



# 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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### I.

#### State Bar's Annual Discipline Report

Following from discussions at the last committee meeting on January 31, 2016, work on the State Bar's annual discipline report (ADR) continues and will be reported by Chief Operating Officer Leah Wilson. As previously reported, once changes to ADR are finalized by the State Bar, OCTC will recommend related revisions to its month-end report for consistency of reporting. Until then, OCTC's monthly metrics reports to the Board continues in the same scope and format previously approved by this committee.

### II.

#### Audit and Review

Following recommendations by the California State Auditor and pursuant to workforce planning efforts, the State Bar will realign the Audit and Review's "second look" function to the Office of General Counsel. In addition, OCTC continues to work with the Chief Operating Officer to refine and permanently implement the use of an independent auditor to conduct a bi-annual audit of OCTC's closed cases. Commencing in 2014, OCTC had self-initiated the use of an independent auditor.

### III.

#### January 2016 Month-End Metrics

For greater context, in addition to the most recent key monthly metrics, a reminder of monthly metrics from 2015 are provided herein:

### New Complaints

In January 2016, Intake opened 1,144 new cases (complaints, State Bar Initiated (SBI) matters, and Reportable Actions (RAs)), as follows:

- 937 new complaints from Complainants,
- 27 new State Bar Initiated cases,
- 180 new Reportable Action matters.

As a reminder, Intake opens cases from different “case initiation” types or sources. 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.

The monthly new case numbers from 2015 were as follows:

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
Complainant	930	1,016	1,068	1,178	942	985	1,030	1,009	1,058	970	947	883
State Bar Initiated	24	47	107	121	34	29	24	32	74	24	24	28
Reportable Actions	274	239	254	281	236	255	233	198	190	212	226	235
<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>	<b>1,197</b>	<b>1,146</b>

### Call Center Volume

In January 2016, Intake received 3,243 calls to the Complaint Hotline, 19 of which came through the Immigration Hotline.

The monthly numbers from 2015 were as follows:

<b>2015</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Complaint Hotline	3,706	3,414	3,973	3,895	3,509	3,877	3,808	3,735	3,615	3,681	3,060	3,043
Immigration Hotline	23	18	29	20	12	30	22	30	25	25	22	18
<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>	<b>3,082</b>	<b>3,061</b>

### Active Inventories

At the end of January 2016, OCTC's month-end inventory of active attorney disciplinary cases which had yet to be filed, closed or otherwise resolved was 3,152:

- 1,339 cases in Intake,
- 1,579 cases in Investigations,
- 234 cases in Pre-Filing.

At the end of January 2016, OCTC's backlog inventory stood at 1,485:

- 523 active cases in backlog
- 962 suspended cases in backlog

The monthly numbers from 2015 were as follows:

<b>2015</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Intake	1,676	1,857	2,124	2,054	1,848	1,857	1,934	1,798	1,883	1,824	1,852	1,643
Investigation	1,197	1,181	1,200	1,356	1,403	1,396	1,404	1,456	1,660	1,576	1,597	1,554
Pre-Filing	145	143	156	200	181	173	196	217	246	269	250	205
<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>	<b>3,699</b>	<b>3,217</b>

The monthly backlog numbers from 2015 were as follows:

<b>2015</b>	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Active	283	296	301	343	355	361	382	414	601	627	601	418
Suspended	1,648	1,670	892	896	906	951	980	1,026	906	909	859	952
<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>	<b>1,460</b>	<b>1,370</b>

### 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 January 31, 2016, there were 1,118 cases in suspended status, 962 of which were in backlog status. The 1,118 suspended cases involved 194 attorneys, 149 of whom were on inactive status or otherwise not-entitled to practice law. The reasons for suspension of work in the 1,118 cases were as follows:

<b>Suspension Reason</b>	
Default in other matter	158
Expected Disbarment	321
Disbarment Recommendation Filed by SBC	373
Overlapping Litigation	133
Inactive Enrollment Order	133
<b>TOTAL</b>	<b>1,118</b>

### Audit & Review: Second Look Requests

There were 286 pending "second look" requests at the end of the month. The median time it

took OCTC to process a second look request was 93 days. The mean (average) time it took OCTC to process a second look request was 98 days.

