

## Regulation and Discipline Committee – Annual Discipline Report Working Group

### Conference Call

August 11, 2016 – 12:30 – 1:30

Toll-free dial-in number: (855) 520-7605

Conference code: 3426505408

**Purpose** – The 2016 Annual Discipline Report (ADR) pointed to a number of sections of the Business and Professions code that could be changed to make the ADR more useful. That section of the ADR (attached) also noted that “the Board of Trustees will develop State Bar rules in 2016 regarding the content of the Annual Discipline Report. These rules will augment statutory requirements with a comprehensive set of qualitative and quantitative measures of the efficacy of the discipline system as a whole.”

#### I. Recommendations Contained in the ADR

- a. Reportable actions: Section 6086.15, subdivision (a)(4) requires the ADR to include actions reported under section 6101, subdivision (b) (*criminal charges pending* against an attorney reported to the Bar by District Attorneys);  
  
Actions reported under subdivision (c) (*criminal convictions* reported to the Bar by the Courts), however, are omitted. This omission should be addressed;
- b. Definition of the attorney discipline system: The composition of the discipline system is not statutorily defined. a definition should be developed in partnership with the Bar (the full BOT will work on this, but we need to discuss to develop measures);
- c. Backlog reporting: There are a myriad of complaint and case types handled by the State Bar. There are reasons to include or exclude each of these in a backlog calculation. A full vetting of this issue, culminating in a comprehensive statutory definition, is needed
- d. Second look cases: When OCTC decides to close a complaint against a member of the Bar without disciplinary action, the complainant may request a review ("second look") of the decision. Should these cases be included in the ADR?
- e. Rule 2201 cases: State Bar Rule of Procedure rule 2201, subsection (a), allows for, and subsection (i) requires, the appointment of Special Deputy Trial Counsel under specified circumstances when OCTC receives an inquiry or complaint that

presents a potential conflict of interest (e.g., when the respondent is a Bar employee, Trustee, or has a relationship to the State Bar that presents an actual or potential conflict of interest). Should 2201(a) and / or 2201(i) cases be included in the ADR?

## II. “A comprehensive set of qualitative and quantitative measures.”

The ADR points to the need for a “comprehensive set of qualitative and quantitative measures of the efficacy of the discipline system as a whole.” This brings us back to the challenge of defining the discipline system, and, in addition, defining efficacy.

- a. A proposed working definition of the discipline system would be as follows: Those programs at the Bar that contribute to the *detection, investigation, prosecution, adjudication, and remediation* of attorney misconduct. Working from this definition, we could then focus on the following components of the Bar:
  - a. Detection – OCTC (Intake), Member Records & Compliance;
  - b. Investigation – OCTC
  - c. Prosecution – OCTC
  - d. Adjudication – SBC
  - e. Remediation – Client Securities Fund, Probation, Lawyers Assistance Program.
- b. Efficacy – as measured by % of misconduct detected or amount of misconduct reduced – can never be measured directly. Instead, the Bar can only work with misconduct that is identified and reported. Efforts to improve the efficacy of the discipline system could include the following:
  - i. Improved outreach and intake policies to encourage more reporting of complaints, and making it easier to do so (e.g., allow for online reporting of complaints)
    - Efficacy could be measured based on the number of complaints reported
  - ii. Once complaints are received, efficacy in investigation, prosecution, adjudication and remediation should be identified and measured. Measures to consider:
    - Speed of handling
    - Success in prosecution and adjudication – how to define?
    - Rehabilitation of attorneys – through LAP, training, other Probation efforts, etc.?
    - Complainant restitution
  - iii. User evaluation and feedback: implement a mechanism for complainants to provide feedback at each phase of the discipline system.

- Develop and set up a client satisfaction survey that provides an opportunity for complainants at each phase to provide feedback along the lines of the NCSC’s “Access & Fairness” survey.
- Survey should distinguish between complainants’ level of satisfaction based on the stage at which their case was closed, i.e., Intake, Investigation, Prosecution and Adjudication.

### **III. Process**

The ADR points to the need for the Bar to work with the Legislature to effectuate needed statutory amendments and for the Board of Trustees to develop State Bar rules in 2016 regarding the content of the ADR. What next steps and timeline will get us there?