



## THE STATE BAR OF CALIFORNIA

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TO: Members, Committee on Regulation and Discipline Oversight (RAD)

FROM: Jayne Kim, Chief Trial Counsel

SUBJECT: Status Report From the Office of Chief Trial Counsel (OCTC)

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In addition to the standard reporting of OCTC's key monthly metrics, this status report will include a summary of the California State Auditor's recommendations related to the State Bar's annual discipline reporting.

Each year the State Bar publishes an Annual Discipline Report (ADR) addressed to the Chief Justice of California, the Governor, the Speaker of the Assembly, the President pro Tempore of the Senate and the Assembly and Senate Judiciary Committees in accordance with Business and Professions Code, section 6086.15. That public report describes the performance and condition of the State Bar's attorney discipline system in the previous calendar year.

Commencing with the April 2011 ADR, which reported discipline data for 2010, the executive director's office of the State Bar assumed oversight and control of the report, establishing an independent data compilation, validation and reporting process from the Office of Chief Trial Counsel (OCTC) and State Bar Court. This independent reporting structure was designed, in part, to ensure independent review and assessment of OCTC's discipline data and that independence has remained in place since April 2011.

### I.

#### **State Auditor Recommendations Regarding Discipline Reporting**

Of the eight recommendations specific to the discipline system, as stated in chapter one of the state auditor's June 2015 report, three recommendations related to discipline reporting and were specific to concerns with the ADR. The recommendations were, as follows:

- **Consistency of Backlog Reporting:** To ensure it consistently counts and reports its backlog of disciplinary cases, the State Bar and the Legislature should work together to determine what cases the State Bar should include in its backlog. For example, one method of calculating the backlog would be to include every case that affects public protection that the State Bar does not resolve within six months from the time it receives a complaint. The Legislature should then amend the state law that currently defines how the State Bar should present the backlog in its

annual discipline report. In the interim, the State Bar should comply with our 2009 recommendation to fully disclose the types of cases it includes and excludes from its backlog calculation, as well as any methodology changes from the prior year.

- Clear and Reliable Case Processing Speeds: To provide clear and reliable information to the Legislature, the governor, and the public, the State Bar should define how it calculates case-processing speeds in its annual discipline report and report this metric using the same method each year. If the State Bar elects to continue presenting the median case-processing time, it should also present the average case-processing time. Finally, it should disclose any methodology changes from the methodology used in the prior year.
- Implement Data Controls: To assure the Legislature and the public that the data in the State Bar's annual discipline reports are accurate, the board should implement controls over the accuracy, consistency, and sufficiency of the data gathered and methods used to compute the information included in the annual discipline report. For example, the board could expand the role of an existing board committee—such as the regulation and discipline committee—to include a review of the annual discipline report and the underlying discipline statistics.

The recommendation regarding consistency in backlog reporting relates to the state auditor's findings that the State Bar had not been transparent when reporting its backlog and other attorney discipline statistics as reported in ADR. More specifically, the state auditor found that the ADR reported "less than what the law permits related to backlog" and that the criteria and methodologies used for the ADR changed over the years without sufficient disclosure of those changes.<sup>1</sup> The state auditor concluded that, while the changes ultimately increased the annual backlog reporting, the failure to fully disclose changes in methodology made it difficult to compare annual reports, fell short of the law's requirements, and risked misleading those who relied upon the report.<sup>2</sup>

The recommendation regarding providing clear and reliable case processing speeds relates to the state auditor's findings that, commencing in 2011, the methodology used in the ADR to report case processing times changed without specific disclosure of the changes.<sup>3</sup>

The recommendation regarding implementation of data controls relates to the above concerns and to the additional finding that, in 2012, the methodology used in the ADR to calculate the State Bar's general fund discipline costs had changed and was not disclosed. While the state auditor did not disagree with the new methodology used, the auditor determined that failing to disclose the change may have misled readers of the ADR.<sup>4</sup>

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<sup>1</sup> California State Auditor, State Bar of California Report 2015-030 (June 2015), p. 26, hereafter referenced as the "State Audit Report."

<sup>2</sup> State Audit Report, pp. 29-30.

<sup>3</sup> State Audit Report, pp. 31-32.

<sup>4</sup> State Audit Report, p. 33.

The State Bar is working to implement the auditor recommendations and to further refine the ADR pursuant to the reporting requirements as recently amended in Business and Professions Code section 6068.15(a).

