



The State Bar *of California*

OPEN SESSION AGENDA ITEM SEPTEMBER 2019 AUDIT COMMITTEE III.A

DATE: September 19, 2019

TO: Members, Audit Committee

FROM: Linda Katz, Principal Program Analyst,
Office of Research and Institutional Accountability

SUBJECT: Annual Update on Implementation of Audit Recommendations

EXECUTIVE SUMMARY

The State Bar has been audited numerous times over the past several years. The purpose of this agenda item is to update members of the Audit Committee on the implementation status of recommendations contained in each of those audits.

BACKGROUND

The State Auditor regularly conducts audits of the State Bar, as required by subdivision (b) of Business and Professions Code section 6145. The reports produced by the State Auditor make recommendations for improvements to State Bar operations, policies and procedures. The State Bar has engaged consulting firms to conduct audits and make recommendations for improvements in these areas, as well. The following audits have been conducted since 2015:

- Bureau of State Audits Report 2015-30 (June 2015)
- Bureau of State Audits Report 2015-47 (May 2016)
- Bureau of State Audits Report 2017-30 (June 2017)
- Bureau of State Audits Report 2018-30 (April 2019)
- Moss Adams Internal Audit and Policy and Procedure Review (March 2018)
- Netxperts Cybersecurity Audit (December 2017)

With the exception of the most recent State audit, which was issued in April of this year, the majority of recommendations in each of these reports have been implemented, as discussed below.

DISCUSSION

Following is a summary of the focus of each audit report, as well as the implementation status of the recommendations contained in each report. The attachments to this agenda item provide an itemized accounting of the recommendations contained audits 1-4, listed below. Detailed appendices are not provided for audits 5 and 6 as the audits included sensitive information on potential vulnerabilities and the steps taken to address them.

1. Bureau of State Audits Report 2015-030 (June 2015)

This audit focused on improving the effectiveness of the State Bar's discipline system; the report recommended changes to discipline-related operations and reporting.

- Number of recommendations: 14
- Recommendations fully implemented or deemed resolved by the Auditor: 14

2. Bureau of State Audits Report 2015-047 (May 2016)

This audit focused on the State Bar's financial operations and management practices; the report recommended changes to financial operations and reporting.

- Number of recommendations: 22
- Recommendations fully implemented or deemed resolved by the Auditor: 22

3. Bureau of State Audits Report 2017-030 (June 2017)

This audit focused on controls the State Bar uses to verify that its expenses are reasonable and appropriate; the report recommended changes to compensation practices and purchasing policies.

- Number of recommendations: 17
- Recommendations fully implemented: 14
- Recommendations partially implemented: 3

4. Bureau of State Audits Report 2018-030 (April 2019)

This audit focused on the fee increase proposed by the State Bar, to address its identified funding needs; the report recommended changes to property management and discipline-related practices and procedures.

- Number of recommendations: 7
- Recommendations with implementation in progress: 7

5. Moss Adams Internal Audit and Policy and Procedure Review (March 2018)

This internal audit focused on the State Bar's policies and internal controls; the report recommended changes to some of those policies and controls.

- Number of recommendations: 70
- Recommendations fully implemented: 56
- Recommendations with implementation in progress: 14

6. Netxperts Cybersecurity Audit (December 2017)

This internal audit comprised an overall network security assessment of the State Bar's networking infrastructure; the report recommended changes to improve security to that infrastructure.

- Number of recommendations: 45
- Recommendations fully implemented: 40
- Recommendations with implementation in progress: 1
- Recommendations that require no action: 4

FISCAL/PERSONNEL IMPACT

None

RULE AMENDMENTS

None

BOARD BOOK AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

None – Core business operations

RECOMMENDATIONS

None

ATTACHMENT(S) LIST

- A. State Audit 2015-030 Recommendations Status Summary
- B. State Audit 2015-047 Recommendations Status Summary
- C. State Audit 2017-030 Recommendations Status Summary
- D. State Audit 2018-030 Recommendations Status Summary

