



# The State Bar of California

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## **OPEN SESSION AGENDA ITEM 701 JULY 2021**

**DATE:** July 23, 2021

**TO:** Members, Board of Trustees

**FROM:** Ron Pi, Principal Analyst, Office of Research & Institutional Accountability  
Dag MacLeod, Chief of Mission Advancement & Accountability Division

**SUBJECT:** Report on Office of Chief Trial Counsel Workload Study

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### **EXECUTIVE SUMMARY**

This agenda item updates the Board of Trustees on the development of revised workload estimates for the Office of Chief Trial Counsel (OCTC) and seeks the support of the Board of Trustees to pursue new statutory case-processing goals that would be used to finalize the workload study.

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### **BACKGROUND**

#### **THE 2018 WORKLOAD STUDY**

The State Bar's 2017–2022 Strategic Plan directed staff to develop and implement “transparent and accurate reporting and tracking of the health and efficacy of the discipline system,” including “(a) an updated workload study for [the Office of Chief Trial Counsel] OCTC; (b) identification of staffing and resource needs based on the results of that study” (strategic goal 2b). After conducting a workload study from late 2017 through early 2018, staff presented a report with the results from the study to the Board of Trustees at their meeting on September 13, 2018.

The key finding of that study was that OCTC needed an additional 58 positions relative to those budgeted for the office at the time. The estimated need for additional staff in OCTC served as the foundation for State Bar advocacy for a fee increase in 2019. The California State Auditor (CSA), in assessing the need for a fee increase at the State Bar, cited the workload study's estimates favorably but went on to note that “Although we agree that the trial counsel's office

needs additional staff, recent and planned procedural changes related to the trial counsel's office may affect its staffing needs." As a result, the CSA ultimately recommended the addition of 19 new positions in 2020 followed by a reassessment of OCTC's needs.<sup>1</sup>

At the same time that the CSA was evaluating whether the State Bar needed a fee increase to add positions to OCTC, the Legislative Analyst's Office (LAO) was also tasked with evaluating the same question. The LAO report on the merits of a fee increase also cited the workload study's estimate of a need for 58 additional positions in OCTC, but took a slightly different approach in its critique of that finding.<sup>2</sup>

The LAO report asserted that the workload study would have produced more accurate estimates of the need for staff in OCTC if the study had used a methodology similar to the workload models used in the Superior Courts in California. Specifically, the LAO report criticized the State Bar's 2018 workload study for relying on data showing the historic relationship between staffing levels and case-processing times to adjust case weights to arrive at an estimate of the additional number of staff needed. In addition, the LAO report proposed that the State Bar employ differentiated case weights—different workload estimates for different types of cases—rather than using a single case weight for all types of cases.

### **The 2021 Workload Study – Methods and Implementation**

Plans to address these issues by reassessing the workload in OCTC in 2020 were put on hold following the outbreak of the COVID-19 pandemic. In early 2021, staff determined that the need for updating the workload model outweighed the challenges associated with studying workload during a period when almost all staff were working remotely. Indeed, whereas staff viewed remote work as an aberration in 2020—something that would make a study during the pandemic unreliable—it appears increasingly likely that a much greater share of staff will continue to work remotely beyond the pandemic. Taking this into account, a workload study under these conditions would be both viable and valuable by capturing information on staff productivity during remote work.

Working closely with OCTC leadership, staff in the Office of Research & Institutional Accountability (ORIA) revised the workload study to take into account a number of critical operational changes and to address the concerns raised by the LAO. Task lists used to track work by staff were updated to capture additional information on cases in OCTC's inventory and work associated with the case management system, Odyssey, which was implemented after the previous workload study had concluded.

Workload evaluation generally begins with the collection and analysis of *descriptive* data on an organization's work and the resources available to complete that work. Only after producing accurate estimates of the *existing* amount of work per employee is it possible to then adjust the

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<sup>1</sup> See California State Auditor, "State Bar of California: It Should Balance Fee Increases with Other Actions to Raise Revenue and Decrease Costs," Report 2018-030, April 2019.

