

# ANNUAL DISCIPLINE REPORT

## FOR YEAR ENDING DECEMBER 31, 2016



THE STATE BAR OF CALIFORNIA  
APRIL 30, 2017

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## 2016 Annual Discipline Report

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## Executive Summary

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## KEY THEMES

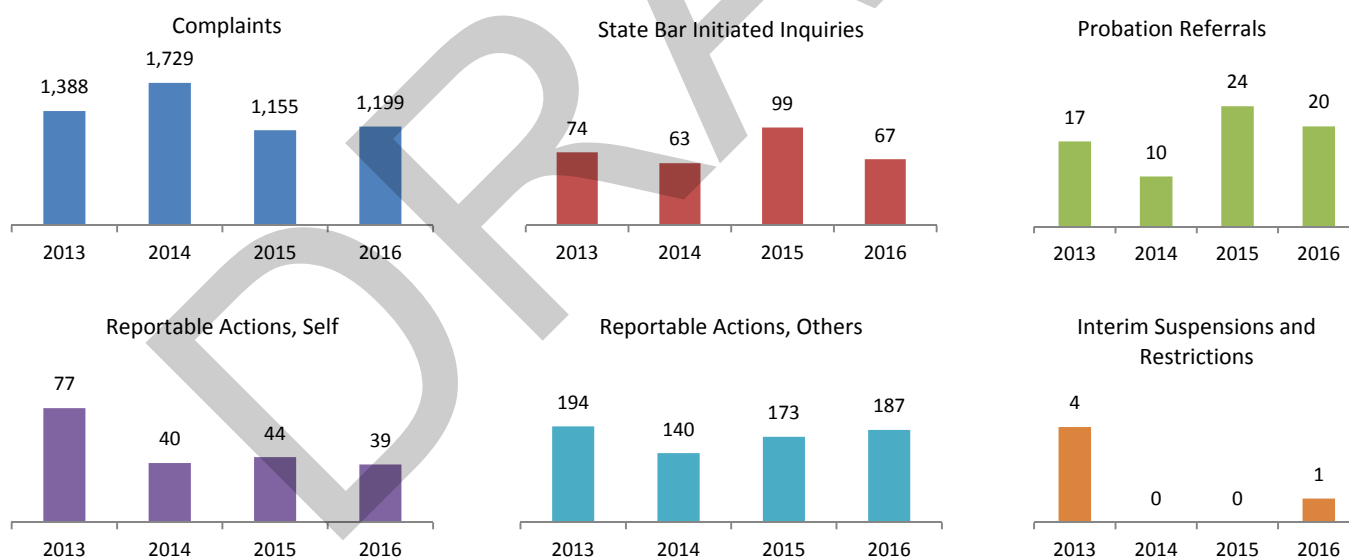
The Annual Discipline Report provides an overview of the performance of the discipline system, reporting on data elements that are mandated by statute. For 2016 the overall backlog remained largely unchanged while case processing times improved, and more cases were filed in State Bar Court for attorney misconduct.

### BACKLOG HOLDING STEADY

The backlog<sup>1</sup> of discipline cases was 1,513 at the end of 2016, reflecting a one percent increase from the 1,495 cases in backlog at the end of 2015. This leveling off of the backlog, along with an increase in the number of cases filed in State Bar Court (Chart B), reflects the Bar's continued commitment to carrying out its critical public protection mission in a timely manner. In the latter part of 2016, the Office of Chief Trial Counsel (OCTC) began implementing a structural reorganization pursuant to recommendations included in the statutorily mandated report on Workforce Planning submitted to the Legislature in May, 2016.<sup>2</sup> OCTC anticipates additional improvements in case processing times once the new organizational structure has been fully implemented and additional resources are provided to OCTC. Chart A shows the number of each type of case comprising the backlog as of December 31 for the past four years.

A glossary of the terminology used in the Annual Discipline Report (Report) is provided as Appendix A. The full text of all statutory citations referenced in the Report is provided in Appendix B, which includes an explanation of minor variances from prior year data that were caused by ongoing review and correction of the underlying data.

Chart A: Cases Pending More than Six Months on December 31, 2016



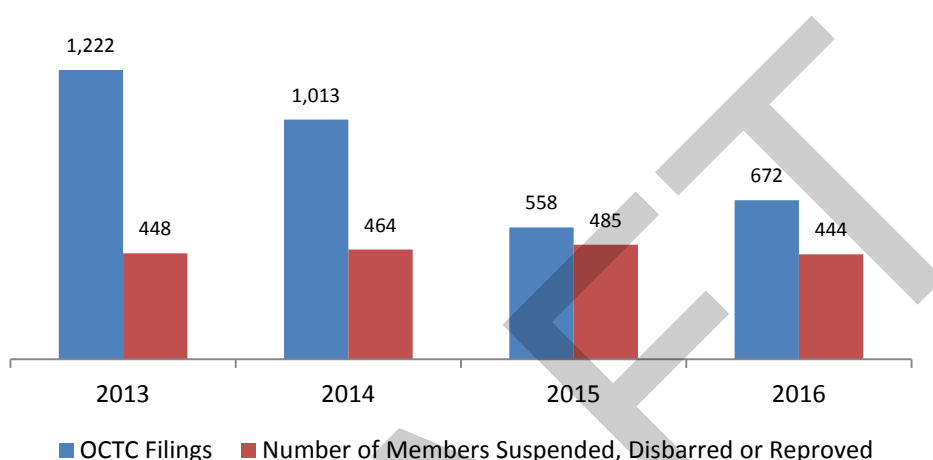
<sup>1</sup> Defined by statute as those open complaints and cases at year's end where the State Bar had not filed disciplinary charges or reached other disposition within six months after receipt of the complaints. This report uses 180 days, as opposed to 6 months, to calculate backlog, which allows for more accurate calculations based on the data structure of the Bar's case management system.

<sup>2</sup> *State Bar of California Workforce Planning: Report to the Office of the Executive Director*. May 10, 2016, National Center for State Courts, Denver.  
<http://www.calbar.ca.gov/LinkClick.aspx?fileticket=sql7pgRpfPY%3d&tabid=224&mid=1534>.

## INCREASED NUMBER OF CASES FILED IN STATE BAR COURT

OCTC receives complaints of attorney misconduct, investigates them and, where appropriate, prosecutes the attorneys. In 2016, OCTC filed 672 cases in State Bar Court, a twenty percent increase in filings compared to the 558 cases filed in 2015. The number of attorneys who were subject to formal discipline decreased nine percent, from 485 in 2015 to 444 in 2016. Filings in State Bar Court in 2016 may not reach disposition until 2017 and may be reported in a subsequent Annual Discipline Report.

Chart B: Disciplinary Filings and Outcomes



In 2016, the State Bar received 15,247 new complaints against California lawyers. As Chart D shows, the vast majority of complaints are found to lack any grounds for discipline, and are closed without disciplinary action. It is important to note that in many instances where a case is closed with no disciplinary action, OCTC staff have in fact intervened to remedy the issues that led to the filing of a complaint. OCTC staff often close cases with warning letters admonishing attorneys whose practices, while questionable, may not constitute a clear violation of the rules of professional conduct, or reflect aberrational conduct of a low level ethical violation not likely to recur and unlikely to result in discipline. Examples of closing letters reflecting the nature of the services provided by OCTC staff even in those instances where matters are closed with “no action” are provided in Appendix C. Chart C illustrates the potential actions taken in cases that are resolved without disciplinary action.

Chart C: Complaints Resolved without Investigation

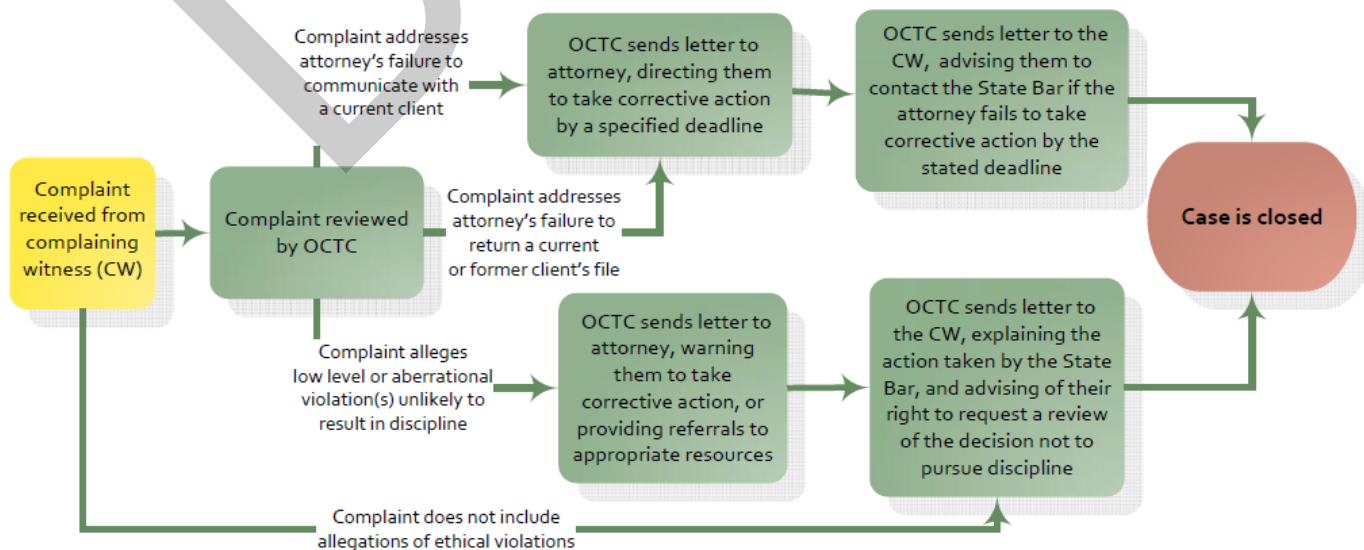
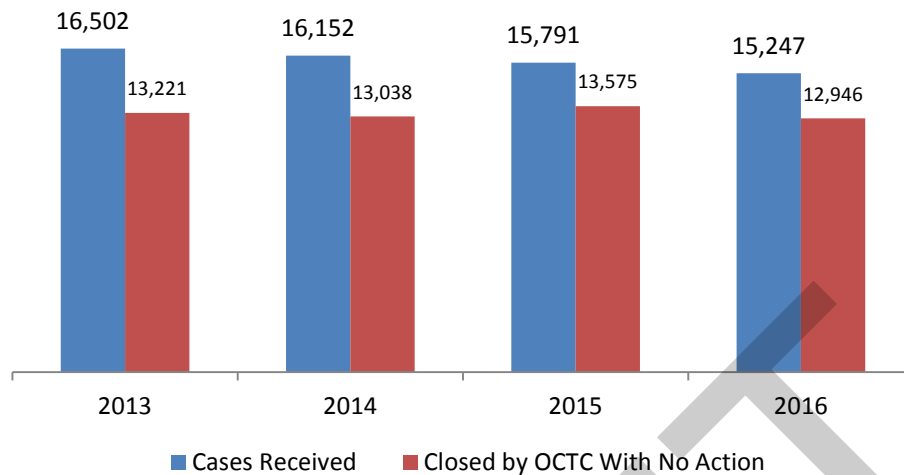


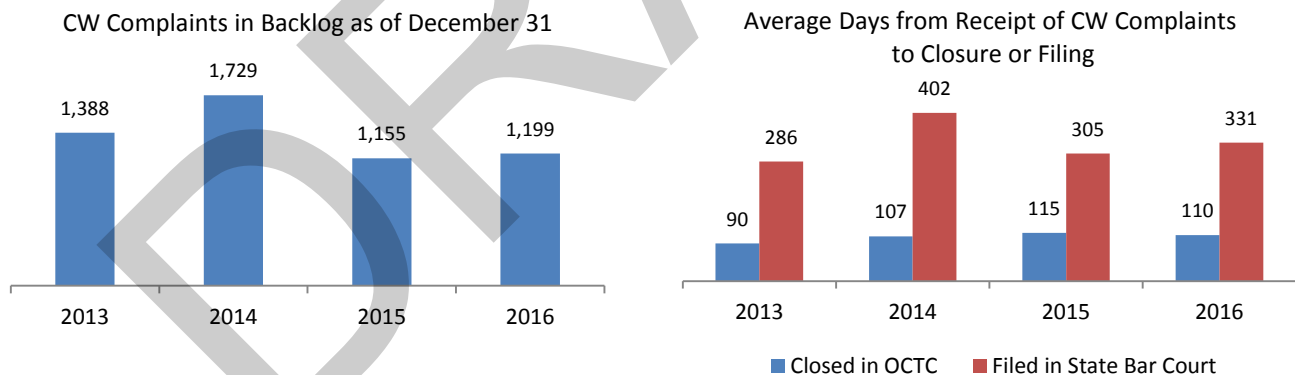
Chart D: Cases Closed with No Disciplinary Action



### IMPROVED RESPONSIVENESS TO PUBLIC COMPLAINTS

In 2016, the State Bar continued to improve responsiveness to complaints received from the public. As illustrated by Chart E, the backlog of complaints from complaining witnesses (CW) has remained at a reduced level for the past two years, demonstrating the State Bar's ongoing commitment to resolving complaints in a timely manner. While there was a slight increase in the average time spent processing complaints from complaining witnesses that resulted in filing a case in State Bar Court, there was a slight reduction in the average processing time of complaints that were closed without filing.

Chart E: Backlog and Speed of Case Handling



### KEY DATA POINTS

Following are key data points on the 2016 performance of the discipline system; complete data is provided in the tables on the following pages.

## ACTIVITY IN 2016

- OCTC received 15,247 new complaints in 2016, a three percent reduction from the 15,791 complaints received in 2015.<sup>3</sup>
- Complaints from complaining witnesses dropped from 12,308 in 2015 to 12,135 in 2016, a one percent reduction.
- State Bar initiated inquiries decreased from 577 to 556, a four percent decrease.
- OCTC closed 15,240 cases and filed formal charges in 672 cases.
- The State Bar Court took action on 903 cases, closing 107 with no action or with non-disciplinary action, issuing formal reprimands or referring cases to the California Supreme Court with a recommendation for suspension or disbarment in 796 cases.
- The Supreme Court disbarred 191 and suspended 202 attorneys in 2016; these figures reflect a ten percent increase over the 174 attorneys disbarred in 2015 and an eighteen percent decrease compared to the 247 attorneys suspended in 2015.
- On December 31, 2016, OCTC had an inventory of 4,428 cases, which included 928 cases, or twenty-two percent, that were suspended while OCTC pursued disbarment action against the same respondents in different cases. The total year-end inventory reflects a nine percent decrease compared to the 4,646 cases pending at the end of 2016.

## SPEED OF CASE HANDLING IN 2016

- Depending on the type of complaint, the average time from receipt of a complaint to closure by OCTC varied from a minimum of 77 days to a maximum of 297 days.<sup>4</sup>
  - The average pendency for complaints from a complaining witness decreased from 115 days in 2015 to 110 days in 2016.
  - The average pendency for a State Bar initiated inquiry decreased from 145 days in 2015 to 121 days in 2016.
- The average time from receipt of a complaint to filing formal charges in State Bar Court also depended on the type of case and varied from a minimum of 126 days to a maximum of 391 days.
  - The average pendency for complaints from a complaining witness increased from 305 days in 2015 to 331 days in 2016.
  - The average pendency for a State Bar initiated inquiry increased from 286 days in 2015 to 368 days in 2016.

## STATUTORY GUIDELINES FOR REPORT

The data provided in this Report is governed by Business and Professions Code sections 6086.15, 6095(b), and section 6126.7, the full text of which can be found in Appendix B. The charts and tables on the following pages are numbered consistent with paragraphs one through eleven of section 6086.15, subdivision (a); each table provides the data specified in the corresponding paragraph.<sup>5</sup>

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<sup>3</sup> These figures include complaints from complainants, State Bar initiated inquiries, referrals from the Office of Probation (relating to violations of conditions of probation), reportable actions (except for criminal conviction matters), and interim suspensions and license restrictions (see Table 2). The following types of cases are excluded: motions to enforce fee arbitration, which are filed by the Mandatory Fee Arbitration Program directly in State Bar Court; motions to terminate practice, which are filed by OCTC in Superior Court; and, investigations into the unauthorized practice of law (UPL). See footnote 7 in the main body of this report for further explanation regarding the exclusion of criminal conviction monitoring and UPL cases. See Appendix A for definitions of key terms.

<sup>4</sup> These figures include cases that were closed by OCTC without filing in State Bar Court.

<sup>5</sup> All further statutory references are to the Business and Professions Code unless otherwise noted.

## **2016 Annual Discipline Report**

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## **CALIFORNIA'S ATTORNEY DISCIPLINE SYSTEM**

In California, a lawyer is licensed when admitted as a member of the State Bar; only active members of the State Bar may practice law. The State Bar is a constitutional agency established in the judicial branch. In administering the requirements for admission and discipline of California lawyers, the State Bar is an administrative arm of the California Supreme Court. Under its inherent judicial power to regulate admission and discipline, it is the Supreme Court that admits, disbars, or suspends a lawyer from the practice of law.

In California's attorney discipline system, all communication and information concerning alleged misconduct of California lawyers is handled by the State Bar's Office of Chief Trial Counsel (OCTC). OCTC investigates those complaints involving allegations of professional misconduct and may initiate and prosecute disciplinary proceedings in State Bar Court (Court). The Hearing Department of the Court conducts evidentiary hearings and renders a decision with findings and recommendations of discipline that are reviewable by the Court's Review Department. In each case, the Court's final decision and accompanying record are then transmitted to the Supreme Court. In cases where the Court recommends the suspension or disbarment of a lawyer, the Supreme Court undertakes an independent determination of the discipline to be imposed. Discipline occurs with a final decision and order of the Supreme Court.<sup>6</sup> Following is a more detailed description of the attorney discipline process.

### **INQUIRY**

The disciplinary process typically begins with receipt of a written complaint in OCTC. Staff in OCTC receive and review complaints that allege ethical misconduct by an attorney or the unauthorized practice of law by a non-attorney. OCTC conducts the initial review of a complaint to determine whether to close it or forward it for investigation. If a complaint sufficiently alleges misconduct, OCTC assigns it for investigation. If it does not, OCTC closes the complaint.

Some complaints lack sufficient detail to allow OCTC to make an informed decision at the outset as to whether or not to assign a case for investigation. In these cases, OCTC will seek additional information to determine the next steps. This information gathering may involve contacting the complainant, reviewing court records, searching the internet, or conducting legal research. For example, in evaluating an allegation of failing to perform competently, if it is unclear whether an attorney-client relationship exists, OCTC will contact the complainant to try to secure a fee agreement or other evidence of such a relationship. If a complaint involves a violation of a court order, OCTC will attempt to obtain a copy of the order if it is not included with the complaint. If a complaint alleges failure to return an unearned fee, OCTC may request billing statements or an accounting to determine if there is a plausible claim of misconduct, and may assist the complainant in recovering fees from the respondent. Appendix C provides samples of letters sent to complainants that reflect the efforts of OCTC to undertake a meaningful analysis of the facts and their applicability to the rules governing the prosecution of attorney misconduct, as well as to assist complainants and respondents in resolving issues, prior to closing a complaint.

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<sup>6</sup> Public and private reprimands are also considered formal discipline; issuance of a reprimand by the Court does not require Supreme Court action.

## **INVESTIGATION**

Investigations are carried out by investigators in OCTC, under the guidance and supervision of OCTC attorneys. Investigators may interview witnesses and respondents, subpoena and analyze bank records, obtain court documents, and otherwise evaluate and analyze the case to determine whether there is clear and convincing evidence of attorney misconduct that would allow OCTC to bring disciplinary proceedings in Court. After a determination to proceed with disciplinary proceedings, the complaint advances to the pre-filing stage.

When multiple complaints are made against the same attorney, OCTC will often focus its resources and prosecutorial efforts on those complaints most likely to result in disbarment. In such an event, the investigation of the other complaints may be suspended or “held.” If OCTC is successful in obtaining disbarment, prosecution of the suspended cases will no longer be necessary and the remaining complaints will not be investigated further.<sup>7</sup> If the attorney is not disbarred, however, OCTC may re-activate any suspended investigations. If an attorney is the subject of a criminal prosecution or party to civil action for the same misconduct, OCTC may suspend its investigation until the criminal or civil proceedings have concluded.

## **PRE-FILING**

Before finalizing formal charges, OCTC evaluates the evidence gathered during the investigation and any subsequent information received from the respondent or other source. Where OCTC has determined there is sufficient evidence to file a Notice of Disciplinary Charges, OCTC will notify the respondent in writing of the intent to file such charges and the attorney’s right to request a confidential Early Neutral Evaluation Conference (ENE) as required by the State Bar Rules of Procedure. Either party may request an ENE before a State Bar Court judge who will orally evaluate the facts, charges, and potential for discipline. Prior to the ENE, OCTC must provide the ENE judge with a draft or summary of the charges and OCTC’s settlement position. Regardless of whether either party requests an ENE, OCTC also provides the respondent an opportunity to request informal discovery and to discuss potential settlement. If the parties are unable to reach a resolution or the respondent does not respond to OCTC’s written notice, OCTC will proceed to file charges.

After the filing of formal charges, the parties may explore the appropriateness of participation in the Alternative Discipline Program (Program) for respondents with substance abuse and/or mental health concerns. Participation is contingent upon the following: 1) the Court’s approval of a stipulation of facts and conclusions of law signed by the parties; 2) evidence that the respondent’s substance abuse or mental health issue causally contributed to the misconduct; and 3) respondent’s acceptance into the Bar’s Lawyer Assistance Program (LAP). The extent and severity of the respondent’s stipulated misconduct, including the degree of harm suffered by his or her clients, if any, are factors in determining eligibility for the Program. The stipulation includes the level of discipline that will be imposed if the program is completed successfully, and a higher level of discipline that will be imposed if the attorney does not complete the program. If the respondent successfully completes the Program, the disposition may be dismissal of the charges or proceeding or some other level of discipline less than disbarment; if the respondent does not complete the Program, the higher level of discipline will be imposed.

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<sup>7</sup> Complainants in cases dismissed under these circumstances are eligible for reimbursement through the Client Security Fund.

## HEARING AND REVIEW

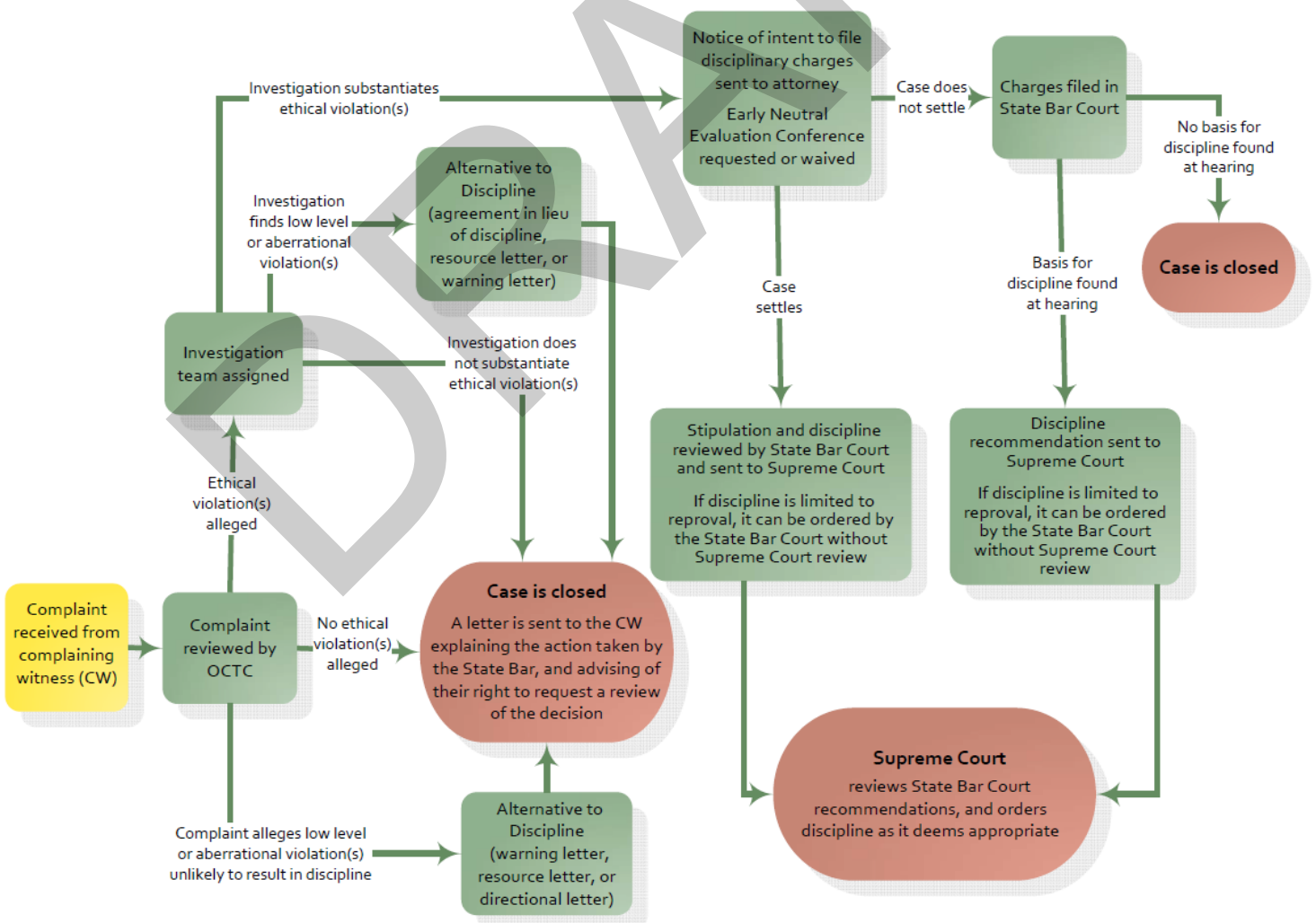
After the filing of disciplinary charges, OCTC prosecutes the case in the Hearing Department, which is the trial level of the Court. Five full-time judges hear and decide cases, and make recommendations to the Supreme Court in cases where discipline includes suspension or disbarment. If the discipline is limited to reproof, it can be imposed by the Court without review by the Supreme Court.

The Review Department is the appellate level of the State Bar Court, consisting of the presiding judge and two other review judges. The three-judge panel acts on a statewide basis to conduct *de novo* reviews of Hearing Department decisions and orders in cases in which at least one of the parties has sought review. Review judges review and decide cases, and make recommendations to the Supreme Court in cases in which one or both of the parties have sought review of a hearing judge's decision, exercise temporary suspension and other powers delegated to it by the Supreme Court according to rule 9.10, California Rules of Court; and conduct discretionary interlocutory review on issues materially affecting the outcome of the Hearing Department cases.