No.*	Recommendation	Current Status
1	To ensure that its backlog does not adversely affect the quality of the discipline it imposes on attorneys who fail to fulfill their professional responsibilities, the State Bar should adhere to its quality control processes. Further, it should take steps to prevent its management or staff from circumventing those processes, such as requiring the presentation to the board of any proposed changes to quality control.	Fully Implemented
3	To ensure that it consistently counts and reports its backlog of disciplinary cases, the State Bar and the Legislature should work together to determine what cases the State Bar should include in its backlog. For example, one method of calculating the backlog would be to include every case that affects public protection that the State Bar does not resolve within six months from the time it receives a complaint. The Legislature should then amend the state law that currently defines how the State Bar should present the backlog in its discipline report. In the interim, the State Bar should comply with our 2009 recommendation to fully disclose the types of cases it includes and excludes from its backlog calculation, as well as any methodology changes from the prior year.	Fully Implemented
4	To provide clear and reliable information to the Legislature, the governor, and the public, the State Bar should define how it calculates case-processing speeds in its discipline report and should report this metric using the same method each year. If the State Bar elects to continue presenting the median case-processing time, it should also present the average case-processing time. Finally, it should fully disclose any methodology changes from the methodology used in the prior year.	Fully Implemented
5	To assure the Legislature and the public that the data in the State Bar's discipline reports are accurate, the board should implement controls over the accuracy, consistency, and sufficiency of the data gathered and methods used to compute the information included in the report. For example, the board could expand the role of an existing board committee—such as the regulation and discipline committee—to include a review of the discipline report and the underlying discipline statistics.	Fully Implemented
6	To align its staffing with its mission, the State Bar should engage in workforce planning for its discipline system. The workforce planning should include the development and formal adoption of an appropriate backlog goal, an assessment of the staffing needed to achieve that goal while ensuring that the discipline process is not compromised, and the creation of policies and procedures sufficient to provide adequate guidance to the staff of each unit within the discipline system.	Fully Implemented
7	To ensure that the audit and review unit's random audits of closed case files provide an effective oversight mechanism, the State Bar should follow its policy to conduct and record meetings and trainings related to the audit report's recommendations.	Fully Implemented
8	The audit and review unit should oversee the retrieval of cases files for audit to ensure that it maintains control over its random selection of cases.	Fully Implemented

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No.*	Recommendation	Current Status
9	To ensure that the review function within the audit and review unit continues to provide a means for complainants to appeal the State Bar's decisions on closed cases, the State Bar should implement a policy that prohibits the chief trial counsel from dissolving the review function of the audit and review unit. Alternatively, at a minimum, it should require board approval for such an action.	Fully Implemented
10	To provide independent oversight of the Office of the Chief Trial Counsel and assurance that it properly closes its case files, the audit and review unit should report to an individual or body that is separate from the chief trial counsel, such as the executive director or the board.	Fully Implemented
11	To ensure that it spends revenues from the membership fee appropriately, the State Bar needs to implement policies and procedures to restrict its ability to transfer money between funds that its board or state law has designated for specific purposes.	Fully Implemented
12	To ensure that it can justify future expenditures that exceed a certain dollar level, such as capital or IT projects that cost more than \$2 million, the State Bar should implement a policy that requires accurate cost-benefit analyses comparing relevant cost estimates. The policy should include a requirement that the State Bar present the analyses to the board to ensure that it has the information necessary to make appropriate and cost-effective decisions. In addition, the State Bar should be clear about the sources of funds it will use to pay for each project.	Fully Implemented
13	To justify any future special assessment that the State Bar wants to add to the annual membership fee, the State Bar should first present the Legislature with the planned uses for those funds and cost estimates for the project for which the State Bar intends to use the special assessment.	Fully Implemented
14	To ensure that it adequately informs the Legislature about the status of the IT projects in its strategic plan, the State Bar should annually update the projects' cost estimates, their respective status, and the funds available for their completion.	Resolved
17	To determine a reasonable and justified annual membership fee that better reflects its actual costs, the State Bar should conduct a thorough analysis of its operating costs and develop a biennial spending plan. It should work with the Legislature to set an appropriate annual membership fee based upon its analysis. The first biennial spending plan should also include an analysis of the State Bar's plans to spend its current fund balances.	Resolved

