



The State Bar of California

OPEN SESSION AGENDA ITEM 41-1 JULY 2020

DATE: July 16, 2020

TO: Members, Board of Trustees

FROM: Donna S. Hershkowitz, Interim Executive Director

SUBJECT: Report from Executive Director

As I think back over the period between the May Board of Trustees meeting and today, and the exciting steps forward represented by the agenda items set forth on the July meeting agenda, I find myself at a loss for words as to how best to describe where we have been, and where we are going.

In a way, the nation feels like it is standing still—one more day of working from home; not being able to go to the gym, a restaurant, or a nail salon; and grabbing a mask to leave the house or walk through the office—but at the same time, many also feel so upended by the events of May 25 and the killing of George Floyd and everything for which it stands.

On June 16, 2020, the Chair of the Board of Trustees and I penned an open letter to the legal community. For those who did not have the opportunity to see it, and even for those who did, I think the sentiments bear repeating:

Recent events that have roiled the nation create a moment of reckoning for American ideals of justice and equality. This moment calls each of us to engage in an unflinching search for systemic racism in our institutions and accept individual and collective responsibility for making and accelerating change. How can we contribute to a nation united in fairness and equality?

The California Supreme Court said it best in its June 11, 2020, Statement on Equality and Inclusion: *“It is all too clear that the legacy of past injustices inflicted on African Americans persists powerfully and tragically to this day. Each of us has a duty to recognize there is much unfinished and essential work that must be done to make equality and inclusion an everyday reality for all.”* The legal profession bears a special responsibility to guarantee the equal treatment of all persons and to ensure remedies

for those subjected to unfair, unequal, and unjust treatment. Many in the legal community have worked for years to reduce bias, support access to justice, and foster diversity and inclusion, but there is much more to do. Each instance of injustice is one too many.

As the regulatory agency for California lawyers, the State Bar must focus both outwardly toward the profession and inwardly on our own operations. By statute, access and inclusion are core to our public protection mission. To that end, the State Bar has recently taken the following steps:

- Early last year, the Board of Trustees committed to concrete objectives to advance diversity and inclusion within the legal profession.
- We are scrutinizing the development and framing of bar exam questions, and how answers are graded, to identify and address bias, implicit or explicit.
- We conducted the first comprehensive California attorney census designed to help identify particular obstacles to diverse attorneys' entry into, retention, and advancement in the legal profession.
- Two years ago, we commenced a tradition of annual diversity summits to bring leaders in key legal sectors together to discuss how to improve inclusion and diversity in the legal profession.
- Soon we will release the State Bar's first Report Card on the Diversity of California's Legal Profession to move the ball forward toward meeting our diversity and inclusion objectives for the profession.

In a state as diverse as California, the lagging growth of diversity in the legal profession both reflects entrenched inequities and limits progress to eradicate such inequities. By working to diversify the profession, we do our part to address those inequities and help to shape the California we wish to see. We also increase trust in the profession among the people it serves. Diverse experiences and perspectives make the profession stronger and the legal system more just, both in perception and in reality.

Looking inward, the State Bar has recently examined its own disciplinary system and found evidence that African American male attorneys have experienced a higher rate of serious discipline than other attorneys. The Board of Trustees is committed to examining the mechanisms that may have contributed to disproportionate discipline and rectifying the disparity, a process that remains underway.

We must seize this important moment and commit to sustained actions that continue even if the news cycle moves on and the hashtags fade. We must find ways to accelerate progress. We commit to continuing this work, and we invite you to join us.

So, perhaps it is fortuitous that the discussion agenda includes an in-depth discussion of what can be done to address the disparities in our discipline system. As noted in the report by Professor Farkas which was presented to the Board last November, African American male

attorneys receive a considerably higher number of complaints than their white counterparts. They have a higher number of investigations conducted against them, are disproportionately unrepresented by counsel in our discipline system, and get reported more frequently for being overdrawn on their client trust accounts.

We chose not to wash our hands of it and say, “See, it’s not us,” or blame the disparate level of discipline is on external factors beyond our control. Rather, we dove in. The fact that disproportionate discipline against African American male attorneys can be explained statistically by these other factors, does not change the fact that these attorneys are more likely to be disciplined by the State Bar. The State Bar has an obligation to ensure a discipline system free of bias and discrimination. Today’s agenda item looks at intriguing ways we might get behind some of the data and develop new approaches to the old methods of doing business. This is a discussion worth having. It is a discussion whose time has come.

