCTC) ended 2011 with no backlog complaints in its “investigation open” inventory. We also ended the year by reducing our “notice open” backlog of complaints to 187, below our target of 250.<sup>1</sup> That said, however, each day we face new backlog and roll-over matters given the volume of complaints we receive each year.

In 2011, OCTC received approximately 16,116 new complaints and opened approximately 5,258 new investigations. As we work diligently to prevent a first quarter spike in backlog matters -- which has haunted OCTC in past years -- this year we are transitioning into a model of vertical prosecution and towards a more efficient organizational structure. This status report is intended to report on key statistics from 2011 and on OCTC’s new organizational structure and plans for 2012.

## **January Backlog Numbers:**

As of January 20, 2012 (Discipline Day), OCTC had **36** backlog complaints in “investigation open” and 142 in “notice open.” In addition, as of January 20, 2012, there were 97 complaints in the system scheduled to roll into backlog within 30 days and another 324 complaints scheduled to roll into backlog within 60 days if OCTC does not complete the investigations within the statutorily defined six-month period.

<b>January 20, 2012</b>	<b>Backlog</b>	<b>30-day Roll In</b>	<b>60-day Roll In</b>
Investigation Open	36	97	324
Notice Open	142		

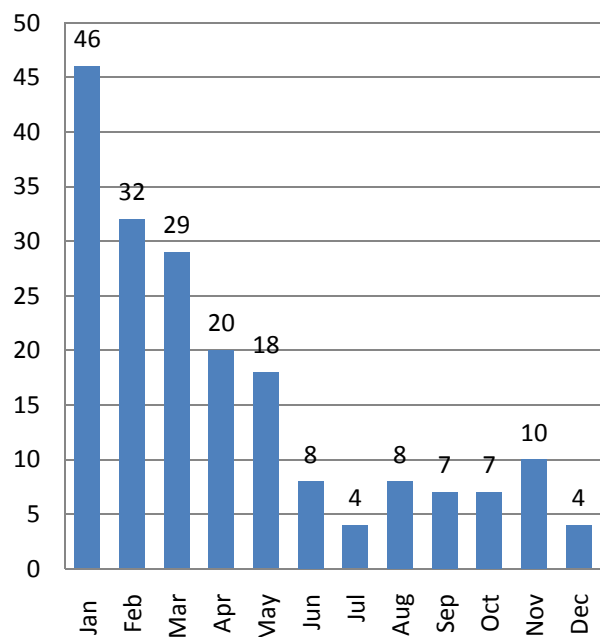
Each day brings new numbers for OCTC and, consequently, the backlog numbers may fluctuate significantly within each month. As daily numbers may change dramatically, OCTC intends to provide RAD with an average of its daily backlog inventory for each month. OCTC also notes that due to organization changes addressed below, we expect transitional challenges that may cause temporary increases in daily backlog numbers. Consequently, OCTC proposes providing monthly backlog numbers based upon daily averages, rather than focusing on any one particular date and the numbers on that date.

<sup>1</sup> The State Bar considers complaints in “backlog” if they are more than six months old. The term “Investigation Open” refers to the investigatory phase of a disciplinary matter. The term “Notice Open” refers to the post-investigatory and pre-filing phase of a disciplinary matter wherein OCTC generally prepares a Notice of Disciplinary Charges or otherwise resolves the matter via stipulation or closure.

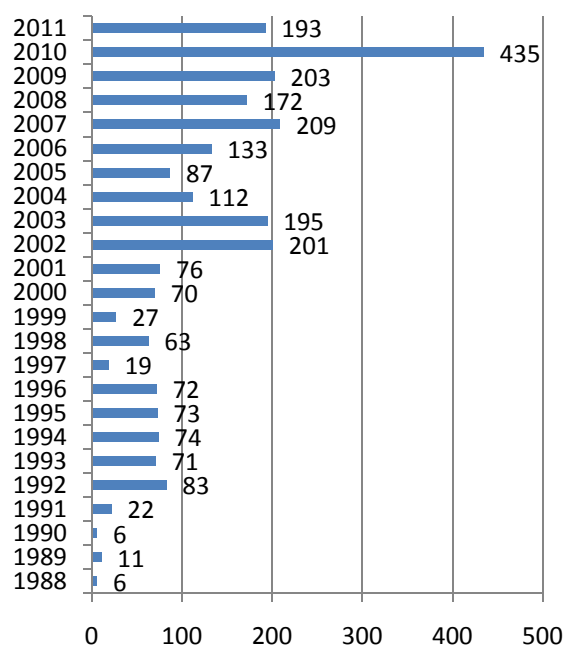
## Audit & Review:

