

# ANNUAL DISCIPLINE REPORT

FOR YEAR ENDING DECEMBER 31, 2017



THE STATE BAR OF CALIFORNIA  
APRIL 30, 2018

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## **Executive Summary**

## KEY THEMES

The Annual Discipline Report (ADR) provides an overview of the performance of the attorney discipline system, reporting on data elements that are mandated by statute. As with previous years, the pages that follow provide detailed data on the activity of the State Bar's discipline system.<sup>1</sup> This data, summarized on Charts A through D below, reflects the fact that 2017 was a year of significant transition for the State Bar, particularly in the Office of the Chief Trial Counsel (OCTC or Office), the foundation of the attorney discipline system.

The State Bar's mission is one of public protection. Ultimately, this includes working to ensure that all Californians have access to qualified, ethical attorneys to help them navigate legal matters. The updated 2017 mission statement specifies a focus on attorney discipline:

The State Bar of California's mission is to protect the public and includes the primary functions of licensing, regulation and discipline of attorneys; the advancement of the ethical and competent practice of law; and support of efforts for greater access to, and inclusion in, the legal system.

Over the past few years the State Bar has embarked on ambitious reform efforts, with 2017 marking a pivotal moment. These comprehensive reforms are geared toward serving the 39 million residents of California. Structural and governance reforms necessarily impact the attorney discipline system, as a core part of the State Bar's regulatory work. Many of these reforms are outlined below.

The most visible manifestation of the major transitions impacting the State Bar in 2017 is the separation of the State Bar's voluntary membership associations – the Sections – from the core functions of the State Bar.<sup>2</sup> The separation completed the State Bar's conversion from a hybrid regulatory and trade association to a sole-purpose regulatory agency, sharpening the focus of the State Bar on its statutorily mandated mission: protection of the public.<sup>3</sup>

Less visible, but no less significant, were transformations in OCTC in 2017. In late spring 2017, OCTC implemented a thorough restructuring of case processing in response to a legislatively mandated workforce planning study.<sup>4</sup> During the same period, OCTC also began replacing a significant percentage of its workforce as the State Bar sought to manage its budget through a Reduction in Force initiative. And, in the midst of these changes, key OCTC staff worked to implement a new case management system.

Change is necessarily disruptive, and also imperative for progress and evolving to meet the needs of the public the State Bar serves. It is critical to the State Bar's new strategic direction and

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<sup>1</sup> The State Bar's discipline system is comprised of a number of related entities including the Office of the Chief Trial Counsel, State Bar Court, Office of Probation, and Client Security Fund. While the Annual Discipline Report provides data on the operation of all of these components of the discipline system, it emphasizes the performance of the Office of the Chief Trial Counsel due to its critical discipline system role.

<sup>2</sup> Business and Professions Code section 6056, enacted as part of the 2018 State Bar fee bill (SB 36, Stats. 2017, ch. 422) directed the State Bar to separate the Sections into a private nonprofit corporation, effective January 1, 2018.

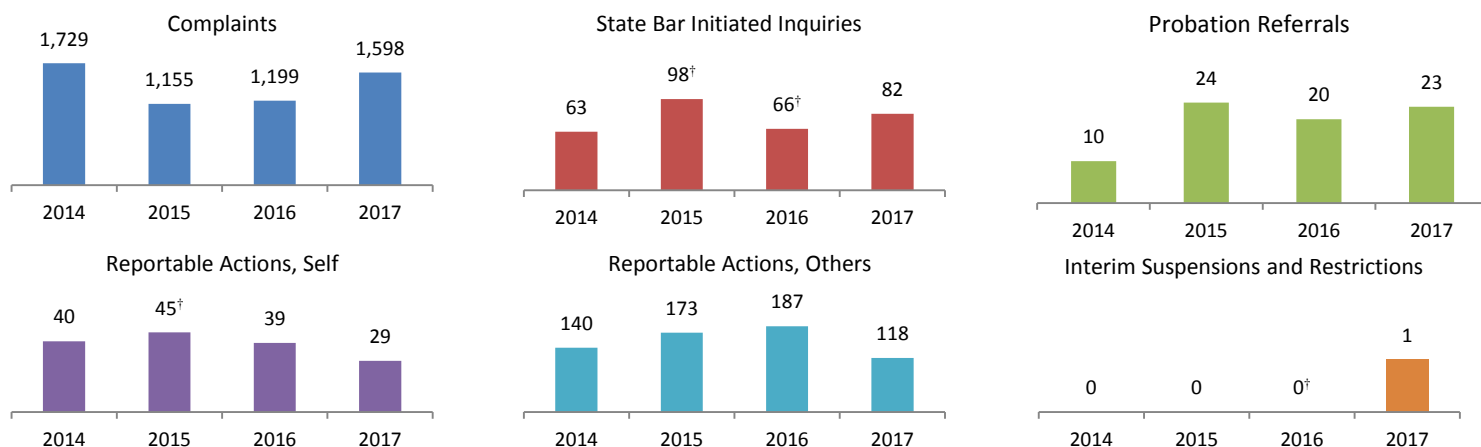
<sup>3</sup> Business and Professions Code section 6001.1 states that "Protection of the public shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions."

<sup>4</sup> See *State Bar of California: Workforce Planning*,

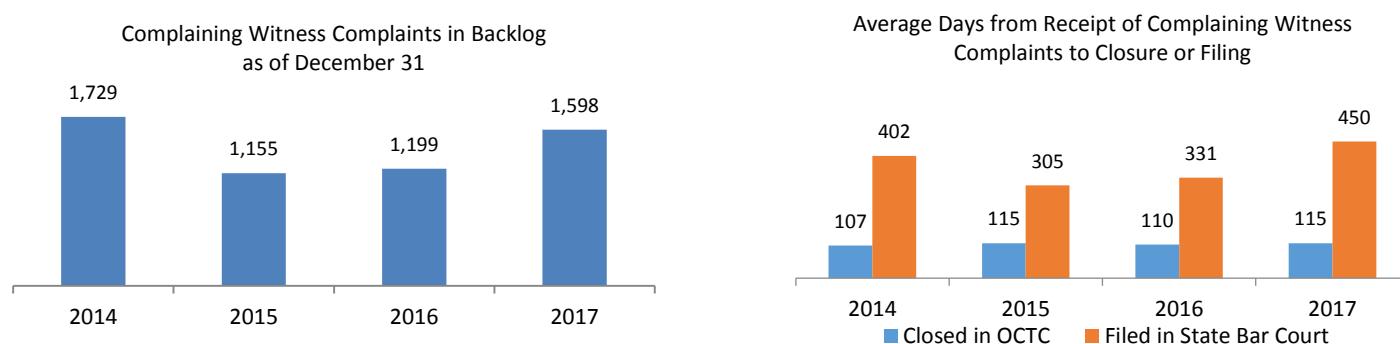
[http://www.calbar.ca.gov/Portals/0/documents/reports/2016\\_Workforce\\_Planning\\_Report\\_May\\_15.pdf](http://www.calbar.ca.gov/Portals/0/documents/reports/2016_Workforce_Planning_Report_May_15.pdf)

continuous improvement. The Annual Discipline Report provides an overview of the performance of the discipline system which reflects the more adverse impacts of compounding change; this year's ADR reveals a growth in the backlog and a decline in the number of cases filed in State Bar Court.

**Chart A: Cases Pending More than Six Months on December 31<sup>†</sup>**

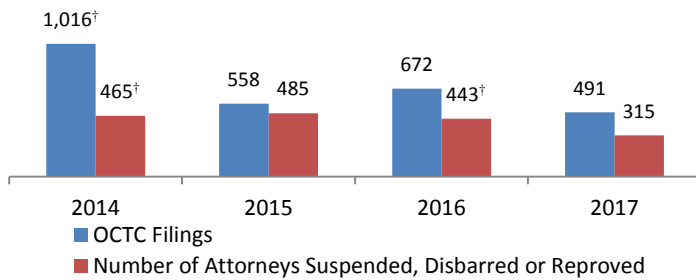


**Chart B: Backlog and Speed of Case Handling**

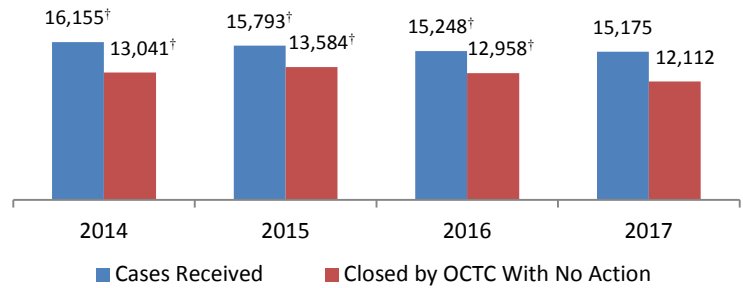


<sup>†</sup> Ongoing review and revisions to the underlying data resulted in small changes from the statistical information reported for the previous three years. Reasons for changes to prior year data include the following: (1) cases were reopened, resulting in a change to the case disposition (e.g., a case that was initially closed was reopened for further investigation); (2) case closure dates were changed, sometimes due to a delay in receipt of a Supreme Court discipline order; (3) changes were made to how cases were categorized (e.g., case-level review found some cases categorized as judicial sanctions reported by a court that were, in fact, reported by opposing counsel); and (4) corrections were made with regard to law enforcement referrals (e.g., some cases were reported as law enforcement referrals when the authorization to make such a referral had been obtained, regardless of whether the referral was ultimately made). All prior year data that has changed since the 2016 Annual Discipline Report is marked with the <sup>†</sup> symbol.

**Chart C: Disciplinary Filings and Outcomes**



**Chart D: Cases Closed with No Disciplinary Action**



While the decline in State Bar performance on these measures in 2017 is not ideal, it is not surprising given the changes being made. While the volume and pace of change resulted in a decline in productivity in 2017, the reforms initiated and underway will result in substantial improvement in the attorney discipline system in the years to come.

### **FROM TRANSITIONS TO TRANSFORMATION: THE CURRENT LANDSCAPE**

As the prosecutorial arm of the State Bar, OCTC is the linchpin of the Bar's public protection mission. The single largest part of the State Bar, with over 200 employees, OCTC receives complaints of attorney misconduct, investigates those complaints, and seeks discipline against attorneys when a violation of the Rules of Professional Conduct is found. OCTC also addresses complaints of unauthorized practice of law, and partners with law enforcement and other state agencies in this area. Given the importance of the changes underway in OCTC, the Key Themes section of this year's Annual Discipline Report focuses primarily on that office.

In June, a new Chief Trial Counsel (CTC) took the helm of OCTC. Steven Moawad, a career criminal prosecutor with a consumer protection focus, was hired to implement crucial reforms already underway and identify additional changes to improve the efficiency and effectiveness of the Office.

Under CTC's new leadership, OCTC:

- developed and began implementing a new case prioritization system designed to protect vulnerable victims from attorney misconduct;
- carried out business process improvements to increase the efficiency of the office;
- led OCTC's participation in a workload study to identify additional opportunities for business process improvement;
- implemented new protocols to improve the likelihood that victims of attorney misconduct will receive restitution; and
- began developing metrics with which to measure OCTC's performance and to hold the Office and its staff accountable; and
- issued fraud alerts for the public following the California fires and after high profile reports of raids on immigrants.

These initiatives are all discussed in greater detail below.

In the context of far-reaching organizational changes already underway in OCTC, these changes constitute a tectonic shift in the work of the Office. In late spring, OCTC implemented a thorough restructuring of case processing in response to a legislatively mandated workforce planning study. During the same period, OCTC also began replacing a significant percentage of its workforce as the State Bar sought to manage its budget through a Reduction in Force initiative. And, in the midst of these changes, key OCTC staff worked to implement a new case management system. A stronger attorney discipline system built for the long term is critical to serving the public.

2017 began with OCTC led by an interim CTC. Recruitment efforts throughout the first few months of 2017 resulted in the selection of Mr. Moawad, who began work in early June 2017. Upon joining OCTC, he set about learning the work of the Office as well as its staff, processes, and challenges. Recognizing the importance of line staff to the success of the Office, he moved quickly to improve employee morale, fill vacancies, reengineer case processing, establish a new case prioritization system, and support efforts to collect restitution for victims. In the long run, the prioritization of cases that have the greatest impact on public protection will result in a better discipline system that will more effectively prevent unscrupulous and unethical attorneys from practicing law in California, and discipline those who do. In the short run, it can be expected to increase the backlog as efforts move from backlog reduction alone to a broader definition of public protection.

#### *Case Prioritization Emphasizing Public Protection*

The previous system for prioritizing cases identified three priority levels based largely on the potential severity of discipline that could result from a complaint. Despite the use of “priority codes,” there has been no real difference in the way that cases were treated. The absence of differentiated processing rules to prioritize higher level complaints was largely driven by a focus on limiting the number of complaints in backlog. As a result, complaints in backlog, or those in danger of falling into the backlog, were worked first, regardless of the nominal priority.

OCTC recently developed a new case prioritization protocol which shifts the focus from working the oldest cases first to prioritizing cases that have the greatest impact on public protection. A key to devoting additional resources to higher-priority cases is to ensure the expedited handling of lower priority cases. To do so, OCTC has begun to eliminate tasks that are not necessary to investigate and prosecute lower priority complaints, and reallocate those resources to the investigation of higher priority matters. Once fully implemented in 2018, these changes should lead to improvement in the time required to process the most serious and impactful cases. Table A provides a summary of the new case prioritization protocol.

Table A: Revised Case Prioritization Protocols

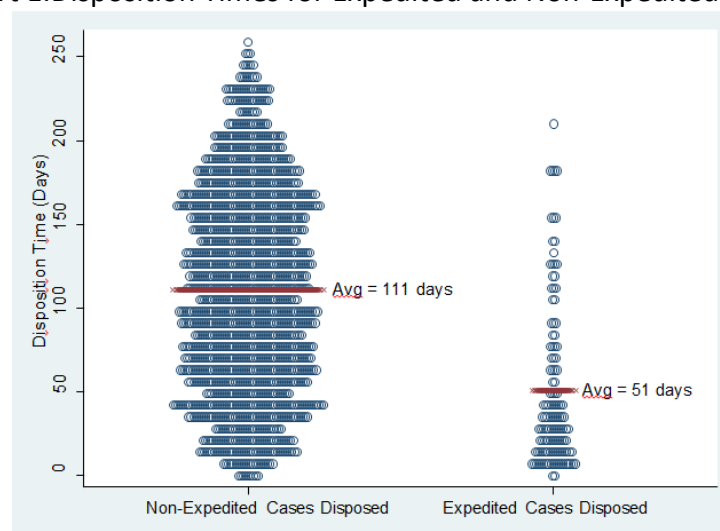
Priority One	<ul style="list-style-type: none"> <li>• Significant, ongoing, or serious potential harm to the public</li> <li>• Abandonment</li> <li>• Abusive and/or frivolous litigants</li> <li>• Unauthorized practice of law</li> <li>• Other complaints, at the discretion of OCTC management</li> </ul>
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Priority Two (Expedited)	<ul style="list-style-type: none"> <li>• Likely to close with a response from respondent attorney</li> <li>• Insufficient information; follow-up required;</li> <li>• Likely to result in non-disciplinary action (e.g., warning or resource letters)</li> <li>• Likely to resolve within 60 days</li> <li>• Respondent has multiple current or prior complaints involving similar allegations <i>and</i> the individual complaints do not fall within Priority One category. The total number and/or pattern of complaints warrant an expedited investigation, including to determine if complaints should be categorized as Priority One.</li> <li>• Other matters, at the discretion of OCTC management</li> </ul>
Priority Three (Standard)	<ul style="list-style-type: none"> <li>• All matters that do not fall into a different priority code</li> </ul>

New cases are currently being prioritized based on the protocol reflect in Table A above. Prioritization of the existing inventory of cases is underway. Preliminary data shown in Chart E shows the average case processing times for Expedited cases and non-Expedited cases – and, consequently, the resource savings associated with the new case prioritization methodology. As reflected in Chart 1B in the body of the ADR, the number of cases in the backlog for more than one year fell by five percentage points from 2016 to 2017, with a corresponding increase in the number of cases pending for one year or less. In addition to the faster disposition of these cases, fewer Expedited than non-Expedited cases were pending when these data were analyzed.

Chart E:Disposition Times for Expedited and Non-Expedited Cases



### *Case Processing Efficiencies*

The CTC began his tenure at OCTC by studying procedures and protocols for handling cases, and identifying areas for improvement. One example is the way in which bank records are received and sorted: OCTC subpoenas have been redrafted to request that bank records be provided in electronic format, eliminating the need for manual entry of information from hard copies into spreadsheets. OCTC also purchased licenses for software to scan electronic bank records and automatically

convert text from the records into spreadsheets. Both of these automated processes have drastically reduced the amount of time it takes to trace banking transactions.

#### *New Discipline System Metrics*

Currently, the only quantitative measure used to assess the health of the Bar's discipline system is the backlog metric. The State Bar has identified the inadequacies of this metric as a measure of performance for a number of years, and is currently poised to adopt and recommend a comprehensive set of new performance measures that will enable better assessment of the effectiveness of the attorney discipline system and create better incentives for OCTC and its staff.

Measures that are being developed include procedural fairness – to be determined by surveys of complaining witnesses – recidivism, and workload standards to link resources to efficacy in case processing. The State Bar will continue to assess data quality and availability; review, modify, and finalize draft metrics; and incrementally increase the scope of the metrics through the end of 2018.

#### *Focus on Restitution and Improved Fiscal Health of the Client Security Fund*

OCTC has placed a renewed emphasis on the importance of securing an agreement or court order for timely and appropriate payment of restitution by attorneys. OCTC protocols include ensuring that every effort is made to determine the exact amount of restitution owed to each victim, set those amounts out in any stipulation, and request the State Bar Court to include those amounts in any decision. The protocol emphasizes that the preferred approach is to get the restitution paid immediately, or at the earliest possible time, and emphasizes the need to objectively scrutinize an attorney's assertion of financial hardship. Direct payment of restitution from disciplined attorneys to their victims will improve public protection by expediting payment to victims, thereby reducing the need for payment of claims by the Client Security Fund. It may also increase victim satisfaction and achieve some of the social goals of restorative justice.