## SUPREME COURT

Upon the filing of the Court's decision and the record, the Supreme Court conducts its own independent determination and action. Discipline is not imposed until the Supreme Court issues its final order or decision.

Chart F: Client Complaint Process



## BACKLOG<sup>8</sup>

**Section 6086.15, subdivision (a)(1)** *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 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.*

As Table 1A shows, the total number of cases in backlog was effectively unchanged, increasing a scant one percent compared to the number of cases in backlog at the end of 2015. This slight increase in backlog was driven primarily by an increase in the number of Complaining Witness cases (Complaints) in backlog and also an increase in the number of Reportable Actions Reported by Others, in backlog. These increases were partially offset by decreases in the number of State Bar Initiated cases, Reportable Actions Reported by Self, and Probation Referrals in backlog.

More than half of the 1,513 complaints in backlog are cases that are either currently suspended or were previously suspended and have since been reactivated. As discussed above, when multiple complaints are made against the same attorney, OCTC may select and prosecute only those complaints likely to result in disbarment while holding the other cases in a suspended status. If OCTC is successful in obtaining disbarment, the remaining complaints are closed. If the attorney is not disbarred, OCTC may reactivate any suspended investigations. The pendency of both suspended and reactivated complaints reflects the dates they were originally received.

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<sup>8</sup> The following types of cases are excluded from the backlog count:

*Criminal Conviction Matters:* Criminal complaints filed against members of the State Bar are reportable actions, but may not be prosecuted unless and until the attorney is convicted in the underlying criminal proceeding. Since months or years may elapse between the receipt of such a report and the ultimate disposition of the criminal case, these cases are not included in the calculation of the backlog. Information about criminal conviction matters is, however, provided in Table 3 and Table 4, as well as Appendix D.

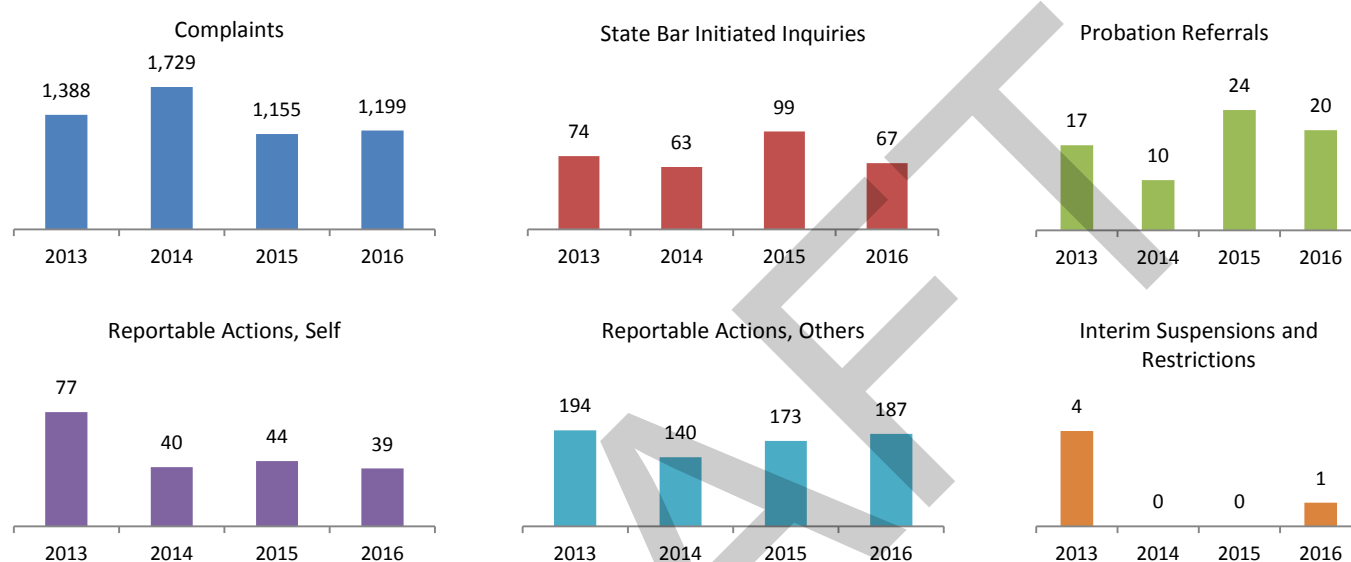
*Unauthorized Practice of Law (UPL):* The State Bar's primary jurisdiction involves the regulation of attorneys; statutory authority is provided to the State Bar for limited action, including pursuit of civil penalties against non-attorneys and assumption of the non-attorney's practice. Because the State Bar does not have the authority to impose discipline in these cases, they are not included in the calculation of the backlog. Data regarding UPL matters for both former attorneys and non-attorneys is provided in Table 8 and Table 9, respectively. Additional information regarding UPL, notario, and immigration attorney misconduct is provided as Appendix E.

*Motions to Enforce Fee Arbitration and Motions to Revoke Probation:* These cases are filed directly in State Bar Court, by the Mandatory Fee Arbitration Program and the Office of Probation, respectively. As such, they are not included in the backlog.

Fifty-five percent of complaints in backlog status were suspended due to anticipated disbarment on other cases filed against the attorney, overlapping litigation, default status on pending litigation likely to result in disbarment, or an inactive enrollment order.

The remaining forty-five percent of cases in backlog status reflect active pending complaints at various stages of case processing, from intake to pre-filing.

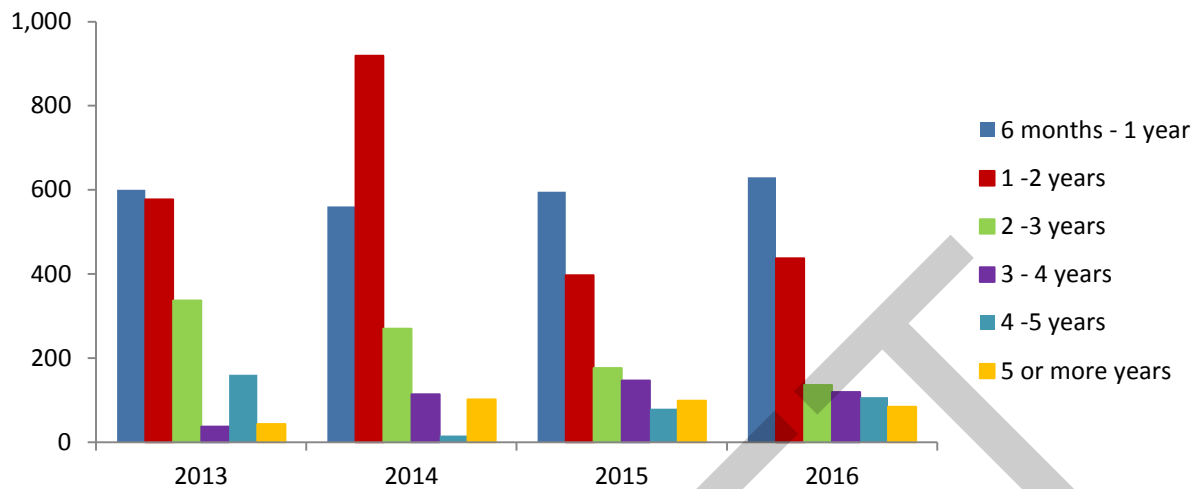
Chart 1A: Cases Pending More than Six Months on December 31



<b>Table 1A: Backlog</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Complaints	1,388	1,729	1,155	1,199
State Bar Initiated Inquiries	74	63	99	67
Probation Referrals	17	10	24	20
Reportable Actions, Reported by Self	77	40	44	39
Reportable Actions, Reported by Others	194	140	173	187
Interim Suspensions and Restrictions	4	0	0	1
<b>Total</b>	<b>1,754</b>	<b>1,982</b>	<b>1,495</b>	<b>1,513</b>

Despite the slight increase in the number of cases in backlog, the age of the cases in backlog fell for the second consecutive year. As Chart 1B shows, the percent of backlog cases pending for more than two years fell from twenty-seven percent in 2015 to twenty-four percent in 2016. The decline in the number of the oldest cases is matched by a corresponding increase in the number of cases pending for two years or less, which increased by five percentage points, from sixty-six to seventy-one percent.

Chart 1B: Cases Pending More than Six Months<sup>9</sup>



**Table 1B: Aged Backlog**

	2013	2014	2015	2016
<b>All Case Types</b>				
181 - 360 days	600	561	596	630
361 - 720 days	577	919	397	437
721 - 1080 days	337	270	176	136
1081 - 1440 days	37	114	147	119
1441 - 1800 days	160	16	80	107
1801 or more days	43	102	99	84
<b>Total</b>	<b>1,754</b>	<b>1,982</b>	<b>1,495</b>	<b>1,513</b>
<b>Complaints</b>				
181 - 360 days	398	426	396	499
361 - 720 days	468	843	297	297
721 - 1080 days	306	247	156	105
1081 - 1440 days	32	107	136	114
1441 - 1800 days	152	15	77	103
1801 or more days	32	91	93	81
<b>Total</b>	<b>1,388</b>	<b>1,729</b>	<b>1,155</b>	<b>1,199</b>
<b>State Bar Initiated Inquiries</b>				
181 - 360 days	34	29	62	31
361 - 720 days	25	18	23	22
721 - 1080 days	6	8	6	11
1081 - 1440 days	2	3	4	1
1441 - 1800 days	3	1	2	2
1801 or more days	4	4	2	0
<b>Total</b>	<b>74</b>	<b>63</b>	<b>99</b>	<b>67</b>

<sup>9</sup> Table 1B shows the age of cases in backlog reflecting 360 days per year, consistent with the calculation of 6 months as 180 days, as noted in footnote 1. Chart 1B refers to years for ease of reading, but is based on the data provided in Table 1B.

<b>Table 1B: Aged Backlog</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<u>Probation Referrals</u>				
181 - 360 days	11	7	9	4
361 - 720 days	4	1	12	6
721 - 1080 days	1	1	1	7
1081 - 1440 days	0	1	1	1
1441 - 1800 days	0	0	1	1
1801 or more days	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
<b>Total</b>	<b>17</b>	<b>10</b>	<b>24</b>	<b>20</b>
<u>Reportable Actions, Reported by Self</u>				
181 - 360 days	28	20	25	19
361 - 720 days	39	12	15	15
721 - 1080 days	7	8	2	4
1081 - 1440 days	1	0	2	0
1441 - 1800 days	2	0	0	1
1801 or more days	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>Total</b>	<b>77</b>	<b>40</b>	<b>44</b>	<b>39</b>
<u>Reportable Actions, Reported by Others</u>				
181 - 360 days	129	79	104	76
361 - 720 days	41	45	50	97
721 - 1080 days	13	6	11	9
1081 - 1440 days	2	3	4	3
1441 - 1800 days	3	0	0	0
1801 or more days	<u>6</u>	<u>7</u>	<u>4</u>	<u>2</u>
<b>Total</b>	<b>194</b>	<b>140</b>	<b>173</b>	<b>187</b>
<u>Interim Suspensions and Restrictions</u>				
181 - 360 days	0	0	0	1
361 - 720 days	0	0	0	0
721 - 1080 days	4	0	0	0
1081 - 1440 days	0	0	0	0
1441 - 1800 days	0	0	0	0
1801 or more days	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<b>Total</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>1</b>
<b>Grand Total</b>	<b>1,754</b>	<b>1,982</b>	<b>1,495</b>	<b>1,513</b>

## CASE INVENTORY AND DISPOSITION<sup>10</sup>

### *Section 6086.15, subdivision (a) (2) The number of inquiries and complaints and their disposition.*

Chart 2A reflects the total number of new cases received each year by OCTC, as well as the number of cases pending at year end. OCTC received a total of 15,247 new cases in 2016, compared to 15,791 in 2015, which represents a decrease of three percent. The number of cases pending was reduced from 4,646 at the end of 2015 to 4,248 at the end of 2016, which represents a reduction of nine percent in the total number of unresolved cases at the end of the year.

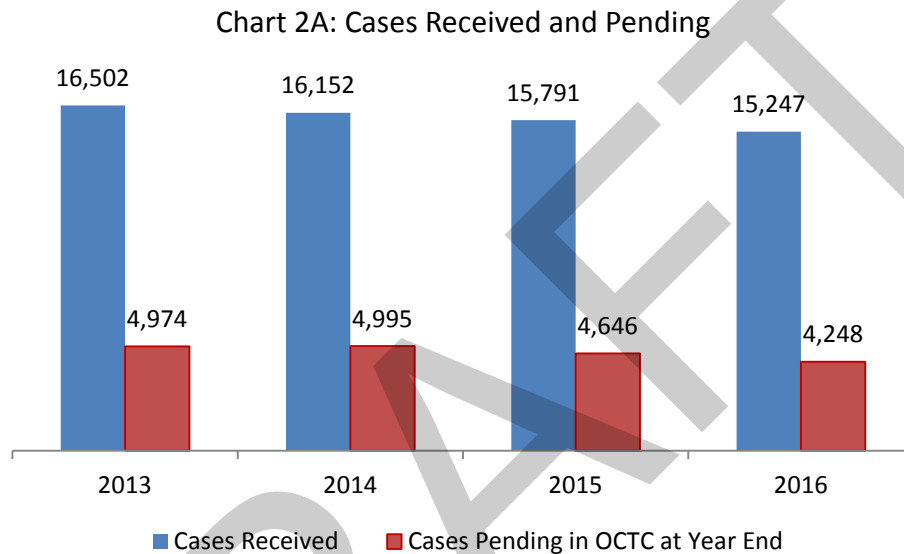


Chart 2B shows the total number of cases filed in State Bar Court each year, along with the dispositions of cases closed by the Court during the same year.<sup>11</sup> OCTC filed 672 cases in Court in 2016, compared to 558 in 2015, which represents a twenty percent increase in filings. The total number of cases closed by the Court in 2016 was 903, compared to 1,011 cases closed in 2015, a reduction of eleven percent. Of cases closed by the Court in 2016, eleven percent were closed with no action, less than one percent were closed with non-disciplinary action, and eighty-eight percent were closed with discipline imposed.<sup>12</sup>

<sup>10</sup> Tables 2A and 2B do not include criminal conviction matters and UPL cases, to enable a consistent comparison with the data in Tables 1A and 1B.

<sup>11</sup> The State Bar Court may not dispose of cases during the same year that they are filed by OCTC, so there is not a one-to-one correlation between OCTC filings during a year and the number of cases disposed by the State Bar Court.

<sup>12</sup> See Appendix A for a description of OCTC dispositions.



Chart 2B: State Bar Court Filings and Outcomes

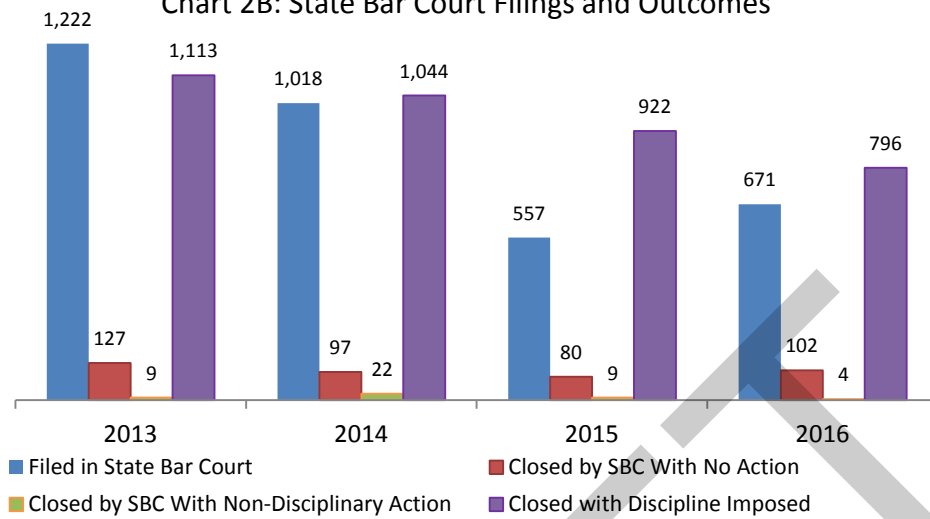


Table 2: Inquiries and Complaints	2013	2014	2015	2016
<u>Summary: All Case Types</u>				
Cases Received	16,502	16,152	15,791	15,247
Cases Reopened	212	202	118	264
Closed by OCTC With No Action	13,221	13,038	13,575	12,946
Closed by OCTC With Referral	378	344	287	299
Closed by OCTC With Non-Disciplinary Action	<u>1,881</u>	<u>1,937</u>	<u>1,848</u>	<u>1,995</u>
<i>Total Cases Closed by OCTC</i>	<i>15,480</i>	<i>15,319</i>	<i>15,710</i>	<i>15,240</i>
Filed in State Bar Court	1,222	1,018	557	671
Cases Pending in OCTC at Year End	4,974	4,995	4,646	4,248
Closed by SBC With No Action	127	97	80	102
Closed by SBC With Non-Disciplinary Action	9	22	9	5
Closed with Discipline Imposed	<u>1,113</u>	<u>1,044</u>	<u>922</u>	<u>796</u>
<i>Total Cases Closed by SBC</i>	<i>1,249</i>	<i>1,163</i>	<i>1,011</i>	<i>903</i>
Cases Pending in SBC at Year End	1,807	1,668	1,215	989
<u>Complaints</u>				
Complaints Received	13,050	12,745	12,308	12,135
Complaints Reopened	204	198	114	254
Closed by OCTC With No Action	10,316	10,513	10,773	10,218
Closed by OCTC With Referral	378	344	283	299
Closed by OCTC With Non-Disciplinary Action	<u>1,472</u>	<u>1,591</u>	<u>1,469</u>	<u>1,468</u>
<i>Total Complaints Closed by OCTC</i>	<i>12,166</i>	<i>12,448</i>	<i>12,525</i>	<i>11,985</i>
Filed in State Bar Court	933	593	340	392
Complaints Pending in OCTC at Year End	4,058	3,964	3,530	3,541
Closed by SBC With No Action	66	72	58	76
Closed by SBC With Non-Disciplinary Action	0	2	1	1
Closed with Discipline Imposed	<u>821</u>	<u>733</u>	<u>593</u>	<u>536</u>
<i>Total Complaints Closed by SBC</i>	<i>887</i>	<i>807</i>	<i>652</i>	<i>613</i>
Complaints Pending in SBC at Year End	1,378	1,168	857	641

<b>Table 2: Inquiries and Complaints</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<u>State Bar Initiated Inquiries</u>				
Inquiries Initiated	411	425	577	556
Inquiries Reopened	6	1	3	3
Closed by OCTC With No Action	237	246	309	308
Closed by OCTC With Referral	0	0	0	0
Closed by OCTC With Non-Disciplinary Action	<u>65</u>	<u>101</u>	<u>99</u>	<u>256</u>
<i>Total Inquiries Closed by OCTC</i>	302	347	408	564
Filed in State Bar Court	72	104	83	70
Inquiries Pending in OCTC at Year End	165	140	229	154
Closed by SBC With No Action	13	18	5	9
Closed by SBC With Non-Disciplinary Action	0	0	0	0
Closed with Discipline Imposed	<u>50</u>	<u>78</u>	<u>74</u>	<u>102</u>
<i>Total Inquiries Closed by SBC</i>	63	96	79	111
Inquiries Pending in SBC at Year End	106	116	120	79
<u>Probation Referrals</u>				
Probation Referrals Received	132	137	97	100
Probation Referrals Reopened	1	1	1	0
Closed by OCTC With No Action	30	19	22	32
Closed by OCTC With Referral	0	0	0	0
Closed by OCTC With Non-Disciplinary Action	<u>2</u>	<u>3</u>	<u>2</u>	<u>3</u>
<i>Total Probation Referrals Closed by OCTC</i>	32	22	24	35
Filed in State Bar Court	101	118	59	82
Probation Referrals Pending in OCTC at Year	52	50	65	48
Closed by SBC With No Action	10	4	13	11
Closed by SBC With Non-Disciplinary Action	0	0	0	0
Closed with Discipline Imposed	<u>114</u>	<u>87</u>	<u>101</u>	<u>70</u>
<i>Total Probation Referrals Closed by SBC</i>	124	91	114	81
Probation Referrals Pending in SBC at Year	137	164	109	111
<u>Reportable Actions, Self-Reported</u>				
Actions Reported	169	226	197	174
Reportable Actions Reopened	0	1	0	1
Closed by OCTC With No Action	170	189	181	184
Closed by OCTC With Referral	0	0	0	0
Closed by OCTC With Non-Disciplinary Action	<u>11</u>	<u>14</u>	<u>5</u>	<u>17</u>
<i>Total Reportable Actions Closed by OCTC</i>	181	203	186	201
Filed in State Bar Court	18	26	18	16
Reportable Actions Pending in OCTC at Year	119	117	110	68
Closed by SBC With No Action	2	1	0	3
Closed by SBC With Non-Disciplinary Action	0	0	0	0
Closed with Discipline Imposed	<u>26</u>	<u>18</u>	<u>24</u>	<u>16</u>
<i>Total Reportable Actions Closed by SBC</i>	28	19	24	19
Reportable Actions Pending in SBC at Year End	22	29	23	20

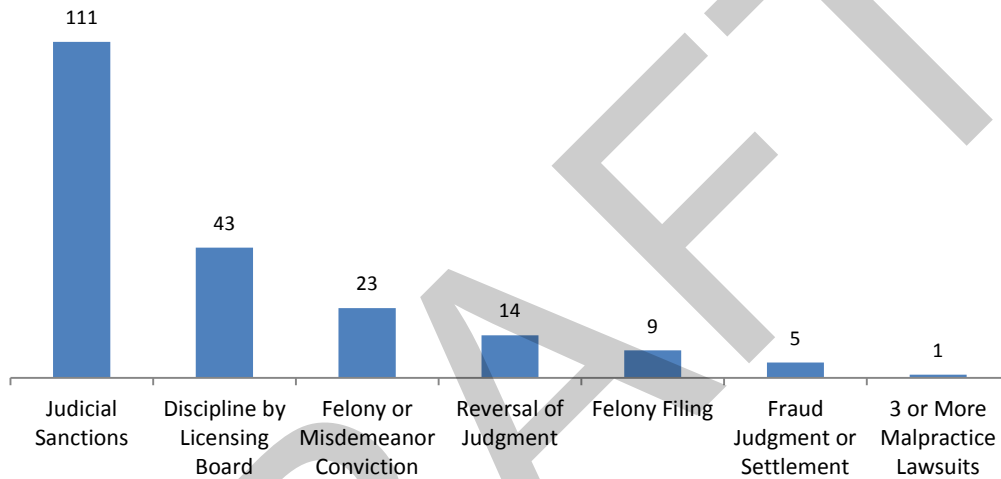
<b>Table 2: Inquiries and Complaints</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<u>Reportable Actions, Reported by Others</u>				
Actions Reported	2,733	2,603	2,607	2,277
Reportable Actions Reopened	1	1	0	6
Closed by OCTC With No Action	2,467	2,066	2,290	2,204
Closed by OCTC With Referral	0	0	4	0
Closed by OCTC With Non-Disciplinary Action	<u>331</u>	<u>228</u>	<u>273</u>	<u>251</u>
<i>Total Reportable Actions Closed by OCTC</i>	<i>2,798</i>	<i>2,294</i>	<i>2,567</i>	<i>2,455</i>
Filed in State Bar Court	91	162	52	107
Reportable Actions Pending in OCTC at Year	576	724	712	435
Closed by SBC With No Action	35	1	3	2
Closed by SBC With Non-Disciplinary Action	0	8	0	0
Closed with Discipline Imposed	<u>102</u>	<u>128</u>	<u>130</u>	<u>72</u>
<i>Total Reportable Actions Closed by SBC</i>	<i>137</i>	<i>137</i>	<i>133</i>	<i>74</i>
Reportable Actions Pending in SBC at Year End	161	186	105	138
<u>Interim Suspensions and Restrictions</u>				
ISRs Received	7	16	5	5
ISRs Reopened	0	0	0	0
Closed by OCTC With No Action	1	5	0	0
Closed by OCTC With Referral	0	0	0	0
Closed by OCTC With Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total ISRs Closed by OCTC</i>	<i>1</i>	<i>5</i>	<i>0</i>	<i>0</i>
Filed in State Bar Court	7	15	5	4
ISRs Pending in OCTC at Year End	4	0	0	2
Closed by SBC With No Action	1	1	1	1
Closed by SBC With Non-Disciplinary Action	9	12	8	4
Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total ISRs Closed by SBC</i>	<i>10</i>	<i>13</i>	<i>9</i>	<i>5</i>
ISRs Pending in SBC at Year End	3	5	1	0

## SELF-REPORTED REPORTABLE ACTIONS

**Section 6086.15, subdivision (a)(3)** *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.*<sup>13,14</sup>

State law requires attorneys to self-report when a number of situations occur, including when three or more malpractice lawsuits have been filed against them within twelve months, when a civil judgment is entered against them in a fraud case, or when felony charges have been filed against them. While the number of self-reported actions decreased by sixteen percent between 2015 and 2016, the number of cases in which OCTC took some action increased from 54 to 56.

Chart 3: Self-Reported Actions 2016



<b>Table 3: Reportable Actions, Reported by Self</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<u>Summary: All Reportable Actions, Reported by Self</u>				
Reports Received	224	280	244	206
Cases Reopened	0	1	0	1
Cases Closed by OCTC Without Action	184	205	207	192
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>11</u>	<u>14</u>	<u>5</u>	<u>17</u>
<i>Total Cases Closed by OCTC</i>	195	219	212	209
Cases Filed in State Bar Court	56	68	49	39
Cases Remaining in OCTC at Year End	186	185	170	123
Cases Closed by SBC Without Action	10	11	7	7
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>57</u>	<u>40</u>	<u>40</u>	<u>51</u>
<i>Total Cases Closed by State Bar Court</i>	67	51	47	58
Cases Remaining in SBC at Year End	106	121	128	102

<sup>13</sup> The full text of sections 6068 and 6086.8 is provided in Appendix B.

<sup>14</sup> The figures in Table 3 differ from those in Table 2 for this category because Table 3 includes reports of criminal conviction matters, which are excluded from Table 2.

