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Report Number: 2017-030

## The State Bar of California

It Needs Additional Revisions to Its Expense Policies to Ensure That It Uses Funds Prudently

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# Summary

## HIGHLIGHTS

Our review of the State Bar's expenses—salaries and benefits, travel, catering, lobbying activities, outside legal counsel— and funding for its attorney discipline system, revealed the following:

- Although the State Bar has revised its expense policies to help ensure the prudent use of its funds, it still lacks effective controls to verify that its expenses are reasonable and appropriate.
- The State Bar has not conducted an in-depth update of its job classifications since 2000 and, until recently, had not reviewed its compensation against comparable agencies since 2006.
  - Most full-time employees (80 percent) work a 36.25-hour workweek.
  - After adjusting to a 40-hour workweek, it pays base salaries that average 10 percent above the market median for comparable agencies.
  - It provides more generous health care benefits to its nonrepresented employees than its represented employees.
- The State Bar lacks a process to demonstrate that it only assigns purchasing cards to appropriate staff and has no process for documenting changes to credit limits.
- It could further decrease its catering costs by aligning its policies with those of the State's Executive Branch.
- Because it does not require the two lobbyists it contracts with to justify the amounts they bill, the State Bar may be paying more than necessary—it paid \$768,000 for lobbying activities from 2014 to 2016.

- Although the State Bar reduced its costs for outside legal services, it has not formalized its process to demonstrate its need for and selection of outside counsel.
- Because of a lack of resources, its attorney discipline system has struggled historically to promptly resolve all the complaints it receives, potentially delaying the timely discipline of attorneys who engage in misconduct.

## Results in Brief

The state constitution requires that every person licensed to practice law in California belong to the State Bar of California (State Bar). Supported primarily by member fees from its more than 260,000 members, the State Bar licenses and regulates individuals practicing law in California. State law requires the State Bar to contract with the California State Auditor to audit the State Bar's operations every two years, but it does not specify the topics that the audits should address. Over the past year, the Legislature has questioned the State Bar's operational structure and the prudence of some of its expenses. For this audit, we focused on the appropriateness of the State Bar's expenses, including salaries and benefits, travel, catering, lobbying activities, and outside legal counsel, as well as the adequacy of funding for the State Bar's attorney discipline system.

Although the State Bar has revised its expense policies to help ensure the prudent use of its funds, it still lacks effective controls to verify that its expenses are reasonable and appropriate. We reviewed the six categories of expenses listed above from 2014 through 2016 and found that all six categories lacked sufficient management controls to ensure that costs were prudent. For example, although salaries and benefits made up 51 percent of its total expenses in 2016, the State Bar has not conducted an in-depth update of its job classifications since 2000 and, because it lacks a compensation policy, the State Bar had not until recently reviewed its compensation against comparable agencies since 2006. In response to a 2016 state law requiring it to obtain a compensation and benefit study of those classifications required to conduct disciplinary activities, the State Bar retained an outside consultant—CPS HR Consulting (consultant)—to perform an agencywide total compensation study.

In its April 2017 compensation study, the consultant noted that 80 percent of the State Bar's full-time employees work a 36.25-hour workweek, making the State Bar an outlier among the 40-hour workweeks of comparable agencies. To compare the State Bar's salaries with those of comparable agencies it identified, the consultant converted the State Bar's monthly salaries to a 40-hour workweek equivalent. The consultant found that for the selection of job classifications it reviewed, the State Bar pays base salaries that average 10 percent above the labor market median for comparable agencies—including local governments and the State's Judicial and Executive branches. The State Bar is currently negotiating with its employees represented by an employee union (represented employees) to adopt the consultant's salary and classification recommendations. It is also transitioning staff from a 36.25-hour workweek to a 40-hour workweek.

The consultant also identified that the State Bar provides more generous health care benefits to its nonrepresented employees than to its represented employees. The State Bar currently pays 100 percent of the health care premium costs for nonrepresented employees compared to the 80 percent of premium costs it pays for its represented employees. Moreover, the State Bar provides its executive management with lifetime post-retirement medical benefits, which it does not offer to other staff. According to the compensation study, the State Bar's enhanced health care coverage for nonrepresented employees is more generous than the health care coverage at comparable agencies. The State Bar plans to standardize health care benefits for all its employees beginning January 2018, but it will continue to provide lifetime post-retirement medical benefits for executive employees.

Our review of 90 State Bar expenses from 2014 through 2016 concluded that the State Bar could improve its policies and controls over these expenses. For example, although the State Bar assigns purchasing cards to nearly 38 percent of its employees, with monthly credit limits ranging from \$5,000 to \$75,000, it lacks a process to demonstrate that it only assigns purchasing cards to appropriate staff and has no process for documenting changes to credit limits. Specifically, we found eight instances in which the State Bar's records reflected that employees' monthly credit limits ranged from \$5,000 to \$20,000, while the bank showed all their limits being set at \$75,000. With no documentation for these changes, we could not determine whether the increased credit limits were authorized by the State Bar as necessary.

Until late 2016, the State Bar's policies allowed staff to purchase alcohol for events and meetings. In response to scrutiny from the Legislature, the State Bar identified alcohol purchases totaling \$156,900 for events, meetings, and meals between January 2015 and September 2016. Subsequently, the State Bar's board of trustees (board) prohibited all State Bar spending on alcohol as of January 2017. However, the State Bar has not updated its procurement manual to reflect the board's prohibition on alcohol purchases. To demonstrate its commitment to the board's decision, the State Bar should immediately update its procurement manual to prohibit staff from purchasing alcohol for events and meetings.

