



# THE STATE BAR OF CALIFORNIA

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April 30, 2012

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 Darrell Steinberg  
Senate President pro Tempore  
State Capitol, Room 205  
Sacramento, CA 95814

Honorable John A. Pérez  
Speaker of the Assembly  
State Capitol, Room 219  
Sacramento, CA 94249-0046

Honorable Noreen Evans  
Chair, Senate Committee on Judiciary  
State Capitol, Room 4032  
Sacramento, CA 95814

Honorable Mike Feuer  
Chair, Assembly Committee on Judiciary  
State Capitol, Room 2013  
Sacramento, CA 95814

Dear Chief Justice Cantil-Sakauye, Governor Brown, Senator Steinberg, Assemblyman Pérez, Senator Evans, Assemblyman Feuer, Members of the Senate Judiciary Committee and Members of the Assembly Judiciary Committee:

Attached is the Annual Discipline Report of the State Bar of California in fulfillment of the requirements of Business and Professions Code section 6086.15.

Last year, the State Bar made major changes in both the format and the content of the *Annual Discipline Report*. Additional refinements were made this year. Our goal has been to sharpen its focus on the areas of greatest interest to the State Bar's stakeholders and to improve the overall transparency of the attorney discipline system.

The State Bar also made significant changes in the operations of its Office of the Chief Trial Counsel, the prosecutorial arm of the State Bar's discipline system. The new Chief Trial Counsel, Jayne Kim, and her new management team have taken great steps to enhance and ensure the State Bar's mission of regulating the legal profession and public protection. The positive results are reflected in this year's report.

### **Accomplishments**

In 2011, the State Bar made significant progress in reducing the backlog of open complaints in the attorney discipline system. At the end of 2010, there were 4,402 complaints more than six months old in the inquiry, investigation and pre-filing stages of the discipline process. By the end of 2011, this number had been reduced by more than 70%, to 1,222. Progress in key stages of the discipline process has been even more marked:

- **Investigation Stage-Zero Backlog.** At the end of 2010, there were more than 1,200 active investigations pertaining to complaints six months old or older. By the end of 2011, there were eight, all of which were in the hands of outside evaluators. As a result, State Bar investigators were able to begin 2012 with no backlog of complaint over six months old.
- **Pre-Filing Stage-75% Reduction.** The total number of disciplinary matters being prepared for litigation but not yet filed in the State Bar Court fell by more than 75% from the end of 2010 to the end of 2011. At the end of 2010, 860 complaints were open in the pre-filing stage, of which 69% were more than twelve months old. At the end of 2011, this figure stood at 196, with only 34% over one year old.

In addition, the State Bar was able to reduce the number of investigations suspended pending action in related matters by over one thousand – from 2,510 at the end of 2010 to 1,495 at the end of 2011 – due to the disbarment or resignation of respondents named in over 1,800 complaints.

Notably, these reductions were accomplished during a year in which the State Bar received over 16,000 new complaints of attorney misconduct and opened almost five thousand new investigations.

### **Work Ahead**

While we are proud of what has been accomplished over the past year, the fact remains that the attorney discipline process simply takes too long. Our goal, as defined by statute, is to file formal charges within six months of receiving a complaint. Yet, in 2011, the median time merely to complete an investigation was approximately seven months, with an additional five months to the filing of a Notice of Disciplinary Charges. Overall, the median time to filing formal charges in 2011 was about thirteen months. The State Bar can – and must – improve on this performance.

Structural changes to achieve this improvement are already underway within the Office of Chief Trial Counsel. In addition, we are currently selecting new information systems for both the Office of Chief Trial Counsel and the State Bar Court which will enable many process improvements and efficiency gains. Over the next twelve months, in connection with the implementation of these new systems, we will re-examine the processes and procedures which make up the discipline system with fresh eyes and renewed focus on the bottom-line mission: how best to protect the public from misconduct in the legal profession.

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April 30, 2012

The accomplishments of 2011 have laid a solid foundation for future progress. Our task now is to build a fully modernized, more responsive and more effective discipline system upon that foundation.

Yours truly,

A handwritten signature in blue ink that reads "Joseph L. Dunn". The signature is written in a cursive style with a large, prominent initial "J".

Senator Joseph L. Dunn, Ret.  
Executive Director/CEO



# 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, 2012

The State Bar of California has 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 2011, the State Bar received 16,156 new complaints against California lawyers. The Office of Chief Trial Counsel, the State Bar's prosecutorial arm, opened 4,967 new investigations and filed disciplinary charges or stipulations to discipline in 1,522 complaints. Formal discipline was imposed in 1,573 complaints, resulting in the disbarment or suspension of 394 lawyers.

In 2011, the State Bar made significant progress in reducing its backlog of cases—those open complaints 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. At the end of 2010, 4,402 complaints were in backlog. By the end of 2011, the backlog was 1,222 complaints—a reduction of more than 70 percent. More significantly, backlog complaints with open investigations pending over six months old were reduced from 1,234 at the end of 2010 to 8 at the end of 2011.

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 (1) other programs of the State Bar directed at assuring attorney honesty and competency or preventing misconduct, (2) the condition of the Client Security Fund, and (3) the cost of the discipline system.

The full report is available at:

<http://www.calbar.ca.gov/Attorneys/LawyerRegulation/DisciplineReport.aspx>

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

# **Attorney Discipline Report For Year Ending December 31, 2011**



**The State Bar of California  
April 30, 2012**

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# INTRODUCTION

## **Introduction**

Each April, the State Bar of California issues its *Annual Discipline Report*. The State Bar presents this 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, for their consideration. It fulfills the requirements of Business and Professions Code section 6086.15, which mandates that the State Bar report annually on the performance and condition of its discipline system.<sup>1</sup>

This report contains detailed statistical and other information about the State Bar's attorney discipline system. It presents data and tables on the numbers of complaints made against California lawyers and the average times for processing complaints through the discipline system for the preceding year. Statistical information is also presented for the three previous years to enable a year-to-year comparison and an overview of the workload and performance of the State Bar's attorney discipline system.

This report also contains information on the costs of the discipline system and the condition of the Client Security Fund, the program established under Business and Professions Code section 6140.5 to provide some relief and mitigation to victims who have suffered pecuniary losses caused by the dishonest conduct of a California lawyer. Finally, there is a description of some of the State Bar's programs directed at assuring attorney honesty and competence and preventing acts warranting discipline.

The *Annual Discipline Report* is published on the State Bar's website at <http://www.calbar.ca.gov/AboutUs/Publications/Reports.aspx>.

## ***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 and disbars or suspends a lawyer from the practice of law.

In California's attorney discipline system, all communications and information concerning the conduct of California lawyers are 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 the State Bar Court. The Hearing Department of the State Bar Court conducts evidentiary hearings and renders a decision with findings and recommendations of discipline that are reviewable by the Review Department of the State Bar Court. The State Bar Court's final decision and accompanying record in each case are then transmitted to the Supreme Court. The Supreme Court undertakes an independent

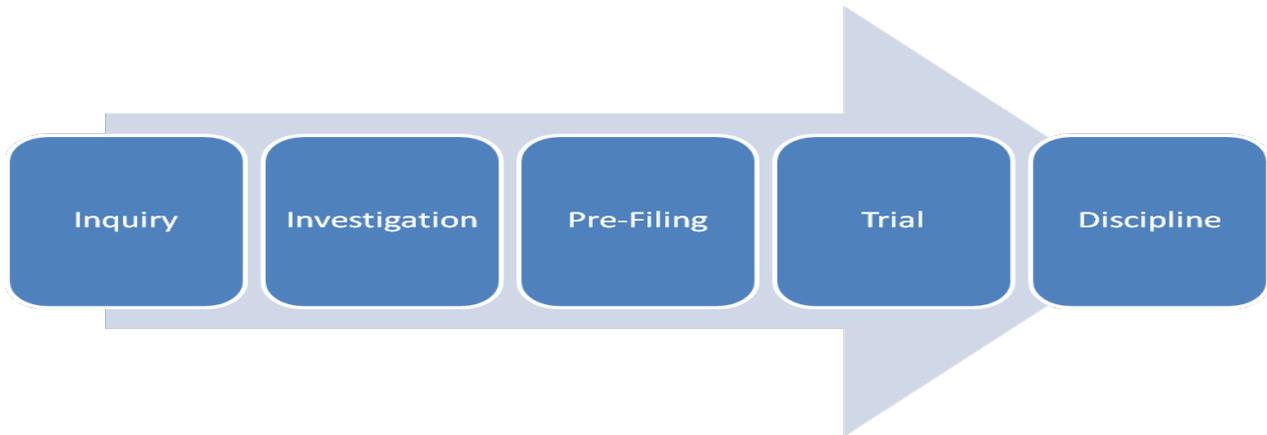
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<sup>1</sup> A summary of the content required by Business and Professions Code section 6086.15 and related statutes and the complete text of the provisions may be found in the Appendix.

determination whether the lawyer should be suspended or disbarred as recommended. Discipline occurs with a final decision and order of the Supreme Court.

