



The State Bar of California

OPEN SESSION

AGENDA ITEM

60-4 SEPTEMBER 2023

DATE: September 22, 2023

TO: Members, Board of Trustees
Sitting as the Regulation and Discipline Committee

FROM: Yun Xiang, Chief of Mission Advancement & Accountability Division

SUBJECT: Annual Discipline Report Review and Approval Timeline and Discussion of Inclusion of Demographic Data in Report

EXECUTIVE SUMMARY

This agenda item requests that the Board of Trustees confirm its role in reviewing, evaluating, and approving the Annual Discipline Report (ADR) at a special Board meeting before October 31, 2023. In addition, this agenda item solicits the Board's feedback regarding the addition of demographic reporting in the 2023 ADR.

BACKGROUND

Every year, the State Bar prepares an Annual Discipline Report (ADR) "describing the performance and condition of the State Bar discipline system, including all matters that affect public protection," as outlined in Business and Professions Code section 6086.15. The California State Auditor's April 2021 report (State Audit Report 2020-030) made a recommendation regarding the Board of Trustees' oversight of the compilation of the ADR:

To ensure that the State Bar's discipline report presents accurate, complete, and consistent information as state law requires, the Board should require the designated committee to review, evaluate, and approve the discipline report before submitting it to the Board. Additionally, the committee should develop procedures outlining how the State Bar should compile the report in accordance with statutory requirements. The committee should approve these procedures for the State Bar's use before finding its 2021 discipline report.

DISCUSSION

In the September 2022 Board meeting, staff outlined a set of procedures to produce the FY2022 [ADR](#), which was approved by the Board. Staff recently reviewed these procedures in preparation for the production of the ADR due on October 31, 2023, and made no substantive modifications. The proposed procedures for completion of the 2023 ADR are provided in Attachment A.

This year, staff proposes adding new content to the report's narrative, specifically, the summary tables that describe the gender and racial/ethnic distribution of disciplined attorneys in comparison to the active attorney population. The purpose of this proposed addition is to demonstrate the State Bar's commitment to diversity, equity, and inclusion as a foundational principle, as consistent with the 2022–2027 Strategic Plan. Staff notes that there are some data limitations that will impact reporting, as licensees who were admitted prior to 1990 are less likely to have reported race/ethnicity data to the State Bar than more recent cohorts of admittees.

The State Bar is slated to update its study of racial disparities in the attorney discipline system in 2024. As such, any explanation of variances noted in the data reported in the 2023 ADR will not be based on the updated study but rather on the previous ["Farkas" report](#) (2019).

Staff asks the Board to provide feedback on the proposal to include demographic reporting in this year's ADR in light of the State Bar's strategic plan and related commitments, the reality of missing data, and the fact that an updated study of racial disparities in the discipline system will not be completed until next year. The Board is asked to approve the procedures for production of the 2023 ADR.

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

STRATEGIC PLAN GOALS & IMPLEMENTATION STEPS

None – compliance

RECOMMENDATIONS

Should the Board of Trustees, sitting as the Regulation and Discipline Committee, concur with the proposed action, passage of the following resolution is recommended:

RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee will review, evaluate, and approve the Annual Discipline Report due annually on October 31; and it is

FURTHER RESOLVED, that the Board of Trustees, sitting as the Regulation and Discipline Committee approves the procedures the State Bar will follow in its production of the Annual Discipline Report due October 31, 2023.

ATTACHMENT LIST

- A.** State Bar Procedures to Produce the 2023 Annual Discipline Report

**State Bar Procedures to Produce the Annual Discipline Report (ADR)
due on October 31, 2023**

The State Bar's Division of Mission Advancement and Accountability (MAAD) produces the Annual Discipline Report (ADR) as required by Business and Professions Code 6086.15 and other statutes and rules.¹ MAAD will follow the following procedures to compile and produce the ADR due on October 31, 2023. This list will be modified annually in response to changing statutory requirements and ongoing internal process improvements.

Project Launch

- Confirm reporting requirement changes to Business and Professions Code 6086.15 and other relevant statutes.
- Confirm overarching goals of the project to include addressing State Audit recommendations, lessons learned from previous ADR iterations, and State Bar's emphasis on transparency.
- Develop project plan and timeline.
- Set ADR team meeting schedule.
- Convene ADR project kickoff meeting.

Produce data tables required by Business and Professions Code section 6086.15 and other statutes and rules.

- Identify specific data sources and elements to be used to satisfy each statutory reporting requirement; identify any areas of ambiguity and note any policy decisions made regarding data sources and elements.
- Where available, generate data from Odyssey, the case management system used by the Office of Chief Trial Counsel (OCTC) and the State Bar Court.
- Work with offices across the organization to provide data not generated using Odyssey.
- Review, replicate, and validate the accuracy of data generated using Odyssey.
- Identify anomalies in data, and request clarification/explanation/corrections from offices, including OCTC and the State Bar Court.

Review appendices in previous ADR to update, modify, or augment.

- Appendices include methodology, glossary, and background information.

Update methodology appendix

- Summarize any changes in calculating metrics and provide information calculated under both old and new methods.

¹ While Business and Professions Code section 6086.15 in its various sections define the bulk of ADR statistics across multiple tables, a few additional statutes require reporting on specific matters and different aspects of the discipline system, including: Business and Professions Code section 6095(b) on felony convictions; Civil Code 55.32(f)(1) on construction-related demand letters; Insurance Code 1872.95(a) related to insurance fraud cases; and Business and Professions Code section 6177 regarding complaints of financial services provided by lawyers.

Write narrative that summarizes report structure and changes in reporting requirements pursuant to Senate Bill 211

- Examples include changing the reporting period from the calendar to fiscal years, with the specific requirement to report both in this year's report, report deadline, and new reporting requirements.

Compile report and circulate internally among senior management for feedback

- Update report based on feedback received.

Produce report for Board of Trustee review, evaluation, and approval

- Schedule a special meeting of Board of Trustees in October 2023.
- Focus Board presentation on changes from prior year ADRs and related rationale and any policy decisions reflected in report analysis or narrative.

Produce final report for Chief Justice of California, the Governor, Speaker of the Assembly, the President pro Tempore of the Senate, Assembly and Senate Judiciary Committees