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No.*	Recommendation	Current Status
1	To reduce the length of time that victims of dishonest lawyers must wait for reimbursement from the Client Security Fund, the State Bar should continue to explore fund transfers, member fee increases, and operating efficiencies that would increase resources available for payouts.	Fully Implemented
2	To ensure that it maximizes its cost-recovery efforts related to the Client Security Fund, the State Bar should adopt a policy to file for money judgments against disciplined attorneys for all eligible amounts as soon as possible after courts settle the discipline cases.	Resolved
3	To ensure that it maximizes its cost-recovery efforts related to the Client Security Fund, the State Bar should evaluate annually the effectiveness of the various collection methods it uses to recover funds from disciplined attorneys.	Fully Implemented
4	To reduce the risk of errors in financial reporting, the State Bar should update its procedures to include guidance on detailed steps that staff should take to prepare financial statements and to ensure that the statements are accurate and complete.	Fully Implemented
5	To reduce the risk of errors in financial reporting, the State Bar should update its procedures to include guidance on management's review and approval of financial statements.	Fully Implemented
6	To increase the transparency and comparability of its financial information, the State Bar should limit significant changes in its indirect cost reporting	Fully Implemented
7	To increase the transparency and comparability of its financial information, the State Bar should clearly disclose any changes in its accounting practices.	Fully Implemented
8	To increase the transparency and comparability of its financial information, the State Bar should disclose the reasons for any significant changes to program costs.	Fully Implemented
9	To ensure that it accounts appropriately for information technology project costs and their related funding sources, the State Bar should develop a reasonable method for allocating information technology project costs.	Fully Implemented
10	To ensure that it accounts appropriately for information technology project costs and their related funding sources, the State Bar should apply this new cost-allocation method to the costs of its Technology Improvement Fund.	Fully Implemented
11	To ensure it informs stakeholders of conditions that may affect its policy and programmatic decisions, the State Bar should document the assumptions and methodology underlying its budget estimates.	Fully Implemented
12	To ensure it informs stakeholders of conditions that may affect its policy and programmatic decisions, the State Bar should should concisely present such assumptions and methodology in the final budget document it provides to its board and the Legislature.	Fully Implemented
13	To make certain that its budget documents conform to the requirements in state law and that they are comparable to prior budgets, the State Bar should establish a process for ensuring that budget documents conform to the requirements in state law.	Fully Implemented

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Bureau of State Audits Report Number 2015-047 (May 2016)

No.*	Recommendation	Current Status
14	To make certain that its budget documents conform to the requirements in state law and that they are comparable to prior budgets, the State Bar should update its budget policies to require supplementary schedules and narratives for any budget in the year in which the State Bar implements changes to the presentation of its budget.	Fully Implemented
15	To ensure that the State Bar's board can make informed decisions about its consultant's recommendations regarding budgeting and financial reporting, the State Bar should analyze the costs and benefits of implementing its consultant's recommendations about budgets and present this analysis to its board for consideration.	Fully Implemented
17	To ensure that it retains appropriate supervision and control over the State Bar's financial affairs, the board should establish a policy that includes a description of the parameters for the creation of nonprofit organizations limiting such organizations to the purposes consistent with the law and the State Bar's mission.	Fully Implemented
18	To ensure that it retains appropriate supervision and control over the State Bar's financial affairs, the board should establish a policy that includes a description of the board's oversight role in relation to the State Bar's nonprofit organizations.	Resolved
19	To ensure that it retains appropriate supervision and control over the State Bar's financial affairs, the board should establish a policy that includes requirements to make sure that the board reviews and approves all documents the State Bar uses in the creation and use of a nonprofit organization, including original and amended bylaws as well as agreements between the State Bar and the organization.	Resolved
20	To ensure that it retains appropriate supervision and control over the State Bar's financial affairs, the board should establish a policy that includes requirements ensuring that the board reviews, approves, and monitors regularly the budgets and other financial reports of any nonprofit organizations.	Resolved
21	To ensure that it retains appropriate supervision and control over the State Bar's financial affairs, the board should establish a policy that includes requirements that the State Bar develop policies and procedures to prevent the mingling of the its funds and any nonprofit organization's funds.	Resolved
23	To ensure that the compensation it provides its executives is reasonable, the State Bar should include in the comprehensive salary and benefits study that it plans to complete by October 2016 data for the salaries and benefits for comparable positions in the state government's executive branch.	Fully Implemented
24	To ensure that the compensation it provides its executives is reasonable, the State Bar should revise its policy for housing allowances and relocation expenses to align with the requirements in the state law that are applicable to managerial employees.	Fully Implemented

