



The State Bar of California

The Enhanced Whistleblower Antiretaliation Program

Proposed interagency agreement with the California Department of Justice

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Overview

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Current Whistleblower Program

- The Office of Human Resources currently receives and investigates whistleblower and whistleblower retaliation complaints against State Bar personnel.
- Human Resources involves the Office of General Counsel as necessary to engage external investigators.
- The Ad Hoc Committee on Oversight & Accountability Reforms has been considering ways to enhance the State Bar's response to whistleblower complaints.
- At the March 24, 2023, special meeting of the Board, the Board was notified of clarifications to the existing policy:
 - Regarding the handling of complaints against the executive director, general counsel, or chief trial counsel.
 - Ensures that the subject of the complaint is not involved in its review.



Enhanced Whistleblower Antiretaliation Program

The enhanced Whistleblower Antiretaliation Program (WAP) will supersede all existing whistleblower-related policies and procedures at the State Bar.

Under the WAP, individuals can **bring whistleblower and whistleblower antiretaliation complaints against State Bar personnel and Board members directly to the California Department of Justice (DOJ)** for review and investigation without any prior review by the State Bar.

This agenda item presents a **one-year interagency agreement with the DOJ** to implement this new program.



Why the California Department of Justice?



Currently conducts investigations in response to whistleblower complaints against the California State Auditor.



Has existing infrastructure, standards, and policies that can be adapted for the State Bar's new WAP.



Using the existing infrastructure and policies will help to reduce costs to the State Bar and speed up implementation.



Has a strong reputation for skillfully handling workplace investigations, which will instill public trust in the new WAP.



What Will the DOJ Investigate?

Improper Governmental Activity

Complaints alleging that a current or former State Bar employee, agent, and/or officer (including a member of the Board of Trustees or any Board subentity) failed to act competently, ethically, legally, and properly in accomplishing their duties and/or engaged in whistleblower retaliation.



The DOJ's Proposed Process Flow

Complaint Review

Complaints can be sent directly to the DOJ by email, phone, US Mail, or a complaint form on the State Bar's website. The State Bar will not review any complaints before the DOJ.

Complaints Outside the Scope

If the complaint is not subject to the WAP, then the DOJ will notify the State Bar within 3 days of its determination. The DOJ will share relevant information with the State Bar so that the State Bar may investigate further, as appropriate.

Investigation

If the complaint is subject to the WAP and warrants further investigation, then the DOJ will assign an independent investigator. That investigator will comply with best practices and State law.

Report to State Bar

If improper governmental activity likely occurred, then the investigator will prepare a written report that is submitted to the general counsel (or Human Resources, if conflict), the chair of the Board of Trustees, and the chair of the Audit Committee.



State Bar's Response to Reports/Findings from DOJ

The State Bar will take appropriate action to address improper governmental activity.

Possible responses include:

- Referrals to law enforcement,
- Disciplinary, administrative, judicial, or similar adjudicatory proceedings, and/or
- Corrective or disciplinary action.





Confidentiality

All investigations, including draft reports, documents, materials, recordings, photographs, audit and investigation records, and similar evidence gathered, will be confidential.

However, the State Bar or independent investigator may make certain disclosures as necessary to carry out the State Bar's appropriate action to address any improper governmental activity identified.



Fiscal Impact



Hourly rate not to exceed \$500 for the actual, necessary, and reasonable direct costs of the independent investigator's services.



Total cost for an investigation should not exceed \$50,000 absence special circumstances and prior approval.



Maximum cost for this one-year agreement is \$100,000 unless the DOJ receives prior approval.





Recommendation:

RESOLVED, that the Board of Trustees authorizes the general counsel and the executive director to negotiate and enter into the agreement with the DOJ in the amount not to exceed \$100,000, and subject to the general terms of the contract described in the agenda item.



Questions?

