

# **AGENDA ITEM**

## **MAY 2017**

**DATE:** May 3, 2017

**TO:** Members, Regulation and Discipline Committee

**FROM:** Gregory Dresser, Interim Chief Trial Counsel

**SUBJECT:** Status Report from the Office of Chief Trial Counsel (OCTC)

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### **I. IMPLEMENTATION OF WORKFORCE PLANNING TEAM STRUCTURE**

Effective April 24, 2017, OCTC implemented the team structure recommended by the Workforce Planning analysis. Under this structure, OCTC now has 8 non-specialized Enforcement/Trial Teams in Los Angeles, 3 non-specialized Enforcement/Trial teams in San Francisco, and the following teams co-located in Los Angeles and San Francisco:

- 2 Intake teams.
- 1 Non-Attorney/Unauthorized Practice of Law Team. This team will soon include the intake function of non-attorney complaints, as well as the intake function of 6180/6190 matters (dealing with the assumption of practice of disbarred, suspended, deceased, or inactive members, or members who have otherwise become incapable of practicing law), making the team truly vertical – from the intake stage through enforcement.
- 1 Appellate team.
- 1 Calibration/Training team.

In addition, a reduced central administration staff continues to handle matters such as case initiation, file retention, and a wide range of administrative support not appropriate for individualized handling on each of the teams.

Each team is headed by a supervising attorney. The trial teams are comprised of attorneys, investigators, a paralegal, and support staff. The composition of the other teams varies slightly, based on operational needs. In the future, all new cases will be assigned to an attorney/investigator pair on the same team. As to existing caseloads, the most recently assigned cases were reassigned to align with this same approach (leaving the case with the investigator previously assigned, but assigning a new attorney who is on the same team). In an effort to avoid major disruption, the majority of cases were left with the investigator/attorney pair to whom they were previously assigned, even though this means cross-team assignments for the immediate future.

The supervising attorneys have, for the most part, the full range of supervisory authority, reducing the number of documents and requests that need to be reviewed and approved at multiple levels. This is intended to streamline OCTC's processes. Because this approach

necessarily means greater numbers of individuals making final prosecutorial decisions, we have taken steps to ensure continued consistency in what cases are pursued and the level of discipline sought in similar cases. This includes continuing to conduct cross-team meetings on trial strategy, review of decisions and opinions, and increased frequency in the review of stipulations entered into by the office.

## **II. MARCH 2017 MONTH-END METRICS**

For this status report, I have highlighted key inventory numbers and workflows for 2017, based on statistical information as of March 31, 2017.

### **New Complaints**

In March 2017, Intake opened 1305 new cases (complaints from complainants, State Bar Initiated (SBI) matters, and Reportable Actions (RAs)), as follows.

- 1081 new complaints from complainants;
- 17 new SBIs; and
- 208 new RAs.

Intake opens cases from different “case initiation” types or sources. Complainant cases are initiated by a complaint from a member of the public. SBIs are opened by OCTC without a complaint, such as when OCTC learns of possible attorney misconduct through media coverage or during the course of a separate disciplinary investigation. RAs are matters where an individual or entity has reported certain activity to OCTC, pursuant to statutory obligations, such as where a financial institution reports insufficient funds in an attorney-client trust account or a superior court reports imposition of certain sanctions against an attorney.

The monthly new case numbers for calendar year 2017, through March, are set forth, immediately below.

<b>New Complaints</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>
Complainant	971	978	1080
State Bar Initiated	29	14	17
Reportable Actions	259	127	208
<b>Total</b>	<b>1259</b>	<b>1119</b>	<b>1305</b>

### **Inventory and Backlog**

At the end of March 2017, OCTC’s month-end inventory of active attorney disciplinary cases that had yet to be filed, closed, or otherwise resolved was 3668:

- 847 cases in intake
- 2558 cases in investigations; and
- 263 cases in pre-filing (investigation is complete and matter is with trial counsel to take next steps regarding formal disciplinary charges).

The monthly active inventory, by case phase, for calendar year 2017, through March, are set forth, immediately below.

<b>Active Inventory</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>
Intake	717	802	847
Investigation	2386	2426	2558
Pre-Filing	246	263	263
<b>Total</b>	<b>3349</b>	<b>3491</b>	<b>3668</b>

Of the 3668 active cases, 892 were in backlog as of March 31, 2017:

- 12 cases in intake;
- 685 cases in investigations; and
- 195 cases in pre-filing.

The total number of cases in backlog was 1645:

- 892 active cases in backlog; and
- 753 suspended cases in backlog.

Total monthly inventories and backlog, for calendar year 2017, through March, are set forth, immediately below.

