



THE STATE BAR OF CALIFORNIA

OFFICE OF THE EXECUTIVE DIRECTOR

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April 29, 2016

Honorable Tani G. Cantil-Sakauye
Chief Justice of California
Supreme Court of California
455 Golden Gate Avenue
San Francisco, CA 94102-3660

Honorable Jerry Brown
Governor of California
State Capitol, Suite 1173
Sacramento, CA 95814

Honorable Kevin de León
Senate President pro Tempore
State Capitol, Room 205
Sacramento, CA 95814

Honorable Anthony Rendon
Speaker of the Assembly
State Capitol, Room 219
Sacramento, CA 95814

Honorable Hannah-Beth Jackson
Chair, Senate Committee on Judiciary
State Capitol Room 2032
Sacramento, CA 95814

Honorable Mark Stone
Chair, Assembly Committee on Judiciary
State Capitol, Room 5155
Sacramento, CA 95814

Dear Chief Justice Cantil-Sakauye, Governor Brown, Senator de León, Assemblyman Rendon, Senator Jackson, Assemblyman Stone, Members of the Senate Judiciary Committee and Members of the Assembly Judiciary Committee:

Attached please find the *Annual Discipline Report* of the State Bar of California for 2015, as required by Business and Professions Code, section 6086.15 in documentation of the State Bar's public protection efforts in the operation of its attorney discipline system.

The attorney discipline system is the central component of the State Bar's public protection mission and critical to achieving the objectives of California's regulatory and discipline system for lawyers. The complaints against attorneys which it investigates and also prosecutes, when warranted, result in a broad array of recommended sanctions for attorneys found culpable of misconduct.

Recognizing the importance of the Annual Discipline Report (ADR), the 2015 Audit of the Bureau of State Auditors recommended greater involvement in its preparation by the State Bar Board of Trustees to insure the accuracy, consistency and sufficiency of its data. Accordingly, in January 2016 the Board of Trustees amended the charter of the Regulation and Discipline Committee to assign it the responsibility for reviewing the report and its underlying discipline statistics, prior to review by the full Board of Trustees. Thus, the attached report has been reviewed both by the Committee and the full Board.

The performance of the State Bar's discipline system is a crucial measure of its success as a public regulatory agency and numerous statutory provisions proscribe the statistical reporting which is designed to measure the system's performance. The attached *Annual Discipline Report* is a long-standing vehicle for transmitting such objective statistical information about the activities and performance of the discipline system to key stakeholders: the Legislature, the Governor, the Supreme Court, and, of course, the public.

This year's *Annual Discipline Report* reflects progress in the State Bar's discipline system in that the statutorily defined case backlog has been reduced, as has the time for filing complaints from complaining witnesses in State Bar Court. In addition, although the number of filings in State Bar Court has decreased as compared to 2014, the number of attorneys suspended or disbarred has increased. Finally, the report adds a definitional section and explains the categories of data on which the statutory framework requires reporting. Special effort has also been taken to ensure that readers can compare data across a three year period and that changes in definitions are clearly presented and explained. In this spirit of commitment to meaningful improvement in both report design and substance, we worked with multiple stakeholders in the legislature, Bureau of State Audits and Office of the Governor in structuring this year's report format. The attached report thus addresses and includes the 2015 findings of the Bureau of State Auditors.

In preparing the report, the State Bar has focused significant effort to ensure that its performance in measuring and reporting its disciplinary activities reflects the transparency, accountability and excellence to which the State Bar's new leadership is committed. As explained below, however, we also recognize that there have been shortcomings in data collection and reporting in the past. Work remains to be done and the Board of Trustees has made this a high priority going forward. Nonetheless, we believe that the attached report is much improved and is an important first step in creating the excellent reporting system that California's public protection system deserves.

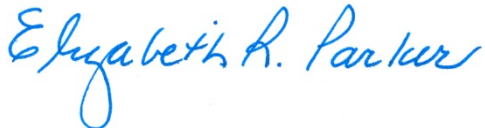
Among the problems in improving our reporting which have been identified is the failure of the State Bar to develop a modern automated case management system (CMS). Without the tracking system and forced conformity of data entry which modern case management systems provide, taking full advantage of collected data for analysis and reporting is difficult, if not sometimes impossible. Moreover, tracking large volumes of individual matters is both labor intensive and prone to human error. The State Bar is committed to identifying a new CMS in 2016 to address these problems.

Professional staff are also important for managing such a system of data collection and analysis. Regrettably, in 2015 the data collection required to produce the *Annual Discipline Report* was the responsibility of a single part time contractor who was forced to rely on legacy systems which have been difficult to interpret. While this data was validated to the extent possible by staff in both our Information Technology Department and Office of the Chief Trial Counsel, the process was less than optimal. To address this problem, in 2016, the State Bar's new management team has begun consolidating the collection and analysis of data under the direction of one professionally staffed office, the newly created Office of Research and Institutional Accountability (ORIA). This new office will be staffed by moving data analysts now scattered about the agency into a single organization which will be directed by an experienced researcher with extensive data collection and analysis background in the California court system. ORIA will be responsible for gathering and reporting data in future reports and will bring a professional accountability to the process, something missing in 2015.

Other problems have also been identified by new management for correction in 2016. These include the need to focus more resources on the problem of documenting unauthorized practice of law (UPL), particularly in the immigrant community. Efforts to develop more effective ways to identify, investigate and respond to UPL complaints are now underway and will receive heightened attention in 2016. A May 'Stakeholders Summit' will examine the problem of limited reporting and will be followed by a second session focused on creating better systems of coordination with those law enforcement authorities responsible for the criminal prosecution of UPL matters. In anticipation of this second session, two members of the State Bar's Regulation and Discipline Committee have begun meeting with law enforcement counterparts and are working to develop a protocol to support the cooperation among those law enforcement authorities whose partnership with the State Bar is required to insure that UPL complaints are thoroughly investigated and timely referred for prosecution by local law enforcement authorities.

In conclusion, while progress has been made, we see this year's *Annual Discipline Report* as a transitional document. In pointing out the problems of the past and plans for the future, we re-enforce our commitment to both transparency and accountability. Nonetheless, the excellence we aspire to achieve will require time and your help. In this regard, we welcome your advice and concrete ideas for improving future reports so that they effectively reflect the accomplishments of California's system of attorney discipline, widely recognized as the finest in the nation.

Respectfully,



Elizabeth R. Parker
Executive Director
State Bar of California



THE STATE BAR OF CALIFORNIA

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Title of Report: Annual Discipline Report of the State Bar of California
Statutory Citation: Business and Professions Code, section 6086.15
Date of Report: April 30, 2016

The State Bar of California submitted its *Annual Discipline Report* to the Chief Justice of California, the Governor, the Speaker of the Assembly, the President pro Tempore of the Senate and the Assembly and Senate Judiciary Committees in accordance with Business and Professions Code, section 6086.15. The *Annual Discipline Report* describes the performance and condition of its attorney discipline system in the previous calendar year. The following summary is provided under Government Code, section 9795.

In 2015, the State Bar received 15,796 new complaints against California lawyers. The Office of the Chief Trial Counsel, the State Bar's prosecutorial arm filed disciplinary charges or stipulations to discipline in 558 cases. Formal discipline was imposed in 990 cases, resulting in the disbarment or suspension of 421 lawyers.

In 2015, the State Bar has continued to timely process complaints and keeps cases from falling into backlog—defined by statute as those open complaints and cases at year's end where the State Bar had not filed disciplinary charges or reached other disposition within six months after receipt of the complaints. As of December 31, 2015, the number of cases in backlog was 1,500, compared to 1,988 on December 31, 2014.

More detailed information on the complaints, backlog, time for processing complaints, and disciplinary outcomes are contained in the *Annual Discipline Report*. In addition, the report presents summaries of the cost of the discipline system and the condition of the Client Security Fund.

The full report is available at:

<http://www.calbar.ca.gov/AboutUs/Reports.aspx>

A printed copy of the report may be obtained by calling (916) 442-8018.

ATTORNEY DISCIPLINE REPORT

FOR YEAR ENDING DECEMBER 31, 2015



THE STATE BAR OF CALIFORNIA
APRIL 30, 2016

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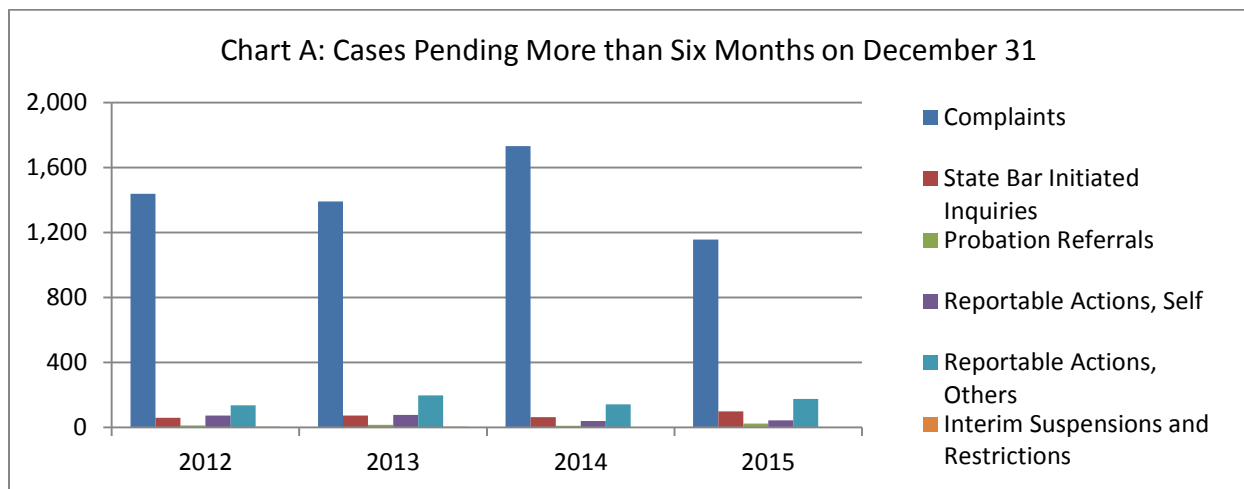
Executive Summary

KEY THEMES

The Annual Discipline Report provides a snapshot overview of the performance of the discipline system as reflected by statutorily required data elements. In the aggregate, this data tells a story; as outlined in the Key Themes discussion below, for 2015, that story is one of reduced backlogs, improved case processing times, and increased numbers of attorneys suspended or disbarred.

BACKLOG AT LOWEST LEVEL SINCE 2009

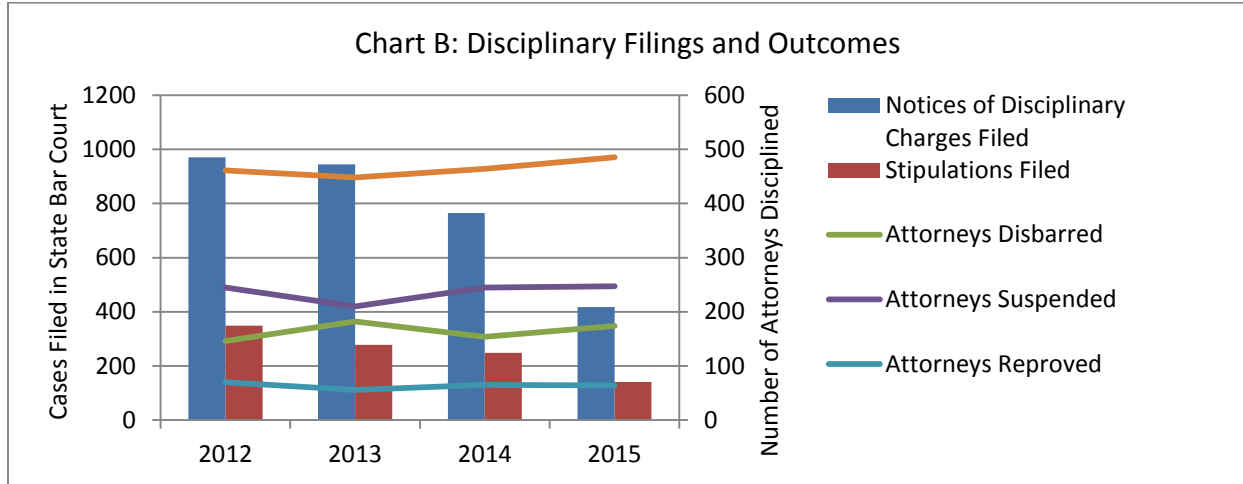
The backlog¹ of discipline cases was 1,500 at the end of 2015, a twenty-five percent decline from the 1,988 cases in backlog status at the end of 2014. This is the lowest level of backlogged cases since 2009. This decrease in the backlog, along with an increase in the number of attorneys suspended or disbarred (Chart C), and an improvement in the speed at which complaints are handled as reflected in Chart E below, reflects the Bar's increased efficacy in carrying out its critical public protection mission. Chart A shows the number of each type of case comprising the backlog at the end of each year for the past four years. A glossary of the terminology used in the Annual Discipline Report (Report) is provided as Appendix A. The full text of all statutory cites referenced in the Report is provided in Appendix B.



¹ Defined by statute as those open complaints and cases at year's end where the State Bar had not filed disciplinary charges or reached other disposition within six months after receipt of the complaints. This report uses 180 days, as opposed to 6 months, to calculate backlog, which allows for more accurate calculations based on the data structure of the Bar's case management system.

INCREASED NUMBER OF ATTORNEYS DISCIPLINED

OCTC filed 1,013 cases in State Bar Court in 2014, and only 558 in 2015, a decline of forty-five percent. However, the number of attorneys who were subject to formal discipline rose from 464 in 2014 to 485 in 2015, a five percent increase.

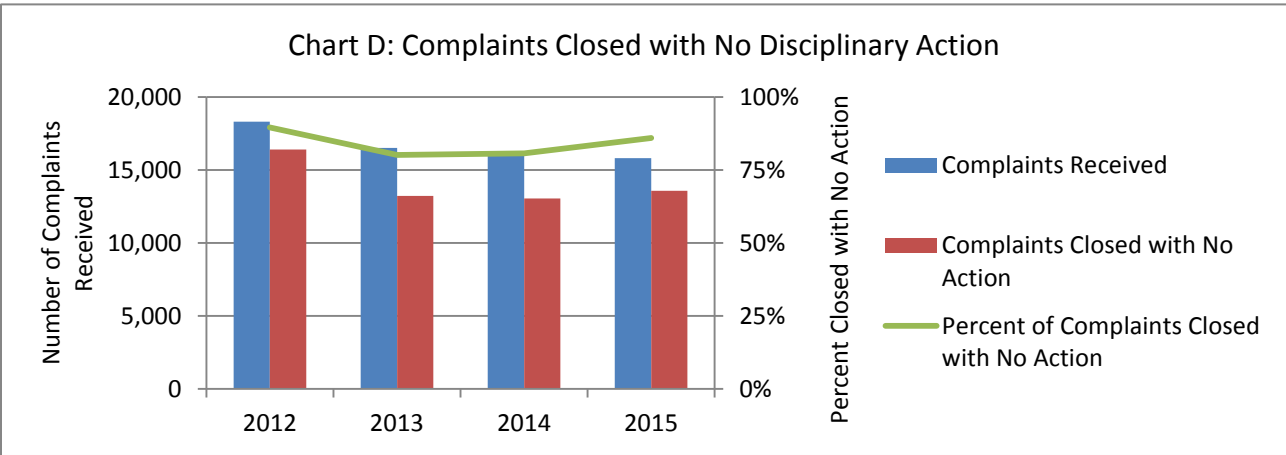
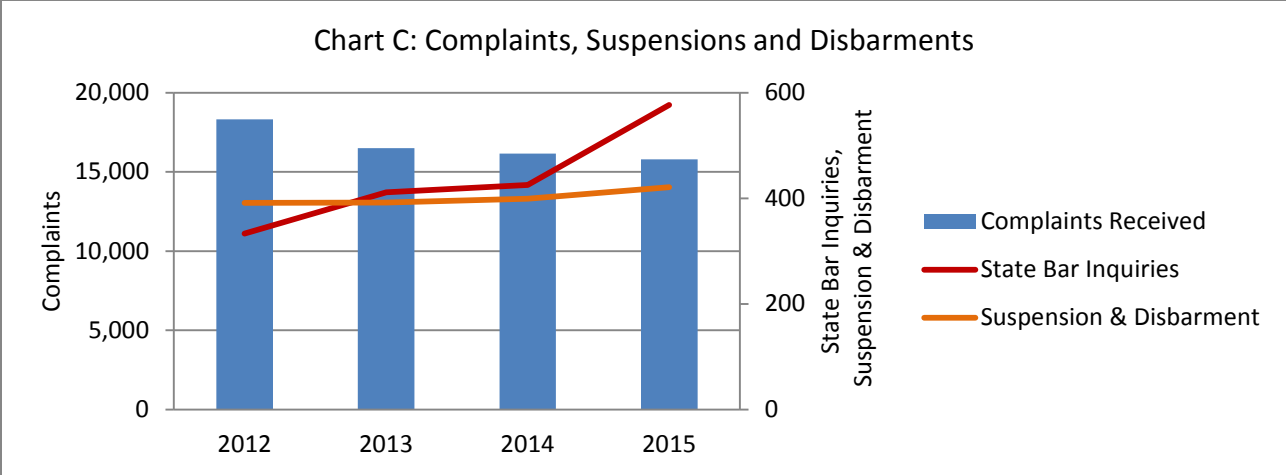


PROACTIVE APPROACH

In 2015, the State Bar received 15,796 new complaints against California lawyers. While the number of complaints from complaining witnesses² decreased by three percent from 2014 to 2015, the number of complaints based on State Bar-initiated inquiries³ increased by thirty-six percent. This increase reflects the State Bar’s commitment to being proactive in identifying and addressing potential problem lawyers. The number of lawyers either suspended or disbarred increased by six percent. Chart C shows the total number of complaints and State Bar-initiated inquiries, as well as the number of cases resulting in suspension or disbarment. As is reflected in Chart D, the vast majority of complaints are found to lack any grounds for discipline, and are closed without disciplinary action. It is important to note that in many instances where a case is closed with no disciplinary action, State Bar staff have in fact intervened to remedy the issues resulting in the complaint being filed. Examples of closing letters reflecting the nature of the services provided by State Bar staff even in those instances where matters are closed with “no action” are provided in Appendix C.

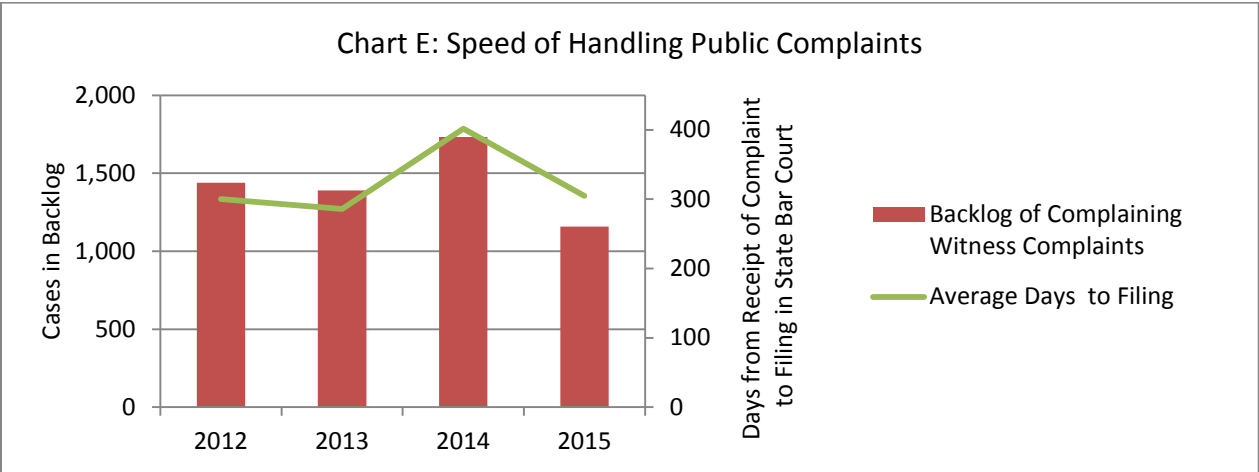
² Complaining witnesses are typically clients, relatives of clients, or opposing parties of the attorney against whom a complaint is made.

³ An inquiry into possible misconduct of an attorney initiated by the Office of the Chief Trial Counsel based on information other than a written complaint, Probation referral, or reportable action, such as from media reports or anonymous sources.



IMPROVED RESPONSIVENESS TO PUBLIC COMPLAINTS

In 2015, the State Bar improved its responsiveness to complaints received from members of the public. As illustrated by Chart E, the backlog of complaints from complaining witnesses was reduced by one third from 2014 to 2015. Further, for those cases from complaining witnesses that resulted in filing a case in State Bar Court, there was a twenty-four percent reduction in the average time from receipt of the complaint until the case was filed.



KEY DATA POINTS

Following are key data points on the 2015 performance of the discipline system; complete data is provided in the tables on the following pages.

ACTIVITY IN 2015

- The State Bar's Office of the Chief Trial Counsel (OCTC) received 15,796 new complaints in 2015.⁴
- Complaints from complaining witnesses dropped from 12,745 in 2014 to 12,307 in 2015, a three percent reduction.
- State Bar initiated inquiries increased from 425 to 577, a thirty-six percent increase.
- OCTC closed 15,706 cases and filed formal charges in 558 cases.
- The State Bar Court took action on 1,006 cases, closing 89, issuing reprimands in 86 cases and referring 944 cases to the California Supreme Court for formal discipline.
- The Supreme Court disbarred 174 and suspended 247 attorneys in 2015.
- On December 31, 2015, OCTC had an open caseload of 4,659 cases.

SPEED OF CASE HANDLING IN 2015

- Depending on the type of complaint, the average time from receipt of a complaint to closure⁵ by OCTC varied from a minimum of 98 days to a maximum of 213 days.
 - The average pendency for complaints from a complaining witness increased from 107 days in 2014 to 115 days in 2015.
 - The average pendency for a State Bar initiated inquiry decreased from 163 days in 2014 to 145 days in 2015.
- The average time from receipt of a complaint to filing formal charges in State Bar Court ranged from a minimum of 92 days to a maximum of 388 days.
 - The average pendency for complaints from a complaining witness decreased from 402 days in 2014 to 305 days in 2015.
 - The average pendency for a State Bar initiated inquiry decreased from 308 days in 2014 to 286 days in 2015.

RESPONSE TO THE 2015 STATE AUDITOR'S REPORT

The State Auditor's Report 2015-030, *State Bar of California: It Has Not Consistently Protected the Public Through its Attorney Discipline Process and Lacks Accountability*,⁶ included the following statement:

⁴ This figure includes complaints, State Bar inquiries, Probation referrals, reportable actions (except for criminal conviction matters), and interim suspensions and license restrictions (see Table 2). The following types of cases are excluded: motions to enforce fee arbitration, which are filed by the Mandatory Fee Arbitration Program directly in State Bar Court; motions to terminate practice, which are filed by OCTC directly in Superior Court; and, investigations into the unauthorized practice of law (UPL). See Table 1 in the main body of this report for further explanation regarding the exclusion of criminal conviction monitoring and UPL cases. See Appendix A for definitions of key terms.

⁵ These figures include cases that were closed by OCTC without filing in State Bar Court.

⁶ California State Auditor. *Report 2015-30, The State Bar of California: It Has Not Consistently Protected the Public Through Its Attorney Discipline Process and Lacks Accountability*. Sacramento: June 2015.

According to state law, the State Bar must include specific information in the discipline report, such as its existing backlog of discipline cases and the speed with which it has handled complaints. However, the State Bar reports less than what the law permits related to its backlog. Moreover, the State Bar has frequently changed its criteria and methodologies for how it gathers the information included in its discipline reports and, more importantly, did not always fully disclose the changes made in its criteria and methodologies.

In response to findings made by the State Auditor, as well as feedback from key stakeholders, the format of this Report has been modified in both form and content. For example, Reports from the past several years provided statistical information about cases in each stage of the disciplinary system, which had the benefit of educating readers regarding the phases of the process. However, this format did not allow for an aggregate analysis of cases and dispositions. This year's Report closely tracks statutory requirements, which are contained in Business and Professions Code section 6086.15⁷. In doing so, the Report provides system-level aggregate data, which allows for a more comprehensive view of the number and type of cases received, the speed with which they are processed through the disciplinary system, and their outcomes. Changes to methodology between the 2014 and 2015 reports are detailed in Appendix D.

The State Auditor's report also disagreed with how the State Bar has calculated the backlog in prior reports. The following statement is reproduced from the Auditor's report:

The differences between how we calculated the State Bar's backlog and the State Bar's method for calculating its backlog primarily relate to the types of discipline cases included. In particular, because state law defines the State Bar's highest priority as protecting the public by exercising its licensing, regulatory, and disciplinary functions, we believe the appropriate method of calculating the State Bar's backlog would be to include every case that affects public protection. Currently, the State Bar does not include every such discipline case. In Table 8 on the following page, we show the types of cases that the State Bar reported as its backlog since 2009, as well as all the types of cases that affect public protection. By not including all the types of cases that affect public protection, the State Bar limits its stakeholders' ability to assess the performance of the discipline system.

Table A on the following page is a modified version of Table 8 of the 2015 State Auditor's report. A column for 2015 has been added, confirming that each of the items identified as being included in the State Bar's calculation of the backlog in prior years is included in the 2015 backlog calculation. An explanation regarding the 2015 Annual Discipline Report's presentation of each of the "blue" case types recommended for inclusion in the backlog by the State Auditor is also provided.

⁷ All further statutory references are to the Business and Professions Code unless otherwise indicated.

Table A, Based on Table 8 from State Auditor’s Report 2015-030

DESCRIPTION	2009	2010	2011	2012	2013	2014	2015
Suspended cases		✓	✓	✓	✓	✓	✓
Cases six to 12 months old designated as complex		✓	✓	✓	✓	✓	✓
Non-complex investigations			✓	✓	✓	✓	✓
Stipulations not yet filed				✓	✓	✓	✓
Closed cases that were later reopened		✓	✓	✓	✓		✓
Violations of previously imposed discipline					✓	✓	✓
Professional misconduct in other jurisdictions					✓	✓	✓
Failure to comply with the duties of disbarred, resigned, or suspended attorneys					✓	✓	✓
Complaints	✓	✓	✓	✓	✓	✓	✓
State Bar of California (State Bar) initiated	✓	✓	✓	✓	✓	✓	✓
Reportable actions in intake					✓	✓	✓
Probation referrals					✓	✓	✓
Resignation processing, with charges pending					✓	✓	✓
The State Bar does not include the cases below this line in its backlog; an explanation regarding each case type is provided.*							
Enforcement of a fee arbitration decision	Not included in 2015 backlog count. Filed directly in State Bar Court; no involvement by OCTC						
Monitoring an attorney's conviction in another court	Not included in 2015 backlog count. State Bar action triggered by finality of underlying criminal proceeding, a process State Bar does not control						
Disbarred or resigned attorneys practicing law	Not included in 2015 backlog count. Filed in Superior Court, not State Bar Court						
Unauthorized practice of law	Not included in 2015 backlog count. Filed in Superior Court, not State Bar Court						
Violation of the conditions of probation	Not included in 2015 backlog count. Filed directly in State Bar Court; no involvement by OCTC						
Inactive enrollment for mental illness, harm, or other cause	Included in backlog under Interim Suspension and License Restriction.						
Petition to assume jurisdiction over a law practice	Not included in 2015 backlog count. Filed in Superior Court, not State Bar Court						

*As noted below, cases involving inactive enrollment for mental illness, harm, or other case are included in the backlog; they fall under the category of Interim Suspensions and Restriction.

Section 6086.15 (a) (1) specifically enumerates the types of cases to be included in the backlog, as follows:

In addition to written complaints received by the State Bar, the backlog of cases shall include other matters opened in the Office of the Chief Trial Counsel and pending beyond six months after receipt without the filing of notices of disciplinary charges, or the initiation of other disciplinary proceedings in the State Bar Court for the purpose of seeking the imposition of discipline against a member of the State Bar...