To inform the Legislature, the Governor, and the Supreme Court on the performance of the discipline system, the tables in the *Annual Discipline Report* are organized to show the numbers and ages of complaints as they are processed through each stage of the attorney discipline system.

### ***Stages of the Discipline System in Processing of Complaints***



#### Five Stages of the Attorney Discipline Process

The attorney discipline system is described in the *Annual Discipline Report* in five major stages: **inquiry**, **investigation**, **pre-filing**, **trial**, and finally, imposition of **discipline**. The following briefly explain each of these stages and how a complaint proceeds from one stage to the next.

- **Inquiry**

The process begins after receipt of a written complaint in OCTC’s Intake Unit. OCTC then conducts an inquiry to review and evaluate the complaint, any supporting documents, and other information to determine whether a complaint merits a full investigation.

- **Investigation**

A complaint that alleges misconduct that could result in discipline, if proved, will be advanced to the investigation stage. Investigations are carried out by professional investigators in OCTC, with 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 the State Bar Court. An OCTC attorney reviews the results of each investigation. After any determination to proceed with disciplinary proceedings, the complaint advances to the pre-filing stage.

When multiple complaints are made against the same respondent, OCTC may select and prosecute only some of the complaints likely to result in disbarment. In such investigations, the remaining complaints will be suspended or “held.” If OCTC is successful in obtaining disbarment, prosecution of the suspended investigations will no longer be warranted and the

remaining complaints will be closed. However, if the respondent is not disbarred, OCTC may re-open any suspended investigations.

At this stage, if the respondent is the subject of a criminal prosecution for the same misconduct, OCTC may suspend its investigation until the criminal proceedings have been concluded.

- **Pre-Filing**

When a completed investigation presents sufficient evidence to support the imposition of discipline, OCTC drafts a Notice of Disciplinary Charges for filing in the State Bar Court. Before filing charges, OCTC attempts to negotiate a stipulation as to facts and proposed discipline. At this point, both OCTC and the respondent have the right to request an Early Neutral Evaluation Conference (ENE). To facilitate an early stipulated outcome, in an ENE, a State Bar Court judge orally evaluates the facts and charges and potential for imposing discipline.

- **Trial**

OCTC prosecutes the case in a trial in the Hearing Department of the State Bar Court. The Hearing Department's decision with findings and a recommendation of discipline of the respondent may be reviewed on appeal to the State Bar Court's Review Department. If there is no appeal, or the appeal is unsuccessful, the case passes to the next stage for the imposition of discipline.

- **Discipline**

Any decision of the State Bar Court to impose discipline is subject to review by the Supreme Court. After any final decision and order of the State Bar Court to impose a suspension or disbarment, the State Bar Court's decision and record of its proceeding is prepared and formally transmitted to the Supreme Court for its independent determination and action. The Supreme Court issues the final order or decision imposing discipline.

### ***Discipline System Terminology***

The State Bar Act (Bus. & Prof. Code, §§ 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. (See e.g., Rules of the State Bar, Rule 5.4.) Definitions of some of those key terms as used in this report are presented here.

***Inquiry*** refers to the evaluation of a written complaint after its receipt by the Intake Unit of OCTC. The purpose of an inquiry is to determine whether an investigation or other action is warranted based on information relating to alleged professional misconduct. OCTC first assigns an inquiry number to each complaint and then a case number to each complaint when an investigation is opened. If a complaint names more than one lawyer, a separate complaint is opened for each lawyer.

**Complaint** refers to all written complaints received by OCTC. When an inquiry determines that a complaint has sufficient allegations or information to show misconduct, which if proved, could result in discipline, an *investigation* may be opened. **Each complaint against a lawyer is counted as one complaint.** The terms “*case*” and “*complaint*” are used interchangeably in Business and Professions Code section 6086.15 and in the *Annual Discipline Report*.<sup>2</sup>

**Complainant** refers to the person who makes a written complaint against a lawyer.

**Investigation** is the process during which OCTC gathers, evaluates, and reviews evidence and information about a complaint against a lawyer.

**Respondent** is a California lawyer who is the subject of an inquiry, complaint, investigation or a disciplinary proceeding in the State Bar Court.

**Notice of Disciplinary Charges** (or “*disciplinary charges*”) means the papers or “initial pleading” that is filed to begin the disciplinary proceeding in the State Bar Court against a lawyer. The Notice of Disciplinary Charges provides notice of the rules, statutes, or orders the lawyer is alleged to have violated. Notice of Disciplinary Charges has also been referred to by statute as a “*notice to show cause*” and “*formal charges*.” Each filing of a Notice of Disciplinary Charges may consolidate and include multiple complaints against a lawyer.<sup>3</sup> For consistency of reporting the State Bar’s process of handling complaints, **each complaint against a lawyer continues to be counted as one complaint** throughout the discipline system.

**Stipulation to Discipline** refers to settlement by the stipulation to facts, conclusions of law and disposition reached between OCTC and a respondent under State Bar Rule 5.56. A Stipulation to Discipline must first be approved by the State Bar Court and then transmitted to the Supreme Court for its final determination.

**Alternative Discipline Program** or **ADP** refers to the program in which a respondent with substance abuse or mental health issue may participate upon approval of a judge of the State Bar Court. Among the conditions for acceptance into ADP is the respondent’s acceptance into the State Bar’s treatment program for treating lawyers impaired by substance abuse or mental illness,<sup>4</sup> the judge’s approval of a stipulation to facts and conclusions of law, evidence that the respondent’s substance abuse or mental health issue contributed to the misconduct, and any other condition the judge may impose. The judge of the State Bar order approving an application to participate in ADP will include a statement of the range of low and high discipline that may be imposed if the respondent is successful or unsuccessful in completing the program.

**Disciplinary Proceeding** means a proceeding in the State Bar Court for the purpose of seeking the imposition of discipline against a respondent.

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<sup>2</sup> Beginning with the *Annual Discipline Report* for 2010, as recommended by the Bureau of State Audit in California State Auditor 2009-040, at pp. 39-40, each complaint opened against a lawyer is counted and included as a separate “*complaint*” or “*case*” in the data and tables in this report.

<sup>3</sup> For consistency, each complaint is counted separately even though the complaints are consolidated in a single disciplinary proceeding in the State Bar Court. (See *ante*, fn. 2.)

<sup>4</sup> The State Bar’s **Lawyers Assistance Program** is a separate treatment program established under Business and Professions Code sections 6230 et seq.

**Backlog** is the statutory term referring to the status of a complaint or case based on time goals set by the Legislature for the processing of complaints in the discipline system. For purposes of the *Annual Discipline Report*, Business and Professions Code section 6086.15 defines *backlog* to mean “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].” The *backlog* is used as a key benchmark for the performance of the discipline system. This definition is consistent with Business and Professions Code section 6140.2, which states: “The State Bar shall set as a goal the improvement of its disciplinary system so that no more than six months will elapse from the receipt of complaints to the time of dismissal, admonishment of the attorney involved, or the filing of formal charges by the State Bar Office of [the Chief] Trial Counsel.”

