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The State Bar Has Not Been Transparent When Reporting Its Backlog and Other Attorney Discipline Statistics

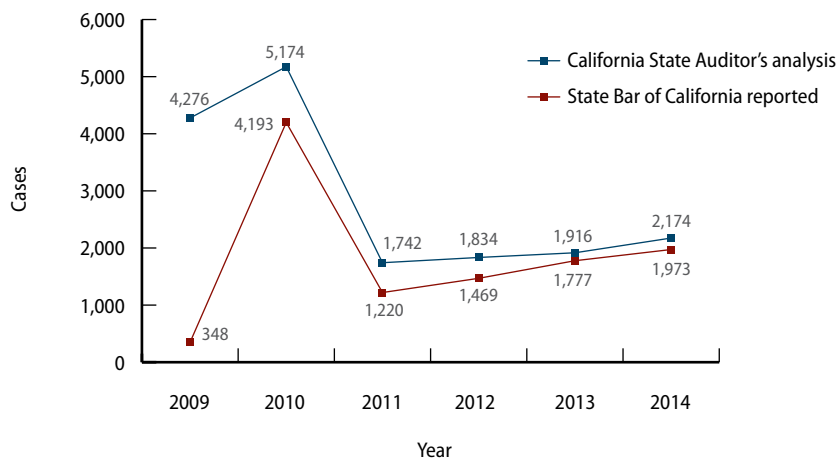
The State Bar has made missteps in its reporting of attorney discipline statistics to its key stakeholders, including the Legislature. State law requires the State Bar to prepare a discipline report, a public document that it must present to the governor, the chief justice, and specified legislative members and committees to enable them to evaluate the performance of its attorney discipline system. According to state law, the State Bar must include specific information in the discipline report, such as its existing backlog of discipline cases and the speed with which it has handled complaints. However, the State Bar reports less than what the law permits related to its backlog. Moreover, the State Bar has frequently changed its criteria and methodologies for how it gathers the information included in its discipline reports and, more importantly, did not always fully disclose the changes made in its criteria and methodologies. Despite improvements in recent years, because the discipline report is the only report that the State Bar must submit to the Legislature that describes the performance of its discipline system as a whole, it is critical that it contain useful and consistent information.

Despite Recent Improvements, the State Bar Continues to Report Less Than What the Law Permits Related to Its Backlog

The state law that requires the State Bar to submit the discipline report defines the backlog as the number of cases within the discipline system, including, but not limited to, the number of unresolved complaints as of December 31 that the State Bar had received more than six months earlier. However, in each of the past six years, the State Bar reported less than what the law permitted related to its backlog—the same concern that we raised in our 2009 report—and as a result, the State Bar's stakeholders may not be fully informed about the status of the

backlog. To illustrate, we calculated the State Bar's backlog using its Discipline Case Tracking System and compared it to what the State Bar reported in each of its discipline reports from 2009 through 2014. As we show in Figure 6, even though the backlog reported by the State Bar has become closer to the backlog we calculated in recent years, our calculation still reveals a backlog that is slightly higher than what the State Bar reported in 2014.

Figure 6
State Bar of California Reported Backlog Versus California State Auditor's Analysis of Backlog
2009 Through 2014



Sources: State Bar of California's (State Bar) *Annual Discipline Reports* for 2009 through 2014, and the California State Auditor's analysis of data obtained from the State Bar's Discipline Case Tracking System.

The differences between how we calculated the State Bar's backlog and the State Bar's method for calculating its backlog primarily relate to the types of discipline cases included. In particular, because state law defines the State Bar's highest priority as protecting the public by exercising its licensing, regulatory, and disciplinary functions, we believe the appropriate method of calculating the State Bar's backlog would be to include every case that affects public protection. Currently, the State Bar does not include every such discipline case. In Table 8 on the following page, we show the types of cases that the State Bar reported as its backlog since 2009, as well as all the types of cases that affect public protection. By not including all the types of cases that affect public protection, the State Bar limits its stakeholders' ability to assess the performance of the discipline system.