The current Annual Discipline Report conforms with this statutory requirement as to the presentation of the backlog, yet, as reflected in the annotations in Table A, certain case types continue to be excluded from the backlog calculation. While the State Bar takes action, within its jurisdiction, with respect to all of the “blue” cases identified by the State Auditor, inclusion of many of these cases in a backlog count would inappropriately skew the results. For some, the State Bar’s ability to exercise authority only begins when an underlying matter is resolved in

another jurisdiction (e.g., monitoring an attorney's criminal conviction in a superior or appellate court). For others, OCTC does not file an action in State Bar Court (e.g., motions to enforce a fee arbitration award, which are filed directly by the Mandatory Fee Arbitration Program, or violations of the conditions of probation, which are filed directly by the Office of Probation). Lastly, with respect to disbarred or resigned attorneys practicing law, or the unauthorized practice of law by those who have never been licensed to do so, the State Bar has no authority to initiate proceedings in State Bar Court. Though not included in backlog reporting, statistical information regarding each of the case types identified by the Auditor, including average pending times, are included in other tables within this Report.

STATUTORY AMENDMENTS FOR CONSIDERATION

Recent amendments to section 6086.15 have improved the guidance provided for reporting on the attorney discipline system. Further clarification would assist the Bar in providing clear and consistent information. Following are some suggested areas for consideration:

- Reportable actions: section 6086.15, subdivision (a)(4) requires the Report to include actions reported under section 6101, subdivision (b); actions reported under subdivision (c) are omitted. This omission should be addressed;
- Definition of the attorney discipline system: as discussed in Appendix D, the composition of the discipline system is not statutorily defined. A definition should be developed in partnership with the Bar; and
- Backlog reporting: as this Report reflects, there are a myriad of complaint and case types handled by the State Bar. There are reasons to include or exclude each of these in a backlog calculation; a full vetting of this issue, culminating in a comprehensive statutory definition, is needed.
- Second look cases: When OCTC decides to close a complaint against a member of the Bar without disciplinary action, the complainant may request a review ("second look") of the decision. A discussion regarding the appropriateness of including these cases in the Attorney Discipline Report is warranted.
- Rule 2201 cases: State Bar Rule of Procedure rule 2201, subsection (a), *allows for*, and subsection (i) *requires*, the appointment of Special Deputy Trial Counsel under specified circumstances when OCTC receives an inquiry or complaint that presents a potential conflict of interest (e.g., when the respondent is a Bar employee, Trustee, or has a relationship to the State Bar that presents an actual or potential conflict of interest). A discussion regarding the appropriateness of including these cases in the Attorney Discipline Report is warranted.
- In addition to working with the legislature to effectuate needed statutory amendments, the Board of Trustees will develop State Bar rules in 2016 regarding the content of the Annual Discipline Report. These rules will augment statutory requirements with a comprehensive set of qualitative and quantitative measures of the efficacy of the discipline system as a whole.

STATUTORY GUIDELINES FOR REPORT

The data provided in this Report is governed by sections 6086.15, 6095(b), and section 6126.7, the full text of which can be found in Appendix B. The charts and tables on the following pages are numbered consistent with paragraphs one through eleven of section 6086.15, subdivision (a); each table provides the data specified in the corresponding paragraph.

2015 Attorney Discipline Report

CALIFORNIA’S ATTORNEY DISCIPLINE SYSTEM

In California, a lawyer is licensed when admitted as a member of the State Bar; only active members of the State Bar may practice law. The State Bar is a constitutional agency established in the judicial branch. In administering the requirements for admission and discipline of California lawyers, the State Bar is an administrative arm of the California Supreme Court. Under its inherent judicial power to regulate admission and discipline, it is the Supreme Court that admits, disbars, or suspends a lawyer from the practice of law.

In California’s attorney discipline system, all communication and information concerning the conduct of California lawyers is first received by the State Bar’s Office of the Chief Trial Counsel (OCTC). OCTC investigates those complaints involving allegations of professional misconduct and may initiate and prosecute disciplinary proceedings in State Bar Court (Court). The Hearing Department of the Court conducts evidentiary hearings and renders a decision with findings and recommendations of discipline that are reviewable by the Court’s Review Department. The Court’s final decision and accompanying record in each case is then transmitted to the Supreme Court. In cases where the Court recommends the suspension or disbarment of a lawyer, the Supreme Court undertakes an independent determination of the discipline to be imposed. Discipline occurs with a final decision and order of the Supreme Court.⁸ Following is a more detailed description of the attorney discipline process.

INQUIRY

The disciplinary process typically begins with receipt of a written complaint in OCTC’s Intake Unit (Intake). Intake receives and reviews complaints that allege ethical misconduct by an attorney or the unauthorized practice of law by a non-attorney. Intake conducts the initial review of a complaint to determine whether to close or forward it for investigation. If a complaint sufficiently alleges violation of a rule or statute, Intake will forward it for investigation. If it does not, the complaint will be closed.

Some complaints lack sufficient detail to allow Intake to make an informed decision as to whether or not to forward a case to investigation. In these cases, Intake will proactively acquire information in order to determine the appropriate next steps in case disposition. This information gathering may involve contacting the complainant, reviewing court records, searching the internet, or conducting legal research. For example, if it is unclear whether an attorney-client relationship exists in evaluating an allegation of failing to competently perform, Intake will contact the complainant to try to secure a fee agreement or other evidence of such a relationship. If a complaint involves a violation of a court order, Intake will attempt to obtain a copy of the order if it is not included with the complaint. If a complaint alleges failure to return an unearned fee, Intake may request billing statements to determine the validity of the claim, and then may assist the complainant in recovering fees from the respondent. Appendix C provides samples of letters sent to complainants that reflect the efforts of Intake to do a meaningful analysis of the facts and their applicability to the rules governing the prosecution of attorney misconduct, as well as to assist complainants and respondents in resolving issues, prior to closing a complaint.

⁸ Public and private reprovals are also considered formal discipline; issuance of a reproof by the Court does not require Supreme Court action.

INVESTIGATION

Investigations are carried out by professional investigators in OCTC, under the guidance and supervision of OCTC attorneys. Investigators may interview witnesses and respondents, subpoena and analyze bank records, obtain court documents, and otherwise develop the evidence needed to determine whether to bring disciplinary proceedings in Court. After a determination to proceed with disciplinary proceedings, the complaint advances to the pre-filing stage.

When multiple complaints are made against the same attorney, OCTC may select and prosecute only those complaints likely to result in disbarment. In such investigations, the remaining complaints may be “held.” If OCTC is successful in obtaining disbarment, prosecution of the suspended investigations will no longer be warranted and the remaining complaints will not be investigated.⁹ However, if the attorney is not disbarred, OCTC may re-activate any suspended investigations. If an attorney is the subject of a criminal prosecution or a related civil action for the same misconduct, OCTC may suspend its investigation until the criminal or civil proceedings have concluded.

PRE-FILING

Before finalizing formal charges, OCTC evaluates the evidence gathered during the investigation and any subsequent information received by the respondent or other source. Where OCTC has determined there is sufficient evidence to file a Notice of Disciplinary Charges, OCTC will notify the respondent in writing of the right to request a confidential Early Neutral Evaluation Conference (ENE) as required by the State Bar Rules of Procedure. Either party may request an ENE before a State Bar Court judge who will orally evaluate the facts, charges, and potential for discipline. Prior to the ENE, OCTC must provide the ENE judge with a draft or summary of the charges and OCTC’s settlement position. Regardless of whether either party requests an ENE, OCTC also provides the respondent an opportunity to request informal discovery and to discuss potential settlement without an ENE. If the parties are unable to reach a resolution or the respondent does not respond to OCTC’s written notice, OCTC will proceed to file charges where there is clear and convincing evidence of professional misconduct.

After the filing of formal charges, the parties may explore the appropriateness of Alternative Discipline Program (Program) participation for respondents with substance abuse and/or mental health concerns. Participation is contingent upon the Court’s approval of a stipulation of facts and conclusions of law signed by the parties, evidence that the respondent’s substance abuse or mental health issue causally contributed to the misconduct, and respondent’s acceptance into the Bar’s Lawyer Assistance Program (LAP). The extent and severity of the respondent’s stipulated misconduct, including the degree of harm suffered by his or her clients, if any, are factors in determining eligibility for the Program. If the respondent successfully completes the Program, the disposition may be dismissal of the charges or proceeding; if the respondent does not complete the Program, stipulated discipline will ensue.

HEARING AND REVIEW

After the filing of disciplinary charges, OCTC prosecutes the case in the Hearing Department of the Court. The Hearing Department’s decision may be appealed to the Court’s Review

⁹ Complainants in cases dismissed under these circumstances are eligible for reimbursement through the Client Security Fund.

Department. If there is no appeal, or the appeal is unsuccessful, there is a final decision of the Court. When a final decision of the Court includes a recommendation that the attorney be suspended or disbarred, the Court's decision and record of its proceeding is prepared and formally transmitted to the Supreme Court. Decisions to issue a public reproof do not require review by the Supreme Court.

SUPREME COURT

Upon the filing of the Court's decision and the record, the Supreme Court conducts its own independent determination and action. Discipline is imposed when the Supreme Court issues its final order or decision.

BACKLOG¹⁰

Section 6086.15, subdivision (a)(1) *The existing backlog of cases within the discipline system, including the number of complaints as of December 31 of the preceding year that were pending beyond six months after receipt without dismissal, admonition, or the filing of a notice of disciplinary charges. In addition to written complaints received by the State Bar, the backlog of cases shall include other matters opened in the Office of the Chief Trial Counsel and pending beyond six months after receipt without the filing of notices of disciplinary charges, or the initiation of other disciplinary proceedings in the State Bar Court for the purpose of seeking the imposition of discipline against a member of the State Bar, and tables showing time periods beyond six months and the number in each category and a discussion of the reason for the extended periods.*

As Chart 1A reflects, the total number of cases in backlog reduced by twenty-five percent from 2014 to 2015. The most significant reduction was for written complaints received from complaining witnesses, which also represents the largest volume of complaints received each year. The backlog of complaining witness complaints was reduced from 1,732 in 2014 to 1,157 in 2015, a thirty-three percent reduction.

The 1,500 complaints in the backlog include cases that are either currently suspended or were previously suspended and have been reactivated. When multiple complaints are made against the same attorney, OCTC may select and prosecute only those complaints likely to result in disbarment, and hold the remaining cases in a suspended status. If OCTC is successful in obtaining disbarment, the remaining complaints are closed. If the attorney is not disbarred, OCTC may reactivate any suspended investigations. The pendency of both suspended and reactivated complaints reflects the dates they were originally received.

Specifically, sixty-six percent of complaints in backlog status were suspended due to a pending disbarment recommendation, overlapping litigation, default status on pending litigation likely to result in disbarment, or an inactive enrollment order.

¹⁰ The following types of cases are excluded from the Backlog count:

Criminal Conviction Matters: Criminal complaints filed against members of the State Bar are reportable actions, but do not become ripe for State Bar action until finality is reached in the underlying criminal proceeding. Since months or years may elapse between the receipt of such a report and the ultimate disposition of the criminal case, these cases are not included in the calculation of the backlog. Information about criminal conviction matters is, however, provided in Table 3 and Table 4, as well as Appendix E.

Unauthorized Practice of Law (UPL): The State Bar's primary jurisdiction involves the regulation of attorneys; statutory authority is provided to the State Bar for limited action, including referral to law enforcement and pursuit of civil penalties against non-attorneys, under certain circumstances. Because the State Bar does not have the authority to impose discipline in these cases, they are not included in the calculation of the backlog. However, data regarding UPL matters for both former attorneys and non-attorneys is provided in Table 8 and Table 9, respectively. Additional information regarding UPL, notario, and immigration attorney misconduct is provided as Appendix F.

Motions to Enforce Fee Arbitration and Motions to Revoke Probation: These cases are filed directly in State Bar Court, by the Mandatory Fee Arbitration Program and the Office of Probation, respectively. As such, they are not included in the Backlog.

The remaining thirty five percent of cases in backlog status reflect active pending complaints at various stages of case processing, from intake to pre-filing. These complaints may be in backlog due to staffing shortages, complexity, or other case-specific factors.

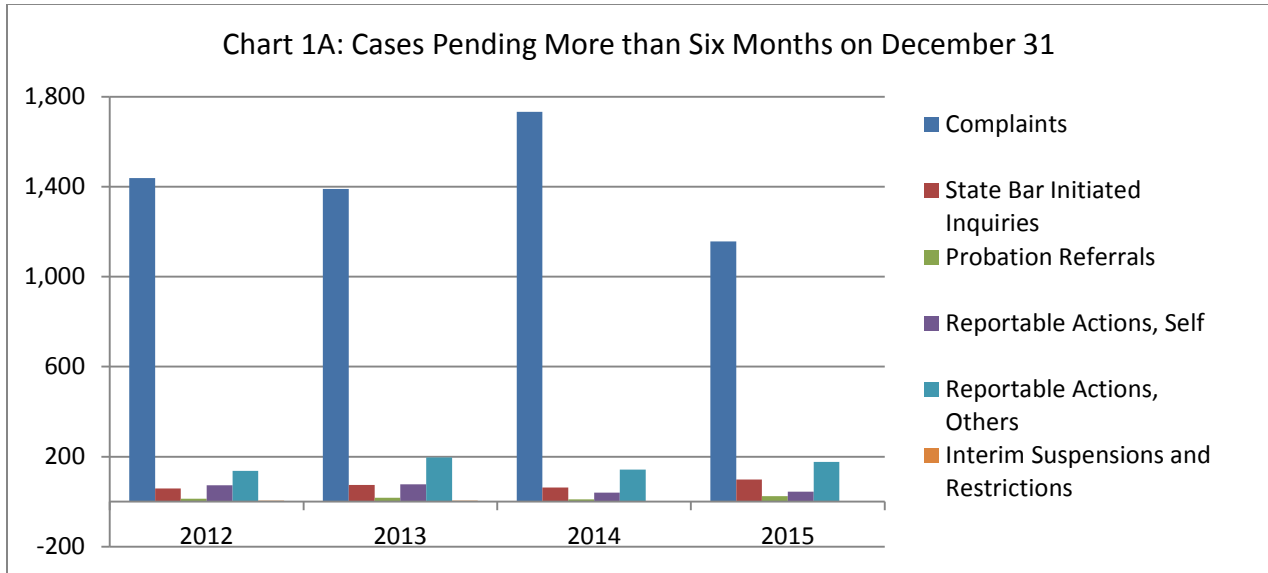


Table 1A: Backlog	2012	2013	2014	2015
Complaints	1,438	1,390	1,732	1,157
State Bar Initiated Inquiries	59	74	63	99
Probation Referrals	13	17	10	24
Reportable Actions, Reported by Self	73	77	40	44
Reportable Actions, Reported by Others	137	197	143	176
Interim Suspensions and Restrictions	5	4	0	0
Total	1,725	1,759	1,988	1,500

In addition to the decreased overall backlog, the proportion of backlog status cases that are twelve months or older reduced significantly between 2014 and 2015. As Chart 1B reflects, in 2014 only twenty-eight percent of cases in backlog had been received within the prior year (pending for six to twelve months); in 2015, forty percent of the overall backlog consisted of cases that had been received within the prior year. Conversely, in 2014 forty-six percent of backlog status cases were one to two years old; in 2015, the percent of cases in that age range dropped by nearly half, to twenty-six percent.

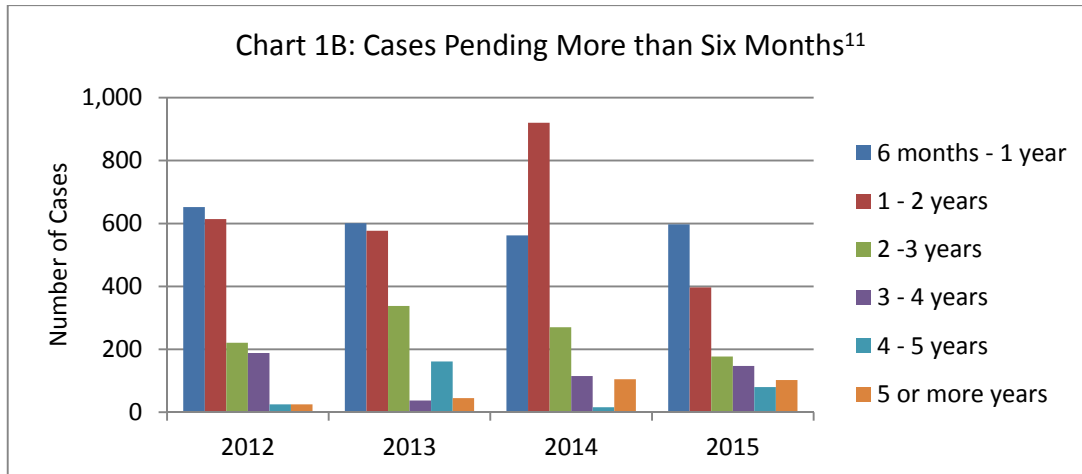


Table 1B: Aged Backlog	2012	2013	2014	2015
<u>All Case Types</u>				
181 - 360 days	652	601	562	597
361 - 720 days	614	577	920	397
721 - 1080 days	221	338	270	177
1081 - 1440 days	188	37	115	147
1441 - 1800 days	25	161	16	80
1801 or more days	25	45	105	102
Total	1,725	1,759	1,988	1,500
<u>Complaints</u>				
181 - 360 days	499	398	427	397
361 - 720 days	524	468	843	297
721 - 1080 days	204	307	247	156
1081 - 1440 days	174	32	108	136
1441 - 1800 days	17	153	15	77
1801 or more days	<u>20</u>	<u>32</u>	<u>92</u>	<u>94</u>
Total	1,438	1,390	1,732	1,157
<u>State Bar Initiated Inquiries</u>				
181 - 360 days	32	34	29	62
361 - 720 days	13	25	18	23
721 - 1080 days	6	6	8	6
1081 - 1440 days	4	2	3	4
1441 - 1800 days	1	3	1	2
1801 or more days	<u>3</u>	<u>4</u>	<u>4</u>	<u>2</u>
Total	59	74	63	99

¹¹ Table 1B shows the age of cases in backlog reflecting 360 days per year, which allows for more accurate calculations based on the data structure of the Bar's case management system. Chart 1B refers to years for ease of reading, but is based on the data provided in Table 1B.

Table 1B: Aged Backlog	2012	2013	2014	2015
<u>Probation Referrals</u>				
181 - 360 days	8	11	7	9
361 - 720 days	3	4	1	12
721 - 1080 days	1	1	1	1
1081 - 1440 days	0	0	1	1
1441 - 1800 days	1	0	0	1
1801 or more days	<u>0</u>	<u>1</u>	<u>0</u>	<u>0</u>
Total	13	17	10	24
<u>Reportable Actions, Reported by Self</u>				
181 - 360 days	35	28	20	25
361 - 720 days	30	39	12	15
721 - 1080 days	6	7	8	2
1081 - 1440 days	2	1	0	2
1441 - 1800 days	0	2	0	0
1801 or more days	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	73	77	40	44
<u>Reportable Actions, Reported by Others</u>				
181 - 360 days	78	130	79	104
361 - 720 days	40	41	46	50
721 - 1080 days	3	13	6	12
1081 - 1440 days	8	2	3	4
1441 - 1800 days	6	3	0	0
1801 or more days	<u>2</u>	<u>8</u>	<u>9</u>	<u>6</u>
Total	137	197	143	176
<u>Interim Suspensions and Restrictions</u>				
181 - 360 days	0	0	0	0
361 - 720 days	4	0	0	0
721 - 1080 days	1	4	0	0
1081 - 1440 days	0	0	0	0
1441 - 1800 days	0	0	0	0
1801 or more days	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	5	4	0	0
Grand Total	1,725	1,759	1,988	1,500

CASE INVENTORY AND DISPOSITION¹²

Section 6086.15, subdivision (a) (2) The number of inquiries and complaints and their disposition.

Chart 2A reflects the total number of cases received each year by OCTC, as well as the number of cases pending at year end. OCTC received a total of 15,796 new cases in 2015, compared to 16,152 in 2014, which represents a decrease of two percent. The number of cases pending was reduced from 5,001 at the end of 2014 to 4,659 at the end of 2015, which represents a reduction of seven percent in the total number of unresolved cases at the end of the year.¹³ The steep decline in pending cases was partially due to a significant number of cases (over 700) that were closed upon the disbarment of a single attorney.

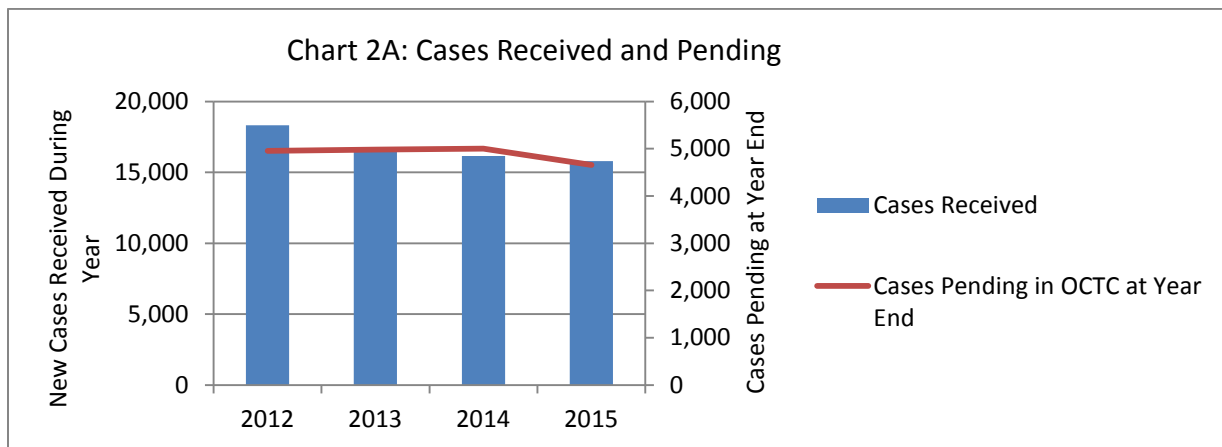
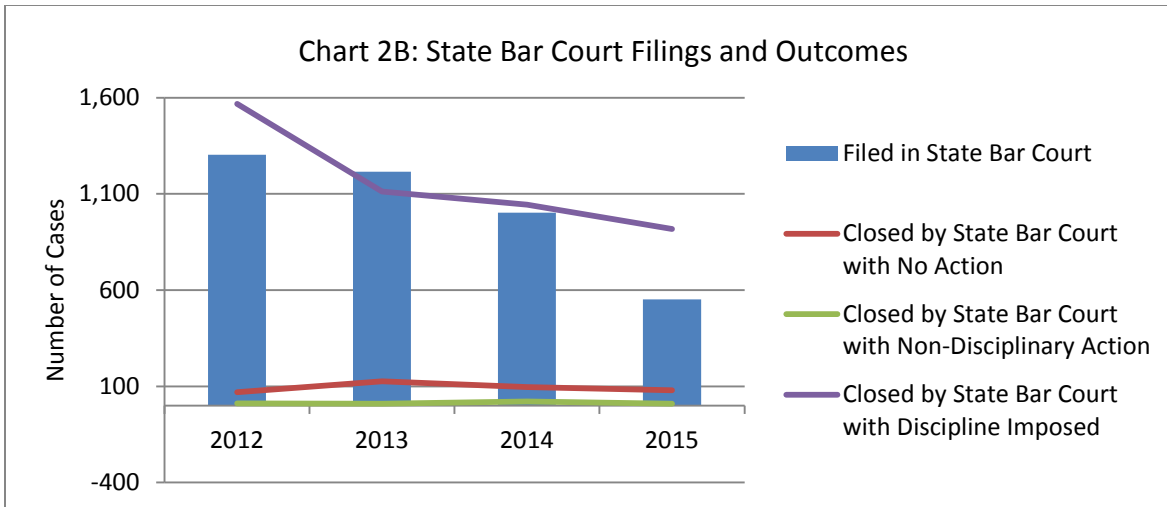


Chart 2B shows the total number of cases filed in Court each year, along with the dispositions of cases closed by the Court during the same year.¹⁴ OCTC filed 558 cases in Court in 2015, compared to 1,013 in 2014, which represents a reduction of forty-five percent in filings. The total number of cases closed by the Court in 2015 was 1,006, compared to 1,162 cases closed in 2014, a reduction of thirteen percent. Of cases closed by the Court in 2015, eight percent were closed with no action, one percent were closed with non-disciplinary action, and ninety-one percent were closed with discipline imposed.

¹² Tables 2A and 2B do not include criminal conviction matters and UPL cases, to enable a consistent comparison with the data in Tables 1A and 1B.

¹³ The 2014 Report summary reported 4,095 *active* cases pending at year end; this figure included cases pending in Court as of December 31, 2014, but excluded suspended cases. Chart 2A of the 2015 Report provides a comparison of all cases pending in OCTC at year end, regardless of active or suspended status.

¹⁴ The State Bar Court generally does not dispose of cases during the same year that they are filed by OCTC, so there is not a one-to-one correspondence between OCTC filings during a year and the number of cases disposed of by the State Bar Court.



While this chart reflects a reduction in the total number of *cases* closed with discipline imposed, Chart 6 and Table 6B show an increase in the number of *attorneys* who were suspended and disbarred in 2015 as compared to 2014. The disparity in these figures is due to the fact that more cases were filed per attorney in 2014 than in 2015. For example, in 2014 there were multiple instances of a single attorney having ten or more associated complaints; in 2015, there were none.

Table 2: Inquiries and Complaints	2012	2013	2014	2015
<u>Summary: All Case Types</u>				
Cases Received	18,311	16,502	16,152	15,796
Cases Reopened	408	212	202	118
Closed by OCTC With No Action ¹⁵	16,404	13,220	13,038	13,569
Closed by OCTC With Referral	457	378	345	288
Closed by OCTC With Non-Disciplinary Action	<u>1,904</u>	<u>1,882</u>	<u>1,936</u>	<u>1,849</u>
<i>Total Cases Closed by OCTC</i>	18,765	15,480	15,319	15,706
Filed in State Bar Court	1,304	1,215	1,003	552
Cases Pending in OCTC at Year End	4,956	4,979	5,001	4,659
Closed by SBC With No Action	69	127	96	80
Closed by SBC With Non-Disciplinary Action	11	9	22	9
Closed with Discipline Imposed	<u>1,567</u>	<u>1,113</u>	<u>1,044</u>	<u>917</u>
<i>Total Cases Closed by SBC</i>	1,647	1,249	1,162	1,006
Cases Pending in SBC at Year End	1,826	1,808	1,670	1,222
<u>Complaints</u>				
Complaints Received	14,825	13,050	12,745	12,307
Complaints Reopened	404	204	198	114
Closed by OCTC With No Action	13,740	10,316	10,513	10,768
Closed by OCTC With Referral	456	378	345	284
Closed by OCTC With Non-Disciplinary Action	<u>1,438</u>	<u>1,472</u>	<u>1,590</u>	<u>1,470</u>
<i>Total Complaints Closed by OCTC</i>	15,634	12,166	12,448	12,522

¹⁵ See Appendix A for a description of OCTC dispositions.