**Abatement** refers to the procedure and grounds in the State Bar Court to stay a disciplinary proceeding after the filing of disciplinary charges. (Rules of the State Bar, rules 5.50 – 5.52.) OCTC may *abate* its investigation of a complaint and not initiate disciplinary proceedings in the State Bar Court for the same reasons. In some circumstances with 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. In the *Annual Discipline Report*, investigations of complaints *held* or *abated* by OCTC are referred to collectively as *suspended investigations*. Suspended investigations pending more than six months from receipt without the filing of disciplinary charges are counted and included in the backlog under Business and Professions Code section 6086.15.

### ***Statistical Highlights in 2011***

The following are some of the statistical highlights from this year’s report, which are more fully detailed in the tables and data below.

- In 2011, the backlog of all complaints open longer than six months without dismissal or the filing of formal charges fell from 4,402 to 1,220, a reduction of more than 70%. The backlog of active investigations over six months old was virtually eliminated.
- In 2011, the State Bar completed 15,866 inquiries occasioned by complaints of lawyer misconduct from the public. About one third of these (4,967) led to the opening of new formal investigations.
- State Bar investigators completed 5,464 complaint investigations in 2011, of which 1,672 were forwarded for pre-filing (i.e. preparation for trial), and another 352 were joined to matters already in trial. 1,478 investigations were suspended pending action in related matters.
- Formal filings in State Bar Court were made in connection with 2,231 complaints during 2011 – divided into roughly equal numbers of stipulations to discipline and Notices of Disciplinary Charges (NDCs). This represented more than a 50% increase on 2010’s level and was about three times the level reached in 2009.
- Discipline was imposed in connection with 1,573 complaints. About 30% resulted in disbarment, while the remainder represented suspensions of varying durations.

**CASELOAD  
COMPLAINTS BY STAGE**

## Caseload – Complaints by Stage

Every year the State Bar’s attorney discipline system receives more than ten thousand new complaints. At any point in time, OCTC has over a thousand open complaints under inquiries, along with hundreds of open investigations, pre-filing matters, and cases in the State Bar Court. In addition, there are hundreds of decisions of cases transmitted or about to be transmitted to the Supreme Court for its review and determination.

This section details the volume and flow of complaints through the five stages of the discipline system, along with the inventory by age of the number of complaints-in-process at each stage. For each stage, the tables below show the number of complaints at the beginning of the year, the number of complaints entering and leaving during the year, and the remaining inventory of complaints at year-end, December 31<sup>st</sup>. The age of a complaint in the year-end inventories is measured from the date on which the complaint was first received by OCTC.<sup>5</sup>

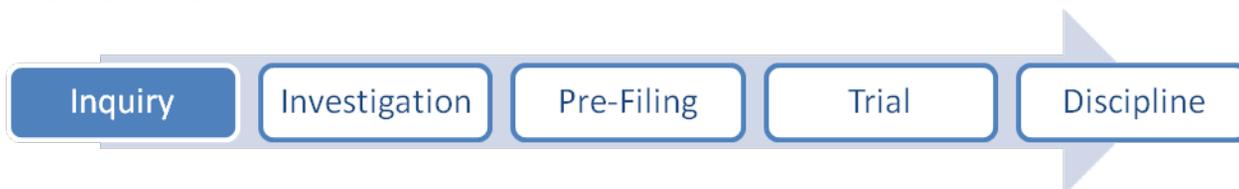
A complaint may be closed and no longer counted in the caseload for various reasons. The following is an explanation of the reasons, as shown in the tables in this section, why a complaint may be closed.

- **Referred:** Complaints may be closed if a complainant or the underlying matter is referred elsewhere for resolution. For example a complaint may be referred to mandatory fee arbitration, if the matter is a fee dispute; to an alternative dispute resolution mediation program sponsored by a local bar association for resolving lawyer-client related disputes; or to the criminal justice system if criminal conduct is alleged.
- **Non-Disciplinary Action:** Complaints may be closed with a *directional or warning* letter to the respondent. A *directional letter* points out there is a potential for future violation if specified conduct is not corrected and may reference resources the respondent may consult to ensure future compliance with professional standards. A *warning letter* advises a respondent of the opinion of OCTC that professional misconduct has occurred; it warns the respondent not to continue or repeat the conduct, but advises that because of the present circumstances or minor nature of the infraction, there will be no prosecution at this time.
- **Resolved Between the Parties:** Complaints may be closed if the complainant and respondent have resolved the underlying dispute and OCTC has determined that prosecution of disciplinary proceedings is not warranted.
- **Closed with No Action:** Complaints may be closed with no action if they are without merit, there is insufficient evidence to support or prove the allegations, or the complainant refuses to cooperate.
- **Respondent Resigned, Disbarred, or Deceased:** Complaints may be closed if the Supreme Court accepts the respondent’s resignation, which has been tendered while the complaints are pending. Complaints may be closed if the respondent is disbarred in another case. And complaints may be closed because of the death of the respondent.
- **Duplicate Complaints and Error:** Complaints may be closed if they were opened in error or if they involve the same matters as another complaint.

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<sup>5</sup> The complaints at the inquiry, investigation or pre-filing stages that are more than six-months in age are included in the complaints in backlog in the next section of this report.

## ***Inquiry Stage***



The majority of disciplinary actions originate with complaints filed by members of the public. For every written complaint received by OCTC, its Intake Unit opens and conducts an inquiry – a review of the complaint itself, as well as the supporting documentation and surrounding circumstances – to determine whether a formal investigation is warranted. In some instances, this determination can be made quickly based on the allegations and facts presented by the complainant. In other cases, Intake will contact the parties for additional information. If a complaint is not advanced to the formal investigation stage, it was either referred elsewhere; the parties resolved the underlying matter; OCTC issued a directional or warning letter to the respondent; or it was closed without action.

**Table 1: Complaints in Open Inquiries**

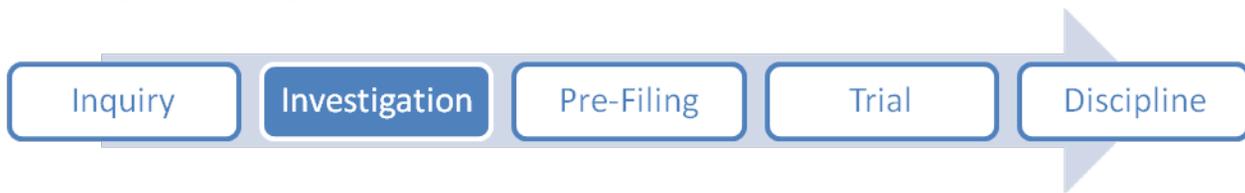
<b>Activity, January 1 to December 31</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>Open Inquiries as of January 1</b>	<b>1,577</b>	<b>1,837</b>	<b>3,327</b>	<b>2,066</b>
PLUS:				
New Complaints Received	13,585	17,103	17,914	16,156
LESS:				
Forwarded to Investigation Stage	2,805	5,377	6,028	4,967
Referred	452	388	385	285
Closed with Non-Disciplinary Action	618	631	663	870
Resolved Between the Parties	145	107	173	198
Closed with No Action	8,956	8,658	9,868	8,798
Respondent Resigned, Disbarred, or Deceased	219	322	1,893	587
Duplicate Complaints and Errors	<u>130</u>	<u>130</u>	<u>165</u>	<u>161</u>
Sub-Total	13,325	15,613	19,175	15,866
<b>Open Inquiries as of December 31</b>	<b>1,837</b>	<b>3,327</b>	<b>2,066</b>	<b>2,356</b>

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<b>Age of Open Inquiries as of December 31</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
0 to 3 months	1,729	3,096	1,895	2,107
3 to 6 months	55	189	86	217
6 to 12 months	38	32	52	29
1 to 5 Years	15	10	32	3
> 5 Years	0	0	1	0
<b>Open Inquiries as of December 31</b>	<b>1,837</b>	<b>3,327</b>	<b>2,066</b>	<b>2,356</b>

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## ***Investigation Stage***



A complaint alleging misconduct that could result in discipline, if proved, will be advanced to the investigation stage. Investigations are carried out by professional investigators in OCTC, with 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 against the respondent in State Bar Court. An OCTC attorney reviews the results of each investigation and determines whether to advance the matter to the pre-filing stage. If not, the complaint may be closed without action or with non-disciplinary action, or may be referred elsewhere.

