



The State Bar of California

OPEN SESSION AGENDA ITEM 701 OCTOBER 2022

DATE: October 24, 2022

TO: Members, Board of Trustees

FROM: Yun Xiang, Chief of Mission Advancement & Accountability Division
George Cardona, Chief Trial Counsel, Office of Chief Trial Counsel

SUBJECT: Review and Approval of Senate Bill 211 Case Processing Standards Proposal

EXECUTIVE SUMMARY

Senate Bill 211 (SB 211) directs the State Bar to propose case processing standards as an alternative to the current statutory case processing goals of six months for non-complex matters and 12 months for complex matters. This agenda item requests that the Board of Trustees review and approve the SB 211 Case Processing Standards Proposal.

BACKGROUND

In developing new proposed case processing standards, SB 211 directs the State Bar to consider "all relevant factors, including, but not limited to, the mechanics of the discipline process, the risk to public protection, including multiple complaints against the same attorney, reasonable expectations of the public for resolution of complaints, and the complexity of cases." In addition, SB 211 also outlines methodological requirements, indicating that the "case processing standards shall be based on and reflect all of the following:

- A review of case processing standards in attorney discipline systems in at least five other states, including large and small jurisdictions, with the goal of reviewing jurisdictions that have strong and effective discipline systems that protect the public;
- Consultation with state and national experts on attorney discipline;
- Reports from the Legislative Analyst's Office; and
- Reports from the California State Auditor."

SB 211 requires the State Bar, after analysis of the data collected through these methodological requirements, to "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." SB 211 also directs the State Bar to provide an analysis of the "staffing requirements for the Office of Chief Trial Counsel to achieve the case processing goals."

Finally, SB 211 directs the State Bar to "provide its analysis and recommendations to the Legislative Analyst's Office for review" by October 31, 2022..

DISCUSSION

The State Bar has systematically addressed all directives outlined in SB 211 in developing proposed case processing standards and backlog metrics. See Attachment A for the full proposal. The proposal outlines case processing standards and backlog metrics for six categories of cases based on three dimensions: case stage when cases are closed or filed, risk to public protection, and case complexity:

1. Cases closed in the intake stage;
2. Cases that are higher risk to public protection (RPP), noncomplex, and closed after investigation;
3. Cases that are lower RPP, noncomplex, and closed after investigation;
4. Cases that are higher RPP, complex, and closed after investigation;
5. Cases that are lower RPP, complex, and closed after investigation; and
6. Cases closed or filed in the charging phase.

The proposed case processing times and associated backlog metrics for each of these six categories are provided in table 1. The proposed case processing times are significantly shorter than the status quo and backlog metrics reflect substantial reductions in time to close or file the most time-consuming cases.

Table 1. Proposed Case Processing Standards and Backlog Metrics for Six Categories of Cases

Case Category	Current Case Processing Time (Average)	Proposed Standards (Average)	Current 90 th Percentile Case Processing Time	Proposed Backlog Metric
1. Closed in intake	42 days	30	74	45
2. Closed after investigation: Higher RPP, noncomplex	167 days	120	294	180
3. Closed after investigation: lower RPP, noncomplex	197 days	150	384	225

Case Category	Current Case Processing Time (Average)	Proposed Standards (Average)	Current 90 th Percentile Case Processing Time	Proposed Backlog Metric
4. Closed after investigation: higher RPP, complex	248 days	180	414	270
5. Closed after investigation: lower RPP, complex	307 days	210	579	310
6. Closed/filed in charging	449 days	300	874	450

Staff will conduct a comprehensive staffing needs analysis once the Legislature has indicated its views on the proposed case processing standards and backlog metrics. The study will account for the planned OCTC process and procedure improvements outlined in the proposal. To provide a general sense of resources needed to implement proposed standards, staff used the results of a 2021 workload study to estimate staffing needs as well as a linear model. The two analyses identified the need for 119 and 78 additional staff, respectively, to achieve the proposed average case processing times and backlog metrics; as a point of reference OCTC currently has approximately 300 funded positions.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

Goal 1. Protect the Public by Strengthening the Attorney Discipline System

a.1. Support accountability in the attorney discipline system through the development and implementation of new case processing standards.

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 Senate Bill 211 Case Processing Standards Proposal; and it is

FURTHER RESOLVED, that the Board of Trustees hereby authorizes staff to make minor technical adjustments and corrections to the Senate Bill 211 Case Processing Standards Proposal before submitting it to the Legislative Analyst's Office by October 31, 2022.

ATTACHMENT LIST

- A.** Senate Bill 211 Case Processing Standards Proposal



The State Bar of California

ATTACHMENT A

SB 211 Case Processing Standards Proposal

October 14, 2022

DRAFT

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DRAFT

EXECUTIVE SUMMARY

The State Bar of California is responsible for investigating and prosecuting complaints against California attorneys. On average, the State Bar handles about 15,000 cases each year. Under current law, the State Bar is supposed to complete its investigation and either charge or close a case within 180 days of receiving a complaint for standard cases and 365 days for complicated (complex) cases.

Each year, the State Bar has a significant backlog of cases that have not been charged or closed within these time frames and has been criticized for taking too long to investigate and prosecute cases. Last year, Senate Bill 211 (SB 211) directed the State Bar to develop and propose new 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. The State Bar was also directed to propose staffing levels necessary for the Office of Chief Trial Counsel (OCTC) to achieve these case processing standards.

CASE PROCESSING STANDARDS FRAMEWORK

The State Bar has developed proposed case processing standards through a data-driven and evidence-based process that considered the following three factors identified in SB 211:

Mechanics of the Discipline Process (Case Stage). Different standards apply to cases closed or charged at each of three stages: (1) intake (initial review of complaints); (2) investigation (gathering information and evidence for complaints not closed in Intake); and (3) charging (any final additional investigation required as well as the drafting of a charging memo and Notice of Disciplinary Charges (NDC) or stipulation for complaints that lead to disciplinary charges).

Case Complexity. In the Investigation stage, different standards apply to complex cases, which take longer to investigate for various reasons. The reasons include: These cases may involve multiple charges arising from multiple events; require the gathering and analysis of large numbers of documents, such as bank or court records (the time for producing these records is often outside of OCTC's control); or require other investigative steps that take significant time.

Risk to Public Protection (RPP), Including Multiple Complaints against the Same Attorney. Different standards apply to cases that pose a higher RPP. Higher RPP cases include those in which the conduct in the case caused substantial harm or posed a risk of potential substantial harm, to clients or the public. Higher RPP cases also include those in which the attorney is the subject of multiple pending complaints, or the current complaint is similar to one or more prior closed complaints, suggesting an increased risk that, absent disciplinary action, the attorney may continue to engage in misconduct.

To develop its new proposed standards, the State Bar also addressed the following methodological requirements outlined in SB 211:

- Consideration of prior reports from the Legislative Analyst’s Office ([LAO 2019 Report](#)) and California State Auditor ([CSA 2022 Report](#), [CSA 2021 Report](#), [CSA 2019 Report](#)) relating to State Bar disciplinary case processing.
- Review of case processing standards and times in six other states based on those states’ annual reports and data reported to the American Bar Association ([ABA 2018 Survey on Lawyer Discipline Systems](#), [ABA 2019 Survey on Lawyer Discipline Systems](#)).
- Consultation with California and national experts on attorney discipline.
- Consideration of reasonable public expectations for the resolution of complaints.

The State Bar also reviewed case processing times reported by the California Department of Consumer Affairs (DCA) for licensing agencies under its jurisdiction. Last, to assess the practicality of the proposed case processing standards and obtain feedback to inform the final proposed case processing standards and the planned staffing needs analysis, the State Bar solicited input from five focus groups comprised of State Bar investigators and attorneys.

The proposed case processing standards set goals for average case processing time in each of the following six categories:

- Closed in intake
- Closed after investigation – higher RPP, noncomplex
- Closed after investigation – lower RPP, noncomplex
- Closed after investigation – higher RPP, complex
- Closed after investigation – lower RPP, complex
- Closed or filed in charging

In the last category, closed or filed in charging, the State Bar proposes a change to measure the average case time from OCTC’s receipt of the complaint through the earliest of (1) closure, (2) the filing of an NDC or stipulation to discipline if no Early Neutral Evaluation Conference (ENEC) is conducted, or (3) the initiation of the ENEC process if an ENEC is conducted.¹ In each case category, the average case processing time is cumulative, measured from OCTC’s receipt of a complaint through either closure of the complaint (in any of the six categories) or the initiation of the ENEC process or filing of an NDC or stipulation (in the charging category).

PROPOSED CASE PROCESSING STANDARDS

The derivation of the proposed case processing time standards involved four steps. First, current case processing times were adjusted to eliminate all gaps between case processing events of 60 days or more. Many gaps are hypothesized to result from excessive caseloads that prevented attorneys and investigators from timely taking actions in all cases or inefficiencies in case processing procedures and practices (step one). Next, refinements were made based on consideration of the methodological requirements mentioned above as well as DCA-reported

¹ For ease of reference, these three alternatives for the charging category are referred to below as “closed or filed.”

case processing times (step two), OCTC staff focus groups (step three), and public comment on the proposed standards (step four).

The resulting proposed case processing standards for each of the six case categories are set out in table 1, along with comparative actual four-year average case processing times.

Table 1. Proposed Case Processing Standards

Case Category	Current Average Case Processing Time in Days ^{N1}	Proposed Average Case Processing Standard in Days ^{N2}
1. Closed in intake	42	30
2. Closed after investigation: higher RPP, noncomplex cases	167	120
3. Closed after investigation: lower RPP, noncomplex cases	197	150
4. Closed after investigation: higher RPP, complex cases	248	180
5. Closed after investigation: lower RPP, complex cases	307	210
6. Closed/filed in charging	449	300

N1: Average days from receipt of complaints to closure or filing based on actual case data over four years (2018–2021). For example, for higher RPP, noncomplex cases, over the last four years, the average time from receipt of complaint to closure after investigation was 167 days.

N2: Proposed standard for average days from receipt of complaints to closure or filing. For example, for higher RPP, noncomplex cases, the proposed time standard would be an average time from receipt of complaint to closure in investigation of 120 days.

PROPOSED BACKLOG METRIC

The proposed backlog metrics address SB 211’s requirements by: (1) establishing a goal that no more than 10 percent of cases be in backlog status (a “small backlog”); and (2) setting the threshold for a case to be designated in backlog status at 150 percent of proposed average case processing times by case category.

To determine the case closure/filing time target that should be used to designate backlog status, an idealized normal curve reflecting case processing times significantly narrower than that produced by current data was developed. This curve is based on the idea that backlog metrics should equate to 150 percent of each case category’s proposed average case processing time standard. For example, for cases closed in intake, the idealized 90th percentile is 45 days (30 days multiplied by 150 percent). In effect, this approach to backlog incorporates two significant adjustments to current case processing times based on assumed improvements in case processing procedures and practices and staffing increases to reduce caseloads: first, a significant reduction from the current average case time to the proposed average case time; and second, a significant reduction in the width of the case time distribution based on decreases in the time needed for the most time-consuming cases.

For each case category, any case closed or charged in a time longer than the proposed backlog metric would be deemed “closed in backlog” or “not meeting goals,” and a single backlog metric would be measured by the total number of backlog cases across all six case categories. Table 2 shows the proposed 90th percentile backlog metric, along with comparative actual four-year average 90th percentile times in each case category.

Table 2. Proposed Backlog Metrics

Case Category	Current 90th Percentile Time in Days ^{N1}	Proposed 90th Percentile Time in Days ^{N2}
1. Closed in intake	74	45
2. Closed after investigation: higher RPP, noncomplex cases	294	180
3. Closed after investigation: lower RPP, noncomplex cases	384	225
4. Closed after investigation: higher RPP, complex cases	414	270
5. Closed after investigation: lower RPP, complex cases	579	310
6. Closed/filed in charging	874	450

N1: Current 90th percentile days to closure or filing based on actual case data over four years (2018–2021). For example, over the last four years, 90 percent of higher RPP, noncomplex cases closed in investigation were closed within 294 days after OCTC’s receipt of the complaint.

N2: Proposed 90th percentile days to closure or filing. For example, for higher RPP, noncomplex cases closed in investigation, the proposed 90th-percentile backlog metric would establish a goal of at least 90 percent of cases closing within 180 days after OCTC’s receipt of the complaint.

STAFFING NEEDS ANALYSIS

SB 211 requires that the State Bar’s proposal for new case processing standards “shall include staffing requirements for the OCTC to achieve the case processing goals.”

Once the Legislature has indicated its views on the proposed case processing standards, the State Bar plans to conduct a comprehensive staffing needs analysis that will also account for planned OCTC process and procedure improvements.

To provide the Legislature with a general sense of resources needed to implement proposed standards, the State Bar used the results of a 2021 workload study to estimate staffing needs; in addition, a linear model reflecting the relationship between staffing levels and case processing times, was conducted. These analyses identified the need for between 78 and 119 of new staff to achieve the proposed average case processing times outlined in this report.

INTRODUCTION

Senate Bill 211 (SB 211) directs the State Bar to propose “case processing standards for competently, accurately, and timely resolving cases within the Office of Chief Trial Counsel.” SB 211 specifies:

“The case processing standards shall take into account all relevant factors, including, but not limited to, the mechanics of the discipline process, the risk to public protection, including multiple complaints against the same attorney, reasonable expectations of the public for resolution of complaints, and the complexity of cases.”

SB 211 also includes methodological requirements, directing that the “case processing standards shall be based on and reflect all of the following:

- A review of case processing standards in attorney discipline systems in at least five other states, including large and small jurisdictions, with the goal of reviewing jurisdictions that have strong and effective discipline systems that protect the public;
- Consultation with state and national experts on attorney discipline;
- Reports from the Legislative Analyst’s Office; and
- Reports from the California State Auditor.”

SB 211 requires the State Bar, after analysis of the data collected through these methodological requirements, to “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.” Finally, SB 211 directs the State Bar to provide an analysis of the “staffing requirements for the OCTC to achieve the case processing goals.”

This report proposes new case processing standards for cases within OCTC,² describes how the proposed standards incorporate the factors and methodological requirements provided in SB 211, and outlines the State Bar’s plan to identify staffing requirements to meet these standards.

CONSULTATION WITH STATE AND NATIONAL EXPERTS

The State Bar secured the services of national expert Ellyn Rosen and California experts Robert Fellmeth and Richard Zitrin. Ellyn Rosen is Regulation and Global Initiatives Counsel for the American Bar Association Center for Professional Responsibility and a recognized expert on attorney disciplinary systems in the United States and abroad. Robert Fellmeth is the Price Professor of Public Interest and Executive Director of the Consumer Protection Policy Center, both at the University of San Diego School of Law. Richard Zitrin is Lecturer Emeritus at the University of California, Hastings, specializes in legal ethics, and was the former chair of the

² The same standards are intended to apply to cases referred by OCTC to the Special Deputy Trial Counsel Administrator when OCTC is recused as the result of an identified conflict pursuant to the Rules of Procedure of the State Bar of California, rule 2201.

State Bar’s Committee on Professional Responsibility. Appendix A contains their full biographies. As reflected in table 3, which sets out the meetings the State Bar held with these subject matter experts (SMEs), they were consulted throughout developing the proposed case processing standards. As a result, many of their comments and recommendations have been incorporated into those standards. In addition, each SME reviewed a draft of this report and provided comments and additional suggestions (some relating to proposed improvements in OCTC procedures and practices) that are also provided in Appendix A.

Table 3. Meeting Dates and Topics Discussed with SMEs

Meeting Date	Topic Discussed
December 16, 2021	Kickoff meeting
January 5, 2022	Standards framework
January 20, 2022	Standards framework; review data requests
January 27, 2022	Standards framework
February 22, 2022	Standards methodology
March 8, 2022	Preliminary proposed standards
March 22, 2022	Preliminary proposed standards
April 7, 2022	Preliminary proposed standards
April 28, 2022	Preliminary proposed standards
July 12, 2022	Backlog metrics and final proposed standards
September 2, 2022	Backlog metrics and final proposed standards

The State Bar asked Ms. Rosen to recommend five jurisdictions for the State Bar to review in accordance with SB 211. With the requirements of SB 211 in mind, Ms. Rosen suggested six states for review, intending to provide examples that, in her experience, had strong and effective discipline systems and would facilitate the development of realistic time standards in California. Based on Ms. Rosen’s recommendations, the six states selected for review are (in alphabetical order): Arizona, Colorado, Illinois, Maryland, New Jersey, and Texas. Illinois, New Jersey, and Texas are large jurisdictions; Arizona, Colorado, and Maryland are smaller. The review of these states’ case processing standards is discussed in Parts Two and Three below and Appendix B.

ORGANIZATION OF THE REPORT

Part One of the report outlines the framework that guided the development of the proposed case processing standards. It also describes the six categories of cases to which time processing standards will apply. Part Two describes how the State Bar engaged in a four-step data-driven process to develop case processing time standards and a backlog metric for each of the six

categories of cases. Part Three is a detailed summary of SB 211's methodological requirements. It describes how the framework and proposed time standards reflect the State Bar's analysis of attorney discipline systems in six states, consultation with state and national experts on attorney discipline, and analysis of previously published reports by the LAO and the CSA. Part Four describes the preliminary staffing needs analysis and the State Bar's plan for conducting a comprehensive staffing analysis to identify staffing levels needed to meet the proposed time standards. Seven appendices to the report provide additional information and research conducted to inform the proposed case processing standards including the SMEs' comments and recommendations; the State Bar's analysis of attorney discipline systems in six other states; an analysis of time gaps in case activity; an analysis of complaint types; the results of OCTC focus groups conducted to assess the feasibility of the proposed standards; a review of performance measures for regulatory agencies under the purview of the California DCA; and an inventory that summarizes policies and procedures the State Bar has initiated over the last several years to improve the discipline system's fairness and effectiveness.

PART ONE: CASE PROCESSING STANDARDS FRAMEWORK

This section of the report outlines the State Bar’s consideration of four factors identified as relevant in SB 211: mechanics of the discipline process; RPP, including multiple complaints against the same attorney; case complexity; and the reasonable expectations of the public.³

MECHANICS OF THE DISCIPLINE SYSTEM

The proposed standards reflect the mechanics of the discipline process by incorporating three distinct case processing stages: intake, investigation, and charging. As described below, case processing time varies significantly depending on the stage at which the case is closed or charges filed; as such, case stage is a key dimension of the case processing standards framework.

The case processing times reported in this section exclude the time when investigations are deferred (abated) pending civil or criminal litigation addressing similar issues. This “time in deferral” is also excluded from the proposed case processing standards. As is discussed in Part Three, this accords with practices in three states reviewed by the State Bar and provides OCTC with the necessary prosecutorial discretion to await a resolution of issues by a civil or criminal court when there is a substantial overlap with issues posed by a disciplinary complaint.⁴ This practice also serves to avoid potential differences in the resolution of issues in different forums and interference with law enforcement investigation and prosecution of criminal matters, and it provides appropriate deference to civil or criminal court resolution of issues.⁵

Intake

The intake stage of case processing involves the initial screening of a complaint, an evaluation of the complaint’s merits, and follow-up with the complaining witness if necessary to collect additional information needed to support the complaint. In some instances, additional information may be gathered from publicly available sources such as court dockets or opinions. Complaints are forwarded to investigation if they set out plausible, nonconclusory factual

³ The proposed case processing standards are intended to apply to the following types of cases: original complaints submitted by complaining witnesses, State Bar initiated inquiries, probation referrals, and reportable actions (other than criminal conviction matters). Analyses presented throughout this report reflect this set of cases. The proposed case processing standards are not intended to apply to the following matters: criminal convictions, nonattorney unauthorized practice of law (UPL), involuntary inactive enrollment under Business and Professions Code section 6007, moral character, resignations with charges pending, or mini-reinstatements.

⁴ Among states that have rule-based time standards, only Texas prohibits abatement or deferral of investigations based on a related pending civil or criminal action. Maryland, New Jersey, and Colorado allow deferral. Similarly, current State Bar procedural rules allow tolling of the rule of limitations for a related pending civil or criminal action. Further, the State Bar Court is authorized by current rules to defer filed disciplinary proceedings based on pending civil or criminal actions. Consistent with these approaches, the proposed standards exclude time while an investigation is deferred based on a related pending civil or criminal action.

⁵ One of the SMEs raised concern that deferral is overused. OCTC is developing guidelines for case deferral. Deferral data will be reported in the State Bar’s Annual Discipline Report (ADR), including the number of deferred cases and time spent in deferral.

allegations that: (a) if true, would constitute a violation of the State Bar Act or Rules of Professional Conduct; or (b) suggest reasonable avenues of investigation that, if pursued, would be likely to develop facts constituting such a violation. If a case is not forwarded to investigation, a closing letter explaining the reasons for closure is drafted and sent to the complaining witness. Approximately 63 percent of complaints received by the State Bar are closed in the intake stage; over the four-year period 2018 to 2021, these complaints took on average 42 days to close.

Investigation

The investigation stage involves preparing an investigation plan, additional contact with complaining witnesses, notice to respondents that they are under investigation along with a request for a response to the allegations, and follow-up investigation to speak with additional witnesses and gather supplemental information as needed. Subpoenas must be issued to obtain documents in many cases, such as client trust account or immigration-related matters. Further legal research may also need to be conducted. In many cases, including those forwarded to charging, an investigative report is drafted summarizing the information gathered in the investigation. If a decision is made to close a case without disciplinary action, closing letters explaining the reasons for closure are drafted and sent to the complaining witness and respondent. Approximately one-third of complaints received by the State Bar are closed in the investigation stage; over the four-year period 2018 to 2021, these cases took on average 230 days to close.

Charging

The charging stage involves additional investigation and legal research as needed, followed by closure, a stipulation to facts and discipline, or drafting a charging memorandum and an NDC. If additional information or legal research and analysis in the charging stage leads to a decision to close a case without disciplinary action, closing letters explaining the reasons for closure are drafted and sent to the complaining witness and respondent. Before an NDC can be filed, State Bar Rule of Procedure 5.30 requires OCTC to provide the respondent with 10-days' notice to request an ENEC. If the respondent requests an ENEC, the State Bar Court is required to conduct the ENEC within 15 days of the request. Three court days before the scheduled conference, OCTC must provide the court with a copy of the draft NDC or a written summary of the allegations and charges. If, before or after an ENEC, the respondent indicates a desire to resolve the matter through a stipulation, the charging stage will include time spent negotiating and drafting the final stipulation for filing. While the rules require the opportunity for one ENEC, there can be multiple ENECs. Approximately 4 percent of complaints received by the State Bar close or result in filing an NDC or stipulation during the charging stage. Over the four-year period 2018 to 2021, cases closed without an ENEC, closed with one or multiple ENECs, or filed during this stage took on average 481 days to close or file. If the time spent in multiple ENECs is not counted, then the average time for completion of the charging stage (closure or filing) is reduced to 449 days.

RISK TO PUBLIC PROTECTION

The proposed case processing standards include a risk dimension, differentiated by two categories of cases: cases that pose a higher RPP and cases that pose a lower RPP. Higher RPP cases include those in which the conduct in the case caused substantial harm, or poses a risk of potential substantial harm, to clients or the public. Higher RPP cases also include those in which the attorney is the subject of multiple pending complaints or in which the current complaint is similar to one or more prior closed complaints against the same attorney, suggesting an increased risk that, absent disciplinary action, the attorney may continue to engage in misconduct.

Initial proposed factors for designation of higher RPP cases are as follows:

- Case alleges misconduct involving a risk of significant, ongoing, or serious actual or potential harm to a client, the public, or the administration of justice, including but not limited to the following:
 - An intentional misappropriation of funds, regardless of amount and regardless of whether restitution has been paid;
 - A misappropriation (whether intentional or not), regardless of amount, for which restitution has not been paid;
 - Facts indicating an effort to mislead clients regarding potential case resolutions, settlement terms, allocations of settlement funds, and/or conflicting client interests at settlement; and/or
 - Intentional misrepresentations to a court or other tribunal that resulted in, or posed the risk of, substantial harm to the administration of justice.
- Case alleges misconduct involving a risk of actual or potential harm to vulnerable victims, including immigrants, seniors, and people with significantly reduced ability to manage their affairs competently;
- Case alleges engaging in or abetting the UPL resulting in significant actual or potential harm to a client, the public, or the administration of justice;
- Respondent has prior discipline;
- Respondent has multiple pending complaints; and/or
- Respondent has a pattern of similar prior closed complaints.⁶

The State Bar will continue to explore factors appropriately considered in identifying and designating higher RPP cases.⁷ Cases that do not meet the criteria for higher RPP cases will be considered lower RPP cases.

⁶ The listed factors for designation of higher-RPP cases incorporate suggestions Mr. Zitrin made in his formal responses to the proposal. See Appendix A.

⁷ For example, the SMEs who consulted on this project indicated that the amount of funds flowing through a particular attorney's client trust accounts might be an important risk factor to monitor and analyze. The State Bar is in the process of obtaining such information for future analysis.

OCTC currently uses a slightly different risk-based system to prioritize cases.⁸ Under the current approach, the number of cases that can be designated as high risk is capped at approximately 20 percent of cases that move beyond intake into the investigation stage—this equates to approximately 7 percent of entire case inventory. The proposed case processing standards do not contemplate a limitation on the number of matters that can be designated as higher RPP cases. As a result, it is estimated that 30 to 40 percent of cases that move beyond intake into the investigation stage (approximately 12 to 15 percent of the entire case inventory) will be designated as higher RPP cases under the proposed case processing standards.

CASE COMPLEXITY

SB 211 also requires consideration of case complexity, which increases the time required for case investigation. The State Bar has examined case characteristics and events within cases that cause processing delays. Initial proposed factors, the presence of any one of which will result in a case being designated complex, are as follows:

- Case requires subpoenas to banks, courts, federal immigration officials, or another third-party entity;
- Case has numerous potential charges (often arising from multiple incidents);
- Case has numerous potential parties;
- Case is designated as a major case;⁹ and/or

⁸ In 2018, the State Bar implemented a case prioritization system that classified cases according to potential harm to the public to marshal resources in a way that best protects the public from attorneys who pose the greatest risk. Allocating limited resources to high-priority cases in some instances caused significant delay in the processing of lower-priority cases. Moreover, the number of cases designated high priority was, for resource reasons, capped at approximately 20 percent of the total number of cases in the investigation stage, resulting in some cases that potentially posed higher risks not being designated high priority.

⁹ Designated major cases take longer both because many tend to be complex for other reasons and because OCTC has additional monitoring and reporting requirements for major cases. Currently, the following criteria are used to designate major cases: (1) A case involving significant publicity, or the likelihood of significant publicity, or involving issues of special interest to the public, the legal profession, or the State Bar—this includes matters involving allegations of significant harm or potential harm, to clients or others, likely to generate publicity or be of special interest to the public; allegations that a prosecutor has engaged in misconduct in the course of a criminal prosecution, if a court or government office has found such misconduct to have occurred, whether or not the prosecutorial misconduct resulted in harm; matters that have already generated significant publicity; and matters with the potential to generate significant criticism of the State Bar if there is disagreement with the outcome of the investigation; (2) a case referred to the State Bar by the Supreme Court or the Commission on Judicial Performance; (3) a case involving a complaint submitted by an elected or appointed public official, judge, or well-known public figure; (4) a case involving allegations of misconduct by an elected or appointed public official or well-known public figure—this includes allegations of misconduct of any type by elected or appointed district attorneys, city attorneys, county counsel, attorneys general, United States attorneys, or public defenders, or high-ranking supervisors or managers within their offices; and allegations that a prosecutor has engaged in misconduct in the course of a criminal prosecution, even in the absence of a finding by a court or government office that such misconduct has occurred; and (5) a case involving investigation of a respondent who has been reinstated to the practice of law following disbarment or resignation with disciplinary charges pending.

- Respondent is uncooperative and fails to provide information to OCTC as requested within a reasonable time or at all.¹⁰

Upon case closure, designations will be reviewed to ensure accurate application. OCTC currently categorizes cases as complex using these same factors. Over the four-year period 2018 to 2021, complex cases comprised approximately 36 percent of cases that closed in investigation (which equates to 13 percent of the entire case inventory) and took on average approximately 297 days to closure or filing, as compared to 191 days for noncomplex cases that closed in investigation. The State Bar will continue to explore and validate complex case designation factors.

REASONABLE EXPECTATIONS OF THE PUBLIC

SB 211 requires the State Bar to consider “reasonable expectations of the public for resolution of complaints.” In early 2022, the State Bar launched a social media campaign to solicit input from the public on expected case processing timelines for three different types of cases varying by complexity. More than 450 survey participants rated scenarios on complexity (on a scale of 1 to 5) and on corresponding reasonable case processing times. OCTC staff were issued the same survey. The public and OCTC staff agreed that more complex cases require more time than less complex cases, although the amount of time that was identified as being needed for the scenarios presented varied by respondent type. The gap between the public and OCTC staff in their estimates of reasonable case processing times was relatively small for noncomplex cases, with the public providing an estimate of 3.5 months relative to OCTC’s 5.3 months. For cases that were viewed as complex, the difference was more significant: approximately six months from the public relative to 11 months estimated by OCTC staff.¹¹

The State Bar also launched a social media campaign in August 2022 to solicit input from the public on the final proposed standards. Following the same online public comment process the State Bar uses to solicit comments from the public on other issues before the Board, staff provided a brief overview of the project’s motivation, background, and methodology, and the proposed standards for each of the six categories of cases. The public was asked to indicate their position on the standards using the following answer categories: (1) agree with the proposed standard; (2) disagree with the proposed standard; (3) agree only if modified; or (4) state no preference. Commenters were also offered the opportunity to provide more specific feedback. Results are discussed in Part Two.

¹⁰ The listed factors for designation of complex cases incorporate suggestions from the national and state experts on attorney discipline. See Appendix A.