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No.	Recommendation	Current Status
1	To better align its compensation practices with those of comparable agencies, the State Bar should update and formalize its salaries and benefits policies by continuing its negotiations with the union to transition represented employees to an eight-hour workday and a 40-hour workweek, and to implement new salary and job classifications.	Fully Implemented
2	To better align its compensation practices with those of comparable agencies, the State Bar should update and formalize its salaries and benefits policies by implementing an eight-hour workday and a 40-hour workweek, as well as new salary and job classifications, for its non-represented employees by July 2017.	Fully Implemented
3	To better align its compensation practices with those of comparable agencies, the State Bar should update and formalize its salaries and benefits policies by requiring a contribution rate to health care costs for non-represented employees that is equal to the contribution rate for represented employees by January 2018.	Fully Implemented
4	To better align its compensation practices with those of comparable agencies, the State Bar should update and formalize its salaries and benefits policies for executive employees hired on or after January 1, 2018, to require that contributions to post-retirement health care costs are at a rate equivalent to their contributions during employment at the State Bar.	Fully Implemented
5	To better align its compensation practices with those of comparable agencies, the State Bar should update and formalize its salaries and benefits policies by developing and adopting a formal policy by December 2017 to regularly compare staff compensation and benefits with those of comparable agencies.	Fully Implemented
6	To assign purchasing cards only to appropriate staff, ensure that the State Bar's records of employees' credit limits reflect those established with the bank, and to verify that staff use purchasing cards only for allowable and necessary expenses, the State Bar should immediately develop a policy that requires justification of the business needs for employees to receive purchasing cards, and use this policy to limit the number of staff issued a purchasing card.	Partially implemented: Purchasing limits over \$5,000 are permitted only for certain expenses related to administration of the California Bar Examination, or for expenses related to facilities management or other support operations. These higher limits are assigned only to specific individuals with responsibility for specific operational areas. As of August 2019, only five (5) cardholders have single purchase limits over \$5,000. We are, however, reviewing all Procurement and Finance procedures as we plan the ERP system upgrade, which is scheduled to go live in January 2020. Changes and additional restrictions related to purchasing cards may be implemented as part of this process.

Bureau of State Audits Report Number 2017-030 (June 2017)

