

**Annual Discipline Report Statute  
Proposed Definitions and Interpretation**

**DRAFT 1/19/2016**

1. *6086.15 (a)(1) Backlog: the existing backlog of cases within the discipline system, including 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. In addition to written complaints received by the State Bar, the backlog of cases shall include other matters opened in the Office of the Chief Trial Counsel and pending beyond six months after receipt<sup>1</sup> without the filing of notices of disciplinary charges, or the initiation of other disciplinary proceedings in the State Bar Court for the purpose of seeking the imposition of discipline against a member of the State Bar, and tables showing time periods beyond six months and the number in each category and a discussion of the reason for the extended periods.*

a. Consists of:

- Complaints<sup>\*2</sup>
- State Bar Inquiries (“SBIs”)\*
- Probation Referrals\*
- Self-Reported Reportable Actions (also covered in para 3) <sup>\*3</sup>
- Other-Reported Reportable Actions (also covered in para 4) \*
- Petitions to terminate practice (also covered in para 7)
- Interim suspensions and license restrictions (also covered in para 7)
- Former Attorney UPL matters (also covered in para 8)
- Non-Attorney UPL matters (also covered in para 9)

RAD Discussion: is this the correct definition of Backlog? Note that Motions to Enforce Arbitration Awards, Motions to Revoke Probation, and Criminal Conviction Monitoring are NOT included. Are UPL matters appropriately included?

b. Other Definitions:

- Pendency of complaints, non-attorney and former attorney UPL matters begins on the date of receipt of the written complaint (in non-attorney and former attorney UPL matters, complaints may not always be received. In that instance start date = date OCTC opens the case)
- Pendency of SBIs, Probation Referrals, Petitions to Terminate Practice, and Interim Suspensions and License Restrictions , begins on the date OCTC opens the case
- Pendency of SRA and ORA = date OCTC opens the case

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<sup>1</sup> 6 months counted as 180 days; all time periods counted in days at 30 days/month

<sup>2</sup> \* references items included in 2014 Backlog definition

<sup>3</sup> Although included in backlog count, reportable action start date for OCTC backlog tracking purposes may not begin in some instances until finality has been reached in an underlying proceeding outside of OCTC jurisdiction.

- Pendency ends when OCTC closes a case or files with State Bar Court or, for former and non-attorney UPL matters, when OCTC refers the case to another agency or files a petition in superior court pursuant to 6180 or 6126.3
- Filing a Stipulation to Facts and Discipline constitutes “initiation of other disciplinary proceedings in the State Bar Court for the purpose of seeking the imposition of discipline against a member of the State Bar.”
- Periods beyond six months:
  - 6 months – one year
  - One year – two years
  - Two years – three years
  - Three years – four years
  - Four years – five years
  - Five years and over

RAD Discussion: are these Other Definitions correct? particularly definitions of “start” and “end” for backlog counting purposes?

2. *6086.15 (a)(2) Inquiries and Complaints: the number of inquiries and complaints and their disposition.*
  - a. Consists of:
    - Complaints received during the reporting year
    - State Bar Inquiries (SBIs) initiated during the reporting year
  - b. Dispositions:
    - Closed with no action
    - Closed with non-disciplinary action
    - Closed with discipline imposed
    - Undisposed (all complaints received and SBIs initiated during the reporting year and not closed at the end of the reporting year)

RAD Discussion: should we include “closed with discipline imposed” as a disposition? This reflects a SBC outcome, not a purely OCTC one. Should we instead limit scope to OCTC jurisdiction only?

3. *6086.15 (a)(3) Reportable Actions, Self-Reported: the number, average pending times, and types of matters self-reported by members of the State Bar pursuant to subdivision (o) of Section 6068 and subdivision (c) of Section 6086.8.*
  - a. For each type of matter:
    - Count of new reports received during the reporting year
    - Count of reports disposed during the reporting year
    - Count of reports pending at the end of year

- Average pendency of all reports disposed during the year<sup>4</sup>
- Average pendency of all reports pending at the end of the year
- Number of reports pending more than six months at the end of the year without filing of NDC or Stipulation

b. Matter types:

- Filing of 3 or more lawsuits in a 12-month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity (6068 (o)(1))
- Entry of a judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity (2)
- Imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than \$1,000 (3)
- Bringing of an indictment or information charging a felony against the attorney
- Conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of a felony, or a misdemeanor committed in the course of the practice of law, or in a manner in which a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of a misdemeanor, involves improper conduct of an attorney...(5)
- Imposition of discipline against the attorney by a professional or occupational disciplinary agency or licensing board (6)
- Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation (7)
- Attorney does not possess professional liability insurance shall submit a complete written report to the State Bar as to any settlement, judgment, or arbitration award (6086.8 (c))

RAD Discussion: what does disposition mean? Does it include the State Bar Court process? Meaning, are we reporting on pendency in SBC, not just OCTC? The answer to this question impacts the definition of pending as well – pending where, OCTC or SBC? In addition, the “start” date for some of these matters is not necessarily the date that OCTC opens the case, but instead the date that finality is reached in the underlying matter. How should this be addressed?