### **OVERVIEW OF 2017 ORGANIZATIONAL RESTRUCTURING TO STREAMLINE CASE PROCESSING**

Even prior to the arrival of the new CTC, Business and Professions Code section 6140.16 directed the State Bar to develop and implement a workforce plan to align its staffing and resources with its mission to protect the public. The National Center for State Courts was contracted to conduct this study and delivered a final report on Workforce Planning to the Legislature in 2016.

The report's recommendation for a major reorganization of OCTC required a renegotiation of the Bar's Memorandum of Understanding with its labor union to create a new Supervising Attorney classification. These interdependent changes – the creation of new Supervising Attorney (SA) positions to support organizational restructuring – were completed in April 2017.

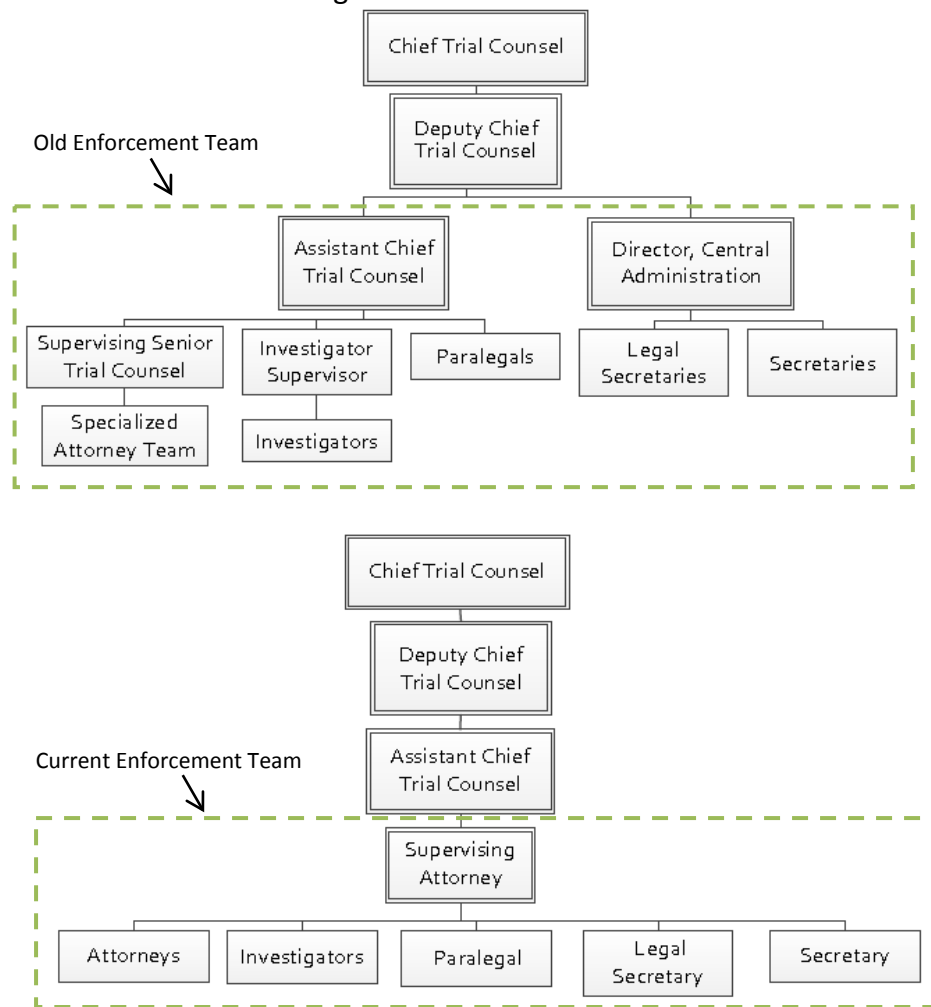
Previously, OCTC had enforcement teams that specialized in particular types of violations. For example, one team handled only cases involving misappropriation and fraud, while another handled only cases that addressed performance and conflict of interest issues. Each team included attorneys and investigators, but there was no direct reporting/supervisory structure within each team. Support staff, including paralegals and legal secretaries, was not assigned to enforcement teams, but instead supported several teams. This structure sometimes led to conflicting instructions regarding priorities and required multiple levels of authorization for work.

The new structure consists of teams of attorneys, investigators and support staff combined, with each team headed by an SA to whom all team members report. With the exception of Unauthorized Practice of Law cases that involve non-attorneys, enforcement teams are not designated with specialty areas. Instead, each team is capable of handling all case types. In addition to providing a clear supervisory structure, the SA provides streamlined approval of work and better cross-training of all members of the office.

An additional benefit of OCTC's new organizational structure is clarification of career paths for State Bar staff, offering advancement opportunities for excellent employees. The long-term benefits of this approach, however, have generated short-term disruption as some of the most senior attorneys, capable of handling the largest caseloads, were moved into SA positions, and their positions were backfilled with other, internal promotions.

Chart F shows the old and new structure at OCTC. Now that the new structure is fully in place and additional staff has been hired, OCTC is on track to handle cases more efficiently.

Chart F: Change to Enforcement Team Structure



## 2017 REDUCTION IN FORCE AND REPLACEMENT OF STAFF

In 2016, the Legislature did not authorize the State Bar's collection of a 2017 annual licensing fees from attorneys. The Supreme Court then granted the State Bar's request to impose an interim special regulatory assessment to fund the State Bar's attorney discipline system for 2017. The Court adopted California Rule of Court, rule 9.2, which imposed a mandatory assessment of \$297 per active attorney to support all identified components of the attorney discipline system for the year, including implementation of the Workforce Planning Report recommendations. In prior years, the General Fund fee for active attorneys was \$315; thus, the net result was a reduction in funding for State Bar operations. To address this challenge, the State Bar implemented a reduction in force plan (RIF), offering incentives to employees who might be near retirement or were interested in pursuing other career options. Twenty-two OCTC employees participated in the RIF, including four investigators and eight attorneys. Many were seasoned professionals who carried significant caseloads. Upon their departure, that work was initially absorbed by existing staff.

Despite the funding reduction and the need to offer the RIF to all employees, the State Bar moved to reallocate staffing resources from other parts of the organization to ensure adequate staffing for OCTC. Shortly after the implementation of the RIF, OCTC began recruiting to fill both existing and newly-created positions. Some of the newly created positions were the Supervising Attorney positions referenced above. During the year, OCTC filled 105 positions. More than half of these were filled by staff within OCTC or from other State Bar departments, as a way to continue investing in and developing our employees, with the remainder recruited from outside the State Bar.

After initial training periods with reduced caseloads, new employees maintain caseloads on par with their more seasoned co-workers, resulting in improved case processing times. Hiring has continued in 2018, with additional external hires as well as a transfer from another State Bar department. Table B shows OCTC staffing levels as of the end of January 2018, compared with those prior to the RIF.

Table B: OCTC Staffing Levels

Total Staff as of January 31, 2017	217
Staff Departures *	-50
Internal Promotions and Transfers within OCTC**	53
Promotions and Transfers from Other Departments	+8
External Hires	+57
Total Staff as of February 28, 2018	232
2018 Funded Positions	253

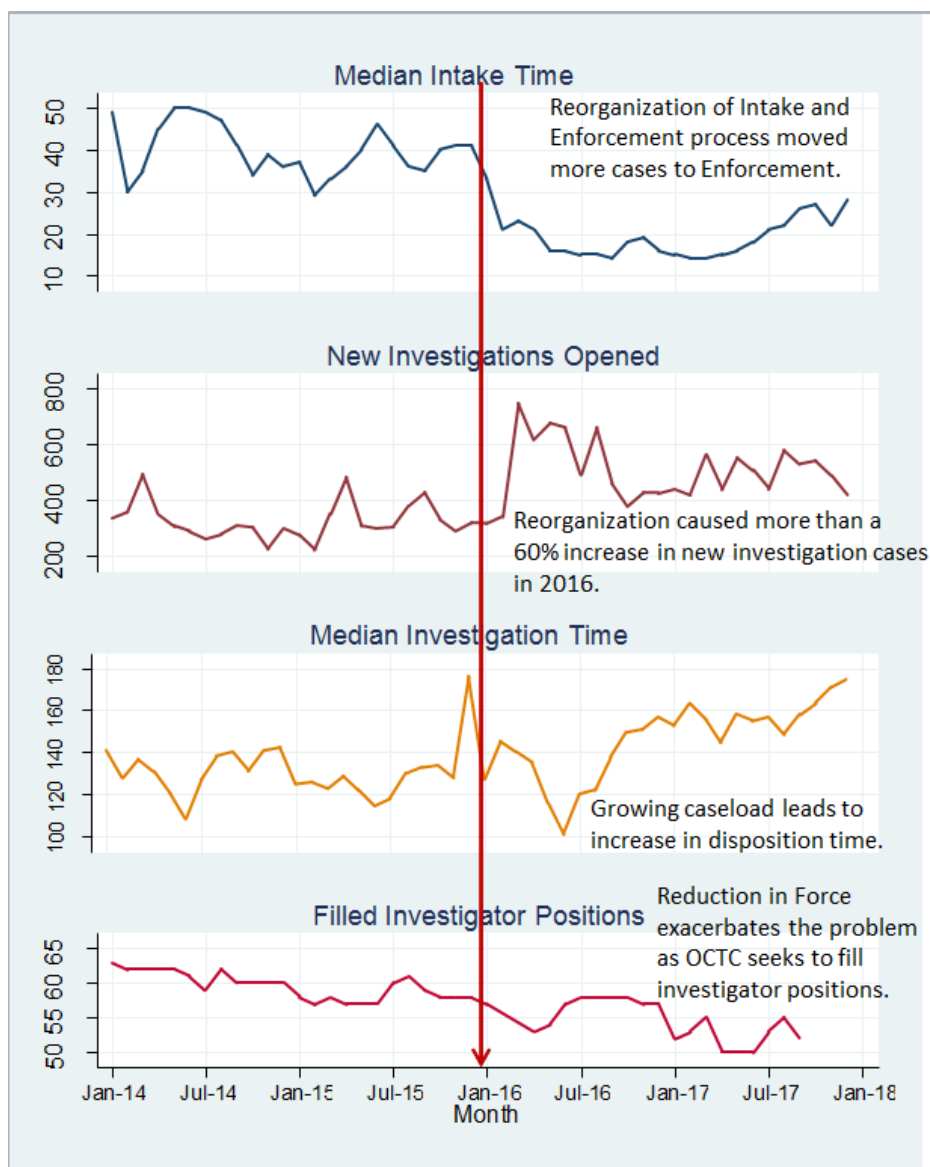
\*Includes 22 departures due to RIF and 4 transfers to other departments.

\*\*No net impact on total number of OCTC staff.

Chart G shows the ripple effects of a number of these changes on key indicators of OCTC workload. Changes in the organization of the Intake unit implemented in early 2016 drastically reduced the amount of time that cases spent in Intake but increased the number of new investigations opened and, with a lag, increased the amount of time to disposition. New hires in

OCTC and expedited case processing should ameliorate these problems, focusing resources on the cases that have the most significant potential impact on public protection.

Chart G: OCTC Workload, Staffing and Case Processing Times



## OTHER INITIATIVES IMPACTING OCTC

### *New Case Management System*

OCTC currently uses a decades-old legacy mainframe system to manage its cases. This system currently requires duplicative data entry and presents challenges in accurately tracking and reporting cases. Implementation of a new case management system (CMS), begun in 2017, will be completed in 2018. Customization of the CMS, which requires a significant dedication of staff with expertise in day-to-day operations, has diverted resources from case processing. Once the

new CMS is implemented and staff training is completed, however, the new CMS should improve day-to-day case processing by establishing “point-of-action” data entry, eliminating subsequent data entry to capture tasks that have already been completed and improving reporting. These upgrades will also increase the transparency and accountability of the attorney discipline system, to ensure that the State Bar is fulfilling its public protection mission.

#### *Fingerprinting Project*

In 2017, the Supreme Court directed the State Bar to consider and present to the Court any proposed court rules to facilitate implementation of the fingerprinting requirement for all State Bar applicants and all active attorneys pursuant to Business and Professions Code section 6054 as recently amended by Senate Bill No. 36. In 2018, the State Bar will implement re-fingerprinting all active attorneys licensed in California in order to fully comply with statutory requirements. This initiative is likely to identify thousands of attorneys who have been convicted of crimes and failed to comply with reporting obligations, which may subject them to discipline, resulting in an increased workload for OCTC.

### **HIGHLIGHTS OF OCTC’S NA/UPL WORK**

OCTC’s new organizational structure retains a Non-Attorney Unauthorized Practice of Law (NA/UPL) team dedicated to investigating the unauthorized practice of law by non-attorneys, the only enforcement team with a specialized focus under the new structure. The NA/UPL team reviews complaints against non-attorneys practicing law, investigates complaints, refers the complaints to law enforcement partners for possible criminal prosecution and, where appropriate, seeks a superior court order to assume jurisdiction over an unauthorized practice. When such an order is granted, OCTC seizes client files, freezes bank accounts, redirects mail and telephone calls, and makes every effort to return files to clients.

One example of OCTC’s work in this area in 2017 is the matter of Eddie Bonilla, who practiced immigration law without a license. In April 2017, Bonilla pleaded no contest in superior court to the unauthorized practice of law and was placed on probation, with conditions to pay fines and penalties. Undeterred by the conviction, he continued his unauthorized practice. In collaboration with the Los Angeles City Attorney’s Office, OCTC completed an investigation of the ongoing UPL and filed a petition in superior court for an order to assume the jurisdiction of the unauthorized practice. The petition was granted, and OCTC seized almost 5,000 client files.

OCTC also conducted significant community outreach in 2017 to educate the public about NA/UPL and resources available through the State Bar. OCTC participated in an immigration seminar co-sponsored by the San Diego District Attorney’s office and Talamantes Immigration Law Firm; a presentation at the National Conference of Vietnamese Attorneys; and a table and presentation at Cabrera Victims Assistance Workshop, organized by the Department of Consumer & Business Affairs to assist the victims of Oswaldo Cabrera, a non-attorney successfully prosecuted for unauthorized practice of law by the California Attorney General’s Office. OCTC provided information on how to verify that an attorney is licensed and how to file complaints with the State Bar. OCTC regularly monitors Spanish language media for potential UPL practices and will continue focusing on these important cases in the years to come. It has also expanded access in other non-English languages commonly spoken in California.

In March 2018, OCTC staff received authorization to enter the Immigrations and Customs Enforcement (ICE) Processing Center in Adelanto and spoke with detainees about their experiences with attorneys and non-attorneys who assisted them with their immigration matters. Detainees were provided with attorney and non-attorney complaint forms in six languages. OCTC will soon be posting educational information in the Adelanto detainee dormitories about immigration fraud, and integrating attorney and non-attorney complaint forms in the facility's law library's internal database for access by detainees. OCTC plans to expand its detention center outreach to facilities throughout California, in conjunction with the Executive Office for Immigration Review's Legal Orientation Programs, and at those facilities without such programs.

### **PROSECUTION HIGHLIGHTS**

In 2017 OCTC took 491 cases to trial or resolved them by stipulated disposition. In total, 129 attorneys were disbarred and 134 were suspended from the practice of law.

All public attorney discipline is noted on the online State Bar profile of the attorney. Attorney discipline summaries are also posted on the attorney's profile to provide a short overview of the discipline for members of the public.

2017 cases of note include that of Demas W. Yan, who was admitted to the State Bar of California in 2008. In 2017, after a five-day trial on six cases involving multiple charges of misconduct, the State Bar Court recommended that he be disbarred. Yan, in multiple cases over a period of years, filed frivolous, repeated, and bad faith actions and "Used the courts as a means of intimidating those he had disputes with through his endless litigations." In one matter in particular, the victim of Yan's misconduct spent more than \$400,000 in attorney's fees to defend against his frivolous and harassing litigation, exhausting her savings.

Heather Stanley was a 10-year practitioner who agreed to hold \$1.2 million, representing proceeds from the sale of a home and investments, in trust for a client. Instead, Stanley used the money for her own personal expenses, including the purchase of a yacht. Stanley was found culpable of misappropriation and moral turpitude when she misled OCTC during the investigation, claiming she had returned all funds to the client. She was disbarred.

### **KEY DATA POINTS**

Following are key data points on the 2017 performance of the discipline system; complete data is provided in the tables on the following pages.

## ACTIVITY IN 2017

- OCTC received 15,175 new complaints in 2017; 15,248<sup>†</sup> complaints were received in 2016.<sup>5</sup>
- 12,298 complaints were received complaining witnesses in 2017; 12,135 were received in 2016.
- The State Bar initiated 352 inquiries in 2017; 556 were initiated in 2016.
- OCTC closed 14,063 cases and filed formal charges in 483 cases in 2017.
- The State Bar Court took action on 675 cases, closing 180 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 592 cases.
- The Supreme Court disbarred 129 and suspended 134 attorneys in 2017. In addition, 52 attorneys were subject to reprimand, resulting in a total of 315 attorneys subject to formal discipline in 2017. In 2016, 191 attorneys were disbarred, 201<sup>†</sup> attorneys were suspended, and 51 attorneys were subject to reprimand.
- On December 31, 2017, OCTC had an inventory of 5,095 cases, which included 787 cases, or 15 percent, that were suspended while OCTC pursued disbarment action against the same respondents in different cases. 2016 ended with 4,243<sup>†</sup> cases pending.

## SPEED OF CASE HANDLING IN 2017

- Depending on the type of complaint, the average time from receipt of a complaint to closure by OCTC varied from a minimum of 62 days to a maximum of 376 days.<sup>6</sup>
  - The average pendency from receipt of a complaint until closure by OCTC for complaints from a complaining witness was 115 days in 2017; average pendency in 2016 was 110 days.
  - The average pendency from receipt of a complaint until closure by OCTC for a State Bar initiated inquiry was 150 days in 2017; average pendency in 2016 was 121 days.
- 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 131 days to a maximum of 450 days.
  - The average pendency from receipt of a complaint from a complaining witness until charges were filed was 450 days in 2017; average pendency in 2016 was 331 days.