Processing of a complaint in the investigation stage or pre-filing stages may be *suspended*. When there are multiple complaints against a single respondent, OCTC may determine select prosecution of complaints likely to result in the disbarment of the respondent. Investigation of the remaining complaints will be suspended. If disbarment is not obtained, the suspended complaints may be re-opened. If the respondent is disbarred, the suspended investigation will be closed. OCTC may also suspend an investigation upon notification by a criminal prosecutor until the conclusion of a pending criminal investigation or proceeding against the respondent for the same misconduct.

## Table 2: Complaints in Open Investigations

Activity, January 1 to December 31	2008	2009	2010	2011
<b>Open Investigations as of January 1</b>	<b>1,711</b>	<b>1,446</b>	<b>2,770</b>	<b>2,849</b>
PLUS:				
Forwarded from Inquiry Stage	2,805	5,377	6,028	4,967
Suspended Investigations Re-Opened	34	57	127	281
Other Re-Opened Investigations	<u>34</u>	<u>28</u>	<u>22</u>	<u>63</u>
Sub-Total	2,873	5,462	6,177	5,311
LESS:				
Forwarded to Pre-Filing Stage	1,114	949	1,328	1,672
Forwarded to Trial Stage	15	75	230	352
Suspended	335	1,083	1,521	1,478
Referred	89	117	213	405
Resolved Between the Parties	143	158	191	355
Closed with Non-Disciplinary Action	175	149	285	229
Closed with No Action	1,162	1,455	2,139	2,132
Respondent Resigned, Disbarred or Deceased	29	37	26	99
Duplicate Complaints and Errors	<u>76</u>	<u>115</u>	<u>165</u>	<u>220</u>
Sub-Total	3,138	4,138	6,098	6,942
<b>Open Investigations as of December 31</b>	<b>1,446</b>	<b>2,770</b>	<b>2,849</b>	<b>1,218</b>
<b>Age of Open Investigations as of December 31</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
0 to 3 months	375	839	768	594
3 to 6 months	523	1,111	847	616
6 to 12 months	332	627	987	4
1 to 5 Years	214	193	245	4
> 5 Years	2	0	2	0
<b>Open Investigations as of December 31</b>	<b>1,446</b>	<b>2,770</b>	<b>2,849</b>	<b>1,218</b>

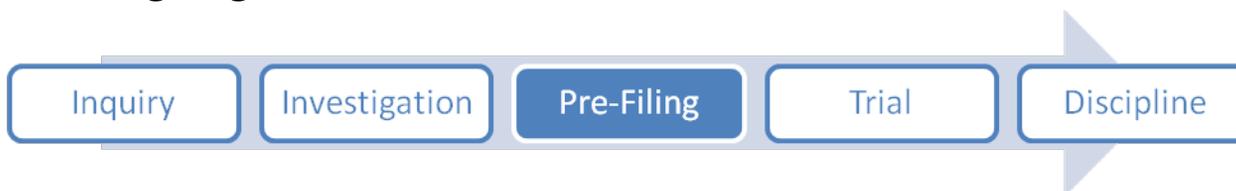
### Table 3: Complaints in Suspended Investigations

Activity, January 1 to December 31	2008	2009	2010	2011
<b>Suspended Investigations as of January 1</b>	<b>307</b>	<b>530</b>	<b>1,402</b>	<b>2,510</b>
PLUS:				
Investigations Suspended	335	1,083	1,521	1,478
From Other Stages	<u>84</u>	<u>119</u>	<u>112</u>	<u>168</u>
Sub-Total	419	1,202	1,633	1,646
LESS:				
Suspended Investigations Re-Opened	34	57	127	281
Forwarded to Pre-Filing Stage	14	4	44	154
Forwarded to Trial Stage	5	3	50	297
Resolved Between the Parties	0	0	0	7
Closed with Non-Disciplinary Action	0	1	0	2
Closed with No Action	14	37	32	63
Respondent Resigned, Disbarred or Deceased	128	222	268	1,853
Duplicate Complaints and Errors	<u>1</u>	<u>6</u>	<u>4</u>	<u>4</u>
Sub-Total	196	330	525	2,661
<b>Suspended Investigations as of December 31</b>	<b>530</b>	<b>1,402</b>	<b>2,510</b>	<b>1,495</b>

Age of Suspended Investigations, December 31	2008	2009	2010	2011
0 to 3 months	19	263	33	228
3 to 6 months	44	362	216	275
6 to 12 months	154	334	597	232
1 to 5 Years	306	435	1,645	746
> 5 Years	7	8	19	14
<b>Suspended Investigations as of December 31</b>	<b>530</b>	<b>1,402</b>	<b>2,510</b>	<b>1,495</b>

## Pre-Filing Stage



Once an investigation is complete and OCTC has made a determination to proceed against the respondent, OCTC then prepares to litigate the case in the State Bar Court. The Notice of Disciplinary Charges against a respondent is drafted at this stage. Depending upon the circumstances, OCTC may attempt to negotiate a stipulation to discipline. The respondent or OCTC may also request an Early Neutral Evaluation Conference (ENE) to facilitate a stipulated outcome. In some cases, in an ENE the State Bar Court judge may refer a respondent to the Alternative Discipline Program. If an early resolution cannot be reached, OCTC will proceed to file formal charges.

### Table 4: Complaints in Pre-Filing

Activity, January 1 to December 31	2008	2009	2010	2011
<b>Pre-Filing Matters as of January 1</b>	<b>993</b>	<b>1,150</b>	<b>1,247</b>	<b>860</b>
PLUS:				
Forwarded from Open Investigation	1,114	949	1,328	1,672
Forwarded from Suspended Investigation	14	4	44	154
From Other Stages	<u>15</u>	<u>8</u>	<u>19</u>	<u>21</u>
Sub-Total	1,143	961	1,391	1,847
LESS:				
Forwarded to Trial (Filed)	612	508	959	1,545
Closed With Non-Disciplinary Action	95	95	223	204
Closed With No Action	164	124	457	490
Suspended	71	99	92	158
Resolved Between the Parties	3	4	8	30
Respondent Resigned, Disbarred or Deceased	12	0	0	1
Other Dispositions	<u>29</u>	<u>34</u>	<u>39</u>	<u>83</u>
Sub-Total	986	864	1,778	2,511
<b>Pre-Filing Matters as of December 31</b>	<b>1,150</b>	<b>1,247</b>	<b>860</b>	<b>196</b>

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<b>Age of Pre-Filing Matters as of December 31</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
0 to 3 months	2	3	5	2
3 to 6 months	33	27	33	6
6 to 12 months	252	238	225	122
1 to 5 Years	858	975	596	66
> 5 Years	5	4	1	0
<b>Pre-Filing Matters as of December 31</b>	<b>1,150</b>	<b>1,247</b>	<b>860</b>	<b>196</b>

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## ***Trial Stage***



The trial stage is reached when OCTC files either a stipulation to discipline – if one has been reached – or a Notice of Disciplinary Charges in the State Bar Court.

In review and approval of a stipulation to discipline in the Hearing Department of the State Bar Court, a hearing judge must determine if the stipulation is fair and adequately protects the public.

If disciplinary charges are filed, pre-trial discovery and motion practice, and trial will be conducted in Hearing Department of the State Bar Court. At this stage, a respondent may be referred to the Alternative Discipline Program. After a trial, the hearing judge renders a decision with findings of fact and a recommendation of discipline if the respondent is found culpable of the alleged misconduct. A respondent or OCTC may appeal the decision of the Hearing Department to the Review Department of the State Bar Court. A final decision of the State Bar Court is reached after any appeal to the Review Department of the State Bar Court, or when there is no appeal, the Hearing Department's decision will become the final decision of the State Bar Court.

