



THE STATE BAR OF CALIFORNIA

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April 30, 2013

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 Bob Wieckowski
Chair, Assembly Committee on Judiciary
State Capitol, Room 4016
Sacramento, CA 95814

Dear Chief Justice Cantil-Sakauye, Governor Brown, Senator Steinberg, Assemblyman Pérez, Senator Evans, Assemblyman Wieckowski, 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.

The attorney discipline system is, by far, the largest component of the State Bar, and it plays an indispensable role in carrying out the bar's mission of public protection. It is the discipline system which receives complaints against attorneys, investigates those complaints, prosecutes them when warranted, and recommends sanctions against attorneys found culpable of misconduct. The performance of the discipline system is a crucial measure of the success of the State Bar as a public regulatory agency.

The Annual Discipline Report is a long-standing vehicle for transmitting objective statistical information about the activity and performance of the discipline system to key stakeholders: the Legislature, the Governor, the Supreme Court and, of course, the public. Historically, to comply with statutory requirements since 1986, the report has focused on presenting a snapshot of the

inventory of complaints at various stages of the discipline process as of December 31 of each year. Useful as this information is, however, it does not answer the fundamental question: how long does it take a complaint to make its way through each stage of the process?

Last year, we began supplementing the traditional snapshot with data showing the number of days complaints spend in each stage of the discipline process. By directly measuring this aspect of performance, we have been able to focus our efforts, not merely on eliminating “backlogs,” but on improving the time required to investigate, prosecute, and adjudicate complaints.

A New Model for Prosecution

In 2012, the Office of Chief Trial Counsel completely restructured its approach to investigating and prosecuting complaints. Under the new model, dubbed “vertical” prosecution, a single attorney is assigned end-to-end responsibility for each complaint, from initial investigation to trial. This model eliminates several time consuming hand-offs under the old model, where a complaint might have been handled by three different attorneys at different points in the process. The vertical model also improves the quality of work at each stage and strengthens accountability for results.

Implementation of the vertical model began in the first quarter of 2012, and the new approach remains a work in progress. Nevertheless, positive results may already be observed.

Results

- In 2010, the median length of time taken to complete a complaint investigation leading to a prosecution was 234 days. In 2011, this was reduced slightly, to 212. In 2012, this figure was cut by an additional 40%, to 129 days.
- The median length of time between the completion of an investigation and the filing of a Notice of Disciplinary Charges was 206 days in 2010. This was reduced in 2011 to 160 days. In 2012, this period was further reduced by more than 60% to just 58 days.
- The median length of time between the completion of an investigation and the filing of a Stipulation to Discipline (i.e. a “plea agreement”) fell precipitously, from 337 in 2010 to 82 in 2011, and further to 72 in 2012.
- The median total time from the receipt of a complaint to the filing of either a Notice of Disciplinary Charges or a Stipulation to Discipline stood at 414 days in 2010 and 392 days in 2011. In 2012, this fell by 40%, to 235 days.

Backlogs

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. While the transition to the vertical prosecution model played a role in achieving the results described above, another important contributor was the fact that the

discipline system is no longer burdened by outsized backlogs of unresolved complaints. A major accomplishment of 2011 was reducing or eliminating backlogs throughout the discipline system, and in 2012 that achievement was preserved overall.

- As of December 31, 2012, the number of backlog complaints still under inquiry or active investigation totaled 29. The comparable figures for 2011 and 2010 were 66 and 1,327, respectively.
- Also as of December 31, 2012, the number of backlog complaints, for which the investigation was complete but charges had not yet been filed, stood at 227. This is slightly above the 2011 level of 187, but remains far below the 2010 level of 822.
- Finally, the number of backlog complaints with suspended investigations because of pending actions against the same respondent in State Bar Court or in criminal or civil court) was 1,213, up from the prior year's figure of 1,109, but well below the 2010 level of 2,261. Notably, more than half of the complaints in this status pertain to just five individual respondents.

The Work Ahead

The pace of change at the State Bar will only accelerate in 2013. The most visible changes next year will be the deployment of a modern case management system in the Office of Chief Trial Counsel and the relocation of all Los Angeles staff (including much of OCTC and of the State Bar Court) to the State Bar's new offices at 845 South Figueroa.

While both projects are expected to yield very positive long-term results, it is likely that they will be somewhat disruptive to the day-to-day work of the discipline system, particularly in the last quarter of 2013. Productivity will suffer an unavoidable, but temporary, downturn. Our goals, of course, are to minimize the disruption to the extent possible and to "rebound" early in 2014.

