



The State Bar *of California*

Overview of the Legislative Analyst's Office Report Regarding SB211 Proposed Standards

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Overall Assessment in Executive Summary

Overall assessment: “we generally found some portions of the report reasonable, but also identified concerns with other parts”



Topic

Overarching Comments: “consider whether changes for additional oversight are warranted”

Case processing standards: “partially reasonable”

Backlog metrics: “partially reasonable”

Staffing analysis: “makes sense to delay”



Concerns

Are changes to the disciplinary process warranted?
What level of oversight does the Legislature want to exercise over State Ba processes and funding?

May be too aggressive

Measure closed rather than pending, workload

When would be the most appropriate time for the State Bar to conduct the staffing analysis?



Main Points in Background Section of Report

- ✓ **Budgeting process**
“Legislature Establishes Annual Fees, but Does Not Approve State Bar’s Annual Budget.”
- ✓ **Attention given to the State Bar Court**
“The State Bar administers its own disciplinary system primarily through OCTC and the State Bar Court (SBC).”
- ✓ **Overview of discipline process and OCTC operations and analysis of OCTC workload**
Includes “hearing stage” after OCTC formally files disciplinary charges.
- ✓ **Overview of the Legislature’s oversight of the discipline process. The process includes:**
 - Annual Discipline Report
 - State Auditor Performance Audits
 - One time evaluation



Background Section Notes

Concerns Raised in Previous Reports

Concerns With Efficacy of the Disciplinary Process, Reporting of Data, the Use and/or Level of Resources

- Some Attorneys Not Held Accountable for Misconduct.
- 2017 Organizational Changes Decreased Operational Efficiency.
- Annual Discipline Report Needs Improvement.
- 2019 Request for Additional Resources Premature.
- Workload Formula May Require Revision.
- 2019 Proposal for Annual Inflationary Adjustment Lacked Justification.

Staff Response

1. Many concerns raised in the previous reports have been addressed by staff in response to each report.
2. The concerns discussed and issues raised in this section of Background were not part of the SB211 proposal work.



LAO Review of State Bar's SB211 Proposal

- Proposes Two Overarching Key Questions for Legislative Consideration
- Provides Assessment of Case Processing Standards, Backlog Metrics, and Staffing Analysis
- Offers Key Questions and Ideas for Legislative Consideration



Two Overarching Key Questions

Question One: Are Existing Disciplinary Procedures Reasonable?

- ✓ **Case processing time to file cases in State Bar Court (SBC):** average and median times increasing
- ✓ **Early Neutral Evaluation Conference (ENEC):** currently required before charges are filed

“To the extent that the Legislature would like to reduce such times, it could consider eliminating ENECs. We note that the attorney discipline experts consulted by the State Bar noted that California is the only jurisdiction that they are aware of which uses a formal ENEC before charges are filed. The experts suggested eliminating the ENEC prior to charging and shifting it to after charges have been filed in the SBC. Prior to charges being filed, accused attorneys would continue to be able to informally pursue settlement discussions with OCTC (which they currently are able to do).”



Two Overarching Key Questions

Question Two: What Level of Legislative Oversight Is Needed?

Option 1: Include the State Bar in the annual state budget process

“including the State Bar in the annual state budget process to increase legislative oversight by leveraging the expertise of the budgetary committees to evaluate State Bar funding requests in a manner similar to other state departments.”

“requiring the State Bar to submit budgetary information in a manner similar to other state departments would enable easier comparison to ensure standardized or similar treatment across the various departments responsible for licensing professions”

Option 2: Consider a fee specifically to support the disciplinary system

“consider a fee specifically to support the disciplinary system to ensure the State Bar uses the funding for this specific purpose. The current \$25 disciplinary fee generates around \$5.7 million annually—significantly less than is needed to support the entire disciplinary system. The Legislature could consider adjusting this fee and directing that this fee be placed in a special fund specifically for disciplinary system purposes.”