<sup>2</sup> See Legislative Analyst's Office, "The California State Bar: Considerations for a Fee Increase," June 26, 2019.

estimates to assess the resources that *would be* needed to achieve certain goals, such as providing enhanced services or reducing the amount of time required to process cases.

In OCTC, the work is defined by the cases processed, and the resources available for that work are the teams of attorneys, investigators, and support staff. By assessing the total volume of work and the total resources available for processing the work, it is possible to arrive at an estimate of the amount of work per staff. For example, in a simplified model, if OCTC closed 10,000 cases with 100 staff in a given year, we could easily see that, on average, each employee in OCTC processed 100 cases.

There are obvious deficiencies with the simplified workload model as presented here—among which is the fact that neither OCTC’s work or the staff needed to process the work is an undifferentiated mass. Different types of cases follow different case-processing paths and require different amounts and types of staff resources to process. Nonetheless, the simplified model is useful for understanding workload evaluation because, even when more detailed data are collected to isolate the specific types of resources needed to process specific types of cases, the starting point remains a description of the average resource currently used to process cases.

### The 2021 Workload Study – Findings

Staff in the ORIA evaluated case-processing data over the previous five years in OCTC to determine whether there were categories of filings that were sufficiently stable to be used for creating case weights. One of the reasons why the 2018 workload study used a single, aggregate, case weight rather than creating differentiated case weights, is because OCTC’s work is dominated by a single case type. Original matters, also known as complaining witness, or CW cases, make up almost 80 percent of the total volume of case filings.

**Table 1. Five broad categories of cases plus an “other” category meet the requirements for creating differentiated case weights.**

#### Case Dispositions per Year

	Original Matter	NA/ UPL	RA-Bank	Criminal Conviction	Violation*	Other	Total
2015	13,550	695	2,188	313	138	833	17,717
2016	12,976	975	2,157	266	118	709	17,201
2017	11,938	649	1,978	309	105	628	15,607
2018	12,536	684	1,915	271	136	714	16,256
2019	13,452	934	1,750	332	101	590	17,159
2020	13,729	898	1,486	1,016	92	640	17,861
<b>3-Year Average 2018–20</b>	<b>13,239</b>	<b>839</b>	<b>1,717</b>	<b>540</b>	<b>110</b>	<b>648</b>	<b>17,092</b>

\* Disciplined respondents in violation of conditions of reproof, probation, or rule 9.20.

As shown in table 1, the analysis of case dispositions established that OCTC’s work can be usefully divided into five categories of cases that are processed in a large enough volume and share sufficiently similar characteristics to lend themselves to the estimation of case weights. A sixth, catch-all, “other” category is used for cases that are filed so infrequently that it prevents the accurate estimation of individual case weights.

To build stability into the model, the disposition data are averaged over three years. This dampens the impact of one-time fluctuations in dispositions that would otherwise make the model too volatile.

To capture information on the allocation of resources across these different case types, ORIA conducted a time study of OCTC staff. Over two weeks in mid-March, all OCTC staff were sent two brief surveys per day asking essential information about case processing, including, as a threshold question, whether they were working on a case at the time and if so the type of case. To use case volume as a workload driver, staff time spent on training, in meetings, or on other activities not directly related to the processing of specific cases needs to be subtracted from the estimate of resources available for case processing.

A total of 5,420 surveys were distributed to 271 OCTC staff and 4,486 valid responses were returned for a response rate of 83 percent.<sup>3</sup> With the data on staffing categorized by case type, it becomes possible to develop preliminary case weights—an estimate of the relative workload required for different case types. The value of case weighting can be seen in table 2, which shows how the volume of case dispositions differs from the allocation of staff resources.