The Board will be adopting a charge for a Joint Supreme Court/State Bar Blue Ribbon Commission on the Future of the Bar Exam to include not only questions about the content and the format of the exam, but also to require the commission to explore the appropriate passing score, along with data the State Bar has generated on the pass rates of applicants of color. These issues are far from theoretical. They are part of our daily consciousness, as the plan for bar licensure in 2020 in the era of COVID-19 is the subject of constant discussion. What we know is that there is no perfect solution, no perfect way to balance the needs of applicants and the State Bar’s public protection mission. The various solutions discussed have disparate impacts on applicants of different socioeconomic backgrounds or racial or ethnic backgrounds; on applicants who recently graduated from law school and those who did not; on California residents and non-Californians. What this challenge has brought to light is the stark reality that even when “physical distancing” is no longer part of the lexicon, the way the Bar Exam is administered will change. The Blue Ribbon Commission needs to look holistically at the exam, thinking not just in terms of content, format, or passing score, but also at how those choices could be impacted by different approaches to administration of the exam in the future.

Finally, at the July meeting, the Board will also be asked to consider the funding for legal services at a time when the need for such services is escalating—as people are losing jobs, housing, security, health care, and much more. And as those losses may be disproportionately visited upon certain parts of the population.

Circling back to the call to action posed to California attorneys in our open letter to the legal community, while the Board considers the items on today’s agenda and strategizes for the next set of initiatives, I challenge us to continually push ourselves and others to seize this critical moment and commit to sustained actions in a conscious effort to find ways to accelerate progress, despite the temptation to shy away from the challenging in favor of the safe.

METRICS FOR APRIL AND MAY 2020

There are 17 metrics with monthly performance goals discussed in Attachment A; the remainder of the metrics established have one-time, quarterly, semiannual, or annual

performance goals. Of those 17, 10 have specific targets against which to measure ourselves to promote accountability. For April and May 2020, six of the 10 met their targets; the four that did not were highlighted at the Finance Committee meeting on July 6, and in the materials for the Regulation and Discipline Committee meeting on July 13. The saying is that we focus on what we measure. Although these measures have absolutely not been static in the last two years, offices across the State Bar have developed a better understanding of the importance of performance metrics, and may be in a better position to help create even better metrics by which to hold ourselves accountable. In addition, new initiatives—such as the recommendations by Professor Robertson discussed in Item 701—provide insight for new performance metrics to incentivize better performance and attention to new issues. As a result, I recommend we take a fresh look at the performance metrics before the end of the year, and that we discuss an updated list of performance metrics at the January 2021 planning session.

ATTACHMENT(S) LIST

- A. State Bar Metrics Report for April and May 2020**

State Bar Monthly Metrics

JULY 2020



The State Bar of California



Overview

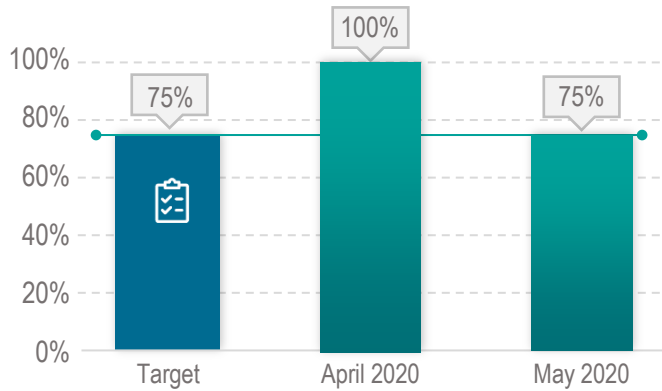
This report contains results for the 17 State Bar metrics that have monthly targets. This report contains the results for April and May 2020, and covers most of the State Bar's operational areas. 10 of the 17 metrics have targets for accountability purposes; targets were not met for four of them, as detailed on pages 6 and 7.

All data and metric names reported in this report supersede that which was previously reported. Please refer to the "Metric Updates" section on page 8 for a list of all metrics currently tracked and organized by operational area.