<b>Table 3: Reportable Actions, Reported by Self</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<u>Three or more malpractice lawsuits filed within 12 months (§6068, subd. (o)(1))</u>				
Reports Received	4	5	2	1
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	5	3	6	1
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	5	3	6	1
Average Pendency at Closure <sup>15</sup>	472	206	299	29
Median Pendency at Closure	317	4	161	29
Cases Filed in State Bar Court	0	0	0	0
Average Pendency at Filing	0	0	0	0
Median Pendency at Filing	0	0	0	0
Cases Remaining in OCTC at Year End	2	4	0	0
Average Pendency at Year End	342	258	0	0
Median Pendency at Year End	160	134	0	0
Cases Closed by SBC Without Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by State Bar Court</i>	0	1	0	0
Average Pendency at Closure	0	1,228	0	0
Median Pendency at Closure	0	1,228	0	0
Cases Remaining in SBC at Year End	1	0	0	0
Average Pendency at Year End	1,127	0	0	0
Median Pendency at Year End	1,127	0	0	0
<u>Judgment in civil case for fraud, misrepresentation, gross negligence, etc. (§6068, subd. (o)(2))</u>				
Reports Received	7	12	4	5
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	11	10	8	1
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	11	10	9	1
Average Pendency at Closure	430	189	178	43
Median Pendency at Closure	536	61	144	43
Cases Filed in State Bar Court	1	1	0	0
Average Pendency at Filing	414	555	0	0
Median Pendency at Filing	414	555	0	0
Cases Remaining in OCTC at Year End	4	5	0	4

<sup>15</sup> Pendency is reported in days.

<b>Table 3: Reportable Actions, Reported by Self</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Average Pendency at Year End	281	104	0	134
Median Pendency at Year End	92	112	0	113
Cases Closed by SBC Without Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>1</u>	<u>1</u>	<u>1</u>	<u>0</u>
<i>Total Cases Closed by State Bar Court</i>	1	1	1	0
Average Pendency at Closure	1,219	896	714	0
Median Pendency at Closure	1,219	896	714	0
Cases Remaining in SBC at Year End	2	2	1	1
Average Pendency at Year End	878	1,040	1,739	2,105
Median Pendency at Year End	747	707	1,739	2,105
<u>Judicial sanctions imposed (§6068, subd. (o)(3))</u>				
Reports Received	106	146	129	111
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	128	137	122	133
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>5</u>	<u>10</u>	<u>1</u>	<u>11</u>
<i>Total Cases Closed by OCTC</i>	133	147	123	144
Average Pendency at Closure	200	285	192	150
Median Pendency at Closure	100	140	152	81
Cases Filed in State Bar Court	2	7	3	5
Average Pendency at Filing	601	582	452	478
Median Pendency at Filing	256	510	441	412
Cases Remaining in OCTC at Year End	78	70	73	35
Average Pendency at Year End	395	180	219	348
Median Pendency at Year End	285	104	157	257
Cases Closed by SBC Without Action	0	1	0	1
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>20</u>	<u>4</u>	<u>2</u>	<u>3</u>
<i>Total Cases Closed by State Bar Court</i>	20	5	2	4
Average Pendency at Closure	1,002	798	611	1,627
Median Pendency at Closure	1,187	695	572	1,350
Cases Remaining in SBC at Year End	5	7	8	9
Average Pendency at Year End	877	999	1,242	998
Median Pendency at Year End	840	1,191	1,050	724
<u>Felony indictment (§6068, subd. (o)(4))</u>				
Reports Received	11	16	18	9
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	2	6	4	3

<b>Table 3: Reportable Actions, Reported by Self</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	2	6	4	3
Average Pendency at Closure	634	723	1,370	960
Median Pendency at Closure	268	598	715	1,189
Cases Filed in State Bar Court	13	9	10	9
Average Pendency at Filing	660	435	366	655
Median Pendency at Filing	542	330	225	333
Cases Remaining in OCTC at Year End	37	40	47	41
Average Pendency at Year End	610	585	564	669
Median Pendency at Year End	440	329	338	561
Cases Closed by SBC Without Action	3	6	3	3
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>7</u>	<u>8</u>	<u>2</u>	<u>12</u>
<i>Total Cases Closed by State Bar Court</i>	10	14	5	15
Average Pendency at Closure	888	994	941	1,477
Median Pendency at Closure	848	882	992	1,515
Cases Remaining in SBC at Year End	39	34	43	34
Average Pendency at Year End	1,121	1,293	1,361	1,462
Median Pendency at Year End	924	1,122	1,185	1,244
<u>Conviction of felony, or misdemeanor related to practice of law (§6068, subd. (o)(5))</u>				
Reports Received	44	38	29	23
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	12	10	22	5
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	12	10	22	5
Average Pendency at Closure	113	378	350	110
Median Pendency at Closure	48	170	294	123
Cases Filed in State Bar Court	25	33	21	14
Average Pendency at Filing	167	172	113	191
Median Pendency at Filing	60	37	44	173
Reports Remaining in OCTC at Year End	30	28	13	14
Average Pendency at Year End	360	280	184	248
Median Pendency at Year End	111	232	78	255
Cases Closed by SBC Without Action	5	4	4	1
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>24</u>	<u>14</u>	<u>14</u>	<u>23</u>
<i>Total Cases Closed by State Bar Court</i>	29	18	18	24

<b>Table 3: Reportable Actions, Reported by Self</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Average Pendency at Closure	548	688	873	771
Median Pendency at Closure	421	521	627	608
Cases Remaining in SBC at Year End	45	58	62	48
Average Pendency at Year End	696	712	715	830
Median Pendency at Year End	468	512	567	698
<u>Discipline by professional agency or licensing board (§6068, subd. (o)(6))</u>				
Reports Received	37	47	37	43
Cases Reopened	0	1	0	1
Cases Closed by OCTC Without Action	14	26	23	31
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>2</u>	<u>3</u>	<u>0</u>	<u>5</u>
<i>Total Cases Closed by OCTC</i>	16	29	23	36
Average Pendency at Closure	141	203	350	189
Median Pendency at Closure	79	127	232	48
Cases Filed in State Bar Court	15	18	15	11
Average Pendency at Filing	219	311	298	352
Median Pendency at Filing	154	341	267	381
Cases Remaining in OCTC at Year End	29	30	29	26
Average Pendency at Year End	266	283	175	272
Median Pendency at Year End	264	159	59	186
Cases Closed by SBC Without Action	2	0	0	2
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>5</u>	<u>12</u>	<u>21</u>	<u>13</u>
<i>Total Cases Closed by State Bar Court</i>	7	12	21	15
Average Pendency at Closure	373	516	597	753
Median Pendency at Closure	360	440	512	625
Cases Remaining in SBC at Year End	14	20	14	10
Average Pendency at Year End	418	545	678	509
Median Pendency at Year End	420	483	559	425
<u>Reversal of judgment based on misconduct, gross incompetence, etc. (§6068, subd. (o)(7))</u>				
Reports Received	15	16	25	14
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	12	13	22	18
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>4</u>	<u>1</u>	<u>3</u>	<u>1</u>
<i>Total Cases Closed by OCTC</i>	16	14	25	19
Average Pendency at Closure	75	237	182	150
Median Pendency at Closure	43	116	162	96
Cases Filed in State Bar Court	0	0	0	0



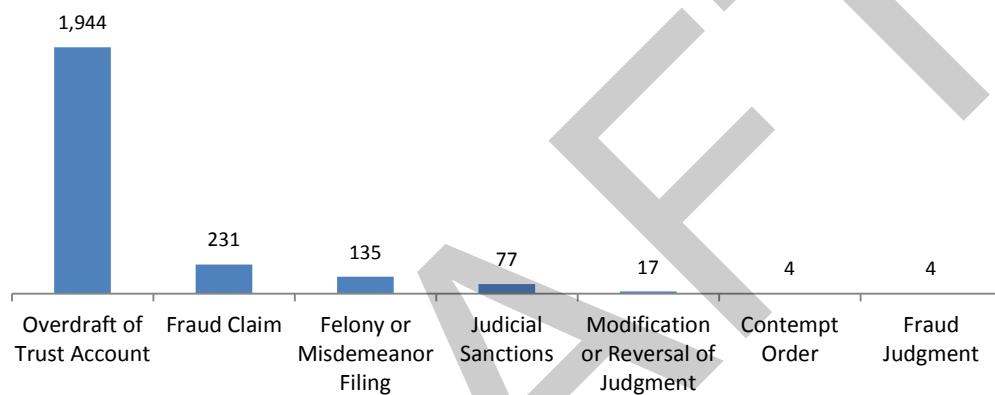
<b>Table 3: Reportable Actions, Reported by Self</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Average Pendency at Filing	0	0	0	0
Median Pendency at Filing	0	0	0	0
Cases Remaining in OCTC at Year End	6	8	8	3
Average Pendency at Year End	428	227	199	234
Median Pendency at Year End	249	111	97	318
Cases Closed by SBC Without Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by State Bar Court</i>	0	0	0	0
Average Pendency at Closure	0	0	0	0
Median Pendency at Closure	0	0	0	0
Cases Remaining in SBC at Year End	0	0	0	0
Average Pendency at Year End	0	0	0	0
Median Pendency at Year End	0	0	0	0
<u>Settlement or judgment for civil fraud, misrepresentation, gross negligence, etc. (§6086.8, subd. (c))</u>				
Reports Received	0	0	0	0

## REPORTABLE ACTIONS, REPORTED BY OTHERS

*Section 6086.15, subdivision (a)(4) 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.<sup>16,17</sup>*

The most common action reported by others, accounting for approximately eighty percent of all reports each year, was action falling under section 6091.1, which requires financial institutions to report overdrafts from attorney trust accounts. Fraud claims, reported pursuant to section 6086.8, subdivision (b), accounted for an additional ten percent of reportable actions in 2016.

Chart 4: Actions Reported by Others 2016



An interesting opportunity for analysis is presented by the potential overlap between actions that attorneys are required to self-report and those that are reported by others. Unfortunately, there are only two areas that precisely align, for such a comparison:<sup>18</sup>

- Section 6068, subdivision (o)(2), requires attorneys to report judgments based on fraud, misrepresentation, breach of fiduciary duty, or gross negligence, while section 6086.8 requires courts to report the same information about an attorney. In 2013, 2014 and 2016,

<sup>16</sup> The full text of section 6086.7, section 6086.8, section 6091.1, section 6101, and section 6175.6 is provided in Appendix B. Cases reported pursuant to section 6175.6 are included in a separate annual report to the legislature, pursuant to section 6177. (The most recent report, dated December 15, 2016, may be accessed at: <http://www.calbar.ca.gov/LinkClick.aspx?fileticket=helYm1fUKpA%3d&tabid=224&mid=1534>). One such action was reported in 2013, with no others during the four year period encompassed by this report. Since this action was initiated pursuant to a complaint rather than a reportable action reported by a court, it is not included in Table 4.

<sup>17</sup> The figures in Table 4 differ from those in Table 2 for this category because Table 4 includes reports of criminal conviction matters, which are excluded from Table 2.

<sup>18</sup> A direct comparison of reportable criminal conviction matters is not possible as attorneys, prosecuting agencies, and courts are not required to report the same types of information. With respect to initial reporting, prosecuting agencies are required to report any felony or misdemeanor charges filed, while attorneys are only required to report felony charges filed against them. With regard to convictions, courts are required to report both felony and misdemeanor convictions, while attorneys are required to report convictions for felonies and only specified misdemeanors.

there were more self-reported actions than court-reported actions pursuant to these statutes. In 2015, there were more court-reported actions than self-reported actions.

- Section 6068, subdivision (o)(3), requires attorneys to report certain judicial sanctions imposed against them, while section 6086.7, subdivision (a)(3), requires courts to report the same types of sanctions. In each of the years encompassed by this report, there were more self-reported than court-reported actions pursuant to these statutes.

This summary analysis suggests that courts may be under-reporting to the State Bar. In an effort to ensure that Bar receives all of the data that it should from these different mandated reporters, OCTC sends an annual letter to each judge of each Superior Court, every Appellate Court Justice, the District Attorney of each county, and to trust fund banks. In 2016, almost 2,000 letters were sent with information regarding the reporting requirements. Examples of these letters are provided as Appendix F.

<b>Table 4: Reportable Actions, Reported by Others</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<u>Summary: All Reportable Actions, Reported by Others</u>				
Reports Received	2,903	2,768	2,756	2,412
Cases Reopened	1	1	0	6
Cases Closed by OCTC Without Action	2,557	2,145	2,402	2,299
Cases Closed by OCTC With Referral	0	0	4	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>331</u>	<u>228</u>	<u>273</u>	<u>251</u>
<i>Total Cases Closed by OCTC</i>	2,888	2,373	2,679	2,550
Cases Filed in State Bar Court	166	245	108	166
Cases Remaining in OCTC at Year End	746	898	869	571
Cases Closed by SBC Without Action	48	10	26	17
Cases Closed by SBC with Non-Disciplinary Action	0	8	1	3
Cases Closed with Discipline Imposed	<u>140</u>	<u>172</u>	<u>194</u>	<u>113</u>
<i>Total Cases Closed by State Bar Court</i>	188	190	221	133
Cases Remaining in SBC at Year End	284	342	232	264
<u>Order of Contempt (\$6086.7, subd. (a) (1))</u>				
Reports Received	2	4	6	4
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	1	2	3	4
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>3</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	1	5	3	4
Average Pendency at Closure	45	378	81	192
Median Pendency at Closure	45	127	101	121
Cases Filed in State Bar Court	0	0	0	1
Average Pendency at Filing	0	0	0	245
Median Pendency at Filing	0	0	0	245
Cases Remaining in OCTC at Year End	2	1	4	3
Average Pendency at Year End	466	47	178	231

<b>Table 4: Reportable Actions, Reported by Others</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Median Pendency at Year End	270	47	65	191
Cases Closed by SBC Without Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Cases Closed by State Bar Court	0	0	0	0
Average Pendency at Closure	0	0	0	0
Median Pendency at Closure	0	0	0	0
Cases Remaining in SBC at Year End	0	0	0	1
Average Pendency at Year End	0	0	0	551
Median Pendency at Year End	0	0	0	551
<u>Modification or reversal of judgment based on misconduct, etc. (§6086.7, subd. (a)(2))</u>				
Reports Received	14	18	35	17
Cases Reopened	0	1	0	0
Cases Closed by OCTC Without Action	11	14	26	20
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>1</u>	<u>1</u>	<u>2</u>	<u>2</u>
Total Cases Closed by OCTC	12	15	28	22
Average Pendency at Closure	165	297	139	220
Median Pendency at Closure	78	125	132	164
Cases Filed in State Bar Court	0	0	1	1
Average Pendency at Filing	0	0	364	454
Median Pendency at Filing	0	0	364	454
Cases Remaining in OCTC at Year End	9	13	19	13
Average Pendency at Year End	321	155	226	316
Median Pendency at Year End	174	92	160	304
Cases Closed by SBC Without Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
Total Cases Closed by State Bar Court	0	0	0	1
Average Pendency at Closure	0	0	0	655
Median Pendency at Closure	0	0	0	655
Cases Remaining in SBC at Year End	0	0	1	1
Average Pendency at Year End	0	0	576	464
Median Pendency at Year End	0	0	576	464
<u>Judicial sanctions imposed (§6086.7, subd. (a)(3))</u>				
Reports Received	87	95	69	77
Cases Reopened	1	0	0	1
Cases Closed by OCTC Without Action	80	77	41	56

<b>Table 4: Reportable Actions, Reported by Others</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>13</u>	<u>10</u>	<u>7</u>	<u>14</u>
<i>Total Cases Closed by OCTC</i>	93	87	48	70
Average Pendency at Closure	227	193	260	192
Median Pendency at Closure	179	120	163	126
Cases Filed in State Bar Court	9	27	11	22
Average Pendency at Filing	393	548	495	435
Median Pendency at Filing	343	448	371	337
Cases Remaining in OCTC at Year End	65	46	56	42
Average Pendency at Year End	330	280	237	246
Median Pendency at Year End	203	162	140	178
Cases Closed by SBC Without Action	1	0	1	1
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>16</u>	<u>13</u>	<u>9</u>	<u>20</u>
<i>Total Cases Closed by State Bar Court</i>	17	13	10	21
Average Pendency at Closure	738	1,004	839	1,095
Median Pendency at Closure	731	1,063	910	958
Cases Remaining in SBC at Year End	13	27	28	29
Average Pendency at Year End	764	663	909	705
Median Pendency at Year End	837	614	791	607
<u>Civil Penalty for providing false information to Indian tribe in adoption case (§6086.7, subd. (a)(4))</u>				
Reports Received	0	0	0	0
<u>Prosecutorial misconduct (§6086.7, subd. (a)(5))</u>				
Reports Received	0	0	0	0
<u>Judgment in civil case for fraud, misrepresentation, gross negligence, etc. (§6086.8, subd. (a))</u>				
Reports Received	5	10	9	4
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	5	4	9	6
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>2</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	7	4	9	6
Average Pendency at Closure	306	151	148	156
Median Pendency at Closure	285	124	164	137
Cases Filed in State Bar Court	0	2	1	1
Average Pendency at Filing <sup>19</sup>	0	453	343	827

<sup>19</sup> Superior courts may not always timely report civil judgments to the Bar, which may result in an extended pendency before OCTC takes action in these matters.

<b>Table 4: Reportable Actions, Reported by Others</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Median Pendency at Filing	0	305	343	827
Cases Remaining in OCTC at Year End	3	7	6	3
Average Pendency at Year End	186	92	276	569
Median Pendency at Year End	98	85	164	788
Cases Closed by SBC Without Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>1</u>	<u>0</u>	<u>1</u>
<i>Total Cases Closed by State Bar Court</i>	0	1	0	1
Average Pendency at Closure	0	337	0	1,205
Median Pendency at Closure	0	337	0	1,205
Cases Remaining in SBC at Year End	0	1	2	2
Average Pendency at Year End	0	790	778	799
Median Pendency at Year End	0	790	402	768
<u>Claim or action for damages for fraud, misrepresentation, etc. (\$6086.8, subd. (b))</u>				
Reports Received	314	248	410	231
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	321	246	408	246
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	321	246	408	246
Average Pendency at Closure	26	38	19	23
Median Pendency at Closure	5	8	8	3
Cases Filed in State Bar Court	0	0	0	0
Average Pendency at Filing	0	0	0	0
Median Pendency at Filing	0	0	0	0
Cases Remaining in OCTC at Year End	11	13	15	0
Average Pendency at Year End	393	118	238	0
Median Pendency at Year End	438	51	274	0
Cases Closed by SBC Without Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by State Bar Court</i>	0	0	0	0
Average Pendency at Closure	0	0	0	0
Median Pendency at Closure	0	0	0	0
Cases Remaining in SBC at Year End	0	0	0	0
Average Pendency at Year End	0	0	0	0
Median Pendency at Year End	0	0	0	0

<b>Table 4: Reportable Actions, Reported by Others</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<u>Overdraft of attorney trust accounts (§6091.1)</u>				
Reports Received	2,311	2,228	2,078	1,944
Cases Reopened	0	0	0	5
Cases Closed by OCTC Without Action	2,049	1,723	1,803	1,872
Cases Closed by OCTC With Referral	0	0	4	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>315</u>	<u>214</u>	<u>264</u>	<u>235</u>
<i>Total Cases Closed by OCTC</i>	2,364	1,937	2,071	2,107
Average Pendency at Closure	60	79	109	77
Median Pendency at Closure	41	55	82	39
Cases Filed in State Bar Court	82	133	39	82
Average Pendency at Filing	298	373	360	371
Median Pendency at Filing	315	345	338	357
Cases Remaining in OCTC at Year End	486	644	612	374
Average Pendency at Year End	165	128	137	209
Median Pendency at Year End	97	49	65	103
Cases Closed by SBC Without Action	34	1	2	1
Cases Closed by SBC with Non-Disciplinary Action	0	8	0	0
Cases Closed with Discipline Imposed	<u>86</u>	<u>114</u>	<u>121</u>	<u>50</u>
<i>Total Cases Closed by State Bar Court</i>	120	123	123	51
Average Pendency at Closure	798	902	794	640
Median Pendency at Closure	632	801	687	593
Cases Remaining in SBC at Year End	148	158	74	105
Average Pendency at Year End	911	757	960	955
Median Pendency at Year End	734	624	835	613
<u>Filing of misdemeanor or felony charges (§6101, subd. (b))</u>				
Reports Received	170	165	149	135
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	90	79	112	95
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	90	79	112	95
Average Pendency at Closure	329	381	451	476
Median Pendency at Closure	172	296	320	251
Cases Filed in State Bar Court	75	83	56	59
Average Pendency at Filing	325	330	332	355
Median Pendency at Filing	228	174	239	249
Cases Remaining in OCTC at Year End	170	174	157	136
Average Pendency at Year End	522	520	524	539
Median Pendency at Year End	235	239	234	295
Cases Closed by SBC Without Action	13	9	23	15
Cases Closed by SBC with Non-Disciplinary Action	0	0	1	3

<b>Table 4: Reportable Actions, Reported by Others</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Cases Closed with Discipline Imposed	<u>38</u>	<u>44</u>	<u>64</u>	<u>41</u>
<i>Total Cases Closed by State Bar Court</i>	51	53	88	59
Average Pendency at Closure	623	804	836	920
Median Pendency at Closure	610	630	644	752
Cases Remaining in SBC at Year End	123	156	127	126
Average Pendency at Year End	716	811	940	1,018
Median Pendency at Year End	526	686	793	821
<u>Elder Financial Abuse (\$6175.6)</u>				
Reports Received	0	0	0	0

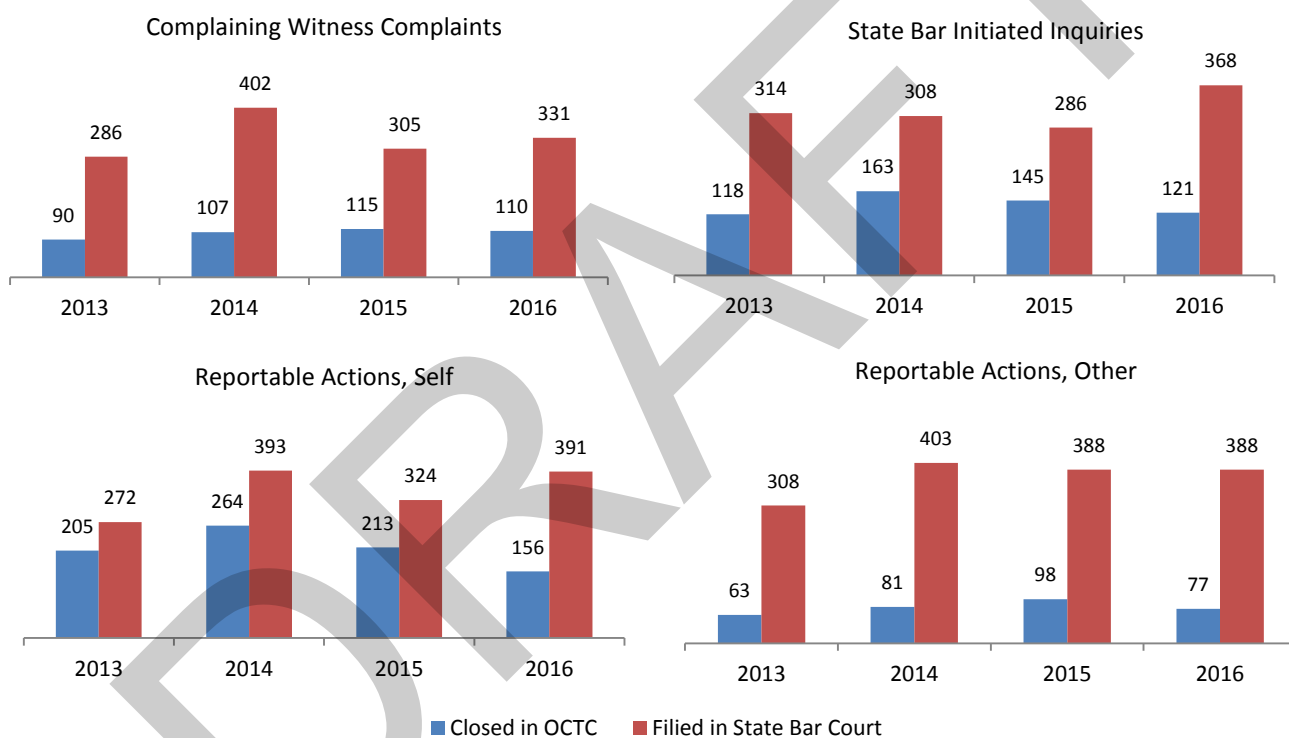


## SPEED OF COMPLAINT HANDLING<sup>20</sup>

*Section 6086.15, subdivision (a)(5) The speed of complaint handling and dispositions by type, measured by the median and the average processing times.*

Chart 5 illustrates the average time cases are pending from filing to disposition. Chart 5 distinguishes between cases that were closed by OCTC without filing in State Bar Court and those that were ultimately filed in State Bar Court. Dispositions for closed cases include Closed with Non-Disciplinary Action, Closed with Referral, and Closed with No Action. In 2016, for those cases that were not filed in State Bar Court, the average time from receipt of a complaint and closure of the case decreased for all types of cases. Conversely, for cases that were filed in State Bar Court, there was an increase in the average time from the receipt of the case to the State Bar Court filing for most case types.

Chart 5: Average Pendency at Filing and Closure\*



\* Days from receipt of complaint to closure in OCTC or filing in State Bar Court

Table 5: Speed of Complaint Handling	2013	2014	2015	2016
<u>Complaints</u>				
Pendency at Closure by OCTC without filing				
Average	90	107	115	110
Median	45	54	52	38
Pendency at Filing by OCTC				

<sup>20</sup> Criminal conviction matters are excluded from the reportable actions included in this section. See footnote 8 for an explanation.