## Table 5: Complaints in Hearing Department

Activity, January 1 to December 31	2008	2009	2010	2011
<b>Trial - Hearing Dept Matters as of January 1</b>	<b>391</b>	<b>527</b>	<b>384</b>	<b>562</b>
PLUS:				
Forwarded from Pre-Filing Stage	612	508	959	1,522
From Active Investigations	15	75	230	284
From Suspended Investigations	5	3	50	221
Returned From Supreme Court	16	14	51	7
Abated Matters and Defaults Made Active	12	45	74	135
Returned From ADP	148	102	111	56
From Other Stages	<u>6</u>	<u>5</u>	<u>3</u>	<u>6</u>
Sub-Total	814	752	1,478	2,231
LESS:				
Forwarded for Imposition of Discipline	302	415	985	1,274
Matter Closed	82	127	74	141
Matters Abated or Pending Default	87	168	98	281
Referred to ADP	162	110	65	31
Appealed	40	55	57	51
Returned To Other Stages	<u>5</u>	<u>20</u>	<u>21</u>	<u>29</u>
Sub-Total	678	895	1,300	1,807
<b>Trial - Hearing Dept Matters as of December 31</b>	<b>527</b>	<b>384</b>	<b>562</b>	<b>986</b>

<b>Age of Trial - Hearing Dept Matters, December 31</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
0 to 3 months	0	21	2	14
3 to 6 months	3	12	9	59
6 to 12 months	40	49	75	298
1 to 5 Years	465	282	436	610
> 5 Years	19	20	40	5
<b>Trial - Hearing Dept Matters as of December 31</b>	<b>527</b>	<b>384</b>	<b>562</b>	<b>986</b>

<b>Matters by Filing Type</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Notice of Disciplinary Charges	653	573	842	1,089
Stipulation to Discipline	142	150	625	1,083
Other	19	29	11	59
<b>Total</b>	<b>814</b>	<b>752</b>	<b>1,478</b>	<b>2,231</b>

## **Table 6: Complaints in Review Department**

<b>Activity, January 1 to December 31</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>Open Appeals as of January 1</b>	<b>16</b>	<b>36</b>	<b>50</b>	<b>39</b>
PLUS:				
Forwarded from Trial Stage	40	55	57	51
From Other Stages	<u>1</u>	<u>2</u>	<u>5</u>	<u>10</u>
Sub-Total	41	57	62	61
LESS:				
Forwarded for Imposition of Discipline	19	41	68	68
Dismissals	1	0	2	4
Other Results	<u>1</u>	<u>2</u>	<u>3</u>	<u>4</u>
Sub-Total	21	43	73	76
<b>Open Appeals as of December 31</b>	<b>36</b>	<b>50</b>	<b>39</b>	<b>24</b>

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<b>Age of Open Appeals, December 31</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
0 to 3 months	0	0	0	0
3 to 6 months	0	0	0	0
6 to 12 months	0	0	0	0
1 to 5 Years	33	42	31	22
> 5 Years	3	8	8	2
<b>Open Appeals as of December 31</b>	<b>36</b>	<b>50</b>	<b>39</b>	<b>24</b>

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## Discipline



This stage commences after a final decision of the State Bar Court. For any State Bar Court decision recommending the disbarment or suspension of a respondent, State Bar Court staff prepares a certified copy of the decision, together with the record of the proceedings, for transmittal to the Supreme Court. An appeal to the Supreme Court to review a decision of the State Bar Court may be filed within 60 days of the filing of the certified copy of the State Bar Court's decision. The Supreme Court exercises its independent judgment as to the weight and sufficiency of the evidence and as to the discipline to be imposed. Under California Rules of Court, rule 9.18(b), if no appeal is filed, the recommendation of the State Bar Court will be filed as an order of the Supreme Court. This last stage is completed with the imposition of discipline.

**Table 7: Complaints in Discipline Stage**

Activity, January 1 to December 31	2008	2009	2010	2011
<b>Complaints in Discipline Stage as of January 1</b>	<b>83</b>	<b>136</b>	<b>229</b>	<b>668</b>
PLUS:				
Forwarded from Trial Stage	302	415	985	1,274
Forwarded from Appeal	19	41	68	68
From Other Stages	<u>44</u>	<u>46</u>	<u>234</u>	<u>88</u>
Sub-Total	365	502	1,287	1,430
LESS:				
Discipline Imposed	295	384	794	1,573
Dismissed	0	3	0	5
Other Results	<u>17</u>	<u>22</u>	<u>54</u>	<u>14</u>
Sub-Total	312	409	848	1,592
<b>Complaints in Discipline Stage as of December 31</b>	<b>136</b>	<b>229</b>	<b>668</b>	<b>506</b>

<b>Age of Complaints in Discipline Stage, December 31</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
0 to 3 months	0	0	0	0
3 to 6 months	0	0	10	34
6 to 12 months	5	4	146	97
1 to 5 Years	105	191	422	356
> 5 Years	26	34	90	19
<b>Complaints in Discipline Stage as of December 31</b>	<b>136</b>	<b>229</b>	<b>668</b>	<b>506</b>

<b>Disciplinary Outcomes</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Disbarment	40	106	198	482
Suspension	248	278	593	1,090
Other	7	0	3	1
<b>Total Discipline Imposed</b>	<b>295</b>	<b>384</b>	<b>794</b>	<b>1,573</b>

## **COMPLAINTS IN BACKLOG**

## Complaints in Backlog

Business and Professions Code section 6086.15 defines *backlog* to mean “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].” The complaints in backlog are those that do not meet the goal for processing a complaint under Business and Professions Code section 6140.2, which states: “The State Bar shall set as a goal the improvement of its disciplinary system so that no more than six months will elapse from the receipt of complaints to the time of dismissal, admonishment of the attorney involved, or the filing of formal charges by the State Bar Office of [the Chief] Trial Counsel.” The State Bar tracks the backlog with four subcategories.

- ***Inquiry Stage.*** This subcategory reports the number of backlog complaints at the inquiry stage of the discipline system.
- ***Investigative Stage, Open.*** This subcategory includes the complaints in backlog that also did not meet the goal in Business and Professions Code section 6094.5 for OCTC to complete an investigation within six months after receipt of the complaint *or* within 12 months as to complaints designated as complicated matters by the Chief Trial Counsel. In past *Annual Discipline Reports*, this subcategory was referred to as the *investigative backlog*.
- ***Investigative Stage, Suspended.*** This subcategory of the backlog tracks *held or abated* investigations that have not been disposed within the six-month period of Business and Professions Code section 6140.2.
- ***Pre-Filing Stage.*** This refers to the number of complaints in backlog at the *pre-filing stage* where OCTC has completed the investigations, but the drafting of notice of disciplinary charges is pending and not filed within the six-month goal of Business and Professions Code section 6140.2. This subcategory of the backlog has also been referred to in previous *Annual Discipline Reports* as complaints in “*notice-open.*”

## Table 8: Complaints in Backlog

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<b>Age of Open Complaints Inquiry, Investigation, and Pre-Filing Stages</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
0 to 3 months	2,125	4,201	2,701	2,931
3 to 6 months	<u>655</u>	<u>1,689</u>	<u>1,182</u>	<u>1,114</u>
Open Complaints, Non-Backlog	2,780	5,890	3,883	4,045
6 to 12 months	776	1,231	1,861	387
1 to 5 Years	1,393	1,613	2,518	819
> 5 Years	<u>14</u>	<u>12</u>	<u>23</u>	<u>14</u>
Open Complaints, Backlog	2,183	2,856	4,402	1,220
<b>Total Open Complaints, December 31</b>	<b>4,963</b>	<b>8,746</b>	<b>8,285</b>	<b>5,265</b>

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<b>Backlog Complaints by Stage</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Inquiry Stage	53	42	85	32
Investigation Stage, Open <sup>6</sup>	548	820	1,234	8
Investigation Stage, Suspended	467	777	2,261	992
Pre-Filing Stage	1,115	1,217	822	188
<b>Open Complaints, Backlog</b>	<b>2,183</b>	<b>2,856</b>	<b>4,402</b>	<b>1,220</b>

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<sup>6</sup> The eight backlog complaints shown at the end of 2011 were assigned to outside examiners, not State Bar investigators.

## **SPEED OF COMPLAINT HANDLING**

## Speed of Complaint Handling

An important dimension of the performance of the attorney discipline system is *timeliness*. When disciplinary sanctions are appropriate, are they imposed promptly? When an allegation is without merit, is it closed out within a reasonable timeframe?

In this section, the State Bar reports the following:

- Time to Filing of Disciplinary Charges or Stipulation to Discipline
- Time to Close Complaint Without Action
- Time to Complete Investigation (forwarded to Pre-Filing stage)
- Time to Complete Pre-Filing Stage
- Time to Complete Trial Stage

Each measure is reported in days; for each measure, the State Bar reports the annual mean, median, and 90<sup>th</sup> percentile.