Table 2: Inquiries and Complaints	2012	2013	2014	2015
Filed in State Bar Court	968	933	593	340
Complaints Pending in OCTC at Year End	3,896	4,060	3,967	3,533
Closed by SBC With No Action	41	66	72	58
Closed by SBC With Non-Disciplinary Action	0	0	2	1
Closed with Discipline Imposed	<u>1,266</u>	<u>821</u>	<u>733</u>	<u>590</u>
<i>Total Complaints Closed by SBC</i>	<i>1,307</i>	<i>887</i>	<i>807</i>	<i>649</i>
Complaints Pending in SBC at Year End	1,324	1,379	1,169	861
<u>State Bar Initiated Inquiries</u>				
Inquiries Initiated	333	411	425	577
Inquiries Reopened	3	6	1	3
Closed by OCTC With No Action	247	236	246	305
Closed by OCTC With Referral	1	0	0	0
Closed by OCTC With Non-Disciplinary Action	<u>37</u>	<u>66</u>	<u>101</u>	<u>102</u>
<i>Total Inquiries Closed by OCTC</i>	<i>285</i>	<i>302</i>	<i>347</i>	<i>407</i>
Filed in State Bar Court	66	72	104	83
Inquiries Pending in OCTC at Year End	121	165	140	230
Closed by SBC With No Action	7	13	18	5
Closed by SBC With Non-Disciplinary Action	0	0	0	0
Closed with Discipline Imposed	<u>48</u>	<u>50</u>	<u>78</u>	<u>73</u>
<i>Total Inquiries Closed by SBC</i>	<i>55</i>	<i>63</i>	<i>96</i>	<i>78</i>
Inquiries Pending in SBC at Year End	97	106	116	121
<u>Probation Referrals</u>				
Probation Referrals Received	177	132	137	97
Probation Referrals Reopened	1	1	1	1
Closed by OCTC With No Action	26	30	19	22
Closed by OCTC With Referral	0	0	0	0
Closed by OCTC With Non-Disciplinary Action	<u>1</u>	<u>2</u>	<u>3</u>	<u>2</u>
<i>Total Probation Referrals Closed by OCTC</i>	<i>27</i>	<i>32</i>	<i>22</i>	<i>24</i>
Filed in State Bar Court	130	101	118	59
Probation Referrals Pending in OCTC at Year	52	52	50	65
Closed by SBC With No Action	12	10	3	13
Closed by SBC With Non-Disciplinary Action	0	0	0	0
Closed with Discipline Imposed	<u>77</u>	<u>114</u>	<u>87</u>	<u>100</u>
<i>Total Probation Referrals Closed by SBC</i>	<i>89</i>	<i>124</i>	<i>90</i>	<i>113</i>
Probation Referrals Pending in SBC at Year	160	137	165	111
<u>Reportable Actions, Self-Reported</u>				
Actions Reported	236	169	226	196
Reportable Actions Reopened	0	0	1	0
Closed by OCTC With No Action	143	170	189	181
Closed by OCTC With Referral	0	0	0	0
Closed by OCTC With Non-Disciplinary Action	<u>12</u>	<u>11</u>	<u>14</u>	<u>5</u>
<i>Total Reportable Actions Closed by OCTC</i>	<i>155</i>	<i>181</i>	<i>203</i>	<i>186</i>

Table 2: Inquiries and Complaints	2012	2013	2014	2015
Filed in State Bar Court	21	18	26	18
Reportable Actions Pending in OCTC at Year	149	119	117	109
Closed by SBC With No Action	2	2	1	0
Closed by SBC With Non-Disciplinary Action	0	0	0	0
Closed with Discipline Imposed	<u>5</u>	<u>26</u>	<u>18</u>	<u>24</u>
<i>Total Reportable Actions Closed by SBC</i>	7	28	19	24
Reportable Actions Pending in SBC at Year End	32	22	29	23
<u>Reportable Actions, Reported by Others</u>				
Actions Reported	2,726	2,733	2,603	2,614
Reportable Actions Reopened	0	1	1	0
Closed by OCTC With No Action	2,243	2,467	2,066	2,293
Closed by OCTC With Referral	0	0	0	4
Closed by OCTC With Non-Disciplinary Action	<u>416</u>	<u>331</u>	<u>228</u>	<u>270</u>
<i>Total Reportable Actions Closed by OCTC</i>	2,659	2,798	2,294	2,567
Filed in State Bar Court	119	91	162	52
Reportable Actions Pending in OCTC at Year	733	579	727	722
Closed by SBC With No Action	5	35	1	3
Closed by SBC With Non-Disciplinary Action	0	0	8	0
Closed with Discipline Imposed	<u>171</u>	<u>102</u>	<u>129</u>	<u>129</u>
<i>Total Reportable Actions Closed by SBC</i>	176	137	137	133
Reportable Actions Pending in SBC at Year End	207	161	186	105
<u>Interim Suspensions and Restrictions</u>				
ISRs Received	14	7	16	5
ISRs Reopened	0	0	0	0
Closed by OCTC With No Action	5	1	5	0
Closed by OCTC With Referral	0	0	0	0
Closed by OCTC With Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total ISRs Closed by OCTC</i>	5	1	5	0
Filed in State Bar Court	14	7	15	5
ISRs Pending in OCTC at Year End	5	4	0	0
Closed by SBC With No Action	2	1	1	1
Closed by SBC With Non-Disciplinary Action	11	9	12	8
Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total ISRs Closed by SBC</i>	13	10	13	9
ISRs Pending in SBC at Year End	6	3	5	1

SELF-REPORTED REPORTABLE ACTIONS

Section 6086.15, subdivision (a)(3) *The number, average pending times, and types of matters self-reported by members of the State Bar pursuant to subdivision (o) of Section 6068 and subdivision (c) of Section 6086.8.*^{16,17}

State law requires attorneys to self-report when a number of situations occur, including when three or more malpractice lawsuits have been filed against them within twelve months, when a civil judgment is entered against them in a fraud case, or when felony charges have been filed against them. The most common self-reported action, accounting for approximately fifty percent of all reports each year, was for actions falling under section 6068, subdivision (o)(3), which requires attorneys to report judicial sanctions imposed against them. Imposition of discipline by a professional or occupational disciplinary agency or licensing board, reported under subdivision (o)(6), made up fifteen percent of self-reported actions in 2015, while felony and misdemeanor convictions, reported under subdivision (o)(5), accounted for twelve percent of self-reported actions in 2015.

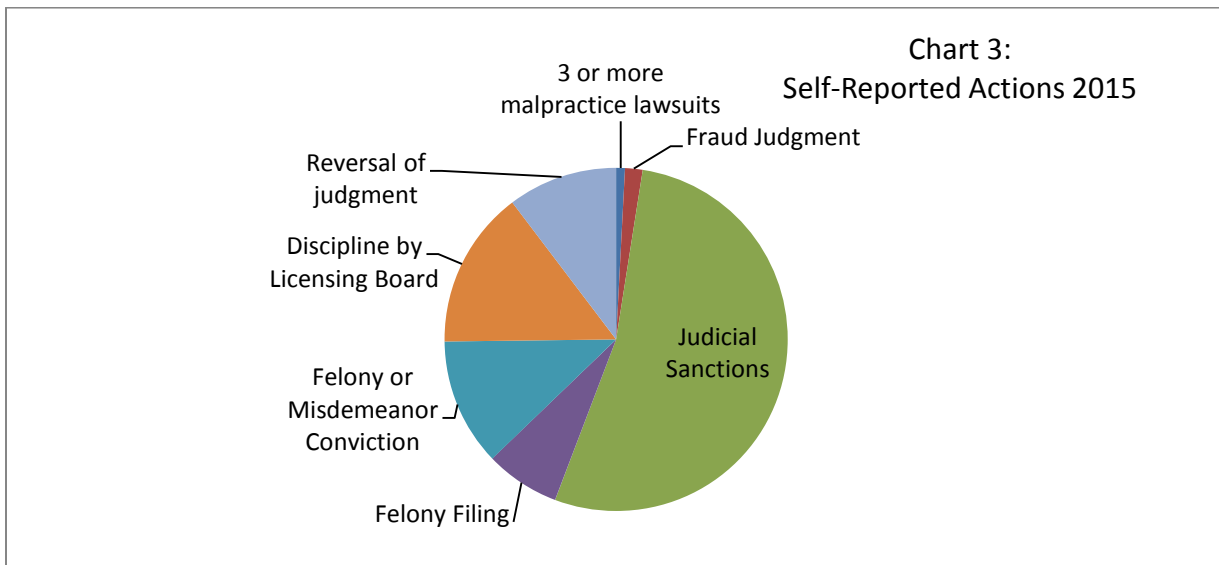


Table 3: Reportable Actions, Reported by Self	2012	2013	2014	2015
<u>Summary: All Reportable Actions, Reported by Self</u>				
Reports Received	303	224	280	242
Cases Reopened	0	0	1	0
Cases Closed by OCTC Without Action	178	184	205	207
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	12	11	14	5
<i>Total Cases Closed by OCTC</i>	<i>190</i>	<i>195</i>	<i>219</i>	<i>212</i>
Cases Filed in State Bar Court	66	56	68	50
Cases Remaining in OCTC at Year End	220	186	185	163

¹⁶ The full text of sections 6068 and 6086.8 is provided in Appendix B.

¹⁷ The figures in Table 3 differ from those in Table 2 for this category because Table 3 includes reports of criminal conviction matters, which are excluded from Table 2.

Table 3: Reportable Actions, Reported by Self	2012	2013	2014	2015
Cases Closed by SBC Without Action	10	10	11	6
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	27	57	40	40
<i>Total Cases Closed by State Bar Court</i>	<i>37</i>	<i>57</i>	<i>51</i>	<i>46</i>
Cases Remaining in SBC at Year End	113	106	121	130
<u>Three or more malpractice lawsuits filed within 12 months (§6068, subd. (o)(1))</u>				
Reports Received	2	4	5	2
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	1	5	3	6
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	<i>1</i>	<i>5</i>	<i>3</i>	<i>6</i>
Average Pendency at Closure ¹⁸	87	472	206	299
Median Pendency at Closure	87	317	4	161
Cases Filed in State Bar Court	1	0	0	0
Average Pendency at Filing	715	0	0	0
Median Pendency at Filing	715	0	0	0
Cases Remaining in OCTC at Year End	3	2	4	0
Average Pendency at Year End	633	342	258	0
Median Pendency at Year End	682	160	134	0
Cases Closed by SBC Without Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>
<i>Total Cases Closed by State Bar Court</i>	<i>0</i>	<i>0</i>	<i>1</i>	<i>0</i>
Average Pendency at Closure	0	0	1,228	0
Median Pendency at Closure	0	0	1,228	0
Cases Remaining in SBC at Year End	1	1	0	0
Average Pendency at Year End	762	1,127	0	0
Median Pendency at Year End	762	1,127	0	0
<u>Judgment in civil case for fraud, misrepresentation, gross negligence, etc. (§6068, subd. (o)(2))</u>				
Reports Received	5	7	12	4
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	6	11	10	8
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
<i>Total Cases Closed by OCTC</i>	<i>6</i>	<i>11</i>	<i>10</i>	<i>9</i>
Average Pendency at Closure	338	430	189	178
Median Pendency at Closure	135	536	61	144

¹⁸ Pendency is reported in days.

Table 3: Reportable Actions, Reported by Self	2012	2013	2014	2015
Cases Filed in State Bar Court	2	1	1	0
Average Pendency at Filing	707	414	555	0
Median Pendency at Filing	618	414	555	0
Cases Remaining in OCTC at Year End	9	4	5	0
Average Pendency at Year End	421	281	104	0
Median Pendency at Year End	458	92	112	0
Cases Closed by SBC Without Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>1</u>	<u>1</u>	<u>1</u>
<i>Total Cases Closed by State Bar Court</i>	<i>0</i>	<i>1</i>	<i>1</i>	<i>1</i>
Average Pendency at Closure	0	1,219	896	714
Median Pendency at Closure	0	1,219	896	714
Cases Remaining in SBC at Year End	2	2	2	1
Average Pendency at Year End	821	878	1,040	1739
Median Pendency at Year End	644	747	707	1739
<u>Judicial sanctions imposed (§6068, subd. (o)(3))</u>				
Reports Received	152	106	146	129
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	98	128	137	122
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>6</u>	<u>5</u>	<u>10</u>	<u>1</u>
<i>Total Cases Closed by OCTC</i>	<i>104</i>	<i>133</i>	<i>147</i>	<i>123</i>
Average Pendency at Closure	191	200	285	192
Median Pendency at Closure	49	100	140	152
Cases Filed in State Bar Court	9	2	7	3
Average Pendency at Filing	336	601	582	452
Median Pendency at Filing	230	256	510	441
Cases Remaining in OCTC at Year End	107	78	70	73
Average Pendency at Year End	255	395	180	219
Median Pendency at Year End	173	285	104	157
Cases Closed by SBC Without Action	0	0	1	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>1</u>	<u>20</u>	<u>4</u>	<u>2</u>
<i>Total Cases Closed by State Bar Court</i>	<i>1</i>	<i>20</i>	<i>5</i>	<i>2</i>
Average Pendency at Closure	2,612	1,002	798	611
Median Pendency at Closure	2,612	1,187	695	572
Cases Remaining in SBC at Year End	23	5	7	8
Average Pendency at Year End	751	877	999	1242
Median Pendency at Year End	952	840	1,191	1,050

Table 3: Reportable Actions, Reported by Self	2012	2013	2014	2015
<u>Felony indictment (§6068, subd. (o)(4))</u>				
Reports Received	20	11	16	17
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	6	2	6	4
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	<i>6</i>	<i>2</i>	<i>6</i>	<i>4</i>
Average Pendency at Closure	578	634	723	1,370
Median Pendency at Closure	587	268	598	715
Cases Filed in State Bar Court	16	13	9	10
Average Pendency at Filing	544	660	435	366
Median Pendency at Filing	329	542	330	225
Cases Remaining in OCTC at Year End	45	37	40	45
Average Pendency at Year End	488	610	585	586
Median Pendency at Year End	287	440	329	349
Cases Closed by SBC Without Action	2	3	6	2
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>7</u>	<u>7</u>	<u>8</u>	<u>2</u>
<i>Total Cases Closed by State Bar Court</i>	<i>9</i>	<i>10</i>	<i>14</i>	<i>4</i>
Average Pendency at Closure	1,479	888	994	929
Median Pendency at Closure	1263	848	882	534
Cases Remaining in SBC at Year End	33	39	34	43
Average Pendency at Year End	904	1,121	1,293	1,361
Median Pendency at Year End	810	924	1,122	1,185
<u>Conviction of felony, or misdemeanor related to practice of law (§6068, subd. (o)(5))</u>				
Reports Received	47	44	38	29
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	29	12	10	22
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	<i>29</i>	<i>12</i>	<i>10</i>	<i>22</i>
Average Pendency at Closure	100	113	378	350
Median Pendency at Closure	46	48	170	294
Cases Filed in State Bar Court	29	25	33	22
Average Pendency at Filing	111	167	172	110
Median Pendency at Filing	27	60	37	44
Reports Remaining in OCTC at Year End	26	30	28	11
Average Pendency at Year End	465	360	280	206
Median Pendency at Year End	160	111	232	100

Table 3: Reportable Actions, Reported by Self	2012	2013	2014	2015
Cases Closed by SBC Without Action	6	5	4	4
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>15</u>	<u>24</u>	<u>14</u>	<u>14</u>
<i>Total Cases Closed by State Bar Court</i>	<i>21</i>	<i>29</i>	<i>18</i>	<i>19</i>
Average Pendency at Closure	601	548	688	873
Median Pendency at Closure	461	421	521	627
Cases Remaining in SBC at Year End	48	45	58	64
Average Pendency at Year End	528	696	712	703
Median Pendency at Year End	357	468	512	521
<u>Discipline by professional agency or licensing board (\$6068, subd. (o)(6))</u>				
Reports Received	71	37	47	36
Cases Reopened	0	0	1	0
Cases Closed by OCTC Without Action	38	14	26	23
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>5</u>	<u>2</u>	<u>3</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	<i>43</i>	<i>16</i>	<i>29</i>	<i>23</i>
Average Pendency at Closure	80	141	203	350
Median Pendency at Closure	99	79	127	232
Cases Filed in State Bar Court	9	15	18	15
Average Pendency at Filing	95	219	311	298
Median Pendency at Filing	74	154	341	267
Cases Remaining in OCTC at Year End	23	29	30	28
Average Pendency at Year End	170	266	283	180
Median Pendency at Year End	161	264	159	59
Cases Closed by SBC Without Action	2	2	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>4</u>	<u>5</u>	<u>12</u>	<u>21</u>
<i>Total Cases Closed by State Bar Court</i>	<i>6</i>	<i>7</i>	<i>12</i>	<i>21</i>
Average Pendency at Closure	230	373	516	597
Median Pendency at Closure	144	360	440	512
Cases Remaining in SBC at Year End	6	14	20	14
Average Pendency at Year End	229	418	545	678
Median Pendency at Year End	192	420	483	559
<u>Reversal of judgment based on misconduct, gross incompetence, etc. (\$6068, subd. (o)(7))</u>				
Reports Received	6	15	16	25
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	0	12	13	22
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>1</u>	<u>4</u>	<u>1</u>	<u>3</u>

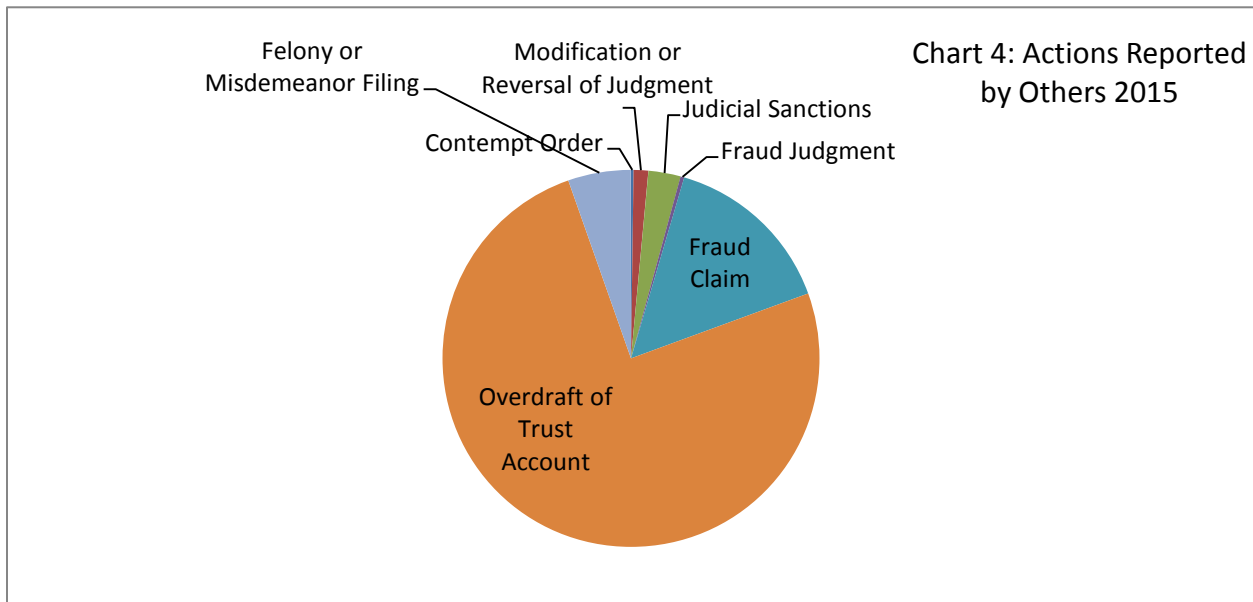
Table 3: Reportable Actions, Reported by Self	2012	2013	2014	2015
<i>Total Cases Closed by OCTC</i>	1	16	14	25
Average Pendency at Closure	203	75	237	182
Median Pendency at Closure	203	43	116	162
Cases Filed in State Bar Court	0	0	0	0
Average Pendency at Filing	0	0	0	0
Median Pendency at Filing	0	0	0	0
Cases Remaining in OCTC at Year End	7	6	8	8
Average Pendency at Year End	196	428	227	199
Median Pendency at Year End	72	249	111	97
Cases Closed by SBC Without Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by State Bar Court</i>	0	0	0	0
Average Pendency at Closure	0	0	0	0
Median Pendency at Closure	0	0	0	0
Cases Remaining in SBC at Year End	0	0	0	0
Average Pendency at Year End	0	0	0	0
Median Pendency at Year End	0	0	0	0
No malpractice insurance when faced with claim of fraud, misrepresentation, etc. (§6086.8, subd. (c))				
Reports Received	0	0	0	0
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	0	0	0	0
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	0	0	0	0
Average Pendency at Closure	0	0	0	0
Median Pendency at Closure	0	0	0	0
Cases Filed in State Bar Court	0	0	0	0
Average Pendency at Filing	0	0	0	0
Median Pendency at Filing	0	0	0	0
Cases Remaining in OCTC at Year End	0	0	0	0
Average Pendency at Year End	0	0	0	0
Median Pendency at Year End	0	0	0	0
Cases Closed by SBC Without Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by State Bar Court</i>	0	0	0	0
Average Pendency at Closure	0	0	0	0
Median Pendency at Closure	0	0	0	0

Table 3: Reportable Actions, Reported by Self	2012	2013	2014	2015
Cases Remaining in SBC at Year End	0	0	0	0
Average Pendency at Year End	0	0	0	0
Median Pendency at Year End	0	0	0	0

REPORTABLE ACTIONS, REPORTED BY OTHERS

Section 6086.15, subdivision (a)(4) The number, average pending times, and types of matters reported by other sources pursuant to Sections 6086.7, 6086.8, 6091.1, subdivision (b) of Section 6101, and Section 6175.6.^{19,20}

The most common action reported by others, accounting for approximately eighty percent of all reports each year, was actions falling under section 6091.1, which requires financial institutions to report overdrafts from attorney trust accounts. Fraud claims, reported pursuant to section 6086.8, subdivision (b), accounted for an additional fifteen percent of reportable actions in 2015.



An interesting opportunity for analysis is presented by the potential overlap between actions that attorneys are required to self-report and those that are reported by others. Unfortunately, there are only two areas that precisely align, rendering such a comparison appropriate²¹:

- Section 6068, subdivision (o)(2), requires attorneys to report judgments based on fraud, misrepresentation, breach of fiduciary duty, or gross negligence, while section 6086.8

¹⁹ The full text of section 6086.7, section 6086.8, section 6091.1, section 6101, and section 6175.6 is provided in Appendix B. Cases reported pursuant to section 6175.6 are included in a separate annual report to the legislature, pursuant to section 6177. One such action was reported in 2013, with none others during the four year period encompassed by this report. Since this action was initiated pursuant to a complaint rather than a reportable action reported by a court, it is not included in Table 4.

²⁰ The figures in Table 4 differ from those in Table 2 for this category because Table 4 includes reports of criminal conviction matters, which are excluded from Table 2.

²¹ A direct comparison of reportable criminal conviction matters is not possible as attorneys, prosecuting agencies, and courts are not required to report the same types of information. With respect to initial reporting, prosecuting agencies are required to report any felony or misdemeanor charges filed, while attorneys are only required to report felony charges filed against them. With regard to convictions, courts are required to report both felony and misdemeanor convictions, while attorneys are required to report convictions for felonies and only specified misdemeanors.

requires courts to report the same information about an attorney. In 2012, 2013 and 2014, there were more self-reported actions than court-reported actions pursuant to these statutes. In 2015, there were more court-reported actions than self-reported actions.

- Section 6068, subdivision (o)(3), requires attorneys to report certain judicial sanctions imposed against them, while section 6086.7, subdivision (a)(3), requires courts to report the same types of sanctions. In each of the years encompassed by this report, there were more self-reported than court-reported actions pursuant to these statutes.

This limited analysis suggests that courts may be under-reporting to the State Bar. In December, 2015, the State Bar provided the California Judicial Council with a resource guide for superior courts regarding mandatory reporting of attorney misconduct. The distribution of this guide, which is provided as Appendix G, should lead to improvements in this area.

Table 4: Reportable Actions, Reported by Others	2012	2013	2014	2015
<u>Summary: All Reportable Actions, Reported by Others</u>				
Reports Received	2,899	2,903	2,768	2,763
Cases Reopened	0	1	1	0
Cases Closed by OCTC Without Action	2,366	2,557	2,145	2,405
Cases Closed by OCTC With Referral	0	0	0	4
Cases Closed by OCTC with Non-Disciplinary Action	416	331	228	270
<i>Total Cases Closed by OCTC</i>	<i>2,782</i>	<i>2,888</i>	<i>2,373</i>	<i>2,679</i>
Cases Filed in State Bar Court	197	166	245	108
Cases Remaining in OCTC at Year End	901	749	901	878
Cases Closed by SBC Without Action	19	48	10	25
Cases Closed by SBC with Non-Disciplinary Action	0	0	8	1
Cases Closed with Discipline Imposed	204	140	172	194
<i>Total Cases Closed by State Bar Court</i>	<i>223</i>	<i>188</i>	<i>190</i>	<i>220</i>
Cases Remaining in SBC at Year End	306	284	342	232
<u>Order of Contempt (§6086.7, subd. (a) (1))</u>				
Reports Received	3	2	4	6
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	3	1	2	3
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>2</u>	<u>0</u>	<u>3</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	<i>5</i>	<i>1</i>	<i>5</i>	<i>3</i>
Average Pendency at Closure	246	45	378	81
Median Pendency at Closure	218	45	127	101
Cases Filed in State Bar Court	0	0	0	0
Average Pendency at Filing	0	0	0	0
Median Pendency at Filing	0	0	0	0
Cases Remaining in OCTC at Year End	1	2	1	4
Average Pendency at Year End	297	466	47	178
Median Pendency at Year End	297	270	47	65

Table 4: Reportable Actions, Reported by Others	2012	2013	2014	2015
Cases Closed by SBC Without Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Cases Closed by State Bar Court	0	0	0	0
Average Pendency at Closure	0	0	0	0
Median Pendency at Closure	0	0	0	0
Cases Remaining in SBC at Year End	0	0	0	0
Average Pendency at Year End	0	0	0	0
Median Pendency at Year End	0	0	0	0
<u>Modification or reversal of judgment based on misconduct, etc. (§6086.7, subd. (a)(2))</u>				
Reports Received	7	14	18	35
Cases Reopened	0	0	1	0
Cases Closed by OCTC Without Action	6	11	14	26
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>2</u>	<u>1</u>	<u>1</u>	<u>2</u>
Total Cases Closed by OCTC	8	12	15	28
Average Pendency at Closure	228	165	297	139
Median Pendency at Closure	145	78	125	132
Cases Filed in State Bar Court	0	0	0	1
Average Pendency at Filing	0	0	0	364
Median Pendency at Filing	0	0	0	364
Cases Remaining in OCTC at Year End	7	9	13	19
Average Pendency at Year End	274	321	155	226
Median Pendency at Year End	117	174	92	160
Cases Closed by SBC Without Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Cases Closed by State Bar Court	0	0	0	0
Average Pendency at Closure	0	0	0	0
Median Pendency at Closure	0	0	0	0
Cases Remaining in SBC at Year End	0	0	0	1
Average Pendency at Year End	0	0	0	576
Median Pendency at Year End	0	0	0	576
<u>Judicial sanctions imposed (§6086.7, subd. (a)(3))</u>				
Reports Received	113	87	95	76
Cases Reopened	0	1	0	0
Cases Closed by OCTC Without Action	71	80	77	41
Cases Closed by OCTC With Referral	0	0	0	0

Table 4: Reportable Actions, Reported by Others	2012	2013	2014	2015
Cases Closed by OCTC with Non-Disciplinary Action	<u>12</u>	<u>13</u>	<u>10</u>	<u>7</u>
Total Cases Closed by OCTC	83	93	87	48
Average Pendency at Closure	193	227	193	260
Median Pendency at Closure	85	179	120	163
Cases Filed in State Bar Court	25	9	27	11
Average Pendency at Filing	364	393	548	495
Median Pendency at Filing	288	343	448	371
Cases Remaining in OCTC at Year End	79	65	46	63
Average Pendency at Year End	258	330	280	221
Median Pendency at Year End	188	203	162	127
Cases Closed by SBC Without Action	0	1	0	1
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>26</u>	<u>16</u>	<u>13</u>	<u>9</u>
Total Cases Closed by State Bar Court	26	17	13	10
Average Pendency at Closure	868	738	1,004	839
Median Pendency at Closure	832	731	1,063	910
Cases Remaining in SBC at Year End	21	13	27	28
Average Pendency at Year End	568	764	663	909
Median Pendency at Year End	504	837	614	791
<u>Judgment in civil case for fraud, misrepresentation, gross negligence, etc.(\$6086.8, subd. (a))</u>				
Reports Received	5	5	10	9
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	3	5	4	9
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>2</u>	<u>0</u>	<u>0</u>
Total Cases Closed by OCTC	3	7	4	9
Average Pendency at Closure	102	306	151	148
Median Pendency at Closure	116	285	124	164
Cases Filed in State Bar Court	0	0	2	1
Average Pendency at Filing ²²	0	0	453	343
Median Pendency at Filing	0	0	305	343
Cases Remaining in OCTC at Year End	5	3	7	6
Average Pendency at Year End	252	186	92	276
Median Pendency at Year End	292	98	85	164
Cases Closed by SBC Without Action	1	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>2</u>	<u>0</u>	<u>1</u>	<u>0</u>

²² Superior courts may not always timely report civil judgments to the Bar, which may result in an extended pendency before OCTC takes action in these matters.