<b>Table 5: Speed of Complaint Handling</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Average	286	402	305	331
Median	255	258	256	281
Pendency at Year End in OCTC				
Average	285	312	302	294
Median	123	140	104	127
Pendency at Closure by SBC				
Average	812	781	833	1,069
Median	761	708	710	844
Pendency at Year end in SBC				
Average	669	823	1,017	929
Median	538	666	869	627
<u>State Bar Initiated Inquiries</u>				
Pendency at Closure by OCTC without filing				
Average	118	163	145	121
Median	54	124	91	19
Pendency at Filing by OCTC				
Average	314	308	286	368
Median	251	259	227	274
Pendency at Year End in OCTC				
Average	342	337	274	275
Median	167	156	143	144
Pendency at Closure by SBC				
Average	712	637	660	691
Median	549	556	495	487
Pendency at Year end in SBC				
Average	668	680	723	918
Median	516	469	463	639
<u>Reportable Actions, Reported by Self</u>				
Pendency at Closure by OCTC without filing				
Average	205	264	213	156
Median	99	135	154	81
Pendency at Filing by OCTC				
Average	272	393	324	391
Median	240	371	279	394
Pendency at Year End in OCTC				
Average	361	209	206	302
Median	278	120	127	239
Pendency at Closure by SBC				
Average	852	648	603	937
Median	1,002	624	560	816
Pendency at Year end in SBC				

<b>Table 5: Speed of Complaint Handling</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Average	596	689	920	808
Median	557	636	848	551
<u>Reportable Actions, Reported by Others</u>				
Pendency at Closure by OCTC without filing				
Average	63	81	98	77
Median	38	52	76	36
Pendency at Filing by OCTC				
Average	308	403	388	388
Median	316	347	338	356
Pendency at Year End in OCTC				
Average	191	137	150	218
Median	104	57	76	127
Pendency at Closure by SBC				
Average	791	908	798	777
Median	648	806	687	662
Pendency at Year end in SBC				
Average	899	743	939	894
Median	734	624	798	611
<u>Probation Referrals</u>				
Pendency at Closure by OCTC without filing				
Average	213	340	200	297
Median	164	198	163	234
Pendency at Filing by OCTC				
Average	105	128	92	126
Median	72	91	59	115
Pendency at Year End in OCTC				
Average	196	141	237	369
Median	117	77	132	129
Pendency at Closure by SBC				
Average	504	537	598	585
Median	449	536	569	540
Pendency at Year end in SBC				
Average	460	499	655	639
Median	375	394	520	397
<u>Interim Suspensions and License Restrictions</u>				
Pendency at Closure by OCTC without filing				
Average	1,041	826	0	0
Median	1,041	997	0	0
Pendency at Filing by OCTC				
Average	11	14	4	2
Median	9	4	0	0
Pendency at Year End in OCTC				

<b>Table 5: Speed of Complaint Handling</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Average	966	0	0	125
Median	966	0	0	31
Pendency at Closure by SBC				
Average	159	128	112	48
Median	87	92	89	28
Pendency at Year end in SBC				
Average	208	79	10	0
Median	209	85	10	0

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## FORMAL DISCIPLINARY FILINGS AND OUTCOMES<sup>21</sup>

**Section 6086.15, subdivision (a)(6)** *The number, average pending times, and types of filed notices of disciplinary charges and formal disciplinary outcomes.*

The number of disciplinary charges filed in Court increased thirty-two percent over the past year, from 417 in 2015 to 549 in 2016, while the number of stipulations decreased thirteen percent, from 141 in 2015 to 123 in 2016. The number of attorneys disciplined decreased eight percent over the same period, from 485 in 2015 to 444 in 2016.

Chart 6: Disciplinary Filings and Outcomes

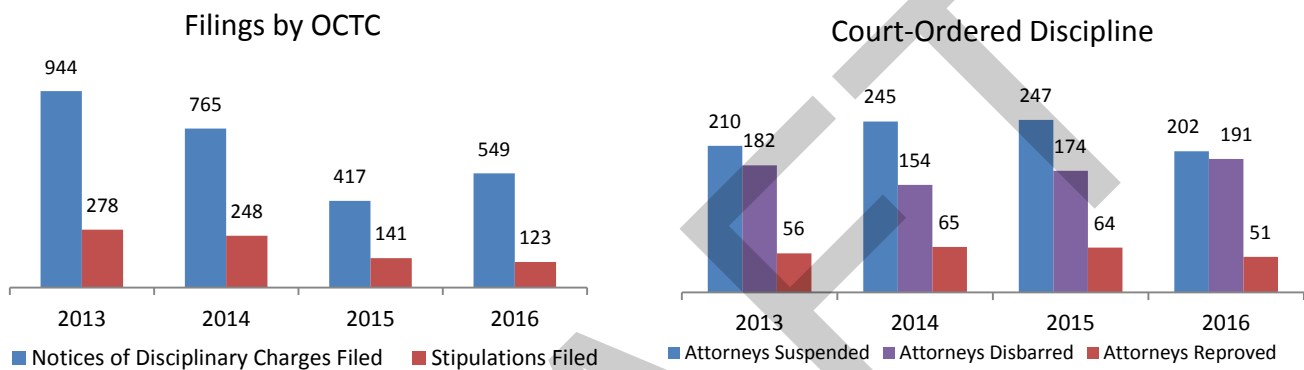


Table 6A: Formal Filings	2013	2014	2015	2016
<u>Notices of Disciplinary Charges</u>				
Number of Filings	944	765	417	549
Average Pendency at Filing	278	368	273	311
Median Pendency at Filing	248	257	241	266
<u>Stipulations to Facts and Discipline</u>				
Number of Filings	278	248	141	123
Average Pendency at Filing	264	331	330	357
Median Pendency at Filing	233	280	273	320
Table 6B: Formal Disciplinary Outcomes	2013	2014	2015	2016
<u>Disbarments<sup>22</sup></u>				
Number of Cases	630	451	423	461
Average Pendency	880	836	754	1,165
Median Pendency	884	782	711	866
Number of Members Disbarred	182	154	174	191
<u>Suspensions</u>				
Number of Cases	501	621	526	374

<sup>21</sup> This section includes all formal disciplinary filings, including criminal conviction matters and reportable actions not included in other sections of this Report.

<sup>22</sup> Includes resignations with charges pending.

<b>Table 6B: Formal Disciplinary Outcomes</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Average Pendency	678	742	817	773
Median Pendency	575	618	600	632
Number of Members Suspended	210	245	247	202
<u>Public Reprovals</u>				
Number of Cases	47	46	46	29
Average Pendency	629	584	563	618
Median Pendency	447	454	423	462
Number of Members Publicly Reproved	36	40	36	26
<u>Private Reprovals</u>				
Number of Cases	23	26	40	30
Average Pendency	642	518	588	648
Median Pendency	461	451	553	443
Number of Members Privately Reproved	20	25	28	25

## OTHER MATTERS AND SPECIFIED DEFINITIONS

**Section 6086.15, subdivision (a)(7)** *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 reprovls, admonitions, and agreements in lieu of discipline.*<sup>23</sup>

<b>Table 7A: Other Matters</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<b>Petitions to Terminate Practice pursuant to section 6180 or section 6190</b>				
Petitions Filed	2	5	7	6
Average Pendency at Filing	60	6	32	89
Median Pendency at Filing	0	1	7	63
Petitions Granted	2	5	5	6
Petitions Denied	0	0	2	0
<i>Total Cases Disposed by Superior Court</i>	2	5	7	6
Average Pendency At Year End	60	6	51	89
Median Pendency At Year End	0	1	22	63
Cases Remaining in Superior Court at Year End	0	0	0	0
Average Pendency At Year End	0	0	0	0
Median Pendency At Year End	0	0	0	0
<b>Interim Suspensions and Restrictions pursuant to section 6007</b>				
Cases Opened	7	16	5	5
Cases Re-Opened	0	0	0	0
Cases Closed Without Filing <sup>24</sup>	1	5	0	0
Average Pendency at Closure	1,041	826	0	0
Median Pendency at Closure	1,041	997	0	0
Cases Filed	7	15	5	4
Average Pendency at Filing <sup>25</sup>	11	14	4	2
Median Pendency at Filing	9	4	0	0
Cases Remaining in OCTC At Year End	4	0	0	2
Average Pendency At Year End	966	0	0	125
Median Pendency At Year End	966	0	0	31
Petitions Granted	9	12	8	4
Petitions Denied	<u>1</u>	<u>1</u>	<u>1</u>	<u>1</u>
<i>Total Cases Disposed by State Bar Court</i>	10	13	9	5

<sup>23</sup> The full text of sections 6180, 6190, 6007, and 6203 is provided in Appendix B.

<sup>24</sup> The long pendencies on the majority of these cases reflect the fact that the cases were suspended while OCTC pursued action against the attorney on related cases; the suspended cases were closed upon disposition of the related cases, which often resulted in disbarment.

<sup>25</sup> For these cases, the filing date reflects the date that OCTC filed the case in State Bar Court.

<b>Table 7A: Other Matters</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Average Pendency at Disposition	159	128	112	48
Median Pendency at Disposition	87	92	89	28
Cases Remaining in State Bar Court at Year End	3	5	1	0
Average Pendency At Year End	208	79	10	0
Median Pendency At Year End	209	85	10	0
<u>Motions to Enforce Fee Arbitration Award</u>				
Cases Opened	6	5	5	12
Petitions Granted	2	6	0	7
Petitions Denied	3	1	2	5
<i>Total Cases Disposed by State Bar Court</i>	5	7	2	12
Average Pendency at Disposition	90	94	87	64
Median Pendency at Disposition	92	65	60	62
Cases Remaining in State Bar Court at Year End	2	0	3	3
Average Pendency At Year End	117	0	30	61
Median Pendency At Year End	46	0	23	78
<u>Motions to Revoke Probation</u>				
Cases Opened	19	14	12	12
Petitions Granted	6	15	17	13
Petitions Denied	0	1	1	1
<i>Total Cases Disposed by State Bar Court</i>	6	16	18	14
Average Pendency at Disposition	270	217	217	249
Median Pendency at Disposition	180	180	193	171
Cases Remaining in State Bar Court at Year End	15	13	7	5
Average Pendency At Year End	114	153	231	84
Median Pendency At Year End	106	140	162	78
<b>Table 7B: Specified Dispositions</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
<u>Admonitions</u>				
Cases	0	10	2	4
Average Pendency at Disposition	0	890	865	852
Median Pendency at Disposition	0	911	764	831
Members Admonished	0	2	2	3
<u>Agreements In Lieu of Discipline</u>				
Cases	21	54	46	23
Average Pendency at Disposition	246	234	250	362
Median Pendency at Disposition	249	229	195	356
Members Entering into Agreements	21	54	46	23
<u>Warning Letters</u>				
Cases	607	700	676	597
Average Pendency at Disposition	146	158	162	186



<b>Table 7B: Specified Dispositions</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Median Pendency at Disposition	122	144	145	164
Members Receiving Warning Letters	546	630	584	534
<u>Private Reprovals</u>				
Cases	23	26	40	30
Average Pendency at Disposition	642	518	588	648
Median Pendency at Disposition	461	451	553	443
Members Privately Reproved	20	25	28	25

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## UNAUTHORIZED PRACTICE OF LAW BY FORMER ATTORNEYS

**Section 6086.15, subsection (a)(8)** 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.

The number of cases regarding reports of unauthorized practice of law by former attorneys decreased from thirty in 2015 to twenty-three in 2016. While the average time from receipt of complaint until closure increased from 126 days in 2015 to 153 days in 2016, the number of referrals to law enforcement for such cases jumped from one to ten.

Chart 8: Unauthorized Practice by Former Attorneys

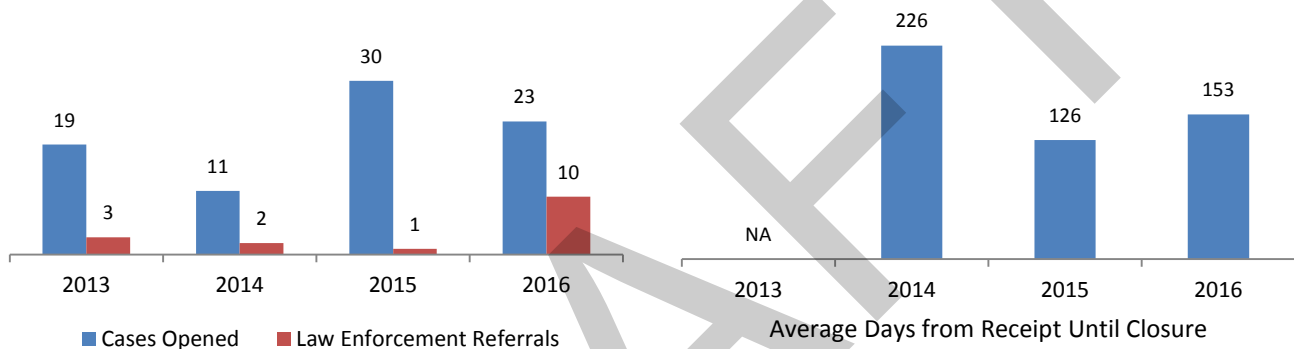


Table 8: UPL by Former Attorneys

	2013	2014	2015	2016
Cases Opened	19	11	30	23
Cases Closed Without Filing	0	31	26	23
Average Pendency at Closure	0	272	137	210
Median Pendency at Closure	0	226	126	153
Cases Filed in Superior Court	0	0	0	0
Average Pendency at Filing	0	0	0	0
Median Pendency at Filing	0	0	0	0
Cases Remaining in OCTC At Year End	26	6	10	10
Average Pendency at Year End	268	180	230	72
Median Pendency at Year End	202	148	112	72
Petitions Granted	0	0	0	0
Petitions Denied	0	0	0	0
Total Cases Disposed by Superior Court	0	0	0	0
Average Pendency at Disposition	0	0	0	0
Median Pendency at Disposition	0	0	0	0
Cases Remaining in Superior Court at Year End	0	0	0	0
Average Pendency at Year End	0	0	0	0
Median Pendency at Year End	0	0	0	0
Referrals to Law Enforcement	3	2	1	10

## UNAUTHORIZED PRACTICE OF LAW BY NON-ATTORNEYS

**Section 6086.15, subsection (a)(9)** 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.

In 2016, OCTC opened 632 cases based on reports regarding the practice of law by individuals who were never licensed as attorneys. This figure represents an increase of nine percent compared to the 580 cases opened in 2015. The average time from receipt of such complaints to closure increased by eight percent during that time period, and the number of referrals to law enforcement increased from ten in 2015 to 443 in 2016. Table 9 reflects data required by statute; Appendix E includes additional information about the unauthorized practice of law and immigration-related attorney complaints.

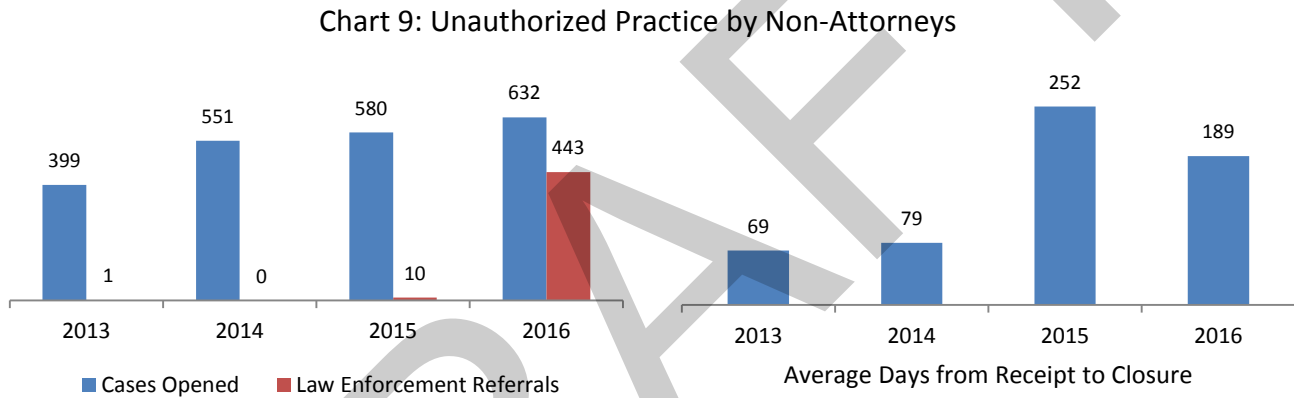


Table 9: UPL by Non-Attorneys	2013	2014	2015	2016
Cases Opened	399	551	580	632
Cases Closed Without Filing	369	214	653	913
Average Pendency at Closure	81	172	270	291
Median Pendency at Closure	69	79	252	189
Cases Filed in Superior Court <sup>26</sup>	1	0	1	6
Average Pendency at Filing	85	0	880	247
Median Pendency at Filing	85	0	880	91
Cases Remaining in OCTC At Year End	190	528	464	181
Average Pendency at Year End	370	265	353	97
Median Pendency at Year End	153	93	141	81
Petitions Granted	1	0	1	6
Petitions Denied	0	0	0	0

<sup>26</sup>Petition to Terminate filed in superior court, pursuant to section 6126.3, to assume the practice of a person holding himself or herself out as entitled to practice law without being an active member of the Bar.

<b>Table 9: UPL by Non-Attorneys</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Total Cases Disposed by Superior Court	1	0	1	6
Average Pendency at Disposition	85	0	880 <sup>27</sup>	247
Median Pendency at Disposition	85	0	880	91
Cases Remaining in Superior Court at Year End	0	0	0	0
Average Pendency at Year End	0	0	0	0
Median Pendency at Year End	0	0	0	0
Referrals to Law Enforcement	1	0	10	443

<sup>27</sup>The pendency in this case reflects an ongoing effort by OCTC and local law enforcement to address the unauthorized practice of law by a repeat offender. In 2008, OCTC successfully petitioned the Los Angeles Superior Court to assume jurisdiction over the offender's illegal law practice. Despite the 2008 assumption of his practice, OCTC received a new complaint about the offender's continuing unauthorized practice of law in late 2012. OCTC opened a new case and also referred the matter to local law enforcement for criminal investigation. The criminal investigation resulted in the filing of criminal charges in 2014 and a new assumption proceeding in March 2015.

## CONDITION OF THE CLIENT SECURITY FUND

*Section 6086.15, subsection (a)(10) A description of the condition of the Client Security Fund, including an accounting of payouts.*

The Client Security Fund (CSF), established by Bar-sponsored legislation in 1972, represents one of the State Bar's major efforts to achieve its public protection goals. The CSF is designed to compensate legal consumers for monetary losses caused by the dishonest conduct of California attorneys. The CSF Commission, appointed by the State Bar Board of Trustees, administers the CSF and makes decisions on applications for reimbursement according to CSF rules. The CSF is financed by an annual assessment added to attorney membership fees, which is used only for purposes of paying the reimbursements and administering the CSF. The assessment is currently \$40 for active members and \$10 for inactive members.

The CSF can reimburse victims who have lost money or property due to theft, or an act equivalent to theft, committed by a lawyer acting in a professional capacity. As detailed in CSF rules, the CSF can reimburse funds received by and wrongfully retained by a California lawyer. The maximum reimbursable amount for losses occurring after January 1, 2009, is \$100,000.

The need for additional CSF funding has been well-documented, including by the California State Auditor's May 2016 report:

*To reduce the length of time that victims of dishonest lawyers must wait for reimbursement from the Client Security Fund, the State Bar should continue to explore fund transfers, member fee increases, and operating efficiencies that would increase resources available for payouts.*

As of December 31, 2016, the inventory of pending CSF applications totaled \$50.9 million. Annual revenue supporting the CSF currently totals approximately \$8 million; after accounting for operating costs, approximately \$6.7 million is available for payouts. Even if no new applications were filed with the CSF, at the current pace of compensation it would take 3.5 years to eliminate the existing inventory.<sup>28</sup>

In addition to a sizeable inventory, the estimated value of new applications, assuming a status quo trend in filings, will exceed the amount of payout funding available by approximately \$0.2 million annually.<sup>29</sup>

To address both the outstanding inventory and annual estimated payout needs, a one-time and ongoing augmentation to the CSF fee is needed as follows:

- One-Time: \$135 per active member
- On-Going: \$4 per active member

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<sup>28</sup> This calculation assumes a payout of 46 percent of the amount claimed based on data from 2016.

<sup>29</sup> Assuming status quo filing trends and average payout of approximately 41 percent (over a ten-year period, CSF approved payouts have ultimately totaled 41 percent of total claims filed).

**Table 10: 2016 Client Security Fund Payments**

<b>Attorney<sup>30</sup></b>	<b>Number of CSF Claims Paid</b>	<b>Total Amount Paid</b>
1	513	\$2,264,470
2	609	\$1,662,246
3	266	\$1,055,111
4	166	\$700,083
5	5	\$391,592
6	2	\$132,500
7	3	\$92,600
8	1	\$76,012
9	2	\$69,289
10	1	\$66,900
11	1	\$66,117
12	1	\$64,518
13	2	\$61,333
14	5	\$57,380
15	17	\$57,198
16	5	\$55,235
17	6	\$53,574
18	1	\$50,000
19	1	\$50,000
20	1	\$43,657
21	2	\$43,491
22	1	\$40,150
23	5	\$40,000
24	4	\$34,100
25	6	\$30,212
26	6	\$30,212
27	2	\$29,132
28	2	\$28,633
29	1	\$28,500
30	1	\$28,461
31	9	\$25,090
32	7	\$25,004
33	1	\$25,000
34	2	\$22,000
35	2	\$22,000
36	1	\$21,250
37	5	\$21,100
38	9	\$18,668
39	1	\$18,267
40	1	\$17,500

<sup>30</sup> Attorney names are not provided, as CSF rules require confidentiality under certain circumstances.

<b>Attorney<sup>30</sup></b>	<b>Number of CSF Claims Paid</b>	<b>Total Amount Paid</b>
41	5	\$15,983
42	2	\$15,963
43	1	\$15,000
44	4	\$14,700
45	4	\$14,000
46	1	\$13,585
47	2	\$12,658
48	1	\$11,400
49	4	\$11,369
50	2	\$11,310
51	3	\$11,123
52	1	\$10,750
53	1	\$10,100
54	3	\$10,088
55	1	\$10,050
56	1	\$10,000
57	3	\$9,145
58	1	\$9,043
59	1	\$8,000
60	1	\$7,500
61	3	\$7,488
62	2	\$7,293
63	1	\$6,668
64	5	\$6,525
65	2	\$6,000
66	3	\$5,875
67	1	\$5,750
68	2	\$5,395
69	1	\$5,168
70	1	\$5,000
71	2	\$4,745
72	1	\$4,500
73	1	\$4,355
74	1	\$4,295
75	1	\$4,250
76	1	\$4,000
77	1	\$3,995
78	1	\$3,990
79	1	\$3,895
80	1	\$3,500
81	1	\$3,500
82	1	\$3,500
83	1	\$3,500
84	1	\$3,500

<b>Attorney<sup>30</sup></b>	<b>Number of CSF Claims Paid</b>	<b>Total Amount Paid</b>
85	1	\$3,470
86	2	\$3,349
87	1	\$3,050
88	1	\$3,000
89	1	\$3,000
90	1	\$2,799
91	1	\$2,766
92	1	\$2,516
93	1	\$2,500
94	1	\$2,500
95	1	\$2,500
96	1	\$2,500
97	1	\$2,500
98	1	\$2,300
99	1	\$2,000
100	1	\$2,000
101	1	\$2,000
102	1	\$2,000
103	1	\$1,806
104	1	\$1,800
105	1	\$1,600
106	1	\$1,600
107	1	\$1,600
108	1	\$1,559
109	1	\$1,400
110	1	\$1,341
111	1	\$1,307
112	1	\$1,250
113	1	\$1,200
114	1	\$1,150
115	1	\$1,000
116	1	\$1,000
117	1	\$1,000
118	1	\$995
119	1	\$680
120	1	\$600
121	1	\$500
122	1	\$350
<b>Grand Total<sup>31</sup></b>	<b>1,793</b>	<b>\$8,037,525</b>

<sup>31</sup> The Bar's accounting system reports total 2016 CSF payments of \$8,007,676, which reflects a discrepancy of \$29,849 (0.4%) from the total reported from the CSF Program; CSF program totals are provided in this table.



## COST OF THE DISCIPLINE SYSTEM

*Section 6086.15, subsection (a)(11) An accounting of the cost of the discipline system by function*

Although section 6086.15 directs the State Bar to provide an accounting of the cost of the discipline system, the exact scope of the discipline system has never been defined in statute. Moreover, various reports have chosen different components of the State Bar for inclusion in the discipline system depending on the focus of the analysis. Taking these different approaches into account, the following tables present the cost of the discipline system under a number of different definitions based on report to the Legislature and the Supreme Court in recent years.

Tables 11A and 11B provide the costs of the discipline system and Client Security Fund as defined in the Annual Discipline Report in prior years.

**Table 11A: Cost of the Discipline System**

<b>General Fund</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Chief Trial Counsel	26,772,904	27,378,462	27,644,950	27,519,104
Probation	919,219	963,776	911,918	926,414
Mandatory Fee Arbitration	603,478	631,382	640,478	665,128
State Bar Court	7,108,017	7,155,103	7,648,436	7,290,326
Professional Competence	1,601,636	1,607,507	1,710,706	1,728,732
Allocated Support Services Costs	15,542,207	15,703,437	16,274,869	16,943,625
<b>General Fund Total</b>	<b>52,547,460</b>	<b>53,439,667</b>	<b>54,831,357</b>	<b>55,073,328</b>

**Table 11B: Cost of the Client Security Fund**

<b>Client Security Fund</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>
Program Administration	1,723,842	1,743,747	1,690,909	1,276,580
Grant Payments	10,714,529	8,552,566	5,350,083	7,115,774
Allocated Support Services Costs	580,355	684,923	704,695	637,875
<b>Client Security Fund Totals</b>	<b>13,018,726</b>	<b>10,981,236</b>	<b>7,745,688</b>	<b>9,030,229</b>

Table 11C shows the 2016 costs of the discipline system as defined in the Workforce Planning Report that was submitted to the Legislature on May 15, 2016.

**Table 11C: Cost of Programs Included in Workforce Planning**

<b>General Fund</b>	<b>2016</b>	<b>Other Funds</b>	<b>2016</b>
Chief Trial Counsel	27,519,104	Client Security Fund	8,392,354
Probation	926,414	Lawyer Assistance Program	1,127,341
Member Records and Compliance	2,633,019		
State Bar Court	7,290,326		
Allocated Support Services Costs	17,097,720	Allocated Support Services	1,056,656
<b>General Fund Total</b>	<b>55,466,583</b>	<b>Other Fund Total</b>	<b>10,576,351</b>

Table 11D provides the 2016 costs of the discipline system as defined in the petition submitted to the Supreme Court on September 30, 2016 requesting authorization to collect attorney fees in 2017, following the legislature's decision not to authorize a fee. The components of the State Bar selected for the discipline system in the 2016 petition followed the definition that was used when the Supreme Court authorized a fee in 1998.

**Table 11D: Cost of Programs Included in Petition to  
Supreme Court**

<b>General Fund</b>	<b>2016</b>
Chief Trial Counsel	27,519,104
Probation	926,414
Mandatory Fee Arbitration	665,128
State Bar Court	7,290,326
Professional Competence	1,728,732
Member Records and Compliance	2,633,019
Communications (70%)	748,866
CYLA (13.5%)	24,353
Member Billing (73%)	1,164,474
General Counsel (76.3%)	2,773,441
Allocated Support Services Costs	18,625,283
<b>General Fund Total</b>	<b>644,099,138</b>

## Appendices

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## Appendix A

### GLOSSARY OF ANNUAL DISCIPLINE REPORT TERMINOLOGY

The State Bar Act (section 6000 et seq.) and Rules of Procedure adopted by the Board of Trustees of the State Bar to govern proceedings in the State Bar Court include definitions of many technical terms used in the State Bar's discipline system. Definitions of some of those key terms, as well as definitions of data elements used in this Report, are presented here.

**BACKLOG:** Cases with Pendency in OCTC of more than 180 days on December 31. The backlog includes complaints, State Bar initiated inquiries, Probation referrals, reportable actions (excluding criminal conviction matters), and interim suspensions and restrictions. Excluded from the backlog, in addition to criminal conviction matters, are unauthorized practice of law cases, motions to enforce fee arbitration, and motions to revoke probation. Please see footnote 10 for a full discussion of the excluded case types.

**CASE:** An individual complaint, Office of Probation referral, State Bar initiated inquiry, reportable action, motion to enforce fee arbitration, motion to revoke probation, motion to terminate practice, or motion to impose interim suspension or license restrictions.