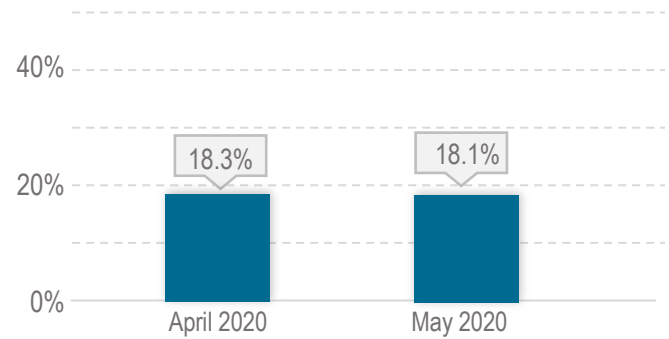
75% of participants completing phone system survey report a high level of overall satisfaction with their call center experience

ARCR-2



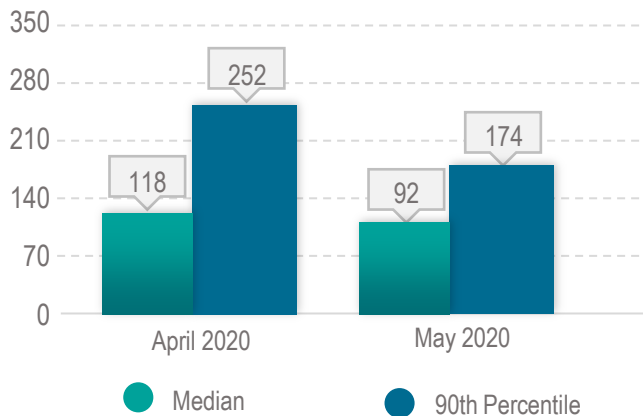
Minimize number of Priority 1 (P1) cases in backlog

OCTC-1



Ensure Priority 2 (P2) cases are processed in an expedited fashion

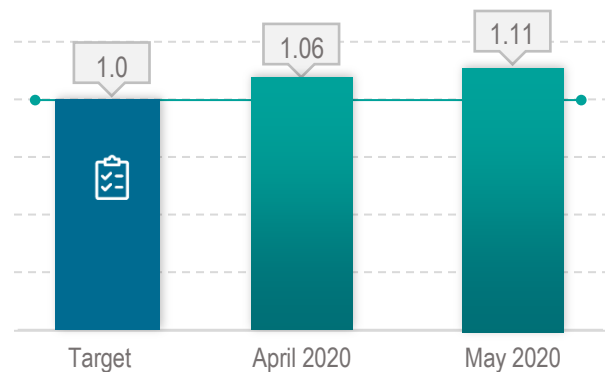
OCTC-2



Note: This metric is measured by number of days.

Maintain OCTC annual caseload clearance rate of at least 1.0

OCTC-3

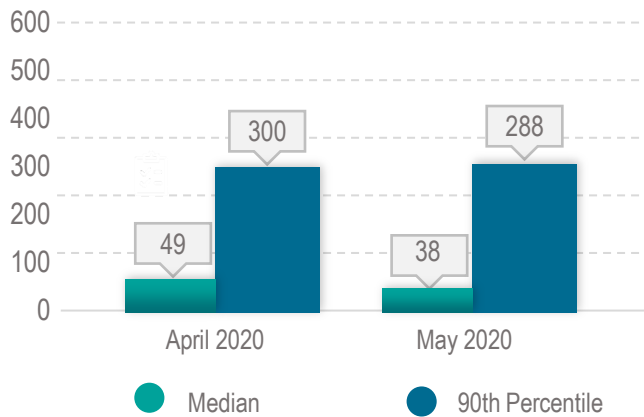


Note: This metric is calculated using a 12-month rolling average to stabilize month-to-month fluctuations in caseload clearance rates. For example, the May 2020 annual caseload clearance rate reflects the average monthly caseload clearance rates of June 2019 through May 2020.



Case disposition times (OCTC)

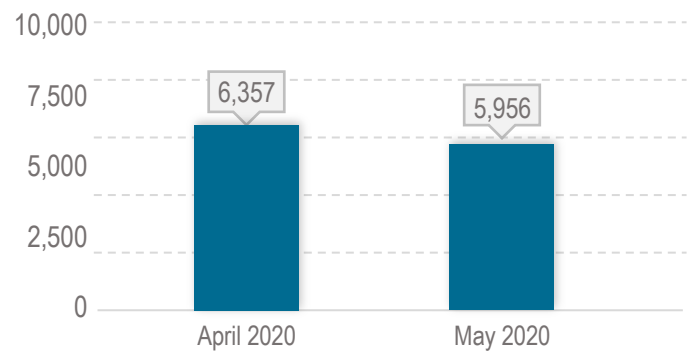
OCTC-4A & OCTC-4B



Note: This metric is measured by number of days.