**Table 2. Looking at the allocation of staff by case categories allows for a preliminary estimate of the weight to assign to different case types.**

Case Type	Cases Closed per Year		Staff Resource Allocation		Staff-to Case-Ratio
	N	%	N	%	
Original	13,239	77.5	201	74.3	0.96
RA-Bank	1,717	10.0	8	2.9	0.29
NA/UPL	839	4.9	21	7.8	1.60
Conviction	540	3.2	15	5.6	1.79
Other	648	3.8	20	7.4	1.95
Violations	110	0.6	5	1.9	3.01
<b>Total</b>	<b>17,092</b>	<b>100.0</b>	<b>271</b>	<b>100.0</b>	

<sup>3</sup> The Office of Case Management & Supervision (OCMS, formerly the Office of Probation) had seven staff members participating in the study, providing responses at a rate of nearly 100 percent. Due to the small sample size of 139 responses, however, the data for OCMS will require more careful analysis to determine its statistical validity and may require supplemental data to construct case weights.

Looking, for example, at the staff-to-case ratio in the far right-hand column of table 2, you can see that the staff time spent processing original matters is roughly proportional to the volume of original-matter cases that are closed each year: 77.5 percent of the caseload is made up of original-matter cases, while 74.3 percent of OCTC staff time is spent processing original-matter cases. If all ratios of staff to case showed a similar correspondence, then creating differentiated case weights would produce little value in assessing resource allocation.

Comparing the staff-to-case ratios of other case types, however, shows that there are significant differences between the resources allocated to process cases and the volume of cases. Although reportable action bank (RA-Bank) cases make up 10 percent of OCTC's total caseload, less than three percent of OCTC staff time is spent working on these cases. Conversely, while violations make up barely one-half of one percent of OCTC's total caseload, 1.9 percent of OCTC staff time is spent working on these cases.

Viewed comparatively, this descriptive assessment of OCTC workload provides important information regarding the *relative* weights to assign to different types of cases. Specifically, RA-Bank cases, on average, appear to require only about one-third of the amount of staff time needed to process original-matter cases, while violation cases, in contrast, require more than three times as much staff time as original-matter cases.

When these proportions are multiplied by the amount of time available to staff in OCTC and then divided by the case volume in each case category, the relative values can be used to estimate the average amount of time that staff spend processing each type of case. It should be noted that the amount of time available for case processing is not as straightforward a calculation as it may appear at first glance. The time that staff spend in trainings or meetings unrelated to case processing, vacation time, and sick leave, all decrease the total amount of time that staff have available for case processing. The current workload model is based on a staff-year value of 1,666 hours.

The case weights, then, are calculated using the following formula

$$\frac{A \times B}{C} = \text{minutes or hours required to process a case}$$

where:

- A = Staff year value, including the total amount of time, in minutes or hours, available in a year to perform the work;
- B = Staff time allocated across different activities, case types, and other relevant case and process characteristics;
- C = Total volume of cases, grouped by the same case types and categories as staff time, to be processed within a year.

With the data organized properly, it is possible to use this formula to evaluate resource allocation not only in terms of different case types, but also in terms of specific tasks that staff work on and for different phases of case processing. For example, table 3 below shows the total case weight for each of the major case types in the far right-hand column. The table also shows the contribution of individual staff classifications to the total time estimates.

**Table 3. Descriptive case weights show the total number of hours spent, on average, per case closed in OCTC.**

Case Type	Average Number of Hours Spent per Case Closed				Total
	Attorney	Investigator	Support Staff	Supervisor Manager	
Original	7.1	8.7	7.0	2.2	25
RA-Bank	3.0	0.6	3.7	0.7	8
NA/UPL	7.0	11.4	22.9	4.0	45
Conviction	16.2	0.5	28.2	4.4	49
Other	22.3	12.1	12.9	4.6	52
Violations	33.6	0	38.2	7.0	79