4. *6086.15 (a)(4) Reportable Actions, Non-Self-Reported: the number, average pending times, and types of matters reported by other sources pursuant to Sections 6086.7, 6086.8, 6091.1, subdivision (b) of Section 6101, and Section 6175.6.*

a. For each type of matter:

- Count of new reports received during the reporting year
- Count of reports disposed during the reporting year
- Count of reports pending at the end of year
- Average pendency of all reports disposed during the year
- Average pendency of all reports pending at the end of the year

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<sup>4</sup> Add median to averages in Sections 3,4,7, 8 and 9

- Number of reports pending at the end of the year without filing of NDC or Stip
- b. Matter types:
- A final order of contempt imposed against an attorney that may involve grounds warranting discipline under this chapter (6086.7 (a)(1))
  - Whether modification or reversal of a judgment in a judicial proceeding is based in whole or in part on the misconduct, incompetent representation, or willful representation of an attorney (2)
  - The imposition of any judicial sanctions against an attorney, except sanctions for failure to make discovery or monetary sanctions of less than \$1,000 (3)
  - The imposition of any civil penalty upon an attorney pursuant to section 8620 of the Family Code (4)
  - Judgment by a court that an attorney is liable for any damages resulting in a judgment against the attorney in any civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity (6086.8 (a))
  - Every claim or action for damages against a member of the State Bar for fraud, misrepresentation, breach of fiduciary duty, or negligence committed in a professional capacity (b)
  - Any properly payable instrument is presented against an attorney trust account containing insufficient funds (6091.1)
  - Pendency of an action charging a felony or misdemeanor (6101 (b))
  - Violation of 6175.3, attorney acting as fiduciary (6175.6)

RAD Discussion: what does disposition mean? Does it include the State Bar Court process? Meaning, are we reporting on pendency in SBC, not just OCTC? The answer to this question impacts the definition of pending as well – pending where, OCTC or SBC? In addition, the “start” date for some of these matters is not necessarily the date that OCTC opens the case, but instead the date that finality is reached in the underlying matter. How should this be addressed?

5. 6086.15 (a)(5) Speed of Complaint Handling and Dispositions: *the speed of complaint handling and dispositions by type, measured by the median and the average processing times.*
- a. Consists of
- Complaints
  - State Bar Inquiries (“SBIs”)
  - Probation Referrals
  - Self-Reported Reportable Actions (also covered in para 3)
  - Other-Reported Reportable Actions (also covered in para 4)
  - Petitions to terminate practice (also covered in para 7)
  - Interim suspensions and license restrictions (also covered in para 7)
  - Former Attorney UPL matters (also covered in para 8)
  - Non-Attorney UPL matters (also covered in para 9)

- b. Speed of complaint handling:
    - Average and median pendency of all cases closed during the reporting year
    - Average and median time from receipt of complaint or opening of to the earliest of (a) closure, (b) filing of a notice of disciplinary charges, (c) filing of a stipulation to facts and discipline, or (d) filing a matter in a superior court, for all cases first reaching any of these milestones in the reporting year
  - c. Dispositions: match Table 2
6. *6086.15 (a)(6) Notices of Disciplinary Charges and Formal Disciplinary Outcome: the number, average pending times, and types of filed notices of disciplinary charges and formal disciplinary outcomes.*
- a. Notices of Disciplinary Charges
    - “Types of filed notices of disciplinary charges”:
      - Notices of Disciplinary Charges *per se*
      - Stipulations to Facts and Discipline
    - For each “type” of filing above:
      - Number filed during the reporting year
      - Average pendency of cases filed on the date of filing
  - b. Formal Disciplinary Outcomes
    - Formal disciplinary outcomes:
      - Disbarment
      - Suspension
      - Public Reprovals
    - For each outcome above:
      - Number of cases resulting in the outcome during the reporting year
      - Number of individuals receiving the outcome during the reporting year
7. *6086.15 (a)(7) Other Matters: the number, average pending times, and types of other matters, including petitions to terminate practice pursuant to Section 6180 or 6190, interim suspensions and license restrictions pursuant to Section 6007, motions to enforce a binding arbitration award, judgment, or agreement pursuant to subdivision (d) of Section 6203, motions to revoke probation, letters of warning, private reprovals, admonitions, and agreements in lieu of discipline.*
- a. Other matter types
    - Consists of:
      - Petitions to terminate practice pursuant to sections 6180 or 6190
      - Interim suspensions and license restrictions pursuant to section 6007
      - Motions to enforce a binding arbitration award, judgment, or agreement pursuant to 6203(d)