According to the Office of General Counsel (OGC), the total of Walker petitions received in 2011 was approximately 193 -- less than half the number received in 2010. The attached chart reflects the significant drop in numbers during the second half of 2011 thanks, in large part, to OCTC's Audit & Review (A&R) team. Given these numbers, we expect a further reduction in the overall number of Walker petitions for 2012.

**2011 Walkers Received by Month**



**Walker Petitions Received by Year**



In addition, OCTC examined the number of A&R requests received during 2011. We currently have 441 matters in A&R pending a “second look” request. According to our records, in 2011, approximately 5.2% of our closed complaints resulted in a request by the complainant for a “second look” (i.e. request for A&R review of that closing decision).<sup>2</sup>

Office Closures		A & R Requests
Intake	11,278	808
Investigations	3,850	108
Hearings	2,853	22
Totals	17,981	938
Percentage of 2 <sup>nd</sup> Look Requests		5.2%

<sup>2</sup> A&R re-opened approximately 17 matters in 2011. To date, only one of those re-opened matters has resulted in discipline.

### **Intake Trends Observed by Complaint or Allegation Type:**<sup>3</sup>

Common types of allegations received in Intake during the last three years were as follows:

	<u>2009</u>	<u>2010</u>	<u>2011</u>
A. Professional Employment	974	481	595
B. Fees	6,449	7,651	6,038
C. Funds	2,565	2,449	2,674
D. Performance	15,377	16,717	14,406
E. Duties to Client	5,563	4,212	4,240
F. Interference With Justice	4,917	3,968	4,318
G. Personal Behavior	4,061	5,441	6,075
P. Duties to State Bar	73	99	120
L. Loan Modification Complaint	3,434	5,279	4,451
R. Debt Resolution	92	231	160
U. UPL	765	564	491
HTO. No complaint articulated	282	329	270
<u>TOTALS</u>	<u>44,552</u>	<u>47,421</u>	<u>43,838</u>

In addition, as reported to various Board members at Discipline Day (January 20, 2012), Intake is seeing an increased number of complaints involving the alleged identity theft of licensed attorneys. Where complaints involve allegations of the unauthorized practice of law (UPL) by a non-attorney, OCTC's ability/resources are limited because we cannot discipline non-attorneys. Where there is evidence of criminal conduct, such as UPL, OCTC prepares the appropriate referral to law enforcement.

### **OCTC 2012 Action Points:**

Pursuant to recent discussions with the Board, OCTC is currently working on the following action points intended to raise the standards for discipline:

- Enhanced integration of OCTC enforcement with law enforcement
  - Establishing law enforcement liaison positions within OCTC
    - ✓ Identify and anticipate trends of criminal/unethical behavior
    - ✓ Maintain consistent/regular communications with law enforcement
  - Exploring ways to expand OCTC's ability to address UPL by non-attorneys
- Increased detection and prosecution of professional misconduct
  - Increasing outreach/communication efforts with courts to identify reoccurring problems/concerns in court proceedings and to ensure that courts are complying with reporting requirements
  - Designating OCTC representatives to participate in regular/standing meetings with various courts in California and the federal system

