



The State Bar *of California*

State Audit 2022-030

George Cardona, Chief Trial Counsel

Board of Trustees Update Meeting, July 21, 2022

Identified Deficiencies (Recommendations)

Investigations/Case Closures

- Criteria for nonpublic measures (3)
- Investigation where complainant withdraws or unavailable (4)
- Discipline in other jurisdictions (5 & 6)
- Identifying patterns of complaints (7)

Conflicts of Interest

- Accuracy of information and process for flagging conflicts in case management system (8)
- Checking conflicts prior to case closure (9)

External Audit Process

- Increased independence (10)
- Accountability for implementation of recommendations (11)

CTA Violations and Bank RAs

- Criteria for de minimis closures of bank RAs (12, 13, 14)
- More complete investigations of CTA complaints and bank RAs (15)
- Resource letters not sent to all subjects of closed bank RAs (16)



Timeline (as of Last Update—May 19, 2022)

Done

Policy re withdrawn complaints (2/2022) (4)
Process for using ABA database to ID lawyers disciplined in other jurisdictions (4/2022) (6)
Policy re consideration of closed complaints (2/2022) (7)
Policy re RAD review of random audits (1/2022) (11)
Discontinue use of informal guidance for bank RAs (12)

July 2022

Consumer alert for disciplinary actions in other jurisdictions (5)
Implement complaint categorization (7)
Policy/procedures for conflicts checks (8, 9)
Integration of COI database with CMS (8)
Monitor accuracy of conflict information in CMS (8, 9)
Policy/procedures for external auditor oversight of random case selection (10)

July 2022 (cont.)

Monitor and report on implementation of random audit actions (11)
Policy re de minimis closures of bank RAs (13)
Monitor compliance with policy re de minimis closures of bank RAs (14)
Policy re investigation of CTA complaints and non-de minimis bank RAs (15)
Revised closing letters for CTA complaints and bank RAs (16)

October 2022/ April 2023

October 2022:

Policy re nonpublic measures (3)
Revised procedures for SDTC referrals (9)

April 2023:

Monitor compliance with policy re withdrawn complaints (4)



Actions Since Last Update

- The State Bar submitted its 60-Day update on implementation of recommendations to the State Auditor (June 10, 2022) and responded to follow-up questions posed by the State Auditor
- OCTC implemented policy/procedures requiring conflict checks by investigators and attorneys at case assignment and closing (June 1, 2022)
- IT completed its work to integrate the COI database with CMS and check the accuracy of conflict flags in CMS (June 30, 2022)
- OCTC revised its closing letters for CTA complaints and bank RAs to include resource information (as of June 30, 2022)
- OCTC issued an updated policy that precludes de minimis closures of bank RAs if the attorney has a pending or prior (within the last two years) bank RA or CTA-related complaint (July 7, 2022)
- OCTC issued an updated policy for external auditor oversight of random case selection and OCTC reports to the Board on actions taken in response to random audit recommendations (July 18, 2022)
- After discussion with legislative staff and the State Auditor, as of August 1, 2022, the State Bar will be implementing a pilot program regarding the auditor's recommendations regarding investigations of non-de minimis bank RAs and CTA-related complaints



Bank RA and CTA Case Filings

Bank Reportable Action					
Count of Case	Year Closed				
Stage	2017	2018	2019	2020	2021
Closed in Intake	1,916	2,068	1,512	1,206	886
Investigation or Beyond	160	171	169	217	198
Total	2,076	2,239	1,681	1,423	1,084

Client Trust Account Numbers					
Count of Case	Year Closed				
Stage	2017	2018	2019	2020	2021
Closed in Intake*	361	342	257	157	164
Investigation or Beyond	730	885	728	772	679
Total	1,091	1,227	985	929	843



Caseload Impact Scenarios

TOTAL NEW CASES IN INVESTIGATION

- Three-year* average number of RA's that end at the intake stage (N=1832)
- 80% of RAs are non de-minimis (N=1465)
- 20% of RAs are de-minimis, of which 60% had a prior violation (N=220)

The total number of additional RA cases for investigation is **1685**.

The total number of additional CTA cases for investigation is **320**.

PILOT PROPSAL

- Random sample of RA and CTA's assigned to Pilot Unit
- Remainder receive Status Quo treatment
- Pilot Unit treatment = State Auditor recommendations
- Goals of pilot:
 - Validity of underlying assumptions regarding cases requiring investigation
 - Identification of Staffing needs

* We focus on the three pre-pandemic years (2017, 2018, 2019) for these metrics.



Pilot FTE Needed

- Eligible Cases: additional RA and CTA cases moving to investigation = **2,005** (1685+320)
 - 360 to be assigned to Pilot Unit
 - Remainder to receive Status Quo treatment
- Average current caseload number per investigator is 87:
 - Pilot Unit investigator need **4** (will serve appx 18% of Eligible Cases or $4 \times 90 = 360$)
- For the estimation of other staffing needs, apply 2022 staffing ratios:
 - 1 investigator: 1.98 other staff (attorneys, paralegals, legal secretaries, etc.)
 - 8 additional staff needed

Grand Total Additional Staff Needed for Pilot Unit: **12**

Research and Evaluation Support: additional .5 research staff needed to support pilot implementation and evaluation



Additional FTE Needed: Detail

Staff Category	Pilot Unit
Investigator	4
Attorney	4
Paralegal	2
Staff Secretary	
Admin Support	2
Principal Analyst	.5
Total	12.5

Pilot Unit Cost

Classification	FTE	Salary (midrange) + Benefits
Investigator	4	\$508,771
Attorney	4	\$705,905
Paralegal	2	\$211,831
Staff Secretary		
Admin Support	2	\$193,273
Principal Analyst	.5	\$88,535
Subtotal	12.5	\$1,708,316,
Overhead (HR, IT, OGC, space, etc.)		\$216,000
Total		\$1,924,316



Pilot Design



- Identification of all Eligible Cases
 - Random assignment to Pilot Unit or Status Quo
- Study differences in:
 - Average time spent in investigation by case type (RA or CTA) and by number of prior violations (N=1-5, 6-10, 11+)
 - Percent of cases that end up with 1) no violation; 2) low-level violation; 3) substantial violation (charging)
 - Percent of cases that end with different discipline actions
- Disaggregate discipline outcome data at different stages by subgroups based on a variety of demographic characteristics
- Final analysis of case load per investigator and per attorney for an adjusted estimation based on the results of the pilot study



Timeline

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Policy re RAD review of random audits (1/2022) (11)

Discontinue use of informal guidance for bank RAs (4/2022) (12)

Done

Policy re conflict checks at assignment and closure (6/2022) (8, 9)

Integrate COI database with CMS and monitor accuracy of conflict flags in CMS (6/2022) (8)

Policy/process for external auditor oversight of random case selection and report on implement random audit actions (7/2022) (10, 11)

Policy re de minimis closures of bank RAs (7/2022) (13)

Revised closing letters for CTA complaints and bank RAs (6/2022) (16)

Pending

Consumer alert for disciplinary actions in other jurisdictions (7/2022) (5)

Operational report to implement complaint categorization (7/2022) (7)

Implementation of pilot project for bank RAs/CTA complaints (15)

Subsequent

August 2022 to January 2023: Pilot project for bank RAs/CTA complaints (14, 15)

October 2022: Policies/procedures re nonpublic measures (3)

Revised procedures for SDTC referrals (9)

April 2023: Monitor compliance with policy re withdrawn complaints (4)