### **Estimating Staff Need Based on Current Staff Resources and Allocation**

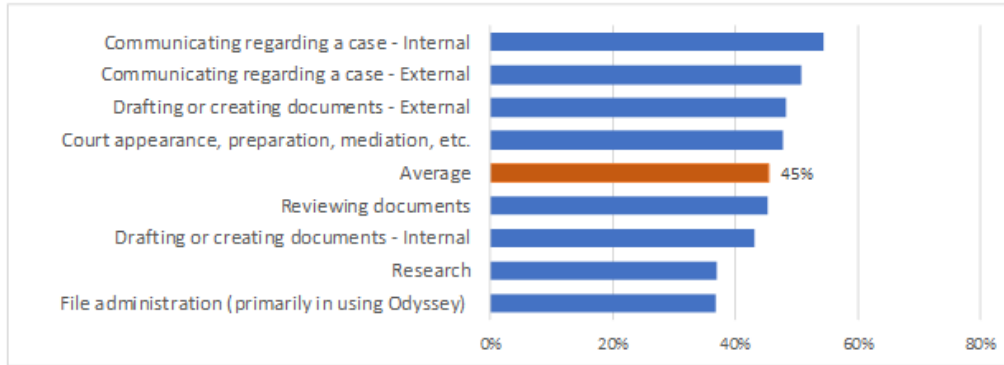
Moving from estimates of the amount of time currently required for case processing to an estimate of the number of staff needed for case processing requires additional data beyond the descriptive allocation of staff time in case categories. The LAO report critiquing the previous workload estimates pointed to the LAO's preference for the method used by the Judicial Council for adjusting case weights: structured focus groups with staff to determine where the time-study estimates could be adjusted.

This type of focus group is often preceded by surveys of staff to collect data on where they believe more resources are needed. Anticipating this, the 2021 time study included a series of questions related to staff perception of the adequacy of time available for specific tasks necessary for case processing. Staff were asked whether, during the previous year, they felt that they had sufficient time to perform specific tasks adequately and were given a five-point scale of answer options ranging from "not at all" to "always." The results of this component of the time study are shown below in figure 1.

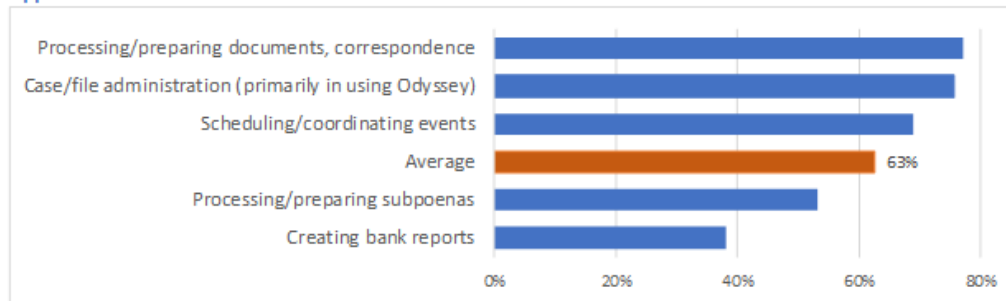
**Figure 1. On average, less than half of attorneys and investigators indicated that they “always” or “often” had sufficient time to process their work adequately while almost two-thirds of support staff felt that they had sufficient time.**

**Percent of respondents answering “always” or “often” to the question of whether they have sufficient time to adequately perform the tasks listed:**