Assessment of New Case Processing Standards

- Reasonable to Include Both Risk and Complexity in Case Prioritization System
 - But Unclear Why Proposed Case Processing Standards for Cases Closed or Filed in Charging Do Not Incorporate Risk.
- Case Processing Standards Do Not Reflect Full OCTC Workload.
 - New Filed in Charging Definition (clock stops at notice of right to request ENEC if ENEC is conducted) further reduces measurement of OCTC workload.
- Unclear Extent to Which Proposed Standards Are Reasonable.
 - State Bar's 60-day gap analysis is aggressive in assuming "that such idle time periods will no longer occur -- rather than assuming that idle periods will be shorter in length"
 - "If case processing standards are unreasonable, it is possible that the quality of case processing – such as the thoroughness of investigations or the proposed disciplinary action – will decrease in order to meet the standards"
- Unclear Impact of Implemented or Potential Operational and Procedural Changes.
- Annual Reporting Requirements Will Need to Be Updated.



Key Questions for Legislative Consideration

Key Questions

- Should There Be Case Processing Standards for the Entire Disciplinary Process (including post-filing)?
- Are Greater Differentiations in the Case Processing Standards Needed?
 - Example: differentiate based on risk at the Charging Stage
- Are Changes to OCTC's Organization and Operation Needed?
 - Examples: specialized v. generalist trial teams; horizontal v. vertical prosecution for some cases
- How Aggressive Should Case Processing Standards Be?
- What Data and Metrics Are Needed to Conduct Legislative Oversight?

Staff Response

1. Some of the questions regarding methodological details can be either clarified or addressed
2. Whether the standards may be too aggressive should be addressed through discussions with the Legislature and LAO
3. Organizational and operational changes within OCTC will depend on the case processing goals set by the Legislature and should be implemented by the CTC, whose appointment is confirmed by the Legislature and who is in a better position to consider all the circumstances, including Legislative priorities, caseloads, and staffing, and perform an overall cost benefit analysis of the available options.



Assessment of Backlog Metrics

Assessment

- Alternative Definition of “Small Backlog” (e.g., 15% v. 10%) Could Also Be Reasonable.
- Proposed Standard Effectively Sets an Upper Limit Goal for Processing Cases.
- Backlog Metrics Tend to Measure Pending, Rather Than Closed, Workload.
 - “In contrast, the proposed backlog time standards are based on closed workload. This means that cases that remain open, for whatever reasons, will not be captured.”
- Good Reasons Why Cases May Remain Pending (e.g., deferred pending resolution of criminal or civil cases).

Key Questions for Legislature Consideration

- How Should Backlog Be Defined and Calculated?
- Should There Be a Single Backlog Metric?
- What Data or Metrics Are Needed to Conduct Legislative Oversight?

Staff Response

1. Concerns about capturing pending backlog cases can be addressed either in the final standards or in revisions to ADR



Assessment of Staffing Analysis

Assessment

- Reasonable That Only Preliminary Estimates of Staffing and Resource Need Are Provided.
- Full Impact of Organizational and Procedural Changes Will Likely Not Be Known in 2023.
- Difficult to Assess Impact of Additional Positions Funded in 2019.
- Workload Formula Needs Revision.

Key Questions

- When Should a Comprehensive Staffing Analysis Be Conducted?
- Should Certain Organizational or Procedural Changes Be Assessed Separately From and/or Prior to the Comprehensive Staffing Analysis?

Staff Response

1. The Bar needs to document operational/procedural changes and periodically assess the impact of these changes
2. The Bar needs to document staffing changes and periodically the impact of these changes



Conclusion and Next Steps

Conclusion

“We generally found some portions of the report reasonable, but also identified concerns with other portions. Based on our review, we also identified a series of key questions for legislative consideration to assist with any future decisions.”

Next steps for the State Bar

1. Collaborate with the LAO and the Legislature to clarify questions and address issues
2. Document the operational and procedural changes described in the SB 211 proposal and track/assess the progress made by OCTC
3. Conduct the staffing analysis in accordance with direction from the Legislature