## II.

### October 2015 Month-End Metrics

In addition to the State Bar's ADR, OCTC prepares monthly metrics reports to the Board, with the scope and format previously approved by this committee. Upon the State Bar finalizing its changes to ADR, OCTC will recommend related revisions to its monthly report for consistency purposes.

#### New Complaints

<u>Case Initiation Type:</u>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct
Complainants	930	1,016	1,068	1,178	942	985	1,030	1,009	1,058	970
State Bar Initiated	24	47	107	121	34	29	24	32	74	24
Reportable Actions	274	239	254	281	236	255	233	198	190	212
<b>TOTAL</b>	<b>1,228</b>	<b>1,302</b>	<b>1,429</b>	<b>1,580</b>	<b>1,212</b>	<b>1,269</b>	<b>1,287</b>	<b>1,239</b>	<b>1,322</b>	<b>1,206</b>

As a reminder, "case initiation type" reflects the source which initiated the case. For example, complainant cases are those complaints initiated by a member of the public. State Bar initiated cases (SBIs) are those opened by OCTC without a complainant, such as where OCTC learns of possible attorney misconduct through media coverage or during the course of a separate disciplinary investigation. Reportable action cases are those matters where an individual or entity has reported certain activity to OCTC, pursuant to statutory obligations, such as where a financial institution reports insufficient funds in an attorney client trust account or a superior court reports imposition of certain sanctions against an attorney.

#### Call Center Volume

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
Complaint Hotline	3,706	3,414	3,973	3,895	3,509	3,877	3,808	3,735	3,615	3,681
Immigration Hotline	23	18	29	20	12	30	22	30	25	25
<b>TOTAL</b>	<b>3,729</b>	<b>3,432</b>	<b>4,002</b>	<b>3,915</b>	<b>3,521</b>	<b>3,907</b>	<b>3,830</b>	<b>3,765</b>	<b>3,640</b>	<b>3,706</b>

### Active Inventories

OCTC's month-end inventory of active complaints which have yet to be filed, closed or otherwise resolved was as follows:

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
Intake	1,676	1,857	2,124	2,054	1,848	1,857	1,934	1,798	1,883	1,824
Investigation	1,197	1,181	1,200	1,356	1,403	1,396	1,404	1,456	1,660	1,576
Pre-Filing	145	143	156	200	181	173	196	217	246	269
<b>TOTAL</b>	<b>3,018</b>	<b>3,181</b>	<b>3,480</b>	<b>3,610</b>	<b>3,432</b>	<b>3,426</b>	<b>3,534</b>	<b>3,471</b>	<b>3,789</b>	<b>3,669</b>

### Backlog Inventories (Active & Suspended Complaints)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
Active	283	296	301	343	355	361	382	414	601	627
Suspended	1,648	1,670	892	896	906	951	980	1,026	906	909
<b>TOTAL</b>	<b>1,931</b>	<b>1,966</b>	<b>1,193</b>	<b>1,239</b>	<b>1,261</b>	<b>1,312</b>	<b>1,362</b>	<b>1,440</b>	<b>1,507</b>	<b>1,536</b>

As of November 1, 2015, OCTC's potential year-end backlog inventory stood at 963. The potential backlog refers to all active cases currently in the system which will be considered backlog (i.e. more than six months old) on December 31, 2015 if not filed in State Bar Court or closed.

### Suspended Inventory Details

The majority of suspended cases are suspended due to the likely disbarment of the attorneys involved as a result of other disciplinary cases already filed and pending before the State Bar Court or Supreme Court. As of October 31, 2015, there were 1,077 cases in suspended status, 909 of which were in backlog status. The 1,077 suspended cases involved 219 attorneys, 163 of whom are on inactive status or otherwise not-entitled to practice law. The reasons for suspension of work in the 1,077 cases were as follows:

<b>Suspension Reason</b>	
Default in other matter	361
Expected Disbarment	266
Disbarment Recommendation Filed by SBC	185
Overlapping Litigation	144
Inactive Enrollment Order	121
<b>TOTAL</b>	<b>1,077</b>

### Audit & Review: Second Look Requests

There were 195 pending "second look" requests at the end of the month. The median time it took OCTC to process a second look request was 60 days. The mean (average) time it took OCTC to process a second look request was 60 days.