Table 4: Reportable Actions, Reported by Others	2012	2013	2014	2015
Total Cases Closed by State Bar Court	3	0	1	0
Average Pendency at Closure	888	0	337	0
Median Pendency at Closure	825	0	337	0
Cases Remaining in SBC at Year End	0	0	1	2
Average Pendency at Year End	0	0	790	778
Median Pendency at Year End	0	0	790	402
<u>Claim or action for damages for fraud, misrepresentation, etc. (§6086.8, subd. (b))</u>				
Reports Received	182	314	248	410
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	179	321	246	408
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Cases Closed by OCTC	179	321	246	408
Average Pendency at Closure	44	26	38	19
Median Pendency at Closure	4	5	8	8
Cases Filed in State Bar Court	0	0	0	0
Average Pendency at Filing	0	0	0	0
Median Pendency at Filing	0	0	0	0
Cases Remaining in OCTC at Year End	18	11	13	15
Average Pendency at Year End	327	393	118	238
Median Pendency at Year End	224	438	51	274
Cases Closed by SBC Without Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Cases Closed by State Bar Court	0	0	0	0
Average Pendency at Closure	0	0	0	0
Median Pendency at Closure	0	0	0	0
Cases Remaining in SBC at Year End	0	0	0	0
Average Pendency at Year End	0	0	0	0
Median Pendency at Year End	0	0	0	0
<u>Overdraft of attorney trust accounts (§6091.1)</u>				
Reports Received	2,416	2,311	2,228	2,078
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	1,981	2,049	1,723	1,806
Cases Closed by OCTC With Referral	0	0	0	4
Cases Closed by OCTC with Non-Disciplinary Action	<u>400</u>	<u>315</u>	<u>214</u>	<u>261</u>
Total Cases Closed by OCTC	2,381	2,364	1,937	2,071
Average Pendency at Closure	96	60	79	109
Median Pendency at Closure	83	41	55	82

Table 4: Reportable Actions, Reported by Others	2012	2013	2014	2015
Cases Filed in State Bar Court	94	82	133	39
Average Pendency at Filing	301	298	373	360
Median Pendency at Filing	225	315	345	338
Cases Remaining in OCTC at Year End	623	489	647	615
Average Pendency at Year End	117	177	138	150
Median Pendency at Year End	56	98	49	65
Cases Closed by SBC Without Action	4	34	1	2
Cases Closed by SBC with Non-Disciplinary Action	0	0	8	0
Cases Closed with Discipline Imposed	<u>143</u>	<u>86</u>	<u>114</u>	<u>121</u>
Total Cases Closed by State Bar Court	147	120	123	123
Average Pendency at Closure	989	798	902	794
Median Pendency at Closure	872	632	801	687
Cases Remaining in SBC at Year End	186	148	158	74
Average Pendency at Year End	779	911	757	960
Median Pendency at Year End	607	734	624	835
<u>Filing of misdemeanor or felony charges (§6101, subd. (b))</u>				
Reports Received	173	170	165	149
Cases Reopened	0	0	0	0
Cases Closed by OCTC Without Action	123	90	79	112
Cases Closed by OCTC With Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Cases Closed by OCTC	123	90	79	112
Average Pendency at Closure	446	329	381	451
Median Pendency at Closure	230	172	296	320
Cases Filed in State Bar Court	78	75	83	56
Average Pendency at Filing	201	325	330	332
Median Pendency at Filing	112	228	174	239
Cases Remaining in OCTC at Year End	168	170	174	156
Average Pendency at Year End	497	522	520	527
Median Pendency at Year End	278	235	239	234
Cases Closed by SBC Without Action	14	13	9	22
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	1
Cases Closed with Discipline Imposed	<u>33</u>	<u>38</u>	<u>44</u>	<u>64</u>
Total Cases Closed by State Bar Court	47	51	53	87
Average Pendency at Closure	697	623	804	833
Median Pendency at Closure	468	610	630	644
Cases Remaining in SBC at Year End	99	123	156	127
Average Pendency at Year End	559	716	811	940
Median Pendency at Year End	412	526	686	793
<u>Elder Financial Abuse (§6175.6)</u>				
Reports Received	0	0	0	0

SPEED OF COMPLAINT HANDLING²³

Section 6086.15, subdivision (a)(5) The speed of complaint handling and dispositions by type, measured by the median and the average processing times.

Chart 5A illustrates the average time spent to review cases that are closed by OCTC without filing in State Bar Court. Dispositions for OCTC closed cases include Closed with Non-Disciplinary Action, Closed with Referral, and Closed with No Action. As the chart shows, the average time between receipt of a complaint by OCTC’s Intake Unit and closure of the case increased slightly from 2014 to 2015 for complaints from complaining witnesses and reportable actions from sources other than the attorney. Conversely, there was a significant decrease in the time from opening of the case to closure for inquiries initiated by the State Bar, as well as for reportable actions made by an attorney regarding him- or herself.

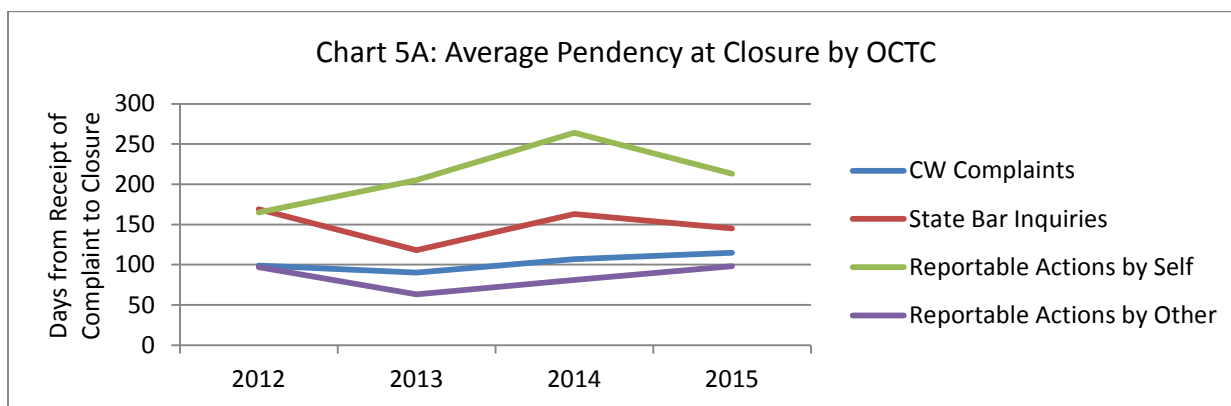
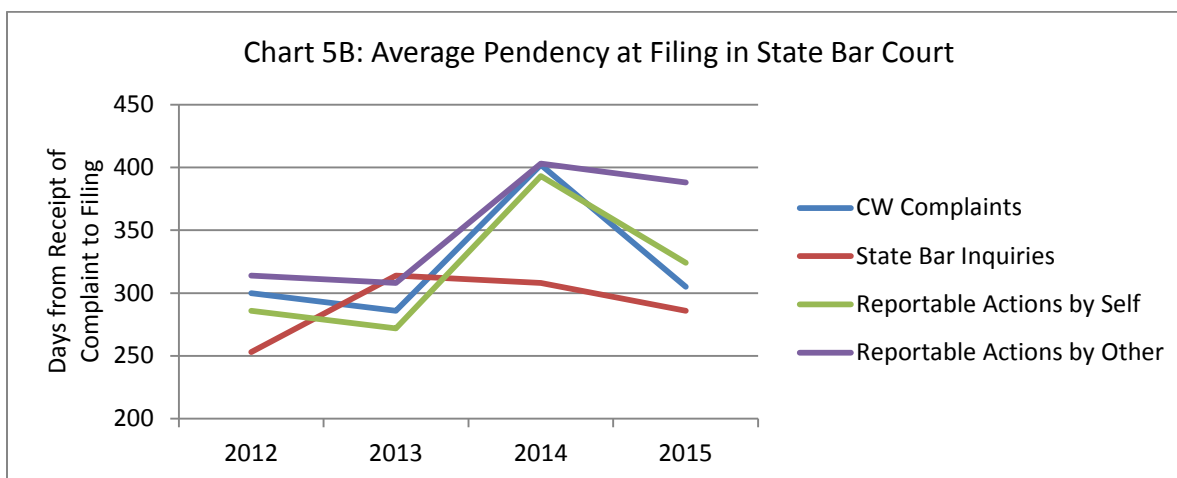


Chart 5B illustrates the average time spent processing cases that are ultimately filed in Court. As the chart shows, the average time between receipt of a complaint by OCTC’s Intake Unit and filing the case in Court decreased for all types of complaints. The biggest decrease occurred for complaints received from members of the public about the conduct of their lawyers or those of opposing parties in their cases, for which there was a twenty-four percent decrease from 2014 to 2015 in the time from receipt of inquiry to filing in Court.



²³ Criminal conviction matters are excluded from the reportable actions included in this section. See footnote 10 for an explanation.

Table 5: Speed of Complaint Handling	2012	2013	2014	2015
<u>Complaints</u>				
Pendency at Closure by OCTC without filing				
Average	99	90	107	115
Median	51	45	54	52
Pendency at Filing by OCTC				
Average	300	286	402	305
Median	236	255	258	256
Pendency at Year End in OCTC				
Average	256	286	313	302
Median	111	123	140	104
Pendency at Closure by SBC				
Average	720	812	781	834
Median	626	761	708	710
Pendency at Year end in SBC				
Average	684	669	822	1,015
Median	591	538	666	869
<u>State Bar Initiated Inquiries</u>				
Pendency at Closure by OCTC without filing				
Average	169	118	163	145
Median	78	54	124	92
Pendency at Filing by OCTC				
Average	253	314	308	286
Median	230	251	259	227
Pendency at Year End in OCTC				
Average	332	342	337	273
Median	178	167	156	139
Pendency at Closure by SBC				
Average	888	712	637	660
Median	750	549	556	495
Pendency at Year end in SBC				
Average	632	668	680	725
Median	447	516	469	472
<u>Reportable Actions, Reported by Self</u>				
Pendency at Closure by OCTC without filing				
Average	165	205	264	213
Median	76	99	135	154
Pendency at Filing by OCTC				
Average	286	272	393	324
Median	168	240	371	279
Pendency at Year End in OCTC				
Average	257	361	209	208
Median	173	278	120	132

Table 5: Speed of Complaint Handling	2012	2013	2014	2015
Pendency at Closure by SBC				
Average	570	852	648	603
Median	294	1,002	624	560
Pendency at Year end in SBC				
Average	658	596	689	920
Median	762	557	636	848
<u>Reportable Actions, Reported by Others</u>				
Pendency at Closure by OCTC without filing				
Average	97	63	81	98
Median	79	38	52	76
Pendency at Filing by OCTC				
Average	314	308	403	388
Median	254	316	347	338
Pendency at Year End in OCTC				
Average	140	201	147	161
Median	63	104	57	76
Pendency at Closure by SBC				
Average	969	791	908	798
Median	863	648	806	687
Pendency at Year end in SBC				
Average	758	899	743	939
Median	595	734	624	798
<u>Probation Referrals</u>				
Pendency at Closure by OCTC without filing				
Average	327	213	340	200
Median	321	164	198	163
Pendency at Filing by OCTC				
Average	65	105	128	92
Median	55	72	91	59
Pendency at Year End in OCTC				
Average	156	196	141	237
Median	60	117	77	132
Pendency at Closure by SBC				
Average	525	504	533	601
Median	487	449	535	583
Pendency at Year end in SBC				
Average	376	460	503	658
Median	284	375	422	520
<u>Interim Suspensions and License Restrictions</u>				
Pendency at Closure by OCTC without filing				
Average	565	1,041	826	0
Median	458	1,041	997	0

Table 5: Speed of Complaint Handling	2012	2013	2014	2015
Pendency at Filing by OCTC				
Average	16	11	14	4
Median	1	9	4	0
Pendency at Year End in OCTC				
Average	687	966	0	0
Median	601	966	0	0
Pendency at Closure by SBC				
Average	89	159	128	112
Median	74	87	92	89
Pendency at Year end in SBC				
Average	122	208	79	10
Median	61	209	85	10

FORMAL DISCIPLINARY FILINGS AND OUTCOMES²⁴

Section 6086.15, subdivision (a)(6) The number, average pending times, and types of filed notices of disciplinary charges and formal disciplinary outcomes.

Formal filings in Court have decreased significantly with respect to both disciplinary charges and stipulations over the past couple of years, while the number of attorneys suspended and disbarred has increased. This disparity is due in part to the fact that OCTC may file charges against one attorney for multiple complaints. There were an estimated 2.1 charges per attorney in 2014, for example, and only 1.7 in 2015.

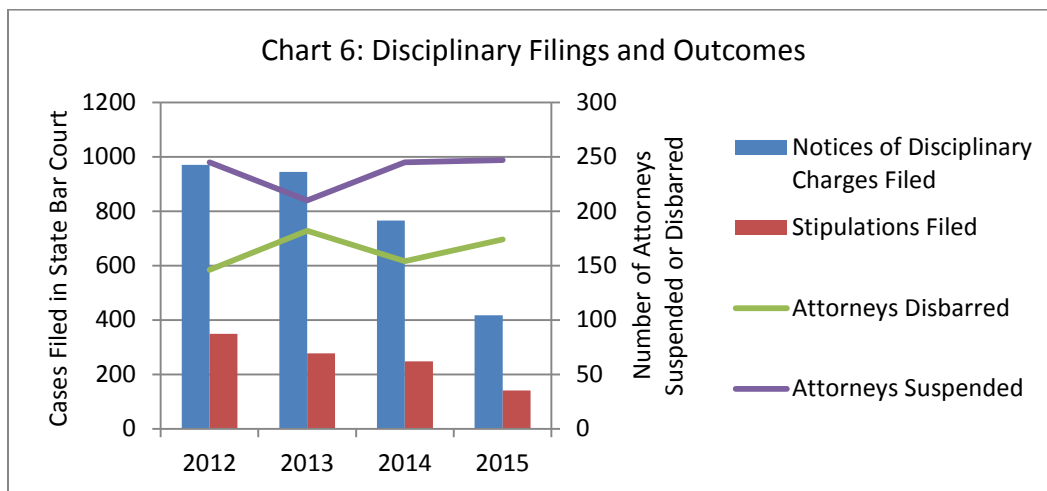


Table 6A: Formal Filings	2012	2013	2014	2015
<u>Notices of Disciplinary Charges</u>				
Number of Filings	970	944	765	417
Average Pendency at Filing	272	278	368	273
Median Pendency at Filing	219	248	257	241
<u>Stipulations to Facts and Discipline</u>				
Number of Filings	349	278	248	141
Average Pendency at Filing	284	264	331	330
Median Pendency at Filing	239	233	280	273
Table 6B: Formal Disciplinary Outcomes				
<u>Disbarments²⁵</u>				
Number of Cases	585	630	451	423
Average Pendency	813	880	836	754
Median Pendency	678	884	782	711
Number of Members Disbarred	146	182	154	174

²⁴ This section includes all formal disciplinary filings, including criminal conviction matters and reportable actions not included in other sections of this Report.

²⁵ Includes resignations with charges pending.

Table 6B: Formal Disciplinary Outcomes	2012	2013	2014	2015
<u>Suspensions</u>				
Number of Cases	973	501	621	521
Average Pendency	732	678	742	819
Median Pendency	635	575	618	600
Number of Members Suspended	245	210	245	247
<u>Public Reprovals</u>				
Number of Cases	40	47	46	46
Average Pendency	466	629	584	563
Median Pendency	375	447	454	423
Number of Members Publicly Reproved	28	36	40	36
<u>Private Reprovals</u>				
Number of Cases	63	23	26	40
Average Pendency	424	642	518	588
Median Pendency	338	461	451	553
Number of Members Privately Reproved	42	20	25	28

OTHER MATTERS AND SPECIFIED DEFINITIONS

Section 6086.15, subdivision (a)(7) The number, average pending times, and types of other matters, including petitions to terminate practice pursuant to section 6180 or 6190, interim suspensions and license restrictions pursuant to section 6007, motions to enforce a binding arbitration award, judgment, or agreement pursuant to subdivision (d) of section 6203, motions to revoke probation, letters of warning, private reprovls, admonitions, and agreements in lieu of discipline.²⁶

Table 7A: Other Matters	2012	2013	2014	2015
<u>Petitions to Terminate Practice pursuant to section 6180 or section 6190</u>				
Petitions Filed	6	2	5	7
Average Pendency at Filing	20	60	6	32
Median Pendency at Filing	14	0	1	7
Petitions Granted	6	2	5	5
Petitions Denied	0	0	0	2
Total Cases Disposed by Superior Court	6	2	5	7
Average Pendency At Year End	20	60	6	51
Median Pendency At Year End	14	0	1	22
Cases Remaining in Superior Court at Year End	0	0	0	0
Average Pendency At Year End	0	0	0	0
Median Pendency At Year End	0	0	0	0
<u>Interim Suspensions and Restrictions pursuant to section 6007</u>				
Cases Opened	14	7	16	5
Cases Re-Opened	0	0	0	0
Cases Closed Without Filing ²⁷	5	1	5	0
Average Pendency at Closure	565	1,041	826	0
Median Pendency at Closure	458	1,041	997	0
Cases Filed	14	7	15	5
Average Pendency at Filing ²⁸	16	11	14	4
Median Pendency at Filing	1	9	4	0
Cases Remaining in OCTC At Year End	5	4	0	0
Average Pendency At Year End	687	966	0	0
Median Pendency At Year End	601	966	0	0
Petitions Granted	11	9	12	8
Petitions Denied	<u>2</u>	<u>1</u>	<u>1</u>	<u>1</u>
Total Cases Disposed by State Bar Court	13	10	13	9

²⁶ The full text of sections 6180, 6190, 6007, and 6203 is provided in Appendix B.

²⁷ The long pendencies on the majority of these cases reflect the fact that the cases were suspended while OCTC pursued action against the attorney on related cases; the suspended cases were closed upon disposition of the related cases, which often resulted in disbarment.

²⁸ For these cases, the filing date reflects the date that OCTC filed the case in State Bar Court.

Table 7A: Other Matters	2012	2013	2014	2015
Average Pendency at Disposition	89	159	128	112
Median Pendency at Disposition	74	87	92	89
Cases Remaining in State Bar Court at Year End	6	3	5	1
Average Pendency At Year End	122	208	79	10
Median Pendency At Year End	61	209	85	10
<u>Motions to Enforce Fee Arbitration Award</u>				
Cases Opened	10	6	5	5
Petitions Granted	5	2	6	0
Petitions Denied	4	3	1	2
Total Cases Disposed by State Bar Court	9	5	7	2
Average Pendency at Disposition	66	90	94	87
Median Pendency at Disposition	68	92	65	60
Cases Remaining in State Bar Court at Year End	1	2	0	3
Average Pendency At Year End	34	117	0	30
Median Pendency At Year End	34	46	0	23
<u>Motions to Revoke Probation</u>				
Cases Opened	21	19	14	12
Petitions Granted	29	6	15	17
Petitions Denied	0	0	1	1
Total Cases Disposed by State Bar Court	29	6	16	18
Average Pendency at Disposition	184	270	217	217
Median Pendency at Disposition	177	180	180	193
Cases Remaining in State Bar Court at Year End	2	15	13	7
Average Pendency At Year End	185	114	153	231
Median Pendency At Year End	111	106	140	162

Table 7B: Specified Dispositions	2012	2013	2014	2015
<u>Admonitions</u>				
Cases	0	0	10	2
Average Pendency at Disposition	0	0	890	865
Median Pendency at Disposition	0	0	911	764
Members Admonished	0	0	2	2
<u>Agreements In Lieu of Discipline</u>				
Cases	27	22	54	50
Average Pendency at Disposition	290	247	234	249
Median Pendency at Disposition	221	249	229	202
Members Entering into Agreements	23	22	54	50
<u>Warning Letters</u>				
Cases	552	607	700	673
Average Pendency at Disposition	150	146	158	161

Table 7B: Specified Dispositions	2012	2013	2014	2015
Median Pendency at Disposition	109	122	144	144
Members Receiving Warning Letters	473	546	630	582
<u>Private Reprovals</u>				
Cases	63	23	26	40
Average Pendency at Disposition	424	642	518	588
Median Pendency at Disposition	338	461	451	553
Members Privately Reproved	42	20	25	28

UNAUTHORIZED PRACTICE OF LAW BY FORMER ATTORNEYS

Section 6086.15, subsection (a)(8) *The number, average pending times, and outcomes of complaints involving a State Bar member who has been disbarred or who has resigned, and is engaged in the unauthorized practice of law, including referrals to district attorneys, city attorneys, or other prosecuting authorities, or petitions to terminate practice pursuant to section 6180.*

In 2015, OCTC opened cases regarding twenty-nine reports of former attorneys engaged in the unauthorized practice of law; only six cases were opened in 2014. The average time from receipt of such complaints to closure was reduced from 284 days in 2014 to 132 days in 2015, a fifty-four percent reduction.

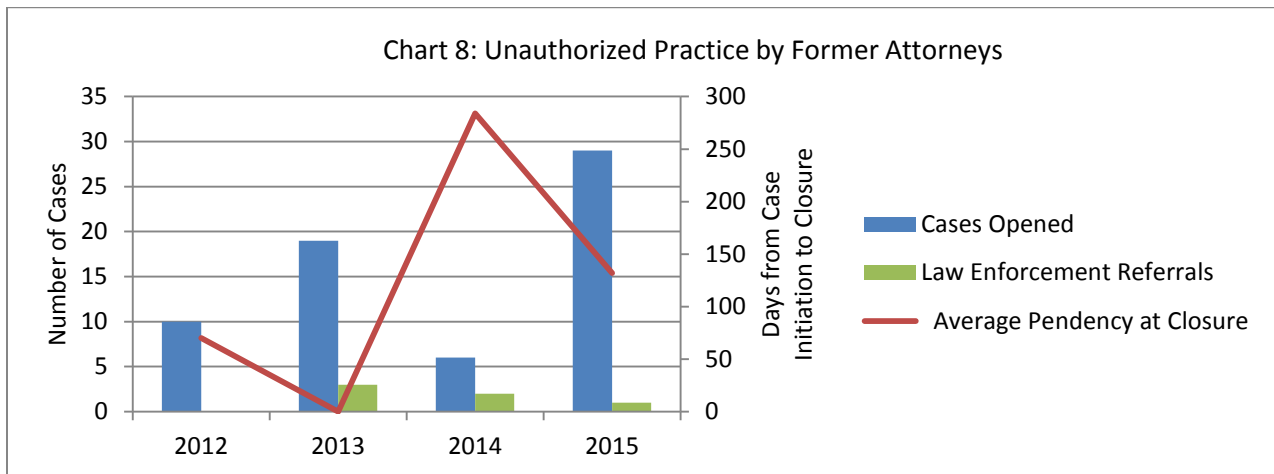


Table 8: UPL by Former Attorneys	2012	2013	2014	2015
Cases Opened ²⁹	10	19	6	29
Cases Closed Without Filing	8	0	29	24
Average Pendency at Closure	70	0	284	132
Median Pendency at Closure	58	0	228	126
Cases Filed in Superior Court	0	0	0	0
Average Pendency at Filing	0	0	0	0
Median Pendency at Filing	0	0	0	0
Cases Remaining in OCTC At Year End	7	23	3	8
Average Pendency at Year End	152	243	193	147
Median Pendency at Year End	179	197	195	106
Petitions Granted	0	0	0	0
Petitions Denied	0	0	0	0
Total Cases Disposed by Superior Court	0	0	0	0

²⁹ OCTC review found additional cases that were omitted due to data entry errors discovered after final data validation was completed for the 2015 Report. OCTC determined that 11 cases were opened in 2012 and 30 were opened in 2015.

Average Pendency at Disposition	0	0	0	0
Median Pendency at Disposition	0	0	0	0
Cases Remaining in Superior Court at Year End	0	0	0	0
Average Pendency at Year End	0	0	0	0
Median Pendency at Year End	0	0	0	0
Referrals to Law Enforcement	0	3	2	1

UNAUTHORIZED PRACTICE OF LAW BY NON-ATTORNEYS

Section 6086.15, subsection (a)(9) The number, average pending times, and outcomes of complaints against non-attorneys engaged in the unauthorized practice of law, including referrals to district attorneys, city attorneys, or other prosecuting authorities; petitions to terminate practice pursuant to section 6126.3; or referrals to prosecuting authorities or actions by the State Bar pursuant to section 6126.7.

In 2015, OCTC opened 581 cases based on reports regarding the practice of law by individuals who were never licensed as attorneys. This figure represents an increase of five percent compared to the 551 cases opened in 2014. While the average time from receipt of such complaints to closure increased by fifty-seven percent during that time period, the number of referrals to law enforcement increased from zero in 2014 to ten in 2015. Table 9 reflects data required by statute; Appendix E includes additional information about the unauthorized practice of law and immigration-related attorney complaints.

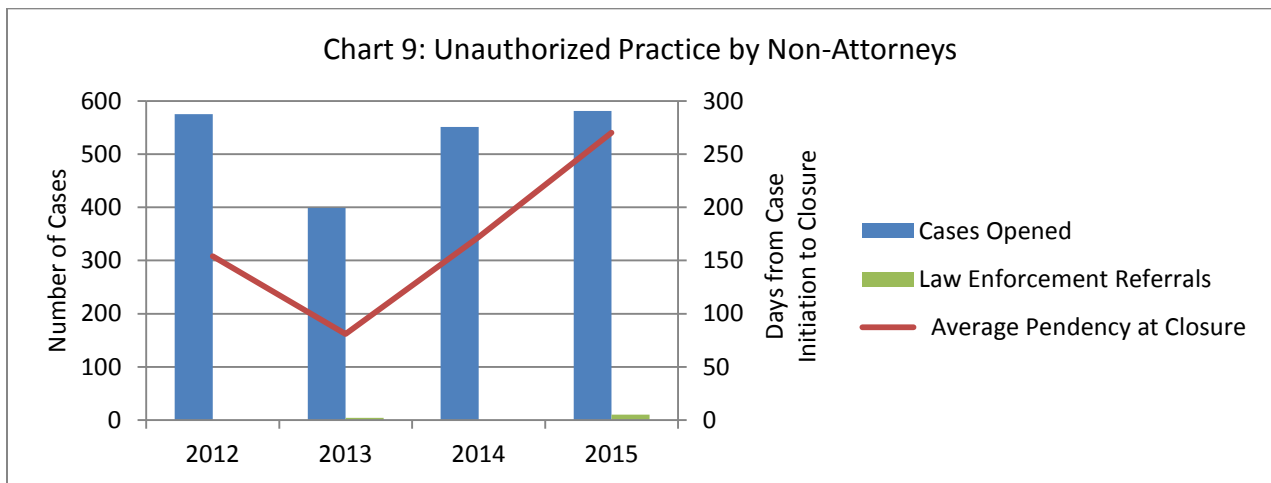


Table 9: UPL by Non-Attorneys	2012	2013	2014	2015
Cases Opened	575	399	551	581
Cases Closed Without Filing	710	369	214	654
Average Pendency at Closure	154	81	172	270
Median Pendency at Closure	107	69	79	252
Cases Filed in Superior Court ³⁰	0	1	0	1
Average Pendency at Filing	0	85	0	880
Median Pendency at Filing	0	85	0	880
Cases Remaining in OCTC At Year End	160	188	526	463
Average Pendency at Year End	260	370	263	351
Median Pendency at Year End	67	140	93	141
Petitions Granted	0	1	0	1

³⁰Petition filed in superior court, pursuant to section 6126.3, to assume the practice of a person holding himself or herself out as entitled to practice law without being an active member of the Bar.

Table 9: UPL by Non-Attorneys	2012	2013	2014	2015
Petitions Denied	1	0	0	0
Total Cases Disposed by Superior Court	1	1	0	1
Average Pendency at Disposition ³¹	2,201	85	0	880
Median Pendency at Disposition	2,201	85	0	880
Cases Remaining in Superior Court at Year End	0	0	0	0
Average Pendency at Year End	0	0	0	0
Median Pendency at Year End	0	0	0	0
Referrals to Law Enforcement	0	4	0	10

³¹The pendency in this case reflects an ongoing effort by OCTC and local law enforcement to address the unauthorized practice of law by a repeat offender. In 2008, OCTC successfully petitioned the Los Angeles Superior Court to assume jurisdiction over the offender's illegal law practice. Despite the 2008 assumption of his practice, OCTC received a new complaint about the offender's continuing unauthorized practice of law in late 2012. OCTC opened a new case and also referred the matter to local law enforcement for criminal investigation. The criminal investigation resulted in the filing of criminal charges in 2014 and a new assumption proceeding in March 2015.

CONDITION OF THE CLIENT SECURITY FUND

Section 6086.15, subsection (a)(10) A description of the condition of the Client Security Fund, including an accounting of payouts.

The Client Security Fund (CSF), established by Bar-sponsored legislation in 1972, represents one of the State Bar's major efforts to achieve its public protection goals. The CSF is designed to alleviate losses to legal consumers resulting from the dishonest conduct of California attorneys. The CSF Commission, appointed by the State Bar Board of Trustees, administers the CSF and makes decisions on applications for reimbursement according to CSF rules. The CSF is financed by an annual assessment added to attorney membership fees. This assessment is used only for purposes of paying the reimbursements and administering the CSF. The assessment is currently \$40.00 for active members and \$10.00 for inactive members.