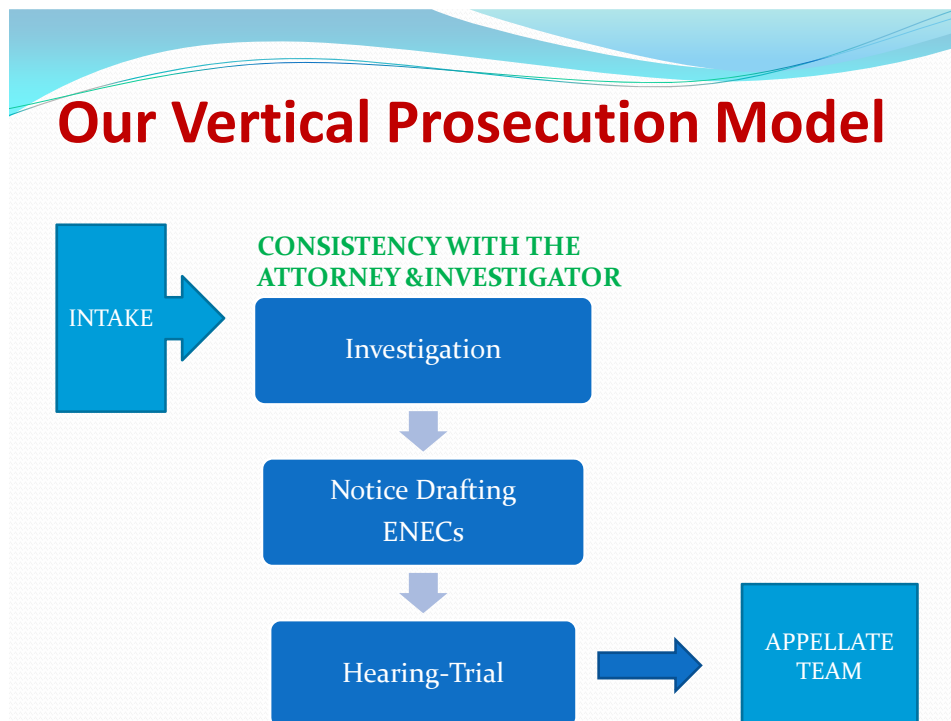
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<sup>3</sup> Note: A single complaint may contain multiple allegations.

## **OCTC's Model of Vertical Prosecution:**

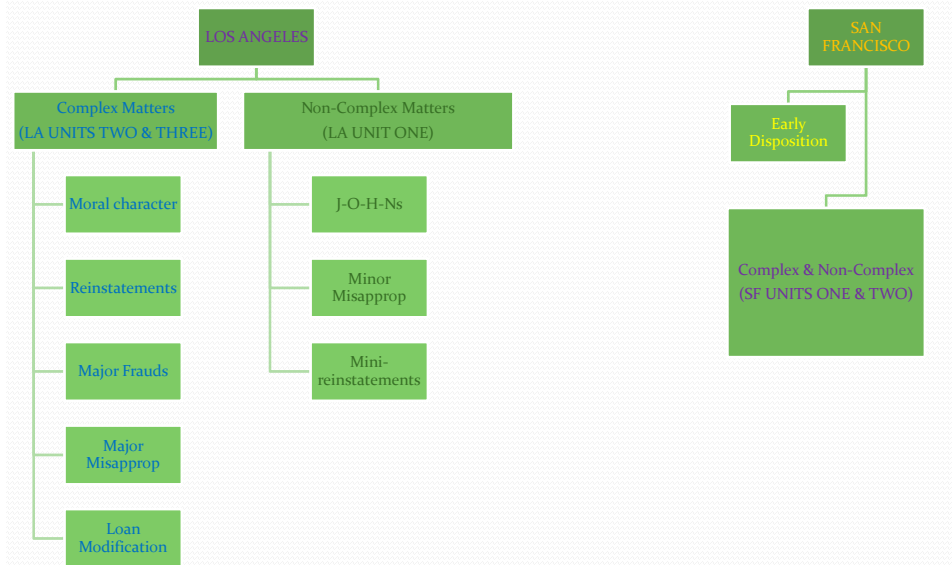
In the past, different OCTC attorneys have handled different phases of the same complaint. For example, an Intake attorney would review the complaint and decide whether to forward the complaint for investigations. Complaints forwarded for investigation were then assigned to a new attorney to act as “legal advisor” during the investigation phase. After the investigation phase, another attorney would handle the matter for filing of disciplinary charges, settlement, or other resolution. Thereafter, if charges were filed with the State Bar Court, another attorney would be assigned to the case for trial purposes. Consequently, it was not uncommon for 4 or more attorneys to handle a complaint before completion of trial.