<b>Inventory and Backlog</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>
Total Inventory	3349	3491	3668
Total Backlog	1562	1667	1645
Active Backlog	792	875	892
Suspended Backlog	770	792	753
Active Backlog as % of Inventory	24%	25%	24%

### **Suspended Inventory Details**

The majority of suspended cases are suspended due to the likely disbarment of the attorneys involved as a result of other disciplinary cases already filed and pending before the State Bar Court or Supreme Court. As of March 31, 2017, there were 827 cases in suspended status, 753 of which were in backlog status. The 827 suspended cases involved 175 attorneys, 108 of whom are on inactive status or otherwise not entitled to practice law. The reasons for suspension of work in the 827 cases are, as follows.

<b>Reason for Suspension</b>	
Default in other matter	195
Expected Disbarment	182
Disbarment Recommendation filed by SBC	98
Overlapping Litigation	146
Inactive Enrollment Order	206
<b>Total</b>	<b>827</b>

The monthly numbers of cases suspended in investigations and in pre-filing, through March 2017, are, as follows.

<b>New Suspensions</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>
Investigations	16	39	26
Pre-Filing	3	1	4

## **Case Processing**

Cases that are resolved in Intake are either closed or forwarded to Investigation. Cases resolved in Investigation may be closed or forwarded to the pre-filing stage. Cases in pre-filing may be closed, or filed in State Bar Court. Cases that are closed may be closed with a warning letter or directional letter to the attorney who is the subject of the complaint, or closed for insufficient facts to prove the allegations (or other similar reasons).

In calendar year 2017, through March 31, the number of cases each month forwarded to the next stage is set forth, immediately below.

<b>Cases Forwarded</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>
Intake	471	395	535
Investigation	22	35	47
Pre-Filing	27	27	45
<b>Total</b>	<b>520</b>	<b>457</b>	<b>627</b>

The number of cases closed each month, through March 2017, is set forth, immediately below.

<b>Cases Closed</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>
Intake	874	668	755
Investigation	248	290	334
Pre-Filing	10	11	12
<b>Total</b>	<b>1132</b>	<b>969</b>	<b>1101</b>

## **Audit & Review: Second-Look Requests**

Following recommendations by the California State Auditor, the Bar realigned Audit and Review's second-look function from OCTC to the Office of General Counsel (OGC). In March 2017, OCTC resolved all second-look cases that were in its inventory as of June 30, 2016. After this report, OCTC will no longer report on the status of second-look requests.

Combining the numbers from OGC and OCTC, there were 63 pending second-look requests as of March 31, 2017. The median time it took to process a second-look request was 28 days. The mean (average) time it took to process a second-look request was 51 days.

The monthly second-look inventory numbers through March 2017, are, as follows.

<b>Second Look Requests</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>
	102	77	63

The month processing times March 2017 are, as follows.

<b>Processing Times</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>
Median	42	31	28
Mean	93	87	51

### **Walker Petitions**

There were 12 *Walker* petitions filed with the California Supreme Court in March 2017. The Supreme Court granted no *Walker* petitions in March 2017.

The monthly numbers for *Walker* petitions, filed and granted, for calendar year 2017, through March 2017, are, as follows.

<b>Walker Petitions</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>
Filed	14	9	12
Granted	0	0	0

### **Trials and Discipline Decisions**

OCTC received discipline recommendations from the Hearing Department in March 2017 involving 49 cases, as follows.

- 6 by trial decision;
- 29 by stipulation;
- 5 Alternative Discipline Program decisions;
- 9 by default decision; and
- 0 dismissal decisions

In addition, one case was dismissed by motion of OCTC.

The monthly numbers for calendar year 2017, through March, are set forth, immediately below.

<b>Decision Type</b>	<b>Jan</b>	<b>Feb</b>	<b>Mar</b>
Trial	10	7	6
Default Decision	12	6	9
Stipulation	30	16	29
ADP Decision	0	3	5
Dismissal Decision	0	0	0

Due to limitations of the State Bar Court's available data, this count is based upon OCTC's internal hand count of the decisions and orders received each month.

## **Non-Attorney Complaints**

OCTC has dedicated to receive and process complaints against non-attorneys. While OCTC's jurisdiction in relation to non-attorneys is limited compared to that over attorneys, OCTC reviews non-attorney complaints alleging the unauthorized practice of law and may investigate complaints for specific action, such as (1) to request a superior court to assume jurisdiction over a non-attorney's law practice, or (2) to bring civil actions against non-attorneys pursuant to Business and Professions Code section 6126.7, to seek civil penalties for the unlawful and misleading advertising by the use of words or phrases, such as "notario" or "notario publico." Although, in the past, OCTC was charged with investigating such "notario" cases and OGC was charged with initiating civil actions in viable cases, OCTC now handles the litigation of such cases.

In 2016, OCTC received 632 non-attorney complaints; an additional 100 matters related to non-attorney practice were initiated by the State Bar. As of March 31, 2017, there were approximately 123 non-attorney complaints in investigation and approximately 27 non-attorney complaints pending in intake. Of those complaints, there were 35 non-attorney complaints related to immigration issues in investigation and 8 non-attorney complaints related to immigration pending in intake.