



# THE STATE BAR OF CALIFORNIA

845 S. FIGUEROA STREET, LOS ANGELES, CALIFORNIA 90017  
180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105

## OFFICE OF THE CHIEF TRIAL COUNSEL

Jayne Kim, *Chief Trial Counsel*

TELEPHONE: (213) 765-1468  
(415) 538-2063

DATE: April 30, 2015

TO: Members, Committee on Regulation and Discipline Oversight

FROM: Jayne Kim, Chief Trial Counsel

SUBJECT: Status Report From the Office of Chief Trial Counsel

---

### I.

#### 2014 Annual Discipline Data

##### Intake Inventory:

According to the Office of General Counsel and Office of Budget and Performance Analysis, the Intake Department of the Office of Chief Trial Counsel (OCTC) processed 15,497 matters in 2014. More specifically, the Intake Department began the year with 1,269 matters carried over from 2013 and opened 16,024 new matters in 2014. In 2014, the Intake Department processed 15,497 matters out of the inquiry stage, as follows:

- Forwarded 3,791 matters to the investigation stage,
- Closed 11,706 matters,
- Continued working on 1,796 active inquiry matters.<sup>1</sup>

##### Investigations Inventory:

OCTC processed 4,404 investigations in 2014 – beginning the year with 1,505 investigation matters carried over from 2013 and receiving 4,124 additional investigation matters in 2014.<sup>2</sup> In 2014, OCTC processed the 4,404 investigation matters as follows:

- Forwarded 1,084 matters to the pre-filing stage and 19 matters to another stage,
- Suspended 737 matters,
- Closed 2,564 matters,

---

<sup>1</sup> Compared to the previous year, the Intake Department began 2013 with 1,975 matters carried over from 2012 and opened 16,387 new matters. That same year, the Intake Department forwarded 4,668 matters for investigation and closed 12,424 matters. See Annual Discipline Report, Table 2: Inquiry Stage - Case Flow of Matters January 1 - December 31.

<sup>2</sup> Additional investigation matters include those forwarded from Intake as well as other cases that entered directly at the investigation stage.

- Continued working on 1,225 active investigation matters.<sup>3</sup>

#### Pre-Filing Inventory:

OCTC processed 1,549 pre-filing matters in 2014 – being the year with 244 pre-filing matters carried over from 2013 and receiving 1,479 additional pre-filing matters in 2014.<sup>4</sup> In 2014, OCTC processed the 1,549 pre-filing matters as follows:

- Forwarded 1,008 to State Bar Court and 178 matters to another stage,
- Suspended 111 matters,
- Closed 252 matters, and
- Continued working on 174 active pre-filing matters.<sup>5</sup>

#### Backlog Inventory:

OCTC concluded the year with 261 active matters and 1,712 suspended matters in backlog status. More specifically, OCTC's year-end backlog inventory was as follows:

- 39 active matters in the Inquiry stage,
- 116 active matters in the Investigation stage,
- 106 active matters in the Pre-Filing stage,
- 1,548 suspended matters in the Investigation stage,
- 164 suspended matters in the Pre-Filing stage.<sup>6</sup>

As a reminder, the inventory, flow, disposition and age tables in the ADR are presented as either *active* or *suspended*. OCTC suspends matters involving respondents who are likely to be disbarred in separate pending proceedings before State Bar Court or where circumstances exist warranting suspension, pursuant to Rules of the State Bar, rules 5.50-5.52. The State Bar Court also suspends formal disciplinary proceedings where circumstances exist warranting suspension, pursuant to rules 5.50-5.52. Regardless of active or suspended status, cases older than 6 months in the inquiry, investigation and pre-filing stages are reported as backlog in the ADR and in OCTC's monthly reports to the Board of Trustees.