**CASE INITIATION DATE:**

- For *complaints*: the date on which the written complaint is received in the Intake Unit
- For *probation referrals*: the date on which the referral is received in the Intake Unit
- For *State Bar initiated inquiries*: the date on which the inquiry is requested by a manager, based on information received
- For *reportable actions*: the date on which the report is received in the Intake Unit
- For *motions to enforce fee arbitration*: the date on which the motion is filed in State Bar Court
- For *motions to revoke probation* : the date on which the motion is filed in State Bar Court
- For *petition to terminate practice*: the date on which the case is opened in the Intake Unit
- For *petition to impose interim suspension or license restrictions*: the date on which the case is opened in the Intake Unit

**COMPLAINT:** A written complaint submitted by a complaining witness to OCTC against one or more attorney respondents. A single written complaint signed by multiple complaining witnesses (e.g. a married couple) against a respondent or multiple respondents is counted as one complaint. Independently submitted written complaints against a single respondent are counted separately. If a complaint against multiple respondents advances to investigation, a separate case is created for each respondent.

**COURT CLOSING DATE:** For cases filed in State Bar Court, the date the court records as the closing date of the case. For cases filed in Superior Court resulting in denial or dismissal of OCTC's petition, the date on which OCTC consequently closes the case.

## APPENDIX A

### DISPOSITIONS (OCTC):

- *Closed with Non-Disciplinary Action:* Closed with a warning letter, directional letter, resource letter, or agreement in lieu of discipline
- *Closed with Referral:* Closed upon referral to other processes or agencies, including mandatory fee arbitration, law enforcement,<sup>32</sup> and alternative dispute resolution
- *Filed in State Bar Court:* Formal filing, including Notice of Disciplinary Charges, Stipulation to Facts and Discipline, or petition pursuant to section 6007
- *Filed in Superior Court:* Petition pursuant to section 6180, section 6190, or section 6126.3 filed in superior court
- *Closed with No Action:* Closed by OCTC with no further action

### DISPOSITIONS (STATE BAR COURT):

- *Discipline Imposed:* Disbarment, suspension, probation, reproof, revocation of probation, or extension of probation<sup>33</sup>
- *Closed with Non-Disciplinary Action:* Admonition or the granting of a petition pursuant to section 6007
- *Closed with No Action:* Closed by the Court with dismissal, termination or denial of petition

### DISPOSITIONS (SUPERIOR COURT):

- *Petition Granted:* Petition granted to assume a practice pursuant to section 6180, section 6190, or section 6126.3<sup>34</sup>
- *Petition Denied/Dismissed:* Closed upon denial or dismissal by the court of petition to assume a practice pursuant to section 6180, section 6190, or section 6126.3

**INITIAL FILING DATE:** The date on which a case is formally filed in State Bar Court or Superior Court by OCTC, Probation, or the Office of Mandatory Fee Arbitration

**MOTION TO ENFORCE RESULT OF FEE ARBITRATION:** A motion filed in State Bar Court by the State Bar's Mandatory Fee Arbitration Program to enforce the outcome of a binding fee arbitration<sup>35</sup>

**MOTION TO REVOKE PROBATION:** A motion filed by Probation in State Bar Court to revoke probation of a member under Probation supervision<sup>36</sup>

**PENDENCY IN STATE BAR COURT:** Number of days from the Initial Filing Date to the Court Closing Date<sup>37</sup>

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<sup>32</sup> A referral to a law enforcement agency is not, by itself, a reason for closing a case; this disposition captures the number of closed cases that included a referral to a law enforcement agency.

<sup>33</sup> A case is disposed with "Discipline Imposed" only after a final order of the California Supreme Court imposing discipline becomes effective, or when the State Bar Court issues a reproof.

<sup>34</sup> This is treated as the disposition of the case for the purposes of the Annual Discipline Report. However, the case technically remains open until the seized practice is fully resolved, which often takes years.

<sup>35</sup> OCTC plays no role in these proceedings.

<sup>36</sup> OCTC plays no role in these proceedings.

<sup>37</sup> Includes any appellate review and time taken to receive the final order from the Supreme Court, as well as any time during which proceedings are abated while a respondent is participating in the Alternative Discipline Program, which provides monitored support for attorneys receiving substance abuse or mental health treatment who have

## APPENDIX A

**PENDENCY IN SUPERIOR COURT:** Number of days from the Case Initiation Date until the date the Superior Court ruled to either grant or deny the petition.

**PENDENCY:** Number of days between the Case Initiation Date and a specified milestone. Note that Pendency is always calculated from the original Case Initiation Date, regardless of whether the case has been closed and reopened.

- *Pendency at Year End in OCTC:* for cases Pending in OCTC at year end, the number of days between the Case Initiation Date and December 31 of that year
- *Pendency at Year End in State Bar Court:* for cases Pending in State Bar Court at year end, the number of days between the Case Initiation Date and December 31 of that year
- *Pendency at OCTC Case Disposition:* the number of days between the Case Initiation Date and the date the case was either closed or filed in State Bar Court
- *Pendency at Closure:* for cases closed during a particular year, the number of days between the Case Initiation Date and the date the case was closed

**PETITION TO IMPOSE INTERIM SUSPENSION OR LICENSE RESTRICTIONS:** A petition filed by OCTC in State Bar Court pursuant to section 6007

**PETITION TO TERMINATE PRACTICE:** A petition filed by OCTC in Superior Court to close down and assume responsibility for the practice of an attorney, former attorney, or non-attorney pursuant to section 6180, section 6190, or section 6126.3

**PROBATION REFERRAL:** Notification from Probation to OCTC of possible misconduct on the part of a member under Probation supervision, including failure to comply with the terms of probation

**REPORTABLE ACTION:** A report of an event statutorily mandated to be reported to the State Bar:

- *Self-Reported:* Reports received from members regarding themselves pursuant to section 6068, subdivision (o) and section 6086.8, subdivision (c)
- *Other-Reported:* Reports received from specified mandated reporters pursuant to section 6086.7, section 6086.8, subdivisions (a) and (b), section 6091.1, section 6101, subdivision (b), and section 175.6

**STATE BAR INITIATED INQUIRY:** An inquiry into possible misconduct of an attorney initiated by OCTC based on information other than a written complaint, Probation referral, or reportable action

**SUSPENSION:** The abatement or holding of a case either that is with OCTC or has been filed in State Bar Court. This action is usually taken where there are other investigations or cases pending against a respondent, and prosecution of other complaints is likely to result in disbarment of the lawyer. Investigations of complaints suspended or *held* by OCTC are referred to collectively as suspended matters. Suspended matters pending more than six months from receipt without the filing of disciplinary charges are included in the backlog

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stipulated to certain facts, conclusions of law, and the level of discipline to be imposed in State Bar Court, prior to entering the Program.

## APPENDIX A

**UNAUTHORIZED PRACTICE OF LAW (UPL):** Active membership in the Bar is a requirement for practicing law in California. Bar Rules, as well as state law, provide authority to investigate UPL, seek civil penalties, assume the practice, and refer violations to law enforcement authority. These activities may be directed toward attorneys licensed in other states but not in California; suspended, disbarred, or otherwise inactive or former members of the Bar; and those who have never been licensed to practice law

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## Appendix B

### **BUSINESS AND PROFESSIONS CODE SECTIONS GOVERNING THE ANNUAL DISCIPLINE REPORT**

The principal statute governing the Annual Discipline Report is Business and Professions Code Section 6086.15. Following is the statute in its entirety:

#### *BUSINESS AND PROFESSIONS CODE SECTION 6086.15*

(a) The State Bar shall issue an Annual Discipline Report by April 30 of each year describing the performance and condition of the State Bar discipline system, including all matters that affect public protection. The report shall cover the previous calendar year and shall include accurate and complete descriptions of all of the following:

(1) 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 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.

(2) The number of inquiries and complaints and their disposition.

(3) 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.

(4) 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.

(5) The speed of complaint handling and dispositions by type, measured by the median and the average processing times.

(6) The number, average pending times, and types of filed notices of disciplinary charges and formal disciplinary outcomes.

(7) 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 reproofs, admonitions, and agreements in lieu of discipline.

(8) 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.

(9) 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.

(10) A description of the condition of the Client Security Fund, including an accounting of payouts.

(11) An accounting of the cost of the discipline system by function.



## APPENDIX B

(b) The Annual Discipline Report shall include statistical information presented in a consistent manner for year-to-year comparison and shall compare the information required under subdivision (a) to similar information for the previous three years.<sup>38</sup>

(c) The Annual Discipline Report shall be presented to the Chief Justice of California, to the Governor, to the Speaker of the Assembly, to the President pro Tempore of the Senate, and to the Assembly and Senate Judiciary Committees, for their consideration and shall be considered a public document.

Business and Professions Code Section 6068.15 contains internal references to other sections of the Business and Professions Code, which specify the data that the State Bar is required to report on an annual basis. Those code sections follow below, organized according to the data tables that report the required information:

### TABLES 3 AND 4: REPORTABLE ACTIONS

#### *BUSINESS AND PROFESSIONS CODE SECTION 6068*

It is the duty of an attorney to do all of the following:

- (a) To support the Constitution and laws of the United States and of this state.
- (b) To maintain the respect due to the courts of justice and judicial officers.
- (c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.
- (d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.
- (e) (1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.
- (2) Notwithstanding paragraph (1), an attorney may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.
- (f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.
- (g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.
- (h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.
- (i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the

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<sup>38</sup> Ongoing review and revisions to the underlying data resulted in small changes from the statistical information reported for the previous three years. For example, Table 4 of the 2015 ADR showed 76 cases reported pursuant to section 6087.7 (a)(3) for 2015, while the current ADR shows only 69 cases reported under that section in 2015. This change was caused by a case-level review of the data that found 7 cases previously categorized as judicial sanctions reported by a court that were, in fact, reported by opposing counsel. Once corrected, these cases no longer belonged in the category of Reportable Actions under this section. Similar changes to the underlying data resulted in minor differences from the statistical information from prior years reported in other categories.

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United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.

(j) To comply with the requirements of Section 6002.1.

(k) To comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

(l) To keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline.

(m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

(n) To provide copies to the client of certain documents under time limits and as prescribed in a rule of professional conduct which the board shall adopt.

(o) To report to the agency charged with attorney discipline, in writing, within 30 days of the time the attorney has knowledge of any of the following:

(1) The filing of three or more lawsuits in a 12 month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity.

(2) The entry of judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.

(3) The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).

(4) The bringing of an indictment or information charging a felony against the attorney.

(5) The 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 the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of that type.

(6) The imposition of discipline against the attorney by a professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.

(7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.

(8) As used in this subdivision, "against the attorney" includes claims and proceedings against any firm of attorneys for the practice of law in which the attorney was a partner at the time of the conduct complained of and any law corporation in which the attorney was a shareholder at the time of the conduct complained of unless the matter has to the attorney's knowledge already been reported by the law firm or corporation.

(9) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may require by rule or regulation.

(10) This subdivision is only intended to provide that the failure to report as required herein may serve as a basis of discipline.

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(a) Within 20 days after a judgment by a court of this state that a member of the State Bar of California 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, the court which rendered the judgment shall report that fact in writing to the State Bar of California.

(b) Every claim or action for damages against a member of the State Bar of California for fraud, misrepresentation, breach of fiduciary duty, or negligence committed in a professional capacity shall be reported to the State Bar of California within 30 days of receipt by the admitted insurer or licensed surplus brokers providing professional liability insurance to that member of the State Bar.

(c) An attorney who does not possess professional liability insurance shall send a complete written report to the State Bar as to any settlement, judgment, or arbitration award described in subdivision (b), in the manner specified in that subdivision.

### *BUSINESS AND PROFESSIONS CODE SECTION 6086.7*

(a) A court shall notify the State Bar of any of the following:

(1) A final order of contempt imposed against an attorney that may involve grounds warranting discipline under this chapter. The court entering the final order shall transmit to the State Bar a copy of the relevant minutes, final order, and transcript, if one exists.

(2) Whenever a modification or reversal of a judgment in a judicial proceeding is based in whole or in part on the misconduct, incompetent representation, or willful misrepresentation of an attorney.

(3) The imposition of any judicial sanctions against an attorney, except sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).

(4) The imposition of any civil penalty upon an attorney pursuant to Section 8620 of the Family Code.

(5) A violation described in paragraph (1) of subdivision (a) of Section 1424.5 of the Penal Code by a prosecuting attorney, if the court finds that the prosecuting attorney acted in bad faith and the impact of the violation contributed to a guilty verdict, guilty or nolo contendere plea, or, if identified before conclusion of trial, seriously limited the ability of a defendant to present a defense.

(b) In the event of a notification made under subdivision (a) the court shall also notify the attorney involved that the matter has been referred to the State Bar.

(c) The State Bar shall investigate any matter reported under this section as to the appropriateness of initiating disciplinary action against the attorney.

### *BUSINESS AND PROFESSIONS CODE SECTION 6091.1*

(a) The Legislature finds that overdrafts and misappropriations from attorney trust accounts are serious problems, and determines that it is in the public interest to ensure prompt detection and investigation of instances involving overdrafts and misappropriations from attorney trust accounts.

A financial institution, including any branch, which is a depository for attorney trust accounts under subdivision (a) or (b) of Section 6211, shall report to the State Bar in the event any properly payable instrument is presented against an attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored.

(b) All reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and shall include a copy of the dishonored instrument, if such a copy is normally provided to depositors.

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(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby. These reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

(c) Every attorney practicing or admitted to practice in this state shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements of this section.

(d) Nothing in this section shall preclude a financial institution from charging an attorney or law firm for the reasonable cost of producing the reports and records required by subdivisions (a) and (b).

### *BUSINESS AND PROFESSIONS CODE SECTION 6101*

(a) Conviction of a felony or misdemeanor, involving moral turpitude, constitutes a cause for disbarment or suspension.

In any proceeding, whether under this article or otherwise, to disbar or suspend an attorney on account of that conviction, the record of conviction shall be conclusive evidence of guilt of the crime of which he or she has been convicted.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Office of the State Bar of California of the pendency of an action against an attorney charging a felony or misdemeanor immediately upon obtaining information that the defendant is an attorney. The notice shall identify the attorney and describe the crimes charged and the alleged facts. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is an attorney, and the clerk shall record prominently in the file that the defendant is an attorney.

(c) The clerk of the court in which an attorney is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the Office of the State Bar. Within five days of receipt, the Office of the State Bar shall transmit the record of any conviction which involves or may involve moral turpitude to the Supreme Court with such other records and information as may be appropriate to establish the Supreme Court's jurisdiction. The State Bar of California may procure and transmit the record of conviction to the Supreme Court when the clerk has not done so or when the conviction was had in a court other than a court of this state.

(d) The proceedings to disbar or suspend an attorney on account of such a conviction shall be undertaken by the Supreme Court pursuant to the procedure provided in this section and Section 6102, upon the receipt of the certified copy of the record of conviction.

(e) A plea or verdict of guilty, an acceptance of a nolo contendere plea, or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of those sections.

### *BUSINESS AND PROFESSIONS CODE SECTION 6175 ET SEQ.*

#### *§6175*

As used in this article, the following definitions apply:

(a) "Lawyer" means a member of the State Bar or a person who is admitted and in good standing and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest

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court of, a foreign country or any political subdivision thereof, and includes any agent of the lawyer or law firm or law corporation doing business in the state.

(b) “Client” means a person who has, within the three years preceding the sale of financial products by a lawyer to that person, employed that lawyer for legal services. The settlor and trustee of a trust shall be considered one person.

(c) “Elder” and “dependent elder” shall have the meaning as defined in Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code.

(d) “Financial products” means long-term care insurance, life insurance, and annuities governed by the Insurance Code, or its successors.

(e) “Sell” means to act as a broker for a commission.

### §6175.3

A lawyer, while acting as a fiduciary, may sell financial products to a client who is an elder or dependent adult with whom the lawyer has or has had, within the preceding three years, an attorney client relationship, if the transaction or acquisition and its terms are fair and reasonable to the client, and if the lawyer provides that client with a disclosure that satisfies all of the following conditions:

(a) The disclosure is in writing and is clear and conspicuous. The disclosure shall be a separate document, appropriately entitled, in 12point print with one inch of space on all borders.

(b) The disclosure, in a manner that should reasonably have been understood by that client, is signed by the client, or the client’s conservator, guardian, or agent under a valid durable power of attorney.

(c) The disclosure states that the lawyer shall receive a commission and sets forth the amount of the commission and the actual percentage rate of the commission, if any. If the actual amount of the commission cannot be ascertained at the outset of the transaction, the disclosure shall include the actual percentage rate of the commission or the alternate basis upon which the commission will be computed, including an example of how the commission would be calculated.

(d) The disclosure identifies the source of the commission and the relationship between the source of the commission and the person receiving the commission.

(e) The disclosure is presented to the client at or prior to the time the recommendation of the financial product is made.

(f) The disclosure advises the client that he or she may obtain independent advice regarding the purchase of the financial product and will be given a reasonable opportunity to seek that advice.

(g) The disclosure contains a statement that the financial product may be returned to the issuing company within 30 days of receipt by the client for a refund as set forth in Section 10127.10 of the Insurance Code.

(h) The disclosure contains a statement that if the purchase of the financial product is for the purposes of MediCal planning, the client has been advised of other appropriate alternatives, including spend down strategies, and of the possibility of obtaining a fair hearing or obtaining a court order.

### §6175.4

(a) A client who suffers any damage as the result of a violation of this article by any lawyer may bring an action against that person to recover or obtain one or more of the following remedies:

(1) Actual damages, but in no case shall the total award of damages in a class action be less than five thousand dollars (\$5,000).

(2) An order enjoining the violation.

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(3) Restitution of property.

(4) Punitive damages.

(5) Any other relief that the court deems proper.

(b) A client may seek and be awarded, in addition to the remedies specified in subdivision (a), an amount not to exceed ten thousand dollars (\$10,000) where the trier of fact (1) finds that the client has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct, (2) makes an affirmative finding in regard to one or more of the factors set forth in subdivision (b) of Section 3345 of the Civil Code, and (3) finds that an additional award is appropriate. Judgment in a class action may award each class member the additional award where the trier of fact has made the foregoing findings.

### *§6175.5*

A violation of this article by a member shall be cause for discipline by the State Bar.

### *§6175.6*

The court shall report the name, address, and professional license number of any person found in violation of this article to the appropriate professional licensing agencies for review and possible disciplinary action.

## **TABLES 7A AND 7B: OTHER MATTERS**

### *BUSINESS AND PROFESSIONS CODE SECTION 6180*

When an attorney engaged in law practice in this state dies, resigns, becomes an inactive member of the State Bar, is disbarred, or is suspended from the active practice of law and is required by the order of suspension to give notice of the suspension, notice of cessation of law practice shall be given and the courts of this state shall have jurisdiction, as provided in this article.

### *BUSINESS AND PROFESSIONS CODE SECTION 6190*

The courts of the state shall have the jurisdiction as provided in this article when an attorney engaged in the practice of law in this state has, for any reason, including but not limited to excessive use of alcohol or drugs, physical or mental illness, or other infirmity or other cause, become incapable of devoting the time and attention to, and providing the quality of service for, his or her law practice which is necessary to protect the interest of a client if there is an unfinished client matter for which no other active member of the State Bar, with the consent of the client, has agreed to assume responsibility.

### *BUSINESS AND PROFESSIONS CODE SECTION 6007*

(a) When a member requires involuntary treatment pursuant to Article 6 (commencing with Section 5300) of Chapter 2 of Division 5 of, or Part 2 (commencing with Section 6250) of Division 6 of the Welfare and Institutions Code, or when under an order pursuant to Section 3051, 3106.5, or 3152 of the Welfare and Institutions Code he or she has been placed in or returned to inpatient status at the California Rehabilitation Center or its branches, or when he or she has been determined insane or mentally incompetent and is confined for treatment or placed on outpatient status pursuant to the Penal Code, or on account of his or her mental condition a guardian or conservator, for his or her estate or person or both, has been appointed, the Board of Trustees or an officer of the State Bar shall enroll the member as an inactive member.

The clerk of any court making an order containing any of the determinations or adjudications referred to in the immediately preceding paragraph shall send a certified copy of that order to the State Bar at the same time that the order is entered.

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The clerk of any court with which is filed a notice of certification for intensive treatment pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Division 5 of the Welfare and Institutions Code, upon receipt of the notice, shall transmit a certified copy of it to the State Bar.

The State Bar may procure a certified copy of any determination, order, adjudication, appointment, or notice when the clerk concerned has failed to transmit one or when the proceeding was had in a court other than a court of this state.

In the case of an enrollment pursuant to this subdivision, the State Bar shall terminate the enrollment when the member has had the fact of his or her restoration to capacity judicially determined, upon the member's release from inpatient status at the California Rehabilitation Center or its branches pursuant to Section 3053, 3109, or 3151 of the Welfare and Institutions Code, or upon the member's unconditional release from the medical facility pursuant to Section 5304 or 5305 of the Welfare and Institutions Code; and on payment of all fees required.

When a member is placed in, returned to, or released from inpatient status at the California Rehabilitation Center or its branches, or discharged from the narcotics treatment program, the Director of Corrections or his or her designee shall transmit to the State Bar a certified notice attesting to that fact.

(b) The board shall also enroll a member of the State Bar as an inactive member in each of the following cases:

(1) A member asserts a claim of insanity or mental incompetence in any pending action or proceeding, alleging his or her inability to understand the nature of the action or proceeding or inability to assist counsel in representation of the member.

(2) The court makes an order assuming jurisdiction over the member's law practice, pursuant to Section 6180.5 or 6190.3.

(3) After notice and opportunity to be heard before the board or a committee, the board finds that the member, because of mental infirmity or illness, or because of the habitual use of intoxicants or drugs, is (i) unable or habitually fails to perform his or her duties or undertakings competently, or (ii) unable to practice law without substantial threat of harm to the interests of his or her clients or the public. No proceeding pursuant to this paragraph shall be instituted unless the board or a committee finds, after preliminary investigation, or during the course of a disciplinary proceeding, that probable cause exists therefor. The determination of probable cause is administrative in character and no notice or hearing is required.

In the case of an enrollment pursuant to this subdivision, the board shall terminate the enrollment upon proof that the facts found as to the member's disability no longer exist and on payment of all fees required.

(c) (1) The board may order the involuntary inactive enrollment of an attorney upon a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public or upon a finding based on all the available evidence, including affidavits, that the attorney has not complied with Section 6002.1 and cannot be located after reasonable investigation.

(2) In order to find that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or the public pursuant to this subdivision, each of the following factors shall be found, based on all the available evidence, including affidavits:

(A) The attorney has caused or is causing substantial harm to the attorney's clients or the public.

(B) The attorney's clients or the public are likely to suffer greater injury from the denial of the involuntary inactive enrollment than the attorney is likely to suffer if it is granted, or there is a reasonable likelihood that the harm will reoccur or continue. Where the evidence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shall shift

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to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue.

(C) There is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter.

(3) In the case of an enrollment under this subdivision, the underlying matter shall proceed on an expedited basis.

(4) The board shall order the involuntary inactive enrollment of an attorney upon the filing of a recommendation of disbarment after hearing or default. For purposes of this section, that attorney shall be placed on involuntary inactive enrollment regardless of the membership status of the attorney at the time.

(5) The board shall formulate and adopt rules of procedure to implement this subdivision.

In the case of an enrollment pursuant to this subdivision, the board shall terminate the involuntary inactive enrollment upon proof that the attorney's conduct no longer poses a substantial threat of harm to the interests of the attorney's clients or the public or where an attorney who could not be located proves compliance with Section 6002.1.

(d) (1) The board may order the involuntary inactive enrollment of an attorney for violation of probation upon the occurrence of all of the following:

(A) The attorney is under a suspension order any portion of which has been stayed during a period of probation.

(B) The board finds that probation has been violated.

(C) The board recommends to the court that the attorney receive an actual suspension on account of the probation violation or other disciplinary matter.

(2) The board shall terminate an enrollment under this subdivision upon expiration of a period equal to the period of stayed suspension in the probation matter, or until the court makes an order regarding the recommended actual suspension in the probation matter, whichever occurs first.

(3) If the court orders a period of actual suspension in the probation matter, any period of involuntary inactive enrollment pursuant to this subdivision shall be credited against the period of actual suspension ordered.

(e) (1) The board shall order the involuntary, inactive enrollment of a member whose default has been entered pursuant to the State Bar Rules of Procedure if both of the following conditions are met:

(A) The notice was duly served pursuant to subdivision (c) of Section 6002.1.

(B) The notice contained the following language at or near the beginning of the notice, in capital letters:

IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INVOLUNTARY INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.

(2) The board shall terminate the involuntary inactive enrollment of a member under this subdivision when the member's default is set aside on motion timely made under the State Bar Rules of Procedure or the disciplinary proceedings are completed.

(3) The enrollment under this subdivision is administrative in character and no hearing is required.



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- (4) Upon the involuntary inactive enrollment of a member under this subdivision, the notice required by subdivision (b) of Section 6092.5 shall be promptly given.
- (5) The board may delegate its authority under this subdivision to the presiding referee or presiding judge of the State Bar Court or his or her designee.
- (f) The pendency or determination of a proceeding or investigation provided for by this section shall not abate or terminate a disciplinary investigation or proceeding except as required by the facts and law in a particular case.
- (g) No membership fees shall accrue against the member during the period he or she is enrolled as an inactive member pursuant to this section.
- (h) The board may order a full range of interim remedies or final discipline short of involuntary inactive enrollment, including, but not limited to, conditions of probation following final discipline, or directly ordered interim remedies, to restrict or supervise an attorney's practice of law, as well as proceedings under subdivision (a), (b), (c), or (d), or under Section 6102 or 6190. They may include restrictions as to scope of practice, monetary accounting procedures, review of performance by probation or other monitors appointed by the board, or such other measures as may be determined, after hearing, to protect present and future clients from likely substantial harm. These restrictions may be imposed upon a showing as provided in subdivision (c), except that where license restriction is proposed, the showing required of the State Bar under the factors described in subparagraph (B) of paragraph (2) of subdivision (c) need not be made.

### *BUSINESS AND PROFESSIONS CODE SECTION 6203*

(a) The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy. The award shall not include any award to either party for costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding, notwithstanding any contract between the parties providing for such an award or costs or attorney's fees. However, the filing fee paid may be allocated between the parties by the arbitrators. This section shall not preclude an award of costs or attorney's fees to either party by a court pursuant to subdivision (c) of this section or of subdivision (d) of Section 6204. The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver to each of the parties with the award, an original declaration of service of the award.

Evidence relating to claims of malpractice and professional misconduct, shall be admissible only to the extent that those claims bear upon the fees, costs, or both, to which the attorney is entitled. The arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying the claim. Nothing in this section shall be construed to prevent the arbitrators from awarding the client a refund of unearned fees, costs, or both previously paid to the attorney.