Cases in inventory at months end (OCTC)

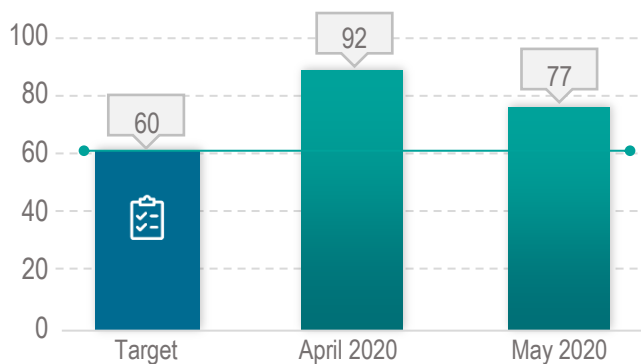
OCTC-6



Note: This chart describes cases that are reported in the Annual Discipline Report (ADR).

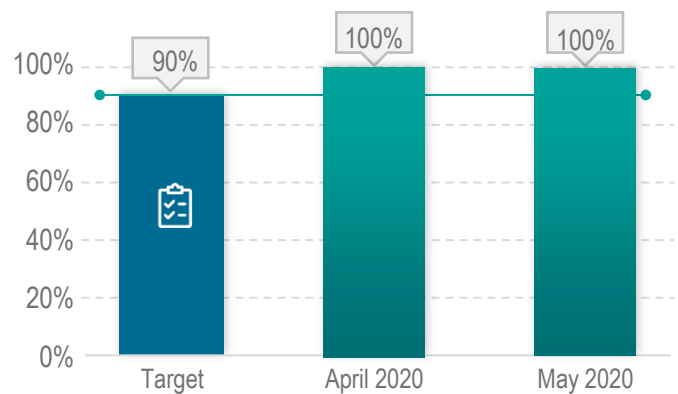
Complete/resolve an average of 60 Complaint Review Unit (CRU) cases per month

OGC-1



90 percent of Review Department cases reach final outcome within timeline requirements

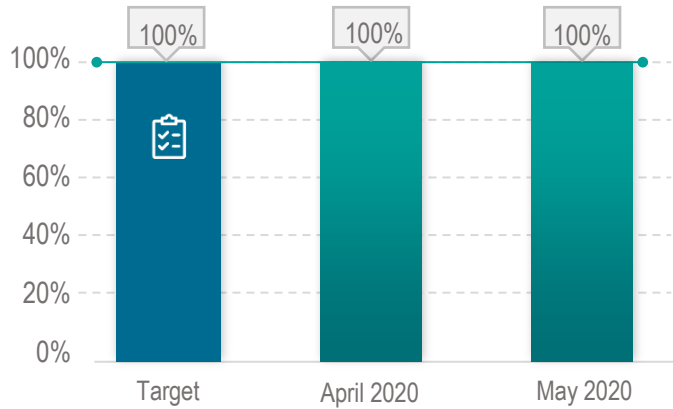
SBC-2C





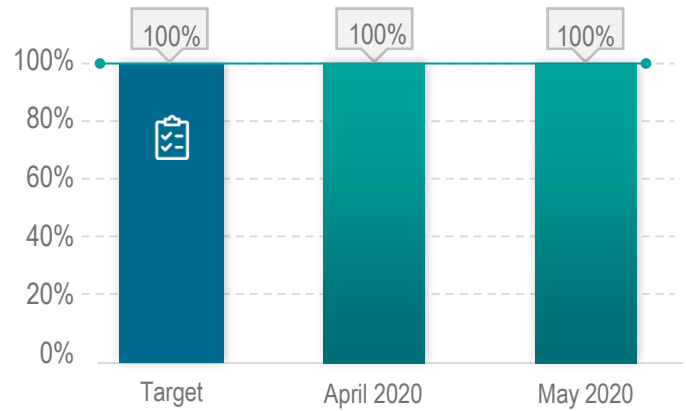
All Review Department cases reach final outcome within 150 percent of timeline requirements

SBC-2D



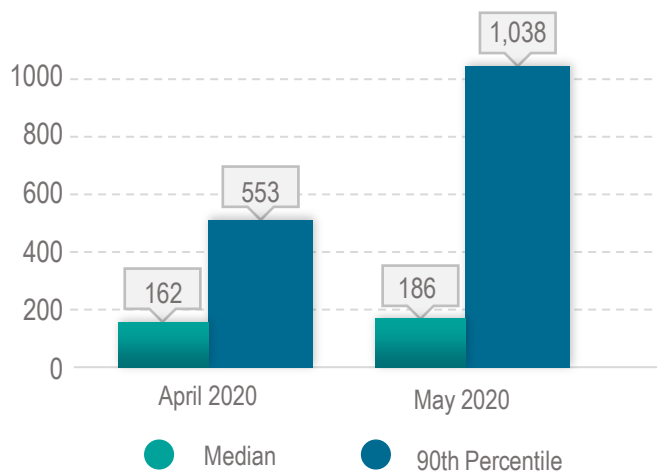
All effectuation cases processed within established timeline requirements

