

AGENDA ITEM III - E

BUSINESS

DATE: January 19, 2017

TO: Members, Regulation and Discipline Committee

FROM: Dag MacLeod, Director, Office of Research & Institutional Accountability

SUBJECT: Proposed Revisions to Business & Professions Code §6086.15

EXECUTIVE SUMMARY

Business & Professions Code section 6086.15 contains various requirements for reporting on the work of the Office of the Chief Trial Counsel. The Bar satisfies these reporting requirements with the production of the Annual Discipline Report. Bar staff have been evaluating the statute and the ways in which the Annual Discipline Report may be improved and statutory amendments that should be introduced to effectuate these improvements.

BACKGROUND

The State Bar's 2015 Annual Discipline Report (2015 ADR) recommended consideration of several statutory amendments, including a change to backlog reporting. The report states: "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."

The recommendation above was initially prompted by concerns raised by the Bureau of State Audits (BSA). In its 2015 report on the State Bar, the BSA recommended that the Bar report on the backlog of certain case types that, under the statutory definition, are excluded from the backlog calculation (for example, Non-Attorney Unauthorized Practice of Law (UPL) cases and assumption of practice cases (Business & Professions Code Sections 6180 and 6190).

Since the publication of the 2015 ADR, further analysis of the reporting requirements contained in Business & Professions Code §6086.15 has identified additional factors for consideration regarding the statutory language that defines the backlog. If the Bar seeks statutory changes to Business & Professions Code §6086.15, it should seek a comprehensive overhaul that tackles all of the issues. Below is a summary of issues that should be considered in any proposed statutory amendment:

1. Clarify the statutory language regarding the types of cases to include in the backlog:
 - If the backlog is intended to measure the performance and operations of the Office of the Chief Trial Counsel (OCTC), it should be limited to cases over which OCTC has control.
2. Modify the definition of backlog:
 - The Backlog Report submitted to the legislature in May 2016 indicated that the current definition of the backlog as 6-months is unrealistic and should be modified to no less than 197 days.
3. Modify the time-frame for reporting the backlog:
 - The December 31st point-in-time for calculating the backlog has the unintended consequence of creating an incentive to set aside cases received after July 1 until the beginning of the following year; a monthly, or quarterly “rolling backlog” or a backlog report that includes cases filed beyond the backlog time-frame would eliminate this incentive.
4. Expand the measures to be reported to capture issues other than backlog:
 - While backlog has been the subject of intense focus and scrutiny, it fails to capture other information that may be helpful in understanding the efficiency and effectiveness of the State Bar discipline system.
 - A focus on more detailed information about case types, complexity and timelines for review and disposition should be fully considered as an alternative to the backlog report.

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

Not applicable

BOARD BOOK IMPACT

Not applicable

BOARD GOALS & OBJECTIVES

Improved measures of the work of the Office of the Chief Trial Counsel are essential to accomplishing the State Bar's mission of public protection.