



THE STATE BAR OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL

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DATE: October 25, 2013

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

FROM: Jayne Kim, Chief Trial Counsel

SUBJECT: Status Report

With approximately two months left in the year, the Office of Chief Trial Counsel (OCTC) remains committed to managing its backlog while continuing to focus on key technology efforts and the Los Angeles building move. Throughout the year, OCTC has wrestled with time management and resource allocation issues due to significant I.T. initiatives, the relocation of LA operations, and internal change management efforts. As expected, OCTC's backlog inventories rose during the second half of this year and OCTC will continue to grapple with time and staff limitations through December.

That said, OCTC has been working diligently to control its backlog inventories, ending last month with 71 complaints in investigations backlog and 337 complaints in notice open backlog. By comparison, during the same time period last year, OCTC's backlog inventories stood at 53 in investigations and 327 in notice open. Despite the unique time/resource challenges this year, OCTC's goal remains constant – to close out the year with no more than 250 complaints in backlog.

General Overview of Complaint Process:

Generally, a complaint that results in discipline will move through the following workflow:

- Intake
- Investigations
- Notice Open (post investigation / pre-filing)
- Hearing (formal disciplinary proceeding initiated before the State Bar Court)
- Review (if either party appeals a Hearing Department decision)
- Supreme Court (transmitted to the Supreme Court for order approving recommended level of discipline by the State Bar Court)

Intake

Most disciplinary investigations stem from a public complaint received by OCTC's Intake Unit. The Intake Unit conducts the initial review of the complaint and determines whether the complaint should be forwarded for formal investigation. Generally, Intake is able to make an early determination whether a complaint should be forwarded for investigations, closed or "worked" (i.e. Intake works the case to obtain additional information from the complainant and/or respondent before proceeding).

Investigations

If Intake forwards a complaint for investigations, an OCTC investigator and trial counsel are assigned to investigate the matter. During the investigation period, working at the direction of trial counsel, the OCTC investigator obtains evidence through various investigative means, such as utilizing subpoena power and conducting witness interviews, investigative depositions and field work. The OCTC investigator also notifies the respondent attorney of the allegations in writing. The respondent attorney is required, by statute, to cooperate with disciplinary investigations and to provide a response to the allegations.

Notice Open

Once the investigation is complete, the assigned trial counsel is responsible for determining how to proceed – whether by filing formal charges, entering into a stipulated settlement or through other resolution (closure or non-disciplinary resolution). If charges are to be filed, trial counsel must notify the respondent attorney, in writing, of the intent to file formal charges and of the respondent's right to request an early neutral evaluation conference (ENEC). ENECs are confidential settlement conferences conducted before the State Bar Court and prior to OCTC's filing of formal disciplinary charges.

Understanding Backlog:

OCTC considers a complaint in "backlog" if the complaint is more than six months old from the date Intake received the complaint. This six-month period includes any time a complaint remains in Intake and during both the investigation and notice open phases.

To understand OCTC's productivity and efforts in managing backlog, it is helpful to keep in mind the volume of complaints OCTC receives each year. In 2011, OCTC received 16,116 new complaints, opened 4,967 new investigations and pursued disciplinary proceedings in 1,522 complaints, resulting in the disbarment or suspension of 394 lawyers. In 2012, OCTC received 15,158 new complaints, opened 4,397 new investigations and pursued disciplinary proceedings in 959 complaints. Formal discipline was imposed in 1,246 complaints, resulting in the disbarment or suspension of 259 lawyers.

Each day brings new backlog numbers for OCTC and, consequently, the backlog inventories may fluctuate significantly within each month. Because daily numbers may change dramatically, OCTC provides RAD an average of its daily backlog inventory for each month. In addition, every year beginning on July 1st, OCTC is able to calculate its potential backlog because all active complaints received before July 1st - which are not resolved by December 31st - could be backlog (i.e. more than six months old) by the end of the year.

This year, as of July 1st, OCTC faced a potential year-end backlog inventory of 2,537 complaints which could be in either investigations or notice open backlog by December 31, 2013. By August 1st, OCTC had reduced the potential backlog inventory to 1,285. By October 1st, OCTC had reduced the potential backlog inventory to 954.

Our year-end goal is the same as before – to reduce our investigations backlog to as close to zero as possible and to reduce our total backlog inventory (investigations and notice open) to less than 250 complaints. This will be particularly challenging in 2013, however, given competing focus on other key initiatives.

The 2013 Challenge / Other Key Initiatives:

To recap some of the most notable initiatives that have impact on OCTC's productivity:

1. **Case Management System (CMS):** OCTC, I.T. and Sustain continue working on the development and implementation of a new case management system. We are replacing a 20+ year-old legacy business application (AS400). Our work towards a new CMS is significant and includes:
 - Configuration (developing the user interface)
 - Data conversion (mapping and converting existing data into the new system)
 - Interface/Integration with State Bar Court and Member Records data
 - Interface/Integration with the new document management system (discussed below)
 - User Acceptance Testing
 - End-User Training
2. **Document Management System (DMS):** The State Bar is moving to a new document management system and OCTC will be the first department directly impacted by the DMS change.
 - As part of the CMS implementation, OCTC must migrate all existing case-related documents into the new DMS. OCTC has been working with I.T. to develop a migration plan and has begun testing the migration plan with a small test group.
 - As part of the CMS and DMS implementation, the State Bar must develop new naming conventions and document definitions. OCTC, I.T., and our vendor are currently working towards this end.
 - All State Bar staff will participate in DMS training but OCTC will likely be the first to go through the training due to CMS implementation.
3. **PC - Software Upgrade / New Software Training:** The State Bar conducted and completed PC and software upgrades in July. In relation to the software upgrade, OCTC staff received training in July.
4. **PC Proficiency Assessments / Proficiency Training:** The State Bar began PC proficiency assessments, starting with OCTC in August. OCTC staff completed the assessment tests in late August. As previously reported, I.T. will be working to identify proficiency gaps and develop necessary training to close those gaps. This training is yet to come.
5. **LA Operations Move:** The State Bar will be moving its entire Los Angeles operation to 845 Figueroa Street in December. For OCTC, that relates to approximately 190 staff positions in LA. OCTC has been working with the State Bar's Office of General Services re: space planning, furniture/equipment needs, and other move considerations. Last month, OCTC began informal packing preparation – such as moving closed cases to off-site storage, eliminating/purging unnecessary papers, consolidating/emptying file cabinets, etc. We are awaiting the official move schedule to finalize our move plans.
6. **Shortened SBC Calendar:** As reported by the Executive Director, in preparation of the LA move, Colin Wong and I have been in discussion about how to best manage OCTC and SBC operations during the relocation. As the majority of discipline matters proceed in LA, this building move will impact OCTC's year-end productivity and backlog management. In order to make this transition as smooth as possible, OCTC plans to stop filing new LA cases (NDCs)

after December 13th and until the SBC is operational in the Fig building (January 6). This shortens OCTC's year-end date by two weeks.

7. **Increased Litigation:** You may recall that, last year, OCTC began systematic re-engineering efforts, including the transition to a vertical model of prosecution, improved training and development and other quality control measures. We began re-examining our internal processes (from the bottom up and top down) to identify areas for performance improvement. OCTC was the first department in the State Bar to commence such change management endeavors and we remain committed to the re-engineering process. That said, our work towards performance improvement is never ending. In 2012, we experienced a significant increase in litigation work, commencing 176 trials (a dramatic increase from 101 trials in 2011). This year, we continue to see an increase in litigation, commencing 199 trials during the period of January – September. Increased trial activity naturally requires more time devoted to trial preparation/work, which has been a competing interest with the notice open inventory.

OCTC's Year-End Plan:

Where appropriate, OCTC continues to utilize additional resources (contract employees and overtime). Use of contract employees and overtime, however, presents certain challenges as productivity assistance must come without sacrificing quality control. Because contract employees require training/development and greater oversight/supervision, OCTC is mindful of the tipping point where the benefits of contract employees may be outweighed by time/resource demands. In addition, overtime is limited to non-exempt employees, such as investigators. Given the converging key initiatives described above, OCTC must ensure that our investigative staff can be productive during overtime hours without being unduly burdened.

1. **OCTC's current use of contract/temp assistance:**
 - Five (5) contract attorneys are assisting with trial work
 - Two (2) paralegals are assisting with trial preparation work
 - Five (5) contract investigators are assisting with backlog investigative work
2. **Use of Overtime:** Like last year, OCTC is utilizing a controlled group of investigators for authorized overtime through the end of the year. Overtime will be conducted on Saturdays under supervision.
3. **Reallocation of Audit & Review attorneys:**
 - Due to the shortened SB Court calendar described above, in November, OCTC is reallocating two of Audit & Review attorneys to assist with the Los Angeles notice open inventory through December.
 - OCTC is looking to contract additional attorneys to assist with our bi-annual random audit to fill in the gap from reallocating two Audit & Review attorneys to notice open work.

Month-End Inventories:

Current Backlog Inventories as of September 30:

- **Investigations Backlog of Complaints = 71** (up from 61 last month).
- **Notice Open Backlog of Complaints = 337** (down from 383 last month)
- **Inquiry Inventory = 1,083** inquiries involving 1,161 respondents (down from 1,263 inquiries involving 1,385 respondents last month)

Potential Backlog Inventories: As referenced above, in September, OCTC reduced its potential backlog to 954 (down from 1,285 in August).

OCTC's Court Activity in September (according to OCTC's data):

- OCTC filed formal charges in 89 complaints (involving 33 respondents).
- OCTC commenced trial in 8 matters.
- The State Bar Court issued 15 decisions/orders in September, 14 of which resulted in a discipline recommendation.

Walker Petitions Filed in March 2013: There were 3 Walker petitions filed in September, bringing the year-to-date total to 71. This same time last year, there had been 76 Walker petitions filed (Jan-September 2012).

Audit & Review:

OCTC received 58 new matters into the A&R inventory and completed 93 matters.

Conclusion:

Given that OCTC's CMS implementation has been moved to 2014 – after the LA building move and time for staff to settle into the new environment -- OCTC maintains the same backlog objective we had last year, which is to end the year with a total of 250 or less complaints in backlog. Given the shortened SBC calendar and key initiative work described above, 250 is an ambitious goal and OCTC staff will be challenged in achieving that goal. In comparison, without the building move and technology initiatives described above, last year OCTC ended the year with a total of 237 complaints in backlog (5 complaints in investigation and 232 in notice open).

Despite the unique challenges of this year, however, OCTC staff intends to work diligently towards the same backlog objective with the hopes of coming as close to our goal as possible.