---

<sup>3</sup> Compared to the previous year, OCTC began 2013 with 1,066 matters carried over from 2012 with 4,817 additional matter entering into the investigation inventory. In 2013, OCTC processed 4,378 matters out of the investigation stage (1,229 matters to the pre-filing stage, 46 matters to other stages, and 1,980 matters closed). See Annual Discipline Report, Table 7: Investigation Stage – Case Flow of Active Matters January 1 - December 31.

<sup>4</sup> Additional matters include those forwarded from the investigation stage as well as other cases that entered directly into the pre-filing stage.

<sup>5</sup> Compared to the previous year, OCTC began 2013 with 398 matters carried over from 2012 and 1,428 additional matters entering the pre-filing inventory. In 2013, OCTC processed 1,582 matters out of the pre-filing stage (1,170 matters to post-filing stage, 4 matters to other stages, and 307 matters closed.). See Annual Discipline Report, Table 17: Pre-Filing Stage –Case Flow of Active Matters January 1 - December 31.

<sup>6</sup> See Annual Discipline Report, Table 42: Backlog By Stage and Source.

### Disciplinary Proceedings:

In 2014, OCTC filed 1,008 disciplinary cases in State Bar Court and obtained disciplinary outcomes in 2014, as follows:<sup>7</sup>

- 276 matters resulted in disbarment,
- 151 matters resulted in disbarment due to default,
- 585 matters resulted in suspension (actual suspension or stayed suspension),
- 36 matters resulted in a public reproof,
- 6 matters resulted in a private reproof with public disclosure, and
- 19 matters resulted in a private reproof without public disclosure.

## **II.**

### **Annual Comparison of OCTC's Backlog Inventory**

The table below reflects annual backlog inventories as reported in the State Bar's Annual Discipline Report.

<b>Stage &amp; Status</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>
Inquiry	111	75	116	78	39
Investigation Active	1,473	31	37	105	116
Investigation Suspended	2,293	1,038	1,104	1,219	1,548
Pre-Filing Active	1,028	234	272	178	106
Pre-Filing Suspended	242	182	167	167	164
<b>Total</b>	<b>5,147</b>	<b>1,560</b>	<b>1,696</b>	<b>1,747</b>	<b>1,973</b>

As reflected above, the total active inventory (inquiry, investigation and pre-filing) has decreased since 2011, while the total suspended inventory has increased. The majority of suspended matters involved respondents who were facing disbarment in separate pending proceedings before State Bar Court. Moreover, the majority of the respondents in the suspended inventory were on inactive status and, therefore, unable to practice law. Consequently, increases in the suspended inventory were often the direct result of "repeater respondents" who had more than one disciplinary complaint pending against them and facing disbarment. Notably, OCTC has seen in recent years, single repeater respondents who, individually, have had hundreds of complaints pending against them at one time.

Given the nature of the suspended inventory and the fact that most of the respondents are not entitled to practice law, from a public protection and efficiency point of view, this committee has focused greater attention on OCTC's management of its active backlog inventory. Relying upon the same numbers from the table above, but re-sorted to better reflect OCTC's management of active cases, the annual comparison of OCTC's backlog inventory is as follows:

---

<sup>7</sup> See Annual Discipline Report, Table 27: Hearing & Review Stage - Case Flow of Active Matters January 1 - December 31 and Table 43: Disciplinary Outcomes, respectively.

### ANNUAL BACKLOG INVENTORY

	2010	2011	2012	2013	2014
<b>Total Backlog</b>	<u>5,147</u>	<u>1,560</u>	<u>1,696</u>	<u>1,747</u>	<u>1,973</u>
<b>Suspended Matters</b>	<b>2,535</b>	<b>1,220</b>	<b>1,271</b>	<b>1,386</b>	<b>1,712</b>
Inquiry Suspended <sup>8</sup>	0	0	0	0	0
Investigation Suspended	2,293	1,038	1,104	1,219	1,548
Pre-Filing Suspended	242	182	167	167	164
<b>Active Matters</b>	<b>2,612</b>	<b>340</b>	<b>425</b>	<b>361</b>	<b>261</b>
Inquiry Active	111	75	116	78	39
Investigation Active	1,473	31	37	105	116
Pre-Filing Active	1,028	234	272	178	106

Notably, while cases age in the suspended inventory for reasons explained above, OCTC has shown steady improvement in managing the inflow of cases to suspended status. As reflected in the chart below, OCTC has suspended fewer investigation and pre-filing cases each year.

