



The State Bar *of California*

State Audit 2022-030

Board of Trustees, May 19, 2022

Identified Deficiencies (Recommendations)

Investigations/Case Closures

- Criteria for nonpublic measures (1)
- Investigation where complainant withdraws or unavailable (2)
- Discipline in other jurisdictions (3 & 4)
- Identifying patterns of complaints (5)

Conflicts of Interest

- Accuracy of information and process for flagging conflicts in case management system (6)
- Checking conflicts prior to case closure (7)

External Audit Process

- Increased independence (8)
- Accountability for implementation of recommendations (8)

CTA Violations and Bank RAs

- Criteria for de minimis closures of bank RAs (9a, 9b, 9c)
- More complete investigations of CTA complaints and bank RAs (9d)
- Resource letters not sent to all subjects of closed bank RAs (9e)



Recommendation 1: Nonpublic Measures

To ensure that it uses nonpublic measures to close complaints only when such use is consistent and appropriate, the State Bar should revise its policies by October 2022 to define specific criteria for which cases are eligible to be closed using nonpublic measures and which are not eligible.

- To Do:
 - Revise policies and procedures for nonpublic measures (alternatives to discipline & private reprovations issued prior to NDC)
 - Specific criteria for eligibility
 - Specific criteria for exercising discretion when eligible



Recommendation 2: Withdrawn Complaints

To ensure that it fulfills its duties to investigate attorney misconduct, by April 2023, the State Bar should begin monitoring compliance with its new policy for identifying the circumstances in which investigators should continue to investigate even if the complainant withdraws the complaint.

- Done:
 - New policy issued February 2022
 - Closing codes in case management system updated
- To Do:
 - System for monitoring compliance (resources needed)



Recommendation 3: Discipline in Other Jurisdictions

The State Bar should notify the public on its website when other jurisdictions determine that an attorney that is also licensed in California presents a substantial threat of harm to the public.

- To Do:
 - Board agenda item for May 2022 re consumer alerts for interim, nonfinal, and final disciplinary actions in other jurisdictions



Recommendation 4: Discipline in Other Jurisdictions

To ensure that it identifies discipline imposed on California attorneys in other jurisdictions, the State Bar should use the American Bar Association's data bank to identify attorneys disciplined in other jurisdictions who do not report that discipline.

- Done
 - OCTC staff have access to ABA data bank
 - OCTC staff receiving notices from ABA data bank when another jurisdiction notifies the ABA data bank of discipline imposed on an attorney identified as also being licensed in CA



Recommendation 5: Patterns of Similar Complaints

To allow its staff to more easily identify patterns of similar complaints made against attorneys, by July 2022, the State Bar should begin using its general complaint type categorizations when determining whether to investigate a complaint.

- Done:
 - New policy issued February 2022
 - General complaint categorization system in place
- To Do:
 - Categorize complaints
 - Mechanism for accessing complaint categorization
 - System for analyzing effectiveness of categorization and use (resources needed)



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Recommendations 6 & 7: Identifying Conflicts

6: To improve its ability to identify and prevent conflicts of interest that its staff may have with attorneys who are subjects of complaints, the State Bar should develop a process by July 2022 for monitoring the accuracy of the information in its case management system used to flag attorneys with whom its staff have declared that they have a conflict of interest.

- Done:
 - Added event to case management system to report on initial conflict check
- To Do:
 - Ensure accurate integration of conflict-of-interest database with case management system
 - System for monitoring accuracy of conflict information in case management system (resources needed)



Recommendations 6 & 7: Identifying Conflicts

7: To ensure that State Bar staff do not inappropriately close cases against attorneys on the conflict list, the State Bar should create a formal process by October 2022 for determining whether it is able to objectively assess whether such a complaint should be closed or whether the decision should be made by the independent administrator. The State Bar should document this assessment in its case files for each case against an attorney on the conflict list.

- To do:
 - New policy re conflicts
 - Checks at assignment and prior to closing
 - Documentation in case management system
 - Additional SDTC referrals/revised procedures (resources needed)



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Recommendation 8: External Review

To ensure the independence and objectivity of the external review of its case files, the State Bar should amend its policies by July 2022 to do the following:

- **Require the external reviewer to select the cases for the semiannual review.**
- **Establish formal oversight to ensure that it follows up and addresses the external reviewer's findings.**

- Done:
 - January 2022 policy formalizing regular RAD review of random audit results and OCTC response
- To do:
 - Revise policy/procedures to provide for external auditor oversight of random case selection
 - System for formal monitoring of and reporting on implementation actions taken in response to random audit (resources needed)
 - Identify/retain additional external auditors without prior connections to OCTC (resources needed)



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Recommendations 9a, b, c: De Minimis Closures

9a: Discontinue its use of informal guidance for review of bank reportable actions and direct all staff to follow the policies established in its intake manual.

9b: Revise its intake manual to disallow de minimis closures if the attorney has a pending or prior bank reportable action or case alleging a client trust account violation.

9c: Establish a monitoring system to ensure staff are following its policies for de minimis closures.

- Done:
 - Use of informal guidance discontinued (9a)
- To Do:
 - New policy for de minimis closures (9b)
 - Revise all closing letters to include resources (9e)
 - System for monitoring compliance (9c) (resources needed)



Recommendations 9d, e: CTA Complaints and Non-de minimis Bank RAs

9d: When investigating client trust account related cases and bank reportable actions not closed de minimis, require its staff to obtain both the bank statements and the attorney's contemporaneous reconciliation of the client trust account, and determine if the relevant transactions are appropriate.

9e: Require a letter with client trust account resources to be sent to the attorney after the closure of every bank reportable action.

- To do:
 - New policy—specific criteria defining situations in which bank statements and attorney reconciliation must be obtained and analyzed before closing (9d)
 - Revise all closing letters to include resources (9e)
 - System for monitoring compliance (resources needed)



Timeline

Done

Policy re withdrawn complaints (2/2022) (2)

Process for using ABA database to ID lawyers disciplined in other jurisdictions (4)

Policy re consideration of closed complaints (2/2022) (5)

Policy re RAD review of random audits (1/2022) (8)

Discontinue use of informal guidance for bank RAs (9a)

July 2022

Consumer alert for disciplinary actions in other jurisdictions (3)

Implement complaint categorization (5)
(resources needed)

Policy/procedures for conflicts checks (6, 7)

Integration of COI database with CMS (6)

Monitor accuracy of conflict information in CMS (6, 7)
(resources needed)

Policy/procedures for external auditor oversight of random case selection (8)

July 2022 (cont.)

Monitor and report on implementation of random audit actions (8)
(resources needed)

Policy re closures of de minimis bank RAs (9b)

Monitor compliance with policy re closures of de minimis bank RAs (9c)
(resources needed)

Policy re investigation of CTA complaints and non-de minimis bank RAs (9d)

Revised closing letters for CTA complaints and bank RAs (9e)

October 2022/ April 2023

October 2022:

Policy re nonpublic measures (1)

Revised procedures for SDTC referrals (7)
(resources needed)

April 2023:

Monitor compliance with policy re withdrawn complaints (2) (resources needed)