(b) Even if the parties to the arbitration have not agreed in writing to be bound, the arbitration award shall become binding upon the passage of 30 days after service of notice of the award, unless a party has, within the 30 days, sought a trial after arbitration pursuant to Section 6204. If an action has previously been filed in any court, any petition to confirm, correct, or vacate the award shall be to the court in which the action is pending, and may be served by mail on any party who has appeared, as provided in Chapter 4 (commencing with Section 1003) of Title 14 of Part 2 of the Code of Civil Procedure; otherwise it shall be in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure. If no action is pending in any court, the award may be confirmed, corrected, or vacated by petition to the court having jurisdiction over the amount of the arbitration award, but otherwise in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

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(c) Neither party to the arbitration may recover costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding with the exception of the filing fee paid pursuant to subdivision (a) of this section. However, a court confirming, correcting, or vacating an award under this section may award to the prevailing party reasonable fees and costs incurred in obtaining confirmation, correction, or vacation of the award including, if applicable, fees and costs on appeal. The party obtaining judgment confirming, correcting, or vacating the award shall be the prevailing party except that, without regard to consideration of who the prevailing party may be, if a party did not appear at the arbitration hearing in the manner provided by the rules adopted by the board of trustees, that party shall not be entitled to attorney's fees or costs upon confirmation, correction, or vacation of the award.

(d) (1) In any matter arbitrated under this article in which the award is binding or has become binding by operation of law or has become a judgment either after confirmation under subdivision (c) or after a trial after arbitration under Section 6204, or in any matter mediated under this article, if: (A) the award, judgment, or agreement reached after mediation includes a refund of fees or costs, or both, to the client and (B) the attorney has not complied with that award, judgment, or agreement the State Bar shall enforce the award, judgment, or agreement by placing the attorney on involuntary inactive status until the refund has been paid.

(2) The State Bar shall provide for an administrative procedure to determine whether an award, judgment, or agreement should be enforced pursuant to this subdivision. An award, judgment, or agreement shall be so enforced if:

(A) The State Bar shows that the attorney has failed to comply with a binding fee arbitration award, judgment, or agreement rendered pursuant to this article.

(B) The attorney has not proposed a payment plan acceptable to the client or the State Bar.

However, the award, judgment, or agreement shall not be so enforced if the attorney has demonstrated that he or she (i) is not personally responsible for making or ensuring payment of the refund, or (ii) is unable to pay the refund.

(3) An attorney who has failed to comply with a binding award, judgment, or agreement shall pay administrative penalties or reasonable costs, or both, as directed by the State Bar. Penalties imposed shall not exceed 20 percent of the amount to be refunded to the client or one thousand dollars (\$1,000), whichever is greater. Any penalties or costs, or both, that are not paid shall be added to the membership fee of the attorney for the next calendar year.

(4) The board shall terminate the inactive enrollment upon proof that the attorney has complied with the award, judgment, or agreement and upon payment of any costs or penalties, or both, assessed as a result of the attorney's failure to comply.

(5) A request for enforcement under this subdivision shall be made within four years from the date (A) the arbitration award was mailed, (B) the judgment was entered, or (C) the date the agreement was signed. In an arbitrated matter, however, in no event shall a request be made prior to 100 days from the date of the service of a signed copy of the award. In cases where the award is appealed, a request shall not be made prior to 100 days from the date the award has become final as set forth in this section.

### TABLE 9: UNAUTHORIZED PRACTICE OF LAW BY NON-ATTORNEYS

#### *BUSINESS AND PROFESSIONS CODE SECTION 6126.3*

(a) In addition to any criminal penalties pursuant to Section 6126 or to any contempt proceedings pursuant to Section 6127, the courts of the state shall have the jurisdiction provided in this section when a person advertises or holds himself or herself out as practicing or entitled to practice law, or

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otherwise practices law, without being an active member of the State Bar or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so.

(b) The State Bar, or the superior court on its own motion, may make application to the superior court for the county where the person described in subdivision (a) maintains or more recently has maintained his or her principal office for the practice of law or where he or she resides, for assumption by the court of jurisdiction over the practice to the extent provided in this section. In any proceeding under this section, the State Bar shall be permitted to intervene and to assume primary responsibility for conducting the action.

(c) An application made pursuant to subdivision (b) shall be verified, and shall state facts showing all of the following:

(1) Probable cause to believe that the facts set forth in subdivision (a) of Section 6126 have occurred.

(2) The interest of the applicant.

(3) Probable cause to believe that the interests of a client or of an interested person or entity will be prejudiced if the proceeding is not maintained.

(d) The application shall be set for hearing, and an order to show cause shall be issued directing the person to show cause why the court should not assume jurisdiction over the practice as provided in this section. A copy of the application and order to show cause shall be served upon the person by personal delivery or, as an alternate method of service, by certified or registered mail, return receipt requested, addressed to the person either at the address at which he or she maintains, or more recently has maintained, his or her principal office or at the address where he or she resides. Service is complete at the time of mailing, but any prescribed period of notice and any right or duty to do any act or make any response within that prescribed period or on a date certain after notice is served by mail shall be extended five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the State Bar is not the applicant, copies shall also be served upon the Office of the Chief Trial Counsel of the State Bar in similar manner at the time of service on the person who is the subject of the application. The court may prescribe additional or alternative methods of service of the application and order to show cause, and may prescribe methods of notifying and serving notices and process upon other persons and entities in cases not specifically provided herein.

(e) If the court finds that the facts set forth in subdivision (a) of Section 6126 have occurred and that the interests of a client or an interested person or entity will be prejudiced if the proceeding provided herein is not maintained, the court may make an order assuming jurisdiction over the person's practice pursuant to this section. If the person to whom the order to show cause is directed does not appear, the court may make its order upon the verified application or upon such proof as it may require. Thereupon, the court shall appoint one or more active members of the State Bar to act under its direction to mail a notice of cessation of practice, pursuant to subdivision (g), and may order those appointed attorneys to do one or more of the following:

(1) Examine the files and records of the practice and obtain information as to any pending matters that may require attention.

(2) Notify persons and entities who appear to be clients of the person of the occurrence of the event or events stated in subdivision (a) of Section 6126, and inform them that it may be in their best interest to obtain other legal counsel.

(3) Apply for an extension of time pending employment of legal counsel by the client.

(4) With the consent of the client, file notices, motions, and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained.

## APPENDIX B

- (5) Give notice to the depositor and appropriate persons and entities who may be affected, other than clients, of the occurrence of the event or events.
- (6) Arrange for the surrender or delivery of clients' papers or property.
- (7) Arrange for the appointment of a receiver, where applicable, to take possession and control of any and all bank accounts relating to the affected person's practice.
- (8) Do any other acts that the court may direct to carry out the purposes of this section.

The court shall have jurisdiction over the files and records and over the practice of the affected person for the limited purposes of this section, and may make all orders necessary or appropriate to exercise this jurisdiction. The court shall provide a copy of any order issued pursuant to this section to the Office of the Chief Trial Counsel of the State Bar.

(f) Anyone examining the files and records of the practice of the person described in subdivision (a) shall observe any lawyer-client privilege under Sections 950 and 952 of the Evidence Code and shall make disclosure only to the extent necessary to carry out the purposes of this section. That disclosure shall be a disclosure that is reasonably necessary for the accomplishment of the purpose for which the person described in subdivision (a) was consulted. The appointment of a member of the State Bar pursuant to this section shall not affect the lawyer-client privilege, which privilege shall apply to communications by or to the appointed members to the same extent as it would have applied to communications by or to the person described in subdivision (a).

(g) The notice of cessation of law practice shall contain any information that may be required by the court, including, but not limited to, the finding by the court that the facts set forth in subdivision (a) of Section 6126 have occurred and that the court has assumed jurisdiction of the practice. The notice shall be mailed to all clients, to opposing counsel, to courts and agencies in which the person has pending matters with an identification of the matter, to the Office of the Chief Trial Counsel of the State Bar, and to any other person or entity having reason to be informed of the court's assumption of the practice.

(h) Nothing in this section shall authorize the court or an attorney appointed by it pursuant to this section to approve or disapprove of the employment of legal counsel, to fix terms of legal employment, or to supervise or in any way undertake the conduct of the practice, except to the limited extent provided by paragraphs (3) and (4) of subdivision (e).

(i) Unless court approval is first obtained, neither the attorney appointed pursuant to this section, nor his or her corporation, nor any partner or associate of the attorney shall accept employment as an attorney by any client of the affected person on any matter pending at the time of the appointment. Action taken pursuant to paragraphs (3) and (4) of subdivision (e) shall not be deemed employment for purposes of this subdivision.

(j) Upon a finding by the court that it is more likely than not that the application will be granted and that delay in making the orders described in subdivision (e) will result in substantial injury to clients or to others, the court, without notice or upon notice as it shall prescribe, may make interim orders containing any provisions that the court deems appropriate under the circumstances. Such an interim order shall be served in the manner provided in subdivision (d) and, if the application and order to show cause have not yet been served, the application and order to show cause shall be served at the time of serving the interim order.

(k) No person or entity shall incur any liability by reason of the institution or maintenance of a proceeding brought under this section. No person or entity shall incur any liability for an act done or omitted to be done pursuant to order of the court under this section. No person or entity shall be liable for failure to apply for court jurisdiction under this section. Nothing in this section shall affect any obligation otherwise existing between the affected person and any other person or entity. (l) An order pursuant to this section is not appealable and shall not be stayed by petition for a writ, except as ordered by the superior court or by the appellate court. (m) A member of the State

## **APPENDIX B**

Bar appointed pursuant to this section shall serve without compensation. However, the member may be paid reasonable compensation by the State Bar in cases where the State Bar has determined that the member has devoted extraordinary time and services that were necessary to the performance of the member's duties under this article. All payments of compensation for time and services shall be at the discretion of the State Bar. Any member shall be entitled to reimbursement from the State Bar for necessary expenses incurred in the performance of the member's duties under this article. Upon court approval of expenses or compensation for time and services, the State Bar shall be entitled to reimbursement therefor from the person described in subdivision (a) or his or her estate.

### ***BUSINESS AND PROFESSIONS CODE SECTION 6126.7***

(a) It is a violation of subdivision (a) of Section 6126 for any person who is not an attorney to literally translate from English into another language, in any document, including an advertisement, stationery, letterhead, business card, or other comparable written material, any words or titles, including, but not limited to, "notary public," "notary," "licensed," "attorney," or "lawyer," that imply that the person is an attorney. As provided in this subdivision, the literal translation of the phrase "notary public" into Spanish as "notario publico" or "notario," is expressly prohibited.

(b) For purposes of this section, "literal translation of" or "to literally translate" a word, title, or phrase from one language means the translation of a word, title, or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

(c) (1) In addition to any other remedies and penalties prescribed in this article, a person who violates this section shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000) per day for each violation, to be assessed and collected in a civil action brought by the State Bar.

(2) In assessing the amount of the civil penalty, the court may consider relevant circumstances presented by the parties to the case, including, but not limited to, the following:

(A) The nature and severity of the misconduct.

(B) The number of violations.

(C) The length of time over which the misconduct occurred, and the persistence of the misconduct.

(D) The wilfulness of the misconduct.

(E) The defendant's assets, liabilities, and net worth.

(3) The court shall grant a prevailing plaintiff reasonable attorneys' fees and costs.

(4) A civil action brought under this section shall be commenced within four years after the cause of action accrues.

(5) In a civil action brought by the State Bar under this section, the civil penalty collected shall be paid to the State Bar and allocated to the fund established pursuant to Section 6033 to provide free legal services related to immigration reform act services to clients of limited means or to a fund for the purposes of mitigating unpaid claims of injured immigrant clients under Section 22447, as directed by the Board of Trustees of the State Bar. The board shall annually report any collection and expenditure of funds for the preceding calendar year, as authorized by this section, to the Assembly and Senate Committees on Judiciary. The report required by this section may be included in the report described in Section 6086.15.

## **APPENDIX D: CRIMINAL CONVICTION MATTERS AND SECTION 6095 REPORTING**

### ***BUSINESS AND PROFESSIONS CODE SECTION 6095***

## **APPENDIX B**

(a) The disciplinary agency shall annually hold at least two public hearings, one in southern California and one in northern California, to hear proposals on bar disciplinary procedures, attorney competency, and admissions procedures.

(b) To the extent the information is known to the disciplinary agency, it shall report annually to the Assembly and Senate Judiciary Committees concerning the judicial or disciplinary disposition of all criminal or disciplinary proceedings involving the allegation of the commission of a felony by an attorney.

DRAFT

APPENDIX C  
SAMPLE COMPLAINT CLOSURE LETTERS



THE STATE BAR  
OF CALIFORNIA

OFFICE OF CHIEF TRIAL COUNSEL  
INTAKE UNIT

845 SOUTH FIGUEROA STREET, LOS ANGELES, CALIFORNIA 90017-2515

TELEPHONE: (213) 765-1000

FAX: (213) 765-1168

<http://www.calbar.ca.gov>

January 24, 2017

[REDACTED]  
Los Angeles, CA 90008

RE: Inquiry Number: 16-31228  
Respondent: [REDACTED]

Dear Ms. [REDACTED]:

An attorney for the State Bar's Office of Chief Trial Counsel has reviewed your complaint against [REDACTED] to determine whether there are sufficient grounds for proceeding to prosecute a possible violation of the State Bar Act and/or Rules of Professional Conduct.

You have alleged that you hired Mr. [REDACTED] on May 11, 2016 to represent you in a custody dispute with your ex-spouse. You paid Mr. [REDACTED] an initial retainer of \$3,000 at that time. In June 2016, Mr. [REDACTED] filed a response for you, and the court awarded you temporary custody. In December 2016, you terminated your employment of Mr. [REDACTED] because you were dissatisfied with his services (Apparently there were discrepancies in court filings that Mr. [REDACTED] filed for you.) Although you disputed his fees, Mr. [REDACTED] refused to provide you a refund and failed to provide you an accounting at that time. In response to these allegations, Mr. [REDACTED] admits that you hired and paid him \$3,000, and that he did not provide an accounting to you upon termination. Mr. [REDACTED] sent you an accounting on or about January 23, 2017 upon receiving a letter from the State Bar of California.

After evaluating the facts and evidence presented by you and [REDACTED], we have determined that issuing a warning letter to Mr. [REDACTED] is the appropriate disposition of your complaint. A warning letter serves as notice to the attorney that the specified conduct is prohibited and advises the attorney to refrain from such conduct in the future. Mr. [REDACTED]'s Warning Letter will be kept on file for consideration in the event that additional complaints are submitted to the State Bar against him.

Please be aware that the Warning Letter is not considered public discipline and is confidential. The fact that a warning letter was issued may not be disclosed to anyone besides you and Mr. [REDACTED] and cannot be offered to or considered by a court or other adjudicator as evidence of professional misconduct. Mr. [REDACTED] is not required to disclose the issuance of a warning letter in an application for employment.

For these reasons, the State Bar is closing this matter.

If you have new facts and circumstances that you believe may change our determination to close your complaint, you may submit a written statement with the new information to the Intake Unit for review. If you have any questions about this process, you may call Deputy Trial Counsel [REDACTED] at [REDACTED]. If you leave a voice message, be sure to clearly identify the lawyer complained of, the

## APPENDIX C

[REDACTED]

inquiry number assigned, and your telephone number including the area code. We should return your call within two business days.

If you are not aware of new facts or circumstances but otherwise disagree with the decision to close your complaint, you may submit a request for review by the State Bar's Complaint Review Unit, which will review your complaint and the Intake Unit's decision to close the complaint. The Complaint Review Unit may reopen your complaint if it determines that your complaint was inappropriately closed or that you presented new, significant evidence to support your complaint. To request review by the Complaint Review Unit, you must submit your request **in writing**, together with any new evidence you wish to be considered, post-marked within **90 days of the date of this letter**, to:

The State Bar of California,  
Complaint Review Unit,  
Office of General Counsel,  
180 Howard Street,  
San Francisco, CA 94105-1617

Please note that telephonic requests for review will not be accepted.

The State Bar cannot give you legal advice. If you wish to consult an attorney about any other remedies available to you, a certified lawyer referral service can provide the names of attorneys who may be able to assist you. In order to find a certified lawyer referral service, you may call our automated Lawyer Referral Services Directory at 1-866-442-2529 (toll free in California) or 415-538-2250 (from outside California) or access the State Bar's website at [www.calbar.ca.gov](http://www.calbar.ca.gov) and look for information on lawyer referral services.

Because you dispute the attorney's fees or costs that [REDACTED] [REDACTED] has charged you, you may seek an arbitration or mediation of the dispute under the State Bar's Mandatory Fee Arbitration Program. For more information about this program and how to request arbitration, go to the State Bar's Web site at [www.calbar.ca.gov](http://www.calbar.ca.gov) or call 415-538-2020.

Thank you for bringing your concerns to the attention of the State Bar.

Very truly yours,

[REDACTED]  
Senior Trial Counsel

[REDACTED]



APPENDIX C



THE STATE BAR  
OF CALIFORNIA

OFFICE OF CHIEF TRIAL COUNSEL  
INTAKE UNIT

845 SOUTH FIGUEROA STREET, LOS ANGELES, CALIFORNIA 90017-2515

TELEPHONE: (213) 765-1000

FAX: (213) 765-1168

<http://www.calbar.ca.gov>

January 24, 2017

**PERSONAL AND CONFIDENTIAL**

[REDACTED]

Fresno, CA 93721

RE: Inquiry Number: 16-32020  
Complainant: [REDACTED]

Dear Ms. [REDACTED]:

We have reviewed a complaint from the above-named person. We are directing this communication to you based on our information that you are not currently represented by counsel in this matter. If we are incorrect, please promptly advise the undersigned in writing so that future communications may be directed to your counsel.

Mr. [REDACTED] advises that you have not been in contact with him about the status of his case. Mr. [REDACTED] specifically states that he sent you emails on November 18 and 21, 2016 concerning the status of his case and that you have not substantively responded to these emails.

Please re-establish contact with the client within ten (10) days. The client will be expecting to hear from you personally. He may advise us if he has not heard from you within that time for the State Bar's further consideration, if necessary.

Pursuant to Section 6068 (m) of the California Business and Professions Code, it is the duty of an attorney to respond promptly to a client's reasonable inquiry about his affairs. It is hoped that your re-established contact will resolve this matter. Therefore, the complaint file is being closed at this time, without prejudice.

Thank you for your courtesy and cooperation.

Very truly yours,

[REDACTED]  
Senior Trial Counsel

APPENDIX C



THE STATE BAR  
OF CALIFORNIA

OFFICE OF CHIEF TRIAL COUNSEL  
INTAKE UNIT

845 SOUTH FIGUEROA STREET, LOS ANGELES, CALIFORNIA 90017-2515

TELEPHONE: (213) 765-1000

FAX: (213) 765-1168

<http://www.calbar.ca.gov>

February 23, 2017

[REDACTED]  
[REDACTED]  
[REDACTED]

Vacaville, CA 95696

RE: Inquiry Number: 17-01970  
Respondent: [REDACTED]

Dear Mr. [REDACTED]:

An attorney for the State Bar's Office of Chief Trial Counsel has reviewed your complaint against [REDACTED] to determine whether there are sufficient grounds for proceeding to prosecute a possible violation of the State Bar Act and/or Rules of Professional Conduct.

You have alleged that you have discharged [REDACTED] and have requested your client file but that he has not released your documents to you. We hope to resolve this matter by bringing your complaint to the attorney's attention.

We have advised Mr. [REDACTED] to contact you within ten (10) working days from the date of this letter, to make arrangements to return your client file. Under the Rules of Professional Conduct, the attorney is not required to mail or deliver the file to you. You and the attorney must decide whether the file will be mailed or picked up from the attorney's office, either by yourself or someone whom you authorize to pick up the file for you.

Should Mr. [REDACTED] fail to contact you within the specified time, please contact the Intake Unit of the State Bar of California at: 845 S. Figueroa Street, Los Angeles, CA 90017, (213) 765-1200. At that time, we will determine if further action is needed.

Unless we are notified the attorney has not made your client file available, your complaint will remain closed.

Thank you for bringing your concern to the attention of the State Bar.

Very truly yours,

[REDACTED]

Senior Trial Counsel

/rv

APPENDIX C



THE STATE BAR  
OF CALIFORNIA

OFFICE OF CHIEF TRIAL COUNSEL  
INTAKE UNIT

845 SOUTH FIGUEROA STREET, LOS ANGELES, CALIFORNIA 90017-2515

TELEPHONE: (213) 765-1000

FAX: (213) 765-1168

<http://www.calbar.ca.gov>

February 23, 2017

**PERSONAL AND CONFIDENTIAL**

[REDACTED]

Morristown, NJ 07960

RE: Inquiry Number: 17-01970  
Complainant: [REDACTED]

Dear Mr. [REDACTED]:

Please be advised that [REDACTED] has complained that you have failed to turn his client file over to him.

The Rules of Professional Conduct of the State Bar of California require you to release to a client all papers and property to which a client is entitled. This includes all transcripts (clerk and trial), reports, and tapes in your possession. The complete original file belongs to the client and you may copy at your expense any documents you wish to maintain for your files. (Rules of Prof. Conduct, rule 3-700(D) (1); *Academy of California Optometrists, Inc. v. Superior Court* (1975) 51 Cal.App.3d 999; and *Weiss v. Marcus* (1975) 51 Cal.App.3d 590).

The contact information for [REDACTED] is:

[REDACTED]

Vacaville, CA 95696

Please notify Mr. [REDACTED] within ten (10) business days that the file is available. If you choose to send the file to the client, please send a copy of the cover letter only to my attention. Please do not send any part of the original client file to the State Bar. If you have already provided the file or are unable to provide portions of the requested file to Mr. [REDACTED], please inform him and provide us a copy of that letter.

Although, in our exercise of our discretion, we have decided to close this complaint, we may reopen the matter if Mr. [REDACTED] contacts us to report that the client file was not made available.

## APPENDIX C

Thank you for your cooperation in resolving this matter.

Very truly yours,

[REDACTED]

Senior Trial Counsel

DRAFT



THE STATE BAR  
OF CALIFORNIA

OFFICE OF CHIEF TRIAL COUNSEL  
INTAKE UNIT

845 SOUTH FIGUEROA STREET, LOS ANGELES, CALIFORNIA 90017-2515

TELEPHONE: (213) 765-1000

FAX: (213) 765-1168

<http://www.calbar.ca.gov>

August 12, 2016

**PERSONAL AND CONFIDENTIAL**

[REDACTED]  
Woodland Hills, CA 91367

RE: Inquiry Number: 16-22302  
Complainant: [REDACTED]

Dear Mr. [REDACTED]:

We have received a complaint from [REDACTED] in July 2016, who advised us that you had violated and continued to violate the California Attorney Guidelines of Civility and Professionalism in your communications with him in connection with [REDACTED], Los Angeles County Superior Court case no. [REDACTED]. Mr. [REDACTED] provided a copy of a ruling in that case, filed on June 28, 2016, in which the court expressed concern with your professionalism and directed you to the Superior Court's Guidelines for Civility in Litigation.

While at this time there does not appear to be the level of conduct that would likely lead to the imposition of discipline in the State Bar Court, we are concerned. Please be sure that that you review the State Bar's Attorney Guidelines of Civility and Professionalism which can be found at the State Bar's website at <http://ethics.calbar.ca.gov/Ethics/AttorneyCivilityandProfessionalism.aspx> (see enclosure).

We would also like to bring the following resources to your attention in order to assist you to avoid complaints in the future:

1. State Bar Ethics Hotline

The Hotline provides research assistance to members facing professional responsibility and legal ethics questions. The Hotline is available from 9:00 a.m. to 5:00 p.m. Monday through Friday, by calling 1-800-2-ETHICS or 1-800-238-4427.

2. State Bar Act and Rules of Professional Conduct, Publication 250

Publication 250 is a concise collection of the Rules of Professional Conduct, the California Business and Professions Code, Rules of Court, state statutes and other rules and regulations.

## APPENDIX C

Publication 250 is available from the State Bar by mailing your check for \$15.00 to the State Bar of California, Professional Competence, 180 Howard Street, San Francisco, California, 94105-1639.

### 3. The California Compendium of Professional Responsibility

The Compendium is a comprehensive collection of advisory ethics opinions from the State Bar's Standing Committee on Professional Responsibility and local bar association ethics committees. It contains a complete index to assist you in finding relevant cases, statutes, court rules and ethics opinions bearing on an issue.

The Compendium is also available from the State Bar by mailing your check to the State Bar of California, Professional Competence, 180 Howard Street, San Francisco, California, 94105-1639. The three-volume set is available for \$157.33. Annual updates may be obtained at a cost of \$40.00.

### 4. State Bar Ethics School

Ethics School is a six-hour course providing insight into the common issues faced by attorneys in the course of practice. The course is approved for six hours of MCLE credit. The cost of the course is \$150.00. Scheduling information is available by contacting [REDACTED] at [REDACTED].

We hope that you will find these resources helpful.

Very truly yours,

[REDACTED]  
Deputy Trial Counsel

[REDACTED]:

Enclosure

## APPENDIX C



### THE STATE BAR OF CALIFORNIA

### OFFICE OF CHIEF TRIAL COUNSEL INTAKE UNIT

845 SOUTH FIGUEROA STREET, LOS ANGELES, CALIFORNIA 90017-2515

TELEPHONE: (213) 765-1000

FAX: (213) 765-1168

<http://www.calbar.ca.gov>

November 21, 2016

[REDACTED]  
[REDACTED]  
San Carlos, CA 94070

RE: Inquiry Number: 16-29257  
Respondents: [REDACTED]

Dear Mr. [REDACTED]:

The State Bar's Office of Chief Trial Counsel has reviewed your complaint against [REDACTED] and [REDACTED] to determine whether there are sufficient grounds to prosecute a possible violation of the State Bar Act and/or Rules of Professional Conduct.

You have stated that [REDACTED] represented you after you were sued for violating the Fair Housing Act. [REDACTED] was your opposing counsel. You have complained that Mr. [REDACTED] improperly sued you twice based on the same cause of action because he brought a complaint through the Department of Housing and Urban Development (HUD) and then brought two civil lawsuits. You further complained that Mr. [REDACTED] cashed your settlement check before signing the settlement agreement. You believe the claims were frivolous even though you ultimately settled the matter. You have asked that Mr. [REDACTED] pay your attorney fees, return the \$25,000 settlement funds and be disbarred.

You have further complained about Ms. [REDACTED] performance as your attorney. Specifically you contend that she failed to perform because she was not immediately aware that if you lost the civil case, you would be liable for the other party's attorney fees. You also noted that after agreeing to settlement you asked Ms. [REDACTED] where to send the settlement funds but she neglected to inform you until three days before the funds were due. You have further complained that Ms. [REDACTED] has failed to respond to your repeated email requests and calls regarding the status of the settlement.