SBC-2E



Case disposition times
(State Bar Court)

SBC-3A & 3B

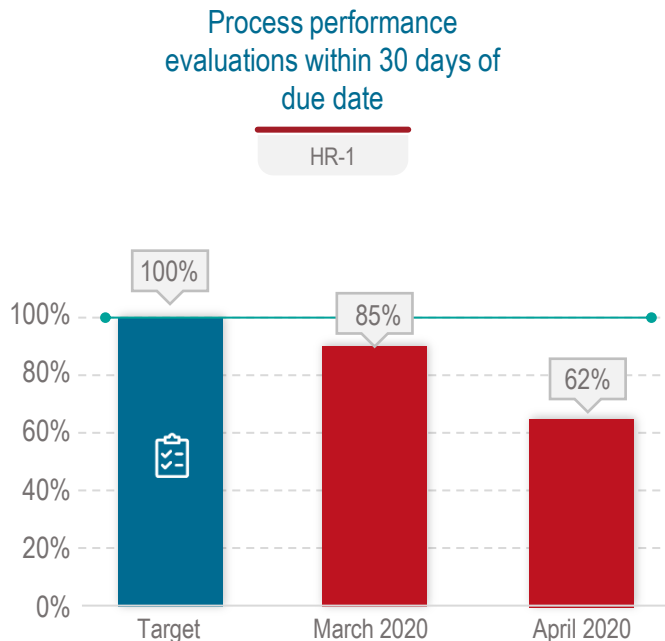


Note: This metric is measured by number of days.



Metrics That Did Not Meet Targets

The following pages detail the four metrics that did not meet their targets. Accompanying each metric is a narrative that provides context for the results.



Note: This metric is reported for March and April due to the 30-day lag time in reporting.

Human Resources (HR) is engaging in key initiatives to ensure greater understanding of the importance of management and performance evaluations (PE) to employee engagement, including the redesign of the Performance Management process.

- HR sends out reminder emails to Chiefs 30 days prior to PE due dates, as well as a reminder for any past due PEs. The transition to Oracle Fusion for performance evaluation management has been delayed; automated reminders will be issued once fully implemented.
- In April 2020, HR began to personally reach out to all supervisors/executives to remind them of overdue and upcoming evaluations to encourage them in order to ensure they are completed in a timely manner.
- An emphasis on the importance of Performance Management has been added as an element of the New Supervisor training being done by HR in conjunction with Recruitment and Retention (R2).

On March 17, 2020, the State Bar transitioned to mandatory telecommuting for all staff as a result of the Shelter at Home orders resulting from the Coronavirus pandemic. While the State Bar has successfully carried out the majority of its functions during this time, the subsequent adjustment period did contribute to a delay in several administrative processes, including the timely completion of performance evaluations.



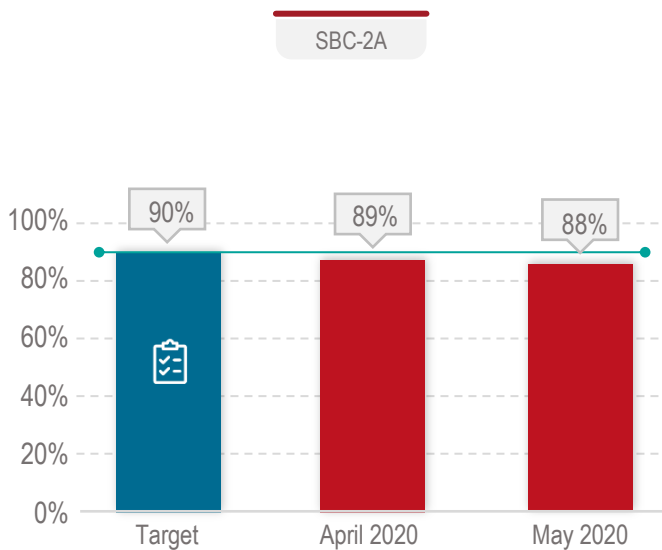
Maintain State Bar Court annual caseload clearance rate of at least 1.0