Although the State Bar also recently imposed limits on its catered meals, it could further decrease its costs by aligning its policies with those of the State's Executive Branch. In November 2016, the State Bar analyzed its catering costs and determined that it could have saved \$54,000 from January 2015 through September 2016 had it implemented the State's Executive Branch per diem rates. Although the State Bar recently placed a limit of \$55 per person per day on catering costs at its San Francisco office, this is still more generous than the limit of \$41 per day for the State's Executive Branch.

Further, the State Bar should take steps to align the expense practices of its sections with the State Bar's policies. The sections are voluntary organizations of attorneys and associates who share a professional area of interest and offer educational programs to their members in various fields of law. Current legislation proposes separating the sections from the State Bar and turning them into a private, nonprofit entity. Notwithstanding this proposal, the State Bar has indicated that the sections currently must comply with the same policies that State Bar staff follow for travel, the use of purchasing cards, contracting, and business expenses. However, our review of the State Bar's updated policies and procedures revealed that the State Bar allows the sections to provide less justification for booking off-site events than it requires of State Bar staff. The costs for the sections' events are significant: from 2014 through 2016, the sections spent \$4.3 million on catering for these events. Further, we found that the sections frequently paid costs for hotel rooms that exceeded the State Bar's lodging rate in its travel policy. Specifically, among the 15 hotel expenses we reviewed, \$15,800 was for charges that exceeded the State Bar's lodging rate by amounts ranging from \$4 to \$330 per night. Regardless of whether the sections separate from the State Bar, there is a need for controls and limits over expenses to ensure a prudent use of funds.

Just as it should improve and better implement its spending policies, the State Bar should develop stronger policies governing its contracts with lobbyists. Although the State Bar's contracts with two lobbyists comply with legal and statutory restrictions related to its funding of lobbying activities, the State Bar may be paying more than necessary for its lobbyists because it does not require them to justify the amounts they bill, which totaled \$768,000 from 2014 to 2016. The State Bar is renewing its contracts for both lobbying firms. However, the State Bar indicates the new contracts will continue to allow the lobbyists to submit invoices that do not detail their monthly activities. As a result, the State Bar is missing an opportunity to ensure that its spending for lobbying is reasonable and to require that the lobbyists provide an explanation of their activities on the monthly invoices.

Although the State Bar reduced costs related to its contracts with outside legal counsel, it could make its justification for these contracts more transparent. Specifically, the State Bar reduced its

costs for hiring outside counsel from \$808,000 in 2014 to \$356,000 in 2016; however, it uses an informal process to demonstrate both its need to hire outside counsel and its process for selecting these law firms. State Bar rules allow it to contract with outside counsel when its members lack the necessary expertise in a particular area of law. In addition, the State Bar is required to use outside counsel when it has a conflict in the matter, such as when current or former employees sue the State Bar. Contracts for legal services are generally exempt from the competitive bidding requirements of the Public Contracting Code. Nevertheless, because of its informal selection process, we were unable to verify whether the State Bar needed its contracts with outside legal counsel, whether the selected firms were the most qualified, or whether the terms of the contracts themselves were reasonable.

Finally, state law defines the State Bar's highest priority as protecting the public from attorney misconduct, but its attorney discipline system has struggled historically to promptly resolve all the complaints it receives, potentially delaying the timely discipline of attorneys who engage in misconduct. Specifically, the State Bar's attorney discipline system has a persistent case backlog—generally defined as cases open for more than 180 days as of December 31 each year. Although the State Bar previously identified a lack of resources in the attorney discipline system as a major reason for this backlog, the State Bar has been unable to obtain the needed resources. In May 2016, the State Bar estimated that it would need an additional 81 staff, at an annual cost of \$9.9 million, for its attorney discipline system to successfully eliminate its case backlog. In September 2016, the State Bar attempted to obtain an additional revenue assessment to bolster its attorney discipline system, but the Supreme Court of California denied this request. The State Bar did budget an increase of 14 positions and \$3.4 million in funding for its attorney discipline system for 2017 from the 2017 special assessment and internal cost savings. However, the attorney discipline system's staffing and funding levels still fall short of its estimated need. Although the State Bar tracks certain workload data, including the number of complaints received, number of cases closed, and size of its backlog, it lacks goals and metrics that would measure whether the attorney discipline system is achieving its broader mission to protect the public from attorney misconduct.

## Selected Recommendations

To better align its compensation practices with those of comparable agencies, the State Bar should continue its efforts to update and formalize its salaries and benefit policies to bring them in line with comparable agencies.

To ensure that it only assigns purchasing cards to appropriate staff, and to verify that staff use purchasing cards only for allowable and necessary expenses, the State Bar should immediately develop a policy that limits issuing purchasing cards to employees who have a demonstrated business need and should ensure that its records of employees' credit limits reflect those established with the bank.

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.

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.

To make certain that the costs for sections events are reasonable and prudent, the State Bar should require that the sections follow the State Bar's catering and travel policies.

To make certain that its lobbying expenses are reasonable and cover only allowable activities, the State Bar should amend its lobbying contracts to require detailed invoices that support the invoiced amount.

To ensure that it contracts only for appropriate and necessary services from outside law firms at a prudent rate, the State Bar should formalize a policy covering its informal practices of assessing the need for legal services and determining the qualifications and reasonableness of the rates for prospective law firms.

The State Bar should, by December 2017, identify key goals and metrics to measure how well its attorney discipline system is meeting the State Bar's core mission to protect the public from attorney misconduct.

## Agency Comments

In its response to the audit, the State Bar generally agrees with the recommendations in our report, and it has already begun implementing some of them; however, it expressed concerns about certain recommendations.

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