### ***Time to Filing of Disciplinary Charges or Stipulation to Discipline***

This metric measures the number of days elapsed between the receipt of a complaint and the filing of either a stipulation to discipline or a Notice of Disciplinary Charges. This is measured over all complaints for which formal charges were filed during the measurement year.

In 2011, the median time to file formal charges was 392 days from the time a complaint was received. Ninety percent (90%) of the time charges were filed in 806 days or less.

**Table 9: Time to Filing**

Time to Filing	2008	2009	2010	2011
Median	615	480	414	392
Mean	662	567	537	448
90th Percentile	1100	1057	1123	806

### ***Time to Close Complaint With No Action***

This metric measures the number of days elapsed between the receipt of a complaint and the date on which it is closed due to lack of merit, insufficient evidence or insufficient proof. This is measured over all complaints closed in the measurement year for the reasons given in the inquiry or investigation stages. Complaints which reached the pre-filing or trial stages are excluded from this metric.

In 2011, the median time to close a complaint without action was 91 days from the date the complaint was received. Ninety percent (90%) of the complaints closed without action were closed within 302 days of receipt.

**Table 10: Time to Close Complaint with No Action**

<b>Time to Close Complaint With No Action</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Median	58	63	88	91
Mean	89	99	128	136
90th Percentile	184	196	261	302

### ***Time to Complete Investigation Forwarded to Pre-Filing Stage***

This metric measures the number of days elapsed between the date an investigation is opened and the date on which it is forwarded to the pre-filing stage. This is measured over all investigations forwarded to the pre-filing stage during the measurement year.

In 2011, the median time to complete an investigation forwarded to the pre-filing stage was 212 days from the date the investigation was opened. Ninety percent (90%) of the investigations forwarded to the pre-filing stage had been open 519 days or less.

**Table 11: Time to Complete Investigation**

<b>Time to Complete Investigation Stage</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Median	218	199	234	212
Mean	277	267	278	262
90th Percentile	538	538	483	519

### ***Time to Complete Pre-Filing Stage***

This metric measures the number of days elapsed from the date on which an investigation is forwarded to the pre-filing stage and the date on which a notice of charges or a stipulation to discipline is filed. Separate figures are reported for each type of filing.

In 2011, the median time to file a stipulation was 89 days from the completion of the investigation; this was a significant improvement on prior years, in which median filing times exceeded three hundred days. Ninety percent (90%) of stipulations filed in 2011 were filed within 602 days of the completion of the underlying investigation.

The median time to file a notice of disciplinary charges in 2011 was 163 days from the completion of the investigation. Ninety percent (90%) of NDCs filed in 2011 were filed within 728 days of the completion of the underlying investigation.

**Table 12: Time to Complete Pre-Filing Stage**

<b>Time to Complete Pre-Filing Stage</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<hr/>				
Stipulation Filed				
Median	348	304	337	89
Mean	342	338	453	206
90th Percentile	671	692	964	602
Notice of Disciplinary Charges Filed				
Median	207	260	206	163
Mean	275	321	323	267
90th Percentile	547	681	791	728

### ***Time to Complete Trial Stage***

This metric measures the number of days elapsed from the date on which a stipulation to discipline or a notice of disciplinary charges is filed in State Bar Court and the completion of the trial stage. Separate figures are reported for each type of filing. As might be expected, contested proceedings take longer than those in which a stipulation has been reached.

In 2011, the median time to complete the litigation stage in which a stipulation was filed was 38 days from the filing. In ninety percent (90%) of such matters, the litigation stage was completed within 51 days.

The median time to complete litigation in 2011 was 177 days from the date on which a Notice of Disciplinary Charges was filed. Ninety percent (90% ) of NDC litigations completed in 2011 were completed within 539 days of the initial filing.

### **Table 13: Time to Complete Trial Stage**

<b>Time to Complete Trial Stage</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
<b>After Stipulation Filed</b>				
Median	42	42	38	38
Mean	48	43	43	39
90th Percentile	59	64	61	51
<b>After Notice of Disciplinary Charges Filed</b>				
Median	103	228	218	177
Mean	197	294	260	250
90th Percentile	494	532	484	539

## **DISCIPLINARY OUTCOMES**

## Disciplinary Outcomes

Business and Professions Code section 6086.15, subdivision (a)(6), requires the *Annual Discipline Report* to report on formal disciplinary outcomes<sup>7</sup> imposed proceedings after the filing of disciplinary charges. The following tables show the disciplinary outcome by the number of complaints and by the number of respondents.<sup>8</sup>

### Table 14: Disciplinary Outcomes by Complaint

Disciplinary Outcomes (by Complaint)	2008	2009	2010	2011
Disbarment	40	106	198	482
Suspension	248	278	593	1090
Other	7	0	3	1
<b>Total</b>	<b>295</b>	<b>384</b>	<b>794</b>	<b>1573</b>

### Table 15: Disciplinary Outcomes by Respondent

Disciplinary Outcomes (by Respondent)	2008	2009	2010	2011
Disbarment	17	32	58	89
Suspension	126	149	217	304
Other	2	0	2	1
<b>Total</b>	<b>145</b>	<b>181</b>	<b>277</b>	<b>394</b>

<sup>7</sup> Private and public reprovls are also disciplinary outcomes, but Business and Professions Code section 6086.15, subdivision. (a)(7), provides that reprovls be included in this report in the section on *informal disciplinary outcomes*.

<sup>8</sup> When disciplinary proceedings are initiated in the State Bar Court, the Notice of Disciplinary Charges may be consolidate and may include multiple complaints against a respondent. The State Bar Court tracks its cases by the case number of the first listed complaint. For consistency of reporting the State Bar's processing complaints at each stage of the discipline system, **each complaint against a respondent continues to be counted as one complaint** throughout the *Annual Discipline Report*, including this section on the disciplinary outcome of those complaints.

## **REPORTABLE ACTIONS**

## Reportable Actions

California law requires the reporting of certain actions or events involving lawyers to the State Bar.

- In California, a lawyer has a duty under Business and Professions Code section 6068, subdivisions (o), to self-report the following actions to the State Bar:
  - (1) The filing of three or more lawsuits in a 12-month period against the lawyer for malpractice or other wrongful conduct committed in a professional capacity.
  - (2) The entry of judgment against the lawyer 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 lawyer, 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 lawyer.
  - (5) The conviction of the lawyer, 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 lawyer 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 the lawyer, 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 lawyer 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 the lawyer.
- **Courts**<sup>9</sup>, under Business and Professions Code sections 6086.7 and 6086.8, must notify the State Bar of any of the following:

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<sup>9</sup> The final report of the California Commission on the Fair Administration of Justice recommended changes in Canon 3D(2) of the California Code of Judicial Ethics, which included seven categories of egregious misconduct by an lawyer in a criminal proceeding that a judge should report to the State Bar. The categories included: (1) “A willful misrepresentation of law or fact to a Court;” (2) “Appearing in a judicial proceeding while intoxicated;” (3) “Engaging in willful unlawful discrimination in a judicial proceeding;” (4) “Willfully and in bad faith withholding or suppressing exculpatory evidence (including impeachment evidence) which he or she is constitutionally obligated to disclose;” (5) “Willful presentation of perjured testimony;” (6) “Willful unlawful disclosure of victim or witness information;” and (7) “Failure to properly identify oneself in interviewing victims or witnesses.” In 2010, OCTC prepared reporting codes in its case management system to track the information, and the State Bar’s Chief Trial Counsel at that time stated that such information would be included in the *Annual Discipline Report*. However, the canon has not been amended to require reporting by the CCFJAJ categories.

(1) A final order of contempt imposed against a lawyer 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 a lawyer.

(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 a lawyer pursuant to Section 8620 of the Family Code.

(5) The rendering of a judgment that a lawyer 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.

- **Insurers and brokers of professional liability insurance** must report under Business and Professions Code section 6086.8, subdivision (b), every claim or action for damages against a lawyer for fraud, misrepresentation, breach of fiduciary duty, or negligence committed in a professional capacity.
- **Banks** under Business and Professions Code section 6191.1 must report to the State Bar any time a properly payable instrument is presented against a lawyer's trust account containing insufficient funds.