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<sup>5</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 10 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>6</sup> These figures include cases that were closed by OCTC without filing in State Bar Court.



- The average pendency from receipt of a State Bar initiated inquiry until charges were filed was 408 days in 2017; average pendency in 2016 was 368 days.

The speed of case handling is calculated exclusively from cases that are closed or filed in State Bar Court during a given year. As a result, the average pendency of case processing will increase if OCTC closes or files charges in very old cases. The increase in the average pendency for complaining witness cases and State Bar initiated inquiries in 2017 appears to be driven by this factor. In 2017, OCTC filed charges in 33 complaining witness cases that had been received more than 2 years earlier, and filed charges in 1 case that was initiated by the State Bar more than 5 years earlier.

## **STATUTORY GUIDELINES FOR REPORT**

The data provided in this Report are governed by Business and Professions Code sections 6086.15, 6095, subdivision (b), and 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 1 through 11 of section 6086.15, subdivision (a); each table provides the data specified in the corresponding paragraph.<sup>7</sup>

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<sup>7</sup> All further statutory references are to the Business and Professions Code unless otherwise noted.

## **2017 Annual Discipline Report**

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

In California, an attorney is licensed when admitted to the State Bar; only attorneys with active status 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, 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>8</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>8</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 may 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 the Supreme Court orders the attorney's disbarment, prosecution of the suspended cases will no longer be necessary and the remaining complaints will not be investigated further.<sup>9</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). 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>9</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 proposed 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 H on the following page shows the flow of client complaints, as described above. Charts I and J on the subsequent pages reproduce the brochure published on the State Bar's website in English and Spanish and provided to members of the public who contact the State Bar.

Chart H: Client Complaint Process

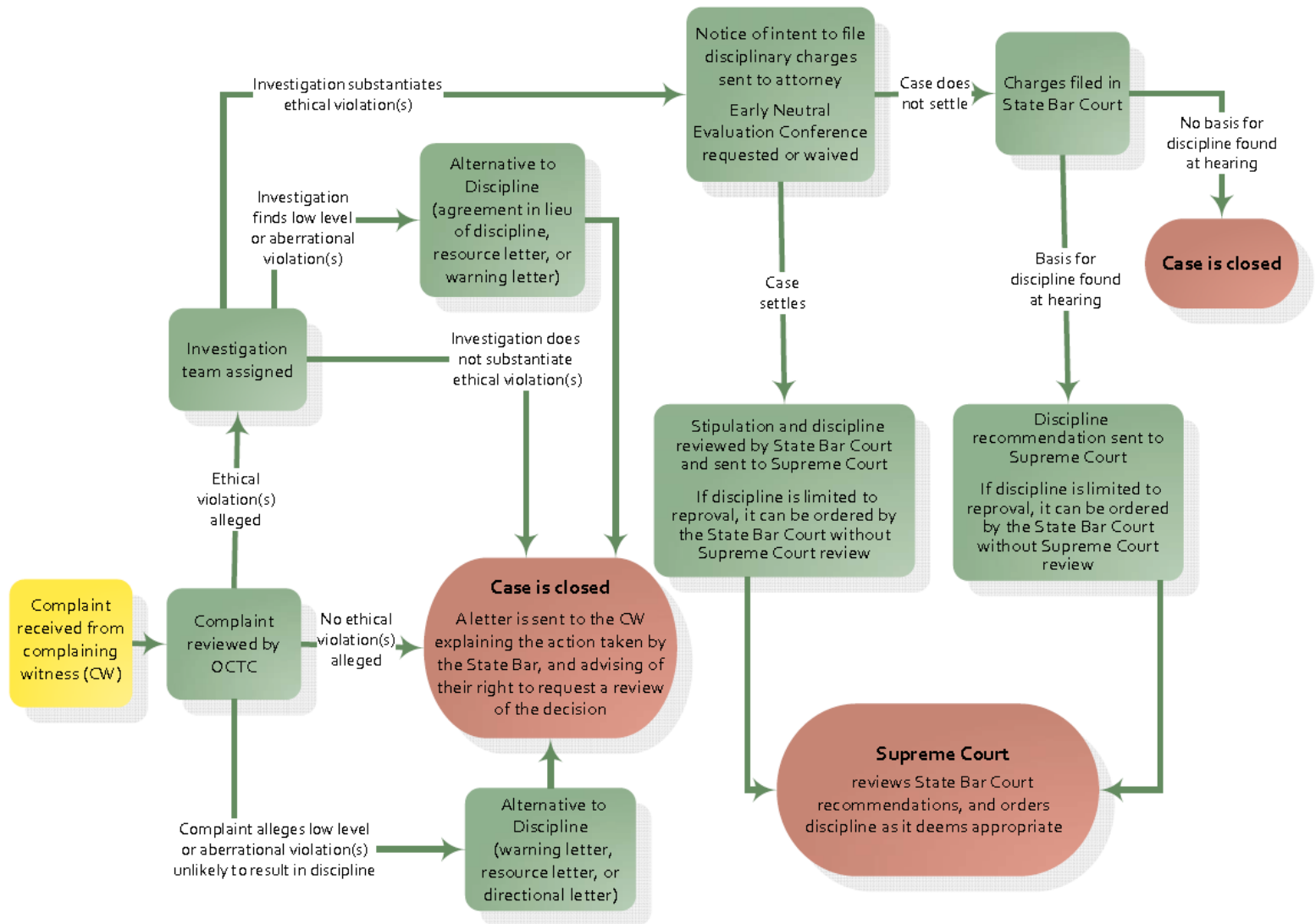


Chart I: Client Complaint Brochure

# What Happens When I File a Complaint Against an Attorney?

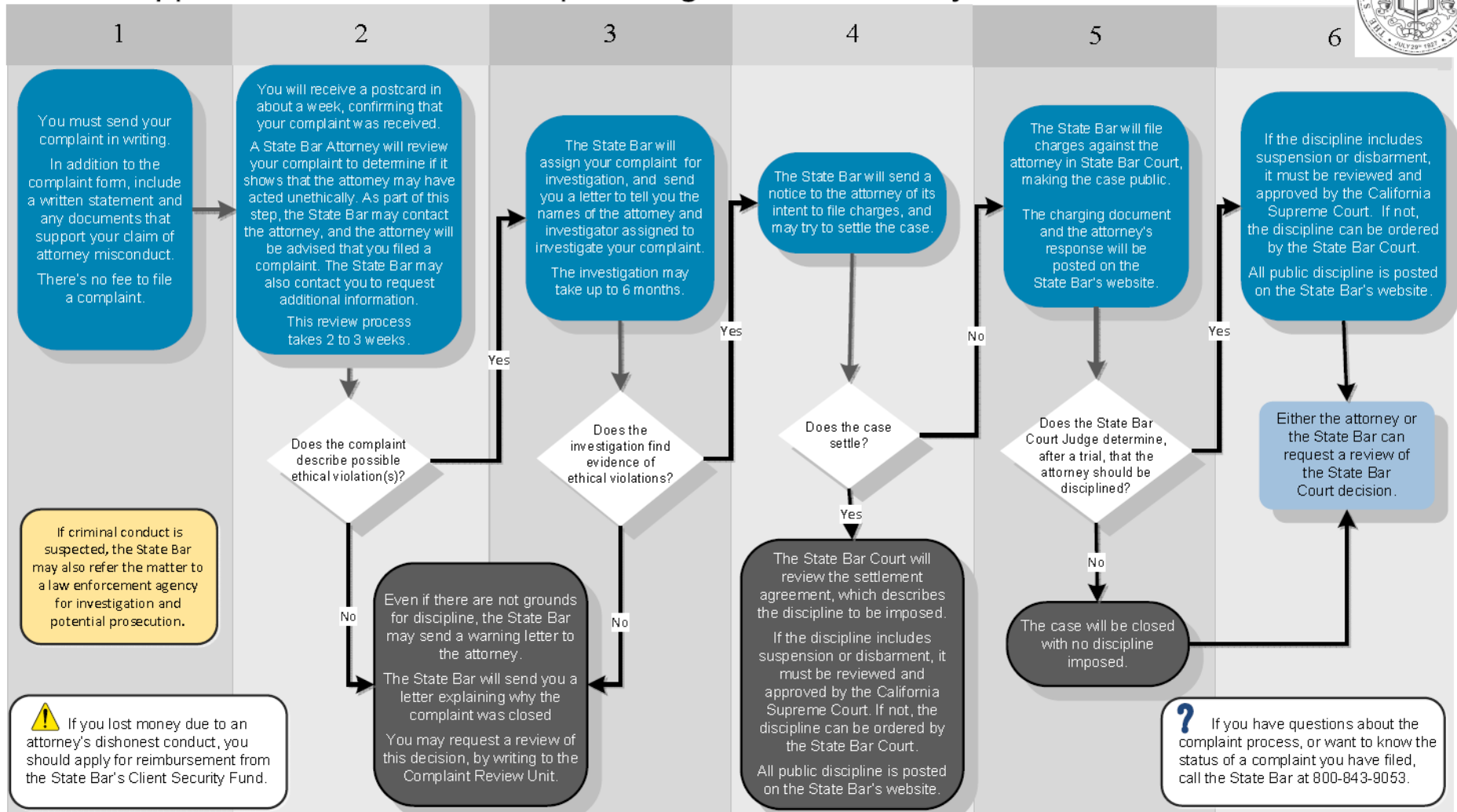
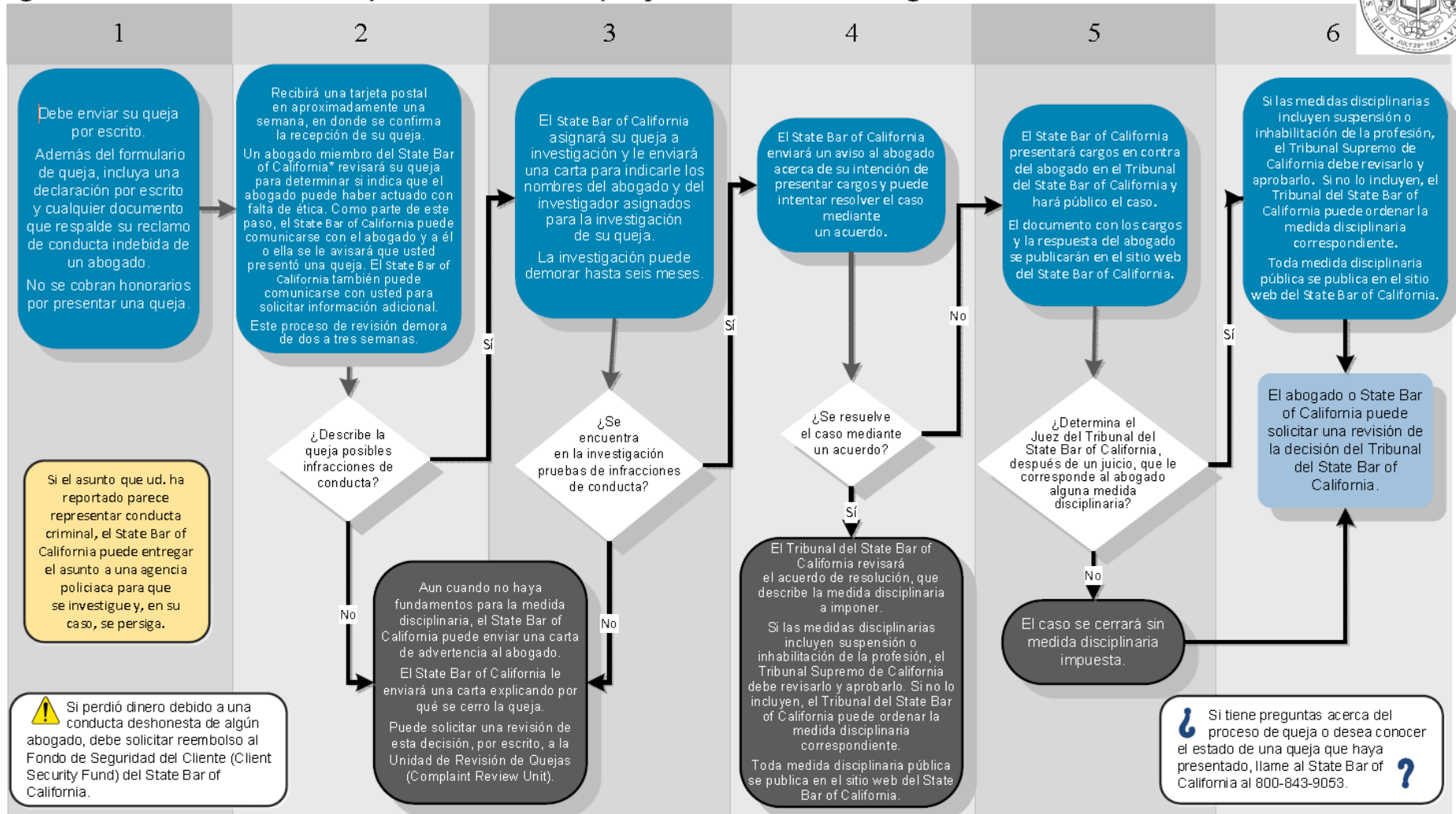


Chart J: Client Complaint Brochure (Spanish)

## ¿Qué sucede cuando presento una queja contra un abogado?





## BACKLOG<sup>10</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 increased 23 percent compared to the number of cases in backlog at the end of 2016. As discussed in the Executive Summary, structural changes in OCTC that will lead to improved case processing times in the long run appear to have had a temporary negative impact on productivity in 2017.

More than one third of the 1,851 cases 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 the Supreme Court orders the attorney to be disbarred, 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.

Thirty-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 45 percent of cases in backlog status reflect active pending complaints at various stages of case processing, from intake to pre-filing.

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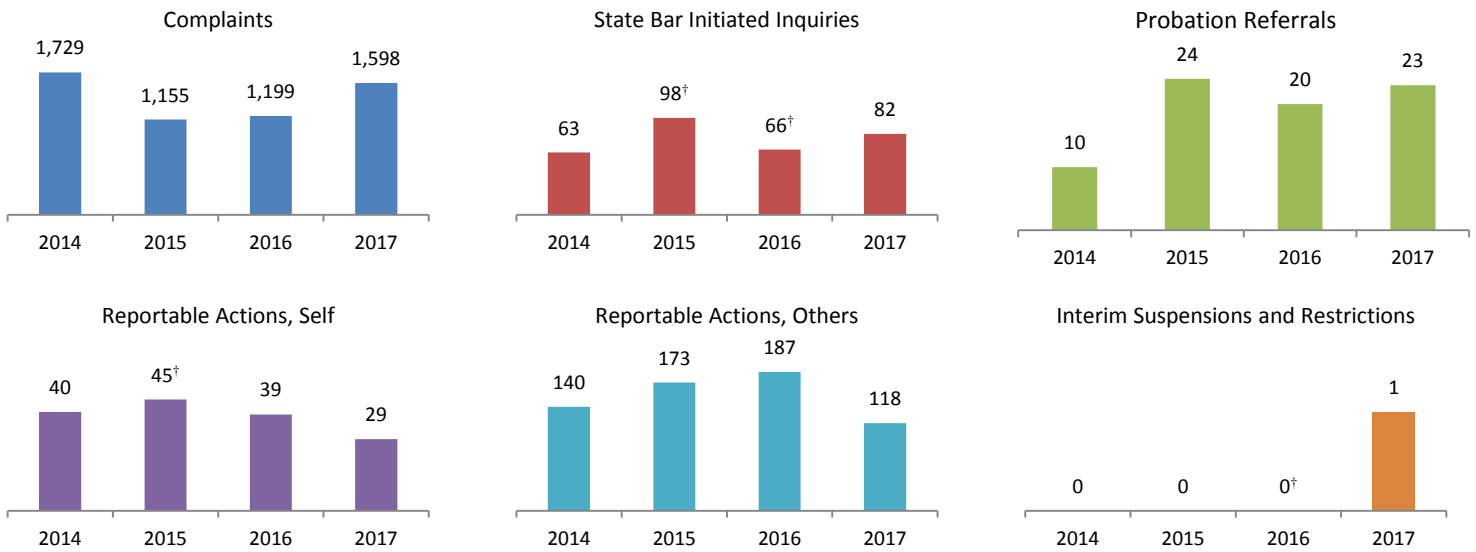
<sup>10</sup>Defined by statute as those open complaints and cases at year's end where the State Bar had not filed disciplinary charges or reached other disposition within six months after receipt of the complaints. This Report uses 180 days, as opposed to 6 months, to calculate backlog, which allows for more accurate calculations based on the data structure of the Bar's case management system. 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):* 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. 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.

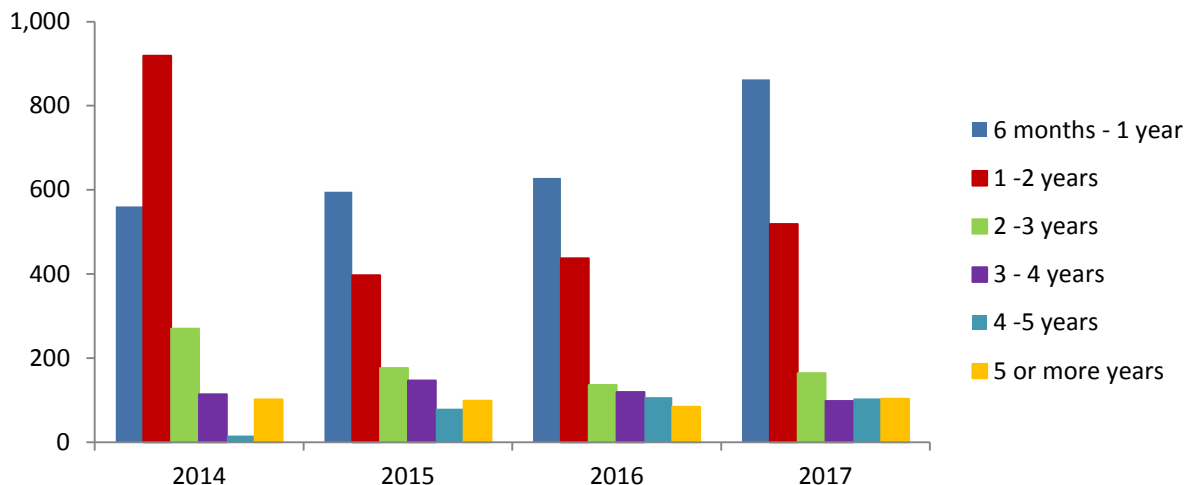
Chart 1A: Cases Pending More than Six Months on December 31



<b>Table 1A: Backlog</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Complaints	1,729	1,155	1,199	1,598
State Bar Initiated Inquiries	63	98 <sup>†</sup>	66 <sup>†</sup>	82
Probation Referrals	10	24	20	23
Reportable Actions, Reported by Self	40	45 <sup>†</sup>	39	29
Reportable Actions, Reported by Others	140	173	187	118
Interim Suspensions and Restrictions	0	0	0 <sup>†</sup>	1
<b>Total</b>	<b>1,982</b>	<b>1,495</b>	<b>1,511<sup>†</sup></b>	<b>1,851</b>

Despite the increase in the number of cases in backlog, the age of the cases in backlog fell for the third consecutive year. As Chart 1B shows, the percent of backlog cases pending for more than one year fell from 58 percent in 2016 to 53 percent in 2017. The decline in the number of the oldest cases is matched by a corresponding increase in the number of cases pending for one year or less.