¹¹ The State Bar’s current 2022–2027 strategic plan includes consumer focus as one of four key strategies for implementing organizational goals. The Bar plans to launch a formal consumer education campaign and conduct research on complaining witnesses to identify gaps between complainants’ understanding of what the State Bar can do compared to actual State Bar capabilities.

SUMMARY

In conclusion, the following case dimensions are incorporated into the proposed case processing standards: case stage of closure or filing, RPP, and case complexity. The next section demonstrates how these factors translate to six categories of cases for which case processing time standards are proposed.

SIX CATEGORIES OF CASES FOR CASE PROCESSING STANDARDS

Category 1: Cases Closed in Intake

Case processing time for cases closed in the intake stage will be measured as the number of days from case initiation to case closure. These matters will not receive risk or complexity designations. Cases that close in intake are inherently noncomplex, as the determination to close can be made based on the allegations in the complaint and limited additional information whose gathering does not pose complexity. Similarly, if a complaint does not warrant investigation, it necessarily poses little risk.

Categories 2–5: Cases Closed after Investigation

The State Bar proposes case processing standards for four types of cases closed after they have moved into the investigation stage based on risk and complexity designations:

- Higher RPP, noncomplex cases
- Lower RPP, noncomplex cases
- Higher RPP, complex cases
- Lower RPP, complex cases

Case processing times for cases closed after investigation will be measured cumulatively (including the time spent in intake before being transferred to investigation) as the number of days from case initiation to case closure.

Investigation of complex cases generally takes longer than the investigation of noncomplex cases. Lower RPP cases do not inherently differ from higher RPP cases in the time needed for investigation. Still, higher RPP cases are assigned shorter case processing standards to best address public protection and will be closely monitored to ensure they move through investigation more quickly.

Category 6: Cases Closed/Filed in Charging

Case processing time for cases closed during the charging stage will be measured cumulatively (including the time spent in intake and investigation before being transferred to charging) as the number of days from case initiation to one of the following events:

- In cases when an ENEC is not conducted, either (a) the date OCTC closes the case, or (b) the date OCTC files an NDC or stipulation with the State Bar Court; or
- In cases when an ENEC is conducted, the date OCTC sends a letter to respondent or respondent's counsel notifying them of their right to request an ENEC.

This approach to identifying when a case is closed or filed during the charging stage is a change from the current way in which case processing times are measured. The State Bar proposes that for cases in which an ENEC is conducted, the case processing time clock stops on the date that notice of the right to request an ENEC is sent to the respondent. Once a respondent elects to proceed with an ENEC, OCTC loses control over the pace of the charging process. ENECs must be scheduled and conducted with both the State Bar Court and respondent, with the potential for additional time if a second ENEC is requested by either the Court or respondent or if the respondent retains counsel at this late stage to assist with the ENEC. Data shows that, in cases where a respondent has chosen to proceed with an ENEC, more than half experience more than one ENEC. Multiple ENECs add on average 79 days to case processing time for cases to close or file.

Approximately 4 percent of the total complaints filed with the State Bar proceed to the charging stage. Due to the criteria applied for moving cases to the charging stage, most of these cases are higher risk, and the complexity designation appears to have little impact in differentiating time to closure or filing within the charging stage. As a result, risk and complexity designations are not applied to differentiate cases closed or filed during the charging stage. The six proposed case categories with corresponding four-year average case count data are provided in table 4 below.

Table 4. Proposed Categories for Case Processing Standards with Case Counts

Category	Number of Cases Closed	Percent of Cases Closed
1. Closed in intake	9,281	63%
2. Closed after investigation: higher RPP, noncomplex cases	547	4%
3. Closed after investigation: lower RPP, noncomplex cases	2,455	17%
4. Closed after investigation: higher RPP, complex cases	307	2%
5. Closed after investigation: lower RPP, complex cases	1,430	10%
6. Closed/filed in charging	642	4%
Total	14,662	100%

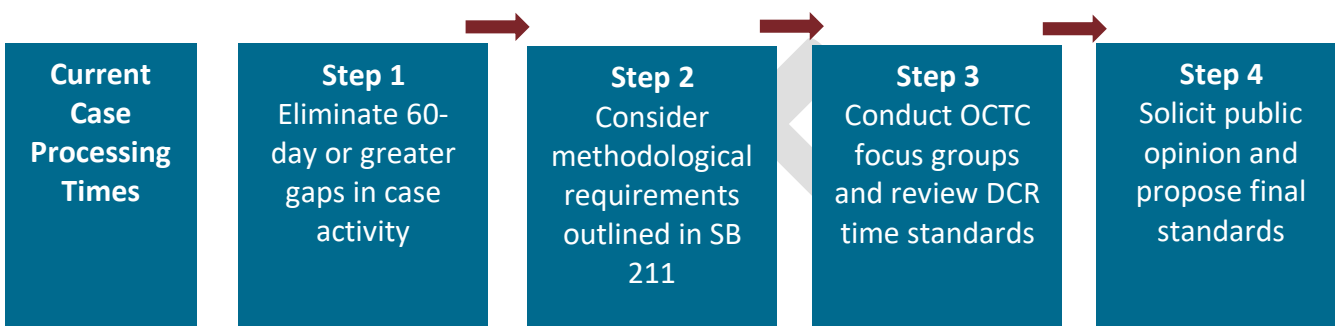
Note: This analysis reflects cases closed/filed between 2018 and 2021.

PART TWO: PROPOSED CASE PROCESSING STANDARDS AND BACKLOG METRIC

CASE PROCESSING STANDARDS

The State Bar engaged in four data-driven steps to arrive at proposed case processing standards, as depicted in figure 1 and described below.

Figure 1. Case Processing Time Standards Development Process



Step 1: Eliminate 60-Day or Greater Gaps in Case Activity

The first step in developing the proposed case processing standards was an analysis of cases closed or filed over the last four years. This analysis aimed to understand cases that took more than one year to close or file, leveraging the detailed information on case processing events that OCTC’s case management system collects for each case. Examples of such events include contacting complaining witnesses, forwarding a case to investigation, contacting respondent attorneys, requesting records, issuing subpoenas, and receiving documents.

The analysis, discussed in detail in Appendix C, uncovered instances where there were lengthy periods with no case activity. When case activity time gaps were evaluated as a contributing factor to prolonged case time, the gaps were categorized into three groups: 60 days or greater, 90 days or greater, and 120 days or greater. After initial analysis, it was determined that adjusting case times by eliminating gaps based on the latter two groups was insufficient, as it would still potentially leave significant numbers of cases with long gaps. As a result, the State Bar settled on the 60-day gap as representing the appropriate range for the modeling exercise. Approximately 44 percent of cases closed in the investigation or charging stages had case activity time gaps of 60 days or greater.

Under certain circumstances, a prolonged elapsed time between case processing events is expected. For example, it is not surprising that after issuing a subpoena, or making a request for records where the production of responsive documents can take a considerable amount of time, there are long time gaps until the next case processing event. Other time gaps are not as readily explained. When queried, OCTC staff hypothesized that these “unexplained” gaps were

caused by inadequate resources and/or high caseloads that limited staff's ability to follow up on all cases in a timely manner.

To estimate how case processing time would be impacted by eliminating time gaps of 60 days or more between events, the State Bar removed all time gaps of 60 days or more from overall case closure time for cases closed or filed beyond the intake phase. For example, if a case closed in investigation in 320 days and had a 65-day gap between two case events, its adjusted case processing time would be 255 days ($N=320 - 65$). This is an aggressive approach because it assumes that any gap of 60 days or more would be eliminated (from 65 to 0 days in the example) instead of reduced (from 65 to 30 days, for example). Nevertheless, it is appropriate to use this as the starting point for deriving case processing standards for two reasons: (1) It is reasonable to expect that there should not be gaps of 60 days or more with no case activity where a case has not been deferred; and (2) the elimination of these gaps in their entirety provides an approximation of the minimum amount of time required for thorough investigation in a situation where resources and staffing do not pose constraints.

The estimated average case processing time for each of the six categories of cases based on an adjustment to remove unexplained gaps between case processing events of 60 days or more is shown in step 1 of table 8 below. The adjustment reduces average case processing time by 33 days for higher RPP, noncomplex cases closed in investigation, and 176 days for cases closed/filed in charging.

Step 2: Consider Methodological Requirements Identified in SB 211

Analysis of Case Processing Standards and Time in Other Jurisdictions

As noted in the introduction, the State Bar reviewed the attorney discipline systems of six states: Arizona, Colorado, Illinois, Maryland, New Jersey, and Texas as part of the SB 211 case processing standards development effort. Operational information and data for each state were drawn from states' annual reports and data from the American Bar Association Survey on Lawyer Discipline Systems (ABA-SOLD). Comprehensive profiles of each state are provided in Appendix B.

The scale of California's disciplinary system is fundamentally different from other states: California has more than twice as many active attorneys and each year receives more than twice as many complaints regarding attorney misconduct as any of the six states.

Table 5. Six States Analyzed for Case Processing Standards Development and California: Attorneys with Active Licenses and Complaints Received

State Size	State	Number of Attorneys with Active License	Number of Complaints Received by Disciplinary Agency
Large	Texas	103,342	8,015
	New Jersey	75,207	3,500*
	Illinois	72,952	5,029
Small	Maryland	40,300	1,802
	Colorado	26,963	3,586
	Arizona	18,750	3,047
	California	185,763	17,145

Data Source: ABA-SOLD 2018

* = Estimate

Notes: California data is drawn from the 2018 annual discipline report (ADR). Illinois data for the number of complaints investigated, complaints closed after investigation, and lawyers charged after probable cause determination is drawn from Illinois' annual report.

Only three of these states (Maryland, New Jersey, and Texas) have rule-based time standards, while two (Colorado and Illinois) operate under directives that disciplinary investigations be conducted promptly or expeditiously. A summary of the time standards and deferral practices currently in place in Maryland, New Jersey, Texas, and California is set out in table 6.

Table 6. Case Processing Time Standards for Maryland, New Jersey, Texas, and California

State	Case Stage				Extensions/Deferral/ Compliance Rates ^{N1}
	Intake		Investigation/Charging		
	Start Point	Time Standard	Start Point	Time Standard	
MD		NA	Docketing of complaint (after initial review)	120 days	Sixty-day extension for good cause; deferral for material pending litigation with reporting every 90 days.
NJ	Receipt of grievance	45 days	Docketing of grievance (after initial review)	180 days (standard) 270 days (complex)	Declination for material pending litigation; 62 percent–76 percent of cases met standards.
TX	Receipt of grievance	30 days to classify grievance	R’s response to classified complaint (30	60 days	Extended to 60-days after compliance with investigatory subpoena or completion of investigatory

State	Case Stage				
	Intake		Investigation/Charging		Extensions/Deferral/ Compliance Rates ^{N1}
	Start Point	Time Standard	Start Point	Time Standard	
			days after classification)		hearing; no deferral for material pending litigation.
CA			180 days (standard) 365 days (complex)		Deferral for material pending litigation; for fiscal year (FY) 2022, 70 percent of complex cases and 91 percent of noncomplex cases met standards.

Notes: NA = Data not available or applicable.

N1: Any existing standards for granting extensions of time and provisions for deferral or deferral are provided in this column. In addition, for New Jersey and California, compliance rates with identified standards are provided.

Despite the differences in operations, procedures, and time standards, these states still provide a meaningful basis for comparison from which certain conclusions can be drawn. First, it is common in other states to differentiate and track cases by case processing stage. Second, although distinctions in time standards by case complexity are not common—only New Jersey has time requirements that distinguish between complex and noncomplex cases—the two other states with time standards (Maryland and Texas) authorize time extensions for events consistent with the complexity indicators identified in this report, including issuing subpoenas or securing enforcement orders.

A summary of actual case processing time data for the six states and California is provided in table 7. The State Bar made slight modifications to time standards generated by the 60-day gap analysis for cases closed in the intake and investigation stages based on its analysis of these actual case processing times.

Table 7. Case Processing Time by Case Closure Stage for Six States and California

State	Case Closure Stage (Average time from receipt to closure/filing in days)		
	Intake	Investigation	Charging
AZ	25	225	391
CO	49	257	365
IL ^{N1}	NA	NA	NA
MD	7–10	120–210	365
NJ ^{N2}	<45	215	215
TX ^{N3}	<30	<120 or <180	159

State	Case Closure Stage (Average time from receipt to closure/filing in days)		
	Intake	Investigation	Charging
CA	42	230	449

Notes: Case processing times for California are based on the four-year average of case processing times in years 2018 to 2021. Data for all other states is for 2018 (ABA-SOLD).

N1: Illinois reports differently. For details, please see 2018 ABA-SOLD data in Appendix B.

N2: New Jersey does not distinguish between cases closed and cases prosecuted in investigation and charging.

N3: Texas investigation time varies based on whether or not there is an investigatory hearing; second time shown is where investigatory hearing is held.

NA = Data not available or applicable.

Cases Closed in Intake Stage. Significant numbers of complaints in every state reviewed except Maryland are screened out and closed during an initial intake process. California's average time for doing this screening (42 days, based on a four-year average from 2018 to 2021) is comparable to the average screening times reported by three states (Colorado, Illinois, and New Jersey) though higher than the average screening times reported by two others (Arizona and Texas). New Jersey rules require this screening to occur within 45 days; Texas rules require it to occur within 30 days. To be more consistent with the six states' rules and reported average processing times, the State Bar adjusted the average case processing standard for cases closed in the intake stage to an average of 30 days.

Cases Closed in Investigation Stage. California's average case processing time for cases closed after investigations (230 days, based on a four-year average from 2018 to 2021) is consistent with the average investigation times reported by Arizona, Colorado, Illinois, Maryland, and New Jersey, though higher than the average investigation time reported by Texas. Maryland rules require investigations be completed within 120 days (subject to extension), measured from post-screening docketing of a grievance. New Jersey rules require investigations be completed and formal charges filed within 180 days for standard cases and 270 days for complex matters, measured from post-screening docketing of a grievance. Texas rules require investigations be completed within 90 days (subject to extension), measured from post-screening classification of a grievance. To be more consistent with the six states' rules and reported average processing times, the State Bar adjusted the average case processing standards for cases closed during the investigation stage to range from 120 to 210 days (measured from receipt of the complaint), depending on complexity and risk. This resulted in slight modifications of the time standards generated by the 60-day gap analysis for cases closed in the investigation stage (see step 2 in table 8).

Cases Closed or Filed in Charging Stage. California's average time for closing a case that reaches the charging phase or filing formal charges, whether by filing an NDC or a stipulation to discipline, is 449 days. This is higher than the average charging times reported by any of the six states. The 60-day gap analysis reduced this time to an estimated average of 257 days, which is well below the average charging times reported by Arizona, Colorado, and Maryland, though higher than those reported by Illinois and Texas. The State Bar adjusted the average case processing time for cases closed in charging to 300 days.

Consultation with National and State Experts

The SMEs' contributions overlap somewhat with the evaluation of other states insofar as these experts provided a comparative perspective on California's attorney discipline system. Much of the input of the SMEs focused on operational details of case processing. Examples include: the organization of OCTC into generalized versus specialized teams; the need to distinguish and dispose quickly of lower-risk cases to enable investigative resources to be focused on higher-risk cases; and the need to address turnover, training, and overall expertise among OCTC staff. The results of consultations with the SMEs are described in detail in Part Three of this report.

Of particular interest to the development of the proposed case processing standards were the following observations by the SMEs:

- **ENEC Prior to Charging.** The SMEs identified as unique to California the fact that the ENEC is conducted prior to charging. They suggested moving the ENEC to follow charging or, in the absence of such a change, considering the pre-charging ENEC in setting the proposed time standard for the charging stage. Accordingly, in cases where an ENEC is held, the proposed time standards treat notification of the ENEC as equivalent to charging for purposes of calculating time.
- **Case Risk vs. Complaint type.** The SMEs also confirmed the importance of using RPP, including an assessment of risk-based on patterns of prior complaints or discipline, as a dimension of the time standards while arguing against the use of "complaint type" or "case type"¹² to serve as the framework for time standards development. The proposed standards include risk, but not complaint type, as a dimension, reflecting this SME feedback.
- **Flexibility Regarding Time Standards.** The SMEs expressed the view that the case processing standards should be treated as guidelines and not as jurisdictional bars to discipline if they are not met. This accords with the State Bar Act's treatment of the current time standards. The proposed standards are based on the assumption that this type of flexibility will continue.

LAO and State Auditor Reports

The results of staff's consideration of reports from the LAO and CSA are described in detail in Part Three of this report. Of particular relevance to the development of the proposed case processing standards are the following observations from the LAO and CSA reports:

- **Case Stage.** The LAO report confirmed that case stage is a meaningful and appropriate dimension for case processing standards.
- **Case Risk.** The most recent CSA report confirmed that risk of harm to clients and/or the public is a meaningful and appropriate dimension for case processing standards. The most recent CSA report emphasized that the State Bar should adequately investigate attorneys with lengthy patterns of similar complaints. The assessment of risk for purposes of the case processing standards will include consideration of such patterns.

¹² More discussions about complaint type can be found in Appendix D.

- **Complaint Type (Case Type).** The LAO report suggested considering complaint type in developing case processing standards. As discussed in Appendix D, data analysis does not suggest a meaningful correlation between case processing time and ascertainable complaint types. The data further shows that the other three factors (case stage, complexity, and risk) used in the proposed standards can effectively differentiate cases. After consultation with the SMEs, the proposed case processing standards do not include “complaint type” or “case type” as a factor in the standards.
- **Backlog Measure.** A CSA report emphasized the need to develop a single backlog measure and goal that includes the number of days in which a case is considered in backlog and a goal for the number of cases in the backlog. The development of such a backlog measure is discussed in detail below.

Step 3: Conduct OCTC Focus Groups and Review DCA Case Processing Standards

Focus Groups

Between June 27 and July 8, 2022, State Bar staff conducted five focus groups with 65 attorneys and investigators in the OCTC to solicit feedback on the case processing time standards generated through the 60-day gap analysis and review of other states’ case processing timelines. The purpose of the focus groups was to validate critical components of the case processing standards’ framework, modify proposed time standards if necessary, and identify opportunities for operational improvements in OCTC. A summary of findings and insights gleaned from the focus groups is provided in Appendix E.

OCTC staff’s feedback on the time standard associated with the intake stage indicated that while a 30-day average would be appropriate, this average encompassed two different types of intake review that take varying times—60 days for cases that require additional information (most often from the complainant) to make an initial screening decision and 20 days for all other cases. With respect to the charging stage, OCTC staff agreed with the proposal to consider the role the ENEC plays, noting that staff lose control over the pace of the charging process at this point in the proceedings because the State Bar Court schedules and conducts ENECs and scheduling must accommodate the availability of respondents and their counsel. As a result, OCTC staff agreed with the proposed time standard (an average of 300 days) for charging, if an ENEC notice is considered the equivalent of charging. Should this approach to ENECs not be approved, staff recommended adding an additional 30 days to the proposed time standard for charging. The proposed standards reflect this recommendation as well.

DCA Time Standards Review

The DCA oversees the licensing of a wide variety of trades and professions, ranging from auto repair to accountancy and pest control to physicians. To monitor consumer complaints and their resolutions, DCA created a set of enforcement performance measures (EPM) on caseload and case processing time. In this report, special attention is given to the seven licensing boards for professionals considered more akin to lawyers: accountants, architects, dentists, doctors, nurses, pharmacists, and veterinarians.

DCA's case processing standards are measured against average times, with a target time established for three stages: intake, investigation, and charging. Intake here includes cases assigned for investigation as well as those closed without investigation; investigation includes cases closed after investigation, without those referred to the next stage for formal discipline; and finally, the formal discipline stage includes cases referred to the Attorney General for disciplinary action, regardless of the outcome resulting in discipline or dismissal. Case time is measured from the initial opening of the case.

At the intake stage, the target average time is set at 10 days for all 38 licensing boards. Most of the licensing boards meet this target based on three years of data (2019–2021).¹³ The target average time for investigation varies significantly across different licensing boards, ranging from 60 days for court reporters to 365 days for veterinarians. About half of the licensing boards did not meet their average time targets in investigation. At the last stage, formal discipline, a single uniform target is adopted for all licensing boards, 540 days.¹⁴ Three-fourths of the licensing boards did not meet the target, including all of the seven comparable boards. The results imply that the formal discipline stage is the most time-consuming, and the target set for charging is the most difficult to achieve. More details can be found in Appendix F.

Considering that resources, operational procedures, and practices vary across agencies, as well as that case processing stages are defined slightly differently by different boards, direct comparisons with the State Bar's proposed case processing framework and standards cannot be made. As a result, no adjustment was made to proposed case processing times as a result of this review.

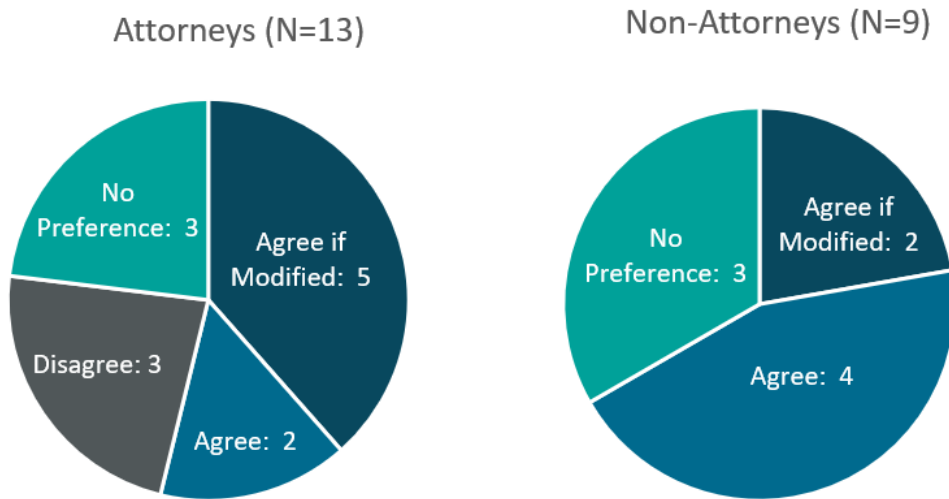
Step 4: Solicit Public Opinion

As mentioned above, the State Bar launched a social media campaign in August 2022 to solicit input from the public on the proposed case processing standards that resulted from adjustments made in step 3. The proposed case processing standards and associated backlog metrics (described in the section below) were posted for public comment; 22 responses were received, 13 from attorneys and nine from nonattorneys. The results were as follows:

¹³ It is difficult for OCTC to set 10 days as its target, as the OCTC intake staff need to reach out to complainants to follow up and obtain additional information, which typically takes anywhere from 20 to 40 days to get a response, longer from complainants who need translation services or are incarcerated. As seen in the other six comparator states, several do intake as the State Bar of California does, with similar time frames.

¹⁴ The 540 days is from receipt of the complaint to the effective date of the discipline decision; that is, through prosecution, hearing, board action, etc.

Figure 3. Summary of Public Comments



Nonattorneys were more likely to agree with the proposed standards than attorneys. In contrast, three out of the 13 attorneys who submitted comments disagreed with the proposed standards whereas no nonattorney disagreed. Overall, the comments indicate that there is public support for the current proposed standards, but the public believes there is a need to further speed up case processing. Among public commenters who agreed with the proposed new time standards only if modified or stated no preference, the sentiment was that the proposed standards are still not fast enough; there is concern about harm to victims when action by the State Bar is delayed. No adjustments were made to the proposed case processing standards as a result of public comment.

Table 8 sets out current case processing time data for each category of cases and the impact of the adjustments (if any) made to the proposed case processing standards to reflect steps 1 to 4 as described above. The final column (step 4) outlines the State Bar’s proposed case processing standards.

Table 8. Summary of Case Processing Time Standards Development Process

Case Category	Current Average Case Processing Time	Step 1: Eliminate 60-Day Gaps	Step 2: Consider Factors Outlined in SB 211	Step 3: Conduct OCTC Focus Groups and Review DCA Standards	Step 4: Consider Public Comment
1. Closed in intake	42 days	42	30	30	30
2. Closed after investigation: higher RPP, noncomplex	167 days	134	120	120	120

Case Category	Current Average Case Processing Time	Step 1: Eliminate 60-Day Gaps	Step 2: Consider Factors Outlined in SB 211	Step 3: Conduct OCTC Focus Groups and Review DCA Standards	Step 4: Consider Public Comment
3. Closed after investigation: lower RPP, noncomplex	197 days	148	150	150	150
4. Closed after investigation: higher RPP, complex	248 days	181	180	180	180
5. Closed after investigation: lower RPP, complex	307 days	209	210	210	210
6. Closed/filed in charging	449 days	257	300	300 ^{N1}	300 ^{N1}

N1: If the proposed standards do not adopt the recommendation that, if an ENEC is conducted, time is measured to the initiation of the ENEC process, the State Bar recommends adjusting this time by 30 days, to 330 days in step 3 and step 4.

Note: Current average case processing time reflects cases closed/filed between 2018 and 2021.

BACKLOG METRIC

Business and Professions Code sections 6086.15(a)(1) and 6094.5(a) require the State Bar to report on the number and percentages of cases meeting and not meeting the following case processing goals: (1) for noncomplicated matters, “to dismiss a complaint, admonish the attorney, or have the Office of Chief Trial Counsel file formal charges within six months after it receives a complaint alleging attorney misconduct”; and (2) for complaints designated as complicated matters by the Chief Trial Counsel, to do the same “within 12 months after it receives a complaint alleging attorney misconduct.” These case processing goals, 180 days for noncomplex matters and 365 days for complex matters, constitute current backlog metrics.

SB 211 directs development of a new backlog metric noting only that there should be “small backlogs of attorney discipline cases.” Backlog metric development has two components: (1) the case closure/filing time target (number of days) after which a case will be designated in backlog status; and (2) defining “small backlogs” as a percentage of cases.

Component One: Case Closure/Filing Time Target

To determine the case closure/filing time target that should be used to designate backlog status, current case processing time distribution by case category for the period 2018 to 2021 was reviewed. As reflected in table 9 in the column labeled “Current 90th Percentile,” 90 percent of cases at the intake stage were closed in 74 days or less while 90 percent of cases at the charging stage took 874 days or less to close or file.

The duration and spread of current case processing times is too long and too wide to satisfy the overall goals of SB 211—to establish standards that take into account RPP and reasonable expectations regarding how long it should take to process complaints. As such, after reviewing current case processing time distribution data, an idealized normal curve that is significantly narrower than that produced by current data was developed. This curve is based on the idea

that backlog metrics should equate to 150 percent of each case category's proposed average case processing time standard. For example, for cases closed in intake, the idealized 90th percentile is 45 days (30 days multiplied by 150 percent).

Component Two: Defining Small Backlogs

Building upon the idealized 90th percentile, a typical statistical measure used to estimate outliers, the State Bar's proposal defines a "small backlog" as 10 percent, meaning that no more than 10 percent of cases should be in backlog status at any time.

Summary

The proposed approach, which establishes average case processing standards and separate backlog metrics reflecting 150 percent of those standards, differs from the status quo in which case processing and backlog standards are one and the same.

The purpose of setting an average case processing time as the standard and an idealized 90th percentile as the backlog metric is to: (1) speed up case processing in general by decreasing the average case processing time; and (2) enable the vast majority of cases to be completed within a shortened reasonable time frame. The impact of the proposed backlog metrics on status quo case processing times is depicted in figure 4. Under the State Bar's proposal, 90 percent of matters in each category will be processed in significantly less time than they are currently; case processing speed improvements are also anticipated for those 10 percent of matters in backlog status, given the shortening of the tail end of the curve.

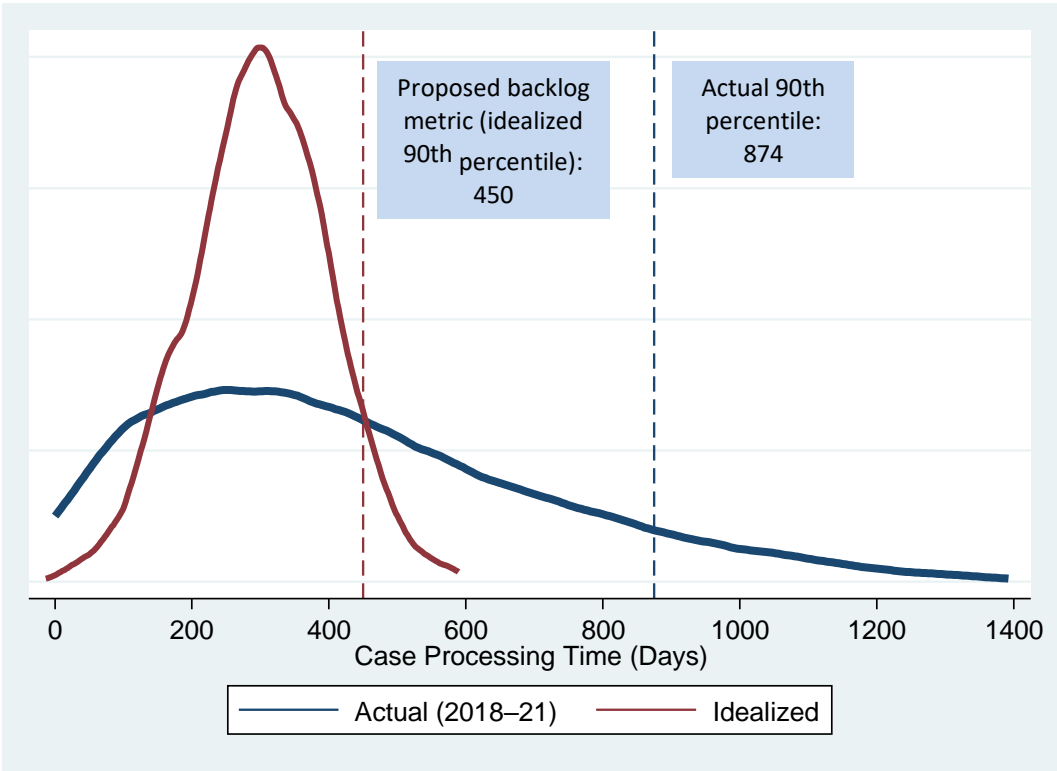
Table 9. Proposed Case Processing Standards and Backlog Metrics for Each Category of Cases

Case Category	Current Case Processing Time (Average)	Proposed Standards (Average)	Current 90th percentile	Proposed Backlog Metric
1. Closed in intake	42 days	30	74	45
2. Closed after investigation: Higher RPP, noncomplex	167 days	120	294	180
3. Closed after investigation: lower RPP, noncomplex	197 days	150	384	225
4. Closed after investigation: higher RPP, complex	248 days	180	414	270
5. Closed after investigation: lower RPP, complex	307 days	210	579	310
6. Closed/filed in charging	449 days	300	874	450

Notes: Current case processing time reflects cases closed/filed between 2018 and 2021.