In addition, the State Bar may receive reports of actions or events not required by the foregoing provisions. The following table summarizes the number of reportable actions received by the State Bar.<sup>10</sup>

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<sup>10</sup> A district attorney, city attorney or other prosecuting attorney must notify OCTC of the pendency of an action against charging a defendant who is a California lawyer with a felony or misdemeanor. (Bus. & Prof. Code, § 6101, subd. (b).) After any conviction, the court clerk of the court must transmit a certified copy of the conviction to the State Bar/ (Bus. & Prof. Code, § 6101, subd. (c).) These reports are included in "criminal conviction monitoring" and reported in the section below on Informal Discipline Outcomes

## Table 16: Reportable Actions

Reportable Actions by Source	2008	2009	2010	2011
Lawyer Self Reports	149	118	165	152
Other Sources:				
Banks	1,979	3,031	2,929	2,338
Insurers	103	139	140	105
Courts	98	103	126	149
Other	<u>14</u>	<u>16</u>	<u>16</u>	<u>22</u>
Sub-Total	2,194	3,289	3,211	2,614
<b>Total Received</b>	<b>2,343</b>	<b>3,407</b>	<b>3,376</b>	<b>2,766</b>
<b>Forwarded to Investigation Unit</b>	<b>475</b>	<b>602</b>	<b>1,093</b>	<b>563</b>

## **INFORMAL DISCIPLINE OUTCOMES**

## Informal Discipline Outcomes

Business and Professions Code section 6086.15, subdivision (a)(7), requires the *Annual Discipline Report* to include the “number and types of informal discipline outcomes, including petitions to terminate practice, interim suspensions and license restrictions, criminal conviction monitoring, letters of warning, private reprovos, admonitions, and agreements in lieu of discipline.”

### ***Definition of Terms***

- ***Petitions to Terminate Practice.*** Under Business and Professions Code sections 6180 and 6190, OCTC may petition a superior court and obtain an order to assume jurisdiction over the law practice of a lawyer who has been disbarred, suspended, becomes inactive, or who has become incapable of practicing law because of excessive use of alcohol or drugs, physical or mental illness, or infirmity or other cause.
- ***Interim Suspensions and License Restrictions.*** Under grounds in Business and Professions Code section 6007, the State Bar Court may order a respondent be placed on *involuntary inactive status*. While on involuntary inactive status, the lawyer may not practice law. This status has been referred to as a “temporary or interim suspension.” (See *Conway v. State Bar* (1989) 47 Cal.3d 1107.) In lieu of involuntary inactive enrollment, the State Bar Court may place other restrictions on the lawyer’s license to practice law.
- ***Criminal Conviction Monitoring.*** After the criminal conviction of any lawyer, OCTC will initiate a conviction matter in the State Bar Court by filing a certified copy of the record of conviction. The criminal conviction is monitored until it becomes final and then disciplinary proceedings are held under Business and Professions Code sections 6101 and 6102 and California Rules of Court, rule 9.10. The State Bar Court may place a respondent under *interim suspension* upon the filing of the certified record of the criminal conviction until the conviction is final if the conviction was a felony or a crime involving moral turpitude.
- ***Private or Public Reproval.*** Under Business and Professions Code section 6078, the State Bar Court may discipline a respondent by reproval, privately or publicly, for misconduct not warranting a suspension or disbarment. Under State Bar Rule 5.127(C), a private reproval is confidential and not disclosed if it is imposed as part of a stipulation and settlement before the filing of disciplinary charges. A private reproval, however, is disclosed if imposed after the filing of a Notice of Disciplinary Charges. (State Bar Rule 5.127(D).) The Supreme Court’s review of a reproval may be sought by a petition; if no petition is filed or if the petition is denied, the reproval is imposed as discipline.
- ***Admonition.*** The State Bar Court may *admonish* a respondent when the misconduct involves no dishonesty, moral turpitude, or other serious offense; is not intentional or occurs under mitigating circumstances; results in no significant harm; and did not cause a pecuniary loss subject to reimbursement by the Client Security Fund. (State Bar Rule 5.126.)

- **Letters of Warning.** OCTC may resolve a complaint during the inquiry or investigation stage by issuing a *warning letter* to the respondent expressing the opinion of OCTC that misconduct not requiring prosecution has occurred and warning not to continue or to repeat the conduct.
- **Agreements in Lieu of Discipline.** OCTC may “[m]ake agreements with respondents in lieu of disciplinary proceedings, regarding conditions of practice, further legal education, or other matters.” These agreements for minor infractions and may be in any subsequent proceeding involving the lawyer. (Bus. & Prof. Code, § 6092.5, subd. (i).)

**Table 17: Informal Disciplinary Outcomes**

Informal Disciplinary Outcomes	2008	2009	2010	2011
Petitions to Terminate Practice	8	9	8	16
Interim Suspensions & License Restrictions	1	9	8	6
Interim Suspensions After Criminal Convictions	43	56	51	59
New Criminal Conviction Monitoring Matters	99	134	158	143
Private Reprovals, Restricted	28	35	28	46
Private Reprovals, Public Disclosure	8	15	9	16
Public Reprovals	30	49	53	55
Admonitions	1	1	2	0
Warning Letters	377	349	658	675
Agreements In Lieu of Discipline	30	19	21	34
<b>Total</b>	<b>625</b>	<b>676</b>	<b>996</b>	<b>1050</b>

# **COSTS OF THE DISCIPLINE SYSTEM**

## COSTS OF THE DISCIPLINE SYSTEM

The *Annual Discipline Report* must include an accounting of the cost of the discipline system. (Bus. & Prof. Code, § 6086.15, subd. (a)(11).)

**Table 18: Costs of the Discipline System by Function**

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**Costs of the Discipline System by Function**

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<b>Function</b>	<b>Amount (in thousands)</b>	<b>Percentage</b>
<u>General Fund</u>		
Chief Trial Counsel	40,933	56%
Probation	1,018	1%
Mandatory Fee Arbitration	793	1%
State Bar Court	10,858	15%
Professional Competence	<u>2,193</u>	<u>3%</u>
Sub-Total	55,795	77%
Client Security Fund	16,740	23%
<b>Total</b>	<b>72,535</b>	<b>100%</b>

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# **CONDITION OF THE CLIENT SECURITY FUND**

## CONDITION OF THE CLIENT SECURITY FUND

The *Annual Discipline Report* must include a description of the condition of the Client Security Fund, including an accounting of payouts. (Bus. & Prof. Code, § 6086.15, subd. (a)(10).)

Established in 1972, this State Bar sponsored Fund is designed to help protect consumers of legal services by relieving or mitigating pecuniary losses caused by the dishonest conduct of California lawyers. This program helps in protecting California's legal consumers.

The Fund may reimburse a maximum of \$100,000 for losses occurring on or after January 1, 2009. Previous to this date, the maximum reimbursement was capped at \$50,000. Beginning in August of 2009, the filing rate for new applications began to increase significantly due in part to loan modification fraud losses. In 2009, 3,028 new applications were received as compared to 825 new applications in 2008. In 2010, new applications filed reached 3,875. During 2011, 3,411 new applications were received. As of the end of 2011, 2,178 applications were processed to closure with 1,534 applications paid in the total amount of \$7.8 million.

The table below reflects the activity of the Fund for 2008 through 2011.