No.	Recommendation	Current Status
7	To assign purchasing cards only to appropriate staff, ensure that the State Bar's records of employees' credit limits reflect those established with the bank, and to verify that staff use purchasing cards only for allowable and necessary expenses, the State Bar should immediately restrict the use of purchasing cards to its original purpose, which was for low-dollar and frequently occurring purchases. For purchases above \$5,000, the State Bar should require the vendor to bill for payment.	Partially implemented: With the separation of the Sections effective January 2018, off-site meeting space is used only for the Bar Exam; some charges related to the Bar Exam are more efficiently handled by credit card. Similarly, catering charges for onsite meetings must usually be reserved and paid by credit card.
8	To demonstrate its commitment to the board's prohibition of all State Bar spending on alcohol, the State Bar should immediately update its procurement manual to reflect this prohibition.	Fully Implemented
9	To ensure that its costs are reasonable and appropriate, the State Bar should update its meal and catering policy to align with the meal policy of the State's Executive Branch and should require individuals attending committee meetings for the State Bar to comply with standard meal per diem rates.	Partially implemented: The State Bar has adopted a travel and business-related expense policy that requires individual employee travel meal reimbursements and onsite catering costs to match the State's Executive Branch per diem rates. Since the separation of the Sections from the State Bar in January of 2018, the only meetings held off-site are related to the California Bar Exam. While every effort is made to arrange for catering at off-site events within these same per diem rates, it is not feasible to require this limitation in every situation.
10	To make certain that the costs for sections events are reasonable and prudent, the State Bar should require that the sections follow that State Bar's meal per diem and lodging rates, and require the sections to limit expenses for events to only those activities that are reasonable and necessary. For off-site events, the State Bar should require the sections to follow the State Bar's existing policy of providing written justification of a significant business need to hold the event off-site and obtain approval from the executive director or chief operating officer.	Resolved
11	To ensure that its lobbying expenses are reasonable and cover only allowable activities, the State Bar should revise the terms of its pending lobbying contract to require that the lobbyists provide sufficiently detailed invoices that support the amounts they bill for their services.	Fully Implemented
12	To ensure that it contracts only for appropriate and necessary services from outside law firms at a prudent rate, the State Bar should put its informal practice into a written policy regarding its assessment of the need for outside counsel, including whether the State Bar's attorneys can provide the specified legal services.	Fully Implemented

Bureau of State Audits Report Number 2017-030 (June 2017)

No.	Recommendation	Current Status
13	To ensure that it contracts only for appropriate and necessary services from outside law firms at a prudent rate, the State Bar should put its informal practice into a written policy regarding its evaluation of the State Bar's past experiences with the law firms being considered.	Fully Implemented
14	To ensure that it contracts only for appropriate and necessary services from outside law firms at a prudent rate, the State Bar should put its informal practice into a written policy regarding its process to select the outside legal firms, including documentation of proposals from other prospective law firms and the costs it considers reasonable for the legal services.	Fully Implemented
15	To reduce its reliance on outside legal counsel, the State Bar should continue its efforts to hire staff to fill its remaining vacant attorney positions.	Partially implemented: The Office of General Counsel (OGC) has fully implemented protocols for recruiting for all attorney positions as soon as a vacancy arises. OGC notifies Human Resources (HR) as soon as it becomes aware of a vacancy, and works with HR to recruit for and fill the vacancy in a timely manner. While this protocol has not been reduced to a written policy, it has been in effect since the beginning of this year. [While the State Bar believes that it has implemented this recommendation, the Auditor has not acknowledged it as fully implemented.]
16	To increase transparency, the State Bar should disclose annually to the board a list of all contracts with outside law firms—including a description of the services provided, the need for such contracts, and the value and length of the contracts.	Fully Implemented
17	To better measure how well its attorney discipline program is meeting the State Bar's core mission to protect the public from attorney misconduct, the State Bar should, by December 2017, identify key goals and metrics for the attorney discipline system.	Fully implemented: The State Bar has adopted detailed metrics for all operational areas, including the discipline system. The Executive Director's report to the Board of Trustees at each meeting includes a Metrics Report. The January Metrics Report, presented at the March 2019 meeting of the Board of Trustees, has been provided to the California State Auditor. Awaiting confirmation from Auditor.