Review of the case dockets shows that the first civil case that was filed has been inactive since November of 2014. The active case docket showed a Notice of Hearing had been issued on 11/15/16 for a settlement conference hearing in April of 2017.

Based on our evaluation of the information provided, we are closing your complaint. Under the laws of California, the facts you alleged against [REDACTED] and [REDACTED], if proved, would not be grounds for disciplinary action. Under the Rules of Professional Conduct, an attorney must only maintain those actions which he believes to be legal or just. Please understand that Mr. [REDACTED] represents the opposing party and is likely acting at the opposing party's direction. Here there are insufficient facts to support a finding that Mr. [REDACTED] himself believes that litigation against you is frivolous. Your attorney brought a demurrer and the court did not find in your favor. Additionally, the issues that you raised about Mr. [REDACTED] actions in regards to settlement are civil in nature and the State Bar does not have the authority or jurisdiction to make determinations about the merits of a civil case. You would be

## APPENDIX C

best served by raising your complaints to the court handling your case, particularly since the court has set a hearing on settlement.

As to your complaints about Ms. [REDACTED], under the Rules of Professional Conduct an attorney must not intentionally, recklessly or repeatedly fail to perform legal services with competence. Here there are insufficient facts to show that Ms. [REDACTED] violated this rule because she did not immediately inform you that you may be liable for the other party's attorney fees. Your dissatisfaction with the settlement does not provide a basis for disciplinary action.

With regards to Ms. [REDACTED] lack of communication, under the Rules of Professional Conduct, an attorney must notify her client of significant case events and reasonably respond to requests for information. We hope to resolve the matter by bringing your complaint to the attorney's attention.

We have requested that Ms. [REDACTED] resume communications with you within ten (10) working days of the date of this letter and discuss the status of your case. If the attorney fails to contact you or provide a status update, please inform this office. We may then consider taking further action to assist you.

For these reasons, the State Bar is closing this matter.

If the court makes any findings of impropriety by Mr. [REDACTED], please notify our office so that we may reevaluate your complaint.

If you dispute the attorney's fees or costs that [REDACTED] has charged you, you may seek an arbitration or mediation of the dispute under the State Bar's Mandatory Fee Arbitration Program. Through arbitration, an arbitrator may determine if Ms. [REDACTED] fees were warranted and whether a refund is due to you. For more information about this program and how to request arbitration, go to the State Bar's website at [www.calbar.ca.gov](http://www.calbar.ca.gov) or call [REDACTED].

If you have new facts and circumstances that you believe may change our determination to close your complaint, you may submit a written statement with the new information to the Intake Unit for review. If you have any questions about this process, you may call Deputy Trial Counsel [REDACTED] at [REDACTED]. If you leave a voice message, be sure to clearly identify the lawyer complained of, the inquiry number assigned, and your telephone number including the area code. We should return your call within two business days.

If you are not aware of new facts or circumstances but otherwise disagree with the decision to close your complaint, you may submit a request for review by the State Bar's Complaint Review Unit, which will review your complaint and the Intake Unit's decision to close the complaint. The Complaint Review Unit may reopen your complaint if it determines that your complaint was inappropriately closed or that you presented new, significant evidence to support your complaint. To request review by the Complaint Review Unit, you must submit your request **in writing**, together with any new evidence you wish to be considered, post-marked within **90 days of the date of this letter**, to:

The State Bar of California,  
Complaint Review Unit,



## APPENDIX C

[REDACTED]

Office of General Counsel,  
180 Howard Street,  
San Francisco, CA 94105-1617.

The State Bar cannot give you legal advice. If you wish to consult an attorney about any other remedies available to you, a certified lawyer referral service can provide the names of attorneys who may be able to assist you. In order to find a certified lawyer referral service, you may call our automated Lawyer Referral Services Directory at 1-866-442-2529 (toll free in California) or 415-538-2250 (from outside California) or access the State Bar's website at [www.calbar.ca.gov](http://www.calbar.ca.gov) and look for information on lawyer referral services.

Thank you for bringing your concerns to the attention of the State Bar.

Very truly yours,

[REDACTED]  
Deputy Trial Counsel

## Appendix D

### CRIMINAL CONVICTION MATTERS AND SECTION 6095 REPORTING

While the body of the Annual Discipline Report provides information required by section 6086.15, not all types of reportable actions are listed under this section of the Business and Professions code. For example, section 6101, subdivision (c), which is omitted from section 6086.15, requires superior courts to report all criminal convictions to the State Bar. This Appendix supplements the statutorily mandated data to provide a more comprehensive understanding of the State Bar's role in monitoring criminal convictions. In addition, this Appendix includes reporting on felony dispositions, as required by section 6095(b).

Business and Professions Code section 6101 requires any prosecuting agency to notify the State Bar of any felony or misdemeanor charges filed against an attorney, and requires any court in which an attorney is convicted of a crime to transmit a certified copy of the record of conviction to the State Bar. In addition, section 6068, subdivision (o), requires an attorney to report any felony indictment or charges, as well as conviction of any felony and certain misdemeanor charges.<sup>39</sup>

When OCTC receives a notice pursuant to these requirements, the following information is recorded:

- Who reported the filing of charges or conviction and when;
- The criminal case number and court where charges were filed;
- The type of charging document;
- Whether the charged violations are misdemeanors or felonies; and
- The disposition of each of the charges.

The State Bar may not initiate disciplinary action against an attorney who has been charged with a crime until the case has reached finality in the superior court. Until then, OCTC tracks those cases that it is aware of, checking back periodically with the courts to determine when a case is disposed. Even so, the Bar is unable to track all superior court dispositions, or appeals that may be invoked by a respondent. The absence of an integrated case management system in the superior courts requires manual tracking of data that may be in any one of California fifty-eight superior courts. 2016 criminal conviction matter data is provided in the table below.

**Table D1: Criminal Conviction Matters 2016**

2015 Pending Inventory	369
New Cases Opened	232
Closed Without Action	161
Filed in State Bar Court	114

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<sup>39</sup> The full text of sections 6101 and 6068 are provided in Appendix B.

## APPENDIX D

In addition to the data provided in the table above, the Bar is able to report that, during the period 2013 to 2016, reports were received regarding 1,075 felony charges and 1,654 misdemeanor charges filed against a total of 765 attorneys. Theft-related charges accounted for thirty-two percent of felonies reported during this time period, followed by crimes related to fraud, which amounted to ten percent. Fifty-nine percent of misdemeanors were traffic-related.

Fifty-eight percent of felonies were reported as being in California's jurisdiction, thirty-two were reported as federal violations, and the remaining ten percent were reported filed in other states. Ninety-two percent of misdemeanor filings reported were within California, with the remaining eight percent filed in other state and federal courts.

### SECTION 6095 REPORTING<sup>40</sup>

Section 6095 requires the Bar to report, to the extent known, information regarding the judicial or disciplinary disposition of all criminal or disciplinary proceedings involving the allegation of the commission of a felony by an attorney.

As discussed above, it is impossible for the State Bar to track the disposition of all criminal proceedings in the superior courts. However, when a court reports a felony conviction to the State Bar, an investigation is opened and a case may be filed in State Bar Court. Table E2 provides information about the disposition of disciplinary proceedings for reported felony convictions.

**Table D2: Disposition of Felony Convictions**

	2013	2014	2015	2016
Felony Convictions	31	44	23	23
Cases filed in State Bar Court	24	37	24	31
Average days from conviction to filing in Court <sup>41</sup>	67	91	151	222
Median days from conviction to filing in Court	57	64	82	97
Cases disposed in State Bar Court	29	27	23	44
Average days from filing to disposition in Court	580	746	612	712
Median days from filing to disposition in Court	440	736	417	623
State Bar Court Dispositions				
Disbarment	25	15	11	33
Dismissal	1	3	3	2
Suspension	1	8	8	5
Termination Due to Resignation	1	0	1	1
Reproval	0	1	0	0

<sup>40</sup> The full text of section 6095 is provided in Appendix B.

<sup>41</sup> Both attorneys and courts are required to report felony convictions. As discussed in the body of the Report, superior courts may not timely report convictions to the Bar. Any resultant delays in discovery of felony convictions may lead to the extended pendency between conviction and filing in Court.

## Appendix E

### **UNAUTHORIZED PRACTICE OF LAW, NOTARIO, AND IMMIGRATION ATTORNEY RELATED COMPLAINTS**

The statutes governing the contents of the Annual Discipline Report identify certain types of non-attorney complaint data for inclusion. This Appendix is designed to provide additional data regarding the Unauthorized Practice of Law (UPL), notario, and immigration-related attorney discipline system activity.

#### UNAUTHORIZED PRACTICE OF LAW GENERALLY

Section 6125 of the Business and Professions code provides that: “No person shall practice law in California unless the person is an active member of the State Bar.” Section 22440 makes it unlawful for any person, other than a person authorized to practice law or authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, to engage in business or act in the capacity of an immigration consultant, except as provided by sections 22440 through 22449 of the code.

A non-attorney could be someone who has never been an attorney, someone who was a licensed attorney and was disbarred or resigned, is suspended, or is an attorney licensed in another state, but not in California. Complaints regarding these types of respondents are referred to as UPL.

The Business and Professions Code does not define the “practice of law.” However, California courts have defined it to include:<sup>42</sup>

- Performing services in court cases/litigation;
- Providing legal advice and counsel; and
- Preparing legal instruments and contracts that secure legal rights – even if the matters involved do not have anything to do with lawsuits or the courts.

#### UNAUTHORIZED PRACTICE OF LAW: NOTARIO

Business and Professions Code section 6126.7, subdivision (a), prohibits any person who is not an attorney from literally translating from English into another language in any document or advertisement any words, including notary, that imply that the person is an attorney. Violation of this prohibition is generally referred to as a *notario* matter, which is a type of UPL.

The legal authority for prosecuting those engaged in the unlicensed practice of law is found in several sections of the Business and Professions Code; as reflected in Table F2; the State Bar’s avenues for addressing non-attorney misconduct represent a limited subset of the broader array of available remedies.

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<sup>42</sup> *People v. Merchants Protective Corp.*, 189 Cal. 531, 535 (1922)

## APPENDIX E

In 2016 OCTC's Intake Unit answered over 40,000 calls; 255, or less than one percent of those calls, originated from an Immigration Hotline that was established by the Bar in 2014. Table E1 provides information about UPL and immigration-related complaints received in 2016, as well as the number of active cases in both categories.

**Table E1: UPL and Immigration-Related Complaints**

Immigration-related Attorney Complaints Received 2016	494
<u>Current Status of Active Immigration Attorney Complaints*</u>	
Cases in Intake	2
Cases in Enforcement	
Investigation	123
Pre-Filing	20
Post-Filing	<u>11</u>
<b>Total Active Cases</b>	156
Non-Attorney (NA) Complaints Received 2016	632
State-Bar Initiated Complaints re NA 2016	100
Cease and Desist/Notice of Violation Letters Issued 2016	177
<u>Current Status of Active NA Complaints*</u>	
Cases in Intake	24
Cases in Enforcement	
Investigation	128
Pre-Filing	0
Post-Filing	<u>3</u>
<b>Total Active Cases</b>	155
Immigration-related NA Complaints Received 2016 <sup>43</sup>	147
<u>Current Status of Active Immigration-related NA Complaints*</u>	
Cases in Intake	5
Cases in Enforcement	
Investigation	41
Pre-Filing	0
Post-Filing	<u>2</u>
<b>Total Active Cases</b>	48

\*As of March 2017

<sup>43</sup> Immigration-related NA complaints is a subset of NA complaints.

## **APPENDIX E**

### **OUTREACH AND EDUCATION EFFORTS**

In 2016, the State Bar continued its outreach and education activities geared toward immigrant populations most vulnerable to UPL, notario, and immigration attorney related misconduct.

#### **IMMIGRATION SUMMIT**

In May, the State Bar hosted an Immigration Summit that drew attendance from a wide range of stakeholders working to combat fraud related to providing immigration assistance. Attendees at the summit included representatives of the following:

- California Senate Judiciary Committee;
- California Department of Social Services; and
- Statewide and local legal services and advocacy organizations that serve the immigrant community.

The Action Summary developed at the Immigration Summit is provided at the end of this Appendix.

#### **ONGOING ACTIVITIES**

OCTC participates in state and nationwide efforts to protect the immigrant community.

- Nationwide activities:
  - Quarterly UPL teleconference coordinated by the Federal Trade Commission; and
  - Monthly teleconferences with federal attorney discipline authorities who field complaints about alleged misconduct in Immigration Court and other federal jurisdictions.
- Statewide activities:
  - Workshops and meetings with city attorneys' offices and the Attorney General's Office related to notario fraud and Immigration fraud-prevention; notice about the right to report a complaint, which is required in all contracts for immigration services pursuant to section 6243;
  - Ongoing media outreach to educate the public about UPL by non-attorneys, awareness of potential immigration-related fraud, and how to file complaints with the State Bar. The State Bar's Office of Communications works with foreign language television, print and web-based media, and uses its active social media presence in these efforts.

### **BACKGROUND AND STATUTORY FRAMEWORK**

#### **IMMIGRATION ATTORNEY MISCONDUCT**

Attorneys must comply with the Rules of Professional Conduct and the State Bar Act and are subject to discipline for violating the law. This includes violating section 6157.5 (advertising legal services related to immigration services not including a statement they are an active member of the Bar), section 6242 (demanding/accepting advance fees for immigration reform act services), and section 6103.7 (threatening to report immigration status of party or witness or his or her family member in employment dispute).

## APPENDIX E

**Table E2: Statutory Authority for UPL Prosecution**

<b>Legal Authority</b>	<b>Who Prosecutes</b>	<b>Remedies</b>
Section 6126, subdivision (a) (non-attorneys and attorneys no longer entitled to practice law)	District Attorney/ Attorney General/ City Attorney	Misdemeanor – Up to 1 year County Jail and/or fine of up to \$1,000 for first offense. For second offense, minimum of 90 days County Jail, except where the interests of justice would be served by a lesser sentence or a fine.
Section 6126, subdivision (b) (attorneys who have been disbarred, suspended, involuntarily enrolled as inactive, or who resigned with charged pending)	District Attorney/ Attorney General/ City Attorney	May be charged as a misdemeanor or a felony. If misdemeanor, up to 6 months County Jail; if felony 16mos/2 or 3 years State Prison.
Section 6126.3, subdivision (a) (non-attorneys and attorneys no longer entitled to practice law)	State Bar or Superior Court initiates civil proceedings	In addition to any criminal proceedings pursuant to Section 6126, or any contempt proceedings pursuant to Section 6127, the court has jurisdiction for a civil action under this section when a person engages in UPL or holds him or herself out as an attorney.
Section 6126.3, subdivision (b) (same as 6126.3(a))	State Bar or Superior Court	Section 6126.3 (b) provides that the State Bar, or the Court on its own motion, may make an application to the superior court for the county where the person maintains or has recently maintained his or her principal office for the practice of law or where he or she resided, for assumption by the court of jurisdiction over their practice. The State Bar may intervene and assume primary responsibility for conducting the action.
Section 6126.4 (makes 6126.3 applicable to immigration consultants pursuant to Chapter 19.5 (commencing with Section 22440) who hold themselves out as practicing or entitled to practice law)	State Bar or Superior Court initiates civil proceedings	Assume jurisdiction over practice as per 6126.3.
Section 6126.5 (relief available in the enforcement actions)	District Attorney/ Attorney General/ City Attorney	Court may award relief for any person who obtained services offered or provided in violation of 6125 or 6126 including damages, restitution, penalties, reasonable attorneys' fees to rectify errors made in the UPL, prejudgment interest and appropriate equitable relief.
Section 6126.7, subdivision (a) (forbids a non-attorney from use of words such as "notario" in advertising, letterhead, etc.)	State Bar	Provides for penalty not to exceed \$1,000 per day for each violation.
Section 6127 (contempt of court for acting as an officer of the court without authority or advertising as such without being a member of the State Bar)	Not specified so State Bar can bring	Order re contempt.

## APPENDIX E

**Table E2: Statutory Authority for UPL Prosecution**

<b>Legal Authority</b>	<b>Who Prosecutes</b>	<b>Remedies</b>
Section 22442.3 (Forbids use, with the intent to mislead, of words such as “notario” in advertising, letterhead, etc. by an immigration consultant)	Injured party or District Attorney/ Attorney General/ City Attorney	Provides for penalty not to exceed \$1,000 per day for each violation.
Section 22445	Injured party or District Attorney/ Attorney General/ City Attorney	Civil penalties not to exceed \$100,000 for each violation of this chapter that regulates activities of immigration consultants.
Section 6030	State Bar initiates civil action	Provides for injunction where there has been a violation or threatened violation of the UPL statutes.

### STATE BAR’S ADVANCEMENT OF THESE REMEDIES

The vast majority of all cases are initiated by complaints from the public. In addition, however, OCTC can independently generate a case pursuant to its ongoing monitoring of Spanish-language print and radio ads for use of the word *notario*. In 2016, there were one hundred State Bar initiated non-attorney inquiries opened.

Complaints are reviewed by OCTC staff, which conducts preliminary research that often includes identifying the internet advertising used by the respondent. OCTC also contacts the complainant in many cases to get more details, and sometimes contacts the respondent for additional information.

In many instances, it is difficult to prove that UPL has occurred. Often, a respondent has a legitimate business but crosses the line into giving legal advice on a particular occasion; where the complaint involves an isolated instance, staff may send a “Cease and Desist” (CND) letter to the respondent. Complaints raising repeated or multiple violations are forwarded for investigation.

The CND letter serves as a warning, puts the respondent on notice that certain services/actions may violate the law and constitute UPL, and that an OCTC investigation may ensue. Excerpts of the cease and desist letters for both UPL and notario matters are provided below:

**NOTICE: (UPL)**

You are hereby on notice that, based upon our investigation to date and your actions described above, it is the opinion of the State Bar Office of Chief Trial Counsel (“OCTC”) that you have engaged in the unauthorized practice of law. You are hereby notified that OCTC may investigate the allegations outlined herein and, if it finds cause, take appropriate action to ensure your compliance with these laws.

You should immediately **CEASE AND DESIST** engaging in the unauthorized practice of law. If the State Bar of California receives additional information that, despite this notice, you continue to engage in violation of the above laws, the State Bar may take any appropriate action to ensure your compliance with these laws and to protect the public.



## APPENDIX E

### NOTICE: (Notario)

You are hereby on notice that, based upon our investigation to date, it is the opinion of the State Bar Office of Chief Trial Counsel (“OCTC”) that you have used words or phrases which imply that you are an attorney or that you may give legal advice or provide legal services or that you are otherwise entitled to practice law in California. You are hereby notified that OCTC may investigate the allegations outlined herein and, if it finds cause, take appropriate action to ensure your compliance with the law.

You should immediately **CEASE AND DESIST** from using such words or phrases in any documents, including, but not limited to any advertisements, stationery, letterhead, business cards, or other comparable written materials. If the State Bar of California receives additional information that, despite this notice, you continue to engage in violation of Business and Professions Code section 6126.7, the State Bar may take any appropriate action to ensure your compliance with the law and to protect the public.

If a complaint sufficiently alleges a UPL violation, the matter is assigned to OCTC’s NA/UPL team for additional investigation. Investigation activity may involve additional internet searches, Secretary of State filings research, field visits, and follow up with the complainant and respondent. Any combination of the following activities may ensue from this additional investigatory period:

### ASSUMPTION OF PRACTICE

Where there is sufficient evidence to conclude that an individual has engaged in UPL and the interest of clients or interested persons will be prejudiced, the State Bar may make application to the superior court, pursuant to section 6126.3, for the assumption of the practice by the superior court. If the superior court grants the application and makes an order assuming jurisdiction, the State Bar acts under direction of the superior court to wind down the practice. These proceedings are typically filed on an ex parte basis in an attempt to prevent the destruction of files or other evidence. In such cases, OCTC is required to give only 24 hours’ notice (less in some jurisdictions), unless there is good cause – which usually exists – to believe that harm would result (e.g., [client property or other evidence would be destroyed](#)) if we provide notice. Table 9 of the Report provides information on section 6126.3 filings (referred to as petitions to terminate) for the last four years.

### LAW ENFORCEMENT REFERRALS

The State Bar routinely refers matters to law enforcement agencies for prosecution. In 2016, the State Bar has authorized 443 law enforcement referrals based on 632 individual complaints.

Historically, OCTC referred UPL cases to law enforcement only after a complete investigation has been done; beginning in 2016, OCTC began making referrals concurrent with ongoing investigations, in an effort to expedite the criminal investigation of these matters.

## **APPENDIX E**

### **UNAUTHORIZED PRACTICE OF LAW AND IMMIGRATION ATTORNEY MISCONDUCT SUMMIT ACTION SUMMARY MAY 19, 2016**

#### **OVERVIEW**

On May 19, 2016, the State Bar convened a summit with immigration legal services providers and other knowledgeable stakeholders to discuss strategies for effective investigation and enforcement of unauthorized practice of law (UPL) and immigration attorney misconduct. attendees came from throughout the state and shared their perspectives, identified challenges, and made recommendations; a list of the organizations represented at the summit is provided at the end of this document. They were joined by members of the State Bar's Board of Trustees, senior staff, representatives of the Office of Chief Trial Counsel (OCTC), and the Legislature.

#### **CHALLENGES IDENTIFIED BY THE GROUP**

- Lack of right to counsel in immigration proceedings
- Lack of competent attorneys (particularly in rural parts of the state)
  - Ineffective advice leading to negative consequences including, in some instances, removal proceedings
- Lack of funding and resources to meet needs
- Lack of education and information
  - For community members, concerns about the process and how to locate qualified service providers
  - For the legal profession, concerns regarding immigration issues/law and how to locate qualified service providers
- Notarios often charge more than attorneys and are unregulated and untrained
- Lack of accountability when problems are identified:
  - State Bar viewed as unresponsive
  - Scope of State Bar's jurisdiction unclear
  - Lack of attention by law enforcement
    - Law enforcement agencies sometimes refuse to act on reports
    - Weak legal remedies
    - Multiplicity of agencies for reporting problems creates confusion
- Explanations for under-reporting:
  - Vulnerable victims are afraid to step forward
  - Lack of trust in government institutions and law enforcement
  - Lack of information regarding where to report
- Problems exist beyond immigration law
  - This population is also vulnerable to fraud in the context of housing, employment, and consumer issues
    - Tax preparation services serving this community often problematic

## APPENDIX E

### RECOMMENDATIONS

Summit participants recommended a number of specific strategies both to prevent and respond to UPL and immigration attorney misconduct. A summary of these strategies is provided below:

- Guarantee and fund the right to counsel in immigration proceedings broadly
- Increase internal competence and awareness of State Bar about immigration issues by hiring OCTC staff with immigration expertise and providing immigration training to staff.
- Engage in affirmative and proactive efforts including but not limited to the following:
  - consumer education
  - attorney education (immigration law MCLE)
  - aggressive and timely investigation and referral to law enforcement or other states' lawyer regulation authorities
  - aggressive and timely prosecution and assumption of practice where warranted
  - timely follow up on referrals to law enforcement and/or other states' lawyer regulation authorities
- Explore new avenues for holding out-of-state attorneys accountable:
  - when an out-of-state attorney provides immigration services in state court (e.g. special immigrant juvenile status (SIJS) petitions), assume jurisdiction over the practice where possible
  - consider expansion of the pro hac vice registration model (for out-of-state attorneys practicing in state courts) to include immigration attorneys where possible
- Increase penalties for California attorneys who aid and abet UPL and publicize consequences
- Update state law regarding "immigration consultants" to change the title to one that makes clear that these individuals are not lawyers and may not engage in legal consultation
- Cap fees that non-attorneys are allowed to charge for their services
- Consider use of intermediary organizations to provide assistance (Qualified Designated Entities funded under IRCA as a potential model)
- Create a private right of action to prosecute UPL or other immigration violations
- Consider ways to expand jurisdiction of State Bar to address UPL violations
- Protect clients who come forward to report problems (e.g., allow third party complaints and fictitious name complaints)
- Create and publicize a UPL registry to assist consumers in finding qualified assistance
- Create and publicize an immigration provider referral information on State Bar or other local bar association websites
- Explore other models for protecting vulnerable communities (e.g., Elder Abuse unit in San Francisco D.A.'s Office; Victim Witness/Assistance programs, etc.)
- Create and support the development of a pipeline of individuals interested in

## APPENDIX E

practicing immigration law

- Provide funding to compile and analyze data regarding service providers and to identify where fraud occurs
- Track referrals and outcomes
- Clarify referral structure – should number of entities responsible for prosecution be narrowed and identified?

### NEXT STEPS

As discussed at the Summit, next steps include engaging law enforcement in a dialogue about effective partnership in the investigation and prosecution of UPL matters. To that end, a meeting between the State Bar and the California District Attorneys' Association is set for June 29, 2016.

This law enforcement-focused meeting will be followed by a joint convening of representatives from immigration legal services and law enforcement agencies.

#### Organizations in Attendance at the State Bar Unauthorized Practice of Law Summit May 29, 2016

ORGANIZATION	CITY
Public Counsel	Los Angeles
Inland Counties Legal Services	Riverside
Immigration Center for Women and Children	San Francisco
San Joaquin County Bar Association	Stockton
Casa Cornelia Law Center	San Diego
Centro Legal de la Raza	Oakland
San Francisco Immigrant Legal Defense Collaborative	San Francisco
California State Senate, Judiciary Committee	Sacramento
AILA Southern California Chapter	Los Angeles
Kids in Need of Defense	San Francisco
Esperanza Immigrant Rights Project	Los Angeles
California Rural Legal Assistance Foundation	Sacramento
Coalition for Humane Immigrant Rights of Los Angeles	Los Angeles
CARECEN	Los Angeles
Immigrant Legal Resource Center	San Francisco
California Rural Legal Assistance	Sacramento
Immigration Branch, Welfare to Work Division, CA Dept of Social Services	Sacramento
Legal Aid Society of San Diego	San Diego



THE STATE BAR  
OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL

Jayne Kim, *Chief Trial Counsel*

845 S. Figueroa Street, Los Angeles California 90017-2515  
180 Howard Street, San Francisco, California 94105-1639

Tel: 231-765-1468 Fax: 213-765-1029  
Tel: 415-538-2063 Fax: 415-538-2214

**\*Please note our new LA address\***

August 2014

Hon. [REDACTED]  
Judge of the Superior Court of California  
County of Alameda  
1221 Oak Street Department 16  
Oakland, CA 94612

Dear Hon. [REDACTED]

I am the Chief Trial Counsel of the State Bar of California. My office is responsible for the investigation and prosecution of disciplinary complaints against members of the State Bar of California. In addition, my office has statutory authority to investigate the unauthorized practice of law by both non-attorneys and by disbarred, resigned, and suspended attorneys. In appropriate cases, my office can also petition the superior courts to assume jurisdiction over the illegal practices of such non-attorneys and former or suspended attorneys.