The CSF can reimburse victims who have lost money or property due to theft, or an act equivalent to theft, committed by a lawyer acting in a professional capacity. As detailed in CSF rules, CSF can reimburse funds received by and wrongfully retained by a California lawyer. The maximum reimbursable amount for losses occurring after January 1, 2009, is \$100,000.

In 2009, the average yearly applications to the CSF tripled and remained well above the historic average through 2013. The increase was due to loan modification fraud schemes perpetuated by some California attorneys. The CSF had been surviving on an accumulated surplus that was exhausted in 2014. Although the number of new applications received in 2015 decreased to the more typical historic level of approximately 1,200, the CSF continues to review and process the large inventory of pending applications that resulted from the loan modification filing increase.

In 2015, CSF's revenue was \$7.7 million. As reflected in Table 10, the CSF paid out approximately \$6 million of this amount on 821 applications reflecting claims against 182 attorneys. The remaining budget was used for the administrative costs of the CSF and to maintain a reserve. The CSF's cash balance at the end of the year was \$2.2 million. At year end, there were 5,465 open CSF applications. Based on historical experience, the State Bar estimates that reimbursements related to these applications will total \$18 million. In March 2016, the Board of Trustees approved transfers from other funds to the CSF totaling \$2 million, enabling additional payouts in 2016, and bringing the total outstanding balance down to approximately \$16 million. At the current rate of CSF revenue, it will take nearly three years to pay down this balance alone, not accounting for additional claims that will be coming in on an ongoing basis.

The Bar estimates that, once the large inventory of loan modification applications are reimbursed, the estimated annual reimbursement amount for new applications being filed will be approximately \$7.3 million, or \$1.3 million in excess of available funding levels. Legislative approval for both a limited-term increase in the CSF assessment to address the loan modification reimbursement backlog, and an ongoing augmentation to address the structural CSF deficit, is needed.

Table 10: 2015 Client Security Fund Payments³²

Attorney	Number of CSF Claims Paid	Total Amount Paid
1	1	\$14,000
2	7	\$59,299
3	1	\$15,500
4	1	\$1,500
5	1	\$1,500
6	1	\$15,000
7	38	\$270,299
8	1	\$23,140
9	1	\$43,333
10	1	\$6,000
11	6	\$58,795
12	3	\$70,107
13	1	\$2,700
14	24	\$91,415
15	6	\$126,968
16	1	\$15,000
17	4	\$4,170
18	1	\$25,000
19	6	\$54,286
20	4	\$33,356
21	1	\$169,499
22	1	\$4,825
23	6	\$145,400
24	14	\$49,819
25	1	\$20,206
26	1	\$4,000
28	1	\$50,000
29	1	\$100,000
30	1	\$3,500
31	1	\$12,500
32	1	\$1,540
33	5	\$23,730
34	1	\$4,280
35	1	\$7,000
36	2	\$5,875
37	2	\$77,500
38	1	\$9,250
39	2	\$104,300

³² Attorney names are not provided, as CSF rules require confidentiality under most circumstances.

Attorney	Number of CSF Claims Paid	Total Amount Paid
40	1	\$34,977
41	2	\$5,545
42	2	\$10,300
43	1	\$8,250
44	1	\$2,200
45	1	\$23,000
46	2	\$4,150
47	1	\$1,500
48	1	\$100,000
49	3	\$9,700
50	3	\$16,508
51	1	\$3,000
52	9	\$334,946
53	6	\$15,037
54	2	\$4,743
55	1	\$1,000
56	3	\$29,200
57	1	\$95,000
58	1	\$2,848
59	1	\$23,455
60	2	\$50,000
61	1	\$32,160
62	1	\$4,333
63	3	\$23,078
64	1	\$1,892
65	26	\$96,850
66	3	\$10,198
67	2	\$44,814
68	1	\$12,200
69	2	\$6,000
70	3	\$5,260
71	1	\$2,000
72	2	\$5,200
73	2	\$2,124
74	2	\$745
75	4	\$10,925
76	3	\$90,947
77	4	\$29,500
78	5	\$50,527
79	2	\$6,854
80	1	\$50,000
81	1	\$9,850

Attorney	Number of CSF Claims Paid	Total Amount Paid
82	2	\$8,373
83	1	\$16,000
84	3	\$61,250
85	1	\$1,500
86	2	\$47,003
87	2	\$3,500
88	5	\$23,590
89	1	\$16,500
90	1	\$50,000
91	1	\$1,900
92	1	\$2,900
93	3	\$11,000
94	4	\$8,412
95	2	\$8,000
96	12	\$64,355
97	1	\$20,000
98	2	\$5,500
99	2	\$5,685
100	55	\$239,768
101	1	\$7,500
102	1	\$1,500
103	6	\$42,301
104	15	\$55,265
105	1	\$3,000
106	1	\$5,990
107	1	\$300
108	13	\$43,600
109	2	\$118,461
110	1	\$2,000
111	1	\$750
112	1	\$5,146
113	1	\$4,000
114	3	\$214,430
115	1	\$3,000
116	1	\$100,000
117	1	\$1,504
118	1	\$5,000
119	1	\$5,000
120	2	\$14,995
121	2	\$5,625
122	2	\$6,200
123	1	\$4,000

Attorney	Number of CSF Claims Paid	Total Amount Paid
124	2	\$4,795
125	1	\$3,437
126	5	\$14,592
127	1	\$50,000
128	3	\$7,870
129	32	\$56,050
130	1	\$56
131	4	\$24,995
132	1	\$20,000
133	1	\$3,500
134	4	\$16,475
135	2	\$123,025
136	2	\$4,500
137	1	\$2,500
138	1	\$3,179
139	8	\$46,346
140	3	\$5,450
141	1	\$5,000
142	3	\$11,735
143	2	\$14,850
144	1	\$1,200
145	1	\$6,000
146	1	\$1,500
147	2	\$10,985
148	2	\$7,670
149	4	\$19,600
150	1	\$1,500
151	2	\$17,175
152	1	\$5,000
153	1	\$3,000
154	5	\$34,174
155	59	\$193,812
156	1	\$7,500
157	1	\$2,500
158	1	\$500
159	1	\$3,525
160	1	\$1,500
161	1	\$1,900
162	8	\$30,245
163	11	\$213,840
164	1	\$6,276
165	1	\$2,770

Attorney	Number of CSF Claims Paid	Total Amount Paid
166	1	\$2,500
167	3	\$8,945
168	1	\$1,000
169	1	\$2,000
170	1	\$9,100
171	6	\$13,833
172	1	\$2,999
173	2	\$2,996
174	1	\$494
175	4	\$17,205
176	1	\$3,615
177	3	\$8,358
178	2	\$7,126
179	155	\$612,480
180	1	\$5,000
181	1	\$500
182	24	\$83,565
Grand Total³³	821	\$6,012,453

³³ Note that the Bar's accounting system reports total 2015 CSF payments of \$6,005,388, which reflects a discrepancy of \$7,065 (0.1%) from the total reported from the CSF Program; CSF program totals are provided in this table.

COST OF THE DISCIPLINE SYSTEM

Section 6086.15, subsection (a)(11) An accounting of the cost of the discipline system by function

Prior year Reports have effectively defined the discipline system as the Office of the Chief Trial Counsel, the Office of Probation, the Mandatory Fee Arbitration Program, the Office of Professional Competence and the Client Security Fund. Data on the 2015 costs of these programs is provided in the following tables:

Table 11A: Cost of the Discipline System

General Fund	2012	2013	2014	2015
Chief Trial Counsel	26,585,837	26,772,904	27,378,462	27,644,950
Probation	804,307	919,219	963,776	911,918
Mandatory Fee Arbitration	606,667	603,478	631,382	640,478
State Bar Court	6,860,154	7,108,017	7,155,103	7,648,436
Professional Competence	1,555,476	1,601,636	1,607,507	1,710,706
Allocated Support Services Costs	15,293,225	15,542,207	15,703,437	16,274,869
General Fund Total	51,705,666	52,547,460	53,439,667	54,831,357

Table 11B: Cost of the Client Security Fund

Client Security Fund	2012	2013	2014	2015
Program Administration	1,269,140	1,723,842	1,743,747	1,690,909
Grant Payments	6,368,899	10,714,529	8,552,566	5,350,083
Allocated Support Services Costs	515,918	580,355	684,923	704,695
Client Security Fund Totals	8,153,957	13,018,726	10,981,236	7,745,688

The State Bar is currently conducting a workforce planning effort for its discipline system; a related report will be submitted to the Legislature on May 15, 2016. For the purposes of workforce planning, the discipline system has been defined as the Office of the Chief Trial Counsel, State Bar Court, the Office of Probation, the Lawyer Assistance Program, the Client Security Fund, and Member Records and Compliance. The 2015 cost of these programs is as follows:

Table 11C: Cost of Program Included in Workforce Planning

General Fund	2015	Other Funds	2015
Chief Trial Counsel	27,644,950	Client Security Fund	7,040,992
Probation	911,918	Lawyer Assistance Program	1,159,706
Member Records and Compliance	2,357,951		
State Bar Court	7,648,436		
Allocated Support Services Costs	16,332,986	Allocated Support Services	1,148,206
General Fund Total	54,896,241	Other Fund Total	9,348,904

As noted in the Executive Summary, development of a statutory definition of the discipline system is an important component of ensuring consistent and accurate data and financial reporting going forward.

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GLOSSARY OF ATTORNEY DISCIPLINE REPORT TERMINOLOGY

The State Bar Act (section 6000 et seq.) and Rules of Procedure adopted by the Board of Trustees of the State Bar to govern proceedings in the State Bar Court include definitions of many technical terms used in the State Bar's discipline system. Definitions of some of those key terms, as well as definitions of data elements used in this Report, are presented here.

BACKLOG: Cases with Pendency in OCTC of more than 180 days on December 31. The backlog includes complaints, State Bar initiated inquiries, Probation referrals, reportable actions (excluding criminal conviction matters), and interim suspensions and restrictions. Excluded from the backlog, in addition to criminal conviction matters, are unauthorized practice of law cases, motions to enforce fee arbitration, and motions to revoke probation. Please see footnote 10 for a full discussion of the excluded case types.

CASE: An individual complaint, Office of Probation referral, State Bar initiated inquiry, reportable action, motion to enforce fee arbitration, motion to revoke probation, motion to terminate practice, or motion to impose interim suspension or license restrictions.

CASE INITIATION DATE:

- For *complaints*: the date on which the written complaint is received in the Intake Unit
- For *probation referrals*: the date on which the referral is received in the Intake Unit
- For *State Bar initiated inquiries*: the date on which the inquiry is requested by a manager, based on information received
- For *reportable actions*: the date on which the report is received in the Intake Unit
- For *motions to enforce fee arbitration*: the date on which the motion is filed in State Bar Court
- For *motions to revoke probation* : the date on which the motion is filed in State Bar Court
- For *petition to terminate practice*: the date on which the case is opened in the Intake Unit
- For *petition to impose interim suspension or license restrictions*: the date on which the case is opened in the Intake Unit

COMPLAINT: A written complaint submitted by a complaining witness to OCTC against a single attorney respondent. If a written complaint names multiple respondents, each respondent is counted as a separate complaint. A single written complaint signed by multiple complaining witnesses (e.g. a married couple) against a single respondent is counted as one complaint. Independently submitted written complaints against a single respondent are counted separately.

COURT CLOSING DATE: For cases filed in State Bar Court, the date the court records as the closing date of the case. For cases filed in Superior Court resulting in denial or dismissal of OCTC's petition, the date on which OCTC consequently closes the case.

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DISPOSITIONS (OCTC):

- *Closed with Non-Disciplinary Action:* Closed with a warning letter, direction letter, resource letter, other non-disciplinary letter, or agreement in lieu of discipline
- *Closed with Referral:* Closed upon referral to other processes or agencies, including mandatory fee arbitration, law enforcement, and alternative dispute resolution
- *Filed in State Bar Court:* Formal filing, including Notice of Disciplinary Charges, Stipulation to Facts and Discipline, or petition pursuant to section 6007
- *Filed in Superior Court:* Petition pursuant to section 6180, section 6190, or section 6126.3 filed in superior court.
- *Closed with No Action:* Closed by OCTC with no further action

DISPOSITIONS (STATE BAR COURT):

- *Discipline Imposed*³⁴: Disbarment, suspension, probation, reproof, revocation of probation, or extension of probation.
- *Closed with Non-Disciplinary Action:* Admonition or the granting of a petition pursuant to section 6007
- *Closed with No Action:* Closed with no action by the Court

DISPOSITIONS (SUPERIOR COURT):

- *Petition Granted:* Petition granted to assume a practice pursuant to section 6180, section 6190, or section 6126.3³⁵
- *Petition Denied/Dismissed:* Closed upon denial or dismissal by the court of petition to assume a practice pursuant to section 6180, section 6190, or section 6126.3

INITIAL FILING DATE: The date on which a case is formally filed in State Bar Court or Superior Court by OCTC, Probation, or the Office of Mandatory Fee Arbitration.

MOTION TO ENFORCE RESULT OF FEE ARBITRATION: A motion filed in State Bar Court by the State Bar's Mandatory Fee Arbitration Program to enforce the outcome of a binding fee arbitration.³⁶

MOTION TO REVOKE PROBATION: A motion filed by Probation in State Bar Court to revoke probation of a member under Probation supervision.³⁷

PROBATION REFERRAL: Notification from Probation to OCTC of possible misconduct on the part of a member under Probation supervision.

PENDENCY IN STATE BAR COURT: Number of days from the Initial Filing Date to the Court Closing Date.³⁸

³⁴ A case is disposed with "Discipline Imposed" only after a final order of the California Supreme Court imposing discipline becomes effective, or when State Bar Court issues a reproof.

³⁵ This is treated as the disposition of the case for the purposes of the Annual Discipline Report. However, the case technically remains open until the seized practice is fully resolved, which often takes years.

³⁶ OCTC plays no role in these proceedings.

³⁷ OCTC plays no role in these proceedings.

³⁸ Includes any appellate review and time taken to receive the final order from the Supreme Court, as well as any time during which proceedings are abated while a respondent is participating in the Alternative Discipline Program, which provides monitored support for attorneys receiving substance abuse treatment who have stipulated to certain facts in State Bar Court prior to entering the Program.

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PENDENCY IN SUPERIOR COURT: Number of days from the Case Initiation Date until the date the Superior Court ruled to either grant or deny the petition.

PENDENCY: number of days between the Case Initiation Date and a specified milestone. Note that Pendency is always calculated from the original Case Initiation Date, regardless of whether the case has been closed and reopened.

- *Pendency at Year End in OCTC:* for cases Pending in OCTC at year end, the number of days between the Case Initiation Date and December 31 of that year
- *Pendency at Year End in State Bar Court:* for cases Pending in State Bar Court at year end, the number of days between the Case Initiation Date and December 31 of that year
- *Pendency at OCTC Case Disposition:* the number of days between the Case Initiation Date and the date the case was either closed or filed in State Bar Court
- *Pendency at Closure:* for cases closed during a particular year, the number of days between the Case Initiation Date and the date the case was closed

PETITION TO IMPOSE INTERIM SUSPENSION OR LICENSE RESTRICTIONS: A petition filed by OCTC in State Bar Court pursuant to section 6007.

PETITION TO TERMINATE PRACTICE: A petition filed by OCTC in Superior Court to terminate the practice of an attorney, former attorney, or non-attorney pursuant to section 6180, section 6190, or section 6126.3.

REPORTABLE ACTION: A report of an event statutorily mandated to be reported to the State Bar:

- *Self-Reported:* Reports received from members regarding themselves pursuant to section 6068, subdivision (o) and section 6086.8, subdivision (c).
- *Other-Reported:* Reports received from specified mandated reporters pursuant to section 6086.7, section 6086.8, subdivisions (a) and (b), section 6091.1, section 6101, subdivision (b), and section 175.6.

STATE BAR INITIATED INQUIRY: An inquiry into possible misconduct of an attorney initiated by OCTC based on information other than a written complaint, Probation referral, or reportable action.

SUSPENSION: The procedure and grounds in State Bar Court to stay a disciplinary proceeding after the filing of disciplinary charges. In some circumstances where there are multiple complaints against a respondent, OCTC may suspend or “hold” the investigation of some of the complaints if it determines that prosecution of other complaints is likely to result in disbarment of the lawyer. Investigations of complaints *held* by OCTC are referred to collectively as suspended matters. Suspended matters pending more than six months from receipt without the filing of disciplinary charges are included in the backlog.

UNAUTHORIZED PRACTICE OF LAW (UPL): Active membership in the Bar is a requirement for practicing law in California. Bar Rules, as well as state law, provide authority to investigate UPL, seek civil penalties, and refer violations to law enforcement authority. These activities may be directed toward attorneys licensed in other states but not in California; suspended, disbarred, or otherwise inactive or former members of the Bar; and those who have never been licensed to practice law.

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BUSINESS AND PROFESSIONS CODE SECTIONS GOVERNING THE ATTORNEY DISCIPLINE REPORT

The principal statute governing the Annual Discipline Report is Business and Professions Code Section 6086.15. Following is the statute in its entirety:

BUSINESS AND PROFESSIONS CODE SECTION 6086.15

(a) The State Bar shall issue an Annual Discipline Report by April 30 of each year describing the performance and condition of the State Bar discipline system, including all matters that affect public protection. The report shall cover the previous calendar year and shall include accurate and complete descriptions of all of the following:

(1) The existing backlog of cases within the discipline system, including the number of complaints as of December 31 of the preceding year that were pending beyond six months after receipt without dismissal, admonition, or the filing of a notice of disciplinary charges. In addition to written complaints received by the State Bar, the backlog of cases shall include other matters opened in the Office of the Chief Trial Counsel and pending beyond six months after receipt without the filing of notices of disciplinary charges, or the initiation of other disciplinary proceedings in the State Bar Court for the purpose of seeking the imposition of discipline against a member of the State Bar, and tables showing time periods beyond six months and the number in each category and a discussion of the reason for the extended periods.

(2) The number of inquiries and complaints and their disposition.

(3) The number, average pending times, and types of matters self-reported by members of the State Bar pursuant to subdivision (o) of Section 6068 and subdivision (c) of Section 6086.8.

(4) The number, average pending times, and types of matters reported by other sources pursuant to Sections 6086.7, 6086.8, 6091.1, subdivision (b) of Section 6101, and Section 6175.6.

(5) The speed of complaint handling and dispositions by type, measured by the median and the average processing times.

(6) The number, average pending times, and types of filed notices of disciplinary charges and formal disciplinary outcomes.

(7) The number, average pending times, and types of other matters, including petitions to terminate practice pursuant to Section 6180 or 6190, interim suspensions and license restrictions pursuant to Section 6007, motions to enforce a binding arbitration award, judgment, or agreement pursuant to subdivision (d) of Section 6203, motions to revoke probation, letters of warning, private reprovals, admonitions, and agreements in lieu of discipline.

(8) The number, average pending times, and outcomes of complaints involving a State Bar member who has been disbarred or who has resigned, and is engaged in the unauthorized practice of law, including referrals to district attorneys, city attorneys, or other prosecuting authorities, or petitions to terminate practice pursuant to Section 6180.

(9) The number, average pending times, and outcomes of complaints against non-attorneys engaged in the unauthorized practice of law, including referrals to district attorneys, city attorneys, or other prosecuting authorities; petitions to terminate practice pursuant to Section 6126.3; or referrals to prosecuting authorities or actions by the State Bar pursuant to Section 6126.7.

(10) A description of the condition of the Client Security Fund, including an accounting of payouts.

(11) An accounting of the cost of the discipline system by function.

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(b) The Annual Discipline Report shall include statistical information presented in a consistent manner for year-to-year comparison and shall compare the information required under subdivision (a) to similar information for the previous three years.

(c) The Annual Discipline Report shall be presented to the Chief Justice of California, to the Governor, to the Speaker of the Assembly, to the President pro Tempore of the Senate, and to the Assembly and Senate Judiciary Committees, for their consideration and shall be considered a public document.

Business and Professions Code Section 6068.15 contains internal references to other sections of the Business and Professions Code, which specify the data that the State Bar is required to report on an annual basis. Those code sections follow below, organized according to the data tables that report the required information:

TABLES 3 AND 4: REPORTABLE ACTIONS

BUSINESS AND PROFESSIONS CODE SECTION 6068

It is the duty of an attorney to do all of the following:

- (a) To support the Constitution and laws of the United States and of this state.
- (b) To maintain the respect due to the courts of justice and judicial officers.
- (c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.
- (d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.
- (e) (1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.
(2) Notwithstanding paragraph (1), an attorney may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.
- (f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.
- (g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.
- (h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.
- (i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.
- (j) To comply with the requirements of Section 6002.1.

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(k) To comply with all conditions attached to any disciplinary probation, including a probation imposed with the concurrence of the attorney.

(l) To keep all agreements made in lieu of disciplinary prosecution with the agency charged with attorney discipline.

(m) To respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in matters with regard to which the attorney has agreed to provide legal services.

(n) To provide copies to the client of certain documents under time limits and as prescribed in a rule of professional conduct which the board shall adopt.

(o) To report to the agency charged with attorney discipline, in writing, within 30 days of the time the attorney has knowledge of any of the following:

(1) The filing of three or more lawsuits in a 12 month period against the attorney for malpractice or other wrongful conduct committed in a professional capacity.

(2) The entry of judgment against the attorney in a civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity.

(3) The imposition of judicial sanctions against the attorney, except for sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).

(4) The bringing of an indictment or information charging a felony against the attorney.

(5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of a felony, or a misdemeanor committed in the course of the practice of law, or in a manner in which a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of that type.

(6) The imposition of discipline against the attorney by a professional or occupational disciplinary agency or licensing board, whether in California or elsewhere.

(7) Reversal of judgment in a proceeding based in whole or in part upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.

(8) As used in this subdivision, "against the attorney" includes claims and proceedings against any firm of attorneys for the practice of law in which the attorney was a partner at the time of the conduct complained of and any law corporation in which the attorney was a shareholder at the time of the conduct complained of unless the matter has to the attorney's knowledge already been reported by the law firm or corporation.

(9) The State Bar may develop a prescribed form for the making of reports required by this section, usage of which it may require by rule or regulation.

(10) This subdivision is only intended to provide that the failure to report as required herein may serve as a basis of discipline.

BUSINESS AND PROFESSIONS CODE SECTION 6086.8

(a) Within 20 days after a judgment by a court of this state that a member of the State Bar of California is liable for any damages resulting in a judgment against the attorney in any civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity, the court which rendered the judgment shall report that fact in writing to the State Bar of California.

(b) Every claim or action for damages against a member of the State Bar of California for fraud, misrepresentation, breach of fiduciary duty, or negligence committed in a professional capacity shall be reported to the State Bar of California within 30 days of receipt by the admitted insurer

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or licensed surplus brokers providing professional liability insurance to that member of the State Bar.

(c) An attorney who does not possess professional liability insurance shall send a complete written report to the State Bar as to any settlement, judgment, or arbitration award described in subdivision (b), in the manner specified in that subdivision.

BUSINESS AND PROFESSIONS CODE SECTION 6086.7

(a) A court shall notify the State Bar of any of the following:

(1) A final order of contempt imposed against an attorney that may involve grounds warranting discipline under this chapter. The court entering the final order shall transmit to the State Bar a copy of the relevant minutes, final order, and transcript, if one exists.

(2) Whenever a modification or reversal of a judgment in a judicial proceeding is based in whole or in part on the misconduct, incompetent representation, or willful misrepresentation of an attorney.

(3) The imposition of any judicial sanctions against an attorney, except sanctions for failure to make discovery or monetary sanctions of less than one thousand dollars (\$1,000).

(4) The imposition of any civil penalty upon an attorney pursuant to Section 8620 of the Family Code.

(5) A violation described in paragraph (1) of subdivision (a) of Section 1424.5 of the Penal Code by a prosecuting attorney, if the court finds that the prosecuting attorney acted in bad faith and the impact of the violation contributed to a guilty verdict, guilty or nolo contendere plea, or, if identified before conclusion of trial, seriously limited the ability of a defendant to present a defense.

(b) In the event of a notification made under subdivision (a) the court shall also notify the attorney involved that the matter has been referred to the State Bar.

(c) The State Bar shall investigate any matter reported under this section as to the appropriateness of initiating disciplinary action against the attorney.

BUSINESS AND PROFESSIONS CODE SECTION 6091.1

(a) The Legislature finds that overdrafts and misappropriations from attorney trust accounts are serious problems, and determines that it is in the public interest to ensure prompt detection and investigation of instances involving overdrafts and misappropriations from attorney trust accounts.

A financial institution, including any branch, which is a depository for attorney trust accounts under subdivision (a) or (b) of Section 6211, shall report to the State Bar in the event any properly payable instrument is presented against an attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored.

(b) All reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and shall include a copy of the dishonored instrument, if such a copy is normally provided to depositors.

(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby. These reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

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(c) Every attorney practicing or admitted to practice in this state shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements of this section.

(d) Nothing in this section shall preclude a financial institution from charging an attorney or law firm for the reasonable cost of producing the reports and records required by subdivisions (a) and (b).

BUSINESS AND PROFESSIONS CODE SECTION 6101

(a) Conviction of a felony or misdemeanor, involving moral turpitude, constitutes a cause for disbarment or suspension.

In any proceeding, whether under this article or otherwise, to disbar or suspend an attorney on account of that conviction, the record of conviction shall be conclusive evidence of guilt of the crime of which he or she has been convicted.

(b) The district attorney, city attorney, or other prosecuting agency shall notify the Office of the State Bar of California of the pendency of an action against an attorney charging a felony or misdemeanor immediately upon obtaining information that the defendant is an attorney. The notice shall identify the attorney and describe the crimes charged and the alleged facts. The prosecuting agency shall also notify the clerk of the court in which the action is pending that the defendant is an attorney, and the clerk shall record prominently in the file that the defendant is an attorney.

(c) The clerk of the court in which an attorney is convicted of a crime shall, within 48 hours after the conviction, transmit a certified copy of the record of conviction to the Office of the State Bar. Within five days of receipt, the Office of the State Bar shall transmit the record of any conviction which involves or may involve moral turpitude to the Supreme Court with such other records and information as may be appropriate to establish the Supreme Court's jurisdiction. The State Bar of California may procure and transmit the record of conviction to the Supreme Court when the clerk has not done so or when the conviction was had in a court other than a court of this state

(d) The proceedings to disbar or suspend an attorney on account of such a conviction shall be undertaken by the Supreme Court pursuant to the procedure provided in this section and Section 6102, upon the receipt of the certified copy of the record of conviction.

(e) A plea or verdict of guilty, an acceptance of a nolo contendere plea, or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of those sections.

BUSINESS AND PROFESSIONS CODE SECTION 6175.6

§6175

As used in this article, the following definitions apply:

(a) "Lawyer" means a member of the State Bar or a person who is admitted and in good standing and eligible to practice before the bar of any United States court or the highest court of the District of Columbia or any state, territory, or insular possession of the United States, or licensed to practice law in, or is admitted in good standing and eligible to practice before the bar of the highest court of, a foreign country or any political subdivision thereof, and includes any agent of the lawyer or law firm or law corporation doing business in the state.

(b) "Client" means a person who has, within the three years preceding the sale of financial products by a lawyer to that person, employed that lawyer for legal services. The settlor and trustee of a trust shall be considered one person.

(c) "Elder" and "dependent elder" shall have the meaning as defined in Chapter 11 (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code.

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(d) “Financial products” means long-term care insurance, life insurance, and annuities governed by the Insurance Code, or its successors.

(e) “Sell” means to act as a broker for a commission.

§6175.3

A lawyer, while acting as a fiduciary, may sell financial products to a client who is an elder or dependent adult with whom the lawyer has or has had, within the preceding three years, an attorney client relationship, if the transaction or acquisition and its terms are fair and reasonable to the client, and if the lawyer provides that client with a disclosure that satisfies all of the following conditions:

(a) The disclosure is in writing and is clear and conspicuous. The disclosure shall be a separate document, appropriately entitled, in 12point print with one inch of space on all borders.

(b) The disclosure, in a manner that should reasonably have been understood by that client, is signed by the client, or the client’s conservator, guardian, or agent under a valid durable power of attorney.