Chart 1B: Cases Pending More than Six Months<sup>11</sup>



<b>Table 1B: Aged Backlog</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<u>All Case Types</u>				
181 - 360 days	561	596	628 <sup>†</sup>	863
361 - 720 days	919	397	437	519
721 - 1080 days	270	176	136	164
1081 - 1440 days	114	147	119	98
1441 - 1800 days	16	80	107	104
1801 or more days	102	99	84	103
<b>Total</b>	<b>1,982</b>	<b>1,495</b>	<b>1,511<sup>†</sup></b>	<b>1,851</b>
<u>Complaints</u>				
181 - 360 days	426	396	499	762
361 - 720 days	843	297	297	423
721 - 1080 days	247	156	105	140
1081 - 1440 days	107	136	114	75
1441 - 1800 days	15	77	103	100
1801 or more days	<u>91</u>	<u>93</u>	<u>81</u>	<u>98</u>
<b>Total</b>	<b>1,729</b>	<b>1,155</b>	<b>1,199</b>	<b>1,598</b>
<u>State Bar Initiated Inquiries</u>				
181 - 360 days	29	61 <sup>†</sup>	30 <sup>†</sup>	29
361 - 720 days	18	23	22	37
721 - 1080 days	8	6	11	8
1081 - 1440 days	3	4	1	7
1441 - 1800 days	1	2	2	0
1801 or more days	<u>4</u>	<u>2</u>	<u>0</u>	<u>1</u>
<b>Total</b>	<b>63</b>	<b>98<sup>†</sup></b>	<b>66<sup>†</sup></b>	<b>82</b>

<sup>11</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 10. 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>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<u>Probation Referrals</u>				
181 - 360 days	7	9	4	7
361 - 720 days	1	12	6	5
721 - 1080 days	1	1	7	3
1081 - 1440 days	1	1	1	6
1441 - 1800 days	0	1	1	1
1801 or more days	<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>
<b>Total</b>	<b>10</b>	<b>24</b>	<b>20</b>	<b>23</b>
<u>Reportable Actions, Reported by Self</u>				
181 - 360 days	20	26 <sup>†</sup>	19	14
361 - 720 days	12	15	15	13
721 - 1080 days	8	2	4	0
1081 - 1440 days	0	2	0	1
1441 - 1800 days	0	0	1	0
1801 or more days	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
<b>Total</b>	<b>40</b>	<b>45<sup>†</sup></b>	<b>39</b>	<b>29</b>
<u>Reportable Actions, Reported by Others</u>				
181 - 360 days	79	104	76	50
361 - 720 days	45	50	97	41
721 - 1080 days	6	11	9	13
1081 - 1440 days	3	4	3	9
1441 - 1800 days	0	0	0	3
1801 or more days	<u>7</u>	<u>4</u>	<u>2</u>	<u>2</u>
<b>Total</b>	<b>140</b>	<b>173</b>	<b>187</b>	<b>118</b>
<u>Interim Suspensions and Restrictions</u>				
181 - 360 days	0	0	0 <sup>†</sup>	1
361 - 720 days	0	0	0	0
721 - 1080 days	0	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>0</b>	<b>0</b>	<b>0<sup>†</sup></b>	<b>1</b>
<b>Grand Total</b>	<b>1,982</b>	<b>1,495</b>	<b>1,511<sup>†</sup></b>	<b>1,851</b>

## CASE INVENTORY AND DISPOSITION<sup>12</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 15,175 new cases in 2017, compared to 15,248 in 2016, which represents a decrease of less than 1 percent.

Chart 2A: Cases Received and Pending

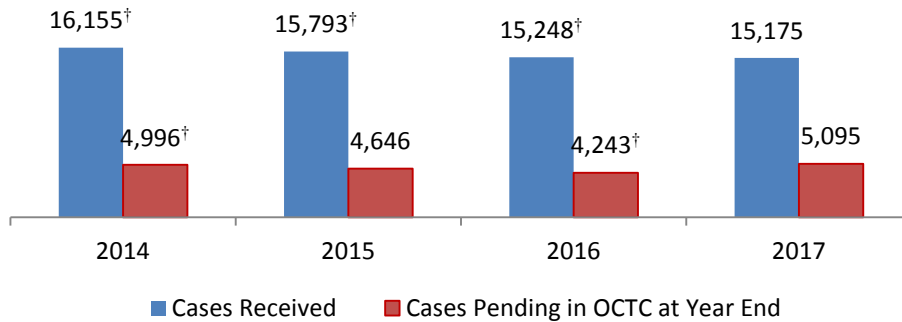
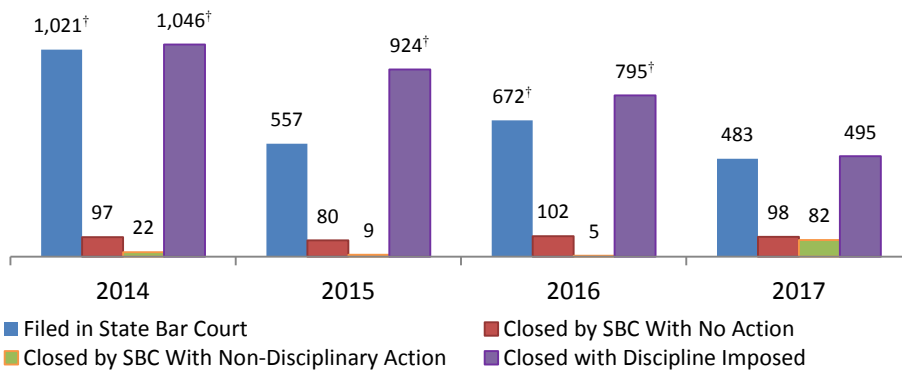


Chart 2B shows the total number of cases filed in State Bar Court each year, along with the dispositions of cases closed by the Court during the same year.<sup>13</sup> Of cases closed by the Court in 2017, 15 percent were closed with no action, 12 percent were closed with non-disciplinary action, and 73 percent were closed with discipline imposed.<sup>14</sup>

Chart 2B: State Bar Court Filings and Outcomes



<b>Table 2: Inquiries and Complaints</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<u>Summary: All Case Types</u>				
Cases Received	16,155 <sup>†</sup>	15,793 <sup>†</sup>	15,248 <sup>†</sup>	15,175
Cases Reopened	204 <sup>†</sup>	120 <sup>†</sup>	265 <sup>†</sup>	221
Closed by OCTC With No Action	13,041 <sup>†</sup>	13,584 <sup>†</sup>	12,958 <sup>†</sup>	12,112
Closed by OCTC With Referral	343 <sup>†</sup>	283 <sup>†</sup>	294 <sup>†</sup>	255

<sup>12</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>13</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>14</sup> See Appendix A for a description of OCTC dispositions.

<b>Table 2: Inquiries and Complaints</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Closed by OCTC With Non-Disciplinary Action	<u>1,937</u>	<u>1,847</u> <sup>†</sup>	<u>1,991</u> <sup>†</sup>	<u>1,696</u>
<i>Total Cases Closed by OCTC</i>	15,321 <sup>†</sup>	15,714 <sup>†</sup>	15,243 <sup>†</sup>	14,063
Filed in State Bar Court	1,021 <sup>†</sup>	557	672 <sup>†</sup>	483
Cases Pending in OCTC at Year End	4,996 <sup>†</sup>	4,646	4,243 <sup>†</sup>	5,095
Closed by SBC With No Action	97	80	102	98
Closed by SBC With Non-Disciplinary Action	22	9	5	82
Closed with Discipline Imposed	<u>1,046</u> <sup>†</sup>	<u>924</u> <sup>†</sup>	<u>795</u> <sup>†</sup>	<u>495</u>
<i>Total Cases Closed by SBC</i>	1,165 <sup>†</sup>	1,013 <sup>†</sup>	902 <sup>†</sup>	675
Cases Pending in SBC at Year End	1,670 <sup>†</sup>	1,215	991 <sup>†</sup>	803
<u>Complaints</u>				
Complaints Received	12,745	12,308	12,135	12,298
Complaints Reopened	200 <sup>†</sup>	116 <sup>†</sup>	255 <sup>†</sup>	210
Closed by OCTC With No Action	10,516 <sup>†</sup>	10,777 <sup>†</sup>	10,227 <sup>†</sup>	9,650
Closed by OCTC With Referral	343 <sup>†</sup>	283	294 <sup>†</sup>	254
Closed by OCTC With Non-Disciplinary Action	<u>1,591</u>	<u>1,467</u> <sup>†</sup>	<u>1,467</u> <sup>†</sup>	<u>1,476</u>
<i>Total Complaints Closed by OCTC</i>	12,450 <sup>†</sup>	12,527 <sup>†</sup>	11,988 <sup>†</sup>	11,380
Filed in State Bar Court	593	340	392	282
Complaints Pending in OCTC at Year End	3,964	3,530	3,539 <sup>†</sup>	4,386
Closed by SBC With No Action	72	58	76	56
Closed by SBC With Non-Disciplinary Action	2	1	1	49
Closed with Discipline Imposed	<u>733</u>	<u>593</u>	<u>535</u> <sup>†</sup>	<u>294</u>
<i>Total Complaints Closed by SBC</i>	807	652	612 <sup>†</sup>	399
Complaints Pending in SBC at Year End	1,168	857	642 <sup>†</sup>	526
<u>State Bar Initiated Inquiries</u>				
Inquiries Initiated	425	577	556	352
Inquiries Reopened	1	3	3	10
Closed by OCTC With No Action	246	309	311 <sup>†</sup>	268
Closed by OCTC With Referral	0	0	0	0
Closed by OCTC With Non-Disciplinary Action	<u>101</u>	<u>99</u>	<u>253</u> <sup>†</sup>	<u>36</u>
<i>Total Inquiries Closed by OCTC</i>	347	408	564	304
Filed in State Bar Court	104	83	70	22
Inquiries Pending in OCTC at Year End	140	228 <sup>†</sup>	153 <sup>†</sup>	190
Closed by SBC With No Action	18	5	9	10
Closed by SBC With Non-Disciplinary Action	0	0	0	2
Closed with Discipline Imposed	<u>78</u>	<u>74</u>	<u>102</u>	<u>38</u>
<i>Total Inquiries Closed by SBC</i>	96	79	111	50
Inquiries Pending in SBC at Year End	116	120	79	51
<u>Probation Referrals</u>				
Probation Referrals Received	137	97	100	116
Probation Referrals Reopened	1	1	0	0
Closed by OCTC With No Action	19	22	32	19
Closed by OCTC With Referral	0	0	0	1
Closed by OCTC With Non-Disciplinary Action	<u>3</u>	<u>2</u>	<u>3</u>	<u>1</u>

<b>Table 2: Inquiries and Complaints</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<i>Total Probation Referrals Closed by OCTC</i>	22	24	35	21
Filed in State Bar Court	118	59	82	82
Probation Referrals Pending in OCTC at Year	50	65	48	61
Closed by SBC With No Action	4	13	11	13
Closed by SBC With Non-Disciplinary Action	0	0	0	13
Closed with Discipline Imposed	<u>87</u>	<u>101</u>	<u>70</u>	<u>58</u>
<i>Total Probation Referrals Closed by SBC</i>	91	114	81	84
Probation Referrals Pending in SBC at Year	164	109	111	109
<u>Reportable Actions, Self-Reported</u>				
Actions Reported	229 <sup>†</sup>	199 <sup>†</sup>	174	151
Reportable Actions Reopened	1	0	1	0
Closed by OCTC With No Action	190 <sup>†</sup>	182 <sup>†</sup>	183 <sup>†</sup>	128
Closed by OCTC With Referral	0	0	0	0
Closed by OCTC With Non-Disciplinary Action	<u>14</u>	<u>6</u>	<u>17</u>	<u>11</u>
<i>Total Reportable Actions Closed by OCTC</i>	204 <sup>†</sup>	188 <sup>†</sup>	200 <sup>†</sup>	139
Filed in State Bar Court	28 <sup>†</sup>	18	17 <sup>†</sup>	25
Reportable Actions Pending in OCTC at Year	118 <sup>†</sup>	111 <sup>†</sup>	69 <sup>†</sup>	56
Closed by SBC With No Action	1	0	3	2
Closed by SBC With Non-Disciplinary Action	0	0	0	5
Closed with Discipline Imposed	<u>19</u> <sup>†</sup>	<u>26</u> <sup>†</sup>	<u>16</u>	<u>16</u>
<i>Total Reportable Actions Closed by SBC</i>	20 <sup>†</sup>	26 <sup>†</sup>	19	23
Reportable Actions Pending in SBC at Year End	31 <sup>†</sup>	23	21 <sup>†</sup>	25
<u>Reportable Actions, Reported by Others</u>				
Actions Reported	2,603	2,607	2,278 <sup>†</sup>	2,252
Reportable Actions Reopened	1	0	6	1
Closed by OCTC With No Action	2,065 <sup>†</sup>	2,294 <sup>†</sup>	2,205 <sup>†</sup>	2,046
Closed by OCTC With Referral	0	0 <sup>†</sup>	0	0
Closed by OCTC With Non-Disciplinary Action	<u>228</u>	<u>273</u>	<u>251</u>	<u>172</u>
<i>Total Reportable Actions Closed by OCTC</i>	2,293 <sup>†</sup>	2,567	2,456 <sup>†</sup>	2,218
Filed in State Bar Court	163 <sup>†</sup>	52	107	67
Reportable Actions Pending in OCTC at Year	724	712	433 <sup>†</sup>	401
Closed by SBC With No Action	1	3	2	17
Closed by SBC With Non-Disciplinary Action	8	0	0	8
Closed with Discipline Imposed	<u>129</u> <sup>†</sup>	<u>130</u>	<u>72</u>	<u>89</u>
<i>Total Reportable Actions Closed by SBC</i>	138 <sup>†</sup>	133	74	114
Reportable Actions Pending in SBC at Year End	186	105	138	92
<u>Interim Suspensions and Restrictions</u>				
ISRs Received	16	5	5	6
ISRs Reopened	0	0	0	0
Closed by OCTC With No Action	5	0	0	1
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>	5	0	0	1

<b>Table 2: Inquiries and Complaints</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Filed in State Bar Court	15	5	4	5
ISRs Pending in OCTC at Year End	0	0	1 <sup>†</sup>	1
Closed by SBC With No Action	1	1	1	0
Closed by SBC With Non-Disciplinary Action	12	8	4	5
Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total ISRs Closed by SBC</i>	<i>13</i>	<i>9</i>	<i>5</i>	<i>5</i>
ISRs Pending in SBC at Year End	5	1	0	0

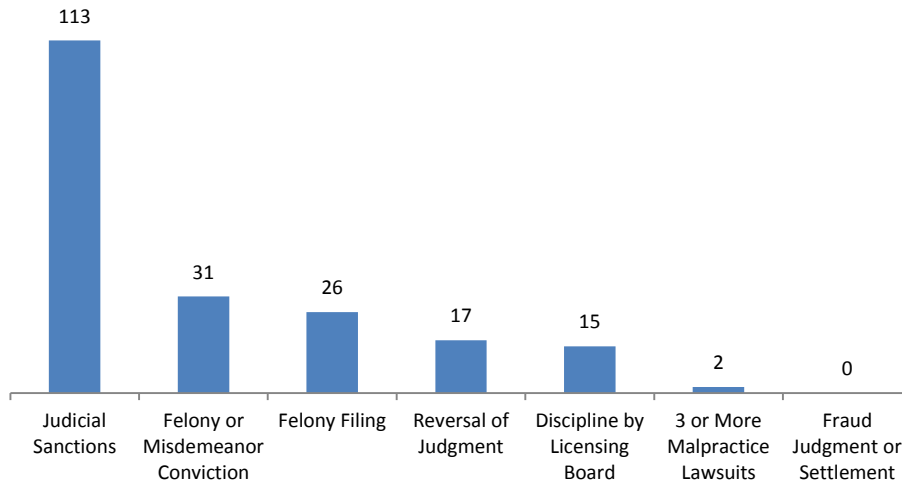


## SELF-REPORTED REPORTABLE ACTIONS

*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>15,16</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 12 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 2 percent between 2016 and 2017, the number of cases in which OCTC took some action increased by 23 percent, from 57 to 70.

