



*The State Bar of California*

# SB 211 Case Processing Standards Development Update

**Yun Xiang, Chief Mission Officer**  
**George Cardona, Chief Trial Counsel**

Board of Trustees, September 22, 2022

**“The case processing standards shall take into account all relevant factors, including but not limited to...”**

**B&P 6094.5(b)(1)**

### **Mechanics of the discipline process**

- Intake, Investigation, Charging

### **Complexity of cases**

- Complex vs Noncomplex

### **Risk to public protection (RPP)**

- Higher-RPP v Lower-RPP
- Including multiple complaints against the same attorney

### **Reasonable expectations of the public for resolution of complaints**

- Public Survey
- Solicit Public Comment



## SB 211: Areas Standards Must Reflect

**“The case processing standards shall be based on and reflect all of the following...”**

**B&P 6094.5(b)(1)**

- Consultation with state and national experts on attorney discipline
- Reports from the Legislative Analyst's Office
- Reports from the California State Auditor
- Review of case processing standards in at least five other states (both large and small)



# Updates to Case Processing Standards Framework

## May

- Review of LAO and Auditor Reports
- Six States' Comparison
- Public Survey Results

## July

- Review of ABA State Comparison Data
- Experts' Opinions
- Focus Group Results

## September (Current)

- Case Processing Standards
- Backlog Metrics
- Public Comments
- Questions for RAD



# Case Processing Standards & Backlog Metrics



# Proposed Standards and Backlog Metrics

**Current Backlog Metrics:** 180 days for noncomplex cases and 365 days for complex cases

**Proposed Backlog Metrics:** Based on narrowed bell curve (half of average) around proposed average standards

Case Category	Current Average (based on 2018-2021 data)	Proposed Standard (average)	Current 90th percentile (based on 2018-2021 data)	Proposed Backlog Metric (90th percentile)
1. Intake	42	30	163	45
2. Investigation – Higher RPP Noncomplex	168	120	426	180
3. Investigation – Lower RPP Noncomplex	197	150	464	225
4. Investigation – Higher RPP Complex	248	180	551	270
5. Investigation – Lower RPP Complex	307	210	638	310
6. Charging	433	300	1126	450



