



## THE STATE BAR OF CALIFORNIA

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

FROM: Jayne Kim, Chief Trial Counsel, Office of the Chief Trial Counsel

DATE: April 22, 2013

RE: OCTC Status Report to RAD

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With the end of the first quarter of 2013, OCTC continues to prepare for several key initiatives this year, including information technology (I.T.) initiatives, the Los Angeles building move, and further re-engineering efforts within OCTC. We expect the year to be productive but challenging as several key projects will converge at our most critical time – the latter part of the year.

As detailed below, OCTC is preparing for each project, anticipating the related work challenges, and developing solutions to our productivity concerns.

### **2013 Key Initiatives**

#### Technology Initiatives

OCTC continues to devote significant time to the development and scheduled implementation of our new case management system. The case management system steering committee and project team meet weekly to discuss issues, progress and scheduled events. OCTC also has designated staff working with Sustain Technologies to ensure that all of our necessary work processes are captured and to contribute to the design phase of the project. There are approximately 40 OCTC staff members – representing all aspects of our work flow and working with Sustain Technologies. Implementation of the case management system is scheduled for November.

Prior to the implementation of OCTC's new case management system, the State Bar will complete a "PC Upgrade", including its desktop software. The upgrade project will commence in May with a target completion of July for both LA and SF offices.

Necessary training and support is anticipated and OCTC is working with I.T. and Human Resources to ensure that staff is prepared for the PC upgrade and the case management system implementation.

#### Los Angeles Building Move

The State Bar's Los Angeles offices will move from Hill Street to Figueroa Street. The move is scheduled to begin during the latter part of the year. OCTC represents the largest department of the State Bar and is preparing to move its Los Angeles office, which consists of approximately 190 staff positions.

OCTC management has been working closely with the State Bar's Operations Department and is taking what steps we can to ensure a smooth transition into our new workspace.

### Operations and Re-Engineering

The second half of the year is the most vital for OCTC given that backlog inventories are based upon year-end numbers. As of July 1, 2013, OCTC will know its universe of “potential” backlog (i.e. those cases in the system which could be more than 6 months old as of December 31, 2013). This second half of the year is always critical to OCTC but more so this year given the aforementioned technology and building initiatives.

As a continued result of OCTC’s transition to a vertical model prosecution and OCTC’s response to the remand of cases from the Supreme Court to the State Bar Court, there continues to be a significant volume of trial work this year. In the first quarter of the year, OCTC commenced 78 trials. Last year, OCTC commenced 176 trials, compared to 101 in 2011.

In preparation for the new case management system, OCTC has been trying to identify ways to prepare our staff for the new system, which includes streamlining some of our current internal processes and improving the consistency and ease in which complaints transition from Intake to Investigations to Notice Open. In our San Francisco office, for example, we have begun providing a scanned copy of the complaint and accompanying documents to the assigned OCTC attorney and investigator so that both may begin reviewing the complaint and thinking about an investigation strategy while waiting for the physical file to arrive. We are also examining some of our current templates/macros to streamline documents where we can avoid reproducing or rewriting work. It is important to note that OCTC management considered postponing some of these internal re-engineering efforts to focus our time on the key 2013 initiatives but many of these re-engineering efforts are needed prior to the case management system implementation.

This year, OCTC is also committed to devoting more staff resources to its Audit and Review Unit, which conducts internal audits of our files, provides staff training based upon the audit results, and responds to “second-look” requests by complainants who disagree with OCTC’s decision to close a case. Given OCTC’s many re-engineering efforts over the last 18 months, a closer examination of our work product is needed and the audit and review unit plays a valuable role in that process. Last month, the Supreme Court granted two Walker petitions and directed OCTC to re-open those two matters. OCTC has reviewed the matters, identified issues of concern and taken corrective steps. Devoting additional resources to the Audit & Review Unit should help further address any related concerns.

### Meeting Challenges

OCTC is working very closely with other key departments to avoid any unnecessary disruption to our work flow. Given the number of significant initiatives and the timing of those initiatives, however, OCTC intends to utilize temporary assistance (contract attorneys, investigators and support staff) to help us transition through each of the aforementioned initiatives.