No.*	Recommendation	Current Status (60 Day Response Submitted June 28, 2019)
9	To enable it to effectively determine its budget, State Bar should continue to annually prepare five-year projections.	<p>The State Bar is committed to continuing the preparation of a five year forecast as part of the annual budgeting and financial planning process. With a multi-year fee bill process, the financial forecast will be critical in assisting the State Bar in identifying future funding needs.</p> <p>Estimated completion: Annually as part of budget submitted to Legislature each February</p>
10	To ensure that it maximizes the revenue from its San Francisco building, State Bar should lease all available space and ensure that its leases reflect market rates.	<p>In progress: the State Bar has one remaining vacant floor; lease negotiations have been underway with an existing tenant that wants to expand in the building, with an anticipated lease execution date of July 30. The State Bar is also conducting a Request for Proposal process for a new property manager and broker, and hopes to have a new contract in place by October 1. The State Bar will work with the new broker to ensure that future leases are at market rate.</p> <p>Estimated Completion: October 2019</p>
11	To ensure that it maximizes the revenue from its San Francisco building, in the event of any future staff growth, State Bar should avoid adding space by reducing its space allocations when practical to more closely match industry standards.	<p>In progress: the State Bar has no plans to secure any additional space. As it plans for staff growth and reconfiguration of its existing space, such reconfigurations will be planned in accordance with industry standards as recommended. This will be an ongoing process as reconfigurations are planned and implemented over the next several years.</p> <p>Estimated completion: Ongoing</p>
12	To further its ability to operate more efficiently and reduce the backlog of discipline cases, State Bar should develop benchmarks by December 2019 delineating the duration of each step in its investigations process.	<p>In progress: OCTC already has some benchmarks related to the duration of each step in the investigation process. Examples of existing benchmarks include the following: the investigator should meet with the legal advisor within five days of assignment of a case to discuss an investigation plan; the investigator should meet with the legal advisor within the first 30 days of assignment, to calendar backlog and 30/60 day backlog roll-in dates. OCTC will work to identify time goals for all steps of the process reflecting current staffing levels and other constraints.</p> <p>Estimated completion: December 2019</p>
13	To further its ability to operate more efficiently and reduce the backlog of discipline cases, State Bar should ensure consistency by December 2019 in the policy and guidance documents its staff follow when performing investigations work.	<p>In progress: OCTC will review all of its existing policy and guidance related to investigations to ensure consistency.</p> <p>Estimated completion: December 2019</p>

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Bureau of State Audits Report Number 2018-030 (April 2019)

No.*	Recommendation	Current Status (60 Day Response Submitted June 28, 2019)
14	To further its ability to operate more efficiently and reduce the backlog of discipline cases, State Bar should use its performance measures and collected data going forward to evaluate its case processing goals and work with the Legislature to revise the 180-day statutory goal if necessary.	<p>In progress: the State Bar's performance metrics were recently adopted and, in some cases, are still being documented and defined. OCTC has already begun collecting some data and will use the new performance metrics to evaluate case processing goals; it will take some time to collect sufficient data based on those metrics to allow us to draw definitive conclusions.</p> <p>Many factors impact the ability to meet the 180 day statutory goal, and meeting this goal will not be feasible in most instances while OCTC remains under-resourced. The State Bar is hopeful that the addition of resources to fund positions, combined with process improvements and benchmarks guided by data collected via the new metrics, will improve our ability to meet this goal; this impact will be delayed until new staff are fully trained. Other long-term improvements may have short-term negative impacts on case processing speed. For example, the implementation of the new case management system (CMS) will allow data collection that will inform process improvements and the creation of benchmarks; however, CMS implementation will slow case processing until users become familiar with the new system, and business practices are adapted to conform to an off-the-shelf customizable system.</p> <p>Once changes identified above have been fully implemented, the State Bar will evaluate whether it is appropriate to work with the Legislature to revise the 180-day statutory goal.</p> <p>Estimated completion: Ongoing</p>
15	To better assess the security fund's revenue needs after 2020, State Bar should develop by August 2019 a methodology for estimating the payments that it is likely to make in a particular year. This methodology should consider the average length of time it will spend processing applications that are eligible for reimbursement and estimate the number of applications anticipated to become eligible for reimbursement during the course of that year.	<p>In Progress: The following 60-day response was submitted: By August of 2019, the State Bar will develop a methodology for estimating payments for the upcoming budget year by reviewing CSF statistics for the previous 3- 5 years, analyzing current inventory, and assessing CSF's finances and staffing. The methodology will consider all of the elements identified by the State Auditors.</p> <p>The methodology has been adopted, and will be reported to the Auditor with the 6-month update.</p>

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