(c) The disclosure states that the lawyer shall receive a commission and sets forth the amount of the commission and the actual percentage rate of the commission, if any. If the actual amount of the commission cannot be ascertained at the outset of the transaction, the disclosure shall include the actual percentage rate of the commission or the alternate basis upon which the commission will be computed, including an example of how the commission would be calculated.

(d) The disclosure identifies the source of the commission and the relationship between the source of the commission and the person receiving the commission.

(e) The disclosure is presented to the client at or prior to the time the recommendation of the financial product is made.

(f) The disclosure advises the client that he or she may obtain independent advice regarding the purchase of the financial product and will be given a reasonable opportunity to seek that advice.

(g) The disclosure contains a statement that the financial product may be returned to the issuing company within 30 days of receipt by the client for a refund as set forth in Section 10127.10 of the Insurance Code.

(h) The disclosure contains a statement that if the purchase of the financial product is for the purposes of MediCal planning, the client has been advised of other appropriate alternatives, including spend down strategies, and of the possibility of obtaining a fair hearing or obtaining a court order.

§6175.4

(a) A client who suffers any damage as the result of a violation of this article by any lawyer may bring an action against that person to recover or obtain one or more of the following remedies:

(1) Actual damages, but in no case shall the total award of damages in a class action be less than five thousand dollars (\$5,000).

(2) An order enjoining the violation.

(3) Restitution of property.

(4) Punitive damages.

(5) Any other relief that the court deems proper.

(b) A client may seek and be awarded, in addition to the remedies specified in subdivision (a), an amount not to exceed ten thousand dollars (\$10,000) where the trier of fact (1) finds that the client has suffered substantial physical, emotional, or economic damage resulting from the defendant’s conduct, (2) makes an affirmative finding in regard to one or more of the factors set

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forth in subdivision (b) of Section 3345 of the Civil Code, and (3) finds that an additional award is appropriate. Judgment in a class action may award each class member the additional award where the trier of fact has made the foregoing findings.

§6175.5

A violation of this article by a member shall be cause for discipline by the State Bar.

§6175.6

The court shall report the name, address, and professional license number of any person found in violation of this article to the appropriate professional licensing agencies for review and possible disciplinary action.

TABLES 7A AND 7B: OTHER MATTERS

BUSINESS AND PROFESSIONS CODE SECTION 6180

When an attorney engaged in law practice in this state dies, resigns, becomes an inactive member of the State Bar, is disbarred, or is suspended from the active practice of law and is required by the order of suspension to give notice of the suspension, notice of cessation of law practice shall be given and the courts of this state shall have jurisdiction, as provided in this article.

BUSINESS AND PROFESSIONS CODE SECTION 6190

The courts of the state shall have the jurisdiction as provided in this article when an attorney engaged in the practice of law in this state has, for any reason, including but not limited to excessive use of alcohol or drugs, physical or mental illness, or other infirmity or other cause, become incapable of devoting the time and attention to, and providing the quality of service for, his or her law practice which is necessary to protect the interest of a client if there is an unfinished client matter for which no other active member of the State Bar, with the consent of the client, has agreed to assume responsibility.

BUSINESS AND PROFESSIONS CODE SECTION 6007

(a) When a member requires involuntary treatment pursuant to Article 6 (commencing with Section 5300) of Chapter 2 of Division 5 of, or Part 2 (commencing with Section 6250) of Division 6 of the Welfare and Institutions Code, or when under an order pursuant to Section 3051, 3106.5, or 3152 of the Welfare and Institutions Code he or she has been placed in or returned to inpatient status at the California Rehabilitation Center or its branches, or when he or she has been determined insane or mentally incompetent and is confined for treatment or placed on outpatient status pursuant to the Penal Code, or on account of his or her mental condition a guardian or conservator, for his or her estate or person or both, has been appointed, the Board of Trustees or an officer of the State Bar shall enroll the member as an inactive member.

The clerk of any court making an order containing any of the determinations or adjudications referred to in the immediately preceding paragraph shall send a certified copy of that order to the State Bar at the same time that the order is entered.

The clerk of any court with which is filed a notice of certification for intensive treatment pursuant to Article 4 (commencing with Section 5250) of Chapter 2 of Division 5 of the Welfare and Institutions Code, upon receipt of the notice, shall transmit a certified copy of it to the State Bar.

The State Bar may procure a certified copy of any determination, order, adjudication, appointment, or notice when the clerk concerned has failed to transmit one or when the proceeding was had in a court other than a court of this state.

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In the case of an enrollment pursuant to this subdivision, the State Bar shall terminate the enrollment when the member has had the fact of his or her restoration to capacity judicially determined, upon the member's release from inpatient status at the California Rehabilitation Center or its branches pursuant to Section 3053, 3109, or 3151 of the Welfare and Institutions Code, or upon the member's unconditional release from the medical facility pursuant to Section 5304 or 5305 of the Welfare and Institutions Code; and on payment of all fees required.

When a member is placed in, returned to, or released from inpatient status at the California Rehabilitation Center or its branches, or discharged from the narcotics treatment program, the Director of Corrections or his or her designee shall transmit to the State Bar a certified notice attesting to that fact.

(b) The board shall also enroll a member of the State Bar as an inactive member in each of the following cases:

(1) A member asserts a claim of insanity or mental incompetence in any pending action or proceeding, alleging his or her inability to understand the nature of the action or proceeding or inability to assist counsel in representation of the member.

(2) The court makes an order assuming jurisdiction over the member's law practice, pursuant to Section 6180.5 or 6190.3.

(3) After notice and opportunity to be heard before the board or a committee, the board finds that the member, because of mental infirmity or illness, or because of the habitual use of intoxicants or drugs, is (i) unable or habitually fails to perform his or her duties or undertakings competently, or (ii) unable to practice law without substantial threat of harm to the interests of his or her clients or the public. No proceeding pursuant to this paragraph shall be instituted unless the board or a committee finds, after preliminary investigation, or during the course of a disciplinary proceeding, that probable cause exists therefor. The determination of probable cause is administrative in character and no notice or hearing is required.

In the case of an enrollment pursuant to this subdivision, the board shall terminate the enrollment upon proof that the facts found as to the member's disability no longer exist and on payment of all fees required.

(c) (1) The board may order the involuntary inactive enrollment of an attorney upon a finding that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or to the public or upon a finding based on all the available evidence, including affidavits, that the attorney has not complied with Section 6002.1 and cannot be located after reasonable investigation.

(2) In order to find that the attorney's conduct poses a substantial threat of harm to the interests of the attorney's clients or the public pursuant to this subdivision, each of the following factors shall be found, based on all the available evidence, including affidavits:

(A) The attorney has caused or is causing substantial harm to the attorney's clients or the public.

(B) The attorney's clients or the public are likely to suffer greater injury from the denial of the involuntary inactive enrollment than the attorney is likely to suffer if it is granted, or there is a reasonable likelihood that the harm will reoccur or continue. Where the evidence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shall shift to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue.

(C) There is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter.

(3) In the case of an enrollment under this subdivision, the underlying matter shall proceed on an expedited basis.

APPENDIX B

(4) The board shall order the involuntary inactive enrollment of an attorney upon the filing of a recommendation of disbarment after hearing or default. For purposes of this section, that attorney shall be placed on involuntary inactive enrollment regardless of the membership status of the attorney at the time.

(5) The board shall formulate and adopt rules of procedure to implement this subdivision.

In the case of an enrollment pursuant to this subdivision, the board shall terminate the involuntary inactive enrollment upon proof that the attorney's conduct no longer poses a substantial threat of harm to the interests of the attorney's clients or the public or where an attorney who could not be located proves compliance with Section 6002.1.

(d) (1) The board may order the involuntary inactive enrollment of an attorney for violation of probation upon the occurrence of all of the following:

(A) The attorney is under a suspension order any portion of which has been stayed during a period of probation.

(B) The board finds that probation has been violated.

(C) The board recommends to the court that the attorney receive an actual suspension on account of the probation violation or other disciplinary matter.

(2) The board shall terminate an enrollment under this subdivision upon expiration of a period equal to the period of stayed suspension in the probation matter, or until the court makes an order regarding the recommended actual suspension in the probation matter, whichever occurs first.

(3) If the court orders a period of actual suspension in the probation matter, any period of involuntary inactive enrollment pursuant to this subdivision shall be credited against the period of actual suspension ordered.

(e) (1) The board shall order the involuntary, inactive enrollment of a member whose default has been entered pursuant to the State Bar Rules of Procedure if both of the following conditions are met:

(A) The notice was duly served pursuant to subdivision (c) of Section 6002.1.

(B) The notice contained the following language at or near the beginning of the notice, in capital letters:

IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INVOLUNTARY INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.

(2) The board shall terminate the involuntary inactive enrollment of a member under this subdivision when the member's default is set aside on motion timely made under the State Bar Rules of Procedure or the disciplinary proceedings are completed.

(3) The enrollment under this subdivision is administrative in character and no hearing is required.

(4) Upon the involuntary inactive enrollment of a member under this subdivision, the notice required by subdivision (b) of Section 6092.5 shall be promptly given.

(5) The board may delegate its authority under this subdivision to the presiding referee or presiding judge of the State Bar Court or his or her designee.

APPENDIX B

(f) The pendency or determination of a proceeding or investigation provided for by this section shall not abate or terminate a disciplinary investigation or proceeding except as required by the facts and law in a particular case.

(g) No membership fees shall accrue against the member during the period he or she is enrolled as an inactive member pursuant to this section.

(h) The board may order a full range of interim remedies or final discipline short of involuntary inactive enrollment, including, but not limited to, conditions of probation following final discipline, or directly ordered interim remedies, to restrict or supervise an attorney's practice of law, as well as proceedings under subdivision (a), (b), (c), or (d), or under Section 6102 or 6190. They may include restrictions as to scope of practice, monetary accounting procedures, review of performance by probation or other monitors appointed by the board, or such other measures as may be determined, after hearing, to protect present and future clients from likely substantial harm. These restrictions may be imposed upon a showing as provided in subdivision (c), except that where license restriction is proposed, the showing required of the State Bar under the factors described in subparagraph (B) of paragraph (2) of subdivision (c) need not be made.

BUSINESS AND PROFESSIONS CODE SECTION 6203

(a) The award shall be in writing and signed by the arbitrators concurring therein. It shall include a determination of all the questions submitted to the arbitrators, the decision of which is necessary in order to determine the controversy. The award shall not include any award to either party for costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding, notwithstanding any contract between the parties providing for such an award or costs or attorney's fees. However, the filing fee paid may be allocated between the parties by the arbitrators. This section shall not preclude an award of costs or attorney's fees to either party by a court pursuant to subdivision (c) of this section or of subdivision (d) of Section 6204. The State Bar, or the local bar association delegated by the State Bar to conduct the arbitration, shall deliver to each of the parties with the award, an original declaration of service of the award.

Evidence relating to claims of malpractice and professional misconduct, shall be admissible only to the extent that those claims bear upon the fees, costs, or both, to which the attorney is entitled. The arbitrators shall not award affirmative relief, in the form of damages or offset or otherwise, for injuries underlying the claim. Nothing in this section shall be construed to prevent the arbitrators from awarding the client a refund of unearned fees, costs, or both previously paid to the attorney.

(b) Even if the parties to the arbitration have not agreed in writing to be bound, the arbitration award shall become binding upon the passage of 30 days after service of notice of the award, unless a party has, within the 30 days, sought a trial after arbitration pursuant to Section 6204. If an action has previously been filed in any court, any petition to confirm, correct, or vacate the award shall be to the court in which the action is pending, and may be served by mail on any party who has appeared, as provided in Chapter 4 (commencing with Section 1003) of Title 14 of Part 2 of the Code of Civil Procedure; otherwise it shall be in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure. If no action is pending in any court, the award may be confirmed, corrected, or vacated by petition to the court having jurisdiction over the amount of the arbitration award, but otherwise in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

(c) Neither party to the arbitration may recover costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding with the exception of the filing fee paid pursuant to subdivision (a) of this section. However, a court confirming, correcting, or vacating an award under this section may award to the prevailing party reasonable fees and costs incurred in obtaining confirmation, correction, or vacation of the award including, if applicable, fees and

APPENDIX B

costs on appeal. The party obtaining judgment confirming, correcting, or vacating the award shall be the prevailing party except that, without regard to consideration of who the prevailing party may be, if a party did not appear at the arbitration hearing in the manner provided by the rules adopted by the board of trustees, that party shall not be entitled to attorney's fees or costs upon confirmation, correction, or vacation of the award.

(d) (1) In any matter arbitrated under this article in which the award is binding or has become binding by operation of law or has become a judgment either after confirmation under subdivision (c) or after a trial after arbitration under Section 6204, or in any matter mediated under this article, if: (A) the award, judgment, or agreement reached after mediation includes a refund of fees or costs, or both, to the client and (B) the attorney has not complied with that award, judgment, or agreement the State Bar shall enforce the award, judgment, or agreement by placing the attorney on involuntary inactive status until the refund has been paid.

(2) The State Bar shall provide for an administrative procedure to determine whether an award, judgment, or agreement should be enforced pursuant to this subdivision. An award, judgment, or agreement shall be so enforced if:

(A) The State Bar shows that the attorney has failed to comply with a binding fee arbitration award, judgment, or agreement rendered pursuant to this article.

(B) The attorney has not proposed a payment plan acceptable to the client or the State Bar.

However, the award, judgment, or agreement shall not be so enforced if the attorney has demonstrated that he or she (i) is not personally responsible for making or ensuring payment of the refund, or (ii) is unable to pay the refund.

(3) An attorney who has failed to comply with a binding award, judgment, or agreement shall pay administrative penalties or reasonable costs, or both, as directed by the State Bar. Penalties imposed shall not exceed 20 percent of the amount to be refunded to the client or one thousand dollars (\$1,000), whichever is greater. Any penalties or costs, or both, that are not paid shall be added to the membership fee of the attorney for the next calendar year.

(4) The board shall terminate the inactive enrollment upon proof that the attorney has complied with the award, judgment, or agreement and upon payment of any costs or penalties, or both, assessed as a result of the attorney's failure to comply.

(5) A request for enforcement under this subdivision shall be made within four years from the date (A) the arbitration award was mailed, (B) the judgment was entered, or (C) the date the agreement was signed. In an arbitrated matter, however, in no event shall a request be made prior to 100 days from the date of the service of a signed copy of the award. In cases where the award is appealed, a request shall not be made prior to 100 days from the date the award has become final as set forth in this section.

TABLE 9: UNAUTHORIZED PRACTICE OF LAW BY NON-ATTORNEYS

BUSINESS AND PROFESSIONS CODE SECTION 6126.3

(a) In addition to any criminal penalties pursuant to Section 6126 or to any contempt proceedings pursuant to Section 6127, the courts of the state shall have the jurisdiction provided in this section when a person advertises or holds himself or herself out as practicing or entitled to practice law, or otherwise practices law, without being an active member of the State Bar or otherwise authorized pursuant to statute or court rule to practice law in this state at the time of doing so.

(b) The State Bar, or the superior court on its own motion, may make application to the superior court for the county where the person described in subdivision (a) maintains or more recently has maintained his or her principal office for the practice of law or where he or she resides, for

APPENDIX B

assumption by the court of jurisdiction over the practice to the extent provided in this section. In any proceeding under this section, the State Bar shall be permitted to intervene and to assume primary responsibility for conducting the action.

(c) An application made pursuant to subdivision (b) shall be verified, and shall state facts showing all of the following:

(1) Probable cause to believe that the facts set forth in subdivision (a) of Section 6126 have occurred.

(2) The interest of the applicant.

(3) Probable cause to believe that the interests of a client or of an interested person or entity will be prejudiced if the proceeding is not maintained.

(d) The application shall be set for hearing, and an order to show cause shall be issued directing the person to show cause why the court should not assume jurisdiction over the practice as provided in this section. A copy of the application and order to show cause shall be served upon the person by personal delivery or, as an alternate method of service, by certified or registered mail, return receipt requested, addressed to the person either at the address at which he or she maintains, or more recently has maintained, his or her principal office or at the address where he or she resides. Service is complete at the time of mailing, but any prescribed period of notice and any right or duty to do any act or make any response within that prescribed period or on a date certain after notice is served by mail shall be extended five days if the place of address is within the State of California, 10 days if the place of address is outside the State of California but within the United States, and 20 days if the place of address is outside the United States. If the State Bar is not the applicant, copies shall also be served upon the Office of the Chief Trial Counsel of the State Bar in similar manner at the time of service on the person who is the subject of the application. The court may prescribe additional or alternative methods of service of the application and order to show cause, and may prescribe methods of notifying and serving notices and process upon other persons and entities in cases not specifically provided herein.

(e) If the court finds that the facts set forth in subdivision (a) of Section 6126 have occurred and that the interests of a client or an interested person or entity will be prejudiced if the proceeding provided herein is not maintained, the court may make an order assuming jurisdiction over the person's practice pursuant to this section. If the person to whom the order to show cause is directed does not appear, the court may make its order upon the verified application or upon such proof as it may require. Thereupon, the court shall appoint one or more active members of the State Bar to act under its direction to mail a notice of cessation of practice, pursuant to subdivision (g), and may order those appointed attorneys to do one or more of the following:

(1) Examine the files and records of the practice and obtain information as to any pending matters that may require attention.

(2) Notify persons and entities who appear to be clients of the person of the occurrence of the event or events stated in subdivision (a) of Section 6126, and inform them that it may be in their best interest to obtain other legal counsel.

(3) Apply for an extension of time pending employment of legal counsel by the client.

(4) With the consent of the client, file notices, motions, and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained.

(5) Give notice to the depositor and appropriate persons and entities who may be affected, other than clients, of the occurrence of the event or events.

(6) Arrange for the surrender or delivery of clients' papers or property.

(7) Arrange for the appointment of a receiver, where applicable, to take possession and control of any and all bank accounts relating to the affected person's practice.

APPENDIX B

(8) Do any other acts that the court may direct to carry out the purposes of this section.

The court shall have jurisdiction over the files and records and over the practice of the affected person for the limited purposes of this section, and may make all orders necessary or appropriate to exercise this jurisdiction. The court shall provide a copy of any order issued pursuant to this section to the Office of the Chief Trial Counsel of the State Bar.

(f) Anyone examining the files and records of the practice of the person described in subdivision (a) shall observe any lawyer-client privilege under Sections 950 and 952 of the Evidence Code and shall make disclosure only to the extent necessary to carry out the purposes of this section. That disclosure shall be a disclosure that is reasonably necessary for the accomplishment of the purpose for which the person described in subdivision (a) was consulted. The appointment of a member of the State Bar pursuant to this section shall not affect the lawyer-client privilege, which privilege shall apply to communications by or to the appointed members to the same extent as it would have applied to communications by or to the person described in subdivision (a).

(g) The notice of cessation of law practice shall contain any information that may be required by the court, including, but not limited to, the finding by the court that the facts set forth in subdivision (a) of Section 6126 have occurred and that the court has assumed jurisdiction of the practice. The notice shall be mailed to all clients, to opposing counsel, to courts and agencies in which the person has pending matters with an identification of the matter, to the Office of the Chief Trial Counsel of the State Bar, and to any other person or entity having reason to be informed of the court's assumption of the practice.

(h) Nothing in this section shall authorize the court or an attorney appointed by it pursuant to this section to approve or disapprove of the employment of legal counsel, to fix terms of legal employment, or to supervise or in any way undertake the conduct of the practice, except to the limited extent provided by paragraphs (3) and (4) of subdivision (e).

(i) Unless court approval is first obtained, neither the attorney appointed pursuant to this section, nor his or her corporation, nor any partner or associate of the attorney shall accept employment as an attorney by any client of the affected person on any matter pending at the time of the appointment. Action taken pursuant to paragraphs (3) and (4) of subdivision (e) shall not be deemed employment for purposes of this subdivision.

(j) Upon a finding by the court that it is more likely than not that the application will be granted and that delay in making the orders described in subdivision (e) will result in substantial injury to clients or to others, the court, without notice or upon notice as it shall prescribe, may make interim orders containing any provisions that the court deems appropriate under the circumstances. Such an interim order shall be served in the manner provided in subdivision (d) and, if the application and order to show cause have not yet been served, the application and order to show cause shall be served at the time of serving the interim order.

(k) No person or entity shall incur any liability by reason of the institution or maintenance of a proceeding brought under this section. No person or entity shall incur any liability for an act done or omitted to be done pursuant to order of the court under this section. No person or entity shall be liable for failure to apply for court jurisdiction under this section. Nothing in this section shall affect any obligation otherwise existing between the affected person and any other person or entity. (l) An order pursuant to this section is not appealable and shall not be stayed by petition for a writ, except as ordered by the superior court or by the appellate court. (m) A member of the State Bar appointed pursuant to this section shall serve without compensation. However, the member may be paid reasonable compensation by the State Bar in cases where the State Bar has determined that the member has devoted extraordinary time and services that were necessary to the performance of the member's duties under this article. All payments of compensation for time and services shall be at the discretion of the State Bar. Any member shall

APPENDIX B

be entitled to reimbursement from the State Bar for necessary expenses incurred in the performance of the member's duties under this article. Upon court approval of expenses or compensation for time and services, the State Bar shall be entitled to reimbursement therefor from the person described in subdivision (a) or his or her estate.

BUSINESS AND PROFESSIONS CODE SECTION 6126.7

(a) It is a violation of subdivision (a) of Section 6126 for any person who is not an attorney to literally translate from English into another language, in any document, including an advertisement, stationery, letterhead, business card, or other comparable written material, any words or titles, including, but not limited to, "notary public," "notary," "licensed," "attorney," or "lawyer," that imply that the person is an attorney. As provided in this subdivision, the literal translation of the phrase "notary public" into Spanish as "notario publico" or "notario," is expressly prohibited.

(b) For purposes of this section, "literal translation of" or "to literally translate" a word, title, or phrase from one language means the translation of a word, title, or phrase without regard to the true meaning of the word or phrase in the language that is being translated.

(c) (1) In addition to any other remedies and penalties prescribed in this article, a person who violates this section shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000) per day for each violation, to be assessed and collected in a civil action brought by the State Bar.

(2) In assessing the amount of the civil penalty, the court may consider relevant circumstances presented by the parties to the case, including, but not limited to, the following:

(A) The nature and severity of the misconduct.

(B) The number of violations.

(C) The length of time over which the misconduct occurred, and the persistence of the misconduct.

(D) The wilfulness of the misconduct.

(E) The defendant's assets, liabilities, and net worth.

(3) The court shall grant a prevailing plaintiff reasonable attorneys' fees and costs.

(4) A civil action brought under this section shall be commenced within four years after the cause of action accrues.

(5) In a civil action brought by the State Bar under this section, the civil penalty collected shall be paid to the State Bar and allocated to the fund established pursuant to Section 6033 to provide free legal services related to immigration reform act services to clients of limited means or to a fund for the purposes of mitigating unpaid claims of injured immigrant clients under Section 22447, as directed by the Board of Trustees of the State Bar. The board shall annually report any collection and expenditure of funds for the preceding calendar year, as authorized by this section, to the Assembly and Senate Committees on Judiciary. The report required by this section may be included in the report described in Section 6086.15.

APPENDIX 9: CRIMINAL CONVICTION MATTERS AND SECTION 6095 REPORTING

BUSINESS AND PROFESSIONS CODE SECTION 6095

(a) The disciplinary agency shall annually hold at least two public hearings, one in southern California and one in northern California, to hear proposals on bar disciplinary procedures, attorney competency, and admissions procedures.

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(b) To the extent the information is known to the disciplinary agency, it shall report annually to the Assembly and Senate Judiciary Committees concerning the judicial or disciplinary disposition of all criminal or disciplinary proceedings involving the allegation of the commission of a felony by an attorney.

APPENDIX C
SAMPLE COMPLAINT CLOSURE LETTERS



THE STATE BAR
OF CALIFORNIA

OFFICE OF CHIEF TRIAL COUNSEL
INTAKE

Dane Dauphine, Assistant Chief Trial Counsel

845 SOUTH FIGUEROA STREET, LOS ANGELES, CALIFORNIA 90017-2515

TELEPHONE: (213) 765-1000

FAX: (213) 765-1168

<http://www.calbar.ca.gov>

October 19, 2015

RE: Inquiry Number: [REDACTED]
Respondent: [REDACTED]

Dear [REDACTED]:

An attorney for the State Bar's Office of Chief Trial Counsel has reviewed your complaint against [REDACTED] to determine whether there are sufficient grounds for proceeding to prosecute a possible violation of the State Bar Act and/or Rules of Professional Conduct.

You report that your divorce became final in January 2014, but there were a couple of issues in the divorce agreement that needed to be further reviewed. On February 21, 2014, you informed [REDACTED] that you and your former spouse, [REDACTED], were going to work out the final details of the case. You then requested an accounting statement from [REDACTED] and a refund of the unearned fees. You explain that you had an aneurysm burst in your brain and it took some time for you to recover. Your daughter and your boyfriend, [REDACTED], handled your affairs. It took a long time for [REDACTED] to respond to the communications and even longer to acknowledge the refund amount. On April 29, 2015, [REDACTED] informed [REDACTED] that the correct refund amount was \$3,872.78 rather than the \$802.78 initially stated. However, as of the date of your complaint, you had not received the refund amount.

In response to these allegations, [REDACTED] confirmed that you were entitled to a refund in the amount of \$3,872.78 as indicated in his email to [REDACTED] on April 29, 2015. However, his staff erroneously sent the check to your old address in [REDACTED]. In reviewing his records later, he located an email from your daughter in 2014 stating that your address had changed to [REDACTED] in [REDACTED]. [REDACTED] provided the State Bar a copy of his letter to you dated September 28, 2015 with the check for \$3,872 therein enclosed. [REDACTED] added that [REDACTED] had confirmed to him receipt of the refund check.

[REDACTED] acknowledged that there was a delay in sending the check was due to the fact that the new address was not timely entered into his billing software and address book and not timely communicated to the bookkeeper.

After evaluating the facts and evidence presented by you and [REDACTED], we have determined that issuing a warning letter to [REDACTED] regarding his failure to promptly return unearned fees is the most appropriate disposition of your complaint. A warning letter serves as notice to the attorney that the specified conduct is prohibited and advises the attorney to refrain from such conduct in the future. [REDACTED] warning letter will be kept on file for consideration in the event that additional complaints are submitted to the State Bar against him.

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██████████
April 18, 2016

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Please be aware that the warning letter is not considered public discipline and is confidential. The fact that a warning letter was issued may not be disclosed to anyone besides you and ██████████ and cannot be offered to or considered by a court or other adjudicator as evidence of professional misconduct. ██████████ ██████████ is not required to disclose the issuance of a warning letter in an application for employment.

For these reasons, the State Bar is closing this matter.

If you have any questions or disagree with the decision to close your complaint or have new information or other allegations not included in your initial complaint, you have two options. For immediate assistance, the first option is to speak directly with a Complaint Analyst. You may leave a voice message with ██████████ at ██████████. Be sure to clearly identify the lawyer complained of, the case number assigned, and your telephone number including the area code in your voice message. The Complaint Analyst will return your call within two business days.

The second option is to request the State Bar's Audit & Review Unit to review your complaint. An attorney may re-open your complaint if he or she determines that you presented new, significant evidence about your complaint or that the State Bar closed your complaint without any basis. You must submit your request for review with the new evidence or a showing that closing your complaint was made without any basis. To request review, you must submit your request in writing, together with any new evidence, post-marked within 90 days of the date of this letter, to:

State Bar of California,
Audit & Review Unit,
845 South Figueroa Street
Los Angeles, CA 90017-2515

Please note that telephonic requests for review will not be accepted.

The State Bar cannot give you legal advice. If you wish to consult an attorney about any other remedies available to you, a certified lawyer referral service can provide the names of attorneys who may be able to assist you. In order to find a certified lawyer referral service, you may call our automated Lawyer Referral Services Directory at 1-866-442-2529 (toll free in California) or 415-538-2250 (from outside California) or access the State Bar's website at www.calbar.ca.gov and look for information on lawyer referral services.

Thank you for bringing your concerns to the attention of the State Bar.

Very truly yours,

██████████
Deputy Trial Counsel

APPENDIX C



THE STATE BAR
OF CALIFORNIA

OFFICE OF CHIEF TRIAL COUNSEL
INTAKE
Dane Dauphine, Assistant Chief Trial Counsel

845 SOUTH FIGUEROA STREET, LOS ANGELES, CALIFORNIA 90017-2515

TELEPHONE: (213) 765-1000
FAX: (213) 765-1168
http://www.calbar.ca.gov

DIRECT DIAL: [REDACTED]

February 19, 2016

PERSONAL AND CONFIDENTIAL

[REDACTED]

RE: Case Number: [REDACTED]
Complainant: [REDACTED]

Warning Letter

Dear [REDACTED]:

This letter is directed to you based on my understanding that you are not represented by counsel in this matter. If I am incorrect in this regard, please arrange to have me advised of the name of your attorney so that any future communications can be directed to your counsel.