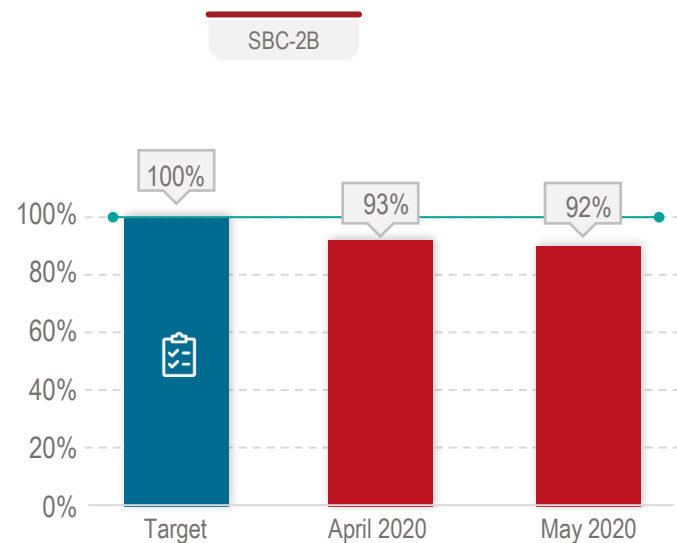
Note: This metric is calculated using a 12-month rolling average to stabilize month-to-month fluctuations in caseload clearance rates. For example, the May 2020 annual caseload clearance rate reflects the average monthly caseload clearance rates of June 2019 through May 2020.

SBC-1, SBC-2A, and SBC-2B: State Bar Court staff has reviewed the cases that resulted in the performance targets not being met and determined that case processing delays were caused by factors outside of the State Bar Court's control. For example, one of the most common factors contributing to case delay is the consolidation of a newer case with an older case.

90 percent of Hearing Department cases reach final outcome within timeline requirements



All Hearing Department cases reach final outcome within 150 percent of timeline requirements





Metric Updates

Organized by office, the list below contains all metrics the State Bar is currently tracking. To clarify timing and meaning, edits to the "Metric Name and Performance Target" column, if any, are reflected in strikethroughs. All metric IDs below supersede those previously reported.

ADMISSIONS

Metric Focus: Quality Control, Cycle Time, Cost Control

Metric ID	Name	Timing	Notes
A-1	Implement 100 percent of Board of Trustees Appendix I adopted reforms	Quarterly	This metric is on track for completion in 2020 and will be reported at that time.
A-2	Conduct initial review of 80 percent of Moral Character applications received within 60 days of receipt	Semiannually	
A-3	Reduce exam costs by 5 percent by Q4 2020	Annually	

ATTORNEY REGULATION & CONSUMER RESOURCES

Metric Focus: Efficiency (Operational Management), Cycle Time

ARCR-1A	Less than 40 percent of Resource Center calls transferred out	Quarterly	
ARCR-1B	Less than 30 percent of calls abandoned	Quarterly	
ARCR-1C	Average call wait time of fewer than eight minutes	Quarterly	
ARCR-2	75 percent of participants completing phone system survey report a high level of overall satisfaction with their call center experience	Monthly and Quarterly	
ARCR-3	Process 75 percent of MCLE applications within 30 days of receipt	Quarterly	
ARCR-4	Continue implementation of LLP online renewal with a goal of 90 percent LLPs completing online by Q4 2020	One-time	
ARCR-5	Fulfill 95 percent of requests for certificates of standing within five business days of receipt	Quarterly	
ARCR-6	Convert 20 percent of Law Corporations to a strictly-online renewal process by Q3 2020	One-time	

**BOARD SUPPORT JNE COMMISSION & APPOINTMENTS****Metric Focus:** Efficiency (Operational Management)

Metric ID	Name	Timing	Notes
BJA-1	90 percent of stakeholders report a high level of overall satisfaction with quality of operational support provided	Annually	
BJA-2	100 percent of JNE candidates evaluated within 90 days	Semiannually	

CLIENT SECURITY FUND**Metric Focus:** Customer Satisfaction, Efficiency, Cost Control, Cycle Time

CSF-1	Provide status update to 100 percent of applicants at least twice per year	Semiannually	
CSF-2	Ensure timely, accurate budget allocations for reimbursements	Annually	
CSF-3	Develop and monitor annual benchmarks for number of cases to be resolved based on annual budget and pending inventory by Q1 annually	Annually	
CSF-4	Develop and monitor target for time to payout after final disposition based on resource availability by Q1 annually	Annually	
CSF-5	Develop and monitor annual benchmarks for cases resolved by staff to monitor caseload clearance rate, caseload inventory, and improvements in efficiency after transitioning Tentative Decisions to staff	Annually	