### ANNUAL FLOW OF ACTIVE TO SUSPENDED STATUS<sup>9</sup>

	2010	2011	2012	2013	2014
Investigation Suspended	1,614	1,595	1,192	1,123	737
Pre-Filing Suspended	187	244	110	101	111
<b>Total</b>	<u>1,801</u>	<u>1,839</u>	<u>1,302</u>	<u>1,224</u>	<u>848</u>

## III.

### The 2011 “Zero Backlog” and Subsequent Quality Control Measures

In July 2011, my predecessor and the majority of OCTC’s management team separated from the office. In August 2011, then State Bar leadership imposed a “zero backlog” goal and directed OCTC to focus its efforts on reducing its active backlog inventory. As of July 2011, OCTC had

<sup>8</sup> Historically, OCTC has not used the suspended status for matters in the Inquiry stage. The Intake Department, however, does defer decisions on whether to close or forward certain reportable action matters where the activity reported does not yet constitute a rule or statute violation but supports further monitoring of the situation. For example, if an attorney reports an entry of judgment or imposition of sanctions, pursuant to the attorney’s self-reporting duties, but has appealed the underlying court order, Intake may hold off on making a decision to forward the matter until there is a final order. Similarly, if an attorney reports the filing of criminal charges, pursuant to the attorney’s self-reporting duties, the Intake Department will monitor the underlying criminal proceedings until ripe for forwarding the matter for discipline consideration. OCTC is considering developing a suspension procedure at the Inquiry stage when it implements a new case management system.

<sup>9</sup> See Annual Discipline Report, Table 7: Investigation Stage – Case Flow of Active Matters January 1 – December 31 and Table 17: Pre-Filing Stage – Case Flow of Active Matters January 1 – December 31.

approximately 1,500 active investigation matters in backlog status and more than 500 active pre-filing matters in backlog status. At that time, there were also approximately 1,500 other active matters with the potential of rolling into backlog status before the end of the year.

Prior to accepting the interim chief trial counsel position in mid-September 2011, OCTC had removed the requirement of supervisor or management review of charging and settlement decisions,<sup>10</sup> realigned staff to focus every available resource towards working the backlog inventory, and begun utilizing overtime, temporary employees and other additional resources to meet its backlog goal. By employing these efforts, OCTC reduced its 2011 backlog inventory to 340 active matters and 1,220 suspended matters. However, while staff should be commended for their hard work in 2011, there were unintended consequences of the aforementioned expedited process of charging/filing cases and increased staffing and overtime, particularly given the significantly reduced OCTC management team.

In 2012, the California Supreme Court remanded or returned approximately 42 disciplinary settlements (stipulated by the parties and approved by the State Bar Court) and directed the State Bar to reconsider the recommended levels of discipline. While interested parties may have interpreted the Court's action differently, OCTC management determined that the lack of management/supervisor review of charging and settlement discussions had adversely impacted the quality of our work and contributed to the aforementioned remand/return of settled cases. These cases significantly impacted existing attorney workloads and resulted in a impermanent but considerable increase in trial activity during 2012 and 2013. The vast majority of the remanded/returned cases went forward to trial and resulted in increased level of discipline recommendations to Court.<sup>11</sup> The Court subsequently approved all of the re-submitted discipline recommendations. The last trial of the remanded/returned cases occurred in July 2013 and resulted in a discipline order from the Court in February 2014.<sup>12</sup>