A single backlog metric will be calculated by the total number and percent of backlog cases across all six categories.

Figure 4. Cases Closed/Filed in Charging: Distribution of Current Average and 90th Percentile Case Processing Times Compared to an Idealized Normal Curve



To transform the actual case time distribution curve to the idealized narrow curve based on the proposed standards and backlog metrics, OCTC must continue to improve its efficiency through operational improvements and staff retention, and it must increase its overall staffing levels.

PART THREE: ANALYSIS OF METHODOLOGICAL REQUIREMENTS

SB 211 requires the State Bar to propose new case standards. Part One of this report describes the proposed framework for these standards, which differentiates cases based on case stage, RPP, and complexity—three relevant factors SB 211 requires be taken into account. Part Two of this report shows how the State Bar’s analysis of the methodological requirements set out in SB 211 drove the development of case processing standards step by step and presents the final standards.

This section of the report discusses how the proposed case processing standards are aligned with the State Bar’s analysis of information, directives, and recommendations arising from each of the four methodological requirements set out in SB 211:

1. A review of case processing standards in attorney discipline systems in at least five other states, including large and small jurisdictions, with the goal of reviewing jurisdictions that have strong and effective discipline systems that protect the public.
2. Consultation with state and national experts on attorney discipline.
3. Reports from the LAO.
4. Reports from the CSA.

CASE PROCESSING STANDARDS IN OTHER STATES

As discussed above, the State Bar reviewed case processing standards and times in Arizona, Colorado, Illinois, Maryland, New Jersey, and Texas. The following conclusions can be drawn about how the proposed case processing standards compare with these six states:

Flexibility Provided by Average Time Standards. Time standards based on average time, meaning that investigations will vary in the time required to conduct them, some exceeding the average, others taking less time, are consistent with the rules and reported case processing times in the six states. New Jersey rules set fixed maximum times for the completion of investigations, but New Jersey reports indicate that, on a regular basis, more than 25 percent of its investigations exceed the maximum time. Maryland and Texas rules similarly set maximum times for the completion of investigations, but they authorize extensions for good cause, indicating a recognition of the need for flexibility in determining what is needed to complete thorough investigations.

Case Deferral. Among states that have rule-based time standards, only Texas prohibits deferral or abatement of investigations based on a related pending civil or criminal action. Maryland, New Jersey, and Colorado allow deferral. Similarly, current State Bar procedural rules allow tolling of the rule of limitations for a related pending civil or criminal action. Further, the State Bar Court is authorized by current rules to defer filed disciplinary proceedings based on pending civil or criminal actions. Consistent with these approaches, the proposed standards exclude time while an investigation is deferred based on a related pending civil or criminal action.

Case Stage. A review of the six states suggests that differentiating time standards based on case stage is appropriate. Texas rules include some time standards differentiated by case stage, requiring initial review and classification of grievances within 30 days of receipt, and, absent extension, completion of investigation within 60 days after the respondent's response to a grievance classified as a complaint is due. Similarly, in Maryland and New Jersey, their rule-based time standards for investigation are triggered only after initial review of a grievance is completed and that grievance is docketed for investigation. Though Arizona, Colorado, and Illinois do not have rule-based time standards, all of them differentiate in their annual reports the average times taken for initial review of complaints and for subsequent completion of investigations. Similarly, the ABA-SOLD includes three different time measures based on the stage at which a case is closed or charges filed: receipt of complaint to summary dismissal, receipt of complaint to closure after investigation, and receipt of complaint to filing of formal charges. All of this supports the proposed framework for California that sets differing time standards for: closure in the intake stage, closure in the investigation stage, and closure/filing of charges in the charging stage.

Complexity. A review of the six states also suggests that it is appropriate to differentiate time standards based on complexity. As does current California Business and Professions Code section 6094.5(a), New Jersey rules include time standards differentiated by complexity, requiring the completion of "all investigations of standard matters within six months, and of complex matters within nine months." Texas rules require investigations to be completed and findings of just cause made within 60 days but allow extensions of this time where investigatory subpoenas are issued or enforcement orders are obtained, both events potentially indicative of more complex investigations. Maryland rules, which require investigations to be completed within 120 days of a complaints docketing, also authorize extensions of this time on showings of just cause, indicating a recognition that more complex investigations may take more time. The Business and Professions Code does not currently attempt to define complexity, nor do the statutes or rules in New Jersey or any of the other five states. The proposed standards take the same approach, leaving it to OCTC to identify those cases that are complex based on consideration of all the relevant facts and circumstances, including those that may develop as an investigation is ongoing. Such discretion is necessary given the unique and unpredictable circumstances that may arise and cause any given investigation to become complex.

Intake Stage Standard. The proposed standard for closures of cases in the intake stage (an average of 30 days), is generally consistent (shorter than some but longer than others) with the six states' rules and reported average processing times.

Investigation Stage Standard. The proposed standards for closures of cases in the investigation stage (an average of between 120 and 210 days depending on complexity and risk, measured from complaint receipt) is generally consistent (shorter than some but longer than others) with the six states' rules and reported average processing times.

Charging Stage Standard. The proposed standard for closures of cases (an average of 300 days) reflects a significant adjustment to bring average charging times more into line (shorter than some but longer than others) with those reported by the other states.

Need for Staffing Analysis. To ensure the State Bar will meet the proposed standards, a staffing needs analysis is key. California's average caseload per lawyer is in general comparable to the national median in 2018 and higher than the national median in 2019 (see Appendix B). A next step will be to investigate other states' caseload reporting in the ABA-SOLD to better understand their calculations. This will be reflected in the State Bar's final staffing needs analysis, which will be performed based on the final case processing standards approved by the Legislature.

Summary and Next Steps

The proposed case processing standards are generally consistent with the six states' time standards and actual case processing performance. No state uses risk to differentiate applicable time standards, nor is case processing time reporting based on risk. SB 211 direction, however, is to account for risk of actual or potential harm, and it makes sense to ensure sufficient time and attention to investigate higher risk cases. Accordingly, risk-based differentiation in the investigation stage is appropriate.

CONSULTATION WITH STATE AND NATIONAL EXPERTS ON ATTORNEY DISCIPLINE

As noted in the introduction, the State Bar secured the services of national expert Ellyn Rosen and California experts Robert Fellmeth and Richard Zitrin. Below is a summary of SME contributions and feedback in relation to the proposed case processing standards. A more comprehensive overview of SME feedback, including recommendations for operational and staffing changes, is provided in Appendix C.

Defining Case Completion in the Charging Stage. The SMEs noted that California is the only jurisdiction they are aware of that uses a formalized ENEC, a settlement conference held before a State Bar Court hearing judge that precedes OCTC's filing of an NDC. Under the current statutory case processing time standards, cases are considered completed (stopping the clock) when dismissed with no discipline or upon filing an NDC or a stipulation. The SMEs noted that the ENEC process can significantly slow the charging stage, an observation consistent with State Bar research that has shown that cases with ENECs have longer overall case processing times. The SMEs suggested eliminating a mandatory prefiling ENEC (leaving the parties free to pursue settlement discussions on their own before filing) and instead having a mandatory evaluation/settlement conference conducted with the court post-filing. One SME, noting that a prefiling ENEC adds time to case processing, advised considering cases completed for purposes of the time standards before the ENEC.

Response: The proposed case processing standards adopt the suggestion that the ENEC process be accounted for in identifying when cases are complete by OCTC. As a result, under the proposed time standards, cases are considered completed for purposes of the charging stage

time standard at the occurrence of the earliest of three conditions: (1) closure or dismissal before an ENEC; (2) notice of an ENEC (if an ENEC is elected and subsequently conducted); or (3) filing of a stipulation or NDC (if no ENEC is conducted).¹⁵

Severity of Cases (Higher RPP vs. Lower RPP). The SMEs raised concerns that efforts to comply with overly restrictive time standards may result in serious complaints not receiving enough attention, with OCTC staff instead focusing on cases that can be quickly resolved. The SMEs agreed that instead of spending too much time on less serious cases, such as pursuing those with minor, nonsystematic communication failures, OCTC should close these cases quickly, as they are usually due to flaws in attorney practice management rather than indicative of misconduct posing a risk of any significant potential harm. The goal should be to allocate sufficient resources and attention to cases with high actual and potential harm. The SMEs specifically asked the State Bar to consider the following questions in developing proposed standards:

- How will the State Bar ensure that complaints against repeat violators, as demonstrated by prior records, are thoroughly vetted, investigated, and resolved? One SME suggested the identification of high-risk attorneys based in part on consideration of past patterns of complaints, with assignments of all subsequent complaints for a high-risk attorney to a designated team to ensure consistency and proper consideration of the attorney's history.

Response: Under a new policy implemented in response to the most recent state audit, prior complaint histories are reviewed and considered in determining whether to refer complaints to investigation. OCTC agrees with the recommendations to ensure consistent treatment of complaints relating to a single attorney; individual caseloads permitting, OCTC currently tries to assign repeater respondents to common attorneys and investigators and will attempt to increase this practice. The proposed case processing standards differentiate between higher RPP and lower RPP cases in the investigation stage. This risk designation, to be flagged at the intake stage, will also account for prior complaint histories as one factor in assessing risk.

- How will the State Bar ensure that the discipline system is not inappropriately targeting small firms or solo practitioners while closing potentially more complicated investigations of larger firms to move through cases more quickly? One SME referenced the Thomas Girardi case as suggesting that a larger firm escaped scrutiny by the discipline system based on the potential complexity of the required investigation even though the large amount of client funds flowing through its accounts should have exposed it to greater scrutiny. Other SMEs viewed the Girardi case as unique but made the same point that resources should be prioritized to cases posing the greatest risk of harm. In this regard, the SMEs highlighted the importance of having “potential harm” (in addition to “actual harm”) considered in identifying higher RPP cases.

¹⁵ For transparency, the ADR will include data on the time to filing of a stipulation or NDC even where an ENEC is conducted.

Response: The risk designation flagged at the intake stage will account for both potential and actual harm. The State Bar also plans to conduct a study to determine whether there are discipline disparities based on firm size and/or practice type and attempt to identify causes of any disparities.

- Is the State Bar taking full advantage of the diversion process? Can more of the lower-risk cases be moved to these outcomes quickly? The SMEs proposed better separation of less serious cases and using alternatives to discipline such as diversion to address situations where remedial assistance can be helpful. An action analogous to diversion that OCTC currently uses in a limited number of cases is an Agreement in Lieu of Discipline (ALD), in which there is an agreement to conditions to be monitored by OCTC that, if successfully complied with for some period of time, will result in OCTC not pursuing discipline. One SME emphasized the need to use warning and directional letters along with providing diversion options.

Response: The most recent state audit suggested that nonpublic actions such as these may be overused. The SMEs, on the other hand, suggest that nonpublic actions should be used more. Attempting to take both these views into account, OCTC is drafting a new policy to define better when the use of nonpublic actions such as these is appropriate. The State Bar also plans to review how other states use diversion to address minor violations.

Deferred Cases. The SMEs generally agreed that deferral is appropriate in many instances where pending civil or criminal litigation will address substantially similar issues, and that time during deferral should not be counted against the case processing standards. OCTC currently defers further review and investigation of some complaints based on pending criminal or civil litigation involving similar material allegations. Under State Bar Rule of Procedure 5.21(C)(3), deferral based on pending criminal or civil litigation tolls the five-year time limit for filing an NDC.¹⁶ Two SMEs suggested that an investigation or the filing of disciplinary charges should not be deferred where a related civil or criminal case has been the subject of a ruling, but that ruling remains pending on appeal.

Response: As discussed in Part Two, the proposed case processing standards exclude time while a case is deferred on the basis of pending criminal or civil litigation. Rather than implementing a bar on deferral based on the pendency of an appeal as suggested by two of the consulting SMEs, OCTC plans to implement new guidance on the circumstances under which deferral is appropriate that will address pendency resulting from appeal; the practical result of this guidance will likely be to limit deferral pending appeal as compared to current practice.

¹⁶ One SME noted that California does not have a rule such as rule 18(g) of the ABA Model Rules for Lawyer Disciplinary Enforcement, which states: “Upon a showing of good cause to the board the processing of a disciplinary matter may be stayed because of substantial similarity to the material allegations of pending criminal or civil litigation or disciplinary action.” As noted, the State Bar Rules of Procedure implicitly recognize OCTC’s ability to defer, with deferral tolling the otherwise applicable time limit for filing. OCTC is not required to obtain approval for its deferrals from a governing board. The SME who noted ABA Model Rule 18(g) did not suggest that such a requirement should be imposed,

Complaint Type (Case Type). All of the SMEs raised concern about the LAO's suggestion to consider adding complaint type (also referred to as "case type") to the case processing standards framework. The SMEs noted that no other state incorporates complaint type in their case processing standards, and suggested that risk of actual or potential harm is more meaningful than case type as a method for categorizing complaints.

Response: The proposed standards include risk of actual or potential harm as part of the framework, but do not adopt complaint type as an additional dimension.

Use of Interim Remedies. All of the SMEs emphasized that there should be more consistent use of interim suspensions when dealing with higher-risk cases in which charges and resulting discipline are likely but will take time to materialize. Currently, Business and Professions Code section 6007(c)(2) authorizes involuntary inactive enrollment of an attorney based on pending discipline only where OCTC can show, by clear and convincing evidence, that an attorney has caused or is causing substantial harm to the attorney's clients or the public and that there is a reasonable probability OCTC will prevail on the merits of the underlying disciplinary matter and the attorney will be disbarred. The SMEs have suggested pursuing legislative changes to further expand the availability of interim suspensions and (a suggestion from one SME) to enable interim restrictions on practice (short of suspension, for example, accountant approval of client trust account disbursements) as to which OCTC would bear the burden of proof by a preponderance (rather than clear and convincing evidence).

Response: Currently, there are only a handful of cases per year in which involuntary inactive enrollment is sought under Business and Professions Code section 6007(c)(2). OCTC agrees that involuntary inactive enrollment and possibly other interim remedies to be determined should be more readily available and more often used when a showing can be made that an attorney has caused or is causing substantial harm to the attorney's clients or the public. OCTC also agrees that there may be circumstances where the burden of proof should be a preponderance rather than clear and convincing evidence.

Bifurcated Case Processing Standards. One SME recommends an alternative approach to the case processing standards, under which OCTC would have 30 or 90 days (depending on a case's complexity) to close a case or designate it as one warranting further investigation, with a 12-month maximum for investigation and charging of those cases determined to warrant further investigation, and consideration of interim remedies for any case taking more than the initial 90 days to complete.

Response: This suggested approach is similar to practices in place in Colorado and Maryland, where the initial screening includes communication with the complaining witness and respondent to identify cases that warrant additional investigation. This would reflect a substantial change in OCTC's current approach, under which intake screening may involve additional communication with the complaining witness but does not involve communication with the respondent, that communication being initiated only after a case is referred for investigation. Accomplishing the suggested level of screening within a 30- to 90-day window

might also require a substantial increase in OCTC's overall resources. The proposal, however, would likely serve to accomplish a goal with which OCTC agrees; that is, resolving minor complaints as quickly as possible while more thoroughly investigating the relatively small subset of complaints that pose a higher risk of substantial actual or potential harm. The proposed standards seek to accomplish this goal albeit in a different manner from that reflected in the SMEs bifurcated case processing standards approach.

Flexibility in meeting time standards. The SMEs expressed that the California Legislature should treat case processing standards as guidelines rather than as jurisdictional. The SMEs noted that doing so would enable OCTC to pursue more thorough investigations where necessary and not feel forced to close cases prematurely.

Response: The State Bar agrees. This approach to time standards is codified in Business and Professions Code section 6094.5: "Goals for case processing and disposition that are intended to encourage the prompt disposition of matters and apply to the overall inventory of matters of the type specified in subdivision (b) are not meant to create deadlines for individual cases, are not jurisdictional, and shall not serve as a bar or defense to any disciplinary investigation or proceeding. 6094.5 (b)(3)." The proposed standards adopt this same approach.

Summary

The proposed case processing standards reflect SME feedback as follows:

1. For purposes of the time standard applicable to the charging stage, cases are considered completed at the earliest of three occurrences:
 - Closure or dismissal prior to ENEC;
 - Notice of ENEC (if ENEC is subsequently conducted); or
 - Filing of stipulation or NDC (if no ENEC is conducted).
2. The assignment of risk level to cases includes consideration of the respondent's complaint and discipline history.
3. The case processing standards do not include complaint type as another dimension for defining case categories.
4. The proposed case processing standards exclude time while a case is deferred on the basis of pending criminal or civil litigation.
5. The proposed case processing standards are guidelines rather than jurisdictional requirements that provide OCTC flexibility to exercise prosecutorial discretion and pursue thorough investigations.

The proposal has been reviewed by the three SMEs, and their additional comments and recommendations are presented in Appendix A.

LEGISLATIVE ANALYST'S OFFICE AND CALIFORNIA STATE AUDITOR REPORTS

SB 211 directs the State Bar to consider reports from the LAO and the CSA. Accordingly, staff reviewed the following reports:

- *The California State Bar: Considerations for a Fee Increase* (LAO, 2019);

- *The State Bar of California: It Is Not Effectively Managing Its System for Investigating and Disciplining Attorneys Who Abuse the Public Trust* (CSA, 2021); and
- *The State Bar of California's Attorney Discipline Process: Weak Policies Limit Its Ability to Protect the Public from Attorney Misconduct* (CSA, 2022).

The narrative below summarizes the State Bar's action in response to issues raised in these reports.

RPP. The CSA 2022 report stated that the State Bar should “adequately investigate attorneys with lengthy patterns of complaints” and that “categorizing allegations into broader categories would allow staff to identify patterns of complaints more easily.” The report recommended that, “to allow its staff to more easily identify patterns of complaints made against attorneys,” the State Bar “should begin using its general complaint type categorizations when determining whether to investigate a complaint.” The State Bar’s proposed case processing standards include a dimension of risk, and the designation of cases as higher RPP will include consideration of any similar complaints or discipline. The risk factor of repeated violations will be closely monitored once such a complaint is initiated.

This risk dimension will replace the current case prioritization system, which is based in part on available resources, thus artificially limiting the number of cases designated as priority 1 (P1) or priority 2 (P2). The State Bar agrees that such a resource-limited prioritization system should not be used for differentiating among the proposed case processing standards. Moreover, as the CSA 2021 report found, higher priority cases took longer to resolve, which was contrary to the system’s intention. In conclusion, the proposed standards do not incorporate the current case prioritization system. Instead, investigation times based on an assessment of risk (higher RPP or lower RPP), independent of any consideration of available resources, are reflected in the proposed standards, with shorter investigation time standards associated with higher RPP matters.

Case Closure Stage. The 2019 LAO report stated that: “...alternative statutory time frames—like ones based on either the specific stage in which cases are closed, the severity of complaints, or specific complaint types—could provide more meaningful metrics measuring State Bar activities....” Case closure stage is a meaningful way to analyze data for understanding and rectifying system inefficiencies; the proposed case processing standards incorporate case closure stage accordingly.

Complaint Type. The 2019 LAO report suggested considering complaint type in developing case processing time frames. Complaint type, in this instance, refers to categorizing cases according to the type of misconduct alleged. To explore this suggestion, staff leveraged a recently created typology that classified over 400 misconduct charge codes into 25 categories. Staff ranked the 25 categories according to severity and further grouped them into six categories based on principal component analysis: (1) client funds, (2) client neglect, (3) duties to the State Bar, (4) professional integrity, (5) UPL and loan modification, and (6) other. Most cases involve more than one charge; cases were categorized into one of the six categories based on the most

severe charge. Staff explored case age data over three years and found only minor variation in case processing time across the six complaint types when examined by case closure stage (see Appendix D). As a result, staff concluded that incorporating the six complaint types added no meaningful analytical value to the case processing framework. In addition to this data analysis, as noted above, the SMEs advised against attempting to base case processing standards on complaint type. While complaint type is not reflected in the proposed case processing time standards, the State Bar will begin tracking case processing times by complaint types to discern whether further exploration of this idea is merited.

Backlog. The CSA 2021 report asserted that the State Bar “must develop and recommend an appropriate backlog measure and goal, 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 the backlog.” The report also noted: “Although different time frames may be appropriate for different types of cases, a single backlog figure that can be compared to prior periods helps ensure that stakeholders can easily understand the overall health of the discipline system.”

As reflected in Part Two above, the State Bar proposes a backlog metric that addresses the issues raised by the CSA. It is based on an idealized narrow bell curve, using half of each case category’s average time standard to identify a backlog measure. Cases whose processing times exceed this backlog metric will be considered to be in backlog. For example, for higher RPP complex cases that are closed in investigation, the proposed case processing standard is an average of 180 days. A higher RPP complex case that remains open in investigation more than 270 days ($180 + 180/2$) would be considered in backlog. A single backlog metric will be measured by the total number of backlog cases across all six case categories. The goal is to have less than 10 percent of all cases in backlog across all six case categories.

Summary and Next Steps

In summary, the following modifications were made to the proposed case processing standards, and to plans for staffing needs analysis and future internal reporting, based on the State Bar’s review of recent LAO and CSA reports:

- The proposed standards will use case stage, complexity, and risk as their three dimensions, and will not use the current case priority levels (P1, P2, P3), which are based in part on availability of resources.
- Complaint patterns in attorneys’ prior records will be considered as a factor in designating higher RPP cases.
- The State Bar is proposing backlog metrics based on the proposed case processing standards.

PART FOUR: TO MEET THE STANDARDS – STAFFING NEEDS ANALYSIS AND OPERATIONAL IMPROVEMENTS

SB 211 requires that the State Bar’s proposal for new case processing standards “shall include staffing requirements for the OCTC to achieve the case processing goals.” A preliminary staffing needs analysis is outlined below. A comprehensive staffing study will be initiated in 2023 to incorporate guidance from the Legislature on the proposed case processing standards and process and practice improvement efforts underway in the Office of the Chief Trial Counsel (also described below).

PRELIMINARY STAFFING NEEDS ANALYSIS

Two methods are used to provide a preliminary analysis of staffing levels and type needed to implement the proposed standards. The first method is based on a workload study conducted in 2021. The second method is based on a linear model in which the size of the improvement in case processing time is directly tied to staffing levels available.

The 2021 Workload Study

In early 2021, OCTC’s leadership started planning for a workload study in response to several significant changes in the past few years, including the implementation of OCTC’s new case management system (Odyssey), the remote work environment imposed by the COVID-19 pandemic, and legislative discussions calling for a reassessment of the backlog metric. Based on the same time-study methodology that the State Bar used in the 2018 workload study reviewed by both the State Auditor and LAO, OCTC staff participated in a time-study survey for two weeks in March of 2021 to measure their work hours for case processing tasks.¹⁷

After completing the time-study analysis, a series of Delphi focus group sessions were conducted with attorneys, investigators, and support staff to review the time-study results at the task-level and make appropriate adjustments to task times where needed. The results from the 2021 time-study analysis were consistent with feedback received from staff over the years, including in developing the 2016 Backlog Report and most recently in focus groups conducted for the SB 211 process.¹⁸

As shown in table 10 below, after aggregating across all task areas the case weight adjustments, the Delphi results from attorney staff implied a need for 47 additional attorneys; the investigator session resulted in a need for 25 additional investigators. Summarizing across all staff groups, the Delphi adjustments provided an estimated need of 119 total additional staff (from 272 to 391 positions), representing an overall increase of 31 percent.

¹⁷ See board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000022831.pdf for the 2018 workload study report submitted to the Board.

¹⁸ See calbar.ca.gov/Portals/0/documents/reports/2016_Backlog_Report_May_15.pdf for the 2016 State Bar Backlog Report.

The study results were presented to the Board at its July 2021 meeting.¹⁹

Table 10. Preliminary Staffing Needs Results – 2021 Workload Study with Delphi Adjustments

Staff Type	Current Staffing (2021)	Estimated Needs	Additional Staffing Needed
Attorney	80	127	47
Investigator	79	104	25
Support staff	88	128	40
Total line staff	247	359	112
Supervisor/manager	25	32	7
Total	272	391	119

Linear Model

An alternative method for deriving preliminary staffing needs is a comparison between current and proposed case processing standards, assuming a linear correlation between changes in case processing time and resources.

Following this method, case processing time for cases closed beyond intake stage is analyzed in relation to the proposed standards; intake cases are excluded in order to represent more accurately investigator and attorney resources. Based on data between 2018 and 2021, it took a weighted average of 256 days to close or file cases.²⁰ Case processing time based on the proposed standards across all the investigation and charging categories leads to a weighted average of 183 days. By implementing the standards, average case processing time should then decrease from 256 to 183 days, a reduction of 29 percent.

Assuming a linear correlation between the improvement in case processing time and staffing needed to achieve the goal, Table 11 shows the additional staffing needed to reduce case processing times by 29 percent. It is worth noting the similar results that the two methods produced for additional investigators needed: 25 according to the Delphi approach and 23 using the linear model. The number of other positions (attorney, support staff, and supervisor/manager) in the linear model are calculated based on their respective ratio to the number of investigators. For example, in 2021, the ratio of attorney to investigator is 80 to 79 (about 1:1); hence, 23 additional investigators will need 23 additional attorneys to ensure the team can function in the current structure. The total additional staff members needed generated by this method is 78.

¹⁹ See board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000027787.pdf for the 2021 workload study report submitted to the Board.

²⁰ Based on the four-year weighted average numbers of cases in categories 2–5.

Table 11. Preliminary Staffing Needs Results – Linear Model Tied to Proposed Standards

Staff Type	Current Staffing (2021)	Estimated Needs	Additional Staffing Needed
Attorney	80	103	23
Investigator	79	102	23
Support staff	88	113	25
Total line staff	247	318	71
Supervisor/manager	25	32	7
Total	272	350	78

The figures presented above based on either method should be considered preliminary and do not constitute a formal funding request by the State Bar; a formal request will follow the more comprehensive staffing needs analysis to be launched next year. Instead, preliminary staffing needs have been identified to provide the Legislature with a general sense of the number of new resources needed to implement the identified standards; the primary purpose is to make clear that the State Bar will be unable to meet the new proposed standards, assuming legislative adoption, if no additional resources are provided. The State Bar would not object to legislative adoption of the standards before a resource augmentation, with the understanding that the State Bar will be unable to meet the standards until sufficient resources are allocated to support implementation.

FINAL STAFFING NEEDS ANALYSIS

The final staffing needs analysis will be initiated in 2023 and will reflect a number of operational improvements underway or planned in the OCTC. Many of these improvements are tied to recommendations made during the SB 211 process. These recommendations and the methodology of the final staffing needs analysis is outlined thereafter.

Recommendations for Operational Improvements

The State Bar has initiated many policies, procedures, and initiatives over the last several years to address system fairness and efficiency.²¹ In addition, OCTC has several built-in mechanisms by which it engages in quality control over and above staff supervision by supervising attorneys and assistant chief trial counsels. These include:

- Monthly random audits of open disciplinary investigations by OCTC supervising attorneys;
- Specified approval requirements for actions in major cases;
- Trial team meetings to discuss planned actions in selected cases; and

²¹ See Appendix G for a complete catalog of this work that was prepared for the Ad Hoc Commission on the Discipline System that was launched in April 2021.

- Offering complaining witnesses the opportunity to share their experience filing a complaint via a survey sent with each closing letter.

OCTC is also subject to external quality control.

- An external auditor conducts a semi-annual random audit of 250 closed cases, and OCTC reports on the results to the Board; and
- Complaining witnesses are entitled to request that the Complaint Review Unit (CRU) review OCTC's decision to close a case. If CRU finds that the case was not closed properly, or if the complaining witness presents new evidence, it will refer the complaint back to OCTC with a recommendation that it be reopened for investigation.

While developing the case processing standards outlined in this proposal, the State Bar received many suggestions, recommendations, and insights regarding OCTC operational practices and procedures as it engaged the SMEs, reviewed LAO and CSA reports, and conducted OCTC focus groups including:

Generalized v. Specialized Teams

The SMEs expressed different opinions regarding the issue of generalized versus specialized teams. One SME expressed the view that it could be detrimental to retention and morale to have specialized units (particularly if those specialized units had lower caseloads or were branded as having greater prestige) while noting there is no evidence to show that a specialized team increases productivity. This SME pointed out that California differs from many jurisdictions in that it has investigators do significant work and take the lead on most investigations. In contrast, in many other jurisdictions, attorneys lead investigations. This SME identified complex trust accounting cases as one area for developing a specialized team. This SME also suggested that the State Bar may consider assigning less experienced investigators and attorneys to less complicated cases until they have sufficient training and experience to take on more complicated matters.

In contrast, the two other SMEs believe that having specialized units in areas of high volume or those requiring special expertise is appropriate and necessary. As examples, they suggested that having teams containing individuals with expertise in the underlying areas of practice at issue in the complaint would speed up and make more effective investigations arising from family law, probate, bankruptcy, and immigration matters in particular. They suggested that supervisors of specialized units covering these areas need to be equipped with expertise in the specific area. To balance workloads, the SMEs suggested that specialized teams could take on other cases when their caseloads drop, similar to white-collar specialists and homicide units in District Attorney's offices.