## Second Look Inventory

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
283	257	210	192	160	152	179	173	165	195

## Processing Time in Days

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
Median	98	105	81	61	31	36	43	50	58	60
Mean	104	113	97	71	52	80	68	85	74	60

## Walker Petitions

There were four (4) Walker petitions filed last month, bringing the year-to-date total to 80. There were no Walker petitions granted last month, bringing the year-to-date total to two (2).

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
Filed	7	8	10	9	9	7	10	7	9	4
Granted	0	0	0	0	1	0	0	0	1	0

## Trials and Discipline Decisions

OCTC received discipline recommendations from the Hearing Department last month involving 134 cases, as follows:

Decision Type	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct
By Trial	5	12	9	9	6	11	15	6	5	70
By Default Decision	8	10	18	31	26	10	19	24	24	21
By Stipulation	44	43	51	38	20	36	53	18	17	43
By ADP Decision	0	1	0	1	6	0	6	22	1	0
Dismissal Decision	0	0	0	1	0	1	0	0	0	0

As a reminder, due to limitations of the State Bar Court's available data, this count is based upon OCTC's internal hand-count of the decisions and orders received each month.

## II.

### New Reportable Action Type (Assembly Bill 1328)

As amended, Business and Professions Code section 6086.7 will require courts to notify the State Bar of a violation under Penal Code section 1424.5(1)(a), where the court finds that the prosecuting attorney acted in bad faith and the violation contributed to a guilty verdict, guilty or nolo contendere plea, or, if identified before conclusion of trial, seriously limited the ability of a defendant to present a defense. This court notification, pursuant to section 6086.7(5), would be considered a reportable action, consistent with other statutory required notices to the State Bar. As referenced above, reportable action

cases are those matters where an individual or entity has reported certain activity to OCTC, pursuant to statutory obligations, such as where a financial institution reports insufficient funds in an attorney client trust account or a superior court reports imposition of certain sanctions against an attorney.

### III.

#### Immigration Fraud Prevention Outreach

This month, OCTC assisted with refinements to the State Bar's communication efforts related to immigration fraud prevention. Collaborating with the Office of Legal Services and reassessing the overall effectiveness of the State Bar's outreach efforts, we developed a program focused heavily on providing general education and awareness to immigrants with a necessary and related fraud prevention component. The roles of the Office of Legal Services and OCTC were as follows:

- **Assistance from the Office of Legal Services re: shaping content and finding speakers:** The office provides training, technical assistance and pro bono coordination related to immigrant rights. It also has community connections through its legal services partners. Several of the office's legal services grantees are leaders in Ready California, which is a cross-sector collaborative effort of legal service providers, community-based organizations, unions, faith-based organizing groups, ethnic media, foreign consulates, and more. The purpose of Ready California is to support non-profits to ensure that the maximum number of eligible Californians benefit from DACA (Deferred Action for Childhood Arrivals) and DAPA (Deferred Action for Parents of Americans and Lawful Permanent Residents). Through those Ready California connections, the office secured immigration rights expert Xiomara Corpeño, Director of Organizing with the Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) as a speaker. The Office of Legal Services also provided a Spanish-language legal resource sheet which included information for L.A. County re: lawyer referral services, legal aid offices, and court self-help and small claims resources.
- **Assistance from the Office of Chief Trial Counsel re: shaping content and providing speakers:** Since, fraud prevention is an important piece of communications and messaging related to immigration administrative relief, OCTC secured Rigoberto Reyes, Chief of Investigations at the LA County Dept of Consumer and Business Affairs, to discuss regulation of immigrant consultants and OCTC investigator Alma Cueto to discuss regulation of attorneys and handling of notario and non-attorney complaints. OCTC also provided a Spanish-language consumer resource guide warning against immigration fraud.

We had the unique opportunity to test this refined program this month. The Santa Monica Police Department (SMPD) provides a semi-annual Spanish Language Community Academy and, recently, community members had asked about immigration. As a result, SMPD extended its academy program to host the State Bar's immigration fraud prevention program. The program was held on November 3, 2015, at the Thelma Terry Community Center in Virginia Park in Santa Monica. Approximately 30 community members attended and both Univision and Estrella covered the event, airing stories that evening. Univision, in particular, aired interviews with community members and the program speakers. Univision also reported about the SB's efforts and provided the State Bar's immigration hotline to viewers.