Table 8**Types of Cases the State Bar of California Included in the Calculation of Its Backlog
2009 Through 2014**

DESCRIPTION	2009	2010	2011	2012	2013	2014
Suspended cases		✓	✓	✓	✓	✓
Cases six to 12 months old designated as complex		✓	✓	✓	✓	✓
Non-complex investigations			✓	✓	✓	✓
Stipulations not yet filed				✓	✓	✓
Closed cases that were later reopened		✓	✓	✓	✓	
Violations of previously imposed discipline					✓	✓
Professional misconduct in other jurisdictions					✓	✓
Failure to comply with the duties of disbarred, resigned, or suspended attorneys					✓	✓
Complaints	✓	✓	✓	✓	✓	✓
State Bar of California (State Bar) initiated	✓	✓	✓	✓	✓	✓
Reportable actions in intake*					✓	✓
Probation referrals					✓	✓
Resignation processing, with charges pending					✓	✓
The State Bar does not include the cases below this line in its backlog calculation						
Enforcement of a fee arbitration decision						
Monitoring an attorney's conviction in another court						
Disbarred or resigned attorneys practicing law						
Unauthorized practice of law						
Violation of the conditions of probation						
Inactive enrollment for mental illness, harm, or other cause						
Petition to assume jurisdiction over a law practice						
<div> <div></div> The State Bar does not include all case types that can have an effect on public safety in its backlog calculation. <div></div> Includes a resignation processing case type, which does not have a significant effect on public safety, in its backlog calculation. </div>						

Sources: State Bar's chief trial counsel and former budget director.

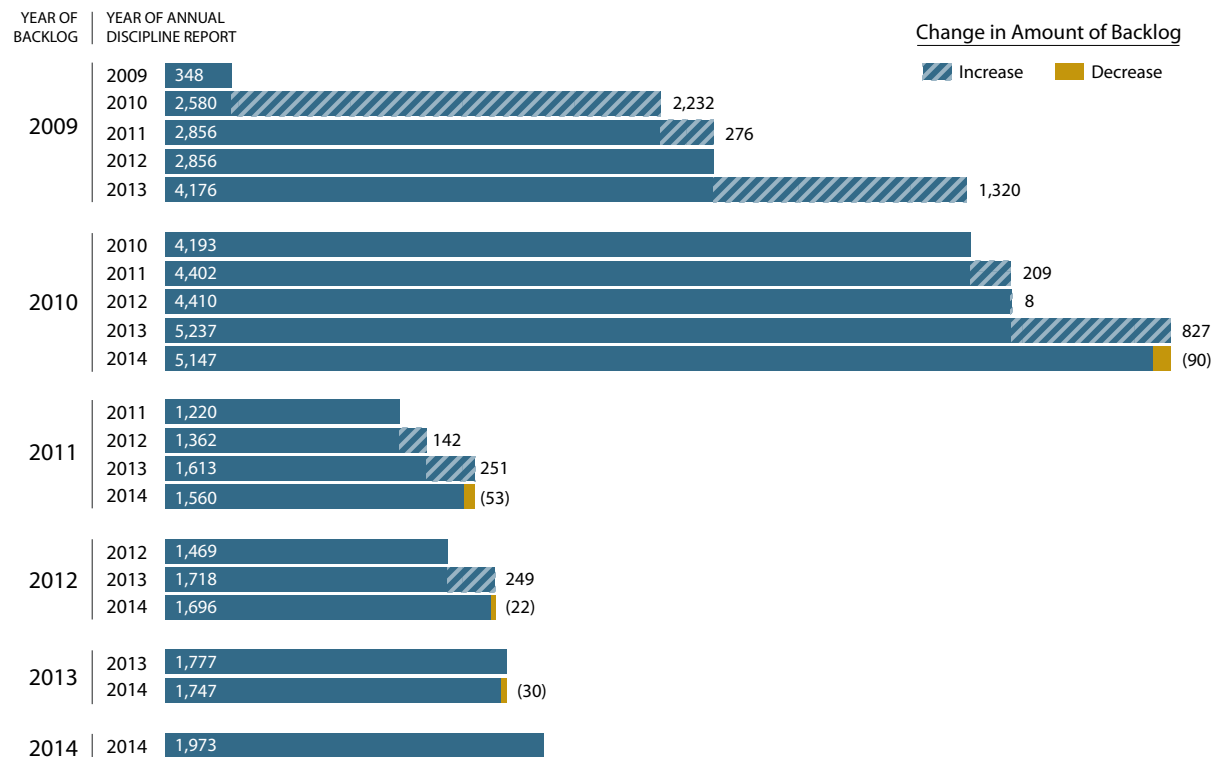
* According to the chief trial counsel, before 2013 the State Bar included reportable actions in its backlog count only if it forwarded the case to be investigated.