Chart 3: Self-Reported Actions 2017



**Table 3: Reportable Actions, Reported by Self**

	2014	2015	2016	2017
<u>Summary: All Reportable Actions, Reported by Self</u>				
Reports Received	283 <sup>†</sup>	249 <sup>†</sup>	211 <sup>†</sup>	208
Cases Reopened	1	0	1	0
Cases Closed by OCTC Without Action	206 <sup>†</sup>	208 <sup>†</sup>	191 <sup>†</sup>	156
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>14</u>	<u>6</u> <sup>†</sup>	<u>17</u>	<u>11</u>
<i>Total Cases Closed by OCTC</i>	<i>220<sup>†</sup></i>	<i>214<sup>†</sup></i>	<i>208<sup>†</sup></i>	<i>167</i>
Cases Filed in State Bar Court	70 <sup>†</sup>	49	40 <sup>†</sup>	59
Cases Remaining in OCTC at Year End	190 <sup>†</sup>	182 <sup>†</sup>	144 <sup>†</sup>	122
Cases Closed by SBC Without Action	11	7	7	9
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	6
Cases Closed with Discipline Imposed	<u>41</u> <sup>†</sup>	<u>42</u> <sup>†</sup>	<u>51</u>	<u>40</u>
<i>Total Cases Closed by State Bar Court</i>	<i>52<sup>†</sup></i>	<i>49<sup>†</sup></i>	<i>58</i>	<i>55</i>
Cases Remaining in SBC at Year End	123 <sup>†</sup>	128	103 <sup>†</sup>	103

<sup>15</sup> The full text of sections 6068 and 6086.8 is provided in Appendix B.

<sup>16</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>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<u>Three or more malpractice lawsuits filed within 12 months (§6068, subd. (o)(1))</u>				
Reports Received	5	2	1	2
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	3	6	1	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>	3	6	1	1
Average Pendency at Closure <sup>17</sup>	206	299	29	13
Median Pendency at Closure	4	161	29	13
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	4	0	0	1
Average Pendency at Year End	258	0	0	24
Median Pendency at Year End	134	0	0	24
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>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by State Bar Court</i>	1	0	0	0
Average Pendency at Closure	1,228	0	0	0
Median Pendency at Closure	1,228	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>Judgment in civil case for fraud, misrepresentation, gross negligence, etc. (§6068, subd. (o)(2))</u>				
Reports Received	12	4	5	4
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	10	8	1	4
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	10	9	1	4
Average Pendency at Closure	189	178	43	211
Median Pendency at Closure	61	144	43	62
Cases Filed in State Bar Court	1	0	0	1
Average Pendency at Filing	555	0	0	385
Median Pendency at Filing	555	0	0	385
Cases Remaining in OCTC at Year End	5	0	4	3
Average Pendency at Year End	104	0	134	113
Median Pendency at Year End	112	0	113	103

<sup>17</sup> Pendency is reported in days.

<b>Table 3: Reportable Actions, Reported by Self</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
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>0</u>	<u>2</u>
<i>Total Cases Closed by State Bar Court</i>	<i>1</i>	<i>1</i>	<i>0</i>	<i>2</i>
Average Pendency at Closure	896	714	0	1,329
Median Pendency at Closure	896	714	0	424
Cases Remaining in SBC at Year End	2	1	1	0
Average Pendency at Year End	1,040	1,739	2,105	0
Median Pendency at Year End	707	1,739	2,105	0
<u>Judicial sanctions imposed (§6068, subd. (o)(3))</u>				
Reports Received	146	129	111	113
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	137	122	133	100
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>10</u>	<u>1</u>	<u>11</u>	<u>6</u>
<i>Total Cases Closed by OCTC</i>	<i>147</i>	<i>123</i>	<i>144</i>	<i>106</i>
Average Pendency at Closure	285	192	150	130
Median Pendency at Closure	140	152	81	44
Cases Filed in State Bar Court	7	3	5	7
Average Pendency at Filing	582	452	478	418
Median Pendency at Filing	510	441	412	344
Cases Remaining in OCTC at Year End	70	73	35	35
Average Pendency at Year End	180	219	348	288
Median Pendency at Year End	104	157	257	174
Cases Closed by SBC Without Action	1	0	1	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	1
Cases Closed with Discipline Imposed	<u>4</u>	<u>2</u>	<u>3</u>	<u>5</u>
<i>Total Cases Closed by State Bar Court</i>	<i>5</i>	<i>2</i>	<i>4</i>	<i>6</i>
Average Pendency at Closure	798	611	1,627	861
Median Pendency at Closure	695	572	1,350	717
Cases Remaining in SBC at Year End	7	8	9	10
Average Pendency at Year End	999	1,242	998	1,071
Median Pendency at Year End	1,191	1,050	724	1,040
<u>Felony indictment (§6068, subd. (o)(4))</u>				
Reports Received	16	19 <sup>†</sup>	13 <sup>†</sup>	26
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	6	4	3	8
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>	<i>6</i>	<i>4</i>	<i>3</i>	<i>8</i>

<b>Table 3: Reportable Actions, Reported by Self</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Average Pendency at Closure	723	1,370	960	940
Median Pendency at Closure	598	715	1,189	710
Cases Filed in State Bar Court	9	10	9	13
Average Pendency at Filing	435	366	655	537
Median Pendency at Filing	330	225	333	483
Cases Remaining in OCTC at Year End	42 <sup>†</sup>	52 <sup>†</sup>	53 <sup>†</sup>	58
Average Pendency at Year End	603 <sup>†</sup>	563 <sup>†</sup>	630 <sup>†</sup>	543
Median Pendency at Year End	428 <sup>†</sup>	316 <sup>†</sup>	456 <sup>†</sup>	261
Cases Closed by SBC Without Action	6	3	3	2
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>8</u>	<u>2</u>	<u>12</u>	<u>10</u>
<i>Total Cases Closed by State Bar Court</i>	<i>14</i>	<i>5</i>	<i>15</i>	<i>12</i>
Average Pendency at Closure	994	941	1,477	1,081
Median Pendency at Closure	882	992	1,515	845
Cases Remaining in SBC at Year End	34	43	34	34
Average Pendency at Year End	1,293	1,361	1,462	1,463
Median Pendency at Year End	1,122	1,185	1,244	1,117
<u>Conviction of felony, or misdemeanor related to practice of law (§6068, subd. (o)(5))</u>				
Reports Received	38	31 <sup>†</sup>	25 <sup>†</sup>	31
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	10	22	5	20
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>	<i>10</i>	<i>22</i>	<i>5</i>	<i>20</i>
Average Pendency at Closure	378	350	110	148
Median Pendency at Closure	170	294	123	63
Cases Filed in State Bar Court	33	21	14	21
Average Pendency at Filing	172	113	191	222
Median Pendency at Filing	37	44	173	91
Reports Remaining in OCTC at Year End	30 <sup>†</sup>	19 <sup>†</sup>	22 <sup>†</sup>	8
Average Pendency at Year End	338 <sup>†</sup>	308 <sup>†</sup>	419 <sup>†</sup>	406
Median Pendency at Year End	237 <sup>†</sup>	90 <sup>†</sup>	318 <sup>†</sup>	223
Cases Closed by SBC Without Action	4	4	1	5
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	1
Cases Closed with Discipline Imposed	<u>14</u>	<u>14</u>	<u>23</u>	<u>14</u>
<i>Total Cases Closed by State Bar Court</i>	<i>18</i>	<i>18</i>	<i>24</i>	<i>20</i>
Average Pendency at Closure	688	873	771	706
Median Pendency at Closure	521	627	608	673
Cases Remaining in SBC at Year End	58	62	48	44
Average Pendency at Year End	712	715	830	883

<b>Table 3: Reportable Actions, Reported by Self</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Median Pendency at Year End	512	567	698	598
<u>Discipline by professional agency or licensing board (§6068, subd. (o)(6))</u>				
Reports Received	50 <sup>†</sup>	39 <sup>†</sup>	43	15
Cases Reopened	1	0	1	0
Cases Closed by OCTC Without Action	27 <sup>†</sup>	24 <sup>†</sup>	30 <sup>†</sup>	8
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>3</u>	<u>1</u> <sup>†</sup>	<u>5</u>	<u>4</u>
<i>Total Cases Closed by OCTC</i>	30 <sup>†</sup>	25 <sup>†</sup>	35 <sup>†</sup>	12
Average Pendency at Closure	201 <sup>†</sup>	329 <sup>†</sup>	205 <sup>†</sup>	178
Median Pendency at Closure	125 <sup>†</sup>	207 <sup>†</sup>	83 <sup>†</sup>	26
Cases Filed in State Bar Court	20 <sup>†</sup>	15	12 <sup>†</sup>	17
Average Pendency at Filing	294 <sup>†</sup>	298	329 <sup>†</sup>	437
Median Pendency at Filing	172 <sup>†</sup>	267	376 <sup>†</sup>	455
Cases Remaining in OCTC at Year End	31 <sup>†</sup>	30 <sup>†</sup>	27 <sup>†</sup>	13
Average Pendency at Year End	274 <sup>†</sup>	177 <sup>†</sup>	265 <sup>†</sup>	382
Median Pendency at Year End	159	59	186	347
Cases Closed by SBC Without Action	0	0	2	2
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	4
Cases Closed with Discipline Imposed	<u>13</u> <sup>†</sup>	<u>23</u> <sup>†</sup>	<u>13</u>	<u>9</u>
<i>Total Cases Closed by State Bar Court</i>	13 <sup>†</sup>	23 <sup>†</sup>	15	15
Average Pendency at Closure	542 <sup>†</sup>	581 <sup>†</sup>	753	619
Median Pendency at Closure	467 <sup>†</sup>	500 <sup>†</sup>	625	613
Cases Remaining in SBC at Year End	22 <sup>†</sup>	14	11 <sup>†</sup>	15
Average Pendency at Year End	518 <sup>†</sup>	678	471 <sup>†</sup>	603
Median Pendency at Year End	483	559	425	551
<u>Reversal of judgment based on misconduct, gross incompetence, etc. (§6068, subd. (o)(7))</u>				
Reports Received	16	25	14	17
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	13	22	18	15
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>1</u>	<u>3</u>	<u>1</u>	<u>1</u>
<i>Total Cases Closed by OCTC</i>	14	25	19	16
Average Pendency at Closure	237	182	150	137
Median Pendency at Closure	116	162	96	91
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	8	8	3	4
Average Pendency at Year End	227	199	234	208
Median Pendency at Year End	111	97	318	94

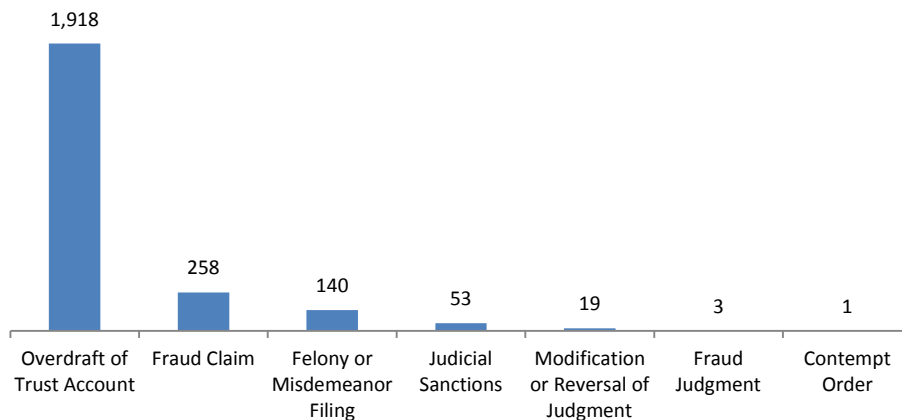
<b>Table 3: Reportable Actions, Reported by Self</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Cases Closed by SBC Without Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by State Bar Court</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
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>18,19</sup>*

State law requires courts, prosecutors and financial institutions to report certain actions to the State Bar, including contempt orders and certain civil judgments entered against an attorney. The most common action reported by others, accounting for approximately 80 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 11 percent of reportable actions in 2017.

Chart 4: Actions Reported by Others 2017



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>20</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 2014, 2016 and 2017,

<sup>18</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>19</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>20</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.

In an effort to ensure that the 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. Letters were not sent to district attorneys or courts in 2017, due to concerns raised by the California Judges Association (CJA) regarding requested information. OCTC is working with the CJA to revise the language in those letters, which will be sent in 2018. In 2017, 218 letters were sent to trust fund banks with information regarding the reporting requirements. An example of these letters is provided as Appendix F.

<b>Table 4: Reportable Actions, Reported by Others</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<u>Summary: All Reportable Actions, Reported by Others</u>				
Reports Received	2,768	2,757 <sup>†</sup>	2,413 <sup>†</sup>	2,392
Cases Reopened	1	0	6	1
Cases Closed by OCTC Without Action	2,144 <sup>†</sup>	2,406 <sup>†</sup>	2,298 <sup>†</sup>	2,145
Cases Closed by OCTC With Referral	0	0 <sup>†</sup>	0	0
Cases Closed by OCTC with Non-Disciplinary Action	228	273	251	172
<i>Total Cases Closed by OCTC</i>	<i>2,372<sup>†</sup></i>	<i>2,679</i>	<i>2,549<sup>†</sup></i>	<i>2,317</i>
Cases Filed in State Bar Court	246 <sup>†</sup>	108	166	126
Cases Remaining in OCTC at Year End	900 <sup>†</sup>	874 <sup>†</sup>	576 <sup>†</sup>	517
Cases Closed by SBC Without Action	10	26	17	37
Cases Closed by SBC with Non-Disciplinary Action	8	1	3	12
Cases Closed with Discipline Imposed	173 <sup>†</sup>	194	113	141
<i>Total Cases Closed by State Bar Court</i>	<i>191<sup>†</sup></i>	<i>221</i>	<i>133</i>	<i>190</i>
Cases Remaining in SBC at Year End	342	232	264	197
<u>Order of Contempt (§6086.7, subd. (a) (1))</u>				
Reports Received	4	6	4	1
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	2	3	4	2
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>3</u>	<u>0</u>	<u>0</u>	<u>1</u>
<i>Total Cases Closed by OCTC</i>	<i>5</i>	<i>3</i>	<i>4</i>	<i>3</i>
Average Pendency at Closure	378	81	192	358
Median Pendency at Closure	127	101	121	225
Cases Filed in State Bar Court	0	0	1	0
Average Pendency at Filing	0	0	245	0
Median Pendency at Filing	0	0	245	0
Cases Remaining in OCTC at Year End	1	4	3	1
Average Pendency at Year End	47	178	231	115



<b>Table 4: Reportable Actions, Reported by Others</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Median Pendency at Year End	47	65	191	115
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	758
Median Pendency at Closure	0	0	0	758
Cases Remaining in SBC at Year End	0	0	1	0
Average Pendency at Year End	0	0	551	0
Median Pendency at Year End	0	0	551	0
<u>Modification or reversal of judgment based on misconduct, etc. (§6086.7, subd. (a)(2))</u>				
Reports Received	18	35	17	19
Cases Reopened	1	0	0	0
Cases Closed by OCTC Without Action	14	26	20	16
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>1</u>	<u>2</u>	<u>2</u>	<u>0</u>
Total Cases Closed by OCTC	15	28	22	16
Average Pendency at Closure	297	139	220	140
Median Pendency at Closure	125	132	164	44
Cases Filed in State Bar Court	0	1	1	1
Average Pendency at Filing	0	364	454	446
Median Pendency at Filing	0	364	454	446
Cases Remaining in OCTC at Year End	13	19	13	15
Average Pendency at Year End	155	226	316	386
Median Pendency at Year End	92	160	304	142
Cases Closed by SBC Without Action	0	0	0	1
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>1</u>	<u>1</u>
Total Cases Closed by State Bar Court	0	0	1	2
Average Pendency at Closure	0	0	655	707
Median Pendency at Closure	0	0	655	703
Cases Remaining in SBC at Year End	0	1	1	0
Average Pendency at Year End	0	576	464	0
Median Pendency at Year End	0	576	464	0
<u>Judicial sanctions imposed (§6086.7, subd. (a)(3))</u>				
Reports Received	95	69	78 <sup>†</sup>	53
Cases Reopened	0	0	1	0
Cases Closed by OCTC Without Action	77	41	55 <sup>†</sup>	45
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>10</u>	<u>7</u>	<u>15</u> <sup>†</sup>	<u>7</u>
Total Cases Closed by OCTC	87	48	70	52
Average Pendency at Closure	193	260	192	144

<b>Table 4: Reportable Actions, Reported by Others</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Median Pendency at Closure	120	163	126	90
Cases Filed in State Bar Court	28 <sup>†</sup>	11	23 <sup>†</sup>	13
Average Pendency at Filing	539 <sup>†</sup>	495	423 <sup>†</sup>	430
Median Pendency at Filing	420 <sup>†</sup>	371	337	423
Cases Remaining in OCTC at Year End	46	56	42	30
Average Pendency at Year End	280	237	246	356
Median Pendency at Year End	162	140	178	241
Cases Closed by SBC Without Action	0	1	1	3
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	3
Cases Closed with Discipline Imposed	14 <sup>†</sup>	9	20	13
<i>Total Cases Closed by State Bar Court</i>	14 <sup>†</sup>	10	21	19
Average Pendency at Closure	965 <sup>†</sup>	839	1,095	755
Median Pendency at Closure	1,058 <sup>†</sup>	910	958	708
Cases Remaining in SBC at Year End	27	28	30 <sup>†</sup>	25
Average Pendency at Year End	663	909	690 <sup>†</sup>	922
Median Pendency at Year End	614	791	572 <sup>†</sup>	810
<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	10	9	4	3
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	4	9	6	2
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	0	0	0	1
Total Cases Closed by OCTC	4	9	6	3
Average Pendency at Closure	151	148	156	18
Median Pendency at Closure	124	164	137	6
Cases Filed in State Bar Court	2	1	1	0
Average Pendency at Filing <sup>21</sup>	453	343	827	0
Median Pendency at Filing	305	343	827	0
Cases Remaining in OCTC at Year End	7	6	3	3
Average Pendency at Year End	92	276	569	934
Median Pendency at Year End	85	164	788	1,153
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	1	0	1	1
<i>Total Cases Closed by State Bar Court</i>	1	0	1	1