OCTC will consider the SMEs' suggestions for improving efficiency such as assigning complaints involving a common respondent to common attorneys and investigators and developing subject-matter expertise among its attorneys and investigators. SME observations regarding

issues of turnover, training time, and institutional knowledge among OCTC attorneys and investigators will be formally addressed in the final staffing needs analysis.

During focus groups conducted as part of the present case processing standards development effort, OCTC staff indicated that generalized teams contributed to higher satisfaction with work but also acknowledged that specialization can make the work process more efficient. The analysis of the impact of the 2016 restructure will attempt to estimate the trade-offs that have resulted from the creation of generalized teams. This analysis will also be reflected in the final staffing needs analysis.

Procedures Specific to Each Case Stage

Intake Stage. Many suggestions regarding the intake phase are consistent with the SMEs' suggestions regarding expediting noncomplex and lower-risk cases. In addition, the intake focus group suggested simplifying internal procedures to speed the transfer of higher-risk cases to investigation. The intake focus group also suggested steps to improve communication with complainants, including modifying the complaint form and providing additional statements and explanations in advance so that complainants will better understand when a case will be closed.

Investigation Stage. As to the investigation stage, suggestions were also made to reduce or simplify unnecessary internal steps, provide more administrative support including data entry and document uploading, strengthen communication between investigators and attorneys, group complaints of repeaters under one small group of investigators and attorneys, and create a specialized unit to handle post-transmittal investigations/filings in cases arising from criminal convictions.

Charging Stage. Suggestions on the charging stage focused on streamlining procedures such as limiting the amount of time that respondents can continue to practice while attempting to be admitted to the Alternative Discipline Program, moving trial team meetings earlier in the process (before moving to the charging phase or at latest before scheduling an ENEC) to ensure that cases coming out of investigation and moving to charging or moving through charging to an ENEC already have complete buy-in for charging the case, and using the charging memo and trial team meeting as a substitute for an investigative report.

OCTC will also consider the SMEs' suggestions on improving efficiencies such as assigning complaints involving a common respondent to a common attorney(s) and investigator(s) and developing subject-matter expertise among its attorneys and investigators

Future Internal Reporting

The CSA 2021 report noted that the State Bar "has not effectively measured the performance of its discipline system staff against internal performance benchmarks." It also pointed out that the State Bar needs to "develop benchmarks for the duration of each step in its investigation process" and "monitor its staff's performance against its internal benchmarks." The LAO 2019

report also recognized the need for developing benchmarks for “further improvements to address backlog of discipline cases,” noting: “The State Auditor recommends the State Bar further improve its ability to operate more efficiently and reduce the backlog of discipline cases by: (1) developing benchmarks to delineate the duration of each step in its investigation process.”

In the summer of 2022, the State Bar deployed a weekly operational report to monitor whether OCTC team members accomplished certain initial investigative tasks consistent with interim case processing benchmarks. The benchmarks encourage the prompt investigation and disposition of attorney discipline matters and assist OCTC management in identifying problems in specific phases of its process so they can be addressed before affecting the backlog. The State Bar also established, in 2022 Q1, a set of dashboards to track OCTC’s main performance measures, including case inventory, case clearance rate, case processing time, and team performance.

The State Bar will continue to develop and test new interim operational reports to understand they can be used by OCTC staff to improve efficiency. In addition, once the Legislature approves case processing standards and backlog metrics, the State Bar will make recommendations to modify the current ADR reporting and performance metrics accordingly.

Methodology of Final Staffing Needs Analysis

The final staffing needs analysis will be initiated once the State Bar receives legislative guidance on the proposed case processing standards. The analysis will incorporate the following elements reflecting feedback received during the SB 211 development process and a review of previous LAO and CSA reports.

Case Weights

The 2019 LAO report discussed the State Bar’s 2018 workload study. The report was critical of how the workload study used case weights and recommended generating different case weights for complaint types or priority categories, stating: “Differentiating between the processes for specific complaint types or priority cases can help more accurately identify workload need.” Risk level and complexity will be added in the forthcoming staffing needs analysis so that different types of cases are assigned different weights, as defined by the dimensions of the proposed case processing standards.

Staffing Needs and Expertise

The SMEs highlighted the human resources needed for an efficient and effective case processing system. They recommended increases in staffing to ensure reasonable caseloads that would permit staff to invest sufficient time and energy in investigating complex, higher-risk cases. In addition, the SMEs expressed concerns about the overall institutional memory of State Bar investigators and attorneys, noting turnover and the relatively low tenure of a large number of investigators and attorneys. In this regard, the SMEs discussed many issues, such as

experience level, turnover rate, salaries, training procedures, and team structure (i.e., generalization vs. specialization). Two SMEs also emphasized the desirability of OCTC having attorneys with expertise in specialized areas of practice, including family law, immigration, probate, and bankruptcy; the SMEs noted that attorneys with such expertise would be able to more quickly identify complaints warranting further investigation as a result of their understanding of ordinary norms of practice in these areas.

To more accurately assess the resources needed to meet the proposed case processing standards and in light of this feedback, the forthcoming staffing needs analysis will consider the following staff characteristics:

Experience Level and Years of Experience. Both OCTC staff members and SMEs highlighted the importance of recruiting and retaining experienced investigators, attorneys, and paralegals, as experienced staff can handle cases faster. Essential in this regard is the experience level within OCTC is essential because there is a steep learning curve for new staff to understand the complex and layered disciplinary system and OCTC and State Bar Court processes and procedures. Hence, experience level will need to be considered in the staffing needs analysis.

Turnover and Training. The staffing needs analysis will also account for turnover and training, which affect the level of resources available to investigate and charge disciplinary matters. The high turnover rate for attorney and investigator staff has been raised as a serious concern in previous workload studies and state audit reports; focus group discussions held with staff during the development of the proposed case processing standards reinforced that turnover-rates are a current and ongoing challenge. Special attention will be paid to trends in turnover-rates for different staff categories and how turnover affects case processing. Partial caseload assignments for new staff while going through onboarding and training will also be analyzed to assess the related potential disruption on caseload management and case processing.

Staff Time Allocation. This approach, used in the State Bar's previous workload studies, will provide key information on staff time allocation across various complaint types and case processing activities:

- *Number of staff members and proportion of time spent in intake*
- *Number of staff members and proportion of time spent in investigation; and*
- *Number of staff members and proportion of time spent in charging.*

Caseload and staff time allocation data will be disaggregated by additional categories, including complex versus noncomplex cases, and higher RPP versus lower RPP cases. With staff time allocation broken out into these more detailed categories, case weights can be generated for each complaint type defined by the three dimensions of the proposed case processing standards.

Investigator Field Activity

The SMEs suggested that investigators should more often actively go into the field to conduct investigations and focus on their process being thorough and accurate. Specifically, they suggested that investigators should more often seek to meet in person with complaining witnesses (CWs) rather than relying on forms, emails, and phone calls, since clients who are harmed are not always equipped to gather and forward information in response to requests and nonverbal clues are an important investigative piece when assessing credibility. The SMEs suggested that having investigators go into the field to meet with CWs in high-risk cases is especially important. The staffing analysis will attempt to account for additional time to be spent by investigators on field activities as a result of this feedback.

Staff Administrative and Technical Support

One of the major takeaways from both the SB 211 focus group analysis and recent exit interviews with departing OCTC staff is the need for increased administrative and technical support to free investigators and attorneys to spend more time on investigation and analysis. As a result, the staffing needs analysis will fully address and document the need for complementary support positions, including paralegals, legal secretaries, and administrative support staff.

Other Sources of Data

The following qualitative data sources will also be examined to inform the State Bar's staffing analysis.

- **Exit interview:** Exit interviews are conducted with all staff who leave the State Bar;
- **Stay interview:** Stay interviews are conducted with new employees within 90 days of hire; and
- **Employee engagement survey:** The State Bar issues an annual staff survey to gauge employee engagement by assessing employee attitudes, conditions in the work environment, and the impact of perceptions about working conditions and organizational culture on individual and team performance.

The qualitative data from these sources related to OCTC personnel will be reviewed with the quantitative data to identify common themes and potential organizational and management issues. Last, the State Bar will look at staffing patterns in other jurisdictions to validate (or not) staffing needs identified.

CONCLUSION

As demonstrated in this report, the State Bar has attempted to systematically address each component of the case processing standards development effort as outlined in SB 211. This work resulted in targeted average case processing times significantly shorter than the status quo and backlog metrics that reflect substantial reductions in time to close or file a small percentage of the most time-consuming cases.

At this time, the State Bar recommends that the California State Legislature adopt the case processing standards and associated backlog metrics outlined in this proposal.²²

The State Bar will be unable to meet the proposed standards and associated backlog metrics without additional resources. While a rough estimate of the number of new staffing positions required has been provided in the present report, a formal staffing needs analysis will not be launched until the State Bar has received feedback on the proposed standards and OCTC has begun to implement some of the operational reforms identified during the SB 211 process itself. The State Bar looks forward to sharing information about the impact of OCTC process improvements and other internal reforms, as well as working with the Legislature on addressing the resource needs identified through the staffing study.

²² The State Bar will propose a set of reporting metrics in alignment with the standards as ultimately adopted by the legislature; these metrics will be used for the ADR as well as internal reporting and system monitoring.

APPENDIX A: THREE EXPERTS' FINAL FEEDBACK TO THE PROPOSED STANDARDS

BIOGRAPHIES

Ellyn S. Rosen served as national expert to the project in her role as Regulation Counsel to the American Bar Association's (ABA) Standing Committee on Professional Regulation. This program provides expert assistance to jurisdictions on matters relating to regulation and discipline of attorneys. Ms. Rosen regularly liaises with the Conference of Chief Justices, National Organization of Bar Counsel, National Council of Lawyer Disciplinary Boards, and the Association of Professional Responsibility Lawyers. She also speaks frequently at international, state, and local bar programs regarding ethics, the regulation of the legal profession, and professionalism. She earned her JD degree with honors from the Indiana University School of Law in Bloomington, Indiana, in 1989.

Richard Zitrin is Lecturer Emeritus at the University of California, Hastings, where he taught legal ethics beginning in 1994. He also taught legal ethics at the University of San Francisco (USF) Law School from 1977 to 2005 and was the founder and first director of USF's Center for Applied Legal Ethics. As an attorney, his practice now involves consulting on all manner of attorney conduct matters, and he is a certified specialist in legal malpractice law. Formerly, he litigated legal malpractice claims as well as trying many other cases, over 50 to verdict. He is the lead author of three legal ethics books and the newly published book about ethics and trials, *Trial Lawyer: A Life Representing People Against Power*. Mr. Zitrin has chaired the State Bar's Committee on Professional Responsibility and was awarded the State Bar's Harry Sondheim Award in 2019 for outstanding long-term contribution to the advancement of attorney professional standards in California. He earned his JD degree from New York University School of Law, in 1974.

Robert Fellmeth is the Price Professor of Public interest at the University of San Diego School of Law. He has held the Executive Directorship of the Center for Public Interest Law (recently renamed the Consumer Protection Policy Center (CPPC)) at the University of San Diego School of Law for 40 years. His scholarship includes authorship or co-authorship of nine books and 150 articles. CPPC monitors regulatory agencies and publishes the California Regulatory Law Reporter covering major state agencies, including the State Bar. CPPC works to improve regulatory agencies and teaches California Regulatory Law and the Public Interest (previously called Public Interest Law and Practice). CPPC has sponsored legislation relevant to the Bar, including the creation of the current State Bar Court. Professor Fellmeth served as the State Bar Discipline Monitor from 1987–1992. He earned his JD degree from Harvard Law School, in 1970.

Additional Comments/Recommendations²³

As discussed in the body of the report, all three experts were consulted throughout the process of developing the proposed case standards, and many of their comments and recommendations have been incorporated in those proposed standards. Each expert also provided additional comments/recommendations as set forth below.

²³ To ensure the integrity of the SMEs' comments and recommendations, no editing was applied to their text.

Ellyn Rosen

I am pleased to have been able to offer assistance to the State Bar of California in its development of proposed time standards pursuant to the directive in S.B. 211. In addition to the biographical information set forth in Appendix A, as Counsel to the American Bar Association Standing Committee on Professional Regulation, I have participated in and served as the Reporter for close to thirty lawyer and judicial discipline system consultations. I did so as part of the Committee's lawyer and judicial discipline system consultation program, which has existed since 1980. The purpose of this successful program is to assist state supreme courts and lawyer disciplinary agencies in optimizing the fairness, effectiveness, and efficiency of their systems. The Committee has conducted 68 consultations. That includes state supreme courts that have retained the Committee's services multiple times.

In my opinion, the State Bar of California's data driven efforts to comply with S.B. 211 have yielded a proposal that is reasonable and in the public interest. The proposed standards seek to maintain necessary and appropriate flexibility and prosecutorial discretion for the Chief Trial Counsel. This was a serious and thoughtful effort by the State Bar Staff and Office of the Chief Trial Counsel on a matter of considerable complexity.

The timely and efficient completion of investigations is one of fairness to respondents and complainants. It is critical to public protection and to public trust and confidence in the lawyer regulatory system. There are many factors impacting the effective and efficient operation of any disciplinary system. They include the system's structure, whether there is "co-authority" between a state supreme court and state legislature (other than California this is the case in a very small number of jurisdictions), whether disciplinary functions have been delegated to a state bar association or are conducted by an independent entity of a state supreme court, and the nature and extent of the procedural rules that disciplinary offices must follow. Other factors include technology, staffing, use of volunteers at differing stages of the process, training, sophistication of the central intake function, effective use of diversion programs, appropriate use of immediate interim suspensions, and staying of cases due to ongoing civil or criminal matters.

The structure of and rules and statutes governing the operation of the State Bar of California disciplinary system are complex and multilayered. Based on a review of the system for purposes of complying with the directive of S.B. 211, there are areas where structure and procedures handicap the optimal handling of matters, and they can be streamlined. For example, the Report identifies, and the retained experts discussed, a need to revise the rules relating to involuntary inactive status enrollment under Business and Professions Code Section 6007(c)(2) (what other jurisdictions call immediate interim suspensions for threat harm). We agreed that there is a need to optimize the use of diversion programs, remove from caseload standards the abatement (staying) of investigations in appropriate circumstances due to parallel criminal or civil proceedings, and shared concerns about the Early Neutral Evaluation Conferences. The Report discusses these matters and how they fit in the proposed standards.

An in-depth review and analysis of the structure and procedures governing the California lawyer disciplinary system, including matters pending before the State Bar Court, was beyond the scope of my retention for this matter. I understand that other entities within the State Bar are addressing some of these issues, and my fellow “California” experts will be discussing concerns in their additional comments.

Noted in the Report, as my research showed, only a few jurisdictions include in their procedural rules the type of time standards or guidelines S.B. 211 seeks. Most jurisdictions have internal time standards and guidelines (formal or informal) to address caseload processing. Lack of rules-based time standards does not mean a disciplinary system is less strong or effective in meeting its mission of protecting the public. Rather, internal time standards or guidelines allow for necessary flexibility and discretion by chief regulatory counsel, subject to oversight, in determining whether and how a matter may require reasonable additional time or resources. That oversight occurs in various ways, including administrative oversight entities for the system appointed by the state supreme court. The Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois is one example.

Also of importance, any time standards and guidelines should be directory. The failure to abide by them should not impact whether a matter proceeds. All jurisdictions fail to meet all their rules-based or internal standards and guidelines at some point. The failure to do so should not assume ill motive or poor management. It should not result in action punitive to the system or any particular matter. That is not protective of the public. Rather, such instances offer an opportunity to promptly understand why delays are happening, identify problems and develop realistic solutions, including assessment of whether the time standards need adjusting or additional resources are required.

Flexibility in implementation and “enforcement” of time standards or guidelines is key nationally. It will be key in California. It should not be assumed that any new time standards would be able to immediately be met. The varying nature and complexity of complaints will continue to impact how matters proceed through the system, even though the proposed standards have taken into account these factors. There will continue to be actions not within the control of OCTC (e.g., time for entities to produce necessary documents even if subpoenaed and delays by respondents or witnesses). There will continue to be issues relating to staffing and staff organization. As noted in the Report, the Office of the Chief Trial Counsel is undertaking a staffing analysis.

Thank you for the opportunity to contribute to this important effort.

Richard Zitrin

First, I would like to express my appreciation to those at the State Bar who invited me to participate in this worthy project, who worked so diligently to create information, advise the three of us experts, and provide exceptional staff support in every respect. I also appreciate that George Cardona and every State Bar official remained open-minded and interested in

learning our opinions. Finally, my appreciation to Bob Fellmeth and Ellyn Rosen, excellent and inciteful colleagues.

The below is a very brief list, somewhat but not entirely in the order of priority, of issues I believe are important to address, whether directly related to the case processing issues presented by the legislature or not. This is in addition to the comments I have added and, in a few instances, language I've suggested in tracked changes on the draft proposal. Finally, I understand that some of my suggestions may require statutory amendments and/or amendments to the State Bar rules. I also believe, however, that most changes, including some that would benefit from changes in law, are available now if State Bar staff is willing to revisit and expand its interpretation of certain rules and statutes.

1. THE priority: It's my belief, as reflected throughout these comments and my tenure on this task force, that the over-arching priority of OCTC should be what I'll call "legitimate cases where discipline is warranted." Every effort should be made to sort the wheat – these cases – from the chaff so that OCTC's focus is on disciplining the malfeasants.
2. Investigators' job descriptions and training: As it is now, investigators do little investigating and a great deal of information gathering. And yet, in "legitimate cases where discipline is warranted," they are dealing primarily with ex-clients who are often emotionally scarred, and must bear the brunt of providing information in responses to written inquiries. I strongly recommended that investigators all go under an extensive re-training so that they can become affirmative investigators who, like prosecutorial investigators, go out in the field and assist victims in gathering information. I have seen too many instances in which clients, burned out, fail to get OCTC complete information, resulting in their legitimate complaints being dismissed. Investigators should also be more affirmative in getting court records and evidence, rather than relying on clerks to do the work for them. This would reduce the need for abatement.
3. Involuntary inactive status should be used far more broadly. Where the public is clearly at serious risk, it appears clear to me that existing law permits much wider use of this status. While legislative amendments may also be warranted, there is nothing preventing OCTC from using the involuntary inactive status more often right now. I disagree with Bob Fellmeth and agree with Ellyn Rosen that it is difficult to see how some kind of "restricted" practice would be possible, or that given OCTC's staffing challenges how it could be enforced. If the issue is, as it should be paramount, public protection, then sidelining lawyers who are a clear danger to the public should be done swiftly and more often.
4. ENEs should take place after the Notice of Disciplinary Charges has occurred. This would have a profound effect in two areas. First, it will dramatically shorten the case- processing time frame. (To me, the "advantage" of not counting the ENE time in case processing is merely a slight-of-hand calculation that does not change the

real, on the ground delay.)

Second, it places ENEs where they should be – after charging – just like they are in almost every prosecutorial office and, I understand, in other disciplinary jurisdictions.

I am not sure whether new law is needed to accomplish this. However, I advise that OCTC and State Bar General Counsel examine ways in which this could be implemented now without law change.

5. High Risk:

- a. Prioritization and timing: All priority should be given to these cases. Not all are “complex,” and those that are not complex should be dealt with in a much shorter time frame than that suggested by the tables in the report.
- b. Definition: The extensive definition of “high risk,” at page 7, is in need of modification, particularly if the list is intended to be in order of priority. I suggest this re-ordered priority:
 - Case presents a risk of significant, ongoing, or serious potential harm to the client, public, or administration of justice;
 - Case alleges misconduct involving a risk of actual or potential harm to vulnerable victims, including immigrants, seniors, and people with significantly reduced ability to manage their affairs competently;
 - Respondent has multiple pending complaints, with more than two getting highest priority;
 - Respondent has prior discipline;
 - Respondent has a pattern of similar prior complaints or other indicators of recidivism;
 - Case alleges engaging in or abetting the unauthorized practice of law resulting in significant actual or potential harm to the client, public, or administration of justice (more specific criteria will be set out to guide identification of such cases).

Under the first bullet point, the report states that “more specific criteria will be set out to guide identification of such cases.” This should be done immediately! Among the criteria should be situations that go beyond trust fund violations and look at a brief but necessary factual inquiry with an eye toward such issues as lawyers who appear to be cheating their clients through bogus settlement documents, misallocation or false allocation of settlement funds, false statements about case resolution both at case end and, most importantly, in the engagement agreement (in which Mr. Girardi, for example, routinely and for years required clients to give up their right to determine their settlement amount and pay for any appeal of that, without representation), unethical demands prior to distribution of funds, and ignoring conflicting multiple client interests at settlement, resulting in trading benefits to one client to the denigration of another.

I emphasize these issues because these are the ones that I’ve seen countless times, particularly in my pro bono work, that come up repeatedly and harm those clients who don’t know any better than to trust their lawyers completely.

- c. Mismanagement vs. dishonesty: To reinforce this point, I believe OCTC overrates the extent to which mismanagement implicitly exceeds the rate of dishonest attorneys and may under-estimate the number of truly dishonest attorneys operating out there. This may have to do with a results-oriented approach (e.g., “did the client get a good settlement?” – a virtually total irrelevancy in my view) and under-reliance on examining the enabling documents (e.g., the engagement agreement) that started the representation and often does not meet ethical standards. When I examine a malpractice case, as I’ve done perhaps 2000 times, the first thing I look at is the engagement agreement.
6. Abatement overuse: Abatement is grossly overused. While it makes sense in terms of the finality of a criminal conviction before a lawyer is suspended for that criminal conviction, it makes little sense in a civil context once there is a decision in the trial court about the case, with evidence presented and available to the investigator from the court. Appeals can be endless, and in cases of high risk especially, there is no need to abate where the facts are available for what is supposed to be OCTC’s independent evaluation.
7. Defining Complex: I do not agree that all cases with multiple charges are complex. There may be multiple charges arising out of a single incident. I think it would be better to talk about multiple incidents, although even in the event of multiple incidents, there may be striking similarities that allow efficient movement through the system. Remember, of course, that with multiple cases, the public is more at risk.
8. Who is the complainant? Having done several complaints for individuals and groups of individuals who have been harmed by attorneys, I have always been surprised and a bit shocked by the attitude that because the client was not the complainant, or was appended along with my complete brief on the malfeasant’s behavior, these complaints were given less weight. This attitude should be changed by training and top-down fiat.
Maybe this happens because we are now, I believe, the last state not to have a self-reporting rule, which I’ve long opposed. However, I have the strong feeling that anecdotally one lawyer reporting another is considered a lesser complaint because historically, lawyers have done this to competitors out of jealousy or pettiness. But complaints written by well-intentioned pro bono or bar association counsel, with organized exhibits attached, often done in cases of the worst offenders, can be much easier to prosecute because all the documents are included with the complaint.
9. The “Sandbox”: Another approach to providing legal services other than through licensed lawyers is imperative. The short-sightedness of the legislature in this regard has serious consequences to the public. Any amount of help to people navigating the legal system on their own is better than no help, every time.
10. Observations about three Fellmeth comments:
- a. Specialists: While I’m not sure that there is or will be enough funding to hire specialists in each of the areas Bob Fellmeth suggests, I completely agree that whether they come to OCTC with expertise or not, expertise in the various subject matters he mentions would make for a much more efficient

- prosecutorial process.
- b. Timeliness and delay: I also agree that there should be an effort, legislative, if necessary, to both reduce delays in such matters as obtaining court and bank documents – though this will be helped by better investigator training – and “requir[ing] counsel for respondents to operate in good faith without unnecessary delays,” though I’m not sure how to accomplish that.
 - c. Require malpractice insurance: Obviously, this requires a law change, but it is ridiculous not to require some amount of malpractice liability insurance.

Again, thank you for the opportunity to work on this interesting project.

Robert Fellmeth

Note that the OCTC Report focuses on time expended for investigations and cases. Consistent with the provisions of SB 211, it seeks to set more expeditious time targets. The Report makes accurate observations as to this narrow issue. However, it interacts with other features of the discipline system that can affect both time expended and other measures of efficacy. Accordingly, as someone looking at the system from a systemic level, I have recommendations that include matters covered by the Report now in preparation but extend to other aspects, also of critical importance. They are as follows:

1. Add compensation to attorneys/investigators to stimulate retention and ameliorate current pattern of premature public employee departure -- and the attendant costs of high turnover.
2. Add at least 20 percent more personnel to Investigators and Attorneys in OCTC to lower caseloads to reasonable levels (well below 50).
3. Provide those additional sums via a fee increase (current fees are just over ½ of the fees in 1992 if compensating for inflation). In addition, consider in the next budget a \$10-\$20 million general fund contribution to discipline. That is based on the extraordinary import of attorney competence to our general fund financed court system.
4. Assign a special attorney supervisor to all counsel with more than 5 pending significant complaints (qualifying as severe) or 15 complaints in general. (Exclude complaints emanating from opposing parties). That inquiry should include the entire operation of said counsel, and such attorneys so tasked should not have caseloads above 15.
5. Hire specialists in family law, bankruptcy, and probate, similar to the current immigration law specialty. Add such expert attorneys to OCTC in other areas where warranted. That expertise can guide investigations and remedies, and such persons should be given an additional task – formulating policies to increase competence in those specialized areas.
6. Develop Interim remedies for attorneys where continued practice poses irreparable harm risks. And amend the State Bar Act to clarify that these remedies, where still allowing legal practice, require “preponderance” of the evidence as a test – where current practice portends more irreparable harm risk to clients and the public than to

counsel. NOT “Clear and Convincing”. These remedies may include a Bar assigned accountant to handle all monies, consulting and approving experts or other screening as appropriate. Also, allow such interim remedies to be confidential, but only where agreed to by the respondent *pendente lite*.

7. Require timely provision of bank, court and other documents requested by OCTC concerning attorney practice, allowing no more than one week for document provision.
8. Require counsel for respondents to operate in good faith without unnecessary delays.
9. Arrange a comprehensive review of State Bar Court proceedings, with special focus on timely decision-making and interim remedy protection of clients and the public generally. Add resources thereto as warranted.
10. Some other indirect reforms that may impact attorney-caused harm:²⁴
 - a. Require all attorneys not employed by a government entity to carry reasonable malpractice coverage to allow reasonable collection of awarded damages for negligence.
 - b. Require all practicing attorney required to engage in Continuing Legal Education to cover practice in their respective areas of practice. In addition, arrange a competence retesting every five years in the actual areas of practice of counsel.²⁵ Twenty-four such areas – most of which require specific competence in courts and areas of practice -- are not otherwise tested or assured by the Bar.
 - c. Establish paralegal providers in those specific areas, at lower cost, and with assured competence through Bar oversight and testing.

²⁴ For detailed description of these and other needed reforms, see Fellmeth, Gramme and Hayes, “Cartel Control of Attorney Licensure and the Public Interest,” *British Journal of American Legal Studies*, Vol. 8, Issue 2, Fall 2019, 193–232.

²⁵ Some of these recommendations can be accomplished by the State Bar itself, but others would require or benefit from amendments to the State Bar Act, including 1–3 and 6–10.

APPENDIX B: MAJOR TAKEAWAYS ON SIX OTHER STATES AND NATIONAL NORMS

INTRODUCTION

Business and Professions Code section 6094.5(b)(1)(A) requires that the proposed case processing standards be based on and reflect a “review of case processing standards in attorney discipline systems in at least five other states, including large and small jurisdictions, with the goal of reviewing jurisdictions that have strong and effective discipline systems that protect the public.” As noted in the body of the report, based on the recommendation of Ellyn B. Rosen, a national expert, the State Bar reviewed case processing standards and reported case processing times in the following six states: Arizona, Colorado, Illinois, Maryland, New Jersey, and Texas. This appendix provides in-depth profiles of each state as well as in-depth discussions of how California compares with the states on numbers of attorneys, numbers of complaints, caseloads per attorney, and deferral.

The Six States’ Disciplinary Systems

The disciplinary systems in these six jurisdictions differ from California’s in structure, operation, and resources. That said, they still provide a sound basis for the required comparison. Based on information reported by the jurisdictions in annual reports and on their websites, summaries of relevant aspects of each jurisdiction’s disciplinary system are as follows:

Arizona

Overview: The Arizona Supreme Court oversees the disciplinary system with the assistance of the Attorney Regulation Advisory Committee (ARC), which is chaired by the vice chief justice and made up of 14 members.

Anyone can submit a complaint regarding attorney misconduct in writing, over the telephone, or through the State Bar’s website. Initially, an intake lawyer reviews each complaint to determine whether it should be summarily dismissed, can be resolved quickly and informally, or should be forwarded from intake to litigation for further investigation. Intake lawyers may call the complainant, as well as the respondent attorney, to discuss potential charges and gather preliminary information.

Intake lawyers may dismiss a complaint if there are not sufficient grounds to proceed. A complainant who disagrees with a dismissal may appeal to the chief bar counsel, who decides whether to uphold the dismissal or conduct further investigation.

If the intake lawyer determines there are sufficient evidentiary grounds to believe the lawyer violated the rules of professional conduct, the intake lawyer may: (1) for less serious misconduct, offer diversion; or (2) for violations serious enough to warrant more than diversion, refer the complaint to the litigation department for a screening investigation.

The assigned litigation department lawyer provides the complaint to the respondent attorney with a request for written response. The respondent is required to provide a written response

within 20 days after notice of the investigation. ARS Supreme Court Rules, rule 55(b)(1). By rule, the respondent attorney may request and receive one extension of time, up to 20 days in length, from the litigation attorney; further extensions can only be granted by the chief bar counsel upon a showing of good cause. ARS Supreme Court Rules, Rule 55(b)(1)(A). Once the respondent's response to the complaint is received, the litigation attorney: (1) forwards it to the complainant for reply; (2) further reviews the complaint, responses, and evidence; and (3) conducts additional investigation as necessary. After completing the investigation, the litigation attorney prepares a report of investigation (ROI) detailing their findings and making a recommendation as to the appropriate outcome.