The State Bar of California has completed its evaluation of the allegations raised by the above-referenced complaint. As part of our review you were contacted and given an opportunity to provide an explanation for your conduct as alleged in to the complaint. Based upon a review of the findings, we concluded that there is substantial evidence of a violation of Rules of Professional Conduct, rule 3-700(D)(2). However, in the exercise of our discretion, we have decided to close this complaint with the issuance of this warning letter and will take no disciplinary action against you at this time.

Our decision to issue the warning letter is based upon the following facts: You were hired on or about March 28, 2015 to provide [REDACTED] with legal services concerning a complaint in intervention, and you were paid a total of \$10,000 in legal fees. Your legal services were terminated on or about November 29, 2015; however, you failed to promptly provide [REDACTED] with a refund of unearned fees. Specifically, following your termination, [REDACTED] questioned your billing, and as a result, you applied a \$350 per hour rate rather than the \$200 bulk billing rate [REDACTED] originally purchased. You have been advised that charging a client more because he or she has questioned your bill is not consistent with the Rules of Professional Conduct. You represent that you have billed [REDACTED] at the original \$200 per hour rate and issued a refund of \$838.90 to him or about February 17, 2016. You are also removing the language from your agreement stating the client will be charged more if he or she contests the bill.

In the future, in order to avoid similar State Bar complaints related to rule 3-700(D)(2), please be mindful that you must *promptly* pay your client any funds that he/she is entitled to receive.

APPENDIX C

February 19, 2016

Page 2

Please be advised of the following:

- This letter is issued pursuant to Rule 2601 of the Rules of Procedure of the State Bar of California and does *not* constitute the imposition of discipline. Only the California Supreme Court or, in limited instances, the State Bar Court, can impose discipline.
- It is the intention of the Office of Chief Trial Counsel that this letter not be considered as evidence of professional misconduct in any future proceeding, court hearing, or application for employment.
- The complainant will be advised of this disposition, but this letter is not a matter of public record and can only be disclosed or released under one of the limited exceptions allowed by law or contained in the rules and regulations governing the State Bar of California.
- We may reopen this matter if we discover new material evidence, or if the Chief Trial Counsel's designee, in his or her discretion, otherwise determines there is good cause to do so. Furthermore, we may reopen this matter based on the request of the complainant if he or she presents us with new material evidence or another compelling reason to reopen the matter. In the event the matter is reopened, you will be notified and given a further opportunity to participate in the investigation and any subsequent disciplinary prosecution.

You may ask that our decision to close this complaint without the imposition of discipline be reviewed by an attorney designated by the Chief Trial Counsel. If you wish to do so, your request must be in writing, addressed to the individual signing below, and postmarked *within 30 days of the date of this letter*. Review may result in: (1) rescission of the warning letter and dismissal of the complaint; (2) reopening of the matter and referral for formal disciplinary prosecution before the State Bar Court; or (3) a determination that the warning letter was appropriately issued, in which case no further action will be taken.

Very truly yours,

Deputy Trial Counsel

APPENDIX C



THE STATE BAR
OF CALIFORNIA

OFFICE OF CHIEF TRIAL COUNSEL
INTAKE

Dane Dauphine, Assistant Chief Trial Counsel

845 SOUTH FIGUEROA STREET, LOS ANGELES, CALIFORNIA 90017-2515

TELEPHONE: (213) 765-1000

FAX: (213) 765-1168

http://www.calbar.ca.gov

DIRECT DIAL: [REDACTED]

March 7, 2016

PERSONAL AND CONFIDENTIAL

[REDACTED]

RE: Case Number: [REDACTED]
Complainant: [REDACTED]

Warning Letter

Dear [REDACTED]:

This letter is directed to you based on my understanding that you are not represented by counsel in this matter. If I am incorrect in this regard, please arrange to have me advised of the name of your attorney so that any future communications can be directed to your counsel.

The State Bar of California has completed its evaluation of the allegations raised by the above-referenced complaint. As part of our review you were contacted and given an opportunity to provide an explanation for your conduct as alleged in the complaint. Based upon a review of the findings, we concluded that there is substantial evidence of a violation of Rules of Professional Conduct, rules 3-110, and 3-700(D)(2) as well as Business & Professions Code § 6148. However, in the exercise of our discretion, we have decided to close this complaint with the issuance of this warning letter and will take no disciplinary action against you at this time.

Our decision to issue the warning letter is based upon your (acknowledged) delay in pursuing a foreclosure action on [REDACTED] behalf. In addition, you acknowledged that you did not have a retainer agreement with [REDACTED] as required by Business & Professions Code §6148. Having a retainer agreement would have helped to clarify whether the \$2,500 was paid toward earned fees and the foreclosure matter or just the foreclosure action. Finally, you acknowledged receiving requests from [REDACTED] for the return of the \$2,500 in fees. At that time, you should have accounted for any earned fees and refunded any unearned fees. As acknowledged in your February 18, 2016 letter to [REDACTED], you refunded the entire amount on February 18, 2016. In issuing this warning letter, we note your many years of practice without any prior discipline.


Please be advised of the following:

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- This letter is issued pursuant to Rule 2601 of the Rules of Procedure of the State Bar of California and does *not* constitute the imposition of discipline. Only the California Supreme Court or, in limited instances, the State Bar Court, can impose discipline.
- It is the intention of the Office of Chief Trial Counsel that this letter not be considered as evidence of professional misconduct in any future proceeding, court hearing, or application for employment.
- The complainant will be advised of this disposition, but this letter is not a matter of public record and can only be disclosed or released under one of the limited exceptions allowed by law or contained in the rules and regulations governing the State Bar of California.
- We may reopen this matter if we discover new material evidence, or if the Chief Trial Counsel's designee, in his or her discretion, otherwise determines there is good cause to do so. Furthermore, we may reopen this matter based on the request of the complainant if he or she presents us with new material evidence or another compelling reason to reopen the matter. In the event the matter is reopened, you will be notified and given a further opportunity to participate in the investigation and any subsequent disciplinary prosecution.

You may ask that our decision to close this complaint without the imposition of discipline be reviewed by an attorney designated by the Chief Trial Counsel. If you wish to do so, your request must be in writing, addressed to the individual signing below, and postmarked *within 30 days of the date of this letter*. Review may result in: (1) rescission of the warning letter and dismissal of the complaint; (2) reopening of the matter and referral for formal disciplinary prosecution before the State Bar Court; or (3) a determination that the warning letter was appropriately issued, in which case no further action will be taken.

Very truly yours,


Deputy Trial Counsel

APPENDIX C



THE STATE BAR
OF CALIFORNIA

OFFICE OF CHIEF TRIAL COUNSEL
INTAKE

Dane Dauphine, Assistant Chief Trial Counsel

845 SOUTH FIGUEROA STREET, LOS ANGELES, CALIFORNIA 90017-2515

TELEPHONE: (213) 765-1000

FAX: (213) 765-1168

<http://www.calbar.ca.gov>

March 18, 2016

[REDACTED]

RE: Inquiry Number: [REDACTED]
Respondents: [REDACTED]

Dear [REDACTED]:

The State Bar's Office of Chief Trial Counsel has reviewed your complaint against [REDACTED] and [REDACTED] to determine whether there are sufficient grounds to prosecute a possible violation of the State Bar Act and/or Rules of Professional Conduct.

In your letter of complaint, you reported to our office that you employed [REDACTED] to represent you in a dispute that arose regarding the estate of your deceased father. You contend [REDACTED] assigned the matter to a less experienced associate attorney in his office, which resulted in additional fees being incurred, as the associate attorney continued to make errors that had to be corrected. You further contend that although you corrected the initial draft of the petition presented to you for review, not all of the changes were made in accordance with your notes. As a result, multiple drafts were created. You maintain you were charged twice for certain actions taken by the office. Specifically, you pointed out charges where you were improperly charged by both the paralegal and the associate attorney for the same discussions and for reading the same emails. Further, you complained that upon notice that [REDACTED] was seeking to withdraw from representation, you requested a copy of the entire petition filed on your behalf, but it was not provided nor had his office provided a final accounting. You assert that you were improperly charged for responding to your requests to see a copy of the final draft of the petition with the attachments and for seeking information regarding your case. You alleged that [REDACTED] office has not responded to you since they requested that you execute a substitution of attorney. As a result, you appeared at a hearing on January 7, 2016. While at the court, [REDACTED] appeared on your behalf to obtain a continuance.

Accordingly, we contacted [REDACTED] and [REDACTED] regarding your allegations. In response, [REDACTED] and [REDACTED] acknowledged that you employed [REDACTED] and that [REDACTED] was assigned to draft the Petition to Confirm Property Belongs to Estate in accordance with California Probate Code Section 850.

[REDACTED] denied there were improper charges for multiple drafts of the petition or that their office failed to provide you with a copy of the petition for review and signature prior to filing. In support of his representation, [REDACTED] provided emails back and forth with his staff regarding the drafting of the petition. [REDACTED] pointed out where you acknowledged having reviewed the petition in an October 26, 2015 email to [REDACTED] and stated specifically, "[i]t looks really good," and "again my

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apologies to yourself and ██████████ for bein' (sic) a bitch.” In an email dated January 27, 2016, you requested certain documents, including the supplement to the petition that was filed. In response, ██████████ ██████████ paralegal clarified in an email dated January 28, 2016, “October 27, 2015 Petition is attached. October 27, 2015 Supplemental Petition is not a pleading. It’s a court note advising a second petition (our petition) had been filed.”

██████████ represented that charges incurred were not for corrections, but rather contends you incurred charges for work related to the review of information you provided during the drafting process, which included a large number of exhibits, legal research, and a draft of a petition you had been working on prior to their retention. Additionally, he contends that you provided information to his office both verbally and in written form and insisted they be reviewed or considered relevant, and this added to your charges. ██████████ contends that it was repeated to you that all of your interactions were billable time, and he says you did not object. ██████████ states that you were responsible for providing his office with the exhibits for the petition. ██████████ wanted to add that the probate court allows amendments, as well as, for supplemental information to be filed, which he says is quite common upon discovery of evidence or documents that were not presented prior to the filing.

In regard to your allegation that you were improperly charged twice for work, ██████████ denied this allegation, as well. He stated that he went back through your billing statements and could not find any instance where you had been billed twice for the same task. ██████████ maintained that if his staff conducts a particular task, it is not improper to charge for it. He added that there were many conversations, in which he was also involved, but you were not charged his time. According to ██████████ ██████████ there were also other conversations where you requested that ██████████ conference call his paralegal, but you were not charged paralegal time.

In ██████████ response she also denied the above allegations. In her response, ██████████ stated that you were aware from the onset that associate attorneys, paralegals, and support staff would work on your case. She indicated that when you came into the office you came in with a strong belief as to exactly how you wanted your claim to be filed and desired to be heavy involved in the legal decisions of the case. ██████████ represented that while you had conducted research and obtained information you wanted included in the petition, much of it was inapplicable under factual circumstances and presented a partially drafted a petition, which you believed was appropriate.

██████████ maintained that she has personally drafted many other 850 Petitions and was familiar with the procedures and case law surrounding the approach. She indicated that the process became compounded because you demanded an explanation as to why they decided not to utilize certain information you had provided to their office and why other law and research you provided was inapplicable to your case. Further, she represented that upon receipt of additional drafts, you provided extensive notes, added notes and made changes that were not in initial notes. ██████████ contends that she had to defend the strategic choice of evidence and exhibits which she believed were necessary and crucial to your argument, which greatly increased the drafting time and expense to you.

██████████ also held that you were provided a copy of the Petition, as you signed it and electronically sent it to their office, where it was then submitted to the court. She referenced her October 26, 2015 email, which she contends shows that she forwarded you the attachments to the Petition.

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As for your allegation that you had not received your case file, ██████████ maintained that she explained to you as did other ██████████ staff that as long as their office represented you, they needed your case file in order to properly act as your representation. She held that it was explained by members of their staff that you would not receive your case file until you signed the substitution of attorney form or they were no longer attorney of record. On January 7, 2016, ██████████ says she met with you in person and explained to you until you either signed the substitution of attorney or the court granted their motion to be relieved, ██████████ still had a duty to represent you. Further, she contends that she informed you that their office was not withholding unearned fees or your file from you for any reason other than to continue to their representation. ██████████ pointed out that upon notification that they wished to withdraw from representation, in the subject line of your email that prompted the decision to withdraw, you stated "DO NOT CALL."


We reviewed your complaint and supporting documents and considered the response and supporting documents provided by ██████████ and ██████████. Based upon this information and our evaluation of the matter, we have determined that no further action is warranted at this time. It is a violation for an attorney to charge an unconscionable fee as defined under the applicable rules. We reviewed the charges, along with your concerns and requested that ██████████ explain the charges that raised concerns. The information shows that ██████████ did not willfully charge fees what would be considered unconscionable. Our office would typically refer you to pursue fee arbitration; however, you have acknowledged that ██████████ addressed the issue by refunding the entire retainer in the amount of \$10,000.

We reviewed your concerns that ██████████ was not experienced, and as a result, repeatedly made errors during the drafting process of the Petition. We have determined that ██████████ conduct does not constitute a violation. While it is a violation for an attorney to intentionally, recklessly, or repeatedly fail to perform services with competence, the information indicates that the alleged conduct was not willful or intentional nor did ██████████ act in a reckless manner when performing services. The information shows that on-going discussions and changes to the Petition were taking place and the information does not show that these changes were a result of misconduct. Moreover, mere dissatisfaction with the legal work or legal advice given by ██████████ is more negligent in nature rather than conduct that constitute an ethical violation (we are not making a decision that ██████████ was negligent.) Negligence, absent sufficient information or credible facts to show that an ethical violation has occurred, is not subject of the State Bar's disciplinary authority.

For these reasons, the State Bar is closing this matter.

If you have new facts and circumstances that you believe may change our determination to close your complaint, you may submit a written statement with the new information to the Intake Unit for review. If you have any questions about this process, you may call ██████████ at ██████████. If you leave a voice message, be sure to clearly identify the lawyer complained of, the inquiry number assigned, and your telephone number including the area code. We should return your call within two business days.

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If you are not aware of new facts or circumstances but otherwise disagree with the decision to close your complaint, you may submit a request for review by the State Bar's Audit & Review Unit, which will review your complaint and the Intake Unit's decision to close the complaint. The Audit & Review Unit may reopen your complaint if it determines that your complaint was inappropriately closed or that you presented new, significant evidence to support your complaint. To request review by the Audit & Review Unit, you must submit your request **in writing**, together with any new evidence you wish to be considered, post-marked within **90 days of the date of this letter**, to:

State Bar of California,
Audit & Review Unit,
845 South Figueroa Street
Los Angeles, CA 90017-2515.

Thank you for bringing your concerns to the attention of the State Bar.

Very truly yours,


Deputy Trial Counsel

APPENDIX D

CHANGES TO REPORT METHODOLOGY

As discussed in the Executive Summary, the 2015 State Auditor report found a number of deficiencies in annual Attorney Discipline Report methodology. Specifically, the State Auditor disagreed with the Report's method for calculating backlog, faulted the Bar for reporting less than the law permits, and criticized the introduction of changes from year to year that made it difficult to compare performance of the State Bar over time.

The 2015 Report introduces a number of changes that address the concerns raised by the State Auditor regarding methodology and content of the Report; as a result, however, it remains difficult to compare 2015 data to that presented in previous annual Reports. In addition, in preparation for the 2015 Report and as discussed below, numerous methodological inconsistencies were identified in prior year Reports, rendering comparative analysis even more challenging. Appendix D is intended to address this concern in part by providing detailed information about the rationale for, and impact of, significant changes in methodology from last year's report.

FOCUS ON STATUTORY REQUIREMENTS

The 2014 Annual Discipline Report was structured to reflect the progression of cases through discipline-system processing, from Intake to Investigation to Pre-filing to the Court. In doing so, it provided an important educational overview of the case flow process. However, the level of detail regarding the progression of cases through the system led to confusion by those seeking statutorily mandated information. For example, the 2014 Annual Discipline Report included Table 27, which provided information about the flow of cases into the Hearing and Review Stage, broken out by the prior stages of the cases, and whether the cases were active or suspended. It is quite challenging, if not impossible, to track the data in Table 27 to tables in the 2014 Report from which that data is drawn. The 2015 Report dispenses with the organization of data by case processing stage and instead provides data in accordance with statutory reporting requirements, which do not distinguish between these phases.

The 2014 Report also included a section entitled Assurance and Prevention Programs, which provided information on the activities of the Office of Professional Competence, as well as the Bar's other regulatory and legal education programs.³⁹ While these programs contribute to the Bar's public protection mission, the 2015 Report is premised on statutory requirements and core discipline system activity. As such, this set of programmatic descriptions is not included in the 2015 Report.

KEY CHANGES IN REPORTED DATA

CASE TYPES ADDED TO 2015 REPORT THAT WERE NOT INCLUDED IN 2014 REPORT

The following types of cases were added to the 2015 report, based on statutory requirements:

- Interim Suspensions and Restriction petitions
- Motions to Enforce Fee Arbitration

³⁹ Recent amendments to section 6086.15 deleted the requirement to include in the Report a description of programs directed at assuring honesty and competence, as well as those directed at preventing acts warranting discipline.

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- Closures of Reopened Inquiries - due to a programming error in the 2014 report, certain cases that were closed in the Inquiry stage and subsequently re-opened were excluded from the count of cases closed; this error has been corrected for the 2015 report.

CASE TYPES FROM 2014 REPORT EXCLUDED FROM 2015 REPORT

The following types of cases were excluded from the 2015 Report, in alignment with the principle of using statutory requirements to organize the Report:

- Reinstatement Proceedings – Proceeding for reinstatement to membership in the State Bar after resignation with or without charges pending and after disbarment or suspension.
- Moral Character Appeals – Appeals of an adverse moral character determination from the Committee of Bar Examiners, heard before the State Bar Court.
- Pre-filing Motions – Motions received (e.g., motion to quash, motion for waiver of filing fees, etc.) in which the State Bar Court has jurisdiction, but there is no existing case for the motion.
- Resignation without charges pending.
- Transfer from inactive to active status – proceedings to transfer a member to active enrollment from inactive enrollment after either (1) the member has paid in full an arbitration award plus any costs and penalties, (2) the member no longer poses a threat after having previously been transferred to inactive status due to mental incompetence or threat of harm to clients or the public, a court order, or substance abuse.

BACKLOG CALCULATION CHANGED FROM 183 TO 180 DAYS

In 2014 and prior years, the Attorney Discipline Report calculated the backlog using 183 days as the count for six months, based on the average number of days per month. The 2015 Annual Discipline Report instead calculates the backlog based on 180 days. This change had a minimal impact on the recasting of prior year data.

CHANGES IN HOW REPORTED DATA IS GATHERED

Last year, Annual Discipline Report data was prepared by a consultant who extracted information from the case management systems used by OCTC and State Bar Court. The criteria used for this data extraction was not documented or thoroughly vetted, and there were limited possibilities for independent validation of the data. As a result, errors in both methodology and results were not necessarily identified. For example, it was discovered that an error in the methodology for extracting the data prior to this year resulted in an over-reporting of the number of attorneys disciplined. Because of this error, it was possible for attorneys to be double-counted if they were the subject of both a written complaint and a reportable action. Conversely, disbarments that resulted from a criminal conviction were excluded in prior years; the net result was a ten percent inflation in the number of attorneys reported as disbarred. For this year's Report, the Bar continued to rely on a consultant to conduct the initial data pulls; the extracted data was validated by the State Bar's Information Technology Department, however, and further reviewed by data analysts in the Office of the Chief Trial Counsel. These additional levels of validation eliminated such errors in the 2015 Report. In addition to running the data for 2015, the contractor was asked to provide data going back to 2012 using the 2015 methodology. Data integrity issues as related to both 2015 data generation and the recasting of prior year data were explained or corrected, to the extent possible.

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A number of discrepancies were identified as part of this effort, particularly with respect to the recasting of prior year numbers. A review of last year’s Report found internal inconsistencies in the data presented in the Report itself, which presented additional challenges. For example, the cover letter provided to the 2014 Report, as well as Table 27 and Table 37 of that Report, stated that 1,558 cases were referred to the Supreme Court, while the statistical overview included in the introduction stated that 1,158 cases were referred to the Supreme Court. Even given these challenges, an attempt was made to identify key data discrepancies between the 2014 and 2015 Reports; the results are presented in the tables on the following pages. Detailed information about the variances in each category, which is available primarily at a case-specific level, is not included in this Appendix, but is available upon request.

The Bar has recently established an Office of Research and Institutional Accountability, which will assume full responsibility for preparing Annual Discipline Reports, including management of the underlying data, beginning with the 2016 Report. The 2015 Report effectively represents a bridge year, with less than an optimal level of clarity regarding the reasons for changes in the data as compared to prior years; it is the Bar’s expectation that significant advancements will be made in this regard going forward.

Following is a summary of the variances between the 2015 and 2014 Reports as reported for key data elements. A detailed reconciliation is provided for perhaps the most critical Report data element, Backlog, in footnote 40. Delineation of variances at this level is unfortunately not available for all key data elements outlined below.

Table D1: Cases in Backlog⁴⁰				
	<u>Source</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
2015 Report	Table 1	1,725	1,759	1,988
2014 Report	Table 41	1,696	1,747	1,973

⁴⁰ Following is a detailed reconciliation between the 2014 Report and the 2015 Report for cases included in the Backlog.

Reconciliation of Reported Backlog			
	2012	2013	2014
Backlog as Reported in 2014 ADR (Table 41)	1,696	1,747	1,973
Case Types added to 2015 Report (Interim Suspension and Restriction Petitions, Motions to Enforce Fee Arbitration)	+5	+4	0
Cases added to 2015 Report due to Backlog calculation reduced from 183 days to 180 days	+27	+12	+9
Cases excluded in 2014 Report due to data problems; these problems were corrected prior to 2015 Report	+3	+4	+6
2014 Report included some Reportable Actions not statutorily required; these are excluded from the 2015 Report	-6	-8	0
Backlog as Reported in 2015 ADR (Table 1A)	1,725	1,759	1,988

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Table D2: Total Cases Received				
	<u>Source</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
2015 Report	Table 2	18,311	16,502	16,152
2014 Report	Table 2	18,140	16,387	16,024

Table D3: Reportable Actions by Self				
	<u>Source</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
2015 Report	Table 3	303	224	280
2014 Report	Table 44	176	137	186

Table D4: Reportable Actions by Others				
	<u>Source</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
2015 Report	Table 4	2,899	2,903	2,768
2014 Report	Table 44	2,811	2,791	2,670

Table D5: State Bar Court Filings⁴¹				
	<u>Source</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
2015 Report	Table 6A	1,319	1,222	1,013
2014 Report	Table 27	2,457	1,935	1,949

Table D6: Attorneys Disbarred⁴²				
	<u>Source</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
2015 Report	Table 6B	146	182	154
2014 Report	Table 43	160	207	171

Table D7: Attorneys Suspended⁴²				
	<u>Source</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
2015 Report	Table 6B	245	210	245
2014 Report	Table 43	282	217	263

⁴¹ The source of the rather significant variance appears to be the fact that the 2015 Report includes only notices of disciplinary charges and stipulations to facts and discipline; the 2014 report also included cases in the Court's Review Department.

⁴² As discussed above, an error was discovered in the method used in the 2014 Report for identifying the number of attorneys suspended and disbarred, which led to some attorneys being double-counted. This error did not occur with respect to the data provided in the 2015 Report.

APPENDIX E

CRIMINAL CONVICTION MATTERS AND SECTION 6095 REPORTING

The body of the Attorney Discipline Report provides information required by section 6086.15, which does not include all types of reportable actions. For example, section 6101, subdivision (c), which is omitted from section 6086.15, requires courts to report all criminal convictions. The information in this Appendix is provided to enhance the understanding of the State Bar's role in monitoring criminal convictions. In addition, this Appendix includes mandatory reporting pursuant to section 6095(b).

Business and Professions Code section 6101 requires any prosecuting agency to notify the State Bar of any felony or misdemeanor charges filed against an attorney, and requires any court in which an attorney is convicted of a crime to transmit a certified copy of the record of conviction to the State Bar. In addition, section 6808, subdivision (o), requires an attorney to report any felony indictment or charges, as well as conviction of any felony and certain misdemeanor charges⁴³.

When OCTC receives a notice pursuant to these requirements, the following information is recorded:

- Who reported the filing of charges or conviction and when;
- The criminal case number and court where charges were filed;
- The type of charging document;
- Whether the charged violations are misdemeanors or felonies; and
- The disposition of each of the charges.

In addition, a check for prior State Bar inquiry and/or conviction history is completed.

The State Bar does not have the ability to automatically track superior court dispositions, or any appeals process that is invoked by a respondent, and can only initiate disciplinary action against a respondent once finality has been reached in the underlying criminal matter. The lack of an automated or integrated case management system requires manual tracking of data that may be in any one of California fifty-eight superior courts. 2015 criminal conviction matter data is provided in the table below.

Table E1: Criminal Conviction Matters 2015

Pending in Intake from 2014	388
New Cases Opened	268
Closed Without Action	181
Filed in State Bar Court	105

⁴³ The full text of sections 6101 and 6808 are provided in Appendix B

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In addition to the aggregate data provided in the table above, the Bar is able to report that, during the period 2012 to 2015, reports were received regarding 799 felony charges and 1,523 misdemeanor charges filed against a total of 870 attorneys. Theft-related charges accounted for twenty-five percent of felonies reported during this time period, followed by crimes related to controlled substances, which amounted to twelve percent. Sixty-three percent of misdemeanors were traffic-related.

Sixty-five percent of felonies were reported as being in California's jurisdiction, twenty-six were reported as federal violations, and the remaining nine percent were reported filed in other states. Ninety-three percent of misdemeanor filings reported were within California, with the remaining seven percent filed in other state and federal courts.

SECTION 6095 REPORTING⁴⁴

Section 6095 requires the Bar to report, to the extent known, information regarding the judicial or disciplinary disposition of all criminal or disciplinary proceedings involving the allegation of the commission of a felony by an attorney.

As discussed above, the State Bar does not track the disposition of criminal proceedings in superior courts. However, when a court reports a felony conviction to the State Bar, an investigation is opened and a case may be filed in State Bar Court. Table E2 provides information about the disposition of disciplinary proceedings for reported felony convictions.

Table E2: Disposition of Felony Convictions

	2012	2013	2014	2015
Felony Convictions	40	31	44	23
Cases filed in State Bar Court	29	24	37	24
Average days from conviction to filing in Court ⁴⁵	51	67	91	151
Median days from conviction to filing in Court	40	57	64	82
Cases disposed in State Bar Court	29	29	27	23
Average days from filing to disposition in Court	680	580	746	612
Median days from filing to disposition in Court	429	440	736	417
State Bar Court Dispositions				
Disbarment	18	25	15	11
Dismissal	4	1	3	3
Suspension	6	1	8	8
Termination Due to Resignation	0	1	0	1
Reproval	1	0	1	0

⁴⁴ The full text of section 6095 is provided in Appendix B.

⁴⁵ Both attorneys and courts are required to report felony convictions. As discussed in the body of the Report, superior courts may not timely report convictions to the Bar. Any resultant delays in discovery of felony convictions result in the extended pendency between conviction and filing in Court. The Resource Guide for Courts, provided as Appendix G, should help to reduce these delays.

APPENDIX F

UNAUTHORIZED PRACTICE OF LAW, NOTARIO, AND IMMIGRATION-ATTORNEY RELATED COMPLAINTS

The statutes governing the contents of the Annual Discipline Report identify certain types of non-attorney complaint data for inclusion. This Appendix is designed to provide additional data regarding UPL, notario, and immigration-related attorney discipline system activity. Status information regarding two distinct sets of UPL cases that experienced delays in processing in 2015 is provided, along with an update regarding the codification of reforms designed to ensure that such delays do not occur in the future.

OCTC's Intake Unit answered over 43,000 calls in 2015; 274, or less than one percent of those calls, originated from an Immigration Hotline that was established by the Bar in 2014. Table F1 provides information about UPL and immigration-related complaints received in 2015, as well as the number of active cases in both categories.