Moreover, the State Bar used a different methodology each year to calculate its case backlog and presented the backlog in a manner that was inconsistent with the prior year's report, which may have further limited the discipline report's usefulness. As we show in Table 8, the State Bar added or removed different types of cases when reporting its backlog for each year from 2009 through 2014. For example, in the 2009 discipline report, the State Bar included only complex cases that were older than 12 months in the backlog; however, in the 2010 discipline report, it modified its calculation of the backlog by also counting complex cases that were between six and 12 months old. In another example, the State Bar did not begin counting *reportable actions*—mandatory notifications of

attorney misconduct—in the backlog until the 2013 report. Most recently, in 2014 the State Bar began to report reopened cases in the backlog only for the years they were open rather than also reporting them for the years they were closed.

In all years we reviewed except for one, the changes the State Bar made in its methodology resulted in it increasing the prior year's backlog from what it had previously reported to the Legislature, as shown in Figure 7. For example, the 2012 discipline report indicated that the State Bar's backlog for 2012 was 1,469 cases. A year later, in its 2013 discipline report the State Bar reported that the 2012 backlog should have been 1,718 cases—249 more cases than it reported in its 2012 report. This increase occurred because it added six types of cases to the backlog.

Figure 7
Backlog Counts That the State Bar of California Reported in Its 2009 Through 2014 Annual Discipline Reports



Sources: State Bar of California's (State Bar) *Annual Discipline Reports* for 2009 through 2014.

Note: State law requires the State Bar to report the current year's backlog, as well as the backlog for the three previous years.

The former director of Budget and Performance Analysis (former budget director), who was responsible for compiling the discipline report, stated that the State Bar changed its backlog calculation

from year to year in order to report information in a more complete manner. He also told us that he changed the methodology when he learned which cases and calculations he should and should not include; however, the State Bar did not fully disclose the changes in the methodologies in its discipline report. State law requires the State Bar to report information in its discipline report in a consistent manner to allow for year-to-year comparisons. To mitigate the difficulty of comparing discipline reports that use different backlog methodologies, the State Bar includes in its discipline reports the backlog numbers for the four preceding years that it determined using the most current year's methodology. However, without an accompanying explanation for everything that changed and why, the State Bar falls short of the law's requirements and risks misleading those who rely upon the report's content to make critical decisions.

At the time of our 2009 audit, we believed that the State Bar's stakeholders, including the Legislature, would benefit from having more complete and clear measures of the backlog. Although we did not recommend a change to state law or that the State Bar include additional types of cases in the backlog, we recommended that the State Bar disclose the composition of the backlog and include an explanation for the cases it excludes. The State Bar implemented our recommendation in its 2009 and 2010 discipline reports, which it published in the two years following our audit; however, it stopped fully describing the methodology it used to calculate its backlog beginning in its 2011 discipline report and for each year thereafter. For example, in its 2011 report the State Bar highlighted its backlog reduction in its report. However, it began including unfiled settlement cases in its backlog in its 2012 discipline report and did not mention the addition of these cases in the report. Because the State Bar did not disclose this change, a reader might not notice that it had adjusted the backlog number it reported for 2011 to include unfiled stipulations, increasing the backlog it previously reported by 133 cases.

Without a more specific definition of backlog in state law, the State Bar may continue to report less than what the law permits and may again change its methodology without fully disclosing the changes in its discipline reports.

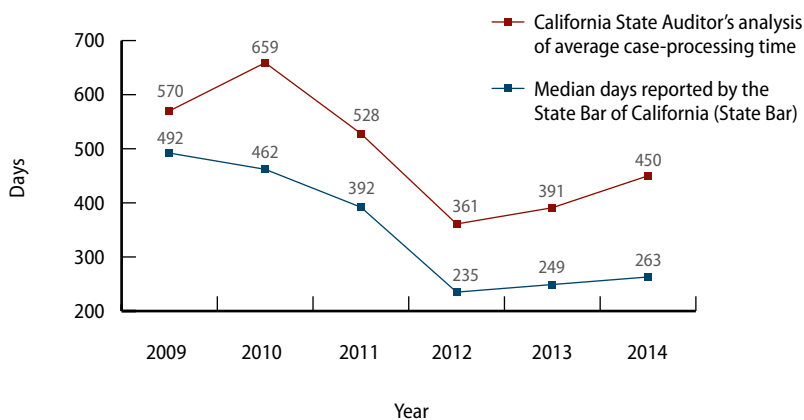
As a result of the State Bar's failure to fully implement our 2009 recommendation, we are concerned that without a more specific definition of backlog in state law, the State Bar may continue to report less than what the law permits and may again change its methodology without fully disclosing the changes. The former budget director stated that the State Bar would benefit from additional discussion with the Legislature to better define what it would like the backlog to include. We commend the State Bar's efforts to include more types of cases in its backlog, but additional steps are necessary to ensure that it reports useful and consistent information related to its backlog of discipline cases.