<sup>21</sup> Pendency for these cases reflects the average time from the date of the civil judgment until the case is filed in State Bar Court. 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>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Average Pendency at Closure	337	0	1,205	844
Median Pendency at Closure	337	0	1,205	844
Cases Remaining in SBC at Year End	1	2	2	1
Average Pendency at Year End	790	778	799	1,195
Median Pendency at Year End	790	402	768	1,195
<u>Claim or action for damages for fraud, misrepresentation, etc. (§6086.8, subd. (b))</u>				
Reports Received	248	410	231	258
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	246	408	246	257
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>	246	408	246	257
Average Pendency at Closure	38	19	23	3
Median Pendency at Closure	8	8	3	2
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	13	15	0	1
Average Pendency at Year End	118	238	0	4
Median Pendency at Year End	51	274	0	4
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>Overdraft of attorney trust accounts (§6091.1)</u>				
Reports Received	2,228	2,078	1,943 <sup>†</sup>	1,918
Cases Reopened	0	0	5	1
Cases Closed by OCTC Without Action	1,722 <sup>†</sup>	1,807 <sup>†</sup>	1,873 <sup>†</sup>	1,724
Cases Closed by OCTC With Referral	0	0 <sup>†</sup>	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>214</u>	<u>264</u>	<u>234</u> <sup>†</sup>	<u>163</u>
<i>Total Cases Closed by OCTC</i>	1,936 <sup>†</sup>	2,071	2,107	1,887
Average Pendency at Closure	79	109	77	67
Median Pendency at Closure	55	82	39	24
Cases Filed in State Bar Court	133	39	81 <sup>†</sup>	53
Average Pendency at Filing	373	360	374 <sup>†</sup>	433
Median Pendency at Filing	345	338	360 <sup>†</sup>	436
Cases Remaining in OCTC at Year End	644	612	372 <sup>†</sup>	351

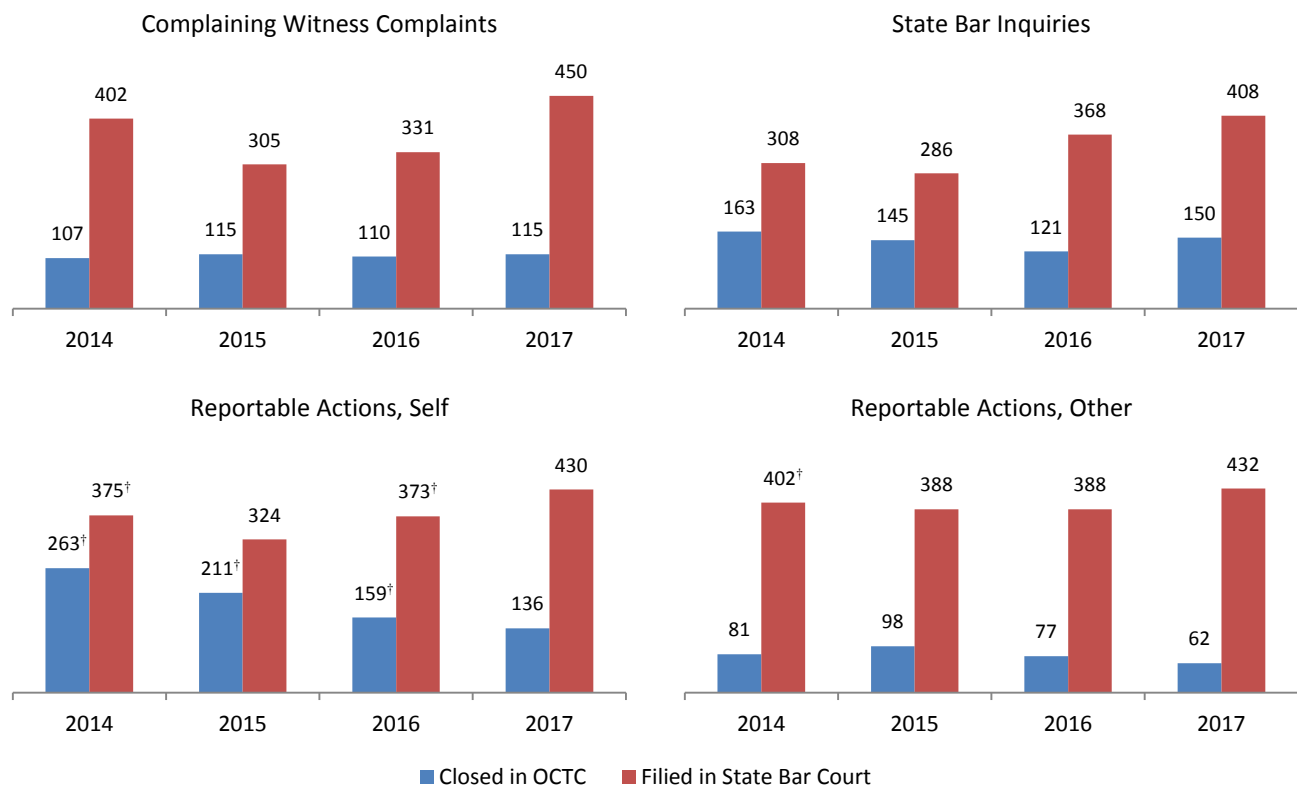
<b>Table 4: Reportable Actions, Reported by Others</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Average Pendency at Year End	128	137	209	180
Median Pendency at Year End	49	65	102 <sup>†</sup>	69
Cases Closed by SBC Without Action	1	2	1	13
Cases Closed by SBC with Non-Disciplinary Action	8	0	0	5
Cases Closed with Discipline Imposed	<u>114</u>	<u>121</u>	<u>50</u>	<u>73</u>
<i>Total Cases Closed by State Bar Court</i>	123	123	51	91
Average Pendency at Closure	902	794	640	690
Median Pendency at Closure	801	687	593	640
Cases Remaining in SBC at Year End	158	74	104 <sup>†</sup>	66
Average Pendency at Year End	757	960	962 <sup>†</sup>	1,319
Median Pendency at Year End	624	835	613	754
<u>Filing of misdemeanor or felony charges (§6101, subd. (b))</u>				
Reports Received	165	150 <sup>†</sup>	136 <sup>†</sup>	140
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	79	112	94 <sup>†</sup>	99
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>	79	112	94 <sup>†</sup>	99
Average Pendency at Closure	381	451	470 <sup>†</sup>	396
Median Pendency at Closure	296	320	245 <sup>†</sup>	235
Cases Filed in State Bar Court	83	56	59	59
Average Pendency at Filing	330	332	355	364
Median Pendency at Filing	174	239	249	162
Cases Remaining in OCTC at Year End	176 <sup>†</sup>	162 <sup>†</sup>	143 <sup>†</sup>	116
Average Pendency at Year End	520	520 <sup>†</sup>	546 <sup>†</sup>	500
Median Pendency at Year End	240 <sup>†</sup>	225 <sup>†</sup>	333 <sup>†</sup>	255
Cases Closed by SBC Without Action	9	23	15	20
Cases Closed by SBC with Non-Disciplinary Action	0	1	3	4
Cases Closed with Discipline Imposed	<u>44</u>	<u>64</u>	<u>41</u>	<u>52</u>
<i>Total Cases Closed by State Bar Court</i>	53	88	59	76
Average Pendency at Closure	804	836	920	983
Median Pendency at Closure	630	644	752	922
Cases Remaining in SBC at Year End	156	127	126	105
Average Pendency at Year End	811	940	1,018	1,020
Median Pendency at Year End	686	793	821	670
<u>Elder Financial Abuse (§6175.6)</u>				
Reports Received	0	0	0	0

## SPEED OF COMPLAINT HANDLING<sup>22</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 2017, for complaints from complaining witnesses and State Bar inquiries that were not filed in State Bar Court, the average time from receipt of a complaint and closure of the case increased, while the average time for closing cases based on reportable actions decreased. 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 all 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

<sup>22</sup> Criminal conviction matters are excluded from the reportable actions included in this section. See footnote 10 for an explanation.

<b>Table 5: Speed of Complaint Handling</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<u>Complaints</u>				
Pendency at Closure by OCTC without filing				
Average	107	115	110	115
Median	54	52	38	44
Pendency at Filing by OCTC				
Average	402	305	331	450
Median	258	256	281	386
Pendency at Year End in OCTC				
Average	312	302	294	277
Median	140	104	127	128
Pendency at Closure by SBC				
Average	781	833	1,070 <sup>†</sup>	909
Median	708	710	844	688
Pendency at Year end in SBC				
Average	823	1,017	928 <sup>†</sup>	1,075
Median	666	869	627	796
<u>State Bar Initiated Inquiries</u>				
Pendency at Closure by OCTC without filing				
Average	163	145	121	150
Median	124	91	19	35
Pendency at Filing by OCTC				
Average	308	286	368	408
Median	259	227	274	314
Pendency at Year End in OCTC				
Average	337	274	275	287
Median	156	139 <sup>†</sup>	144	153
Pendency at Closure by SBC				
Average	637	660	691	915
Median	556	495	487	690
Pendency at Year end in SBC				
Average	680	723	918	1,167
Median	469	463	639	972
<u>Reportable Actions, Reported by Self</u>				
Pendency at Closure by OCTC without filing				
Average	263 <sup>†</sup>	211 <sup>†</sup>	159 <sup>†</sup>	136
Median	134 <sup>†</sup>	154	81	48
Pendency at Filing by OCTC				
Average	375 <sup>†</sup>	324	373 <sup>†</sup>	430
Median	361 <sup>†</sup>	279	394	412
Pendency at Year End in OCTC				
Average	207 <sup>†</sup>	206	298 <sup>†</sup>	290
Median	114 <sup>†</sup>	132 <sup>†</sup>	239	194

<b>Table 5: Speed of Complaint Handling</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Pendency at Closure by SBC				
Average	658 <sup>†</sup>	588 <sup>†</sup>	937	744
Median	624	512 <sup>†</sup>	816	7699
Pendency at Year end in SBC				
Average	661 <sup>†</sup>	920	774 <sup>†</sup>	790
Median	553 <sup>†</sup>	848	551	653
<u>Reportable Actions, Reported by Others</u>				
Pendency at Closure by OCTC without filing				
Average	81	98	77	62
Median	52	76	36	22
Pendency at Filing by OCTC				
Average	402 <sup>†</sup>	388	388	432
Median	347	338	356	436
Pendency at Year End in OCTC				
Average	137	150	218	206
Median	57	76	123 <sup>†</sup>	76
Pendency at Closure by SBC				
Average	905 <sup>†</sup>	798	777	703
Median	801 <sup>†</sup>	687	662	649
Pendency at Year end in SBC				
Average	743	939	894	1,210
Median	624	798	611	754
<u>Probation Referrals</u>				
Pendency at Closure by OCTC without filing				
Average	340	200	297	376
Median	198	163	234	238
Pendency at Filing by OCTC				
Average	128	92	126	131
Median	91	59	115	83
Pendency at Year End in OCTC				
Average	141	237	369	337
Median	77	132	129	139
Pendency at Closure by SBC				
Average	537	598	585	565
Median	536	569	540	471
Pendency at Year end in SBC				
Average	499	655	639	684
Median	394	520	397	353
<u>Interim Suspensions and License Restrictions</u>				
Pendency at Closure by OCTC without filing				
Average	826	0	0	33
Median	997	0	0	33
Pendency at Filing by OCTC				

<b>Table 5: Speed of Complaint Handling</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Average	14	4	2	18
Median	4	0	0	7
Pendency at Year End in OCTC				
Average	0	0	31 <sup>†</sup>	328
Median	0	0	31	328
Pendency at Closure by SBC				
Average	128	112	48	72
Median	92	89	28	69
Pendency at Year end in SBC				
Average	79	10	0	0
Median	85	10	0	0

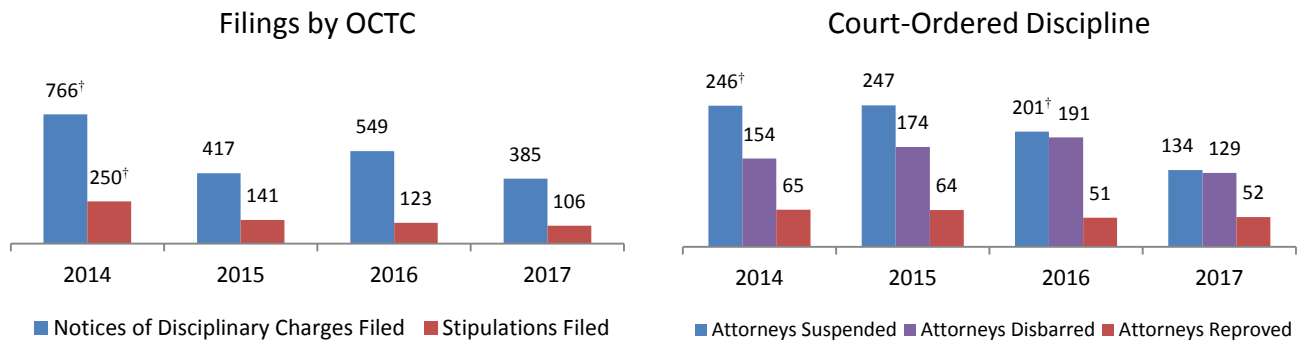


## FORMAL DISCIPLINARY FILINGS AND OUTCOMES<sup>23</sup>

**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 decreased 43 percent over the past year, from 549 in 2016 to 385 in 2017, and the number of stipulations decreased sixteen percent, from 123 in 2016 to 106 in 2017. The number of attorneys disciplined decreased 29 percent over the same period, from 443 in 2016 to 315 in 2017.

Chart 6: Disciplinary Filings and Outcomes



**Table 6A: Formal Filings**

	2014	2015	2016	2017
<u>Notices of Disciplinary Charges</u>				
Number of Filings	766 <sup>†</sup>	417	549	385
Average Pendency at Filing	368	273	311	377
Median Pendency at Filing	257	241	266	337
<u>Stipulations to Facts and Discipline</u>				
Number of Filings	250 <sup>†</sup>	141	123	106
Average Pendency at Filing	330 <sup>†</sup>	330	357	402
Median Pendency at Filing	280	273	320	344

**Table 6B: Formal Disciplinary Outcomes**

	2014	2015	2016	2017
<u>Disbarments</u>				
Number of Cases	452	423	461	270
Average Pendency	835	754	1,165	781
Median Pendency	782	711	866	706
Number of Attorneys Disbarred	154	174	191	129
<u>Suspensions</u>				
Number of Cases	622	528	373	255
Average Pendency	743	816	774	781
Median Pendency	618	600	632	661
Number of Attorneys Suspended	246	247	201	134

<sup>23</sup> This section includes all formal disciplinary filings, including criminal conviction matters and reportable actions not included in other sections of this Report. It does not include State Bar Court filings included in Table 2 that are not formal disciplinary filings.

<b>Table 6B: Formal Disciplinary Outcomes</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<u>Public Reprovals</u>				
Number of Cases	46	46	29	33
Average Pendency	584	563	618	480
Median Pendency	454	423	462	430
Number of Attorneys Publicly Reproved	40	36	26	27
<u>Private Reprovals</u>				
Number of Cases	26	40	30	33
Average Pendency	518	588	648	742
Median Pendency	451	553	443	532
Number of Attorneys Privately Reproved	25	28	25	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 reprimands, admonitions, and agreements in lieu of discipline.<sup>24</sup>*

<b>Table 7A: Other Matters</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<u>Petitions to Terminate Practice pursuant to section 6180 or section 6190</u>				
Petitions Filed	5	7	6	6
Average Pendency at Filing	6	32	89	1,071
Median Pendency at Filing	1	7	63	70
Petitions Granted	5	5	6	6
Petitions Denied	0	2	0	0
<i>Total Cases Disposed by Superior Court</i>	5	7	6	6
Average Pendency At Year End	6	51	89	1,071
Median Pendency At Year End	1	22	63	70
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
<u>Interim Suspensions and Restrictions pursuant to section 6007</u>				
Cases Opened	16	5	5	6
Cases Re-Opened	0	0	0	0
Cases Closed Without Filing <sup>25</sup>	5	0	0	1
Average Pendency at Closure	826	0	0	33
Median Pendency at Closure	997	0	0	33
Cases Filed	15	5	4	5
Average Pendency at Filing <sup>26</sup>	14	4	2	18
Median Pendency at Filing	4	0	0	7
Cases Remaining in OCTC At Year End	0	0	1 <sup>†</sup>	1
Average Pendency At Year End	0	0	31 <sup>†</sup>	328
Median Pendency At Year End	0	0	31	328
Petitions Granted	12	8	4	5
Petitions Denied	<u>1</u>	<u>1</u>	<u>1</u>	<u>0</u>
<i>Total Cases Disposed by State Bar Court</i>	13	9	5	5
Average Pendency at Disposition	128	112	48	72

<sup>24</sup> The full text of sections 6180, 6190, 6007, and 6203 is provided in Appendix B.