Table F1: UPL and Immigration-Related Complaints

Immigration-related Attorney Complaints Received 2015	427
<u>Current Status* of Active Immigration Attorney Complaints</u>	
Cases in Intake	19
Cases in Enforcement	
Investigation	91
Pre-Filing	59
Post-Filing	<u>7</u>
Total Active Cases	176
<hr/>	
Non-Attorney (NA) Complaints Received 2015	581
State-Bar Initiated Complaints re NA 2015	65
Cease and Desist/Notice of Violation Letters Issued 2015	59
<u>Current Status* of Active NA Complaints</u>	
Cases in Intake	112
Cases in Enforcement	279
Total Active Cases	391
<hr/>	
Immigration-related NA Complaints Received 2015 ⁴⁶	118
<u>Current Status* of Active Immigration-related NA Complaints</u>	
Cases in Intake	1
Cases in Enforcement	51
Pre-Filing	0
Post-Filing	1
Total Active Cases	53

*As of April 2016

⁴⁶ Immigration-related NA complaints is a subset of NA complaints.

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The State Bar conducted numerous outreach and education activities in 2015 geared toward immigrant populations most vulnerable to UPL, notario, and immigration attorney related misconduct. These activities included publicity engagements with Univision, Telemundo and other Spanish-language media outlets, a release of an informational Spanish language video on consumer rights, and participation in town hall meetings and community forums where the State Bar partnered with local elected officials, consumer agencies, nonprofit legal services providers, and community-based organizations to provide information and services to immigrant communities. OCTC staff has engaged in ongoing UPL education, including attending two sessions of the American Bar Association's UPL School. The State Bar actively participates in a quarterly nationwide UPL teleconference coordinated by the Federal Trade Commission, and a monthly meeting of the Immigration Services Fraud Law Enforcement Group, both designed to foster and strengthen the inter-agency partnerships that are the foundation of effective enforcement in this area.

Further, pursuant to Assembly Bill 1159, whenever a written contract for immigration services is required, a notice must be included in that contract about the right to report a complaint to the State Bar. The State Bar posts templates of this notice on its website in Spanish, Chinese, Tagalog, Vietnamese, Korean, Armenian, Persian, Japanese, Russian, Hindi, Arabic, French, Punjabi, Portuguese, Mon-Khmer, Hmong, and Thai. In addition, the Bar broadly communicates the availability of an attorney complaint system in English and other languages.

In spite of these activities, the number of UPL, notario, or immigration attorney-related complaints remains low. Under-reporting continues to be a concern and a challenge for the Bar to address. A perception in the immigrant community of non-responsiveness by the Bar may have the unfortunate effect of exacerbating any mistrust that is the basis for these low complaint numbers. As described in the Executive Director's Annual Discipline Report cover letter, the Bar is committed to continuous improvement of its handling of UPL, notario, and immigration attorney misconduct, and to working with impacted communities and service providers in doing so.

Those complaints that are received can be categorized as follows:

- Approximately forty percent are complaints regarding an out-of-state attorney where the allegations are about poor quality or excessive cost
- Another forty percent are complaints regarding respondents who complainants knew were not attorneys at the time of hire and are unhappy with the services provided
- Roughly twenty percent are regarding immigration consultants who failed to perform competently

BACKGROUND AND STATUTORY FRAMEWORK

IMMIGRATION ATTORNEY MISCONDUCT

Attorneys must comply with the Rules of Professional Conduct and the State Bar Act and are subject to discipline for violating the law. This includes violating section 6157.5 (advertisement for immigration services not stating active member), section 6242 (demanding/accepting

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advance fees for immigration reform act services), and section 6103.7 (threatening to report immigration status of party or other in employment dispute).

UNAUTHORIZED PRACTICE OF LAW GENERALLY

Section 6125 provides that: “No person shall practice law in California unless the person is an active member of the State Bar”. Section 22400 makes it unlawful for any person, other than a person authorized to practice law or authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, to engage in business or act in the capacity of an immigration consultant, except as provided by sections 22400 through 22448 of the code.

A non-attorney could be someone who has never been an attorney, someone who was a licensed attorney and was disbarred or resigned, is suspended, or is an attorney licensed in another state, but not in California. Complaints regarding these types of respondents are referred to as UPL.

The Business and Professions code does not define the “practice of law.” However, California courts have defined it to include⁴⁷:

- Performing services in court cases/litigation;
- Providing legal advice and counsel; and
- Preparing legal instruments and contracts that secure legal rights – even if the matters involved do not have anything to do with lawsuits or the courts.

UNAUTHORIZED PRACTICE OF LAW: NOTARIO

Business and Professions Code section 6126.7, subdivision (a), prohibits any person who is not an attorney from literally translating from English into another language in any document or advertisement any words, including notary, that imply that the person is an attorney. Violation of this prohibition is generally referred to as a *notario* matter, which is a type of UPL.

The legal authority for prosecuting those engaged in the unlicensed practice of law is found in several sections of the Business and Professions Code; as reflected in Table F2; the State Bar’s avenues for addressing non-attorney misconduct represent a limited subset of the broader array of available remedies.

⁴⁷ *People v. Merchants Protective Corp.*, 189 Cal. 531, 535 (1922)

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Table F2: Statutory Authority for UPL Prosecution

Legal Authority	Who Prosecutes	Remedies
Section 6126, subdivision (a) (unlicensed)	District Attorney/ Attorney General/ City Attorney	Misdemeanor – Up to 1 year County Jail and/or fine of up to \$1,000 for first offense. For second offense, minimum of 90 days County Jail, except where the interests of justice would be served by a lesser sentence or a fine
Section 6126, subdivision (b) (disbarred attorney)	District Attorney/ Attorney General/ City Attorney	May be charged as a misdemeanor or a felony. If misdemeanor, up to 6 months County Jail; if felony 16mos/2 or 3 years State Prison
Section 6126.3, subdivision (a) (unlicensed)	N/A – Civil Action	In addition to any criminal proceedings pursuant to Section 6126, or any contempt proceedings pursuant to Section 6127, the court has jurisdiction for civil action under this section when a person engages in UPL or holds him or herself out as an attorney
Section 6126.3, subdivision (b) (unlicensed)	State Bar or Superior Court	Section 6126.3 (b) provides that the State Bar, or the Court on its own motion, may make an application to the superior court for the county where the person maintains or has recently maintained his or her principal office for the practice of law or where he or she resided, for assumption by the court of jurisdiction over their practice
Section 6126.4 (makes 6126.3 applicable to immigration consultants pursuant to Chapter 19.5 (commencing with Section 22440) who hold themselves out as practicing or entitled to practice law	State Bar or Superior Court	Assume jurisdiction over practice as per 6126.3
Section 6126.5 (relief available in the enforcement actions)	District Attorney/ Attorney General/ City Attorney	Court may award relief for any person who obtained services offered or provided in violation of 6125 or 6126 including damages, restitution, penalties, reasonable attorneys' fees to rectify errors made in the UPL, prejudgment interest and appropriate equitable relief
Section 6126.7, subdivision (a) (forbids use of words such as “notario” in advertising, letterhead, etc.)	State Bar	Provides for penalty of \$1,000 per day for each violation
Section 6127 (contempt of court for acting as an officer of the court without authority or advertising as such without being a member of the State Bar)	Not specified so State Bar can bring	Order re contempt
Section 22442.3 (Forbids use of words such as “notario” in advertising, letterhead, etc. by an immigration consultant)	Injured party or District Attorney/ Attorney General/ City Attorney	Provides for penalty of \$1,000 per day for each violation
Section 22445	Injured party or District Attorney/ Attorney General/ City Attorney	Civil penalties not to exceed \$100,000 for each violation of this chapter

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STATE BAR'S ADVANCEMENT OF THESE REMEDIES

The vast majority of all cases are initiated by complaints from the public. In addition, however, OCTC can independently generate a case pursuant to its ongoing monitoring of Spanish-language print and radio ads for use of the word *notario*. In 2015, there were sixty-five State Bar initiated non-attorney inquiries opened.

Complaints are reviewed first by Intake, composed of attorney and complaint analyst/paralegal staff, which conducts preliminary research that often includes identifying the internet advertising used by the respondent. Intake also contacts the complainant in many cases to get more details, and sometimes contacts the respondent for additional information.

In many instances, it is difficult to prove that UPL has occurred. Often, a respondent has a legitimate business but crosses the line into giving legal advice on a particular occasion; where the complaint involves an isolated instance, staff may send a "Notice of Violation" (NOV) letter to the respondent. Complaints raising repeated or multiple violations are forwarded for investigation.

The NOV letter serves as a warning, puts the respondent on notice that certain services/actions may violate the law and constitute UPL, and that an OCTC investigation may ensue. The current iteration of the NOV letter replaced a previously used cease and desist notice. The change was initially made in an abundance of caution regarding the potentially anti-competitive posture of state bar associations as related to non-attorney provision of legal services. In April 2016, however, the NOV was revised again, this time to align more closely with the previous cease and desist notices; excerpts of the revised notice for both UPL and notario matters are provided below:

NOTICE: (UPL)

You are hereby on notice that, based upon our investigation to date and your actions described above, it is the opinion of the State Bar Office of Chief Trial Counsel ("OCTC") that you have engaged in the unauthorized practice of law. You are hereby notified that OCTC may investigate the allegations outlined herein and, if it finds cause, take appropriate action to ensure your compliance with these laws.

You should immediately **CEASE AND DESIST** engaging in the unauthorized practice of law. If the State Bar of California receives additional information that, despite, this notice, you continue to engage in violation of the above laws, the State Bar may take any appropriate action to ensure your compliance with these laws and to protect the public.

NOTICE: (Notario)

You are hereby on notice that, based upon our investigation to date, it is the opinion of the State Bar Office of Chief Trial Counsel ("OCTC") that you have used words or phrases which imply that you are an attorney or that you may give legal advice or provide legal services or that you are otherwise entitled to

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practice law in California. You are hereby notified that OCTC may investigate the allegations outlined herein and, if it finds cause, take appropriate action to ensure your compliance with the law.

You should immediately **CEASE AND DESIST** from using such words or phrases in any documents, including, but not limited to any advertisements, stationery, letterhead, business cards, or other comparable written materials. If the State Bar of California receives additional information that, despite this notice, you continue to engage in violation of Business and Professions Code section 6126.7, the State Bar may take any appropriate action to ensure your compliance with the law and to protect the public.

If a complaint sufficiently alleges a UPL violation, the matter is forwarded to Enforcement. Upon referral to Enforcement, additional investigation is done. Investigation activity may involve additional internet searches, Secretary of State filings research, field visits, and follow up with the complainant and respondent. Any combination of the following activities may ensue from this additional investigatory period:

ASSUMPTION OF PRACTICE

Where there is sufficient evidence to conclude that an individual has engaged in UPL and the interest of clients or interested persons will be prejudiced, the State Bar may make application to the superior court, pursuant to section 6126.3, for the assumption of the practice by the superior court. If the superior court grants the application and makes an order assuming jurisdiction, the State Bar acts under direction of the superior court to wind down the practice. These proceedings are filed on an ex parte basis in order to prevent the destruction of files or other evidence that might occur if notice were given. Table 9 of the Report provides information on section 6126.3 filings (referred to as petitions to terminate) for the last four years.

LAW ENFORCEMENT REFERRALS

The State Bar routinely refers matters to law enforcement agencies for prosecution. Pursuant to section 6044.5, the State Bar may disclose, in confidence, information to law enforcement that is not otherwise public. Over the last three years, the State Bar has authorized approximately 241 law enforcement referrals reflecting over 650 individual complaints.⁴⁸

⁴⁸ This is an estimate based upon manual counts. OCTC's current case management system does not allow for automated tracking and reporting of law enforcement referrals and, therefore, the recording and tracking of OCTC's law enforcement referrals has been mostly captured and maintained through physical files and hard copy documents. For example, pursuant to office policy, OCTC requires a written authorization to disclose non-public information to law enforcement, which records the name of the law enforcement agency to receive the referral and the authorization is maintained in OCTC's physical case file. In order to report law enforcement referral numbers this year, the State Bar conducted a manual review of its law enforcement referral authorizations. The State Bar continues validation of these numbers and will be able to report more accurate numbers in future reports. Note that law enforcement referrals in the Report are limited to those that meet the definitions for Table 8 and Table 9.

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Historically, OCTC has referred UPL cases to law enforcement only after a complete investigation has been done; beginning in 2016, OCTC has begun making referrals concurrent with ongoing investigations, in an effort to expedite the criminal investigation of these matters.

CIVIL FINES

The State Bar may seek civil fines of \$1,000 per day for certain types of UPL. A recent news article regarding the State Bar's first superior court filing pursuant to section 6126.7 is illustrative:

The State Bar Monday sued a business that caters to Salvadoran immigrants, alleging its advertising falsely suggests that clients can obtain legal services even though none of the employees are attorneys.

The suit asks that Salvadorean Legal Services on Olympic Boulevard be banned from using words translated from English into Spanish or any other language suggesting to clients that the people who work there are lawyers. The suit also seeks civil penalties of up to \$1,000 daily for each alleged violation.⁴⁹

This 2016 filing has already resulted in a \$5,000 judgment and collection. Funds will be deposited and distributed in accordance with section 6126.7 requirements.

DELAYED COMPLAINT PROCESSING AND 2016 REFORMS

In 2015, two distinct sets of non-attorney complaints were identified as having been pending for lengthy periods of times. The first of these were fifty-nine cases in the investigation stage; the second were 300 cases that had not been processed at the initial, or Intake, stage. A summary of each set of cases is provided below.

CASES PENDING IN INVESTIGATION

In December, 2015, OCTC became aware of fifty-nine UPL cases that had been pending in Investigation for a significant period of time.

The allegations in all fifty-nine of these complaints were essentially the same, namely, that someone had engaged in the unauthorized practice of law; none alleged use of the word notario or other violations of section 6126.7.

The types of services involved in these cases varied. For example, approximately twenty of them implicated a non-attorney offering or engaging in services to modify home mortgage loans. A smaller number of the cases included allegations that a non-attorney offered or performed services related to divorce, unlawful detainer/landlord-tenant, criminal law, or civil matters. Approximately four of the cases involved allegations brought by a licensed attorney that a non-attorney used their name to offer or perform legal services. A small number of the cases indicated that a disbarred or resigned attorney was practicing law, including accepting

⁴⁹ Jackson, Hilary. "Did Business Try to Trick Salvadorean Immigrants into Fake Legal Services?" Mynews1a.com. CalNews.Inc., 4 April 2016.

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payment to review documents or negotiate civil disputes. Three of the cases implicated immigration related services where the crux of the complaint was that someone hired a non-attorney or an attorney licensed in another state and the person failed to do any work, communicate, or return the file.

The origin of the complaints also varied. The majority of them were opened based upon complaints filed by the client who hired the non-attorney. Often they complained of performance related issues such as paying for services they never received. Some were opened based on complaints by a licensed attorney who was aware of the non-attorney because the non-attorney purported to represent opposing clients. Other complaints were opened based on referral by a court, other agency, complaint of a company interacting with the non-attorney, or the State Bar's own initiative.

Information regarding the status and disposition of the fifty-nine cases is provided in the following table:

Table F3: Case Status

Complaint Received Date ⁵⁰	Disposition
2007 (1)	Closed (35)
2009 (3)	Pending, Investigation Stage (24)
2013 (17)	Law Enforcement Referral (9) ⁵¹
2014 (3)	

CASES PENDING IN INTAKE

Earlier this year, the existence of approximately 300 UPL cases pending at the Intake stage of the OCTC process was discovered. The oldest of these cases had been filed in March 2015. Unlike the fifty-nine cases discussed above, detailed statistical data is not available on "the 300," as they were not in fact a discrete cohort. Instead, these pending cases reflected challenges as related to the intake and workflow of UPL case processing; reforms in these processes have been developed and recently articulated in a Policy Directive, as discussed below.

UPL PROTOCOL AND MAY 19, 2016 SUMMIT

A Policy Directive, which addresses in detail the process for initial logging, review, and investigation of non-attorney complaints, as well as law enforcement referrals and superior court filings, has recently been developed. It is in draft format pending approval by the State Bar's Board of Trustees in May 2016; the draft Directive is provided on the following pages. In addition, the Board's Regulation and Discipline Committee has appointed two members to

⁵⁰ Complaint received dates provided for twenty-four of the fifty-nine that remain currently open.

⁵¹ One case has been referred to the Santa Barbara County District Attorney's Office, one to the Riverside County District Attorney's Office, three to the Orange County District Attorney's Office, eight to the Los Angeles District Attorney's Office, seven to the Los Angeles City Attorney's Office, and one to the Beaumont Police Department. The State Bar counts these as nine law enforcement referrals because several cases were referred to more than one law enforcement agency. Also note that a law enforcement referral does not equate to case closure; some of the referrals relate to cases that have been closed, others, to cases pending in Investigation.

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explore UPL case processing procedures in depth. The results of this effort are expected to include a comprehensive policy that will build upon and augment the Directive.

Additional systemic improvement efforts include the establishment of a partnership with both key legal services organizations serving immigrant populations, and prosecuting agencies. As an initial step, on May 19, 2016, the State Bar will host a UPL, Notario, and Immigration Attorney Misconduct summit, designed to elicit ideas for reform in the way in which these issues are identified, brought forward to the State Bar, and prosecuted, from the legal services community. A subsequent forum will include law enforcement agencies currently responsible for acting on State Bar referrals.

Date: April __, 2016

Policy Directive



Policy Directive 2016-02

Processing Complaints Alleging the Unauthorized Practice of Law by Non-Attorneys

Introduction

In addition to evaluating complaints against attorneys for possible violations of the Rules of Professional Conduct or State Bar Act, the Office of Chief Trial Counsel (OCTC) also evaluates “non-attorney complaints,” i.e., those alleging the unauthorized practice of law (UPL) by individuals who are not members of the State Bar of California .

OCTC’s evaluation of a non-attorney complaint focuses squarely upon whether there is evidence that the non-attorney has practiced law, or held himself or herself out as practicing or entitled to practice law. This includes where the non-attorney, in any document, including advertisements, stationary, letterhead, business cards, or other comparable written material, literally translated from English into another language words such as “notary public,” “notary,” “licensed,” “attorney,” or “lawyer,” that imply that the person is an attorney. The literal translation of the phrase “notary public” to “notario publico” or “notario” is expressly prohibited.

Unlike attorney complaints, which are prosecuted before the State Bar Court, OCTC brings enforcement actions against non-attorneys before the superior courts and pursuant to specific statutory authority as described further below. The purpose of this policy directive is to clarify OCTC’s evaluation and processing of non-attorney complaints, and to ensure that OCTC promptly and efficiently processes all such complaints with the goal of protecting the public from individuals who engage in UPL.

Relevant Rules

Business and Professions Code section 6044.5 provides that the State Bar shall disclose,

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in confidence, information not otherwise public to the appropriate agency for criminal or disciplinary enforcement when the State Bar's investigation or formal proceeding concerns misconduct which may subject the individual in question to criminal prosecution or disciplinary charges.

Business and Professions Code section 6125 provides that no person shall practice law in California unless the person is an active member of the State Bar.

Business and Professions Code section 6126(a) provides that any person unlawfully holding himself or herself out as practicing or entitled to practice law is guilty of a misdemeanor.

Business and Professions Code section 6126(b) provides that a disbarred attorney who engages in UPL may be charged with a misdemeanor or a felony.

Business and Professions Code section 6126.3 provides that, in addition to criminal penalties and contempt proceedings, California courts shall have jurisdiction when a person unlawfully advertises or holds himself or herself out as practicing or entitled to practice law. The State Bar may apply to the superior court for assumption by the court of jurisdiction over the practice to the extent provided by statute.

Business and Professions Code section 6126.4 provides that Section 6126.3 applies to a person acting in the capacity of an immigration consultant who advertises or holds himself or herself out as practicing or entitled to practice law.

Business and Professions Code section 6126.7 provides that it is a violation of Section 6126 for a non-attorney to literally translate from English into another language, in any document, including an advertisement, stationary, letterhead, business card, or other comparable written material, any words, such as "notary public," "notary," "licensed," "attorney," or "lawyer," that imply that the person is an attorney. The literal translation of the phrase "notary public" to "notario publico" or "notario" is expressly prohibited by this section. A person who violates this section shall be subject to civil penalty not to exceed \$1000 per day for each violation, to be assessed and collected in a civil action brought by the State Bar.

Business and Professions Code section 6127 provides that acts of UPL are contempt of the authority of the courts.

Intake Process

Intake Evaluation

When OCTC becomes aware of an allegation that a non-attorney has practiced or held

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himself or herself out as practicing or entitled to practice law in California, OCTC's Intake Unit shall open a non-attorney complaint for evaluation and processing. The Intake Unit's evaluation and processing of a non-attorney complaint shall include:

- Opening a case record in OCTC's case management system, using the "complaint form received" (CFR) date, which is the date when the State Bar first received the complaint.
- Creating a summary of the allegations in the case record and inputting staff assignment codes.
- Identifying the source of the complaint.
- Identifying the relevant practice area of law (e.g., immigration, loan modification, debt resolution) and recording the practice area in OCTC's case record.
- Identifying whether allegations include potential identity theft of a licensed attorney's identity, and, if so, contacting the victim attorney to verify whether the attorney is aware of the potential identify theft and has notified law enforcement.
- Evaluating the non-attorney complaint for UPL allegations, which includes:
 - ❖ Opening a corresponding attorney complaint case record, where appropriate, such as where the non-attorney complaint also identifies a licensed California attorney potentially aiding or abetting the non-attorney.
 - ❖ Seeking additional information from the complainant or other sources (e.g., internet search) where the non-attorney complaint does not provide specific or sufficient facts to establish that the unauthorized practice of law may have occurred.
- Determining whether to forward the complaint to the Enforcement Unit for investigation.
 - ❖ If the complaint sufficiently alleges a UPL violation, Intake shall:
 - Forward the complaint to the Enforcement Unit for further action;
and
 - Refer the matter to law enforcement or other appropriate agency for consideration of criminal or other enforcement action, as specified below under the heading, Intake Resolutions.
 - ❖ If the complaint sufficiently alleges the use of "notario" or "notario publico," or other words or phrases, in violation of section 6126.7 (or there is other evidence of a violation of section 6126.7), forward the complaint to the Enforcement Unit for further action.

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- ❖ If the complaint does not sufficiently allege a UPL violation or violation of 6126.7, Intake shall:
 - Notify the complainant in writing of the determination;
 - Advise the complainant in writing of the opportunity to seek reconsideration of the closing decision; and
 - Process the case for closure, including updating the case record.

Intake Resolutions

Intake Staff shall resolve non-attorney complaints by either (1) forwarding the non-attorney complaint to OCTC's Enforcement Unit, or (2) closing the non-attorney complaint in Intake.

Non-attorney complaints alleging UPL are presumed to warrant a law enforcement referral to federal, state or local authorities (e.g. U.S. Attorney's Office, California Attorney General's Office, local district attorney offices, local county counsel offices and/or local city attorney offices) for criminal or other enforcement action. OCTC's Enforcement Unit shall make the referral, where appropriate, and coordinate with law enforcement accordingly throughout OCTC's investigation.

Intake may make other types of referrals where the non-attorney complaint does not allege UPL but warrants referral to another regulatory agency. Examples of other regulatory agencies are attorney regulation offices in other states, the Department of Real Estate, Department of Consumer and Business Affairs, the Security Exchange Commission, and the US Trade and Patent Office,

Intake Time Standards

Intake Staff shall evaluate non-attorney complaints adhering to the time standards stated herein. Recognizing that certain complaints may take longer to process than others, Intake Staff shall strive to meet the following goals in at least 90% of non-attorney complaints:

- Open a non-attorney case record within five (5) days from the CFR date (received date).
- Complete the initial legal review ("read") of non-attorney complaints within 20 days from the CFR date.
- Process non-attorney complaints to resolution (i.e., close or forward for investigation) within 60 days from the CFR date.

Intake Processing Activities

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Intake Staff shall maintain processing activities in the non-attorney complaint case record, including the recording and tracking of other regulatory agency referrals made in connection with non-attorney complaints.

Enforcement Unit Process

All non-attorney complaints forwarded by the Intake Unit to OCTC's Enforcement Unit shall be investigated to determine whether there is evidence of UPL or any violation of section 6126.7. Appropriate law enforcement referrals shall be sent upon assignment to Enforcement Staff. Upon completion of the investigation, Enforcement Staff will analyze the evidence to determine whether the evidence is sufficient to support formal proceedings in superior court.

Investigation Resolutions

Enforcement Staff shall complete non-attorney complaint investigations to resolution by either (1) filing enforcement proceedings in superior court, (2) issuing a cease and desist letter, or (3) closing the complaint with no further action.

Enforcement staff may issue a cease and desist letter where the UPL activity appears isolated in nature and unlikely to recur, or where it otherwise appears that a cease-and-desist warning will sufficiently address and stop the activity at issue.

Enforcement Time Standards

Enforcement Staff shall investigate non-attorney complaints adhering to the same backlog time standard applicable to attorney discipline complaints, namely resolving complaints within six (6) months from the CFR date (i.e., Intake received date).

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Enforcement Processing Activities

Enforcement Staff shall maintain and update processing activities in the non-attorney case record as follows:

- Record and track the number of superior court proceedings initiated pursuant to Business and Professions Code section 6126.3.
- Record and track the number of superior court proceedings initiated pursuant to Business and Professions Code section 6126.4.
- Record and track the number of superior court proceedings initiated pursuant to Business and Professions Code section 6126.7.
- Record and track the number of superior court proceedings initiated pursuant to Business and Professions Code section 6127.
- Record and track the number of law enforcement referrals made in connection with non-attorney complaints.
- Record and track the number of other agency referrals made in connection with non-attorney complaints.
- Record and track the number of cease-and-desist letters issued in connection with non-attorney complaints.

APPENDIX G
RESOURCE GUIDE FOR COURTS - REPORTING ATTORNEY MISCONDUCT



OFFICE OF CHIEF TRIAL COUNSEL – STATE BAR OF CALIFORNIA
Resource Guide for Courts – Reporting Attorney Misconduct

As a regulatory agency and arm of the California Supreme Court, the Office of Chief Trial Counsel serves to protect the public from unethical attorneys and non-attorneys who engage in the unlawful practice of law.

MANDATORY REPORTING OF ATTORNEY MISCONDUCT ISSUES

A court is required by statute to notify the State Bar of various events, including:

- A judgment against an attorney for fraud, misrepresentation, breach of fiduciary duty, or gross professional negligence. (*Cal. Bus. & Prof. C. § 6086.8(a).*)
- A final order of contempt against an attorney which may warrant discipline. (*Cal. Bus. & Prof. C. § 6086.7(a)(1).*)
- The modification or reversal of a judgment based in whole or in part on attorney misconduct or incompetence. (*Cal. Bus. & Prof. C. § 6086.7(a)(2).*)
- The imposition of judicial sanctions, except for failure to make discovery or sanctions under \$1,000. (*Cal. Bus. & Prof. C. § 6086.7(a)(3).*)
- The imposition of a civil penalty upon an attorney pursuant to section 8620 of the Family Code regarding adoption of children with Indian tribal affiliations. (*Cal. Bus. & Prof. C. § 6086.7(a)(4).*)
- The finding of bad faith by a prosecuting attorney in withholding exculpatory evidence. (*Cal. Bus. & Prof. C. § 6086.7(a)(5).*)
- The conviction of an attorney. (*Cal. Bus. & Prof. C. § 6101(c).*) Please note that the court clerk is required to provide to the State Bar a certified record of conviction upon a plea or verdict of guilty or acceptance of a nolo contendere plea.

In addition to these statutory reporting requirements, a judge or court staff should notify the State Bar of any misconduct by an attorney, which appears to violate the law or rules of professional conduct. The State Bar also receives and investigates complaints against non-attorneys who may be engaging in the unauthorized practice of law.

JUDICIAL REPORTING FORM

The Judicial Reporting Form for use by judges and court staff is available online at www.calbar.ca.gov and can be found by using the website search function. The form has “fillable” fields so that the information may be typed in online, but the form should then be printed and either mailed or sent by fax to:

The State Bar of California
Intake Unit
845 South Figueroa Street
Los Angeles, CA 90017-2515
(213) 765-1164 (Fax)

If you have a question or concern about the judicial reporting process, please contact Senior Trial Counsel Cecilia Horton-Billard who supervises court referrals and complaints. Ms. Horton-Billard may be reached at 213-765-1392 or at Cecilia.Horton@calbar.ca.gov.