FINANCE**Metric Focus:** Fiscal Management/Operational Efficiency, Quality, Cycle Time

F1	Provide accurate, timely and informed budget projections to enable efficient financial planning by client division/office and the Executive Director	Quarterly	
F2	Reduce number of billing-related phone calls from attorneys to ARCR by 10 percent	Quarterly	

**FINANCE (CONTINUED)**

Metric ID	Name	Timing	Notes
F3	Pay 90 percent of vendor invoices within 30 days of receipt	Quarterly	
F4	Process 100 percent of monthly financial statements accurately and on time, within 20 days of the end of the month	Monthly	Due to the fiscal calendar, this metric is reported for the months of June through December.
F5	90 percent of internal clients report a high level of overall satisfaction with services provided by finance staff	Annually	

GENERAL SERVICES**Metric Focus:** Cycle Time, Quality

GS-1	Process 90 percent procurement requisitions with 100 percent accuracy within three days	Quarterly	
GS-2	Process 85 percent of all facilities requests (not requiring parts/equipment ordering) within three or fewer business days	Quarterly	
GS-3	Complete 90 percent of capital improvement projects on the annual capital improvement plan	Annually	
GS-4	Process all capital improvement projects within budget	Annually	
GS-5	90 percent of internal customers report a high level of overall satisfaction with services provided by General Services staff	Annually	

HUMAN RESOURCES**Metric Focus:** Cycle Time, Customer Satisfaction

(Note: Metrics related to staffing are now delegated to Recruitment and Retention.)

HR-1	Process performance evaluations within 30 days of due date	Monthly/ Quarterly	This metric is reported for March and April due to the 30-day lag time in reporting.
HR-2	90 percent of internal customers report a high level of overall satisfaction with services provided by Human Resources staff	Annually	

**INFORMATION TECHNOLOGY****Metric Focus:** Efficiency, Customer Satisfaction

Metric ID	Name	Timing	Notes
IT-1	90 percent of stakeholders report a high level of overall satisfaction with new technology deployments	Quarterly	
IT-2	Process 85 percent of all IT service requests (not requiring parts/equipment ordering or software development) within five or fewer business days	Quarterly	
IT-3	Complete 90 percent of planned major IT projects on schedule and on budget	Quarterly	
IT-4	90 percent of internal customers report a high level of overall satisfaction with services provided by IT staff	Annually	

LAWYER ASSISTANCE PROGRAM**Metric Focus:** Utilization, Customer Satisfaction, Outreach

LAP-1	Increase intake by 10 percent	Annually	
LAP-2	Respond to 100 percent of requests for presentations within two business days	Quarterly	
LAP-3	Complete 20 law school presentations and 10 Bar Association/law firm presentations	Annually	This metric will be reviewed to identify 2020 goals.
LAP-4A	80 percent of survey participants report that the Lawyer Assistance Program addressed their goals	Quarterly	
LAP-4B	80 percent of survey participants report they are satisfied with their Lawyer Assistance Program experience	Quarterly	

OFFICE OF ACCESS & INCLUSION**Metric Focus:** Efficiency (Operational Management), Compliance

OAI-1	Monitor bank compliance with agreed-upon interest rates	Quarterly	
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**OFFICE OF ACCESS & INCLUSION (CONTINUED)**

Metric ID	Name	Timing	Notes
OAI-2	Develop detailed operational plan for Legal Services Trust Fund & Access to Justice Commissions based on BOT decisions in January 2019, with a target goal for implementation of 100 percent of identified changes by Q4 2021	One-time	
OAI-3	Roll out 75 percent of identified data reporting and collection improvements by Q2 2019 for changes involving State Bar only, and by Q3 2019 for changes impacting data collection by legal services programs for collection beginning 2020	One-time	This metric will be put on hold and revisited in 2021.