If there is no probable cause to believe misconduct occurred, bar counsel dismisses the charge. Within 20 days after dismissal, bar counsel must provide a written explanation of the dismissal to the complainant. If the complainant disagrees, they have the right to appeal to the Attorney Discipline Probable Cause Committee (ADPCC), a Committee of the Supreme Court of Arizona comprised of three public members and six attorney members, all volunteers. ARS Supreme Court Rules, Rule 50(a). Appeals must be submitted within 10 days of receipt of bar counsel's written explanation of the dismissal. ARS Supreme Court Rules, rule 55(b)(2)(A).

If the litigation attorney recommends diversion or discipline, a copy of the ROI is sent to the respondent. The complainant is not provided with a copy of the ROI but must be provided with a written explanation of the recommendation. Within 10 days of receipt of bar counsel's explanation of its recommendation, the complainant has the right to submit a written objection, and the respondent has the right to submit a summary of their response to the charges, not to exceed five pages. ARS Supreme Court Rules, rule 55(b)(2)(C).

Bar counsel submits the ROI, along with the complainant's objection, if any, and respondent's summary of their response to the charges, if any, to the ADPCC. ARS Supreme Court Rules, Rule 55(c). The ADPCC meets on a monthly basis to review bar counsel recommendations and complainant appeals of dismissals. Bar counsel makes brief presentations on matters to the ADPCC; neither respondents nor the public may attend ADPCC meetings.

The ADPCC can affirm the Bar's decision, change that decision, dismiss the matter, or direct the State Bar to conduct further investigation. ARS Supreme Court Rules, rule 55(c)(1). If the ADPCC affirms the Bar's decision to issue an order of diversion or an order of informal discipline (an admonition, probation, or restitution), then the order becomes final absent further objection from the respondent. If the respondent objects to this order, they may demand formal proceedings. ARS Supreme Court Rules, rule 55(c)(4). If this occurs, or if the Bar is recommending a formal sanction (reprimand, suspension, or disbarment), the ADPCC issues an order of probable cause and directs the Bar to initiate formal disciplinary proceedings.

The Bar initiates formal proceedings by filing a complaint with the disciplinary clerk of the Supreme Court. ARS Supreme Court Rules, rule 58(a). The process is overseen by the Presiding Disciplinary Judge, who is appointed by the Supreme Court and must be an active or judicial member of the state bar who has been admitted to the practice of law for at least five years preceding appointment. ARS Supreme Court Rules, rule 51(a), (b). Once the complaint is filed, the respondent files an answer, a scheduling conference occurs before the Presiding Disciplinary Judge, and the parties engage in discovery and disclosure. ARS Supreme Court

Rules, Rule 58(b)-(f). In proceedings seeking discipline, the state bar bears the burden of proof by clear and convincing evidence. ARS Supreme Court Rules, rules 48((d)(1), (e), 58(j). The parties have the ability to settle by entering into a consent agreement, which must be approved by the Presiding Disciplinary Judge before becoming final. If the matter does not settle, it proceeds to a hearing on the merits held before a disciplinary panel consisting of the Presiding Disciplinary Judge, a volunteer attorney, and a volunteer public member. ARS Supreme Court Rules, rules 52(b), 58(j). After the hearing, within 30 days, the disciplinary panel issues a decision that is subject to appeal to the Supreme Court, which retains exclusive authority over the regulation of attorneys. ARS Supreme Court Rules, Rules 58(k), 59. The disciplinary panel's hearing on the merits must be completed within 150 days of the filing of the formal complaint, unless extended by the Presiding Disciplinary Judge. ARS Supreme Court Rules, rules 58(j), 51(c)(4).

Complexity: Not referenced or defined in the rules.

Time Standards for Investigation/Charging: Not defined in the rules.

Reporting: ARC is directed by the Supreme Court to submit an annual report each year by April 30 that "shall contain case statistics on the processing of attorney admission and discipline cases and recommendations on specific issues addressed by the Committee."

Table B-1. Arizona ARC Statistics

Year	2018	2019	2020	2021
Total charges received	3,047	2,874	2,285	2,299
Charges referred to investigation	555	480	403	464
Number of lawyers investigated relative to charges referred	437	371	305	349
Percentage of complaints resolved in Intake (closed)	75%	79%	70%	75%
Average days to resolve complaints in Intake (closed)	25	22	19	19
Average days to refer from intake to investigation	27	26	23	21
Average days for investigation	216	197	202	179
Average time receipt to closure after investigation (ABA-SOLD) ²⁶	225 days	210 days	NA	NA
Number of matters reviewed by ADPCC	321	296	185	181
Number of probable cause orders authorizing a formal complaint	129	68	90	87
Formal complaints filed	56	44	48	47

²⁶ In this table and those that follow, ABA-SOLD data is provided only for years 2018 and 2019; as of the time of drafting of this report, ABA-SOLD data was not yet available for 2020 or 2021.

Year	2018	2019	2020	2021
Pre-complaint consent agreements	29	19	22	19
Average time receipt to filing of formal charges (ABA-SOLD)	391 days	304 days	NA	NA

Notes: Data source – ARC annual report unless otherwise indicated.

NA = Data not available or applicable.

Colorado

Overview: The Office of Attorney Regulation Counsel (OARC) investigates and prosecutes alleged violations of the Rules of Professional Conduct. The office has an intake system intended to quickly address matters involving more customer-service-related complaints and minor ethical misconduct so that the disciplinary system can concentrate its resources on matters involving more serious attorney misconduct. Intake investigators receive calls to the office and review written investigation requests which they pass to intake attorneys, who in most cases, speak with the CWs to gather additional information. If the intake attorney believes further investigation is warranted, they communicate with the respondent to determine whether the matter can be resolved at the intake stage, or whether the matter needs to be forwarded to the trial division for further investigation. If requested, the respondent must submit to OARC a written response to the allegations within 21 days. Col. R. Civ. P. 242.13(b).

Based on their preliminary investigations, intake attorneys may: dismiss; issue a respondent a letter with educational language; refer a matter for resolution by fee arbitration; or, in cases involving minor misconduct, agree to an alternative to discipline involving education or monitoring. Dismissal at this stage is final; OARC advises the complaining witness of the decision, but the complaining witness has no right to appeal. Col. R. Civ. P. 242.13(b)(3). Roughly 90 percent of complaints received are resolved in the intake division, either through dismissal or a diversion agreement.

Matters determined to require further investigation, including matters involving complex facts or allegations of more serious misconduct, are referred to the trial division for formal investigation. OARC must give the respondent notice of the investigation and the allegations against the respondent; if requested to do so, the respondent must submit a written response to the allegations within 21 days. Col. R. Civ. P. 242.14(a). While a matter is under formal investigation, respondent and OARC may enter into a stipulation for discipline or diversion. Stipulations for diversion or private admonition must be approved by the Legal Regulation Committee (LRC) (made up of at least nine volunteer members, at least six of whom must be attorneys and at least two of whom must be public members), while stipulations for public discipline must be approved by the presiding disciplinary judge (appointed by the Supreme Court and must be a lawyer admitted to practice law in Colorado with at least five years of experience in the practice of law). Col. R. Civ. P. 242.6, 242.14(c).

At the end of a formal investigation, OARC will dismiss or request that the LRC take one of the following actions: place the matter in abeyance; direct the matter to diversion; impose a private admonition; or authorize OARC to file a complaint initiating formal disciplinary proceedings. Col. R. Civ. P. 242.15(a), 242.16(a). If OARC dismisses a matter, it must promptly notify the

complaining witness and the respondent. If the complaining witness submits a request for review to OARC within 35 days of the notice, the LRC must review the decision to dismiss. Col. R. Civ. P. 242.15(b).

If the LRC authorizes the filing of a complaint, directs an offer of diversion, places a matter in abeyance, directs further investigation, or dismisses, OARC must promptly notify the complainant and respondent of the decision. Col. R. Civ. P. 242.16(d), (f). If the LRC authorizes a formal complaint, OARC files it with the presiding disciplinary judge, who refers it to a hearing board consisting of the presiding disciplinary judge and two hearing panel members (one of whom must be a lawyer, both drawn from a pool of volunteer attorneys and public members appointed by the Supreme Court) for a stipulation to formal discipline, or a formal hearing that can lead to dismissal, diversion, private admonition, public censure, suspension, or disbarment. Col. R. Civ. P. 242.6, 242.25 to 242.31. The OARC bears the burden of proof of rule violations and aggravating factors by clear and convincing evidence. Col. R. Civ. P. 242.30(b)(3). Appeals from the hearing board go to the Supreme Court. Col. R. Civ. P. 242.33 to 242.37.

Complexity: Not referenced or defined in the rules.

Time Standards for Investigation/Charging: Rules require that investigations must be conducted promptly. Col. R. Civ. P. 242.14(b)(1). Rules have no further definition of time standards. Rules provide that disciplinary proceedings involving material allegations substantially similar to the material allegations of a criminal prosecution pending against the respondent or the material allegations made against the respondent in a pending civil litigation may, in the discretion of the LRC or the presiding disciplinary judge be placed in abeyance pending completion of the pending criminal prosecution or civil litigation. Col. R. Civ. P. 242.42(e).

Reporting: On a monthly basis, OARC provides the Chair of the LRC with an aging report that includes matters that have been pending at investigation for six months or longer.

Table B-2. Colorado OARC Statistics

Year	2018	2019	2020	2021
Complaints filed	3,586	3,400	3,424	3,816
Average intake processing time	6.55 weeks	6.33 weeks	5.73 weeks	4.96 weeks
Cases processed for further investigation	265	276	239	265
Average time from assign to trial division to dismissal by Regulation Counsel/LRC	25.9 weeks	27.1 weeks	24.8 weeks	25.9 weeks
Average time from assign to trial division to completion of report/diversion/stipulation	29 weeks	26.6 weeks	26.7 weeks	26.4 weeks
Average time from receipt of complaint to summary dismissal (ABA-SOLD)	49 days	50 days	NA	NA

Year	2018	2019	2020	2021
Average time from receipt of complaint to closure after investigation (ABA-SOLD)	247 days	279 days	NA	NA
Average time from receipt of complaint to filing of formal charges (ABA-SOLD)	365 days	304 days	NA	NA

Notes: Data source – 2021 OARC Annual Report unless otherwise indicated.

NA = Data not available or applicable.

Illinois

Overview: The Office of the Administrator of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC) investigates and prosecutes complaints that lawyers violated the Illinois Rules of Professional Conduct.

Complaints initially are reviewed by a commission lawyer who decides whether there is a basis for investigation. If not, the administrator sends the complainant a letter explaining why. The lawyer complained about is provided with a copy of the complaint even if the administrator decides not to investigate.

If the administrator decides to investigate, the complainant is advised, and, in most cases, the lawyer complained about is sent a copy of the complaint with a letter asking the lawyer to submit a written response. Lawyers are required to respond to any such request within 14 days. Commission rule 53. The administrator may send the response to the complainant for comment. Thereafter, the administrator's intake or litigation staff conducts additional investigation as necessary.

If the investigation determines that there is no basis for disciplinary charge, the investigation is closed, and the complainant is notified in writing of the reasons for the closure.

If the investigation determines there is sufficient evidence of a violation of the rules of professional conduct, the case is referred to the inquiry board, unless the matter is filed directly with the Supreme Court under rules 757, 761, 762(a), or 763. An inquiry board panel (two attorneys and one public member, all appointed by the ARDC) may: close the investigation; find probable cause to file formal charges; or with the agreement of the respondent and administrator, place the respondent on a commission rule 108 deferral, akin to diversion. Ill. Sup. Ct. rules 753(a); commission rule 108. The administrator cannot pursue formal charges without authorization by an inquiry board panel.

Formal disciplinary charges are initiated by complaint filed by the administrator and proceed before a hearing board panel (two lawyers and one public member appointed by the ARDC). Ill. Sup. Ct. rule 753(b), (c). Proceedings are public except for hearings held pursuant to Supreme Court rule 758 (petition to transfer a lawyer to disability inactive status). The standard of proof in all hearings is by clear and convincing evidence. Ill. Sup. Ct. rule 753(c)(6). After contested hearings, the hearing board panel prepares a detailed report and recommendation regarding discipline. Ill. Sup. Ct. rule 753(c)(3). The hearing board panel can also recommend discipline after a default, dismiss charges before hearing, and close cases after the filing with the Illinois Supreme Court of a petition for discipline on consent.

Once the hearing board files its report and recommendation, either party may file a notice of exceptions to the review board, which serves as an appellate tribunal. The review board is made up of nine lawyer members appointed by the Supreme Court. Ill. Sup. Ct. rule 753(d). If the hearing board or review board determines that a reprimand is the appropriate level of discipline, the reprimand can be imposed without going to the Supreme Court for approval. Ill. Sup. Ct. rule 753(c)(3), (d)(3). All other hearing board and review board reports recommending discipline are forwarded to the Supreme Court for final action. The Supreme Court also hears the specified disciplinary matters that may be initiated directly with the court by petition from the administrator.

Complexity: Not referenced or defined in rules.

Time Standards for Investigation/Charging: Not defined by rules. ARDC policy requires that matters be handled expeditiously.

Reporting: The ARDC is required to submit an annual report to the court evaluating the effectiveness of the disciplinary system and recommending any changes it deems desirable. Ill. Sup. Ct. rule 751(e)(7).

Table B-3. Office of the Administrator of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois Statistics

Year	2018	2019	2020	2021
New docketed investigations	5,007	4,867	3,875	3,858
Reopened investigations	22	70	61	23
Total docketed investigations	5,029	4,937	3,936	3,881
Pending January 1	1,828	1,899	2,034	1,686
Closed by administrator on initial review	1,233	1,147	1,222	1,097
Fewer than 10 days	875 71%	778 67.8%	888 72.7%	942 85.9%
10-20 days	29 2%	42 3.7%	89 7.3%	46 4.25%
21-60 days	249 20%	257 22.4%	185 15.1%	79 7.2%
More than 60 days	80 7%	70 6.1%	69 4.9%	30 2.7%
Concluded by Intake after investigation	2,435	2,259	1,870	2,368
Fewer than 90 days	1,915 79%	1,687 74.7%	1,238 66.2%	1,767 74.6%
Between 90-180 days	426 17%	463 20.5%	430 23.0%	373 15.8%
Between 180-365 days	71 3%	84 3.7%	127 6.8%	147 6.2%

Year	2018	2019	2020	2021
More than 365 days	13 1%	25 1.1%	75 4.0%	81 3.4%
Concluded by litigation staff after investigation	1,107	1,261	1,066	636
Fewer than 90 days	227 20%	368 29.2%	298 28.0%	122 19.2%
Between 90–180 days	218 20%	220 17.5%	203 19.0%	85 13.4%
Between 180–365 days	291 26%	322 25.5%	247 23.2%	103 16.2%
More than 365 days	371 34%	351 27.8%	318 29.8%	326 51.2%
Filed by administrator at Supreme Court	11	15	16	24
Concluded by inquiry board	172	120	110	120
Total concluded during year	4,958	4,802	4,284	4,245
Pending December 31	1,899	2,034	1,686	1,322
Formal complaints filed with hearing board	64	41	40	53

Notes: Data source – ARDC Annual Reports unless otherwise indicated.

Maryland

Overview: Attorney discipline is overseen by an Attorney Grievance Commission consisting of nine attorneys and three public members appointed by the Court of Appeals (Maryland’s highest court). Subject to approval by the Court of Appeals, the commission appoints an attorney to serve as bar counsel. Bar counsel investigates and prosecutes allegations of misconduct. The commission also appoints the members of peer review committees, all of whom are volunteers. The commission determines the number of persons in each circuit necessary to conduct the volume of peer review meetings. One-third of the members of a peer review committee are public members and two-thirds are attorneys who maintain offices for the practice of law within the particular circuit.

Bar counsel lawyers review complaints by, ordinarily, obtaining a written response from the respondent and considering other appropriate information. If bar counsel determines that an insufficient basis exists to demonstrate a violation of the rules of professional conduct or incapacity or that the overall circumstances do not warrant investigation, bar counsel may close the file without approval of the commission. MD Rules Attorneys, rule 19-711(b)(3). Otherwise, bar counsel docket the complaint (listing it on the docket of active investigations), notifies the complainant in writing of the procedures for investigating and processing the complaint, and investigates further to determine whether there exists a substantial basis to conclude the attorney committed professional misconduct or is incapacitated. *Id.* Absent approval by the commission to proceed without notice, before concluding the investigation, bar counsel must provide the respondent with notice of the investigation that includes the name

and contact information of the complainant and the general nature of the professional misconduct under investigation; the notice may also demand that the respondent provide information and records that bar counsel deems appropriate and relevant to the investigation. MD Rules Attorneys, rule 19-711(c).

If bar counsel determines that a civil or criminal action involving material allegations against the attorney substantially similar to those alleged in the complaint is pending in any court of record in the United States, or that substantially similar or related allegations are under investigation by a law enforcement, regulatory, or disciplinary agency, bar counsel, with approval by the commission, may defer action on the complaint pending a determination of those allegations in the pending action or investigation. MD Rules Attorneys, rule 19-711(b)(5). Bar counsel is required to notify the complainant of this decision and, during the period of the deferral, report to the commission, at least every 90 days, the status of the other action or investigation; the commission may, at any time, direct bar counsel to end the deferral and proceed with its investigation. *Id.* If action on the complaint is not deferred, bar counsel must, absent an authorized extension, complete the investigation within 120 days of the docketing of the complaint. MD Rules Attorneys, rule 19-711(d)(1).

On completion of the investigation, bar counsel must recommend to the commission one of a defined set of actions, which the commission may approve or disapprove, or file with the commission a statement of charges with an election for peer review. MD Rules Attorneys, rule 19-714. If the latter, peer review panels constituted of at least three members of the Peer Review Committee hold informal meetings with bar counsel, the complainant, and the respondent, allow each to explain their positions and offer supporting information, and recommend action to the commission, which it may approve or disapprove. MD Rules Attorneys, rules 19-719, 19-720. The actions that bar counsel or the peer review panels may recommend to the commission include: dismissal (with or without a letter of cautionary advice or a letter of admonition); a conditional diversion agreement; a reprimand; permanent retired status; or the immediate filing of a Petition for Disciplinary or Remedial Action. MD Rules Attorneys, rule 19-714. Petitions for Disciplinary or Remedial Action are filed by bar counsel in the Court of Appeals, which designates a circuit court judge to hold a hearing and make findings of fact and conclusions of law. Bar counsel bears the burden of proving the charges by clear and convincing evidence. MD Rules Attorneys, rule 19-727(c). The matter is then transmitted back to the Court of Appeals for oral argument and final disposition, which may be an order for disbarment, suspension, reprimand, inactive status, dismissal, or remand for further proceedings.

Complexity: Not referenced or defined in the rules.

Time Standards for Investigation/Charging: For nondeferred investigations, unless the time is extended, “Bar Counsel shall complete an investigation within 120 days after docketing the complaint.” MD Rules Attorneys, rule 19-711(d)(1). On written request by bar counsel and a finding of good cause by the commission, the commission may grant or renew an extension for a specified period; absent a finding of good cause for a longer extension, the commission may not grant or renew an extension of more than 60 days. MD Rules Attorneys, rule 19-711(d)(2). If

an extension greater than 60 days is granted, Bar counsel must provide a status report to the commission every 60 days. *Id.* “For failure to comply with the time requirements of section (d) of this Rule, the Commission may take any action appropriate under the circumstances, including dismissal of the complaint and termination of the investigation.” MD Rules Attorneys, rule 19-711(d)(3).

Reporting: The Attorney Grievance Commission prepares annual reports covering each fiscal year (July 1 through June 30).

Table B-4. Maryland Attorney Grievance Commission Statistics

Fiscal Year (July 1 to June 30)	FY 2018	FY 2019	FY 2020	FY 2021
Number of complaints	1,802	1,657	1,599	1,433
Average time receipt to summary dismissal (ABA-SOLD)	7-10 Estimated	7-10 Estimated	NA	NA
Docketed investigations	254	278	285	196
Average time receipt to closure/dismissal after investigation (ABA-SOLD)	120-210 Estimated	120-210 Estimated	NA	NA
Average time receipt to filing of formal charges (ABA-SOLD)	365 days Estimated	365 days Estimated	NA	NA

Note: Data source – 2021 Attorney Grievance Commission Annual Report unless otherwise indicated.

NA = Data not available or applicable.

New Jersey

Overview: The Supreme Court adopts procedural rules for the lawyer disciplinary system and appoints the director of the Office of Attorney Ethics (OAE), who is the chief disciplinary counsel. The Supreme Court also appoints, in each disciplinary district, a district Ethics Committee, made up of at least eight volunteers, at least four of whom must be attorneys, and at least two of whom must be public members, who have authority to screen, investigate, prosecute, and hear disciplinary matters. Rules Governing the Courts of the State of New Jersey (NJ Court Rules), rule 1:20-3. The director, after consultation with the chair of each district Ethics Committee, appoints a secretary for the Ethics Committee, who is not a member of the Ethics Committee but is an attorney maintaining an office within the district. NJ Court Rules, rule 1:20-3(c).

On receipt of a grievance, the Ethics Committee’s secretary evaluates the grievance and, within 45 days, determines whether to docket, decline, or dismiss the matter. NJ Court Rules, rule 1:20-3(e). The secretary declines jurisdiction in specified circumstances, including if the attorney is not admitted in New Jersey (in which case it is referred to any jurisdiction in which the attorney is admitted) or the matter involves advertising or related communications within the jurisdiction of the Committee on Attorney Advertising (in which case it is referred to that committee). NJ Court Rules, rule 1:20-3(e)(2). The secretary, with concurrence from a public member of the Ethics Committee, also declines jurisdiction if the facts stated in the grievance, if

true, would not constitute unethical conduct. NJ Court Rules, rule 1:20-3(e)(3). The secretary also declines jurisdiction if a grievance alleges facts that, if true, would constitute unethical conduct if those facts are substantially similar to the material allegations of pending civil or criminal litigation, unless the secretary or director determines that the facts alleged clearly demonstrate provable ethical violations or present a substantial threat of imminent harm to the public, or where the respondent is a defendant in the criminal proceeding. NJ Court Rules, rule 1:20-3(f). If a matter is declined, the secretary provides a written statement of the reasons for declination to the grievant; there is no appeal from the declination. NJ Court Rules, rule 1:20-3(e)(6), (f).

If the secretary determines that the facts alleged in the grievance, if true, would constitute unethical conduct as defined by the Rules of Professional Conduct, case law, or other authority, and if the grievance is not otherwise declined for a reason set forth above, the grievance is docketed for investigation. NJ Court Rules, rule 1:20-3(e)(1). Respondents are required to cooperate in the investigation by responding in writing to any request for information and producing their client and business files and accounting records for inspection and review; failure to cooperate may result in a temporary suspension until there is cooperation. NJ Court Rules, rule 1:20-3(g)(4). A respondent's written response must be communicated to the grievant, who may respond within 14 days. NJ Court Rules, rule 1:20-3(g)(5).

At the conclusion of the investigation, if the chair of the district Ethics Committee determines that there is "no reasonable prospect" of proving unethical conduct by "clear and convincing evidence," matters are dismissed. NJ Court Rules, rule 1:20-3(h). If the chair determines that there is a reasonable prospect of proving unethical conduct by clear and convincing evidence, then the director, exercising sole discretion, makes a determination whether the conduct is minor unethical conduct, that is, conduct that, if proved, would not warrant a sanction greater than a public admonition, with the exception that conduct cannot be minor unethical conduct if: (1) it involved knowing misappropriation of funds; (2) it resulted in or is likely to result in substantial prejudice to a client or other person and restitution has not been made; (3) respondent has been disciplined in the previous five years; (4) it involved dishonesty, fraud, or deceit; or (5) it constituted a crime. NJ Court Rules, rule 1:20-3(i). For minor ethical misconduct, the director has discretion to divert or approve an ALD. *Id.* Where the chair or director determines that there is a reasonable prospect of a finding of unethical conduct by clear and convincing evidence and where the matter is not diverted, a formal complaint is filed and served on the respondent who has 21 days to file an answer. NJ Court Rules, rule 1:20-4.

As referenced above, district Ethics Committees investigate and prosecute many disciplinary matters arising from submitted written grievances. The director, however, has exclusive jurisdiction to investigate and prosecute any matter that involves "serious or complex issues that must be immediately addressed," "requires emergent action," involves multijurisdictional practice or practice as in-house counsel, is one in which the Ethics Committee requests intervention or the Board or Supreme Court determines the matter should be assigned to the director, or involves a respondent who is a defendant in a criminal matter. NJ Court Rules, rule 1:20-2(b). The director may also take over investigation and prosecution of any matter where a

district Ethics Committee has not resolved it within one year from the filing of the written grievance. *Id.*

Complexity: Referenced but not defined in the rules. Determinations of what constitutes a complex matter are left to the discretion of the director.

Time Standards for Investigation/Charging: “The secretary shall evaluate inquiries and grievances in accordance with this rule and shall docket, decline, or dismiss the matters within 45 days of their receipt.” NJ Court Rules, rule 1:20-3(e). “The Disciplinary system shall endeavor to complete all investigations of standard matters within six months, and of complex matters within nine months, the time period commencing on the date a written grievance is docketed and concluding on the date a formal complaint is filed, the grievance is dismissed or other authorized disposition is made.” NJ Court Rules, rule 1:20-8(a).

Reporting: “Analysis of compliance by the disciplinary system of the time periods herein prescribed shall be made annually and at such intervals as the Disciplinary Oversight Committee may direct, and an analysis published showing how the respective caseloads compare with these goals.” NJ Court Rules, rule 1:20-8(f).

Numbers (from NJ OAE annual reports):

Table B-5. New Jersey Director of the OAE Statistics

Year	2018	2019	2020	2021
Number of grievances docketed and assigned for investigation	1,224	1,227	869	768
Compliance with time standards – District Ethics Committees	68%	72%	61%	57%
Average age of investigations – District Ethics Committees	157 days	151 days	177 days	194 days
Compliance with time standards – OAE	73%	76%	73%	62%
Average age of investigations – OAE	197 days	191 days	196 days	241 days
Complaints filed	291	248	237	166

Note: Data source – OAE annual reports

Texas

The State Bar of Texas is a judicial agency operating under the authority and rules of the State Bar Act and the Texas Supreme Court. The Texas attorney discipline system is administered by the Office of Chief Disciplinary Counsel (CDC), whose work is overseen by the Commission for Lawyer Discipline, a standing committee of the State Bar. The CDC represents the Commission in disciplinary litigation.

The mission and performance of the Texas State Bar is reviewed every 12 years by the Legislature as required under the Texas Sunset Act. The last review occurred in 2017, concluded

that the State Bar should remain in place, and included findings relating to the attorney discipline process:

- Require the State Bar to obtain existing fingerprint-based criminal history information on licensed attorneys on file with the Board of Law Examiners and allow sharing of criminal history information between the two agencies moving forward.
- Require licensed attorneys to self-report criminal activity and discipline imposed by other states, and the State Bar to regularly query a national disciplinary database to ensure access to complete information needed to protect Texans.
- Reinstate the CDC's subpoena power during the investigative phase of the attorney discipline process, with approval and appeal safeguards, to ensure timely access to information needed to investigate allegations.
- Ensure the minimum standards and procedures for the attorney disciplinary system provide attorneys the opportunity to respond to all allegations of misconduct against them.
- Require a standard process and criteria for conducting investigatory hearings to attempt earlier resolution for certain cases and avoid costly litigation when possible.
- Require a re-evaluation and adjustment of time frames governing the grievance process to provide flexibility while also preserving timely resolution of cases.
- Clearly establish the Grievance Referral Program in rule and expand its use to any point in the attorney discipline process to formalize this non-disciplinary approach for case resolution.
- Require comprehensive sanction guidelines in the Texas Rules of Disciplinary Procedure to promote consistent statewide application of sanctions for similar types of misconduct and transparency into decision-making.

The CDC determines whether a filed grievance, on its face, alleges a violation of the Texas Disciplinary Rules of Professional Conduct. This determination is referred to as classification of the grievance and must be made within 30 days of the filing of the grievance. Texas Rules of Disciplinary Procedure, Rule 2.10. If a grievance alleges professional misconduct, it is classified as a complaint. If the grievance does not allege professional misconduct, it is classified as an inquiry and dismissed or, at the discretion of CDC, referred to the Client-Attorney Assistance Program (CAAP), which will attempt to resolve minor issues. Within 60 days, CAAP notifies CDC of the outcome of the referral; within 15 days, CDC must then determine whether the grievance should be dismissed as an inquiry or proceed as a complaint. Texas Rules of Disciplinary Procedure, Rule 2.10(C). The grievant can appeal the dismissal to the Board of Disciplinary Appeals, an independent 12-attorney tribunal appointed by the Supreme Court; appeals must be submitted within 30 days of notice of dismissal. Texas Rules of Disciplinary Procedure, Rule 2.10(A).

Once a grievance is classified as a complaint, it is sent to the respondent, who has 30 days from receipt to respond. Texas Rules of Disciplinary Procedure, rule 2.10(B). Within 60 days of the

response deadline, CDC must investigate and determine whether there is just cause to believe that professional misconduct occurred. Texas Rules of Disciplinary Procedure, rule 2.12(A)(1). If CDC decides to proceed with an investigatory subpoena or an investigatory hearing, the deadline is extended to 60 days after completion of the hearing or the date of compliance in the subpoena. Texas Rules of Disciplinary Procedure, rule 2.12(A)(2). Investigatory hearings are non-adversarial and are conducted before an investigatory hearing panel of a District Grievance Committee. Texas Rules of Disciplinary Procedure, rule 2.12(F). There are 17 of these committees throughout the State—their members are two-thirds lawyers and one-third public members and are appointed by the State Bar president. Texas Rules of Disciplinary Procedure, rules 2.01, 2.02. The investigatory hearing may result in dismissal, a negotiated sanction, or a finding of just cause. Texas Rules of Disciplinary Procedure, rule 2.12(G).