I would like to develop and maintain a close working relationship with all California judges and would like to foster an ongoing dialogue regarding the regulation of attorney conduct during the course of litigation and in the courtroom. As you know, the conduct of attorneys in the courtroom and in the course of litigation often gives rise to disciplinary complaints. Among other things, these complaints often involve the willful violation of court orders (Business. & Professions Code, § 6103) or improper public comments by counsel regarding pending court proceedings (rule 5-120, Rules of Professional Conduct). While my office is available to receive and investigate these complaints, we are highly sensitive to the prejudicial effect that a State Bar investigation may have on a pending trial or proceeding. We are always willing to speak with you about attorney misconduct in pending proceedings; however, in most cases, the court is in the best position to deal with the conduct as it occurs, and the State Bar will generally only pursue its investigation once the trial or proceeding has been concluded.

Detailed information about an attorney's current membership status and about his or her current eligibility to practice law can be immediately obtained from the Member Records Online feature on the State Bar of California's website at [www.calbar.ca.gov](http://www.calbar.ca.gov). Additionally, if you would like to report a specific instance of attorney misconduct or would like to discuss an attorney performance problem, please contact **Mr. Dane Dauphine, Assistant Chief Trial Counsel of our Intake Unit in the Los Angeles office of the State Bar, which has relocated to 845 S. Figueroa Street, Los Angeles, California 90017.** Mr. Dauphine's telephone number is (213) 765-1293. I have also enclosed a copy of the State Bar's Discipline Referral Form, which is specifically designed for use by judges and other judicial officers. The Discipline Referral Form can be accessed on the State Bar's website and filled in online; then it can be printed for mailing to the State Bar.

## APPENDIX F

Hon. [REDACTED]  
Judge of the Superior Court of California  
August 2014  
Page 2 of 3

As you may know, the Lawyer Assistance Program (“LAP”) is available to provide confidential and comprehensive assistance to California attorneys with substance abuse and/or mental health issues. Participation in the LAP is voluntary and may, in appropriate cases, either be in lieu of discipline or as an adjunct to discipline through the State Bar’s Alternative Discipline Program. It is LAP’s goal to provide assistance to these attorneys before their conduct results in a disciplinary complaint, investigation, or proceeding. The LAP can be reached at (877) LAP-4-HELP [527-4435] and is available to provide assistance to you in dealing with an attorney. Alternatively, the LAP can make direct contact with the attorney at your request. All LAP activities are conducted confidentially.

Finally, as you may know, the Business and Professions Code requires courts to report the following specified types of attorney misconduct to the State Bar:

- A final order of contempt imposed against an attorney that may involve grounds warranting discipline. The court entering the final order must transmit to the State Bar a copy of the relevant minutes, the final order and the reporter’s transcript, if one exists. (Bus. & Prof. Code, § 6086.7, subd. (a)(1).)
- A modification or reversal of a judgment based in whole or in part on the misconduct, incompetent representation or willful misrepresentation of an attorney. (Bus. & Prof. Code, § 6086.7, subd. (a)(2).)
- The imposition of judicial sanctions against an attorney, except for sanctions for failure to make discovery or monetary sanctions of less than \$1,000. (Bus. & Prof. Code, § 6086.7, subd. (a)(3).)
- A judgment against an attorney in any civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity. Written notice of the judgment must be provided to the State Bar within 20 days of the judgment. (Bus. & Prof. Code, § 6086.8, subd. (a).)
- The conviction of an attorney of any crime. The clerk of the court in which the attorney was convicted is required to transmit a certified copy of the record of conviction to the State Bar within 48 hours after the conviction.<sup>a</sup> (Bus. & Prof. Code, § 6101, subd. (c).)

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<sup>1</sup> According to the statute, a “plea or verdict of guilty, an acceptance of a nolo contendere plea, or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of those Sections.” (Bus. & Prof. Code, § 6101(e).) An attorney who has been convicted of a felony or a crime that involves, or probably involves, moral turpitude is placed on interim suspension from the practice of law pending the finality of his or her conviction and until the final disposition of any disciplinary proceeding arising out of the conviction. (Bus. & Prof. Code, §§ 6101, subd. (d) and 6102.)



APPENDIX F

Hon. [REDACTED]  
Judge of the Superior Court of California  
August 2014  
Page 3 of 3

Consistent with the 2007 Report and Recommendation of the California Commission on the Fair Administration of Justice concerning the professional responsibility and accountability of prosecutors and defense lawyers, my office is also tracking attorney behavior that involves any one of seven identified categories of egregious conduct. These categories of egregious conduct include: (1) willful misrepresentation of law or fact to a Court; (2) appearing in a judicial proceeding while intoxicated; (3) engaging in willful unlawful discrimination in a judicial proceeding; (4) willfully and in bad faith withholding or suppressing exculpatory evidence (including impeachment evidence) which he or she is constitutionally obligated to disclose; (5) willful presentation of perjured testimony; (6) willful unlawful disclosure of victim or witness information; and (7) failure to properly identify oneself in interviewing victims or witnesses. In addition to the specified types of attorney misconduct that the Business and Professions Code requires courts to report, I also invite you to report any attorney conduct that fits this description of egregious conduct.

Your help in directing the clerks of your court to provide the above-referenced information to the State Bar on a timely basis would be of great assistance so that the State Bar can fulfill its duty to investigate these matters and determine the appropriateness of initiating disciplinary action against the attorney. (Bus. & Prof. Code, § 6086.7, subd. (c).) These statutory reports should be directed to **our new address**:

**Office of the Chief Trial Counsel – Intake Unit**  
**The State Bar of California**  
**845 S. Figueroa Street**  
**Los Angeles, California 90017-2515**

Please do not hesitate to contact me directly if you have any questions, need additional information, or if you would like to report an instance of alleged attorney misconduct or if I can be of assistance to you in any way. My direct telephone number is (213) 765-1468.

Very truly yours,



Jayne Kim  
Chief Trial Counsel

JK/srcp  
Enclosure



**THE STATE BAR  
OF CALIFORNIA**

Office Of The Chief Trial Counsel  
Intake

845 South Figueroa St., Los Angeles, CA 90017-2515

TELEPHONE: (213) 765-1000

FAX: (213) 765-1168

<http://www.calbar.ca.gov>

## **Discipline Referral Form**

*To be used by Judicial Officer or Court Staff only*

Please complete this form for referral to The State Bar of California of attorney discipline matters arising in the State and Federal Courts concerning possible violation of the Rules of Professional Conduct of the State Bar of California or the California Business and Professions Code.

*Please send completed form to The State Bar of California, Intake, at the above address or fax number.*

### **I. Attorney Involved:**

Name:

Bar No.:

Address:

If the attorney is represented by counsel, please provide the name and address of that counsel:

**II. Reportable Actions:** Please check the applicable box and provide a copy of the court decision or order containing the action being reported.

☐ A judgment against an attorney for fraud, misrepresentation, breach of fiduciary duty, or gross professional negligence. (Cal. Bus. & Prof. C. § 6086.8(a).)

☐ The imposition of judicial sanctions, except for failure to make discovery or sanctions under \$1,000. (Cal. Bus. & Prof. C. § 6086.7.)

☐ A final order of contempt against an attorney which may warrant discipline. (Cal. Bus. & Prof. C. § 6086.7.)

☐ The modification or reversal of a judgment based in whole or in part on attorney misconduct or incompetence. (Cal. Bus. & Prof. C. § 6086.7.)

☐ The conviction of an attorney. (Cal. Bus. & Prof. C. § 6101(c).)



**III. Other Professional Misconduct:** Please describe the nature of the attorney's conduct which may warrant disciplinary action and attach any court order or decision regarding the misconduct or any document filed by the attorney which is the subject of the misconduct.

Nature of Misconduct:

Name and Case Number of Court Matter involved:

**IV. Report Submitted By/On Behalf Of:**

Name/Position:

Telephone:

Address:

Signature: \_\_\_\_\_ Date:

Do you wish to be kept informed of the status of the matter as a complainant? ☐ Yes ☐ No

Name, title, email address and telephone number of person to contact for further information:



## THE STATE BAR OF CALIFORNIA

845 S. Figueroa Street, Los Angeles California 90017-2515  
180 Howard Street, San Francisco, California 94105-1639

## OFFICE OF THE CHIEF TRIAL COUNSEL

Jayne Kim, *Chief Trial Counsel*

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Tel: 415-538-2063 Fax: 415-538-2214

July 2015

Hon. Nancy E. O'Malley  
District Attorney  
Alameda County  
1225 Fallon Street, Room 900  
Oakland, CA 94612

**COPY**

Dear Hon. O'Malley:

I am the Chief Trial Counsel of the State Bar of California. My office is responsible for the investigation and prosecution of disciplinary complaints against California attorneys. In addition, my office has statutory authority to investigate the unauthorized practice of law by both non-attorneys and by disbarred, resigned, and suspended attorneys. In appropriate cases, my office can also petition the superior courts to assume jurisdiction over the illegal practices of such non-attorneys and former or suspended attorneys.

I would like to develop and maintain a close working relationship with all of the District Attorneys and with their respective offices. As you know, the State Bar has worked with the state and local law enforcement agencies throughout the state to provide assistance in the investigation and prosecution of The unauthorized practice of law, insurance fraud, and other attorney and non-attorney misconduct. We have also received valuable assistance from law enforcement agencies. We are both willing and able to work with your office and to provide support to you, whenever appropriate, in your investigation and criminal prosecution of California attorneys or non-attorneys who engage in the unauthorized practice of law or other crimes involving the practice of law.

If you have any questions or concerns relating to the attorney discipline system or if you would like to discuss performance-related problems involving attorneys, please contact **Dane Dauphine, Assistant Chief Trial Counsel of our Intake Unit in the Los Angeles office of the State Bar, located at 845 S. Figueroa Street, Los Angeles, California 90017.** You may contact Mr. Dauphine at (213) 765-1293. Please also feel free to contact me directly at (213) 765-1468. You may also obtain information about the discipline system generally or about a specific attorney's current membership status and eligibility to practice law by accessing the State Bar of California's website at [www.calbar.ca.gov](http://www.calbar.ca.gov).

I would also like to respectfully request your cooperation and assistance in a couple of areas. First, Business and Professions Code section 6101, subdivision (b) requires district attorneys, city attorneys and other prosecuting agencies to notify the State Bar of the pendency of any action in which an attorney has been charged with a felony or misdemeanor. The notice should be provided as soon as the prosecuting agency learns that the defendant is an attorney and the notice should include (1) the identity of the attorney; (2) the crime(s) with which he or she is charged; and (3) the alleged facts supporting the charge.

Hon. Nancy E. O'Malley  
June 2015  
Page 2

**COPY**

Second, Business and Professions Code section 6054 provides that the state and local law enforcement agencies must cooperate with the State Bar in connection with any investigation or proceeding regarding the admission or discipline of attorneys, including providing the State Bar with state and local summary criminal history information. That information is often of crucial importance to our investigations. Your assistance to my office in this area is very valuable and is greatly appreciated.

In order to report the charging or conviction of an attorney, please feel free to utilize the enclosed Report by Prosecuting Agency form. You can fill out the form online on the State Bar's website at <http://www.calbar.ca.gov/Attorneys/Forms.aspx> under "Reportable Actions" and email it to [sbnotice.prosecutor@calbar.ca.gov](mailto:sbnotice.prosecutor@calbar.ca.gov) or fax to the State Bar's Intake Unit at (213) 765-1168. In the alternative, you may also provide written notification of the charging or conviction to Dane Dauphine, Assistant Chief Trial Counsel of our Intake Unit in the Los Angeles office of the State Bar, located at 845 S. Figueroa Street, Los Angeles, California 90017, and please provide a copy of the charging document. If you wish to discuss a matter relating to the criminal conduct of an attorney, please feel free to contact Mr. Dauphine directly at (213) 765-1293.

Finally, as you may know, the Lawyer Assistance Program ("LAP") is available to provide confidential and comprehensive assistance to California attorneys with substance abuse and/or mental health issues. Participation in the LAP is voluntary and may, in appropriate cases, either be in lieu of discipline or as an adjunct to discipline through the State Bar's Alternative Discipline Program. It is LAP's goal to provide assistance to these attorneys before their conduct results in a disciplinary complaint, investigation, or proceeding. The LAP can be reached at (877) LAP-4-HELP [527-4435] and is available to provide assistance to you in dealing with a colleague. Alternatively, the LAP can make direct contact with the attorney at your request. All LAP activities are conducted confidentially.

I look forward to developing and maintaining a positive and productive working relationship with your office. Please don't hesitate to contact me if you have any questions, need additional information, or if you would like to report an instance of alleged attorney misconduct or if I can be of assistance to you in any way.

Sincerely,



Jayne Kim  
Chief Trial Counsel

JK/srcp  
Enclosure

**THE STATE BAR  
OF CALIFORNIA****OFFICE OF THE CHIEF TRIAL COUNSEL**Jayne Kim, *Chief Trial Counsel*845 S. Figueroa Street, Los Angeles California 90017-2515  
180 Howard Street, San Francisco, California 94105-1639Tel: 231-765-1468 Fax: 213-765-1029  
Tel: 415-538-2063 Fax: 415-538-2214

July 2015

Ms. [REDACTED]  
HSBC Bank USA N.A.  
2929 Walden Ave.  
Depew, NY 14043

**Re: Reporting of Overdrafts on Attorney Trust Accounts**

Dear [REDACTED]:

As you may know, the California Legislature has declared that overdrafts and misappropriations from attorney trust accounts represent a serious problem and that the public interest requires the prompt detection and investigation of those overdrafts. Business and Professions Code section 6091.1 was enacted to require financial institutions, including individual branches, to report to the State Bar of California in the event any check is presented against an attorney trust account containing insufficient funds, irrespective of whether or not the check is honored. Section 6091.1, subdivision (b) sets forth the required format for the financial institution's report to the State Bar. We enclose a copy of section 6091.1 for your reference.

The issuance of NSF checks by an attorney or member of his or her office staff is often an early indicator of extremely serious misconduct. The misconduct may include the presentation of client trust account checks containing a forged signature of the attorney, or client, or the financial institution's payment of checks against non-sufficient funds that may never be recovered. The financial institution's payment of these checks can create some financial liability for the financial institution. In order to avoid or mitigate financial losses to the attorney's clients, it is essential for the State Bar to be able to investigate these matters quickly. Therefore, your financial institution's preparation and transmittal of reports to the State Bar on at least a monthly basis is critical. We appreciate your assistance in ensuring that these reports are prepared and promptly transmitted.

If you have established a process for reporting insufficient funds activity on attorney trust accounts and are currently reporting that activity to the State Bar, we thank you for your compliance. However, if you have not established such a process, please review the enclosed materials and promptly establish a process that will ensure that the State Bar is notified of all attorney trust account overdrafts.

APPENDIX F

Please send your **attorney trust account overdraft reports** to:

**State Bar of California  
Attention: Intake Unit  
845 S. Figueroa Street  
Los Angeles, California 90017-2515**

Please note that, pursuant to section 6212(e) of the Business and Professions Code, financial institutions are required to remit the interest on an IOLTA account to the State Bar to fund qualified legal services projects. Please continue sending those remittance reports to:

The State Bar of California  
Legal Services Trust Fund Program  
Department 05-590  
San Francisco, California 94139

Thank you for your cooperation and compliance with this statutory requirement. If you have any questions, please contact Assistant Chief Trial Counsel Dane Dauphine in the State Bar's Intake Unit, at (213) 765-1293.

Very truly yours,



Jayne Kim  
Chief Trial Counsel

JK/srcp  
Enclosure

*California Business & Professions Code*

**§ 6091.1 Client Trust Fund Accounts—  
Investigation of Overdrafts and Misappropriations**

(a) The Legislature finds that overdrafts and misappropriations from attorney trust accounts are serious problems, and determines that it is in the public interest to ensure prompt detection and investigation of instances involving overdrafts and misappropriations from attorney trust accounts.

A financial institution, including any branch, which is a depository for attorney trust accounts under subdivision (a) or (b) of Section 6211, shall report to the State Bar in the event any properly payable instrument is presented against an attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored.

(b) All reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and shall include a copy of the dishonored instrument, if such a copy is normally provided to depositors.

(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby. These reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

(c) Every attorney practicing or admitted to practice in this state shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements of this section.

(d) Nothing in this section shall preclude a financial institution from charging an attorney or law firm for the reasonable cost of producing the reports and records required by subdivisions (a) and (b). (Added by Stats. 1988, ch. 1159.)

## Appendix G

### LAWYER ASSISTANCE PROGRAM

Introduced by Senator John Burton, the Attorney Diversion and Assistance Act (SB 479, 2001) became effective January 2002. The act added language to the Business and Professions Code (6230 et seq.) requiring the State Bar to create a program to assist attorneys with substance abuse and/or mental health issues. As a result of the legislation, the State Bar of California created the Lawyer Assistance Program (LAP) to “identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety.”

The State Bar collects \$10 from every active attorney and \$5 from inactive attorneys to operate the program. Statute requires participants to be responsible for all expenses related to treatment and recovery. There are two major components of LAP: monitored LAP and support LAP. Monitored LAP provides a long-term, structured environment designed to help those attorneys who request, or are required to provide, continued verification of compliance with the steps necessary to succeed in recovery. Support LAP is a less stringent program designed for those who seek assistance with their recovery but don’t require the monitoring or verification of their participation.

The State Bar Court’s Alternative Discipline Program (ADP) provides an alternative disciplinary path for attorneys with substance abuse and/or mental health issues. Participation is contingent on the following: 1) the Court’s approval of a stipulation of facts and conclusions of law signed by the parties; 2) evidence that substance abuse or mental health issues causally contributed to the attorney’s misconduct; and 3) acceptance into LAP. The extent and severity of the respondent’s stipulated misconduct, including the degree of harm suffered by his or her clients, if any, are factors in determining eligibility for ADP. The stipulation includes a lower level of discipline that will be imposed if the program is completed successfully, and a higher level of discipline that will be imposed if the attorney does not complete the program.

Table G provides information about participation in the LAP through the ADP or pursuant to an order by the State Bar Court.

Table G-1: 2016 Participation in LAP through the ADP  
or as Ordered by the State Bar Court

Case Intakes	31
Case Closings	34

## Appendix H

### OFFICE OF PROBATION

The Office of Probation (OP) is responsible for monitoring attorney compliance with conditions imposed by State Bar Court and California Supreme Court disciplinary orders. The length of time a respondent attorney spends on probation, and the number, and type of conditions all vary depending on the nature of the charges and severity of the discipline imposed.

The OP participated in the 2016 Workforce Planning evaluation, a legislatively mandated effort intended to align the State Bar's resources with its primary public protection mission. The resulting report included a recommendation to reduce OP caseloads by eliminating monitoring that does not align with the primary function of the OP. Specifically, the OP is no longer responsible for monitoring Agreements in Lieu of Discipline (ALD) and compliance with California Rules of Court, rule 9.20 (Rule 9.20).

An ALD is an agreement between the Office of Chief Trial Counsel (OCTC) and a respondent attorney in lieu of formal disciplinary action. The responsibility for monitoring these agreements has been transferred to OCTC, effective September 15, 2016.

Rule 9.20 imposes certain requirements on attorneys when they resign from the State Bar with no disciplinary charges pending. On January 26, the Board of Trustees approved a new procedure that requires attorneys submit a declaration with their resignation affirming that they have complied with the requirements of Rule 9.20. This procedural change prevents these attorneys – over whom Probation has no authority because they are not the subject of any discipline – from becoming part of the caseload of Probation deputies.

Table H-1: 2016 Probation Average Monthly Caseloads

Probation Monitoring Category	No. of Cases
Rule 9.20 <sup>44</sup>	181
Alternative Discipline Program	4
Agreement in Lieu of Discipline <sup>45</sup>	64
Suspension/Probation Conditions	607
Reproval with Conditions	88
Other	2
<b>Total</b>	<b>946</b>

<sup>44</sup> As discussed above, a change to the procedures for resignation with no disciplinary charges pending, which were implemented early 2017, has eliminated OP monitoring of Rule 9.20 compliance under those circumstances. OP continues to monitor Rule 9.20 compliance imposed as a condition of probation.

<sup>45</sup> As discussed above, as of September 15, 2016, OP no longer monitors agreements in lieu of discipline.



## Appendix I

### POTENTIAL CONFLICTS OF INTEREST: RULE 2201

The purpose of State Bar Rule of Procedure 2201 is to ensure impartiality in disciplinary decision-making and to avoid the appearance of bias. Rule of Procedure 2201 requires the recusal of the Chief Trial Counsel (CTC) in any case involving individuals with close ties to the State Bar. Prior to its revision, Rule 2201 distinguished between two types of complaints that would result in the appointment of an SDTC, allowing the CTC to exercise discretion with regard to recusal in some cases and requiring recusal in others. Effective July 22, 2016, the CTC is required to recuse himself or herself when the subject of an inquiry or complaint has close ties to the State Bar, and in any circumstances where the CTC determines that a real or apparent conflict of interest may exist.

Prior to the rule change, OCTC conducted the initial review of an inquiry or complaint, to determine whether it should be closed, referred for investigation within OCTC, or referred to an outside examiner. Since revision of Rule 2201, any complaints against attorneys who are identified as falling into a Rule 2201 category are automatically referred to a Special Deputy Trial Counsel (SDTC) Administrator, who conducts a preliminary review to determine whether to close the matter or appoint an SDTC to investigate the matter further. The revised rule allows the Administrator and SDTC to be compensated for services rendered and for reimbursement of costs and expenses in all rule 2201 matters. The following tables provide information about cases falling under Rule 2201 in 2016, both prior to and since its revision.

Table I-1: 2016 Complaints Subject to Rule 2201

Status as of March 2017	No. of Cases
Closed without Investigation	56
Closed after Investigation	9
Pending assignment to SDTC	5
Investigation by SDTC	38
<b>Total</b>	<b>108</b>

## **SECOND LOOK AND WALKER PETITIONS: REQUESTS FOR REVIEW OF DECISIONS TO CLOSE COMPLAINTS**

When the State Bar's Office of the Chief Trial Counsel (OCTC) notifies complainants that there are not sufficient grounds to pursue disciplinary action, the complainants are advised of their right to request a review of that decision, commonly referred to as a "second look" review. The purpose of the second look is to ensure that the case was closed properly and, if not, to refer the complaint back to OCTC to be reopened for investigation. As such, the second look process serves a function akin to an appeal of a decision.

Until recently, requests for review were conducted within OCTC by a special unit devoted to this process, the Audit and Review Unit (A&R).

The State Auditor's Report 2015-030 included the following recommendation:

To provide independent oversight of the Office of the Chief Trial Counsel and assurance that it properly closes its case files, the audit and review unit should report to an individual or body that is separate from the chief trial counsel, such as the executive director or the board.<sup>46</sup>

Pursuant to that recommendation, on May 13, 2016, the Board of Trustees amended rule 2603, Rules of Procedure of the State Bar, transferring the second look function to the Office of General Counsel (OGC) effective July 1, 2016. OGC renamed the second look unit as the Complaint Review Unit (CRU).

Complainants are advised in OCTC's closing letters that they may request that CRU review the decision to close their complaint by submitting a written request for review to CRU within 90 days of the date of OCTC's closing letter. The procedures used by CRU to conduct second look reviews were adopted in large part from procedures previously used by A&R and include a review of materials contained in the file as well as any new documentation submitted by the complainant.

CRU fully reviews the file in second look cases, as well as any other material submitted by the complainant, and assesses the full range of allegations made against the attorney. If there is significant new evidence or other good cause to recommend that the matter be reopened, CRU prepares a reopening memorandum which describes the case and the reasons for CRU's recommendation, and makes suggestions for further investigation. The reopening memorandum is then transmitted to OCTC. As a general rule, CRU will not recommend that a matter be reopened unless there is a reasonable possibility that a disciplinary violation can be proven by clear and convincing evidence.

Upon deciding not to reopen a closed complaint, CRU prepares a closing letter to the complainant that contains a clear explanation of the reasons for declining to recommend reopening a case. Closing letters also notify complainants of their right to request California Supreme Court review pursuant to *In re Walker* (1948) 32 Cal.2d 488. CRU's closing letters explain the process for requesting review of the decision by the California Supreme Court.

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<sup>46</sup> California State Auditor. *Report 2015-30, The State Bar of California: It Has Not Consistently Protected the Public Through Its Attorney Discipline Process and Lacks Accountability*. Sacramento: June 2015.

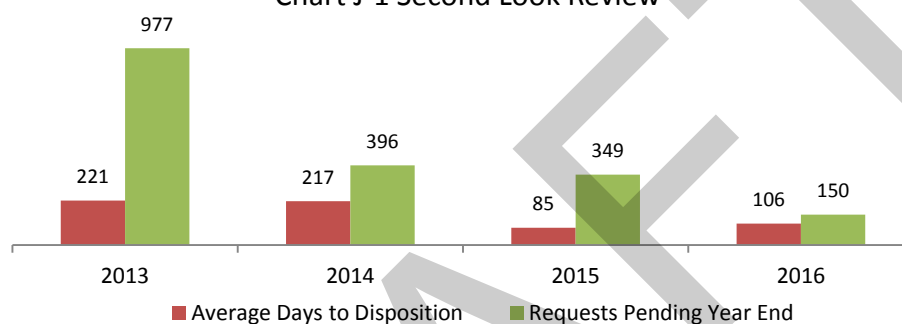
## APPENDIX J

Table J-1: 2016 Second Look Review<sup>47</sup>

Requests Received	1,149
Reviews Completed	1,350
Recommendation to Reopen	92
Closed	1,258 (93%)
Average Days to Disposition	106
Requests Pending Year End	150

As chart J-1 illustrates, the new process for Second Look Review has resulted in a decrease in the amount of time to complete requests for review, as well as a decrease in the number of cases pending at year end.

Chart J-1 Second Look Review



*In re Walker* provides that a member of the public may challenge a decision by the State Bar to close a complaint by filing a petition in the Supreme Court. For a petition to be granted, the complainant must demonstrate that the State Bar has arbitrarily failed or refused to grant a hearing on colorable charges. Table J-2 provides information about the number and disposition of Walker petitions that reached disposition in the Supreme Court in 2016.

Table J-2: 2016 Walker Petitions

Total Petitions Disposed	76
Granted	0
Denied	74 (97%)
Stricken <sup>48</sup>	2
Average Days to Disposition	44

<sup>47</sup> This table provides data for cases that were handled in the A&R Unit from January to June, as well as those in the CRU from July to December. During this time, the average pendency to resolution for cases that originated in the A&R Unit was 139 days, while the average pendency to resolution for requests that originated in the CRU was 28 days.

<sup>48</sup> Cases were stricken due to untimely filing or failure to present the case to Audit and Review prior to filing with the Supreme Court.