OFFICE OF CHIEF TRIAL COUNSEL**Metric Focus:** Cycle Time, Quality

OCTC-1	Minimize number of Priority 1 (P1) cases in backlog	Monthly	
OCTC-2	Ensure Priority 2 (P2) cases are processed in an expedited fashion	Monthly	
OCTC-3	Maintain OCTC annual caseload clearance rate of 1.0 or higher	Monthly	
OCTC-4A	Case Disposition: Median	Monthly	
OCTC-4B	Case Disposition: 90th Percentile	Monthly	
OCTC-5A	Maintain current level of CRU reopens for reasons other than new evidence	Monthly	
OCTC-5B	Maintain current level of Walker reopens	Semiannually	
OCTC-5C	Decrease the number of random audit reopens for substantive reasons	Semiannually	
OCTC-6	Case Inventory Trends	Monthly	

**OFFICE OF GENERAL COUNSEL****Metric Focus:** Cycle Time, Customer Satisfaction

Metric ID	Name	Timing	Notes
OGC-1	Complete/resolve an average of 60 Complaint Review Unit (CRU) cases per month	Monthly	
OGC-2	90 percent of clients report a high level of overall satisfaction with services provided by the Office of General Counsel staff	Annually	

OFFICE OF PROFESSIONAL COMPETENCE**Metric Focus:** Outreach/Access, Customer Satisfaction

OPC-1	Ethics Hotline: Maintain historical benchmark of a ratio of 60 percent new callers to 40 percent returning callers within a 10 percent variance	Quarterly	
OPC-2A	Voluntary e-Learning courses: 85 percent of participants report that courses met their expectations	Quarterly	
OPC-2B	Voluntary e-Learning courses: 85 percent of participants report that courses contained significant practical content	Quarterly	
OPC-2C	Mandatory e-Learning courses: 70 percent of participants report that courses met their expectations	Quarterly	
OPC-2D	Mandatory e-Learning courses: 70 percent of participants report that courses contained significant practical content	Quarterly	

**OFFICE OF RESEARCH & INSTITUTIONAL ACCOUNTABILITY****Metric Focus:** Efficiency (Operational Management)

Metric ID	Name	Timing	Notes
ORIA-1	90 percent of all ORIA projects met project milestones	Quarterly	
ORIA-2	95 percent on-time distribution of discipline reports from Odyssey	Monthly	
ORIA-3	90 percent of regular management reports and performance metrics are automated	Quarterly	

PROBATION**Metric Focus:** Outcomes

P-1	Track successful completion rates and reasons for noncompletion	Quarterly	
P-2	Track rates of successful satisfaction of restitution orders	Annually	

RECRUITMENT & RETENTION**Metric Focus:** Efficiency, Cycle Time, Organizational Capacity, Customer Satisfaction

RR-1	Reduce average time to hire to 60 days or fewer	Quarterly	
RR-2	Stay Interviews are conducted for 100 percent of new hires within 90 days of hire	Quarterly	
RR-3	Reduce average number of days to fill attorney positions	Quarterly	
RR-4	Reduce average number of days to fill investigator positions	Quarterly	
RR-5	90 percent of participants report a high level of overall satisfaction with the Training & Development program	Semiannually	

**RECRUITMENT & RETENTION (CONTINUED)**

Metric ID	Name	Timing	Notes
RR-6	90 percent of participants report a high level of overall satisfaction with training	Quarterly	
RR-7	Increase share of internal hires	Annually	
RR-8	Reduce turnover rate among attorneys	Quarterly	
RR-9	Reduce turnover rate among investigators	Quarterly	

STATE BAR COURT**Metric Focus:** Efficiency, Time Cycle

SBC-1	Maintain State Bar Court annual caseload clearance rate of at least 1.0 or above	Monthly	
SBC-2A	90 percent of Hearing Department cases reach final outcome within timeline requirements	Monthly	
SBC-2B	100 percent of Hearing Department cases reach final outcome within 150 percent of timeline requirements	Monthly	
SBC-2C	90 percent of Review Department cases reach final outcome within timeline requirements	Monthly	
SBC-2D	100 percent of Review Department cases reach final outcome within 150 percent of timeline requirements	Monthly	
SBC-2E	All effectuation cases processed within established timeline requirements	Monthly	
SBC-3A	Case disposition: median	Monthly	
SBC-3B	Case disposition: 90th percentile	Monthly	

**STATE BAR COURT (CONTINUED)**

Metric ID	Name	Timing	Notes
SBC-4A	Number of petitions seeking review	Semiannually	
SBC-4B	Number of petitions granted	Semiannually	
SBC-4C	Number of petitions denied	Semiannually	
SBC-4D	Number of remands	Semiannually	

COMMUNICATIONS

Metric Focus: Outreach (Brand Image, Public Perception), Customer Satisfaction

SCSE2	90 percent of stakeholders report a high level of overall satisfaction with quality of internal communications	Annually	
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