If CDC determines there is no just cause, it presents the case to a summary disposition panel of a District Grievance Committee, which may accept or reject the CDC's recommendation. CDC presents information and results regarding its investigation to the panel at a hearing without the presence of either the complainant or respondent. The panel then votes on whether to accept CDC's recommendation and dismiss the complaint or reject the recommendation and proceed on the complaint. Texas Rules of Disciplinary Procedure, rule 2.13.

If CDC finds just cause, or a summary disposition panel votes to overrule the CDC's finding of no just cause, proceedings based on the complaint continue, and the respondent is given written notice of the allegations and rule violations. The respondent has 20 days to elect whether to have the case heard before an evidentiary panel of the District Grievance Committee or by a district court, with or without a jury. If the respondent fails to elect one of these options, the case is tried before an evidentiary panel. Texas Rules of Disciplinary Procedure, rules 2.14(D), 2.15. Evidentiary panel hearings are confidential and allow for a private reprimand (the lowest sanction available) to be imposed. District court proceedings are public, and the lowest available sanction is a public reprimand. In both types of proceedings, CDC represents the Commission for Lawyer Discipline and has the burden of proving the allegations of professional misconduct by a preponderance of the evidence. Texas Rules of Disciplinary Procedure, rules 2.17(M), 3.08(C). If professional misconduct is found, a separate hearing may be held to determine the appropriate discipline.

Complexity: Not referenced or defined in the rules.

Time Standards for Investigation/Charging: "The Chief Disciplinary Counsel shall within thirty days examine each Grievance received to determine whether it constitutes an Inquiry, a Complaint, or a Discretionary Referral." Texas Rules of Disciplinary Procedure, rule 2.10. "The Chief Disciplinary Counsel must make a Just Cause determination within 60 days of the date that the Respondent's response to the Complaint is due." Texas Rules of Disciplinary Procedure, rule 2.12(A)(1). "The Just Cause determination date is extended to 60 days after the latest of: (a) the date of compliance specified in any investigatory subpoena issued by the Chief Disciplinary Counsel; (b) the date of any enforcement order issued by a district court under (E); or (c) the date that an investigatory hearing is completed." Texas Rules of Disciplinary Procedure, rule 2.12(A)(2). "The processing of a Grievance, Complaint, Disciplinary Proceeding,

or Disciplinary Action is not, except for good cause, to be delayed or deferred because of substantial similarity to the material allegations in pending civil or criminal litigation.” Texas Rules of Disciplinary Procedure, rule 17.02. “The time periods provided in Rules 2.10, 2.12 . . . are mandatory. All other time periods herein provided are directory only and the failure to comply with them does not result in the invalidation of an act or event by reason of the noncompliance with those time limits.” Texas Rules of Disciplinary Procedure, rule 17.05.

Table B-6. Texas Commission for Lawyer Discipline Statistics

Bar Year (June 1 to May 31)	2017–2018	2018–2019	2019–2020	2020–2021
Number of grievances	7,640	8,015	7,505	7,007
Dismissed as inquiries	5,096	5,561	5,123	4,870
Classified as complaints	2,357	2,315	2,202	1,946
No just cause dismissals	1,697	1,779	1,705	1,394
Average time from receipt of grievance to summary dismissal (ABA-SOLD)	Maximum of 30 days	18 days	NA	NA
Average time from receipt of grievance to closure/dismissal after investigation (ABA-SOLD)	Maximum of 120 days	120–180 days	NA	NA
Average time from receipt of grievance to filing of formal charges (ABA-SOLD)	159 days	141 days	NA	NA

Notes: Data source – Commission for Lawyer Discipline annual reports.

NA = Data not available or applicable.

Table B-7. Case Processing Procedures for Six States and California

State	Case Stage		
	Intake	Investigation	Charging
AZ	Includes follow- up with CW; CW may appeal dismissal	Complaint to R for response within 20 days with one 20-day extension by right; R’s response to CW for rebuttal; CW may appeal dismissal	ROI provided to R; CW and R may object within 10 days; ROI and responses submitted to Committee for finding of PC and order authorizing filing of formal complaint
CO	Includes follow-up with CW; may include follow-up with R with written response within 21 days; dismissal decisions final	Notice of allegations to R for response within 21 days; CW may appeal dismissal	Committee must approve filing of complaint; prompt notice to R; notice to CW within 28days
IL	Does not include follow-up with CW; complaint to R even if decision not to investigate	Notice to CW; complaint to R for response within 14 days; R’s response may be sent to CW for comment; notice to CW of closure and reasons	Inquiry board must find probable cause to file formal charges

State	Case Stage		
	Intake	Investigation	Charging
MD	Includes follow-up with CW and written response from R	Notice to CW; notice to R of name and contact information of CW and nature of allegations; may demand records and information from R	Bar Counsel recommends action to Commission or files statement of charges for peer review; Peer Review Committee holds an informal meeting with Bar Counsel, R, and CW and recommends action to Commission
NJ	Does not include follow-up with CW; notice to grievant of declination with statement of reasons; no appeal from declination	R required to respond in writing to request for information; R's written response to CW for response within 14 days; chair of district Ethics Committee may dismiss	Chair of district Ethics Committee determines PC; Director has discretion to designate as minor unethical conduct that may be subject to diversion or ALD
Texas	Does not include follow-up with CW unless referred to CAAP; CW can appeal dismissal	Grievance to R for response within 30 days; CDC may refer to District Grievance Committee for investigatory hearing; finding of no just cause presented to summary disposition panel of District Grievance Committee	CDC or investigatory hearing or summary disposition panel determines just cause; notice to R who has 20 days to elect hearing before evidentiary panel of District Grievance Committee or district court
CA	Includes follow-up with CW; notice to CW of closure with reasons; CW may seek review from CRU	Notice of allegations to R with response within 14 days; notice to CW of closure with reasons; CW may seek review from CRU	Draft NDC to R to request ENEC; ENEC within 14 days unless extended; discovery prior to ENEC

Note: "CW" refers to "Complaining Witness", "R" refers to "Respondent", "ROI" refers to "Release of Information", "PC" refers to "Probable Cause", "NDC" refers to "Notice of Disciplinary Charges", "ENEC" refers to "Early Neutral Evaluation Conference", "CDC" refers to "Chief Disciplinary Counsel", and "ALD" refers to "Agreements in Lieu of Discipline."

California in Comparison to Six Other States

In comparison to the six states analyzed, California has by far the most attorneys, with Texas coming in second (see tables B-8 and B-9).²⁷ California also has the highest number of

²⁷ The analysis relies on the data reported by the states in their annual reports (discussed above) and on data from the ABA Survey on Lawyer Discipline Systems (ABA-SOLD) (referenced in some of the discussions above). Each year, the American Bar Association's Center for Professional Responsibility collects, analyzes, and compiles data about lawyer regulatory systems across the nation. Data points reported in the ABA-SOLD include the number of complaints at different case stages, caseloads, and case processing times to closure at the different stages. Many data points provided in the ABA-SOLD are estimates, but they still provide useful information. The analysis has focused on ABA-SOLD reporting for the six states and national medians. ABA-SOLD results currently are available

complaints received by a disciplinary agency, accounting for more than double the number of complaints received in Texas. California also has more cases carried over from previous years. Compared with the national median, in California, more complaints are closed at the intake stage and fewer complaints are moved to the investigation stage, which may be attributed to OCTC's practice of requesting more information from the complainant or elsewhere at the intake stage (see table B-7). Indeed, Colorado explains in a note to its data that it too does significant investigation at the intake stage, with the result that it has a high percentage of cases dismissed "after an initial review by an Intake Attorney." Although a larger number of attorneys are charged in California, the percentage of attorneys charged, in relation to the number of complaints, is smaller than the national average, slightly smaller than the national median, but higher than Texas, which is the state most comparable to California in terms of numbers of attorneys and complaints, and in line with the figures for Colorado, Illinois, and Maryland.

for 1998 through 2019. The ABA is in the process of collecting and publishing 2020 and 2021 data, but it is not yet available. Given the available ABA data, we have focused on data from 2018 because both the data and its reporting were prior to the pandemic and because 2019 data for California may have been affected by several systemic changes that potentially skewed numbers for that year, including the implementation of a new case management system and a new electronic case portal for the submission of complaints. Relevant ABA-SOLD data for both 2018 and 2019 is set out in tables B-8, B-9, B-10, and B-11 below, with the discussion that follows focused on the 2018 data.

**Table B-8. ABA-SOLD 2018 – Complaints at Different Case Stages in California
vs. Six Other States**

Jurisdiction	Number of Lawyers with Active License	Number of Complaints Received by Disciplinary Agency	Number of Complaint Pending from Prior Years	Number of Complaints Summarily Dismissed/ Screened Out	Number of Complaints Investigated	Number of Complaints Closed or Dismissed After Investigation	Number of Lawyers Charged After Probable Cause Determination
Texas	103,342	8,015	139 (2%)	5,561 (69%)	2,315 (29%)	1,779 (15%)	74 (.9%)
Illinois	72,952	5,029	1,828 (36%)	1,233 (25%)	3,725 (74%)	3,542 (70%)	75 (1.5%)
New Jersey	75,207	3,500*	939 (27%)	2,200* (63%)	2,163 (62%)	1,872 (53%)	291 (8.3%)
Maryland	40,300	1,802	NA	90* (5%)	2,000* (100%)	1,746* (97%)	38* (2.1%)
Colorado	26,963	3,586	422 (12%)	0 ^{N1}	265 ^{N2} (7%)	109 (3%)	58 (1.6%)
Arizona	18,750	3,047	581 (19%)	2,439 (80%)	596 (20%)	317 (10%)	91 (3%)
California	185,763	17,145	5,792 (34%)	9,285 (54%)	6,761 (39%)	5,506 (32%)	340 (2%)
National Average	25,669	1,731	570 (33%)	889 (51%)	1,163 (67%)	695 (40%)	135 (7.8%)
National Median	18,595	1,372	422 (31%)	615 (45%)	727 (53%)	347 (25%)	38 (2.8%)

Notes: California data includes all case types except those that do not go through the intake unit and moral character, interim suspensions, resignations with charges pending, and mini-reinstatements.

Illinois data for # of complaints investigated, complaints closed after investigation, and lawyers charged after probable cause determination is drawn from Illinois' annual report.

All percentages are calculated based on the number of complaints received.

* = Estimated.

N1: Each request for investigation is assigned to one of six attorneys for review and follow-up with the complaining witness. The central intake model is designed to ensure that each request for investigation is properly investigated and analyzed regardless of the information received in an initial request for investigation. Based on State Bar of California interpretations of the definitions, no request for investigation is summarily dismissed under the Colorado model, however, 2,837 matters were dismissed after an initial review by an intake attorney. (This would be 79 percent of the complaints received.)

N2: Number of investigations processed by the trial division. Matters processed to the trial division typically involve issues that may result in some form of public discipline, or that require more investigation than can be conducted in the central intake section. Approximately 3,586 requests for investigation were investigated in some matter by the central intake attorneys in 2018.

NA = Data not available or applicable.

**Table B-9. ABA-SOLD 2019 – Complaints at Different Case Stages in California
Versus Six Other States**

Jurisdiction	Number of Lawyers with Active License	Number of Complaints Received by Disciplinary Agency	Number of Complaints Pending from Prior Years	Number of Complaints Summarily Dismissed/ Screened Out	Number of Complaints Investigated	Number of Complaint Closed or Dismissed After Investigation	Number of Lawyers Charged After Probable Cause Determination
Texas	103,342	8,015 (8%)	180 (2%)	5,123 (64%)	2,202 (27%)	1,705 (21%)	48 (.6%)
Illinois	73,787	4,937 (7%)	1,964 (40%)	1,147 (23%)	3,655 (74%)	3,520 (44%)	56 (1.1%)
New Jersey	74,391	NA	NA	NA	2,131	1,421	248
Maryland	40,393	1,657 (4%)	NA	83* (5%)	2,000* (100%)	1,722* (100%)	46* (2.2%)
Colorado	27,255	3,400 (12%)	342 (10%)	0*	276* (8%)	125 (4%)	56 (1.6%)
Arizona	18,923	2,874 (15%)	574 (20%)	2,435 (85%)	862 (30%)	327 (11%)	64 (2.2%)
California	185,024	20,337 (11%)	7,959 (39%)	10,539 (52%)	6,978 (34%)	5,303 (26%)	386 (1.9%)
National Average	24,906	1,483 (6%)	441 (30%)	733 (49%)	971 (65%)	606 (41%)	120 (8%)
National Median	18,608	1,057 (6%)	304 (29%)	469 (44%)	557 (52%)	313 (30%)	35 (3.3%)

Notes: California data includes all case types except those that do not go through the intake unit and moral character, interim suspensions, resignations with charges pending, and mini-reinstatements. Illinois data for number of complaints investigated, complaints closed after investigation, and lawyers charged after probable cause determination is drawn from Illinois's annual report.

New Jersey data was unavailable from the ABA and, where available, is drawn from its annual report.

All percentages are calculated based on the number of complaints received.

** = Estimated.*

NA = Data not available or applicable.

Average Caseload Per Attorney. The average caseload per attorney in California is comparable to the national median in 2018 (106 vs. 104) and higher than the national median in 2019 (105 vs. 92). The average time from receipt of complaint to summary dismissal (cases closed at intake without any further investigation) is higher than in Arizona, Maryland, and Texas, but appears to be comparable to that in Colorado, Illinois, and New Jersey. Data on a national median for this metric are unavailable. The differences between these two sets of states may or may not be attributable to differences in how states process cases at this initial screening stage. As noted in connection with table B-8 above, Colorado explains that at the intake stage each complaint is assigned to an attorney for review and follow-up with the complaining witness. This is the same approach taken in California and may explain the similarity between the reported times in these states. On the other hand, New Jersey, which has a similar processing

time at this stage, and Texas, which has a shorter time, both do their initial reviews on the face of the submitted grievance. Arizona and Maryland, both of which report shorter times, appear to engage in initial review processes similar to California and Colorado. California's average time from receipt of complaint to closure/dismissal after investigation is comparable to all the other states, but higher than Texas, which operates under a shorter mandatory time standard. California's average time from receipt of complaint to filing of formal charges is higher than most other states (in years 2018-2022, on average, cases that were closed at the charging phase took 32 days in intake stage, 303 days in investigation, and 149 days in charging). Data on a national median for these metrics is unavailable.

**Table B-10. ABA-SOLD 2018 – Caseloads and Case Processing Times
in California Versus Six Other States**

Jurisdiction	Average Caseload Per Lawyer	Average Time from Receipt of Complaint to Summary Dismissal (days)	Average Time from Receipt of Complaint to Closure/Dismissal After Investigation (days)	Average Time from Receipt of Complaint to Filing of Formal Charges (days)
Texas	71	Maximum 30	Maximum 120 ^{N1}	159
Illinois	100* ^{N2}	<10 71% 10-20 2% 21-60 20% > 60 7%	<90 79%/20% 90-180 17%/20% 180-365 3%/26% > 365 1%/34%	NA
New Jersey	137	<45 (per court rule)	215 ^{N3}	215 ^{N3}
Maryland	NA	7-10*	120-210*	365*
Colorado	598 39 ^{N4}	49	257	365
Arizona	487 117 ^{N5}	25	225	391
California	106	37	204	387
National Average	152	NA	NA	NA
National Median	104	NA	NA	NA

Notes: California data is drawn from its most recent ABA-SOLD data report.

Illinois data for average time from receipt of complaint to summary dismissal and closure/dismissal after investigation is drawn from Illinois's annual report. Dual percentages for closures after investigation reflect differences between times for closure by staff in intake (first percentage) and litigation (second percentage).

** = Estimated.*

N1: Per Texas – Unless an investigatory hearing is held, then 180.

N2: Per Illinois – monthly average caseload.

N3: Per New Jersey – Does not distinguish between cases dismissed and cases prosecuted.

N4: Per Colorado – Intake caseload 598; trial caseload 39.

N5: Per Arizona -- Intake caseload 487; litigation caseload 117.

NA = Data not available or applicable.

**Table B-11. ABA-SOLD 2019 – Caseloads and Case Processing Times
in California Versus Six Other States**

Jurisdiction	Average Caseload per Lawyer	Average Time from Receipt of Complaint to Summary Dismissal (days)	Average Time from Receipt of Complaint to Closure/Dismissal After Investigation (days)	Average Time from Receipt of Complaint to Filing of Formal Charges (days)
Texas	62	18	120–180	141
Illinois	140 ^{N1}	< 10 68% 10–20 3.7% 21–60 22.4% > 60 6.1%	< 90 75%/29% 90–180 21%/18% 180–365 3.7%/26% > 365 1.1%/28%	NA
New Jersey	NA	NA	NA	NA
Maryland	NA	7–10*	120–210*	365*
Colorado	576 43 ^{N4}	50	279	323
Arizona	431 108 ^{N3}	22	210	304
California	105	68	220	412
National Average	138	NA	NA	NA
National Median	92	NA	NA	NA

Notes: California data is drawn from ADR.

Illinois data for average time from receipt of complaint to summary dismissal and closure/dismissal after investigation is drawn from Illinois’s annual report. Dual percentages for closures after investigation reflect differences between times for closure by staff in intake (first percentage) and litigation (second percentage).

** = Estimated.*

N1: Per Illinois – monthly average caseload.

N2: Per Colorado – intake caseload 576; trial caseload 43.

N3: Per Arizona – intake caseload 431; litigation caseload 108.

NA = Data not available or applicable.

Time Standards. A review of the six states also suggests that the proposed time standards for California are in alignment with the average case processing times for most comparison states. Standards based on average case processing time preserve the flexibility necessary to protect the public interest by permitting bar disciplinary counsel to exercise prosecutorial discretion to pursue necessary investigative steps, even if those steps may cause completion of an investigation to be delayed. It is unrealistic to expect every case to be closed in a standard time – some cases will require less investigation that will result in them closing more quickly than the average, others will require more investigation that may result in them closing more slowly than the average. This reality is reflected in SB 211 itself: “Goals for case processing and disposition that are intended to encourage the prompt disposition of matters and apply to the overall inventory of matters of the type specified in subdivision (b) are not meant to create

deadlines for individual cases, are not jurisdictional, and shall not serve as a bar or defense to any disciplinary investigation or proceeding.”

Turning to the six comparator states in more detail, three have investigation time standards specified in their rules. Maryland requires that investigations be completed within 120 days “after docketing a complaint” but allows for the grant or renewal of extensions of 60 days based on findings of good cause. Moreover, complaints are not docketed until after Bar Counsel performs initial review, which ordinarily includes obtaining a written response from the attorney who is the subject of the complaint and considering other appropriate information to evaluate the merits of the complaint. This suggests that, measured from the receipt of the complaint (as opposed to its subsequent docketing) the time standard permits more than 120 days. Maryland reported to the ABA-SOLD that summary dismissals of received complaints prior to docketing average 7 to 10 days. If this pre-docketing review time is added to the 120 days, it would make the time standard from receipt of a complaint to completion of investigation 127 to 130 days. A single 60-day extension based on good cause for a complex investigation, would increase this to 187 to 190 days. Addition of a 90-day charging period following investigation would suggest that time from receipt of a complaint to the filing of charges would range from 217-220 days for a noncomplex case, and 277 to 280 days for a complex case warranting a single 60-day extension, and still comply with Maryland’s time standards. This is consistent with Maryland’s report of data in the 2018 ABA-SOLD indicating that the average time from receipt of complaint to closure after investigation is 120 to 210 days, while the average time from receipt of complaint to filing of formal charges is 365 days. These times are consistent with the time standards being proposed.

New Jersey requires summary dismissal based on initial review of grievances to occur within 45 days. This appears consistent with the proposed standard for cases in the intake stage. Another New Jersey rule calls for the disciplinary system to “endeavor” to complete investigations (from receipt to closure or filing) within 180 days for standard cases and 270 days for complex cases. New Jersey’s reported data shows that for the four years 2018 to 2021, it met these standards only in between 62 percent to 76 percent of its cases, with average age of investigations over these four years ranging from 197 to 241 days. As reported to ABA-SOLD, for 2018 its average time from receipt to closure or filing was 215 days. Both these standards and the reported average times appear generally consistent with, though somewhat lower than the proposed standards.

Texas requires initial review and classification of grievances (which is done on the face of the grievance, with resulting summary dismissal if it is determined that the grievance fails to allege professional misconduct) within 30 days. If it is determined that a grievance alleges professional misconduct, it is classified as a complaint, after which it is sent to the respondent, who has 30 days to respond, following which a finding of just cause to proceed with a disciplinary action must be made within 60 days. The sums of these times, $30 + 30 + 60 = 120$ appears to be the 120-day maximum that Texas reported to the ABA-SOLD for 2018 as the time from receipt of a grievance to closure/dismissal following investigation. But, as in Maryland, this time is subject to extension. In particular, if either an investigatory subpoena or investigatory hearing is

needed, the deadline is extended to 60 days after the date of compliance in the subpoena or the completion of the hearing. The potential additional 60 days based on such extensions underlies Texas's report to the ABA-SOLD for 2019 that the average time from receipt to closure dismissal after investigation was 120-180 days. Investigatory subpoenas or hearings may be indicative of complex cases. As a result, it appears that Texas's time standards are consistent with the proposed standards for intake and for investigation of high-risk noncomplex and high-risk complex cases. It should be noted that, with its expedited review and investigation times, based on its data reported to the ABA-SOLD, of the six comparator states, in 2018, Texas charged the lowest number of attorneys as a percentage of complaints filed.

Abatement (Deferral) A review of the six states also suggests that it is appropriate to exclude from the time standards time during which investigations are deferred or abated pending the resolution of civil or criminal litigation addressing substantially similar issues.

Of the states with specific time standards established by rule, only Texas prohibits abatement or deferral. Texas Rules of Disciplinary Procedure, rule 17.02 ("The processing of a Grievance, Complaint, Disciplinary Proceeding, or Disciplinary Action is not, except for good cause, to be delayed or deferred because of substantial similarity to the material allegations in pending civil or criminal litigation."). Maryland specifically authorizes deferral or abatement. MD Rules Attorneys, rule 19-711(b)(5) ("If Bar Counsel concludes that a civil or criminal action involving material allegations against the attorney substantially similar or related to those alleged in the complaint is pending in any court of record in the United States, or that substantially similar or related allegations presently are under investigation by a law enforcement, regulatory, or disciplinary agency, Bar Counsel, with the approval of the Commission, may defer action on the complaint pending a determination of those allegations in the pending action or investigation."). New Jersey effectively permits abatement or deferral by authorizing the declination of a grievance (or the administrative dismissal of a docketed complaint), even if it alleges facts that, if true, would constitute unethical conduct, if "those facts are substantially similar to the material allegations of pending civil or criminal litigation." NJ Court Rules, rule 1:20-3(f). And Colorado, which does not have specific time standards, but whose rules require that investigations be conducted promptly, authorizes disciplinary proceedings to "be placed in abeyance" if they involve "material allegations substantially similar" to either "material allegations of a criminal prosecution pending against the respondent" or "material allegations made against the respondent in pending civil litigation." Col. R. Civ. P. 242.42(e)(1), (2).

APPENDIX C: SIXTY-DAY GAP ANALYSIS AND RESULTS

To explore opportunities for faster case processing, staff analyzed cases closed or filed in investigation and charging over the last four years, focusing on understanding cases that took over one year to close or file.²⁸ Exploring detailed case-level information available within OCTC's case management system,²⁹ staff uncovered instances where there were lengthy amounts of time with no case activity between case processing events. Under certain circumstances, prolonged elapsed time between case processing events would be expected. For example, it is not surprising that after issuing a subpoena or making a request for records—where the production of responsive documents can take a considerable amount of time—there are long time gaps until the next case processing event. State Bar staff selected a sample of cases with significant gaps between events and asked OCTC to review the case histories. The review confirmed that many of the gaps had no explanation inherent in the surrounding case process events. OCTC staff hypothesized that many of the unexplained gaps were the result of investigators and attorneys having caseloads that prevented them from acting timely on all their cases, and that many of these gaps could be eliminated with sufficient staffing or procedural improvement. For further understanding, cases were categorized into three groups based on the presence of at least one gap between case processing events that was: 60 days or greater, 90 days or greater, or 120 days or greater.

Table C-1 shows the number and proportion of cases affected by 60, 90, or 120-day gaps between case events among cases closed or filed during the four-year period from 2018 to 2021. Among cases that were closed or filed beyond intake, nearly 45 percent had at least one gap of 60 days or more between events. Slightly more than 25 percent had at least one gap of 90 days or more while slightly more than 15 percent had at least one gap of more than 120 days. The variation over time is also significant. For example, in 2020, 60-day gaps affected 49 percent of cases that went to investigation, while in 2019 they affected only 39 percent. Similarly, in 2020, 90-day gaps affected 32 percent of cases, while in 2018 they affected only 21 percent. And, in 2020, 120-day gaps affected 21 percent of cases, while in 2018, they affected only 11 percent of cases.

²⁸ Intake cases were not examined because in intake cases close quickly, without significant investigative work or delays.

²⁹ Event codes that track case processing activity within the case management system were used to garner information. Tracking case activity using event codes allowed for a thorough evaluation to determine the events (and dormant times between events) associated with longer case resolution times. From initial case assignment to final case closure, all major actions taken in a case are recorded with event codes that reflect the date and time of their entry. For example, contacting the complaining witness, forwarding a case to investigation, contacting the respondent attorney, requesting records, issuing a subpoena for documents, receiving a response from the respondent attorney, are all captured through event codes entered in the case management system.

Table C-1. Gaps in Event Time Over 60 and 90 days, Cases Closed/Filed Beyond Intake, 2018–2021

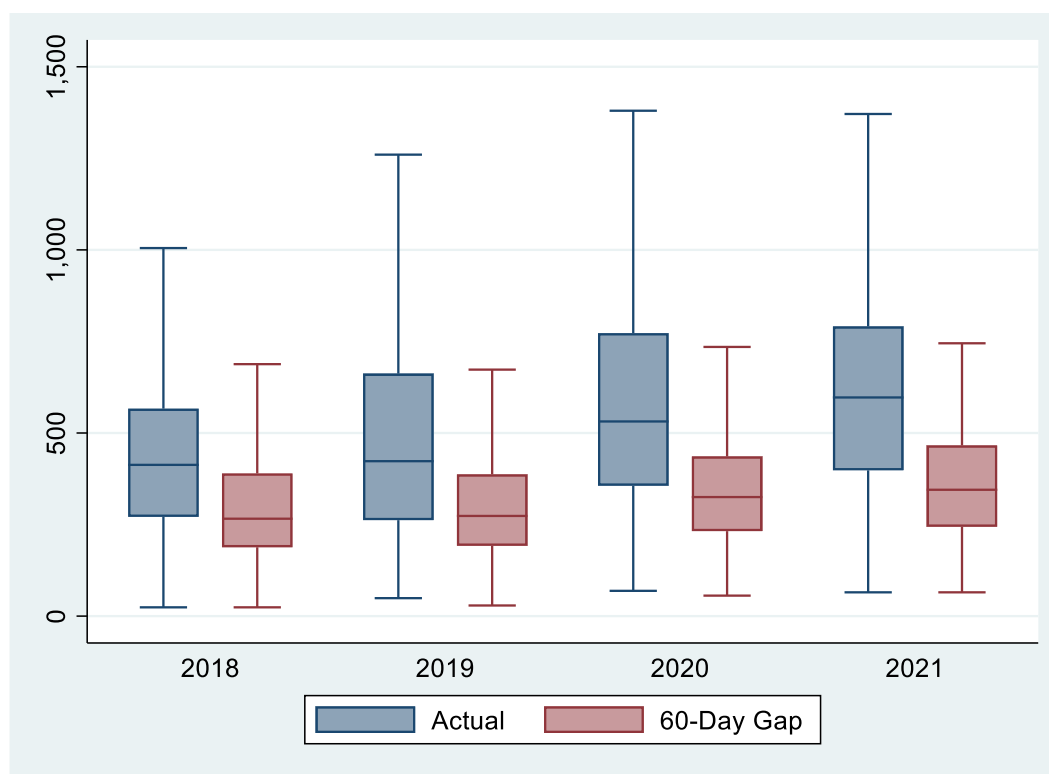
Year	Cases closed/ filed beyond intake	Number of cases with event time gaps at or greater			Percent of cases with event time gaps at or greater		
		60 days	90 days	120 days	60 days	90 days	120 days
2018	5,020	2,093	1,076	563	42%	21%	11%
2019	4,775	1,876	1,027	572	39%	22%	12%
2020	5,662	2,791	1,796	1,164	49%	32%	21%
2021	5,205	2,282	1,525	970	44%	29%	19%
Total	20,662	9,042	5,424	3,269	44%	26%	16%

After this initial analysis, it was determined that adjusting case times based on eliminating only 90 or 120-day gaps was insufficient as it would still leave a significant number of cases with large time gaps between case processing events. As a result, the State Bar settled on the 60-day gap as representing the appropriate range for the modeling exercise described next.

