

## **AGENDA ITEM**

### **III.F. MAY 2017**

**DATE:** May 5, 2017

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

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

**SUBJECT:** Scope and Purpose of the Annual Discipline Report

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#### **EXECUTIVE SUMMARY**

Business and Professions Code 6086.15 requires that the State Bar submit an Annual Discipline Report (ADR) each year “describing the performance and condition of the State Bar discipline system including all matters that affect public protection.” Although subsections of the Business and Professions Code call out specific data elements for inclusion in the ADR, these mandated data elements are not inclusive of “all matters that affect public protection.”

To remedy this, State Bar staff have added various appendices to the ADR to supplement the statutorily mandated components of the report with additional information on matters that affect public protection. This work will benefit from the guidance of the Committee on Regulation and Discipline (RAD). This agenda item requests that RAD members provide guidance on data that should be included in the ADR as well as guidance on seeking statutory changes to include recommendations regarding the content of the ADR.

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#### **BACKGROUND**

In 2016 the ADR was restructured to ensure that it included all data elements that are mandated by statute (2015 ADR). The ADR that was just published (2016 ADR) retained the focus on statutorily mandated data elements for the body of the report but added information in the appendices of the report in an effort to capture information related to the public protection mission of the Bar that is not included to the statutorily identified data.

#### **DISCUSSION**

Table 1, below, shows the program areas for which RAD is responsible and the principal functions and sub-entities that relate to those program areas. Appendix A of this report shows the statutorily mandated data elements that are now covered in the ADR along with the additional information that was provided in the appendices of the most recent ADR.

These tables are provided to focus the discussion with RAD members regarding the scope and purpose of the ADR. Following this discussion, Bar staff will develop a plan to identify the

appropriate communications vehicle for reporting information on the areas that RAD members deem appropriate. If that communications vehicle is not the ADR, Bar staff will work to ensure that the information is communicated through another means.

Table 1: Regulation and Discipline Committee Program Areas

	Ethics	Prevention and Remediation	Discipline
Principal Functions	Formulating Rules of Professional Conduct	Client Security Fund	Office of Chief Trial Counsel <ul style="list-style-type: none"> <li>• Discipline-related attorney investigation and prosecution</li> <li>• UPL investigation and referral for prosecution</li> <li>• Moral character proceedings</li> </ul>
	Ethics Hotline	Lawyer Assistance Program	Probation Monitoring
	Ethics Opinions	Mandatory Fee Arbitration	OCTC Ethics School
	Ethics Symposium	Client Trust Account School	
Sub-Entities	Commission for Revision of the Rules of Professional Conduct	Client Security Fund Commission	
	Committee on Professional Responsibility	Lawyer Assistance Oversight Committee	
		Committee on Mandatory Fee Arbitration	
		Committee on Professional Liability Insurance	

## FISCAL/PERSONNEL IMPACT

Not Applicable

## BOARD BOOK IMPACT

Article 1, Section 6

## BOARD GOALS & OBJECTIVES

Goal 2: “Insure a timely, fair, and appropriately resourced admissions, discipline and regulatory system for California’s over 250,000 lawyers.”

Objective 2c: “Develop and implement transparent and accurate reporting and tracking of the health and efficacy of the discipline system, to include ... development of new metrics for measuring the effectiveness of the discipline system including any needed revisions to the statutory backlog metric.”

## Appendix A – Content of the 2016 Annual Discipline Report

Mandated Data	Business & Professions Code Requirement
Backlog	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.
Inquiries and complaints and their disposition	Section 6086.15, subdivision (a) (2) The number of inquiries and complaints and their disposition.
Reportable Action cases, self-reported	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 6086.8.1
Reportable Action cases, reported by other	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.
Speed of Complaint Handling	Section 6086.15, subdivision (a)(5) The speed of complaint handling and dispositions by type, measured by the median and the average processing times.
Formal disciplinary filings and outcomes	Section 6086.15, subdivision (a)(6) The number, average pending times, and types of filed notices of disciplinary charges and formal disciplinary outcomes.
Other matters	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 reprimands, admonitions, and agreements in lieu of discipline.
Unauthorized Practice of Law by former attorneys	Section 6086.15, subdivision (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.
Unauthorized Practice of Law by	Section 6086.15, subdivision (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

<b>Mandated Data</b>	<b>Business &amp; Professions Code Requirement</b>
non-attorneys	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.
Condition of the Client Security Fund	Section 6086.15, subdivision (a)(10) A description of the condition of the Client Security Fund, including an accounting of payouts
Cost of the Discipline System	Section 6086.15, subdivision (a)(11) An accounting of the cost of the discipline system by function

<b>Non- Mandated Data</b>	
Criminal Conviction Monitoring	Appendix D, Criminal Conviction reporting not required in 6086.15 found in B&P 6101 and 6095 related to reporting by
Unauthorized Practice of Law, Notario & Immigration Related Complaints	Appendix E, Section 6125 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.
Lawyer Assistance Program	Appendix G
Office of Probation Caseload	Appendix H
2201 Cases	Appendix I
2 <sup>nd</sup> Look and Walker Petitions	Appendix J