- Motions to revoke probation
- Criminal Conviction Monitoring matters
- Pendency begins with opening of case file
- For each of the four types:
  - The number of new cases opened during the reporting year
  - The number of cases closed during the reporting year
  - The number of cases pending at the end of the reporting year:
  - The average pendency of cases closed during the year
  - The average pendency of cases pending at the end of the year
  - The number of cases pending more than six months at the end of the year without formal filing in State Bar Court or Superior Court

**RAD Discussion: is the definition of pendency correct for these case types? What constitutes case closure?**

- b. Other dispositions
- Consists of:
    - Letters of warning
    - Private reprovls
    - Admonitions
    - Agreements in lieu of discipline
  - Pendency begins according to the type of original case
  - For each of the four dispositions:
    - The number of cases resulting in the disposition in the reporting year
    - The average pendency of cases resulting in the disposition in the reporting year

**RAD Discussion: does pendency capture OCTC jurisdiction only? Or SBC case processing time as well?**

8. *6086.15 (a)(8) Unauthorized Practice, Former Attorney: the number, average pending times, and outcomes of complaints involving a State Bar member who has been disbarred or who has resigned, and is engaged in the unauthorized practice of law, including referrals to district attorneys, city attorneys, or other prosecuting authorities, or petitions to terminate practice pursuant to Section 6180.*

- a. Consists of:<sup>5</sup>
- Written complaints alleging UPL against former attorneys
  - SBI cases

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<sup>5</sup> Consists of both complaints and SBI's but these two categories will not be reported separately

- Outcomes:
    - Closed with no action
    - Closed with referral to other authority
    - 6180 petition filed and granted:
    - 6180 petition filed and denied
  - Reporting:
    - Number of new cases received or initiated during the reporting year
    - Number of cases disposed during the reporting year, by type of outcome
    - Number of pending cases at the end of the year
    - Average pendency of cases closed during the year
    - Average pendency of cases pending at the end of the year
    - Number of cases pending for more than six months at the end of the year
- b. Pendency begins with receipt of complaint (if one exists) or creation of case file (if no complaint exists) and ends with the closure of the file or with the granting of a 6180 petition. (This interpretation would exclude the time taken to actually resolve the seized practice from this definition of “pendency”)

**RAD Discussion: is this definition of pendency correct?**

9. *6086.15 (a)(9): Unauthorized Practice, Non-Attorney and Notario fraud: the number, average pending times, and outcomes of complaints against non-attorneys engaged in the unauthorized practice of law, including referrals to district attorneys, city attorneys, or other prosecuting authorities; petitions to terminate practice pursuant to Section 6126.3; or referrals to prosecuting authorities or actions by the State Bar pursuant to Section 6126.7.*

- a. Non-Attorney UPL
- Consists of:
    - Written complaints alleging UPL against non-attorneys
    - SBI cases
  - Outcomes:
    - Closed with no action
    - Closed with referral to other authority
    - 6126.3 petition filed and granted:
    - 6126.3 petition filed and denied
  - Reporting:
    - Number of new cases received or initiated during the reporting year
    - Number of cases disposed during the reporting year, by type of outcome
    - Number of pending cases at the end of the year

- Average pendency of cases closed during the year
  - Average pendency of cases pending at the end of the year
  - Number of cases pending for more than six months at the end of the year
- b. Pendency begins with receipt of complaint (if one exists) or creation of case file (if no complaint exists) and ends with the closure of the file, the granting of a 6126.3 petition, or a referral to a prosecuting authority. This interpretation would exclude the time taken to actually resolve the seized practice from this definition of “pendency”)

**RAD Discussion: is this definition of pendency correct**

- c. *Notario* Fraud
- Number of referrals to prosecutorial authority under 6126.7
  - Number of other actions under 6126.7
10. *6086.15 (a)(1): Client Security Fund: a description of the condition of the Client Security Fund, including an accounting of payouts.*
11. *6086.15 (a)(11) Cost of the Discipline System by Function: an accounting of the cost of the discipline system by function.*