To estimate how case processing times would be affected by eliminating time gaps of 60 days or more between events, the State Bar adjusted case closure times by removing these time gaps for cases closed/filed beyond the intake stage. For example, if a case were closed/filed in charging in 520 days and had two gaps between certain case events of 65 and 75 days, its adjusted case age would be 380 days ($N=520 - 65 - 75$). Figure C-1 shows a comparison of case closure times for cases closed/filed in charging for the years 2018 to 2021 based on the actual time (the blue spreads) relative to a hypothetical scenario in which gaps of 60 days or greater between events were subtracted from the overall case closure time (the red spreads)³⁰. As indicated in figure A-1, eliminating 60-day gaps significantly reduced the variance in the spread of case processing times across the four years, resulting in a more consistent pattern over time. The median case processing times both significantly decreased and demonstrated less variance across the four years after the 60-day gap adjustment. Similarly, the case processing time spread each year was significantly reduced by the 60-day gap analysis. For example, in 2020, absent the 60-day gap adjustment, the 25th and 75th percentile values ranged from 356 to 772 days, while after the 60-day gap adjustment, this range was reduced to 232 to 436 days.

³⁰ In each column, the shaded rectangle represents the middle 50 percent of the range (from 25th to 75th percentile), with the horizontal line within the rectangle indicating the median (50th percentile). The horizontal lines outside the shaded rectangle (“whisker”) indicate the range of outlier values.

Figure C-1. Case Processing Time Comparisons with Adjustment of 60-Day Gaps in Event Time



Based on OCTC’s examination of case histories and this analysis, the State Bar hypothesizes that, when the nature of particular case events does not explain gaps of 60-days or more, those gaps result from high caseloads among investigators and attorneys that caused prioritizing work on certain cases to leave other cases to suffer significant gaps between case actions.

Summary

The analysis of cases involving gaps between case events of 60-days or more suggests that if, as hypothesized, these gaps result from high caseloads among investigators and attorneys that cause them to be stretched too thin to effectively work all the cases assigned to them, then adjusting case age data based on removal of all gaps of 60-days or more may provide an aggressive estimate of the investigation time required in the absence of staffing constraints. The estimate is aggressive because it assumes that any gap of 60 days or more would be eliminated (from 65 to 0 days for example), as opposed to reduced (from 65 to 30 days, for example). Removing all gaps may include removing some portions of those gaps inherent in and necessary to the investigative activities in the case. Nevertheless, this aggressive estimate can provide a starting point for deriving case processing time standards for each of the six categories of cases in the investigation and charging stage.

APPENDIX D: COMPLAINT TYPE³¹ (CASE TYPE)—ANOTHER FACTOR CONSIDERED IN THE STANDARDS' FRAMEWORK

The proposed case processing standards are based on three case dimensions: case stage, complexity, and risk level. In its 2019 report, the LAO recommended an additional dimension for case processing standards: complaint type (or case type). The LAO report cited examples of the judicial branch's case weights that relied on complaint type differences, such as those between felony and traffic cases.

Leveraging a new 25-charges category classification system that classifies over 400 allegation codes, the State Bar explored this option by conducting an analysis of complaints closed from 2019 to 2021.³² The first step was to consider that complaints filed against attorneys often include more than one allegation, with the possibility that multiple allegations may fall into multiple categories. Nearly one-half of the cases analyzed had multiple allegations classified into more than one complaint type category and nearly one-fifth of the cases had multiple allegations belonging to three or more categories. This is analogous to charges in a criminal case including both misdemeanor and felony offenses, or including different felony offense types, such as robbery (a crime against a person) and auto theft (a crime against property). Because each complaint had to be assigned to just one category, each allegation was assigned a severity ranking. Higher severity rankings are assigned those allegations that show a higher propensity of moving further into the discipline system, from intake to charges filed with State Bar Court. The result of the severity analysis is shown in table **Error! Reference source not found.**D-1.

With the severity ranking of the allegations established, a complaint with multiple allegations belonging to multiple charge categories is considered within the most severe charge category. For example, a complaint involving “noncompliance with discipline conditions” and “client fees,” ranked first and 12th respectively, is categorized as a “noncompliance with discipline conditions” complaint type, which is ranked first in severity.

Table D-1. Twenty-five Complaint Types and Severity Ranking

Complaint Type	Severity Ranking	Number of Cases
Noncompliance with discipline conditions	1	380
Duties to the State Bar	2	1,412

³¹ “Complaint type” is used to avoid confusion between case type and case category in the standards’ framework. Complaint type is an exchangeable term for “case type.”

³² This charge classification was completed with the assistance of two experienced OCTC attorneys in late 2021, resulting in two different sets of complementary case category classification with one containing 25 categories and the other 11 broader categories. In the following analyses of complaint types, the 25-category classification was used to take advantage of the more refined differentiations.

Complaint Type	Severity Ranking	Number of Cases
Loan modification	3	354
Prohibited attorney-client agreements/transactions	4	632
Employment of disbarred attorneys	5	94
Unauthorized practice of law	6	1,940
Improper business transactions	7	406
Advertising/solicitation	8	983
Client neglect/abandonment	9	49,895
Duties of managing attorney	10	631
Client funds	11	8,146
Client fees	12	4,129
Client loyalty/conflict	13	4,410
Sexual relations	14	98
Disregard of client's decisions	15	915
Interference with judicial administration	16	7,720
Improper conduct toward opposing parties	17	1,805
Judicial officer misconduct	18	79
Professional integrity	19	21,001
Violation of other laws	20	11,112
Prohibited non-client financial transactions	21	7
Discrimination/harassment/retaliation	22	454
Reportable actions	23	936
Superior court assumption	24	14
Prosecutorial misconduct	25	636

With each case assigned to one of the 25 complaint type categories, statistical procedures (factor analysis and network graph) were used to further group them into six categories. They are as follows:

- Client funds
- Client neglect and related
- Duties to State Bar

- Professional integrity

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- UPL, loan modification, and related
- Other

The grouping of the 25 complaint types into the six broader categories is shown in table D-2.

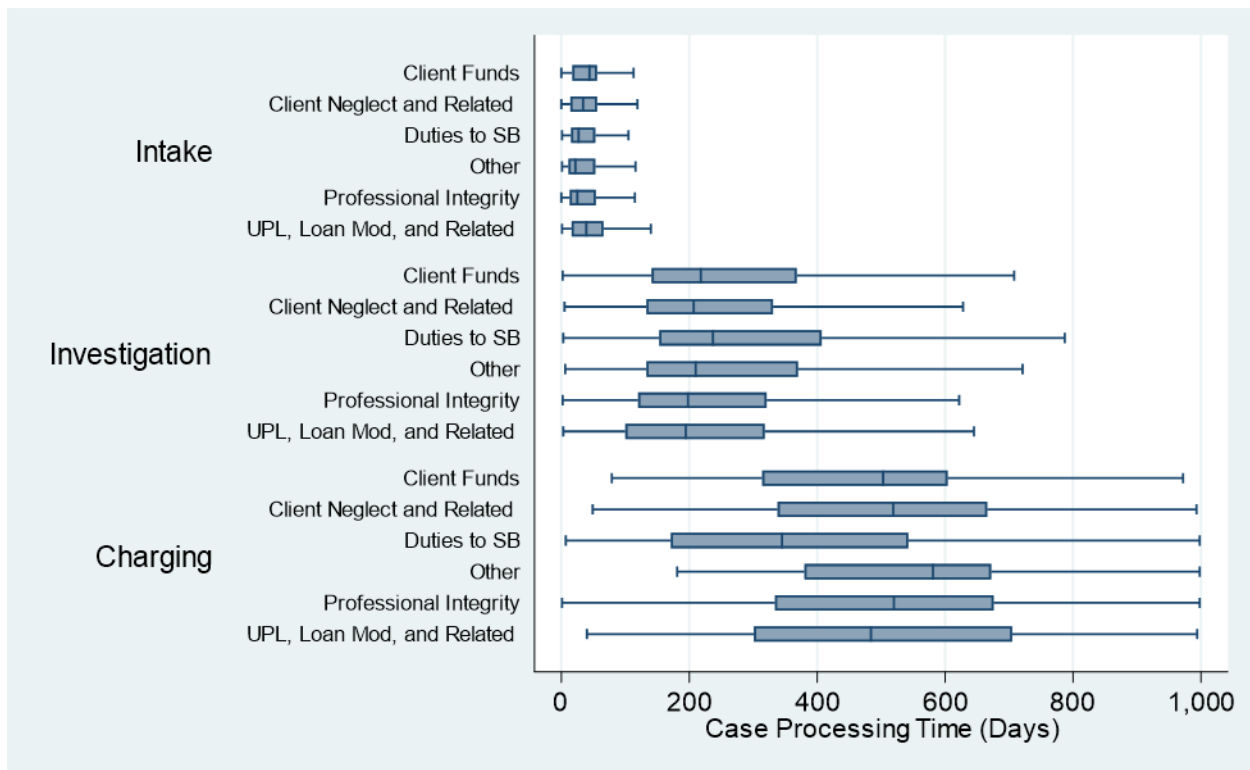
Table D-2. 25 Complaint Types Further Grouped Into Six Categories

	2019	2020	2021
Client Funds			
Client funds	2,157	2,135	1,697
Reportable actions	280	344	184
<i>Total</i>	<i>2,437</i>	<i>2,479</i>	<i>1,881</i>
Client Neglect and Related			
Client fees	160	160	127
Client loyalty/conflict	322	429	425
Client neglect/abandonment	5,851	5,643	5,830
Disregard of client's decisions	10	20	37
Duties of managing attorney	23	124	227
<i>Total</i>	<i>6,366</i>	<i>6,376</i>	<i>6,646</i>
Duties to State Bar			
Duties to State Bar	367	405	408
Noncompliance with discipline conditions	64	67	47
<i>Total</i>	<i>431</i>	<i>472</i>	<i>455</i>
Professional Integrity			
Improper conduct toward opposing parties	154	177	160
Interference with judicial administration	915	1,135	1,299
Professional integrity	1,739	2,422	1,774
Prosecutorial misconduct	28	63	62
Violation of other laws	1,329	1,465	1,004
<i>Total</i>	<i>4,165</i>	<i>5,262</i>	<i>4,299</i>
UPL, Loan Modification, and Related			

	2019	2020	2021
Advertising/solicitation	107	106	123
Employer of disbarred attorneys	19	30	19
Improper business transactions	56	93	41
Loan modification	81	23	5
UPL	478	383	368
<i>Total</i>	<i>741</i>	<i>635</i>	<i>556</i>
Other			
Discrimination/harassment/retaliation	18	17	32
JO misconduct	11	26	9
Prohibited attorney-client agreement/transactions	161	170	182
Sexual relations	15	10	6
Superior Court assumption	6		4
<i>Total</i>	<i>211</i>	<i>223</i>	<i>233</i>
Total Cases Closed	14,351	15,447	14,070

With each case assigned to one of the six complaint categories, comparison of case time by case stage and complaint type (see figure D-1) was done to identify the key drivers of case age variations. As indicated in figure D-1, at each case stage, there was minimal variation in case time based on complaint type group. This is true for the median time (the vertical lines within the blue shaded block within each case stage), as well as the overall spreads (the box length representing the range from 25th to 75th percentile of the distribution).

Figure D-1. Case Processing Time by Closure Stage and Complaint Type



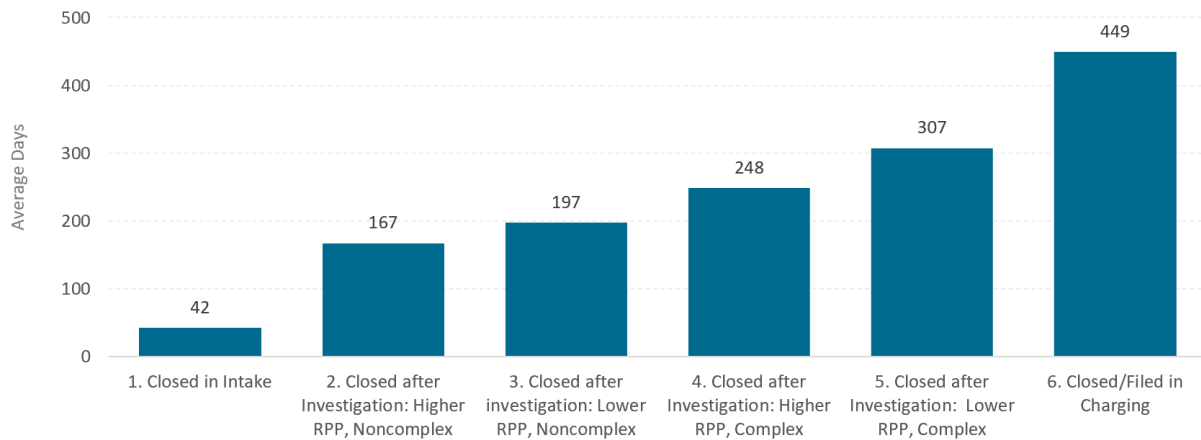
The relatively small amount of difference in average intake, investigation, and charging times among complaint type groups indicates that differentiating by complaint type does not add much value to understanding variation in case processing times.

CASE PROCESSING TIME FOR PROPOSED SIX CATEGORIES OF CASES

The analysis above showed that case processing time does not vary much by complaint type. In contrast, case processing time does vary by the six categories of cases the State Bar developed based on three case dimensions (case stage, RPP, and complexity). Figure D-2 shows four-year average case processing times (2018–2021) for each of these six categories.³³ The clear differentiations among the times shown in figure D-2 support grouping cases along these three dimensions. As expected, cases closed in intake require the least processing time, while cases that close or are filed in the charging stage require the most time. Likewise, among cases closed in the investigation stage, higher RPP noncomplex cases require the least time, while lower RPP complex cases take the most time. Figure D-2 also reinforces the fact that complex cases, in general, require the most amount of time to process. For higher RPP cases closed in the investigation stage, those that are complex take, on average, 81 more days to process than those that are not. Similarly, for lower RPP cases closed in the investigation stage, those that are complex take, on average, 110 more days to process than those that are not.

³³ For purposes of this figure, which looks at existing case processing data, the State Bar used OCTC's current case prioritization system to identify higher and lower risk cases. For reasons discussed in more detail above, this system likely undercounts higher-risk cases.

Figure D-2. Four-Year Average Case Processing Time for Proposed Categories of Cases (days)



Summary

The data shows no clear correlation between case processing time and complaint type, meaning complaint type cannot effectively differentiate cases in terms of case processing time, while the three factors included in the standards (case stage, risk, and complexity) do appear effectively to differentiate cases. Moreover, the three SMEs were opposed to adding complaint type into the framework of the standards. No other state uses complaint type to drive their case processing standards, nor does the ABA collect such data for discipline system reporting. In conclusion, complaint type will not be used as a factor in the new case processing standards.

APPENDIX E: FOCUS GROUP ANALYSIS AND RESULTS

METHOD AND ORGANIZATION

Between June 27 and July 8, 2022, State Bar staff conducted five Delphi focus groups with attorneys and investigators in the OCTC to solicit feedback from SMEs on draft case processing standards. The focus groups were organized to validate key components of the case processing standards, modify the standards if necessary, and identify opportunities for operational improvements in OCTC.

The Delphi focus group method was pioneered by the RAND Corporation in the 1950s and has been applied to fields as diverse as health care, education, management, and environmental science.³⁴ Like other focus groups, the Delphi approach involves a structured conversation with a small group of subjects. Unlike other focus groups, the Delphi method relies on SMEs to provide qualitative assessments of a specific topic.³⁵

To maximize the value of the input from OCTC staff with expertise in various subject matters, the focus groups were organized by case processing stage—intake, investigation, and charging—with separate groups for attorneys and investigators in the investigation phase and staff who handle cases that are, under OCTC current case prioritization system, designated for expedited case processing in the investigation phase. The topic of each focus group is shown in table E-1.

Table E-1. Topics of Delphi Focus Groups

Intake
Investigation – expedited cases
Investigation – nonexpedited cases – attorneys only
Investigation – nonexpedited cases – investigated only
Charging

Process and Findings

Approximately 65 staff participated in the focus groups. Before the meetings, participating staff were sent a PowerPoint slide deck with the material to cover during the focus group. In addition, at the outset of each meeting, a short orientation was provided to ensure that staff understood the purpose and were prepared to provide input.

³⁴ See “Delphi Method,” rand.org/topics/delphi-method.html.

³⁵ See “Interviews, Focus Groups and Delphi Techniques,” Jennifer Brown, eprints.lse.ac.uk/100954/1/Brown_interviews_focus_groups_delphi_techniques.pdf.

The focus groups sought to validate a number of the critical components of the work conducted on developing case processing standards. Specifically, the focus groups sought staff validation for the State Bar's understanding of:

1. Case complexity and the factors that contribute to delay in case processing;
2. Unexplained time gaps that were identified in many cases; and
3. Key steps in case processing and the reasonableness of time estimates for those steps.

In addition, the focus groups were used to identify opportunities for improving the efficiency and effectiveness of case processing.

Case Complexity and Factors that Contribute to Delay in Case Processing

Focus group participants reviewed the following list of factors that had already been identified as principal causes of delay in case processing:

- Subpoenas to banks, courts, or other third parties for records.
- Multiple charges.
- Multiple parties.
- Late retention of counsel:
 - After TR letter³⁶
 - After notice of NDC
- Multiple TR letters.
- Delayed responses to TR letters.
- Delays in scheduling or conducting ENEC.
- New issues requiring analysis/investigation raised at ENEC.

Focus group participants were then asked to comment on whether the items on the list were valid and whether there were additional factors that should be added to the list below. As expected, most of the issues add complexity or cause a delay in a case to occur in the investigation and charging phases. While focus group participants generally agreed with the factors contained on the list, they also pointed to additional factors: case-specific and organizational.

Focus group participants raised the following new issues that were unique to individual cases and contributed to delay:

- Cases with incarcerated CWs. Communication with incarcerated CWs is often delayed;
- Cases in which the CW is a non-English language speaker and for which documentation and interviews need to be translated;
- Cases with voluminous documentation (from whatever source) that needs to be reviewed closely;
- Cases with CWs who are technologically unsophisticated and require special attention to gather and transmit documents;

³⁶ "TR" refers to the letter notifying respondents that they are being investigated by OCTC.

- Post-closure communications with the CW that often involve additional allegations and information from the CW seeking to get the case reopened, which then must be reviewed;
- “Repeater” cases in which the respondent is facing multiple allegations can result in delay as the respondent may face multiple requests for information from the State Bar;
- Cases that stem from highly emotional legal issues—personal injury or divorce, for example—often have CWs who debate decisions for every single possible allegation and continue to provide additional information that is of minimal relevance but must nevertheless be reviewed and addressed; and
- At the charging stage, granting multiple ENECs can cause delay.

Organization issues that cause delay and were identified by focus group participants included the following:

- Staffing changes and team rotations that require new attorneys, investigators, and supervisors to get up-to-speed;
- Operational procedures that require memos to close even minor cases cause delay;
- Data entry and document upload in the case management system;
- The “invisible workload” of cases that are not in OCTC’s regular performance metrics—mini-reinstatements, moral character cases, criminal conviction cases, and trial preparation at the charging stage—can cause delays in handling those cases that are reflected in the regular performance metrics; and
- Cases that come from intake with insufficient documentation take longer.

Review of Time Gaps

As noted in Appendix B, data regarding the 60-day gaps suggested that they were systemic rather than the result of individual investigator or attorney performance issues. Focus group participants generally agreed with the hypothesis that a significant cause of the gaps was high caseloads and insufficient resources to stay on top of all the cases. Participants also contributed the following additional thoughts about the causes of these gaps, some of which echoed the issues identified as contributing to delay more generally:

- Repeated broad organizational changes in OCTC were cited as contributing to delay by changing priorities and making it difficult for staff to know where to focus;
- One participant cited hybrid teams with members in both Los Angeles and San Francisco and the challenges of communication between staff and supervisors when they are not co-located;
- “Case dumps”—when an investigator or attorney leaves OCTC, and the caseload is reassigned to other staff—can cause these types of time gaps;
- A cascading effect of delay contributes to still more delay when staff need extra time to get back up-to-speed on a case after working on other cases for a significant period;
- In the charging phase, attorneys pointed to the unexpected assignment of new work, for example, cases that are reassigned following reopening after reviewing by the CRU;
- Time gaps may also arise from the iterative review process for charging memos and stipulations, resulting in multiple rounds of revision; and

- Different supervisors may also assess cases differently. While this can occur when a supervisor is on vacation, and another supervisor reviews a charging memo or stipulation, regular staff rotation among teams was also cited as a cause for delay, particularly when new supervisors change decisions that a previous supervisor had made.

Key Steps in Case Processing and the Reasonableness of Time Estimates

With the exceptions noted below, focus group participants generally agreed that the task-level time estimates in tables E-2, E-3, and E-4 below were reasonable *but only with sufficient resources*. Participants in the focus groups reviewed the tasks in each phase of case processing and provided the following input.

Intake phase

- Intake staff did not believe that a 30-day average case processing time for forwarding cases to investigation was feasible under current staffing levels.
- Intake staff also indicated that the estimate for “additional legal research/follow-up” understates the amount of time required for this task in many cases.

Table E-2. Key Steps in Intake Stage and Staff Estimates for Processing Time

Step	Days	Cumulative Days
Read/review complaint	20	20
Additional legal research/follow-up	10	30
Option 1: Forward to investigation	0	30
Option 2: Draft/approve/send closing	5	35

Investigation phase

- Attorneys indicated that the “receive/review TR response” time seems too short because respondents tend to delay replying. If respondents retain counsel, this phase takes even longer.
- Investigators proposed adding 30 to 60 days for document production, following step 5.
- Investigators also indicated that 30 days for additional investigation was not realistic.

Table E-3. Key Steps in Investigation Stage and Staff Estimates for Processing Time

Step	Days	Cumulative Days
1. Read/review complaint and intake comments	3	3
2. Prepare/approve investigative plan (overlap-1)	5	8
3. Contact R/prepare and send out TR	14	22
4. Contact CW/conduct interview of CW (overlap-3)	6	28
5. Issue document subpoenas/demands (overlap-3 and 4)	10	38
6. Receive/review TR response	30	68
7. Additional legal research/investigation (if needed)	30	98
8a. Option 1: Draft/approve investigative report	10	108
8b. Option 2: Draft/approve closing letters to R and CW	3	111

Charging phase

- Focus group participants suggested a missing step related to post-ENEC activity. After the ENEC notice is sent, time may be spent negotiating the question whether a stipulation will be agreed to or whether the case is likely to go to trial and charges should be filed without a stipulated resolution.
- When an attorney has a lot of trials pending, 30 additional days should be added to the draft standard for charging because attorneys need to prioritize trial preparation.
- Step 8a seemed overly optimistic to some staff, who indicated that seven days is unrealistic for drafting and filing a stipulation.
- Some staff also indicated that step 6 is unrealistic; according to these staff, in practice, ENEC's are not scheduled and conducted within 14 days.

Table E-4. Key Steps in Charging Stage and Staff Estimates for Processing Time

Step	Days	Cumulative Days
1. Prepare/approve charging memo and draft NDC/stipulation	6	6
2. Prepare for/conduct TTM (if needed) (overlap-1)	4	10
3. Send out 10-day letter with draft NDC	1	11
4. Wait 10 days	10	21
5. Prepare and provide discovery if requested by R	7	28
6. Schedule/conduct ENEC	14	42
7. Additional legal research/investigation (if needed)	15	57

8a. Option 1: Draft/approve/file stipulation	7	64
8b. Option 2: Draft/approve/file final NDC	3	60

Step 3 of developing the proposed case processing standards incorporated the input from focus group participants. Based on this input, the following modifications were made to the proposed case processing standards.

- In the intake phase the internal timeline has been modified to take into account the additional time required to obtain additional information related to a complaint. The case processing standard has been changed to 60 days for cases requiring additional information. The case processing standard has been changed to 20 days for the initial read and review for cases that do not require additional information. This change, however, does not affect the overall proposed case processing standard of 30 days since it is expected that the average case processing time will remain 30 days.
- No changes in terms of time standards were proposed in the investigation phase as a result of the focus groups.
- In the charging phase additional time has been added based on the uncertainty created by the ENEC process. How that time will be factored into the standard depends on whether the Legislature agrees to use the scheduling of a subsequently conducted ENEC as the end point for calculating time. If this suggestion is not adopted, the case processing standard for the charging stage would be increased by 30 days, from 300 days to 330 days.

Opportunities for Improving the Efficiency and Effectiveness of Case Processing

Focus group participants provided many thoughtful recommendations for streamlining case processing. The following list illustrates some of the ideas provided by the focus group participants. OCTC is assessing whether and how to implement the recommendations below; implementation will be considered along with the staffing needs analysis (see Part Four).

Intake stage

- Modify the complaint form to ensure that CWs who need to get authorization from the client provide this information when they file their complaint;
- Modify the communication requesting additional information from CWs to explicitly state when a case will be closed if the necessary documentation is not provided;
- Have the processing of additional mail, additional phone calls, and case status updates handled in the first instance by administrative support staff rather than investigators and attorneys;
- Eliminate the major case memo for cases that are forwarded to investigation, some staff believed this was unnecessary and that the memo would better be prepared by investigation staff than intake staff; and
- Create an expeditor system within the intake unit for simple cases—return of file, or communication—to dispose of those cases quickly.

Investigation stage

- Subpoenas for documents should be issued when a case is transferred from intake to investigation rather than waiting for the investigations team to open the case;
- Eliminate the requirement to write an investigation plan and closing memo for routine, minor cases, particularly since the reasons for closure will be included in the closing letter;
- Assign data entry and document uploading to administrative staff;
- Assign a second investigator to repeater cases (multiple complaints against the same attorney) to get through the cases more efficiently;
- Close repeater cases with a single investigation report;
- Pair investigators with attorneys in one-to-one arrangements on the trial teams;
- Customize the communication to the CW requesting documentation so that it does not include irrelevant descriptions of documents that are not applicable to the specific case;
- Bring the “complaint analyst” position back to intake and make it the responsibility of this position to ensure that documentation is complete. In particular, the complaint analyst should get:
 - Documentation of the existence of an attorney-client relationship
 - A complaint signed by the client
- Assign Spanish-speaking investigators to Spanish-speaking CWs;
- Eliminate declarations in support of subpoenas (it was noted that declarations are required by rules that would need to be amended);
- Alternatively, if declarations are necessary, create standard declaration templates for different types;
- Adopt new rules to encourage cooperation and speedier responses from respondent attorneys and their counsel, possibly even some form of administrative sanction for failure to respond;
- Create a specialized team to deal with incarcerated complainants who pose unique difficulties with communication due to their incarceration; and
- Create a specialized team to handle post-transmittal investigations/filings in cases arising from criminal convictions.

Charging stage

- Limit the amount of time that respondents can continue to practice while attempting to be admitted to the Alternative Discipline Program (ADP);
- Establish earlier milestones along the lines of a civil case management conference to confirm that the respondent is not likely to default;
- Move trial team meetings earlier in the process (before moving to the charging phase or at the latest before scheduling an ENEC) to ensure that cases coming out of investigation and moving to charging or moving through charging to an ENEC already have complete buy-in for charging the case; and
- Eliminate drafting of investigative reports and draft only a charging memorandum prepared after a trial team meeting.

APPENDIX F: CALIFORNIA DEPARTMENT OF CONSUMER AFFAIRS AND ITS CASE PROCESSING TIME REVIEW

The California DCA created a set of EPM on caseload and case processing time. Recognizing the diversity of DCA's various licenses and consumer services involved, this section aims to describe standard performance metrics employed and how the metrics data are reported. Focused on the design and reporting of the metrics, it supplements the comparative analysis of case processing standards in other states provided in Appendix B.

Published on its website and updated quarterly, DCA's performance metrics consist of six measures, including

1. Case volume;
2. Intake time;
3. Investigation time;
4. Formal discipline time; and
5. Two measures on case processing time for probation.

Pertinent to the case processing standards proposed by the State Bar are measures 2 to 4: case time in intake, in investigation, and to formal discipline.

With case processing time grouped into three stages, DCA's case processing standards are measured using average time, establishing a target time for each stage. At the intake stage, the target average time is 10 days, at the same level for all 38 licensing boards. The target average time for investigation varies significantly across different licensing boards, ranging from 60 days for court reporters to 365 days for veterinarians. At the last stage, to formal discipline, a single uniform target is adopted for all licensing boards, at 540 days.³⁷

With case processing data aggregated over a three-year period from 2019 to 2021, figures F-1 to F-3 show the actual average time for more than 30 licensing boards with available data, each measured against its target time in the three stages. Highlighted in red are seven licensing boards for professionals considered more akin to lawyers: accountants, architects, dentists, doctors, nurses, pharmacists, and veterinarians.

As noted above, the performance target for intake time was established at 10 days uniformly across all licensing boards. Figure F-1 shows that the actual average times also fall within a narrow range, with most boards meeting the target of 10 days. Only five of the 34 boards with reported data exceeded the target of 10 days.

In contrast to intake, investigation cases in figure F-2 display large variances across the licensing boards in actual and target times. Almost half of the licensing boards did not meet the target time.

³⁷ In addition to the performance metric data published online, displaying actual average case processing time measured against the target average time, DCA's annual report provides more information on case processing time in a different format. Cases at each stage are grouped into several time categories, from under 90 days to more than three years. Case counts are reported in each category.

At the last formal discipline stage, all licensing boards again share the same target performance time, at 540 days. However, as to the actual average times, the performance of the various boards was significantly different from that at the intake stage. The actual average time in only eight boards (23 percent) met the target average of 540 days. Those failing to meet the target also showed large deviations, exceeding the target by more than one year. None of the six highlighted professional boards met the target of 540 days.³⁸

Note that all the license agencies differ concerning resources, operational procedures, and practices. It is important to review the comparisons with caution.

³⁸ The architects' board was highlighted in the intake and investigation charts, but the number of cases is too small to be included in the formal discipline graph.