The monthly second look inventory numbers from 2015 were as follows:

Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
283	257	210	192	160	152	179	173	165	195	219	246

The monthly processing times from 2015 were as follows:

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Median	98	105	81	61	31	36	43	50	58	60	79	92
Mean	104	113	97	71	52	80	68	85	74	60	84	107

### Walker Petitions

There were seven (7) Walker petitions filed in January 2016. There were no Walker petitions granted in January.

The monthly numbers from 2015 were as follows:

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Filed	7	8	10	9	9	7	10	7	9	4	3	9
Granted	0	0	0	0	1	0	0	0	1	0	0	0

### Trials and Discipline Decisions

OCTC received discipline recommendations from the Hearing Department last month involving 59 cases and no dismissal decisions, as follows:

- Eight (8) by trial decision,
- 32 by stipulation,
- 11 by Alternative Discipline Program decision
- Eight (8) by default decision

The monthly numbers from 2015 were as follows:

Decision Type	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
By Trial	5	12	9	9	6	11	15	6	5	70	11	29
By Default Decision	8	10	18	31	26	10	19	24	24	21	30	4
By Stipulation	44	43	51	38	20	36	53	18	17	43	13	29
By ADP Decision	0	1	0	1	6	0	6	22	1	0	0	0
Dismissal Decision	0	0	0	1	0	1	0	0	0	0	0	1

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.

## Non-Attorney Complaints

Historically, neither the State Bar's ADR nor OCTC's month-end reports have reported inventories or processing times for non-attorney complaints. Commencing with the ADR to be published this year, the State Bar will report its non-attorney complaint inventories and processing times. Once the new format and data methods are approved for the ADR, OCTC will modify its month-end reporting accordingly.

As a reminder, OCTC has dedicated staff in its Intake Unit to receive and process complaints against non-attorneys. While OCTC's jurisdiction over non-attorneys is limited compared to that over attorneys, OCTC reviews non-attorney complaints alleging the unauthorized practice of law and may investigate such complaints for specific action, such as requesting a superior court to assume jurisdiction over a non-attorney law practice.

Moreover, effective October 2013, the State Bar obtained statutory authority to bring civil actions against non-attorneys, pursuant to Business and Professions Code section 6126.7, and to seek civil penalties for violations of section 6126.7, including the unlawful use of the title "notario" or "notario publico." Subsequently, OCTC was charged with investigating such cases and the Office of General Counsel was charged with initiating civil actions in viable cases. Going forward, these civil actions will be handed entirely by OCTC.

On average, for the past five years, OCTC has received over 500 non-attorney complaints annually.<sup>1</sup> Last year, OCTC received approximately 573 non-attorney complaints. Currently, there are approximately 100 non-attorney complaint pending in investigations and approximately 300 pending in Intake.

As reported previously, 59 idle non-attorney files were recently discovered in a search for case files. The 59 cases have been reassigned to attorney and investigator staff with notification to the complainants.

## **IV.**

### **Immigration Fraud Prevention Outreach**

As reported in November 2015, 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

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<sup>1</sup> In comparison, OCTC has received more than 16,000 attorney complaints annually.

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 from 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 the Chief of Investigations from the Los Angeles County Department of Consumer and Business Affairs (LADCBA), to discuss regulation of immigrant consultants and an OCTC investigator 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.

The first of this refined program launched on November 3, 2015 at the Thelma Terry Community Center in Virginia Park, Santa Monica. Both Univision and Estrella covered the event, airing stories on the evening news. Univision, in particular, aired interviews with community members and the program speakers. This refined program continues, now administered by the State Bar's Office of Communication.

On February 22, 2016, the State Bar sponsored a similar program (in Spanish), pursuant to request from the Santa Monica High School English Learner Advisory Committee (ELAC). Presenters from OCTC, CHIRLA and LADCBA spoke with approximately 40-50 parents and family of Spanish-speaking students.