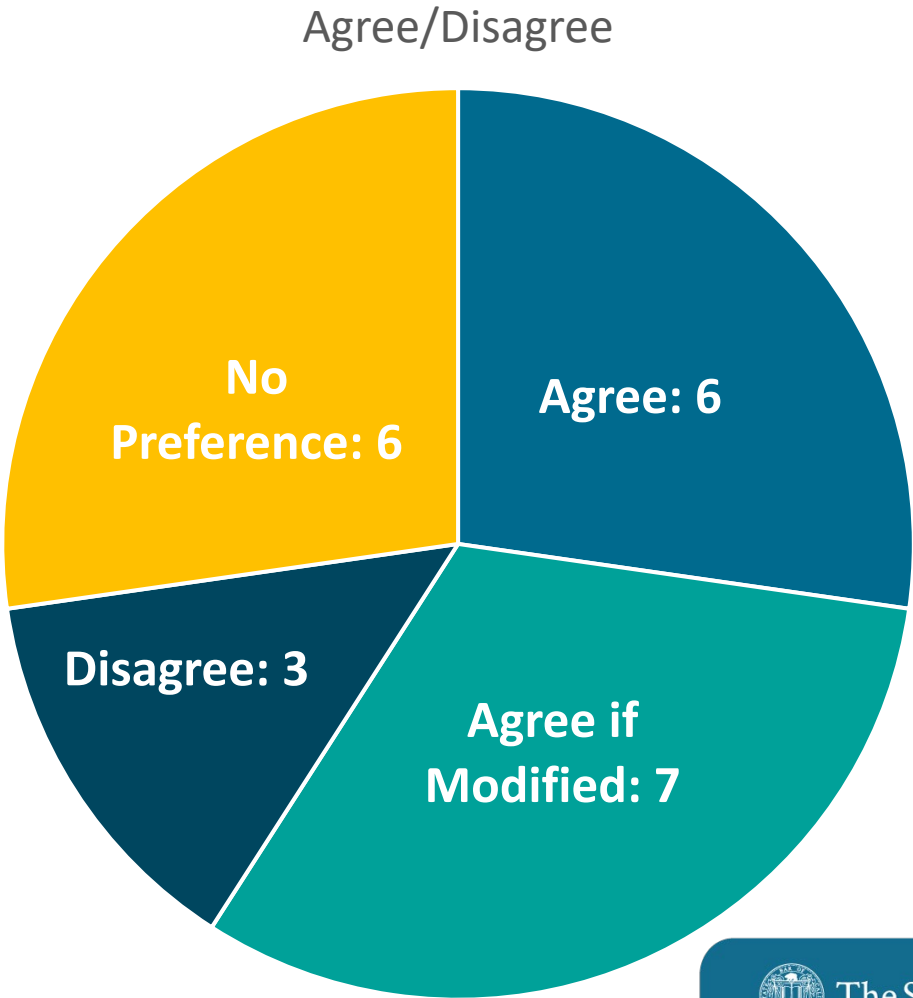
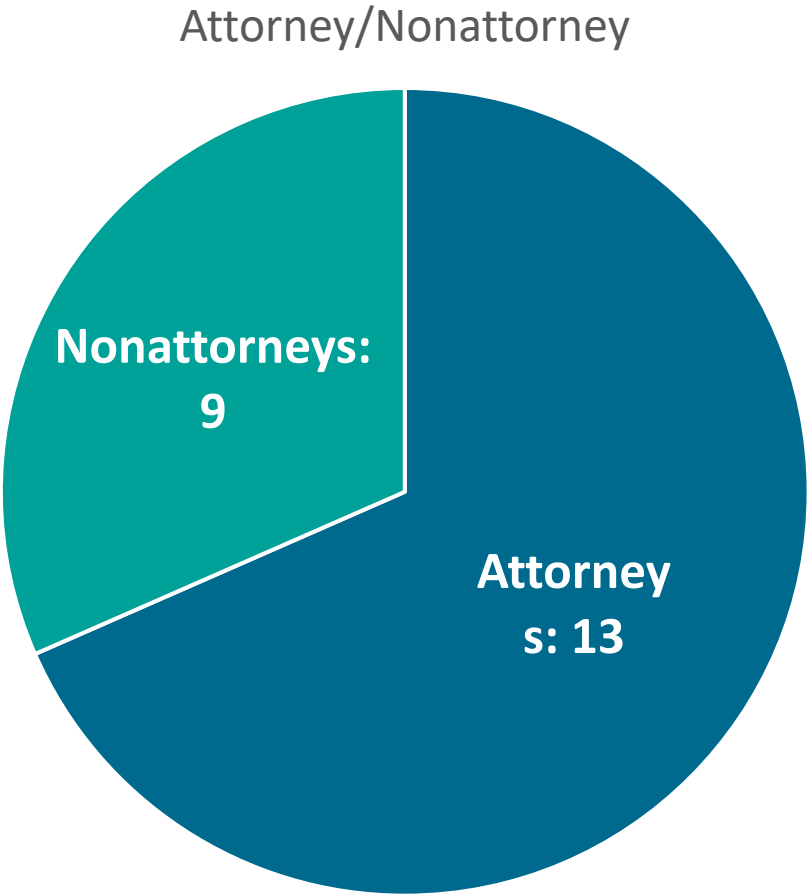


# Public Comments



# Public Comments Received

- Proposed standards and backlog metrics were posted for six weeks for public comment
- 22 responses received





## Public Comment Takeaways

- Overall support for proposed shorter time standards
- New time standards still not fast enough
- Concerns about harm to clients when action by State Bar is delayed
- State Bar needs to ensure that repeat offenders are caught and receive more severe discipline
- Lack of awareness of OCTC responses to State Auditor's recommendations



# Questions for Board



# Standards and Backlog Metric

**Current Statute:** “It is the goal and policy of the State Bar to...dismiss a complaint, admonish the attorney, or have the OCTC file formal charges..”