In addition to the increased workload resulting from the remand/return of cases, OCTC began top-to-bottom re-engineering efforts in 2012 designed to improve overall performance. As just one example of our re-engineering efforts, after analyzing backlog cases and finding inefficiencies due to OCTC's former "horizontal" organizational structure, we embarked on transitioning to a vertical model of prosecution, while simultaneously improving our training and development of staff. OCTC also reinstituted an appellate unit, formal review of stipulated

---

<sup>10</sup> Former Executive Director Joseph L. Dunn and I reported this to RAD upon discovery in 2011. Due to the lack of this quality assurance measure, in early 2012, I requested an independent audit of OCTC's 2011 closed cases and an independent audit ensued coordinated through the executive director's office (by then Deputy Executive Director Robert A. Hawley).

<sup>11</sup> OCTC commenced 242 trials in 2013, up from 176 trials in 2012 and 101 trials in 2011. Trial activity has since been leveling down. According to State Bar Court data, the number of trials commenced in 2014 went down significantly from 242 to 146. Moreover, in the first quarter of 2015, according to the State Bar Court's data, 33 trials had commenced.

<sup>12</sup> Two of the remanded/returned cases were and remain abated in State Bar Court with the respondents on involuntary inactive status.

settlements, monthly attorney training sessions and implemented other quality assurance measures including management approval of all charging decisions and level of discipline ranges. While these changes necessarily slowed down processing times, they were essential to improving the quality of OCTC's prosecutions. Moreover, OCTC maintained consistent management of its backlog throughout these re-engineering efforts.

#### **IV.**

##### **The State Bar's Five Year Strategic Plan (2012)**

OCTC's re-engineering efforts were in sync with the State Bar's Five Year Strategic Plan, published in February 2012. The strategic plan also included other initiatives designed to improve the performance and culture of the State Bar. For example, the State Bar embarked upon several technology initiatives including moving OCTC to a new case management system and document management system. Significant staff time was and continues to be devoted to these technology initiatives. The State Bar also embarked upon a physical facilities initiative and, in 2013, relocated its entire Los Angeles operation into a new building. While these initiatives necessarily impacted staff and productivity, they were essential to the organization's five-year strategic plan. Moreover, OCTC continued management of its active backlog inventory while working on the technology initiatives and during the 2013 relocation.

#### **V.**

##### **March 2015 Month-End Metrics**

###### Backlog Inventory:

OCTC concluded last month with 301 active matters and 892 suspended matters in backlog status. More specifically, OCTC's month-end backlog inventory was as follows:

- 34 active matters in the Inquiry stage,
- 174 active matters in the Investigation stage,
- 93 active matters in the Pre-Filing stage,
- 892 suspended matters (Investigation and Pre-Filing stages combined).

Also in March 2015, OCTC's suspended backlog inventory dropped significantly due to the disbarment of one respondent who had approximately 700 matters in suspended status. Upon receipt of the California Supreme Court's disbarment order, OCTC closed these suspended cases. As a result, the suspended month-end inventory dropped from 1,670 to 892.

###### Second-Look Inventory:

OCTC concluded March with 210 second-look requests pending in the Audit & Review Unit. This is a further reduction in the inventory that began in early 2014 and has continued in 2015.

###### Walker Inventory:

In March, there were 10 Walker petitions filed bring the year-to-date total to 25. During this same time period (January – March), no Walker petitions were granted.

Processing Times (Speed of Forwarding Complaints):

- The median time to process a matter out of Intake to Investigations was 21 days,
- The median time to process a matter out of Investigation was 147 days,
- The median time to process a matter out of Pre-Filing to State Bar Court was 63 days,
- The median time to process a second-look request was 81 days.

Hearing Department Decisions:

- There were nine trial decisions recommending discipline,
- There were no trial decisions dismissals the underlying court proceedings,
- There were 51 stipulated matters recommending discipline,
- There were 18 default decisions recommending discipline.

As a reminder, due to the data limitations of State Bar Court, OCTC reports these numbers based upon a physical hand-count of received disciplinary decisions.