<sup>25</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>26</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>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Median Pendency at Disposition	92	89	28	69
Cases Remaining in State Bar Court at Year End	5	1	0	0
Average Pendency At Year End	79	10	0	0
Median Pendency At Year End	85	10	0	0
<u>Motions to Enforce Fee Arbitration Award</u>				
Cases Opened	5	5	12	4
Petitions Granted	6	0	7	6
Petitions Denied	1	2	5	1
<i>Total Cases Disposed by State Bar Court</i>	7	2	12	7
Average Pendency at Disposition	94	87	64	92
Median Pendency at Disposition	65	60	62	71
Cases Remaining in State Bar Court at Year End	0	3	3	0
Average Pendency At Year End	0	30	61	0
Median Pendency At Year End	0	23	78	0
<u>Motions to Revoke Probation</u>				
Cases Opened	14	12	12	7
Petitions Granted	15	17	13	8
Petitions Denied	1	1	1	0
<i>Total Cases Disposed by State Bar Court</i>	16	18	14	8
Average Pendency at Disposition	217	217	249	169
Median Pendency at Disposition	180	193	171	172
Cases Remaining in State Bar Court at Year End	13	7	5	4
Average Pendency At Year End	153	231	84	131
Median Pendency At Year End	140	162	78	159
<b>Table 7B: Specified Dispositions</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<u>Admonitions</u>				
Cases	10	2	4	1
Average Pendency at Disposition	890	865	852	816
Median Pendency at Disposition	911	764	831	816
Attorneys Admonished	2	2	3	1
<u>Agreements In Lieu of Discipline</u>				
Cases	54	46	20 <sup>†</sup>	14
Average Pendency at Disposition	234	250	368 <sup>†</sup>	609
Median Pendency at Disposition	229	195	354 <sup>†</sup>	502
Attorneys Entering into Agreements	54	46	20 <sup>†</sup>	12
<u>Warning Letters</u>				
Cases	700	675 <sup>†</sup>	597	612
Average Pendency at Disposition	158	162	186	218
Median Pendency at Disposition	144	145	164	184
Attorneys Receiving Warning Letters	630	585 <sup>†</sup>	534	565

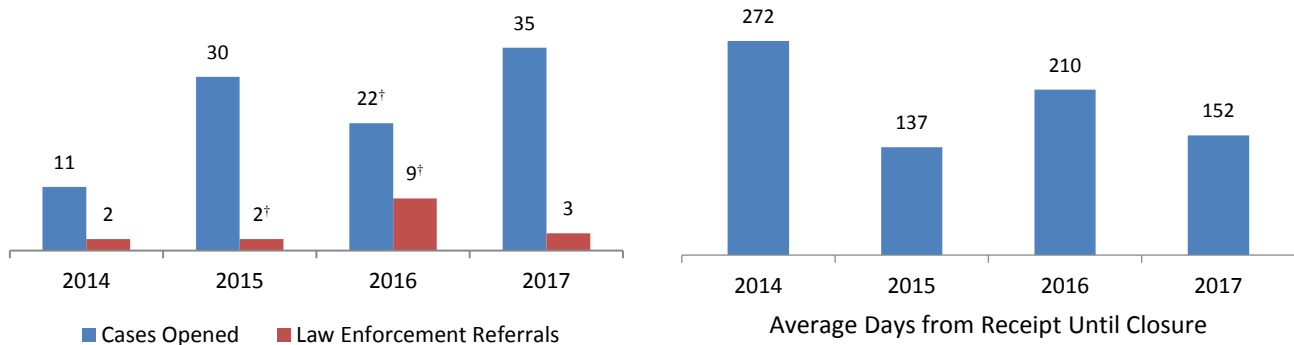
<b>Table 7B: Specified Dispositions</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
<u>Private Reprovals</u>				
Cases	26	40	30	33
Average Pendency at Disposition	518	588	648	742
Median Pendency at Disposition	451	553	443	532
Attorneys Privately Reproved	25	28	25	25

## 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.*

The number of cases regarding reports of unauthorized practice of law by former attorneys increased from 22 in 2016 to 35 in 2017. The average time from receipt of complaint until closure decreased from 210 days in 2016 to 153 days in 2017; the number of referrals to law enforcement for such cases decreased from 9 to 3.

Chart 8: Unauthorized Practice by Former Attorneys



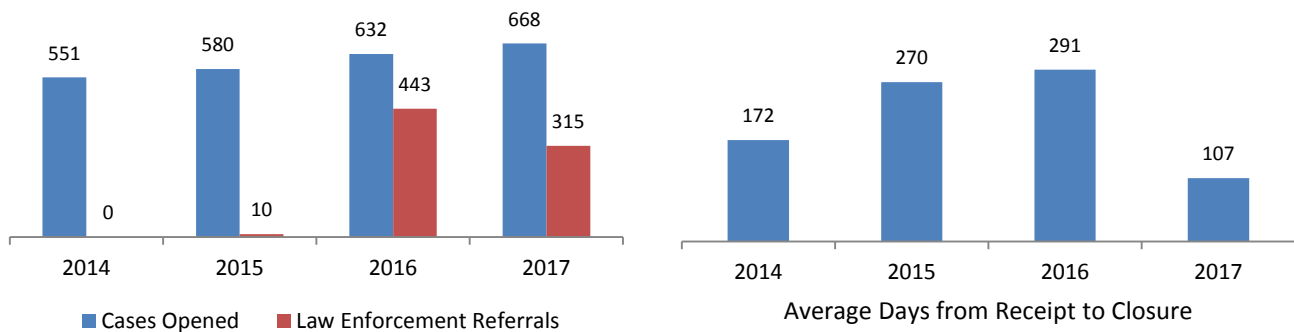
<b>Table 8: UPL by Former Attorneys</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Cases Opened	11	30	22 <sup>†</sup>	35
Cases Closed Without Filing	31	26	23	25
Average Pendency at Closure	272	137	210	153
Median Pendency at Closure	226	126	153	138
Cases Filed in Superior Court	0	0	0	0
Average Pendency at Filing	0	0	0	0
Median Pendency at Filing	0	0	0	0
Cases Remaining in OCTC At Year End	6	10	9 <sup>†</sup>	19
Average Pendency at Year End	180	230	75 <sup>†</sup>	108
Median Pendency at Year End	148	112	73 <sup>†</sup>	142
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	2	2 <sup>†</sup>	9 <sup>†</sup>	3

## UNAUTHORIZED PRACTICE OF LAW BY NON-ATTORNEYS

***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 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 2017, OCTC opened 668 cases based on reports regarding the practice of law by individuals who were never licensed as attorneys. This figure represents an increase of six percent compared to the 632 cases opened in 2016. The average time from receipt of such complaints to closure decreased by sixty-three percent during that time period. The number of referrals to law enforcement decreased from 443 in 2016 to 315 in 2017; the high number of referrals in 2016 reflects the fact that there was an outstanding inventory of referrals that should have been made previously that were processed 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.

Chart 9: Unauthorized Practice by Non-Attorneys



<b>Table 9: UPL by Non-Attorneys</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Cases Opened	551	580	632	668
Cases Closed Without Filing	214	654 <sup>†</sup>	913	609
Average Pendency at Closure	172	270	291	107
Median Pendency at Closure	79	252	189	86
Cases Filed in Superior Court <sup>27</sup>	0	1	6	1
Average Pendency at Filing	0	880	247	7
Median Pendency at Filing	0	880	91	7
Cases Remaining in OCTC At Year End	528	464	181	243
Average Pendency at Year End	265	353	97	91
Median Pendency at Year End	93	141	81	90
Petitions Granted	0	1	6	1
Petitions Denied	0	0	0	0

<sup>27</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>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Total Cases Disposed by Superior Court	0	1	6	1
Average Pendency at Disposition	0	880	247	7
Median Pendency at Disposition	0	880	91	7
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	0	10	443	315



## 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.*

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 licensing fees, which is used only for purposes of paying the reimbursements and administering the CSF. The assessment is currently \$40 for active attorneys and \$10 for inactive attorneys.

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 and wrongfully retained by a California lawyer. The maximum reimbursable amount for losses occurring after January 1, 2009, is \$100,000.

Beginning in 2009, the average yearly applications to the CSF tripled and remained well above the historic average through 2013. The increase was due to loan modification fraud schemes perpetrated by some California attorneys. The CSF had been surviving on an accumulated surplus that was exhausted in 2014. The number of new applications received in 2017 has decreased to more typical historic levels – the CSF received approximately 900 new applications in 2017 - but the CSF continues to review and process the inventory of pending applications that resulted from the loan modification filing increase.

In 2017, the CSF's revenue was \$9.5 million.<sup>28</sup> The CSF paid out approximately \$ 6.4 million on 909 applications filed against 147 attorneys. The remaining budget was used for the administrative costs of the CSF and to maintain a reserve. The CSF's cash balance at the end of the year was \$3.07 million. At year end, there were 3,400 open CSF applications. Based on historical experience, the State Bar estimates that reimbursements related to these applications will total approximately \$23 million. At the current rate of CSF revenue, it will take more than three years to pay down this balance, not accounting for additional applications that will be coming in on an ongoing basis.

If the assessment remains at \$40, annual revenue to the CSF will continue to be \$8 million. Approximately \$2 million is allocated for the administrative costs of the Fund while the remaining \$6 million is designated for reimbursements. The Bar estimates that the estimated annual reimbursement amount for new applications being filed will be approximately \$7.8 million, or \$1.8 million in excess of available funding levels. The need for an increase in the CSF assessment is the subject of a detailed report that was mandated by and provided to the Legislature.

Along with other efforts being studied to increase revenue to the CSF, 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:

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<sup>28</sup> CSF received a transfer of \$1.6 million from the General Fund in 2017.

- One-Time: \$67 per active attorney
- On-Going: \$10 per active attorney

The State Bar has recently undertaken a robust collections effort, which includes efforts to recover reimbursement of CSF payouts from disciplined attorneys. The Bar is also pursuing statutory changes that could assist in a more enhanced collections effort. Results of those efforts will be reported in future Annual Discipline Reports.

<b>Table 10: 2017 Client Security Fund Payments</b>		
<b>Attorney<sup>29</sup></b>	<b>Number of CSF Claims Paid</b>	<b>Total Amount Paid</b>
1	212	\$981,386
2	7	\$482,250
3	114	\$261,444
4	81	\$220,091
5	21	\$213,500
6	53	\$210,619
7	2	\$200,000
8	3	\$187,265
9	7	\$174,817
10	2	\$161,000
11	2	\$156,648
12	16	\$137,778
13	33	\$128,800
14	9	\$127,118
15	5	\$101,925
16	1	\$100,000
17	1	\$100,000
18	1	\$100,000
19	13	\$76,687
20	9	\$76,273
21	5	\$74,955
22	1	\$66,669
23	1	\$65,000
24	19	\$63,952
25	3	\$63,800
26	5	\$62,050
27	8	\$59,803
28	1	\$58,000
29	13	\$57,425
30	9	\$55,901
31	5	\$55,000
32	1	\$50,000
33	1	\$50,000

<sup>29</sup> Attorney names are not provided, as CSF rules require confidentiality under certain circumstances.

<b>Attorney<sup>29</sup></b>	<b>Number of CSF Claims Paid</b>	<b>Total Amount Paid</b>
34	1	\$50,000
35	1	\$50,000
36	1	\$50,000
37	15	\$49,589
38	17	\$49,418
39	1	\$48,790
40	1	\$47,151
41	2	\$44,175
42	3	\$41,207
43	2	\$38,745
44	3	\$36,000
45	8	\$31,345
46	13	\$29,293
47	1	\$29,247
48	5	\$27,455
49	1	\$25,000
50	2	\$24,560
51	11	\$23,700
52	4	\$23,215
53	6	\$23,100
54	1	\$23,000
55	2	\$22,000
56	3	\$21,000
57	2	\$20,356
58	1	\$20,000
59	1	\$20,000
60	2	\$18,668
61	2	\$18,500
62	1	\$17,500
63	4	\$17,000
64	5	\$16,870
65	1	\$16,690
66	1	\$15,588
67	3	\$15,164
68	1	\$15,000
69	5	\$14,111
70	3	\$13,758
71	4	\$12,145
72	1	\$12,000
73	3	\$11,651
74	3	\$11,134
75	7	\$11,010
76	1	\$11,003
77	4	\$10,450

<b>Attorney<sup>29</sup></b>	<b>Number of CSF Claims Paid</b>	<b>Total Amount Paid</b>
78	1	\$10,000
79	1	\$10,000
80	1	\$8,851
81	3	\$8,850
82	2	\$8,780
83	3	\$8,700
84	1	\$8,650
85	2	\$8,145
86	1	\$8,110
87	1	\$7,800
88	5	\$7,750
89	1	\$7,500
90	1	\$7,500
91	1	\$7,000
92	1	\$7,000
93	1	\$6,500
94	1	\$6,200
95	1	\$5,724
96	1	\$5,669
97	1	\$5,500
98	1	\$5,300
99	1	\$5,000
100	1	\$5,000
101	1	\$5,000
102	1	\$4,730
103	2	\$4,700
104	2	\$4,700
105	1	\$4,609
106	1	\$4,500
107	1	\$4,500
108	1	\$4,227
109	1	\$4,000
110	1	\$4,000
111	1	\$3,900
112	1	\$3,500
113	1	\$3,500
114	1	\$3,500
115	1	\$3,460
116	1	\$3,400
117	3	\$3,154
118	1	\$3,000
119	1	\$3,000
120	1	\$3,000
121	1	\$3,000

<b>Attorney<sup>29</sup></b>	<b>Number of CSF Claims Paid</b>	<b>Total Amount Paid</b>
122	2	\$2,862
123	1	\$2,800
124	1	\$2,600
125	2	\$2,550
126	1	\$2,529
127	1	\$2,500
128	1	\$2,500
129	1	\$2,333
130	1	\$2,107
131	1	\$2,000
132	1	\$2,000
133	1	\$2,000
134	1	\$1,738
135	1	\$1,650
136	1	\$1,550
137	1	\$1,500
138	1	\$1,400
139	1	\$1,300
140	1	\$1,300
141	1	\$1,000
142	1	\$811
143	1	\$800
144	1	\$750
145	1	\$654
146	1	\$540
147	1	\$500
<b>Grand Total</b>	<b>909</b>	<b>\$6,401,923<sup>30</sup></b>

<sup>30</sup> This figure represents the total amount approved for payment from the CSF in 2017. Actual CSF payments totaled \$6,339,397 (a discrepancy of \$62,525, or <1%) due to checks not cashed and amounts returned to the CSF by applicants.

## COST OF THE DISCIPLINE SYSTEM

***Section 6086.15, subdivision (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. As a result, the 2015 and 2016 Reports provided three versions of the cost of the discipline system, each of which reflected components that had been included in other reports.<sup>31</sup> This year's Report reflects the budgeted cost of programs included in the Supreme Court's November 2016 order approving an interim special regulatory assessment, which authorized the State Bar to assess 2017 attorney licensing fees for discipline-related functions.<sup>32</sup>

**Table 11: Cost of the Discipline System<sup>33</sup>**

<b>Program</b>	<b>Cost</b>
Chief Trial Counsel	45,841,600
Probation	1,129,100
Mandatory Fee Arbitration	836,900
State Bar Court	11,913,800
Professional Competence	2,572,800
Attorney Regulation and Consumer Resources	4,543,000
Communications (70%) <sup>34</sup>	804,860
Licensee Billing (73%) <sup>35</sup>	1,010,200
General Counsel (76.3%) <sup>36</sup>	3,361,625
<b>Total</b>	<b>72,013,885</b>

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<sup>31</sup> The 2015 and 2016 ADRs reported the cost of the discipline system in the following manner: (1) Cost of programs included in prior year ADRs; (2) cost of programs included in the 2016 Workforce Planning Report; and (3) cost of programs included in 2016 Supreme Court order authorizing the State Bar to collect annual licensing fees.

<sup>32</sup> The Court's order included funding for activities of the California Young Lawyers Association (CYLA) related to the discipline system. The CYLA is no longer a part of the State Bar, so those costs are not included in Table 11.

<sup>33</sup> The 2015 and 2016 ADRs reported on actual costs as of the date of ADR publication. Because the 2017 audit was not completed prior to the ADR submission date, this table reflects 2017 Final Budget amounts. Allocated support services costs are included in program area costs.

<sup>34</sup> This percent reflects the portion of Office of Communications resources devoted to its principle roles, which are to help Californians understand how to access the resources of the discipline system and to ensure that attorneys understand their professional ethical obligations.

<sup>35</sup> This percent reflects the portion of Office of Finance licensee billing resources dedicated to collecting licensing fees and discipline costs.

<sup>36</sup> This percent reflects the portion of Office of General Counsel resources dedicated to supporting the Bar's discipline programs.

## Appendices

## **APPENDIX A**

### **GLOSSARY OF ATTORNEY 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 OCTC
- 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 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>37</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>38</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>39</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 Mandatory Fee Arbitration Program

**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>40</sup>

**MOTION TO REVOKE PROBATION:** A motion filed by Probation in State Bar Court to revoke probation of a licensed attorney under Probation supervision<sup>41</sup>

**PENDENCY IN STATE BAR COURT:** Number of days from the Initial Filing Date to the Court Closing Date<sup>42</sup>

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<sup>37</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>38</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>39</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>40</sup> OCTC plays no role in these proceedings.

<sup>41</sup> OCTC plays no role in these proceedings.

<sup>42</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 the failure of an attorney under Probation supervision 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 licensed attorneys 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 6175.6

**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

**UNAUTHORIZED PRACTICE OF LAW (UPL):** Active State Bar license status is a requirement for practicing law in California. State Bar Rules, as well as state law, provide authority to investigate

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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**

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 formerly licensed California attorneys; and those who have never been licensed to practice law

**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 reprovations, 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.

(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 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.

## APPENDIX B

(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.

### *BUSINESS AND PROFESSIONS CODE SECTION 6086.8*

(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

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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.

(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.

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(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 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.



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(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.

(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

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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.

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

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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 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

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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.

(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.

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(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.

(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

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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 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.

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(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.

(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

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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 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.



## **APPENDIX B**

### *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*

(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.

**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

**PERSONAL AND CONFIDENTIAL**




RE: Inquiry Number:  
Complainant:



Dear Mr. :

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.

 advises that you have not been in contact with her about the status of her case. Specifically, she states that she recently sent you emails on November 18, 20, and 31, and December 5, and 10, 2016, concerning the status of her case and that you have not 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. She may advise us if she has not heard from you within that time for the State Bar's further consideration, if necessary.

Pursuant to Section 6068, subdivision (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 her 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,



Deputy Trial Counsel

**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**RE: Inquiry Number:  
Complainant:

Dear Mr. [REDACTED]:

Please be advised that [REDACTED] has complained that you have failed to turn over his client file 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 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 Mr. [REDACTED] is: [REDACTED] telephone [REDACTED].

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 the 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.

Thank you for your cooperation in resolving this matter.

Very truly yours,



Deputy Trial Counsel

**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

RE: Inquiry Number:  
Respondent:

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 [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 [REDACTED] fail to contact you within the specified time, please contact us at: 845 S. Figueroa Street, Los Angeles, CA 90017, or call 800-843-9053. 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.

We would appreciate if you would complete a short, anonymous survey about your experience with filing your complaint. While your responses to the survey will not change the outcome of the complaint you filed against the attorney, the State Bar will use your answers to help improve the services we provide to the public. The survey can be found at <http://bit.ly/StateBarSurvey1>.

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

Very truly yours,



Deputy Trial Counsel



**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 11, 2017






**PERSONAL AND CONFIDENTIAL**



RE: Inquiry Number:  
Complainant:



Dear Mr. 