**Attorneys and Investigators**

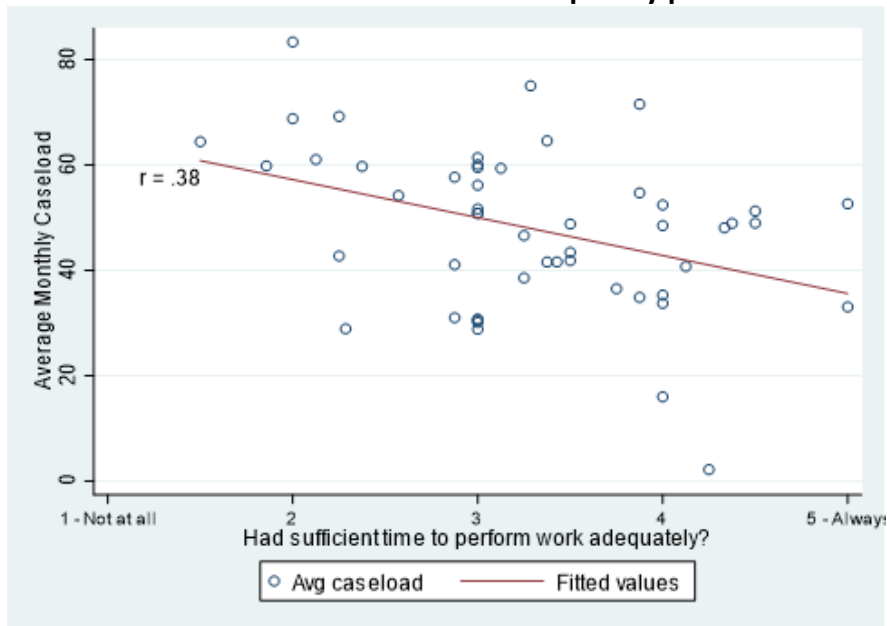


**Support Staff**

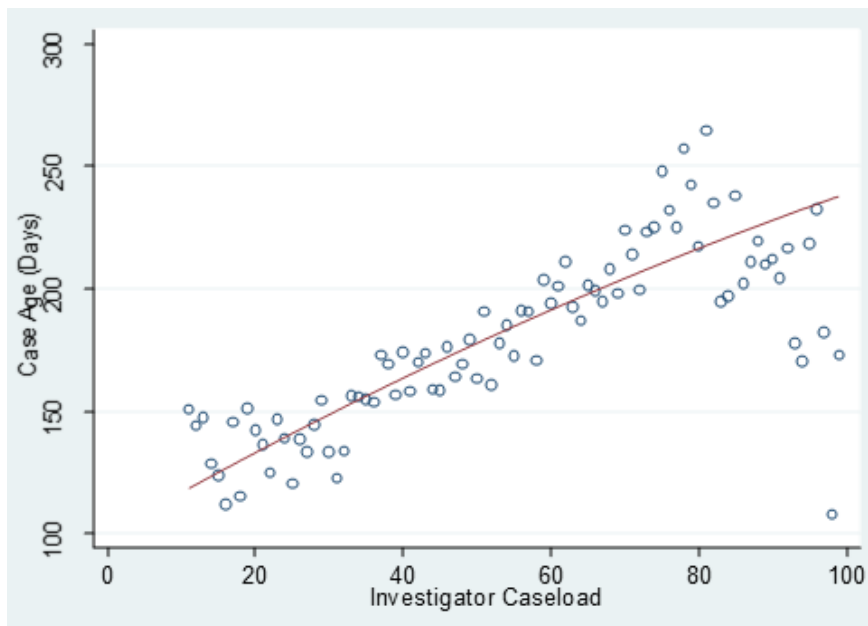


To validate the staff responses regarding the adequacy of time available for case processing, these survey ratings were compared to the actual caseloads of investigators over the previous year. Figure 2 shows a scatter plot of this relationship. Each dot in figure 2 represents an OCTC investigator. The location of each dot is determined by the average end-of-month caseload on the vertical axis and the investigator’s assessment of the adequacy of time on the horizontal axis. The downward sloped line in figure 2 shows the correlation between the two measures; and indicates that investigators who had a higher caseload, generally more than 50 on average per month, are more prone to rate the time sufficiency questions below the mid-point on the 5-point scale.