In addition, OCTC has been identifying key staff to work with and to take leading roles in the initiatives. These team leaders will be assisting their colleagues in our move to a new case management system and into a new building in Los Angeles.

## **Backlog Inventories**

OCTC ended March 2013 with 39 backlog complaints in its “investigation open” inventory and 319 backlog complaints in its “notice open” inventory.

As of April 22, 2013, the backlog inventories stood at 36 complaints in investigations and 338 complaints in notice open.

## **Walker Petitions**

There were six Walker petitions filed in March 2013, bring the first quarter total to 27 Walker petitions filed with the Supreme Court this year. As a reminder, in 2012, there were 103 petitions filed, compared to 193 petitions filed in 2011 and 435 petitions filed in 2010. As referenced above, last month, the Supreme Court granted two Walker petitions and directed OCTC to re-open those matters. OCTC has reopened and reviewed the matters and identified issues of concern.

## **Current Agenda Items**

In consultation with RAD Chair Karen Goodman and Vice Chair Dennis Mangers, OCTC continues to work on ways to improve transparency within and public accessibility to State Bar disciplinary proceedings. As one example, OCTC seeks to amend the State Bar’s policy regarding the posting of consumer alerts to authorize the posting of a consumer alert whenever the State Bar initiates public proceedings involving allegations of professional misconduct against an attorney.

OCTC also seeks to reduce unnecessary backlog delays by moving to a “notice pleading” practice as detailed in proposed amendment to rule 5.41, Rules of Procedure of the State Bar of California, which is currently out for public comment. To date, the only public comment received has been from former Board President John K. Van de Kamp, who supports the proposed amendment and urges approval. The text of his public comment is as follows:

“I write to support approval of the proposed changes to the State Bar Rule of Procedure, Rule 5.41 to allow for pleadings more akin to notice pleadings.

I was Chair of the Board of Governor's RAD Committee in 2003-04, and was surprised by the extraordinary detail that went into disciplinary pleadings. In my view substantial attorney time was wasted to draft lengthy and cumbersome and what I viewed as overly detailed pleadings. The explanation given was that that was needed in the event of default situations where the Bar needed to file a detailed factual statement to prove up the charge. At the time I suggested to the then Chief Trial Council Mike Nisperos (and later Scott Drexel) that shortened pleadings much along the lines used in criminal proceedings in State and Federal Courts should be sufficient and free up a significant amount of attorney time for more important work, provided adequate discovery was available to defense counsel.

I recommended this as a result of my own background.

As an Assistant U.S. Attorney in Los Angeles I ran the complaint unit handling the criminal filings, which basically provided what is sought here. There were very few complaints regarding our charging documents.

Later I served as the Federal Public Defender in Los Angeles and worked to defend based on the notice pleadings. As long as discovery was provided that system worked well.

I can understand why some defense counsel in State Bar proceedings would object. As a defense counsel you want as much information as you can get, and to use the present format of "exaggerated" pleadings to challenge and urge exclusion of irrelevant evidence not mentioned in the NDC.

Looked at as a whole, the proposed State Bar Rule change appears to provide adequate due process.

Before formal charges are filed (NDC), the member is to be notified in writing of the allegation forming the basis for complaint, and the member is given two weeks to respond, (if he or she wishes). Rule of Procedure 2409.

The member is notified of the right to request an Early Evaluation Conference before a judge, and if such is requested the Chief Trial Counsel must provide documentation including the rules and statutes alleged to be violated, together with a summary of the facts supporting the violation(s) (Rule 5.30).

It is only after the ENC (if requested) that the formal charges are filed.

The proposed changes are modest, but should provide adequate notice at the same time providing an adequate opportunity for discovery before filing.

I urge approval.

Sincerely,  
John K. Van de Kamp"

At the conclusion of the public comment period, I will submit a report to this Committee detailing and responding to all public comments.

It should be noted that prior to commencement of the public comment period, on or about March 1, 2013, one disciplinary defense attorney sent a letter to select RAD members critical of OCTC's plan to move to notice pleading. Because that attorney did not send the letter to the full Committee, I distributed that same letter to all Committee members on March 5, 2013. To date, the sentiment of that letter has not been re-submitted for the public comment period, although I anticipate such comment may be forthcoming.