- ✓ Noncomplex cases: **within six months**
- ✓ Complex cases: **within 12 months**

## SB 211

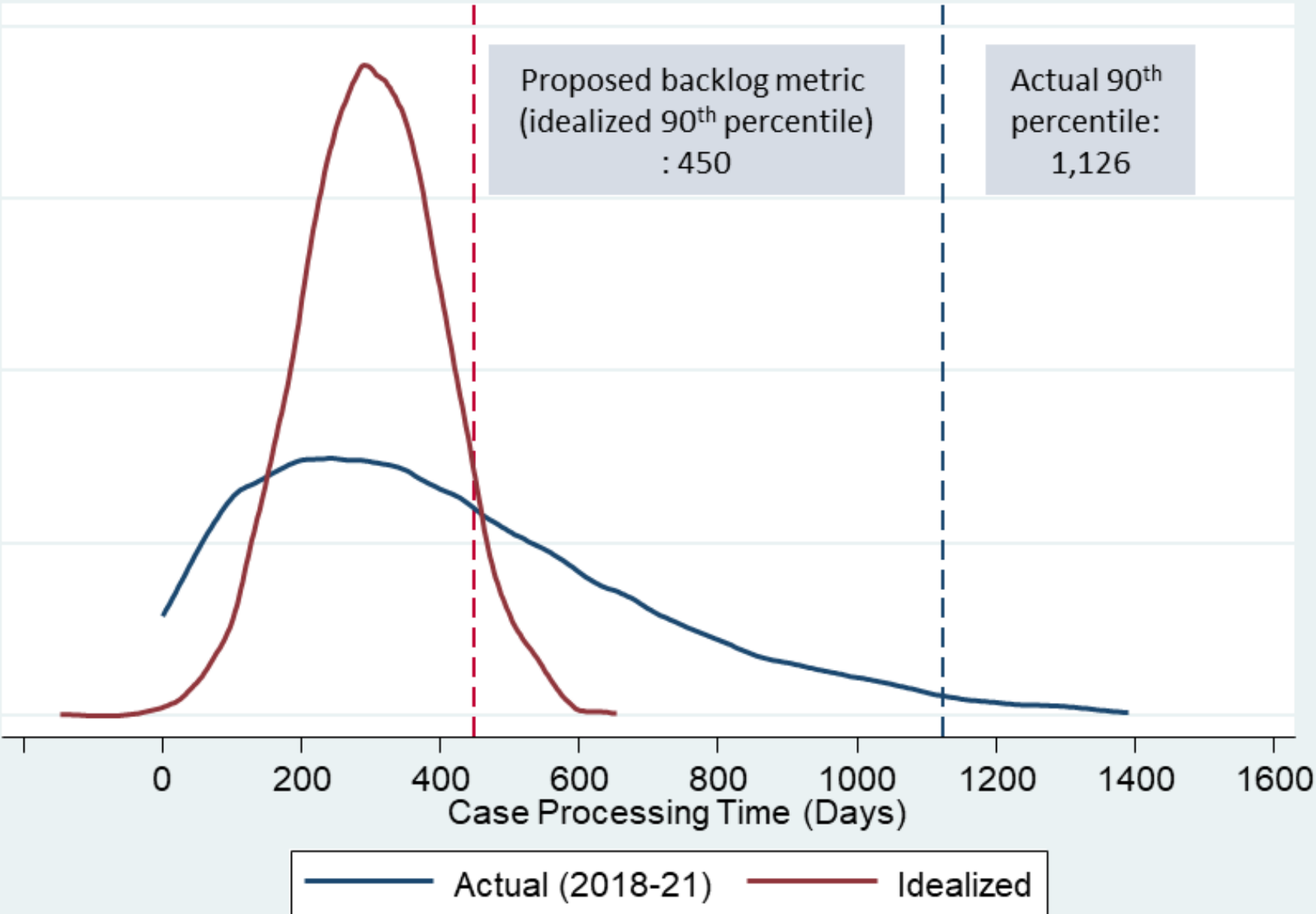
“The State Bar shall...develop **proposed case processing standards** that reflect the goal of resolving attorney discipline cases in a timely, effective, and efficient manner **while having small backlogs** of attorney discipline cases and best protecting the public.”

