



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, Chief Trial Counsel, Office of the Chief Trial Counsel

DATE: February 20, 2014

RE: Status Report to RAD

I. Introduction

After successfully relocating our Los Angeles operations to a new building earlier this year, the Office of Chief Trial Counsel (OCTC) continues to prepare for the implementation of a new case management system and a new document management system, as outlined in the State Bar's Five Year Strategic Plan and as discussed in further detail below.

In addition, at the suggestion of RAD Chair Heather Rosing and Vice-Chair Dennis Mangers, RAD will contemplate proposed refinements to the State Bar's Annual Discipline Report and discuss monthly disciplinary metrics at the March meeting.

II. Technology Initiatives

Since August of last year, Director of Budget and Performance Analysis John Chiappetta and I have taken a larger role in the project management of OCTC's new case management system, working with Sustain Technologies, Inc. and our IT department. We continue to work on configuration, data conversion, interfaces and document management and anticipate implementation of the new case management system this year.

III. Month-End Reports to RAD

Since late 2011, OCTC has provided "backlog" information to RAD on a monthly basis. Pursuant to the counting methodology of the State Bar's Annual Discipline Report, backlog figures have been based upon OCTC's inventory of "complaint" cases, which are initiated when Intake receives a written complaint form. In addition to complaints, however, OCTC handles other types of cases that may result in disciplinary proceedings. For example, entities are required to report certain activities to the State Bar – such as financial institutions reporting insufficient funds in a client trust account –which OCTC refers to as "reportable action" cases. In addition, OCTC may initiate its own investigation, which we refer to as "state bar investigations" or "SBIs."

Related to OCTC's month-end reports, recent events have revealed internal inconsistency in the State Bar's use of the term "complaints" and the need to refine definitions and the scope of reporting in the Annual Discipline Report. A corresponding agenda item has been placed on the March agenda.

The Annual Discipline Report uses the statutory definition of backlog, pursuant to Business and Professions Code section 6086.15, to mean "the number of complaints as of December 31 of the preceding year that were pending beyond six months after receipt without dismissal, admonition, or the filing of a

notice [of disciplinary charges].” A recent re-examination of the Annual Discipline Report revealed, however, that its “complaint” count included a subset of SBIs. During the last quarter of 2013, as OCTC prepared for year-end backlog numbers, OCTC calculated and predicted its year-end backlog numbers based solely upon its complaint inventory, with the exclusion of non-complaint cases (such as SBIs, reportable actions, etc.). This has resulted in discrepancies regarding OCTC’s month-end reports starting with the report distributed in September 2013. For example, in September, OCTC reported ending the previous month with 71 complaints in investigations backlog. Using the Annual Discipline Report’s backlog formula (of complaints plus a subset of SBIs), the number would have been 75. Likewise, in October, OCTC reported ending the previous month with 50 complaints in investigations backlog when the number would have been 61 using the Annual Discipline Report’s counting formula.¹

After re-examining the annual discipline report’s complaint inventory, the State Bar also discovered that certain non-complaint inventories had not been included in the last two annual discipline reports. Working closely with RAD Chair Heather Rosing and Vice-Chair Dennis Mangers, as well as the CEO and Office of General Counsel, we developed the aforementioned March agenda item to address these concerns. In addition, OCTC has provided a more detailed December 2013 month-report report which reported all monthly complaint counts during 2013 using both complaint formulas: (1) counting complaints only and (2) counting complaints using the annual discipline report formula of complaints and a subset of SBIs.

Moreover, in preparation for the March agenda item regarding the Annual Discipline Report, the State Bar will provide a year-end aging report of all complaints, reportable actions and state bar investigations that were older than six months.

A. OCTC December 2013 Month-End Numbers:

As of December 30, 2013:

- OCTC received 633 new complaints, involving 718 attorneys, during the month of December;
- OCTC had 809 active complaints, involving 929 attorneys, pending in Intake;
- Intake took an average of 38 days in December to process a complaint through closure or to forward for investigations;²
- Intake’s call center handled 2,586 calls from the Complaint Hotline;
- OCTC had 20 complaints in investigations backlog (counting by complaint only) and 30 cases if using the annual discipline report formula of complaints plus a subset of SBIs;
- OCTC had 60 complaints in notice open backlog (counting by complaint only) and 91 cases if using the annual discipline report formula of complaints plus a subset of SBIs;
- OCTC had 759 pending “second look” requests in Audit & Review;

¹ Having re-calculated all months in 2013, the two different “complaint” calculations resulted in a variance of 2 to 12 investigations backlog cases depending on the month. Notably, the Office of General Counsel prepares the annual discipline report each year so OCTC’s internal count would not have affected the official State Bar of California Attorney Discipline Report For The Year Ending December 31, 2013.

² Previous month-end reports reflected an average number of days at approximately 50 days. During configuration work for the new case management system, however, we discovered that the previous average calculations were inaccurately higher than actual average numbers. Intake’s monthly average throughout 2013 was closer to 31 days, not 50 days.

- OCTC received 18 discipline decisions from the Hearing Department, 16 of which resulted in discipline recommendations and two of which resulted in dismissal;
- According to State Bar Court, 12 trials were commenced during the month of December, bringing the annual count of trials commenced to 245.

B. January 2014 Month-End Numbers:

As of January 31, 2014:

- OCTC received 1,137 new complaints, involving 1,289 attorneys, during the month of January;
- OCTC had 1,103 active complaints, involving 1,262 attorneys, pending in Intake;
- Intake took an average of 46 days in January to process a complaint through closure or to forward for investigations;
- Intake's call center handled 3,947 calls from the Complaint Hotline;
- OCTC had 93 complaints in investigations backlog (counting by complaint only) and 109 cases if using the annual discipline report formula of complaints plus a subset of SBIs;
- OCTC had 100 complaints in notice open backlog (counting by complaint only) and 126 if using the annual discipline report formula of complaints plus a subset of SBIs;
- OCTC had 804 pending "second look" requests in Audit & Review;
- OCTC received 16 discipline decisions from the Hearing Department, all of which resulted in a discipline recommendation;
- According to the State Bar Court, 15 trials commenced during the month of January.

OCTC's January inventory numbers are notably higher than from December due, in part, to the relocation of our Los Angeles operations during December and January. The physical move significantly impacted our productivity and OCTC was not fully operational during key move periods. We anticipate notable reduction in numbers over the next two months.

IV. 2014 Strategic Planning

OCTC remains committed to managing its workload throughout the year and improving the overall quality of its work. In this new year, we continue to focus on implementing a new case management system to more effectively and efficient managing our workflow and on improving staff training and development.