The State Bar Has Used Inconsistent Case-Processing Metrics

Weaknesses related to the manner in which the State Bar presents case-processing times in its discipline reports may also impede the reports' usefulness to stakeholders. As it did with its backlog reporting, it changed the methodology it uses to report case-processing times without specifically disclosing the change. In particular, in the 2009 and 2010 reports, the State Bar presented case-processing time using an average number of days. Then, in the 2011 and 2012 reports, it used both the average and median number of days to express case-processing time, and began including the 90th percentile of case-processing times—a measure that indicates the number of days within which the State Bar processes 90 percent of its cases. The State Bar again changed its methodology—without disclosing the change—in its 2013 and 2014 discipline reports, when it stopped reporting the average days for case-processing time.

By excluding the average case-processing time, the State Bar now emphasizes in its report summaries only the statistic that shows its case-processing time in a more favorable light. For example, the summaries to the 2013 and 2014 discipline reports highlight only the median case processing times. Although the median statistic can provide valuable information, the State Bar chose to include only the measure that depicts a faster case-processing time in its report summary and to exclude the measure that paints a different picture. As shown in Figure 8, the median case-processing time was consistently lower than the average each year from 2009 to 2014. Moreover, the introductions to the 2013 and 2014 discipline reports states that they present data based on the *average* times for processing complaints through the discipline system rather than the *median* times—a statement that is misleading to readers.

Figure 8
State Bar of California's Average and Reported Median Case-Processing Times
2009 Through 2014



Sources: State Bar's *Annual Discipline Reports* for 2009 through 2014, and the California State Auditor's analysis of data obtained from the State Bar's Discipline Case Tracking System.

In its 2012 and 2013 reports the State Bar highlighted its success in decreasing the case-processing time reported in its discipline reports by choosing a more favorable measure with which to depict its efficiency in processing cases.

According to the former budget director who prepared the data for the discipline report, he believed that the median was a more reliable statistic to use than the average because it did not include the outliers—a small number of cases with high or low case-processing times. His rationale related to outliers is valid; however, the State Bar should have disclosed the methodology change, as well as the rationale for the change, in its discipline reports. We believe that presenting both the median and the average will increase the amount of information available to stakeholders.

Moreover, in its 2012 and 2013 discipline reports the State Bar chose to highlight its success in decreasing the case-processing time by selectively comparing its current median to past medians when they were at their highest points. This decision appears to indicate that the State Bar has chosen the more favorable measure with which to depict its efficiency in processing cases. As an example, in its letter to the Legislature and governor accompanying its 2013 discipline report, the State Bar noted that its median case-processing time for 2013 was 249 days, compared to 492 days and 462 days in 2009 and 2010, respectively. However, the State Bar omitted its median case-processing times of 392 days and 235 days in 2011 and 2012, respectively. If the State Bar had included the 2012 statistic in the letter, it would have disclosed the fact that its median case-processing time had increased slightly, from 235 days in 2012 to 249 days in 2013.

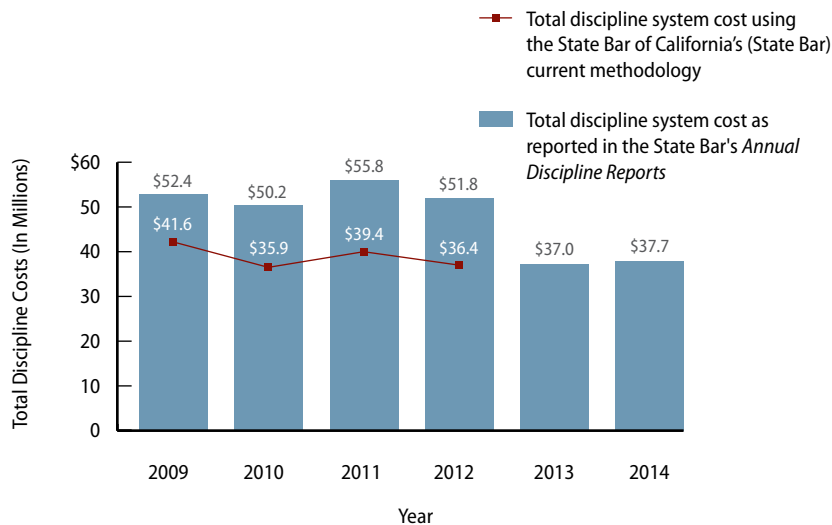
We also expressed concerns in our 2009 audit with the manner in which the State Bar reported case-processing times. In particular, we found that the State Bar calculated case-processing times by averaging its case-processing times from 1999 forward rather than reporting a separate average for each year. At that time, we concluded that this methodology did not meaningfully measure its yearly case-processing times because it included data from years other than the relevant reporting year and because the number of cases from which the State Bar computed the averages continued to grow. We recommended that the State Bar discontinue using this methodology. Although the State Bar implemented our recommendation, its current method of reporting case-processing times produces results that are once again less useful than they could be.