### Current proposal defines:

- Case processing standards based on average time to close; **and**
- Backlog metrics based on 150% of these average case time standards (90th percentile of idealized bell curve)



# Backlog Metric: Idealized 90<sup>th</sup> Percentile



# Three Options:

- Option 1:** The average case processing time standard is the only goal. No more than 50% (?) of cases will close beyond the goal.
- Option 2:** The idealized 90th percentile (150% of average time) is the only goal. No more than 10% of cases will close beyond the goal.
- Option 3:** The average case processing time is the standard. The idealized 90th percentile (150% of average time) is the backlog metric (goal). No more than 10% of cases will close beyond the backlog metric (goal).

	Option 1	Options 2 & 3	Cases Meeting Goals (N/%)	Cases <b>Not</b> Meeting Goals (N/%)
1. Intake	30	45	N (%)	N (%)
2. Investigation – Higher RPP Noncomplex	120	180	N (%)	N (%)
3. Investigation – Lower RPP Noncomplex	150	225	N (%)	N (%)
4. Investigation – Higher RPP Complex	180	270	N (%)	N (%)
5. Investigation – Lower RPP Complex	210	310	N (%)	N (%)
6. Charging	300	450	N (%)	N (%)
Total			N (%)	N (%)





# Abated Cases

## Current Practice

OCTC abates (defers) investigations under following conditions:

- (1) State Bar Court has recommended, or is likely to recommend, disbarment of the same attorney in a different case
- (2) Based on consideration of the factors set out in Rule of Procedure 5.50(B), where a civil, criminal, or administrative proceeding is pending that involves substantially the same subject matter and/or parties
- (3) Respondent is incapacitated or on active military duty (see Rules of Procedure 5.51 and 5.52 governing State Bar Court abatements)

## Proposal

- ✓ Continue the current abatement practices (with some modifications to address situations where a ruling has been issued and the related proceeding is pending only on appeal).
- ✓ Exclude **time** in abatement from application of case processing standards/backlog metrics.
- ✓ For transparency, report on abated cases in ADR

**Question:** Given that OCTC has been criticized for abating investigations, does the proposal cause concerns?



# Abated Cases: Alternatives

## Alternatives

1. Include abated time in application of case processing standards/backlog metrics

2. Choose not to abate or more strictly limit abatement based on pending civil, criminal, or administrative proceedings (the bulk of current abatements).

## Impact

Significant effect on average case time and many abated cases would likely be in backlog

Potential for duplication of investigative efforts, interference with criminal investigations, and inconsistencies in conclusions reached by State Bar and civil or criminal courts.



# Timeline For Staffing Needs Analysis

## **SB 211:**

“The analysis shall include staffing requirements for the Office of Chief Trial Counsel to achieve the case processing goals described in this paragraph.”

## **Issue:**

We will not deliver the staffing needs analysis with the proposal.

## **Reasons:**

- (1) Need to have approved case processing standards before we can do a staffing needs analysis based on those case processing standards.
- (2) As a result of most recent State Audit, as well as information gathered during development of case processing standards, OCTC is making changes in procedures and practices to try and improve efficiency of case processing.



# Timeline For Staffing Needs Analysis

## **Option 1: Once the Board approves case processing standards, immediately complete the staffing needs analysis**

- ✓ Likely time frame approximately 4–5 months, with completion in or around March/April 2023.
- ✓ Would not have data that accounts for any OCTC changes in procedures and practices.

## **Option 2: Wait a year to gather additional data that accounts for OCTC changes in procedures and practices**

- ✓ Likely time frame: data gathering through December 2023, with staffing needs analysis to follow with completion in or around April/May 2024



# Project Timeline