We have received a complaint from , who advised us that you violated the California Attorney Guidelines of Civility and Professionalism in your communications with him in connection with  v. , Los Angeles County Superior Court case no. . Mr.  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 you review the State Bar's Attorney Guidelines of Civility and Professionalism which can be found at the State Bar's website at <http://www.calbar.ca.gov/Portals/0/documents/ethics/Civility/Atty-Civility-Guide-Revised-Sept-2014.pdf>. (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 attorneys facing professional responsibility and legal ethics questions. The Hotline is available from 9:00 a.m. to 5:00 p.m. (PST). 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.

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 \$50.00.

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 Eric Cheung at (213) 765-1238.

We hope that you will find these resources helpful.

Very truly yours,

Deputy Trial Counsel



**THE STATE BAR  
OF CALIFORNIA**

**OFFICE OF CHIEF TRIAL COUNSEL  
ENFORCEMENT UNIT**

Steven J. Moawad, Chief Trial Counsel

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

TELEPHONE: (213) 765-1000

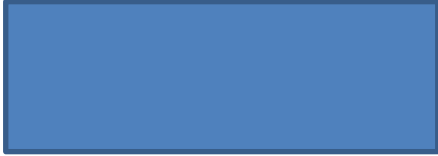
FAX: (213) 765-1319

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

DIRECT DIAL: [REDACTED]

October 6, 2017

**PERSONAL AND CONFIDENTIAL**



Re:

Case Number:

Complainant:



**WARNING LETTER**

Dear Ms. [REDACTED]:

I am directing this letter to you based on my understanding that counsel does not represent you in this matter. If I am incorrect in this regard, please arrange to provide me the name of your attorney so that I can direct any future communications to your counsel.

The State Bar of California has completed its investigation of the allegations raised by the above-referenced complaint. As part of our investigation, we contacted you and gave you an opportunity to provide an explanation for your conduct related to the complaint. Our investigation found substantial evidence of a violation of Rules of Professional Conduct, rule 5-100(a), which states that a member shall not threaten to present criminal, administrative, or disciplinary charges to obtain an advantage in a civil dispute. However, in the exercise of our discretion, we will close this complaint with this warning letter and will take no disciplinary action against you at this time.

We base our decision to issue the warning letter upon the following facts: On June 20, 2017, you sent a letter to [REDACTED], the mother of your client [REDACTED]. In that letter, you threatened to file criminal charges and a "civil lawsuit for monetary damages" against [REDACTED] if she failed to return funds owed to your client. These threats of criminal charges against a third party in an attempt to seek an advantage in a civil dispute between that third party and your client are a violation of Rules of Professional Conduct, rule 5-100(a).

Please be advised of the following:

- We issue this letter pursuant to Rule 2601 of the Rules of Procedure of the State Bar of California; it does **not** constitute the imposition of discipline. Only the California Supreme Court or, in limited instances, the State Bar Court, can impose discipline.

## APPENDIX C

October 6, 2017

Page 2

- It is the intention of the Office of Chief Trial Counsel that third parties not consider this letter as evidence of professional misconduct in any future proceeding, court hearing, or application for employment.
- We will advise the complainant of this disposition, but this letter is not a matter of public record and can only be disclosed or released under one of the limited exceptions allowed by law or contained in the rules and regulations governing the State Bar of California.
- We may reopen the matter if we discover new material evidence, or if the Chief Trial Counsel's designee, in his or her discretion, otherwise determines there is good cause to do so. In the event we reopen the matter, we will notify you and give you a further opportunity to participate in the investigation, as well as any subsequent disciplinary prosecution.

You may ask that an attorney designated by the Chief Trial Counsel review our decision to close this complaint without the imposition of discipline. If you wish to do so, your request must be in writing, addressed to the individual signing below, and postmarked ***within 30 days of the date of this letter.*** Review may result in: (1) rescission of the warning letter and dismissal of the complaint; (2) reopening of the matter and referral for formal disciplinary prosecution before the State Bar Court; or (3) a determination that we appropriately issued the warning letter, in which case we will take no further action.

Very truly yours,



Supervising Attorney







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, 2017



RE: Inquiry Number:  
Respondent:



Dear Mr. [REDACTED]:

The State Bar's Office of Chief Trial Counsel has reviewed your complaint against Mr. [REDACTED] and Ms. [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 Ms. [REDACTED] represented you after you were sued for violating the Fair Housing Act. Mr. [REDACTED] was opposing counsel. You have complained that Mr. [REDACTED] sued you twice based on the same cause of action because he brought a complaint through the Department of Housing and Urban Development 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 the performance of Ms. [REDACTED] as your attorney. You contend 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 showed that the first civil case that was filed has been inactive since November of 2014. The case docket for the active case showed a Notice of Hearing had been issued on November 15, 2017, for a settlement conference hearing in April of 2018.

Based on our evaluation of the information provided, we are closing your complaint. In order to investigate allegations of attorney misconduct, the State Bar needs specific facts which, if proved, would establish a violation of the attorney's ethical duties. That is not the case here. Under the Rules of Professional Conduct, an attorney must only maintain those actions which he believes to be legal or just. 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 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 regard 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 against Mr. [REDACTED], please notify our office so that we may reevaluate your complaint.


If you dispute the attorney's fees or costs that Ms. [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 website at [www.calbar.ca.gov](http://www.calbar.ca.gov) or call 415-538-2020.

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 213-765-1234. 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  
Office of General Counsel  
180 Howard Street

APPENDIX C



Page 3

San Francisco, CA 94105-1617

We would appreciate if you would complete a short, anonymous survey about your experience with filing your complaint. While your responses to the survey will not change the outcome of the complaint you filed against the attorney, the State Bar will use your answers to help improve the services we provide to the public. The survey can be found at <http://bit.ly/StateBarSurvey1>.

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

Very truly yours,



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>43</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, on the basis of having committed the offense, until the case has reached finality in the superior court. Until then, OCTC tracks those cases that it is aware of, checking 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.<sup>44</sup> 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. 2017 criminal conviction matter data is provided in the table below.

Table D1: Criminal Conviction Matters 2017

2016 Pending Inventory	337
New Cases Opened	249
Closed Without Action	170
Filed in State Bar Court	125
2017 Year-End Inventory	291

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<sup>43</sup> The full text of sections 6101 and 6068 is provided in Appendix B.

<sup>44</sup> If a court does not know that the defendant is an attorney, for example, and the attorney failed to self-report, the Bar may be unaware of the conviction.

## APPENDIX D

In addition to the data provided in the table above, during the period 2014 to 2017, reports were received regarding 1,183 felony charges and 1,584 misdemeanor charges filed against a total of 757 attorneys. Theft-related charges accounted for 27 percent of felonies reported during this time period, followed by crimes related to fraud, which amounted to 8 percent. Fifty-five percent of misdemeanors were traffic-related.

Sixty-two percent of felony charges were reported as being filed in California's jurisdiction, 28 percent were reported as federal violations, and the remaining 10 percent were reported as having been filed in other states. Ninety percent of misdemeanor charges reported were filed within California, with the remaining 10 percent filed in other state and federal courts.

The State Bar will begin re-fingerprinting of all active, licensed attorneys in 2018, and has entered into a contract with the California State Department of Justice (DOJ) to receive subsequent request notifications of attorneys, in compliance with statutory requirements. Once re-fingerprinting is completed, information about criminal charges and convictions will not be limited to information reported to the State Bar by attorneys, courts and prosecutors. In addition, the Bar will receive notices of subsequent arrests, charges and convictions of licensed attorneys directly from the DOJ. Protocols for the review and referral of arrest, charging and conviction information to OCTC are being developed.

### **SECTION 6095 REPORTING<sup>45</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 be aware of 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 D2 provides information about the disposition of disciplinary proceedings for reported felony convictions and other convictions of which the State Bar has become aware.

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<sup>45</sup> The full text of section 6095 is provided in Appendix B.

## APPENDIX D

**Table D2: Disposition of Felony Convictions**

	2014	2015	2016	2017
Felony Convictions	44	23	23	16
Cases filed in State Bar Court	37	24	31	27
Average days from conviction to filing in Court <sup>46</sup>	91	151	222	134
Median days from conviction to filing in Court	64	82	97	84
Cases disposed in State Bar Court	27	23	44	32
Average days from filing to disposition in Court	746	612	712	634
Median days from filing to disposition in Court	736	417	623	472
State Bar Court Dispositions				
Disbarment	15	11	33	23
Dismissal	3	3	2	0
Suspension	8	8	5	7
Termination Due to Resignation	0	1	1	0
Reproval	1	0	0	0
Termination Due to Death	0	0	0	2

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<sup>46</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. The State Bar is committed to addressing the unauthorized practice of law as a part of its public protection mission.

#### **UNAUTHORIZED PRACTICE OF LAW GENERALLY**

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.

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>47</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 E2, the State Bar’s avenues for addressing non-attorney misconduct represent a limited subset of the broader array of available remedies.

Table E1 provides information about UPL and immigration-related complaints received in 2017, as well as the number of active cases in both categories.

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<sup>47</sup> *People v. Merchants Protective Corp.*, 189 Cal. 531, 535 (1922)

## APPENDIX E

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

Immigration-related Attorney Complaints Received 2017	524
<u>Current Status of Active Immigration Attorney Complaints*</u>	
Cases in Intake	10
Cases in Enforcement	
Investigation	191
Pre-Filing	47
Post-Filing	<u>12</u>
<b>Total Active Cases</b>	260
Non-Attorney (NA) Complaints Received 2017	668
State-Bar Initiated Complaints re NA 2017	119
Cease and Desist/Notice of Violation Letters Issued 2017	144
<u>Current Status of Active NA Complaints*</u>	
Cases in Intake	41
Cases in Enforcement	
Investigation	245
Pre-Filing	0
Post-Filing	<u>5</u>
<b>Total Active Cases</b>	291
Immigration-related NA Complaints Received 2017 <sup>48</sup>	158
<u>Current Status of Active Immigration-related NA Complaints*</u>	
Cases in Intake	2
Cases in Enforcement	
Investigation	53
Pre-Filing	0
Post-Filing	<u>4</u>
<b>Total Active Cases</b>	59

\*As of February 2018

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<sup>48</sup> Immigration-related NA complaints is a subset of NA complaints.



## APPENDIX E

### OUTREACH AND EDUCATION EFFORTS

In 2017, the State Bar's outreach and education activities were again geared toward immigrant populations most vulnerable to UPL, notario, and immigration attorney related misconduct, and included participation in the following activities:

- Immigration Seminar co-sponsored by the San Diego District Attorney's office and Talamantes Immigration Law Firm;
- National Conference of Vietnamese Attorneys; and
- Cabrera Victims Assistance Workshop.<sup>49</sup>

In March, OCTC spoke with detainees at the Immigration and Customs Enforcement Processing Center in Adelanto about their experiences with attorneys and non-attorneys who assisted them with their immigration matters, and provided attorney and non-attorney complaint forms in six languages. OCTC will soon be posting educational information in the Adelanto detainee dormitories about immigration fraud, and integrating attorney and non-attorney complaint forms in the facility's law library's internal database for access by detainees. OCTC plans to expand its detention center outreach to facilities throughout California, in conjunction with the Executive Office for Immigration Review's Legal Orientation Programs, and at those facilities without such programs.

### 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 Spanish language television, print and web-based media, and uses its active social media presence in these efforts.
  - The State Bar website provides UPL complaint forms in English, Spanish, Chinese, Korean, Russian, and Vietnamese. Additionally, the State Bar's Call Center has two Spanish speakers on staff and has on-demand access to interpretation in over 200 languages.

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<sup>49</sup> This workshop was organized by the Department of Consumer & Business Affairs to assist the victims of Oswaldo Cabrera, a non-attorney successfully prosecuted for unauthorized practice of law by the California Attorney General's Office.

## APPENDIX E

### 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 of legal services related to immigration services not including a statement the provider is 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).

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

<b>Legal Authority</b>	<b>Who Prosecutes</b>	<b>Remedies</b>
Section 6030	State Bar initiates civil action	Provides for injunction where there has been a violation or threatened violation of the UPL statutes.
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.

## APPENDIX E

Legal Authority	Who Prosecutes	Remedies
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.
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.

### 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 2017, there were 119 State Bar initiated non-attorney inquiries opened.

Complaints are reviewed by OCTC staff, which conducts preliminary research, including 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.

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

## APPENDIX E

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.

### 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 notice unless there is good cause to believe that harm would result (e.g., client property or other evidence would be destroyed) from the provision of 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

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. The State Bar routinely refers matters to law enforcement agencies for prosecution. In 2017, the State Bar made 315 law enforcement referrals based on 668 individual complaints.

**APPENDIX F**  
**SAMPLE LETTERS REGARDING REPORTABLE ACTIONS**



**THE STATE BAR  
OF CALIFORNIA**

**OFFICE OF CHIEF TRIAL COUNSEL**

Steven J. Moawad, *Chief Trial Counsel*

845 SOUTH FIGUEROA STREET, LOS ANGELES, CALIFORNIA 90017-2515  
180 HOWARD STREET, SAN FRANCISCO, CALIFORNIA 94105-1617

TELEPHONE: (213) 765-1468

December 8, 2017

[REDACTED]  
VP/Operations Manager  
California Business Bank  
3200 El Camino Real  
Suite 220  
Irvine, CA 92602

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

Dear Ms. [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, regardless of whether 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 an 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. If you have not, however, 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

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

Page 2

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 IOLTA accounts** 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 Supervising Attorney [REDACTED] in the State Bar's Intake Unit, at [REDACTED].

Very truly yours,



Steven J. Moawad  
Chief Trial Counsel

SJM/srcp  
Enclosure

## APPENDIX F

[Bank letter 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<sup>50</sup>**

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.”<sup>51</sup>

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 do not 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 a referral as part of the discipline process.<sup>52</sup>

Table G1: 2017 Participation in LAP through  
the ADP or the Discipline System

	2016	2017
Case Intakes	31	41
Case Closings	34	35

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<sup>50</sup> The Lawyer Assistance Program 2017 Annual Report may be found on the State Bar’s website at <http://www.calbar.ca.gov/Portals/0/documents/reports/2017-State-Bar-of-California-Lawyer-Assistance-Annual-Report.pdf>.

<sup>51</sup> Business and Professions Code section 6230.

<sup>52</sup> Referrals to LAP may be made by an OCTC attorney, the respondent’s attorney, or the State Bar Court.



## APPENDIX H

### 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.<sup>53</sup>

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, 2017, the Board of Trustees approved a new procedure that requires attorneys to 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 H1: Probation Average Monthly Caseloads

<b>Probation Monitoring Category</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Rule 9.20 <sup>54</sup>	148	176	179	137
Alternative Discipline Program	5	6	4	5
Agreement in Lieu of Discipline <sup>55</sup>	50	55	17	0
Suspension/Probation Conditions	680	662	607	517
Reproval with Conditions	109	119	88	80
Other	3	2	2	2
<b>Total</b>	<b>995</b>	<b>1,020</b>	<b>897</b>	<b>741</b>

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<sup>53</sup> 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).

<sup>54</sup> As discussed above, a change to the procedures for resignation with no disciplinary charges pending, which was implemented in 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>55</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 Chief Trial Counsel (CTC) in any case involving individuals with close ties to the State Bar. Pursuant to Rule 2201, all complaints against attorneys who are identified as falling into a Rule 2201 category are automatically referred to an 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. Table I1 provides information about cases falling under Rule 2201 in 2016, both prior to and since its revision.

Table I1: Complaints Subject to Rule 2201<sup>56</sup>

	<b>2016</b>	<b>2017</b>
Closed without Investigation	56	66
Closed after Investigation	9	68
Pending assignment to SDTC	5	6
Pending in Investigation	38	47
<b>Total</b>	<b>108</b>	<b>187</b>

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<sup>56</sup> These cases are included among the complaints reported in the body of the Annual Discipline report; this data is provided to highlight the number of cases that fall under this rule. Inconsistency in how this data was tracked makes it difficult to provide reliable data for prior years.

## APPENDIX J

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

When the State Bar’s Office of 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.

Prior to July 2016, requests for review were conducted within OCTC by a special unit devoted to this process, the Audit and Review Unit (A&R). Since then, these reviews are conducted in the Complaint Review Unit (CRU) of the Office of General Counsel (OGC).

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.

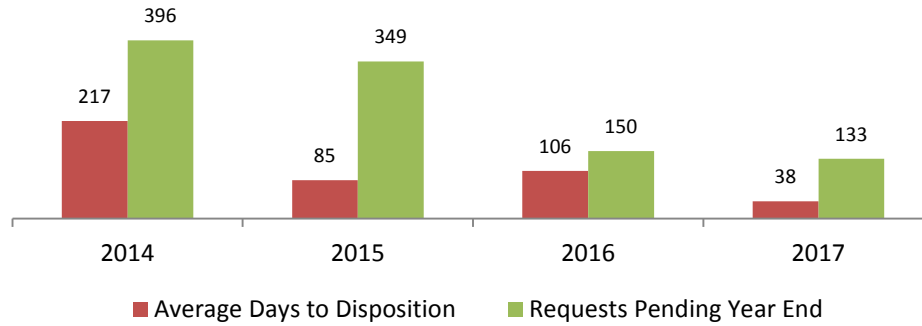
Upon deciding not to reopen a closed complaint, CRU prepares a closing letter to the complainant that contains a clear explanation of the reasons for declining to recommend reopening a case. Closing letters also notify complainants of their right to request California Supreme Court review pursuant to *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.

Table J1: Second Look Review

	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Requests Received	1,257	1,288	1,149	919
Reviews Completed	1,838	1,335	1,350	869
Recommendation to Reopen	104	61	92	46
Closed	1,734 (94%)	1,274 (95%)	1,258 (93%)	823 (95%)
Average Days to Disposition	217	85	106	38
Requests Pending Year End	396	349	150	133

## APPENDIX J

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. A Walker petition may not be filed until after a Second Look request has been submitted to and denied by the State Bar A&R/CRU. 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 each of the past four years.

Table J2: Walker Petitions

	2014	2015	2016	2017
Total Petitions Disposed	67	95	76	121
Granted	0	2	0	0
Denied	67 (100%)	91 (96%)	74 (97%)	119 (98%)
Stricken <sup>57</sup>	0	2	2	2
Average Days to Disposition	43	47	40	40

<sup>57</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.