The State Bar Has Not Ensured That Its Discipline Reports Contain Useful and Consistent Information

The State Bar limited the ability of stakeholders to use its discipline reports to assess the cost-effectiveness of its discipline system because, in 2012, it changed the methodology it employed to

calculate its general fund discipline costs and did not disclose the change. As a result, the costs of the discipline system seemed to decrease significantly when in fact they remained relatively constant. Specifically, as we show in Figure 9, the State Bar reported that its 2012 discipline costs were \$51.8 million, which included administration costs. However, in the 2013 discipline report, the State Bar excluded administration costs from its discipline costs, and as a result, the State Bar reported a lower amount of \$36.4 million for discipline costs for 2012. According to the director of finance, the State Bar decided to remove the administrative costs from the total discipline system expenditures because managers within the State Bar had no control over these costs. We do not disagree with the State Bar's current methodology of calculating discipline expenditures; however, by not disclosing the change in the methodology, the State Bar may have misled the Legislature and others to believe that discipline costs had decreased.

Figure 9
State Bar of California's Discipline System Expenditures
2009 Through 2014



Sources: California State Auditor's analysis of the State Bar's accounting reports and *Annual Discipline Reports* for 2009 through 2014.

Note: Beginning in 2012 the State Bar revised its reporting of discipline costs to exclude administration costs, but began to include them again in 2014.

The problems that we identified with the discipline reports may partly be due to the fact that the State Bar has not established adequate controls to verify the reports' reliability. Although the board approved a resolution in 2014 specifying the types of information that the State Bar should include in the discipline reports, it has not taken sufficient steps to ensure that they contain accurate and

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complete information. For example, the board does not review the discipline report before the State Bar submits it to the Legislature. Moreover, the State Bar has no policy or procedure that dictates how it will compile or review the discipline reports. In fact, the former budget director compiled the data for the past five discipline reports, but no one verified the way the information was gathered or how the calculations were made. According to the vice president of the board, the board's faith in the accuracy and completeness of the discipline reports was based on its review of metrics reported throughout the year, the involvement of the acting general counsel, and its trust in the competence and skill of the staff compiling the reports.

The State Bar Has Not Performed Adequate Workforce Planning, Which May Have Limited the Effectiveness of Its Discipline System

As previously discussed, the State Bar was able to decrease its backlog after making operational changes in response to its former executive director's zero-backlog goal in mid-2011. However, after abandoning all but one of those changes, the State Bar's backlog is once again increasing. Because many of the 2011 operational changes involved devoting more staff resources to case processing, the recent increase in the backlog suggests that additional staff may be necessary within the State Bar's discipline system. However, the State Bar has not conducted any workforce planning to support or refute this supposition. Workforce planning is the process that aligns staffing with an organization's strategic mission and critical needs. Thus far, the State Bar's efforts to align its staffing with its mission have fallen short.

The State Bar Has Not Established Consistent Goals for Processing Disciplinary Cases

Establishing a mission and strategic goals is critical to ensuring the successful outcome of an organization's operations and is typically the first step in workforce planning. State law identifies the State Bar's mission as the protection of the public through exercising its licensing, regulatory, and disciplinary functions and, according to the State Bar, the attorney discipline system plays an indispensable role in carrying out this mission. The State Bar defines the size of its backlog as a key measure of the performance of its attorney discipline system. Thus, we would have expected the State Bar to have established and thoroughly analyzed and documented a goal for an acceptable backlog that would assist it in meeting its mission. However, it has not done so. In particular, although it set a zero goal for its backlog in 2011 and a subsequent goal of keeping its backlog of active cases to less than 15 percent, the State Bar did not document either of those goals. Since 2007 the State Bar has changed its backlog goal four times: from 200, to 250, to zero, to less than 15 percent of all active cases (its current goal).