Under OCTC's new organizational structure, attorneys assigned to investigations will keep the matters through completion of trial. Therefore, the OCTC attorney responsible for investigating and developing the case at the “investigation open” phase will also handle the matter through settlement discussions, filing of charges, and completion of trial. This vertical structure will help increase attorney accountability and investment in our cases. In addition, under this new organizational structure, the assigned investigator will stay responsible for the case through trial and for A&R purposes. The following flow chart reflects OCTC's new model of vertical prosecution:



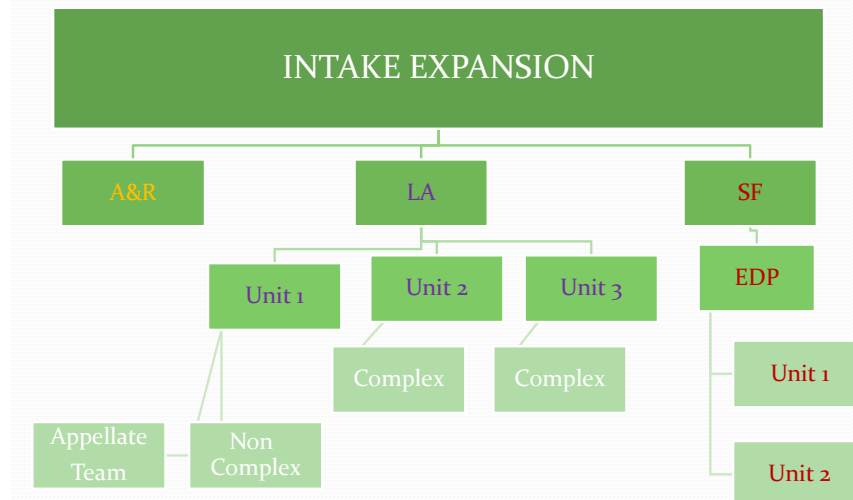
In addition to the vertical model, OCTC is making other organizational adjustments for improved efficiency. For example, OCTC is devoting more resources to its Intake Department in order to invest additional time and attention towards resolving those complaints that could and should be resolved at Intake. Moreover, if a complaint moves forward for investigation, the type of allegations involved may dictate staff assignment, as reflected in the following chart:

## EARLY DISTINCTION of CASE TYPE



Two units in Los Angeles have been designated to receive certain “complex” cases such as moral character matters, reinstatement matters, as well as major frauds, major misappropriation, and loan modification complaints. Less complex matters (eg. mini-reinstatements, violations of probation or reprobation conditions, Rule 9.20 proceedings, etc.) will be assigned to a separate unit in Los Angeles. In San Francisco, due to the smaller size of the office, all new investigations will go through an “early disposition” review to help distinguish and separate complaints involving minor misconduct. All other new investigations will be assigned evenly between two vertical units in the San Francisco office.

## OCTC’s 2012 Re-Org



**Miscellaneous Items:**

- OCTC has re-established an Appeals Team to handle the majority of its Review Department matters;
- OCTC has initiated a 12-month pilot program utilizing “lead” investigators to help monitor backlog numbers and to assist other investigators with case management and case development. OCTC management has identified 7 “lead” investigators (5 in Los Angeles and 2 in San Francisco);
- OCTC has begun developing a monthly training program for its attorneys;
- OCTC has extended contract workers through February 2012 to work through our initial transition towards a vertical system;
- OCTC is exploring an improved case management system;
- OCTC is awaiting results of the independent audit of its closed backlog matters – audit pending with two outside examiners.

**Conclusion:**

This remains a pivotal and challenging time for OCTC. Although we are pleased with our year-end results from 2011, we recognize that we must manage our backlog consistently throughout the year and that success is not driven solely by numbers. This year, we are working with the Metrics Task Force to consider and develop performance measures. We are also working to improve the internal calibration of work product and to develop better internal system checks for both qualitative and quantitative controls, as referenced above. As always, OCTC welcomes the input and direction of RAD as we forge ahead into 2012.