**Figure 2. Higher average caseloads are negatively correlated with ratings of the sufficiency of time to adequately process cases.**



In addition to the negative correlation between caseloads and assessments of the sufficiency of time, the workload analysis also looked at the operational impact of higher caseloads. This impact appears to be most pronounced on the age of pending cases, as shown in figure 3. The upwardly sloped line points to a strong, positive correlation between an investigator's caseload and the age of pending cases in the investigator's inventory. A regression analysis of this data indicates that an increase of each additional case in an investigator's caseload is associated with an average increase of 1.4 days in the age of the cases in the investigator's inventory.





## DISCUSSION

### NEXT STEPS

While the 2021 workload study has documented the allocation of existing resources by case type and established a foundation for adjusting the case weights, the exact rationale for making adjustments is less clear than it was in 2018. In 2018, the statutory backlog standard of processing cases within 180 days was the goal that OCTC was seeking to achieve. Data on the relationship between staffing levels and the time to disposition of cases was used to adjust case weights. Since then, OCTC leadership has demonstrated that the backlog target of 180 days creates perverse incentives for individual staff and the office as a whole by focusing resources on the oldest cases in inventory, regardless of the potential harm that they pose to consumers of legal services.

In its 2021 report on the State Bar, the CSA recommended various revisions to the Business and Professions code sections that reference backlog and also recommended that the State Bar:

- Develop and recommend an appropriate backlog measure and goal as required by state law—including the number of days at which a case should be added to the backlog, as well as a goal for the number of cases in backlog;
- Determine the staffing level necessary to achieve that goal, as required by state law;
- Work with the Legislature to establish this backlog measure and goal, and revise its reporting requirements accordingly. If necessary, it should also request the additional resources required to meet the goal.<sup>4</sup>

With the completion of the current phase of research on the workload study, State Bar staff are prepared to move forward on the second of these recommendations—determining staffing levels—but need for the first recommendation to be completed in order to proceed.

State Bar staff have engaged in discussions with legislative staff about eliminating the statutory 180-day backlog target and replacing it with a range of case-processing time standards modeled on the time standards used in the Superior Courts in California. Once a new target is established, staff can then assess the relationship between these targets and OCTC resources and adjust the case weights to produce a new estimate of staffing need.

Therefore, staff are seeking the approval of the Board of Trustees to move forward in conversations with the Legislature to establish new statutory targets for case processing. As noted above, the framework of the targets would be consistent with case-processing standards used by the Superior Courts and codified in Standards of Judicial Administration that establish a target percentage of cases to be disposed within specific time frames.

ORIA has evaluated disposition times in OCTC and found that the following time frames would be realistic for OCTC to meet as long as it is understood that there will always be some cases that fall short of a 100 percent time goal:

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<sup>4</sup> See California State Auditor, “State Bar of California: It Should Balance Fee Increases with Other Actions to Raise Revenue and Decrease Costs,” Report 2018–030, April 2019, page 19.

- 50% of cases disposed by three months
- 75% of cases disposed by seven months
- 90% of cases disposed by 12 months
- 100% of cases disposed by 24 months

## **FISCAL/PERSONNEL IMPACT**

None

## **AMENDMENTS TO RULES OF THE STATE BAR**

None

## **AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL**

None

## **STRATEGIC PLAN GOALS & OBJECTIVES**

Goal: 2. Ensure a timely, fair, and appropriately resourced admissions, discipline, and regulatory system for the more than 250,000 lawyers licensed in California.

Objective: b. Develop and implement transparent and accurate reporting and tracking of the health and efficacy of the discipline system, and measures to improve the fairness and efficacy of the discipline system to include: (a) an updated workload study for OCTC; (b) identification of staffing and resource needs based on the results of that study.

## **RECOMMENDATIONS**

**Should the Board of Trustees concur in the proposed action, passage of the following resolution is recommended:**

**RESOLVED**, that the Board of Trustees approves the proposed case-processing time standards and directs staff to work with the legislature to replace the existing 180-backlog standard with these case-processing time standards, and it is

**FURTHER RESOLVED**, that the Board of Trustees directs staff to return with updated staffing recommendations once a new time standard has been adopted.

## **ATTACHMENT(S) LIST**

None