Figure F-1. Actual and Target Time to Process Cases Closed in Intake (Average Days) for Licensing Boards Under Purview of California's DCA 2019–2021

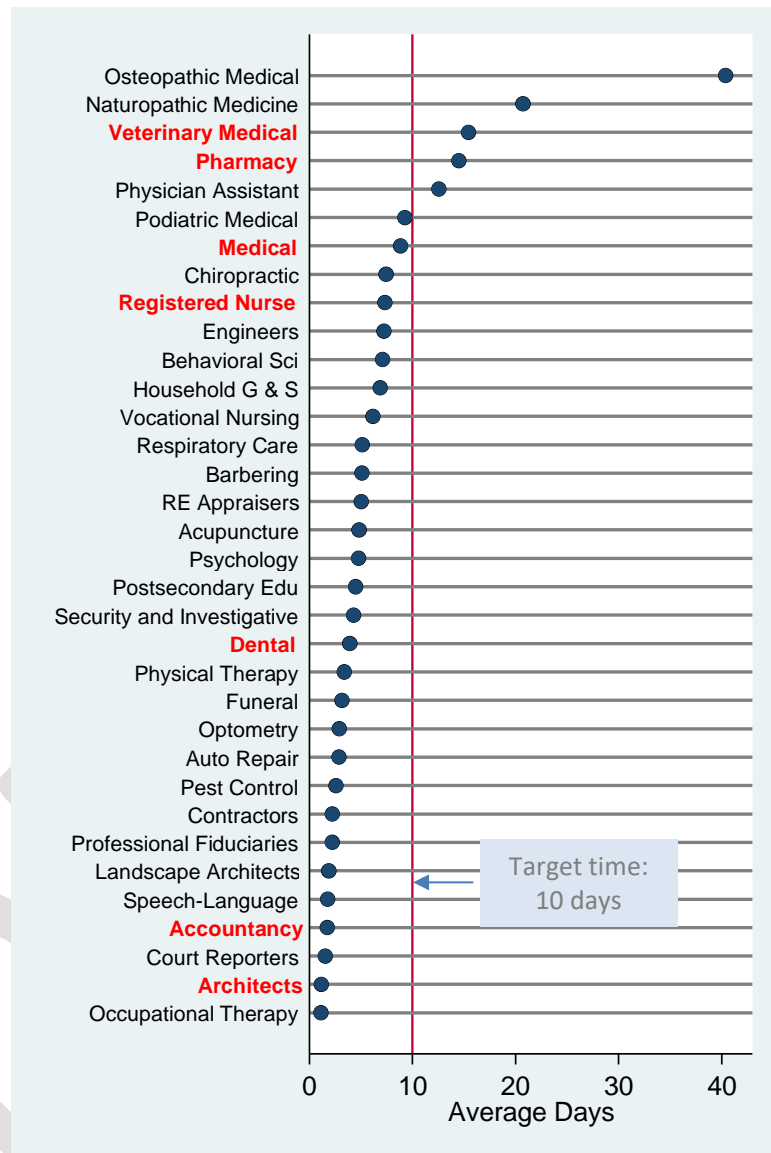


Figure F-2. Actual and Target Time to Process Cases Closed in Investigation (Average Days) for Licensing Boards Under Purview of California's DCA 2019–2021

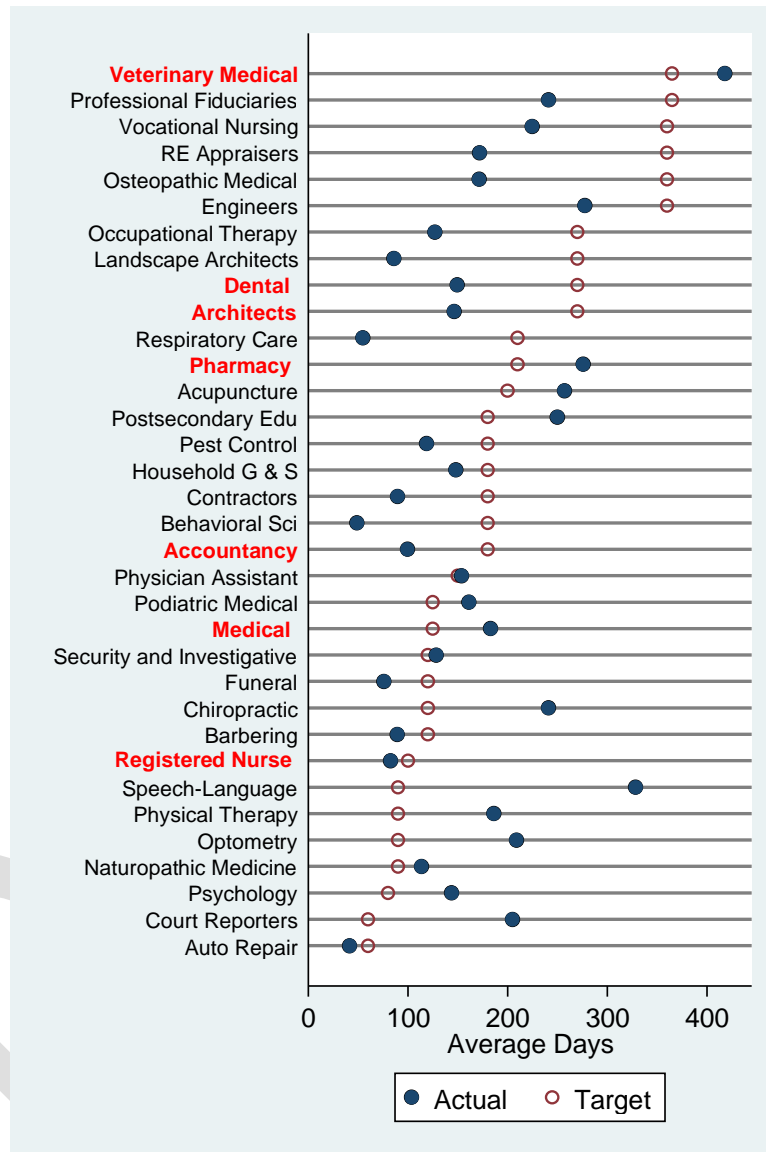
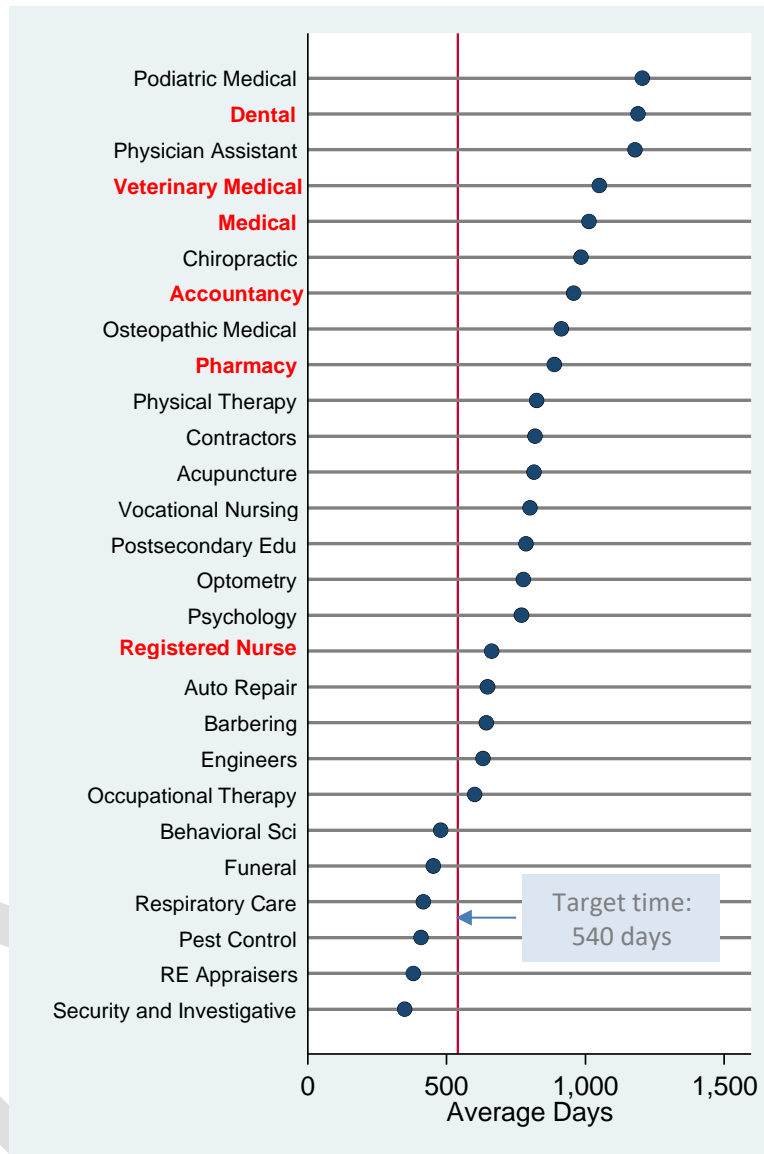


Figure F-3. Actual and Target Time to Process Cases Closed with Formal Discipline (Average Days) for Licensing Boards Under Purview of California's DCA 2019–2021



APPENDIX G: STATE BAR INVENTORY OF DISCIPLINE SYSTEM INITIATIVES

INTRODUCTION

The following inventory lists the dozens of discipline system initiatives, policies, and procedures the State Bar has implemented over the last several years. It is organized in the following categories:

- **Fairness:** This includes initiatives that are intended to promote procedural justice, reduce disparate impact, prevent future attorney misconduct, and improve the experiences and perceptions of CWs and Rs.
- **Effectiveness:** This includes initiatives that address workload and operational efficiency and effectiveness.

The majority of the initiatives outlined are focused on the OCTC. It is the single largest division in the State Bar, comprising about half of all State Bar employees. OCTC is also the lynchpin of the discipline system. OCTC processes approximately 15,000 complaints of misconduct each year and another roughly 4,000 notifications of potential ethical violations related to criminal cases, client trust accounting, and the UPL. Because of its centrality to the State Bar's mission of public protection, OCTC is also the most closely scrutinized of the State Bar's divisions.

Partially as a result of this scrutiny, in recent years, OCTC has undergone numerous and significant organizational changes. Approximately half of the recommendations contained in a California State Auditor report 2015-030 (June 2015) focused directly on OCTC; and 17 recommendations contained in the legislatively mandated workforce planning report of 2016 were also directed toward OCTC.³⁹ A 2018 discipline system workload study estimated the amount of staff resources needed to process cases through different stages of the attorney discipline process. This provided support for the State Bar's proposed licensing fee increase of 2020 to fund, in part, additional staff level for OCTC. California State Auditor report 2020-030 (April 2021) also focused on OCTC, as did CSA report 2021-030 (April 2022), both of which made numerous recommendations for changes in OCTC policies and practices. Finally, it should be noted that some of the most significant changes in OCTC in recent years were initiated by OCTC leadership in their ongoing efforts to streamline operations and ensure that the State Bar fulfills its public protection mandate.

³⁹ See California State Auditor Report, 2015-030, "State Bar of California: It Has Not Consistently Protected the Public Through Its Attorney Discipline Process and Lacks Accountability," bsa.ca.gov/pdfs/reports/2015-030.pdf; also see "State Bar of California Workforce Planning: Report to the Office of the Executive Director," May 10, 2016, calbar.ca.gov/Portals/0/documents/reports/2016_Workforce_Planning_Report_May_15.pdf.

Fairness

Improved Access to the Complaint Process

Online Complaint Portal. OCTC launched an online complaint portal, allowing CWs to file complaints electronically, rather than on paper via mail in both English and Spanish. For approximately 10 months afterward, OCTC saw a significant increase in the number of complaints received overall. Four additional languages (Vietnamese, Korean, Russian, and Chinese) were added to the system in 2019 to further expand access to CWs in their preferred language. (2018)

Multilingual Communication. To increase access to the attorney discipline system and to avoid undue delay of cases involving people who would prefer to communicate in a language other than English, OCTC had the Complaint Acknowledgment Letter and several informational letters translated into the 10 most common languages spoken in California (English, Arabic, Chinese, Farsi, Hindi, Korean, Russian, Spanish, Tagalog, and Vietnamese). This change has eliminated a 10-day delay in each case requiring translation. OCTC translated several informational letters sent at the initial stage of the investigation and whenever a case is reassigned. OCTC also developed new procedures to ensure that CWs are communicated with in their preferred language. (2019–2020)

CWs in Custody. OCTC engaged with a third-party communications company to facilitate collect calls from CWs who are in custody. Doing so eliminates the need to interview CWs via written format, a process that caused delay because of the need to mail questions and responses. Interviews are now completed in a more expeditious manner. (2018)

CRU. In 2016, rule 2603 of the Rules of Procedure of the State Bar of California was amended to delegate to OGC the “second look” function that had previously been completed by OCTC staff. This amendment was sought upon the recommendation of the State Auditor in 2015. Complainants are entitled to request that the State Bar OGC CRU review OCTC’s decisions to close a case. If CRU finds that the case was not closed properly, or if the complaining witness presents new evidence, it will refer the complaint back to OCTC with a recommendation that it be reopened for investigation. While the recommendation to transfer this function to OGC was made in order to make the review process more independent, it also had the practical effect of freeing up OCTC resources to dedicate to case processing.

Targeted Services and Outreach to Vulnerable Populations

UPL by Nonattorneys. A nonattorney could be someone who has never been a licensed attorney, was formerly a California licensed attorney, or an attorney licensed in another state, but not in California. OCTC formed a specialized team dedicated to the investigation of complaints related to the UPL by nonattorneys (NA/UPL), a problem that often impacts vulnerable communities, including immigrants. OCTC did so in response to concerns from stakeholders who expressed concern that the office was not adequately addressing the issue. Since then, the team has streamlined its work and processes, including referring matters to law

enforcement for criminal action early and prioritizing cases that pose the most significant public protection concerns. NA/UPL cases do not impact the count of statutory backlog; as such, additional resources to support the NA/UPL team were not included in the 2016 State Bar licensing fee increase. (2016)

Immigration Law Cases. OCTC established a team (initially on a pilot basis, but now permanently) to primarily handle cases implicating the practice of immigration law. Because immigration law is particularly complicated, OCTC's dedicating staff with expertise in the area is believed to have improved efficiency in handling these cases. The pilot team consisted of two attorneys whose caseloads comprise cases wherein the alleged misconduct in the context of an Immigration case or where the misconduct implicates the immigration status of a client. The team has since been expanded to include a third attorney. These attorneys oversee the investigations of immigration law-related complaints, prepare cases for filing, and present cases at trial. (2020)

To speed up the process of obtaining the privacy waivers required to receive immigration records, in 2020 OCTC created an immigration-specific assignment letter, available in many languages, , which requests that complainants provide the waiver as soon as their case is assigned. Getting the privacy waivers out at the earliest opportunity reduces the time spent waiting for files from U.S. Citizenship and Immigration Services and the Executive Office for Immigration Review, a period which can sometimes be as long as six months or more.

Complaining Witness and Respondent Feedback

Complaining Witness Survey. The State Bar offers CWs the opportunity to share information about their experience filing a complaint via an online survey. The purpose of this survey is to assess CWs' views of the State Bar's discipline system's accessibility and fairness. CWs are invited to participate in a survey via a letter they receive that describes the outcome of their complaint. Those with email addresses are invited to participate via email. CWs are asked, "Please tell us about your experience with how the State Bar handled your complaint, by indicating how strongly you agree or disagree with each of the following statements" using a five-point scale where 1=strongly disagree and 5 = strongly agree. Examples of questions pertaining to access include: (1) It was easy to find the complaint form on the State Bar's website; and (2) the instructions and information on the website about filing a complaint were clear and easy to understand. Examples of questions pertaining to access include: (1) The communication from the State Bar addressed the issues raised in my complaint, even if I did not agree with the decision to close my case; and (2) the communication from the State Bar addressed the issues raised in my complaint, even if I did not agree with the decision to close my case. In 2020, over 1,200 CWs responded to the survey; in 2021, over 1,500 CWs responded to the survey.

Closing Calls to CWs. Prior to mid-2020, OCTC required that staff call a complaining witness upon closure of any investigation. That call was in addition to a required detailed closing letter staff draft and send to the complaining witness. Seeking to reduce a redundancy in order to

more efficiently resolve cases, OCTC participated in an experiment in order to determine what, if any effect, eliminating the closing call had on a complaining witness's perception that OCTC was accessible and fair. At the conclusion of the experiment, results indicated that the perception was impacted, but not in a statistically significant manner such that the impact did not militate against adoption of a new policy. Thus, staff is no longer required to place calls in all cases. OCTC still requires calls in some cases, including those in which the complaining witness is in a vulnerable category and detailed closing letters are still required in all cases.

Respondent Survey. In late 2019, the State Bar distributed a short survey to respondents who were recently disciplined by reproof or probation. The purpose of the survey is to assess respondents' views of the State Bar's discipline system's accessibility and fairness. Respondents were asked, "Please tell us about your experience with how the State Bar handled your case, with respect to the Office of Chief Trial Counsel and the State Bar Court separately, by indicating how strongly you agree or disagree with each of the following statements" using a five-point scale where 1=strongly disagree and 5 = strongly agree. Examples of survey items include: (1) I was given the opportunity to provide or present the necessary information before decisions were made about the matter; (2) I was treated with courtesy and respect; (3) communications about the process and outcome of the case were clear to me; (4) my case was resolved in a reasonable amount of time; and (5) I understand the outcome of the case.

Following the advice from the OGC, distribution of the survey was divided into two groups according to whether the respondents had been represented by counsel in their discipline proceedings. The survey was emailed directly to those without counsel; for those represented by counsel, the survey was emailed to their counsel, with the request that they forward the survey to their clients. A total of 46 surveys were distributed to respondents without counsel, and 11 responses were received, with a response rate of 24 percent. For those represented by counsel, 50 surveys were distributed, and three responses were received, at a rate of 6 percent. Due to the small number of response cases, especially for those represented by counsel, this project was put on hold. The State Bar is currently exploring alternative ways to receive feedback from respondents including interviews and focus groups.

Addressing Racial Disparities in Attorney Discipline

In 2019, the State Bar initiated a statistical analysis of complaints and discipline against attorneys admitted to the Bar between 1990 and 2009. Conducted by Professor George Farkas, Distinguished Professor in the School of Education at the University of California, Irvine, the analysis sought to determine whether there is disproportionate representation of nonwhite attorneys in the attorney discipline system and, if so, to understand its origins, and take corrective action. The [findings, documented in a report to the Board in November 2019](#), included the following:

- Without controlling for any other factors, there was disproportionate discipline against Black male attorneys, who were three times as likely to be placed on probation, and

almost four times as likely to be disbarred as compared to their white male counterparts.⁴⁰

- Using multiple regression analysis to introduce control variables into the evaluation, the study found that the factors that were correlated with race and were statistically significant predictors of discipline included:
 - Number of prior complaints. Discipline disparities between Black and white male attorneys are explained in part by a higher number of complaints against Black attorneys.
 - Rates of counsel representation. Black male attorneys have a lower likelihood of being represented by defense counsel during the investigation stage and during State Bar Court discipline proceedings.

The State Bar invited Professor Christopher Robertson, N. Neal Pike Scholar and Professor at the School of Law of Boston University, Visiting Scholar and Special Advisor at the James E. Rogers College of Law of the University of Arizona, to explore possible remedies to address these findings. Professor Robertson met with OCTC staff and leadership, conducted focus group interviews, and reviewed documents related to OCTC process and policy. In July 2020, Professor Robertson presented an interim report which focused on 13 potential reforms across three broad areas: (1) client trust fund accounting, (2) the treatment of prior complaints and discipline history, and (3) securing legal representation for those facing discipline. Since then, the State Bar has implemented several of these reforms, summarized in **Error! Reference source not found.G-1**.

Table G-1. Racial Disparities Study: Results, Recommendation, and Implementation

Study Finding	Recommendation	Implementation
The number of prior complaints is a strong predictor of discipline. Almost half (46 percent) of all Black male attorneys had at least one complaint filed against them, and 12 percent had 10 or more complaints. In contrast, 32 percent of white male attorneys had at least one complaint filed against them, and 4 percent had 10 or more complaints.	Shield decision-makers from complaints more than five years old that were closed without discipline by expunging complaints or, alternatively, archiving complaints closed without discipline after five years.	In late 2020, the State Bar archived nearly 400,000 cases of all types and origins that were more than five years old and were closed without discipline (excluding the issuance of warning, directional, or resource letters). Archiving complaints removes them from the view of intake staff when they assess the merits of a new complaint.
Among attorneys with a large number of complaints against them, Black male attorneys had, on average, 6.8	Explore proactive, preventive options for attorneys who experience low-level Reportable action bank	OCTC modified the four letters it sends attorneys in response to notices from banks of insufficient funds in a client trust account.

⁴⁰ The study also identified disparities between Hispanic and white and between Black and Hispanic females and their white counterparts, but the State Bar focused on the disparity between Black and white males as it was the largest.

Study Finding	Recommendation	Implementation
Reportable action bank cases while white male attorneys had 3.7. ⁴¹	matters that also ensure public protection is not compromised.	The new letters provide a comprehensive list of resources and warning language regarding the risk of discipline. Approximately 800 attorneys will receive this letter annually.
The proportion of investigations in which attorneys were not represented by counsel is a strong predictor of discipline. Black respondents were less likely to be represented by counsel when facing a disciplinary investigation by the State Bar compared with white attorneys.	(1) Track and report rates of representation in the discipline system as a key performance indicator. (2) Inform attorneys facing discipline about the statistical likelihood of probation or disbarment if they fail to secure counsel.	<p>Staff operationalized a metric “Percent of Respondents that Retain Representation” that will be based on closed cases of all types that reached the investigation stage or a later stage. Staff will report this metric quarterly, beginning in March 2021 with the 2019 value (14 percent) serving as its baseline.</p> <p>Staff developed a one-page flyer for respondents that includes a link to the membership directory of the Association of Discipline Defense Counsel Association and advises them of the importance of securing counsel. To test whether receiving this flyer has an impact on respondents securing counsel, respondents were randomly assigned to two groups and only one received the flyer when they are notified that OCTC had opened an investigation. In January 2022, after statistically significant differences in representation were observed between the groups receiving and not receiving the flyer, OCTC terminated the test and began distributing the flyer advising about the importance of counsel to all respondents.</p>

⁴¹ Reportable action bank cases are initiated when a bank reports insufficient funds activity in an attorney’s client trust account as required under Business and Professions Code section 6091.1.

Effectiveness

Case Processing

Case Prioritization System. In 2018 OCTC implemented a case prioritization system with Board of Trustees approval. Instead of just working the oldest cases first, regardless of the public protection risk, OCTC now prioritizes the cases posing the most significant public protection risks first, regardless of age. In addition, OCTC identifies cases that likely, with a little work, can resolve quickly. Those cases are assigned to an expeditor team, which works only those cases. In these “expedited” cases, OCTC has eliminated a number of processes required in other cases (for example, no investigation plan is necessary), to expedite case processing. The practical effect of expediting teams is the movement of some cases faster, and the reduction of caseloads for others working higher priority cases. In April 2022, OCTC slightly modified its case prioritization system to add new categories of priority cases. In August 2022, OCTC expanded its expeditor team to enable additional cases to be designated as expedited cases.

Modernized Case Management System and Online Complaint Portal. In 2019 OCTC converted from a years-old DOS based case record system to Odyssey, a new case management system. Odyssey has allowed OCTC to move from maintaining paper files to maintaining and using files electronically. Doing so has increased efficiencies in that multiple staff members can work files at the same time and tasks are “moved” electronically to staff without the added need to wait for the receipt of a paper file. Some efficiency has been lost, however, in that moving within the electronic file is slowed because doing so requires multiple clicks. In addition, OCTC is capturing significantly more data per file, requiring more staff resources for data input. In August 2020, OCTC integrated the online complaint portal with the case management system so that, after verification, complaints submitted, including attachments, are automatically uploaded to the case management system and a new case is opened. This eliminates the need for staff to manually enter data for complaints submitted online.

Changes in OCTC Supervisors, Teams, and Administrative Functions

- In 2016 OCTC moved the “worker team” from intake to enforcement. That team, which had been assigned to intake for years, consisted of attorneys and complaint analysts (a classification no longer used), who would “work” lower-level complaints with the goal of resolving them before having to send them to enforcement. While a number of those complaints were able to be resolved without moving them to enforcement, in some instances, the cases were not resolved and were then forwarded to enforcement. However, by the time the cases were moved to enforcement, they were already aged—some so much so they were already nearing backlog. The change meant that cases were not held and worked in intake but rather, assigned like all other cases, to the team in enforcement. In implementing workforce planning recommendations, OCTC dissolved the specialized worker team entirely and deployed the staff among the enforcement teams. Doing so did slow the movement of lower-level cases in intake because they became subject to many of the same processes as other cases that moved to investigations. (2016)

- OCTC reorganized into a vertical team structure with supervising attorneys, a newly created classification, responsible for a team of attorneys, investigators, and support staff, decentralizing previously centralized investigative and administrative functions. Supervising attorneys were empowered to approve charging and resolution decisions in many cases. While making this change improved efficiencies in some respects, the change necessarily required OCTC to move senior staff into supervisor positions and away from carrying full caseloads, thereby reducing resources for case processing. The downside to this change was the need to divert staff that otherwise would be processing cases to new supervisory roles. (2017)
- In 2017, OCTC fully staffed a training and calibration team in order to formalize and improve training for all levels of staff. By doing so, OCTC was able to streamline the onboarding of new staff and improve the quality and consistency of the work of existing staff. (2017)

Policies and Procedures that Improve Efficiency and Effectiveness

- OCTC began requesting that financial records be provided in an electronic format when subpoenaed during an investigation, and in 2018, purchased software to scan paper and electronic financial records to pull out transactions and expedite fund tracing exercises involving voluminous records. Prior to this, financial records were cataloged by staff manually. (2017–2018)
- OCTC sought approval from the Board to update the Rules of Procedure of the State Bar to permit electronic service, the use of electronic signatures, and the exchange and lodging of electronic trial exhibits. This proposed rule was approved in September 2020.
- OCTC sought amendments to Rule 2409 of the Rules of Procedure of the State Bar of California to eliminate delays caused by mailing letters to respondents which describe allegations and requests a response, to allow posting of those letters to the My State Bar Profile page of the respondent attorney. This reduces the amount of time OCTC staff would otherwise wait, due to communication via the U.S. Postal Service. (2018)
- OCTC sought a change to rule 5.140 of the Rules of Procedure of the State Bar of California allowing the court to take judicial notice of noncertified court records. Prior to the rule change, OCTC secured certified court records to ensure admissibility at trial. OCTC was charged for doing so and at times, the cost would be significant. In addition, cases could be delayed from moving forward, while staff waited for receipt of those records. The rule now expressly authorizes the court to take judicial notice of noncertified records, which are often times, easily accessible online. (2018)
- In 2018, OCTC sought amendments to rule 5.21 of the Rules of Procedure of the State Bar of California to toll the rule of limitations when an attorney is on inactive status pursuant to Business and Professions Code section 6007(a) or (b). Many of these attorneys are unlikely to return to practice, but prior to the amendment, OCTC policy required quarterly written status reports on each case in the inventory that was suspended due to the attorney's incapacity. Similarly, State Bar Court conducted periodic status conferences on filed cases that were suspended due to the attorney's incapacity. The practical effect of the amendment is to allow OCTC to move to dismiss

filed matters and to close suspended matters, where attorneys are enrolled under one of these subsections, and where it is more likely than not that the attorney will never return to practice. At the same time, if the attorney does return to practice, OCTC is not limited by the rule of limitations, to re-file charges. Many of the cases that were in OCTC's inventory because of the inactive enrollments were in backlog. (2018)

- OCTC eliminated an office policy prohibiting nolo contendere pleas—often cited by members of the defense bar as a barrier to the efficient resolution of cases. (2018)
- In 2022, OCTC modified an office policy to eliminate the need for intake to prepare a memorandum before designating a case as a major case, and delegated authority for approval of such designations to supervising attorneys. This change, in response to a focus group recommendation, should speed the initial processing of major cases. (2022)
- In 2022, in response to a recommendation by the CSA, OCTC implemented a pilot project for handling of a random selection of client trust account complaints and bank reportable actions. The pilot project procedures require obtaining bank records and attorney reconciliations of the client trust account for the relevant time period, a requirement intended to increase effectiveness by ensuring that any irregularities in client trust account records are identified and addressed. The pilot project is expected to run through January 2023, after which broader implementation of these procedures will be considered. (2022)

Discipline System Metrics. The Board adopted discipline system metrics in September 2018. These metrics were developed, in part, in response to the State Auditor's recommendation in its 2017 report that the State Bar "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."⁴² In support of this recommendation, the State Bar's initial five-year strategic plan for 2017–2022 included the following goal: "Develop and implement transparent and accurate reporting and tracking of the health and efficacy of the discipline system," which specifically includes the "development of new metrics for measuring the effectiveness of the discipline system including any needed revisions to the statutory backlog metric." Specific metrics were developed for each operational area of the discipline system, which include:

- OCTC;
- State Bar Court;
- Office of Probation;
- ADP of the Lawyer Assistance Program; and
- Client Security Fund.

Most metrics include targets for accountability purposes. All metrics are tracked regularly; depending on the metric, reporting frequency varies between monthly, quarterly, semiannually, or annually.

⁴² California State Auditor. *Report 2017-30, The State Bar of California: It Needs Additional Revisions to its Expense Policies to Ensure That it Uses Funds Prudently*, June 2017. bsa.ca.gov/pdfs/reports/2017-030.pdf

Recidivism. The State Bar regularly analyzes post-disposition recidivism among respondents who receive one of four types of dispositions: resource letter, warning letter, reproof (both public or private), and probation. Four outcomes are analyzed: (1) new complaint received; (2) new complaint investigated; (3) new case filed with State Bar Court; and (4) discipline imposed. Disciplines include: participation in the ADP, reproof, probation, or disbarment. All complaint types are considered, including probation violations. Finally, recidivism is analyzed at six, 12, 24, and 36 months post-disposition.

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