**Table 19: Client Security Fund Activity**

<b>Client Security Fund Activity</b>				
<b>Dollars (in thousands)</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Applications outstanding at the beginning of the year	11,811	11,872	22,125	34,514
PLUS: Prior year's outstanding applications adjustment	107	16	100	194
New Applications	11,290	19,469	23,232	26,086
LESS: Applications paid	4,638	3,462	3,331	7,820
Applications denied	2,197	1,930	2,869	2,586
Applications withdrawn	4,502	3,840	4,743	5,061
Applications outstanding at the end of the year	11,871	22,125	34,514	45,327
Applications payout ratio	40.68%	39.38%	33.67%	42.22%
Estimated applications liability at year end	4,829	8,713	11,620	19,137

<b>Number of Applications</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Applications outstanding at the beginning of the year	787	710	2,997	6,112
PLUS: New applications filed	825	3,028	3,875	3,411
LESS: Applications paid	479	378	267	1,534
Applications denied	57	52	138	54
Applications withdrawn	366	311	355	590
Applications outstanding at the end of the year	710	2,997	6,112	7,345

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# **ASSURANCE AND PREVENTION PROGRAMS**

## ASSURANCE AND PREVENTION PROGRAMS

The *Annual Discipline Report* is required to include a description of the programs of the State Bar directed at assuring honesty and competence by lawyers or at preventing acts warranting discipline. (Bus. & Prof. Code, § 6086.15, subd. (a)(8) & (a)(9).) The following is a brief description of some of those programs.

### *Professional Competence*

The Office of Professional Competence operates the Ethics Hotline to respond to questions about the ethical obligations and duties of lawyers practicing in California. In 2011, the Ethics Hotline received and responded to more than 14,700 calls—which together with return or follow-up calls totaled more than 22,500 calls—to provide references to applicable provisions of the Rules of Professional Conduct, the State Bar Act, or case law.

### *Other Regulatory or Legal Education Programs*

Other programs involving regulating the practice of law in California, legal education and competence include:

- ***Multijurisdictional Practice Program (MJP)***. Regulates out-of-state lawyers who live in California who register with the State Bar and perform limited legal services as in-house counsel for some corporations or to provide practice with legal aid organizations to the poor. As of December 31, 2011, there were 3 legal services lawyers and 886 in-house counsel were registered in the MJP program. (Cal. Rules of Court, rules 9.45 – 9.48 and State Bar Rules.)
- ***Out-of-State Attorney Arbitration Counsel (OSAAC)***. Allows out-of-state lawyers to represent parties in arbitration proceedings in California. In 2011, 730 out-of-state lawyers filed OSAAC applications with the State Bar. (Cal. Rules of Court, rule 9.43 and State Bar Rules.)
- ***Pro Hac Vice Program***. Assists the California courts in the application of out-of-state lawyers appearing in California state courts. In 2011, 2,535 out-of-state lawyers filed pro hac vice applications with the State Bar. (Cal. Rules of Court, rule 9.40.)
- ***Military Counsel Program***. Regulates out-of-state lawyers serving as judge advocates in the military to appear in California courts and represent military personnel on a limited basis. (Cal. Rules of Court, rule 9.41.)
- ***Foreign Legal Consultant Program***. Regulates persons who are licensed to practice law in a foreign jurisdiction and allows them to register and engage in the limited practice the law of that country in California. At the end of 2011, 50 such lawyers from over 25 different foreign jurisdictions were registered as foreign legal consultants. (Cal. Rules of Court, rule 9.44 and State Bar Rules.)

- ***Practical Training of Law Students Program.*** Regulates law students who may provide limited legal services under a California lawyer's supervision. In 2011, 2,575 students applied to the program. (Cal. Rules of Court, rule 9.42 and State Bar Rules.)
- ***Legal Specialization Program.*** Administers the requirements for California lawyers to become certified specialists in one or more of 11 areas of law. Certified specialists must pass a written exam, possess special education and experience, undergo peer review and recertify every five years. By the end of 2011, 4,487 lawyers were certified specialists and another 324 were certified by five other organizations accredited by the State Bar. (Cal. Rules of Court, rule 9.35 and State Bar Rules and Standards.)
- ***Minimum Continuing Legal Education (MCLE) Providers Program.*** Authorizes education providers to offer MCLE courses to lawyers. In 2011, providers filed approximately 1,932 applications for provider status or for approval to teach individual classes. (Bus. & Prof. Code, § 6070, Cal. Rules of Court, rule 9.31 and State Bar Rules.)
- ***Minimum Continuing Legal Education (MCLE) Compliance.*** Tracks whether California lawyers meet their continuing legal education requirements every three years. In July 2011, the State Bar placed 544 lawyers on involuntary inactive status for failure to comply. (Bus. & Prof. Code, § 6070 and State Bar Rules.)
- ***Lawyer Referral Services (LRS) Certification Program.*** Certifies services that refer potential clients to California lawyers. To qualify for certification, an LRS must verify that its lawyers have sufficient experience and training, agree to fee arbitration for dispute resolution and possess certain liability coverage. At the end of 2011, 54 lawyer referral services were operating in California. (Bus. & Prof. Code, § 6155 and State Bar Rules.)
- ***Lawyers Assistance Program (LAP).*** LAP is established under Business and Professions Code section 6230 et seq. for treating lawyers with impairments due to substance abuse or mental illness. The State Bar submits a separate report to the Legislature each year on March 1 that includes the number of cases accepted, denied, or terminated and the expenditures related to LAP.
- ***Probation.*** The Office of Probation monitors the compliance of disciplined lawyers on probation. In 2011, the number of cases ranged between 904 and 1127 per month – an increase in caseload as compared to 2010, when the number of cases ranged between 799 and 886 per month. Probation referred 180 lawyers to OCTC for possible discipline for failing to meet the terms of their probation and filed 14 motions to revoke probation.
- ***Mandatory Fee Arbitration Program.*** This statewide program received 78 requests to arbitrate fee disputes between lawyers and clients, and closed 97 cases. Arbitration awards, in favor of clients, that remain unpaid may be enforced through a process administered by the program and brought in State Bar Court. In 2011, 90 clients made requests for enforcement and refund payments were made to 36 clients. The State Bar Court placed one lawyer on involuntary inactive enrollment for failing to pay a fee arbitration award.

# APPENDIX

## Appendix A

### ***Contents of the Annual Discipline Report***

Business and Professions Code section 6086.15 and related statutes specifies the inclusion of the following categories of information:

- (1) The *backlog of cases*.
- (2) The number of *inquiries* and *complaints* and their disposition.
- (3) The number of matters that a lawyer must self-report to the State Bar, including
  - The filing of three or more lawsuits against the attorney in a 12-month period for professional negligence or wrongful conduct;
  - Entry of judgment against the attorney for fraud, misrepresentation, breach of duty or gross negligence;
  - Disciplinary action by another agency;
  - Reversal of a judgment based on attorney misconduct; and
  - Any conviction of a crime.
- (4) The number of matters reported to the State Bar by other sources, including banks, courts, and insurance providers.
- (5) The speed of complaint handling and dispositions by type.
- (6) The number and types of filed notices to show cause and formal disciplinary outcomes.
- (7) The number and types of informal discipline outcomes, including petitions to terminate practice, interim suspensions and license restrictions, criminal conviction monitoring, letters of warning, private reprovls, admonitions, and agreements in lieu of discipline.
- (8) A description of the programs of the State Bar directed at assuring honesty and competence by attorneys.
- (9) A description of the programs of the State Bar directed at preventing acts warranting discipline.
- (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.

## ***Text of Applicable Sections of the Business and Professions Code***

### **§ 6086.15. Annual Discipline Report**

(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. 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, but not limited to, 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 to show cause, 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 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 and types of matters reported by other sources pursuant to Sections 6086.7 and 6086.8.

(5) The speed of complaint handling and dispositions by type.

(6) The number and types of filed notices to show cause and formal disciplinary outcomes.

(7) The number and types of informal discipline outcomes, including petitions to terminate practice, interim suspensions and license restrictions, criminal conviction monitoring, letters of warning, private reproofs, admonitions, and agreements in lieu of discipline.

(8) A description of the programs of the State Bar directed at assuring honesty and competence by attorneys.

(9) A description of the programs of the State Bar directed at preventing acts warranting discipline.

(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.

(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. The report shall include the general data and tables included in the previous reports of the State Bar Discipline Monitor where feasible.

(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.

**§ 6068. Duties of Attorney**

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

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(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.

**§ 6086.7. Notification to State Bar of Court Actions, Judgments, Sanctions, or Civil Penalties Against Attorneys**

(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.

(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.

**§ 6086.8. Judgments for Actions Committed in a Professional Capacity; Claims or Actions for Damages; Reports to State Bar**

(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 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.

**§ 6091.1. Overdrafts and Misappropriations from Attorney Trust Accounts; Reports by Financial Institutions**

(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.

(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).