The performance improvements in the discipline system over the past two years have been striking. However, we must keep them in perspective. The fact remains that it still takes half of complaints 235 days (about eight months) or more to reach the point of charges in the State Bar Court. Ample opportunities remain to do better.

Yours truly,

A handwritten signature in blue ink that reads "Joseph L. Dunn". The signature is fluid and cursive, with the first name being the most prominent.

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, 2013

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 2012, the State Bar received 15,158 new complaints against California lawyers. The Office of Chief Trial Counsel, the State Bar's prosecutorial arm, opened 4,397 new investigations and filed disciplinary charges or stipulations to discipline in 959 complaints. Formal discipline was imposed in 1,246 complaints, resulting in the disbarment or suspension of 259 lawyers.

In 2012, the State Bar has continued its efforts to reduce the backlog of cases—defined by statute as 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. As of December 31, 2012, the number of backlog complaints still under inquiry or active investigation totaled 29. The comparable figures for 2011 and 2010 were 66 and 1,327, respectively. Also as of December 31, 2012, the number of backlog complaints, for which the investigation was complete but charges had not yet been filed, stood at 227. This is slightly above the 2011 level of 187, but remains far below the 2010 level of 822. Finally, the number of backlog complaints with suspended investigations because of pending actions against the same respondent in State Bar Court or in criminal or civil court) was 1,213, up from the prior year's figure of 1,109, but well below the 2010 level of 2,261. Notably, more than half of the complaints in this status pertain to just five individual respondents.

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/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, 2012



**The State Bar of California
April 30, 2013**

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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 that the State Bar report annually on the performance and condition of its discipline system.¹

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://calbar.ca.gov/AboutUs/Reports.aspx>

California's Attorney Discipline System

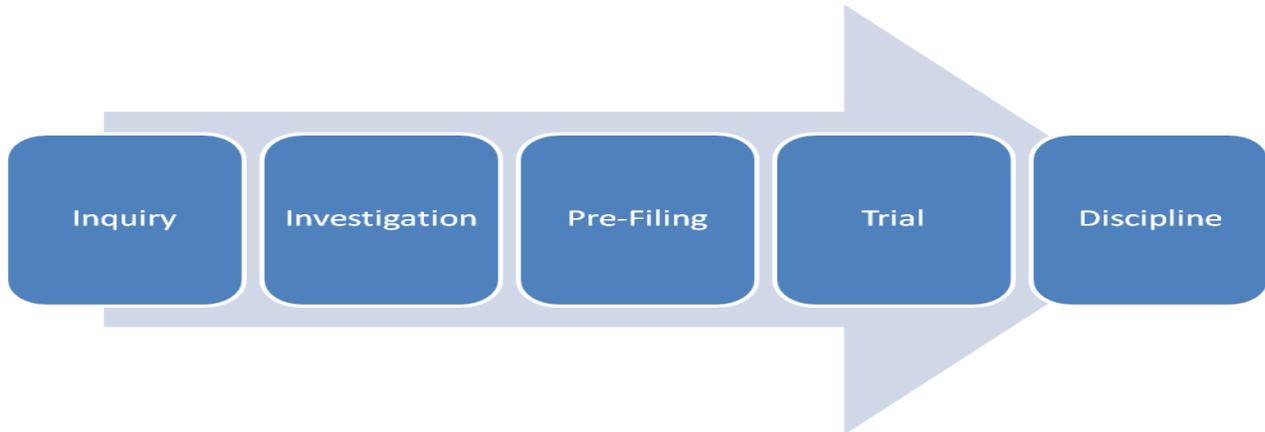
In California, a lawyer is licensed when admitted as a member of the State Bar. Only active members of the State Bar may practice law. The State Bar is a constitutional agency established in the judicial branch. In administering the requirements for admission and discipline of California lawyers, the 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 determination whether the lawyer should be suspended or disbarred as recommended. Discipline occurs with a final decision and order of the Supreme Court.

¹ 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.

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. A complaint that presents sufficient information or allegations of misconduct against a lawyer (“respondent”), which if proved could result in discipline, will be advanced to the investigation stage.

- **Investigation**

At this 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 may 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.

If a 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 OCTC determines that a completed investigation presents sufficient evidence to support the imposition of discipline against the respondent, a Notice of Disciplinary Charges is prepared 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**

After the filing of disciplinary charges, 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 appealed 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**

When there is a final decision of the State Bar Court that includes a recommendation that the respondent be suspended or disbarred, 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*.²

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.³ 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,⁴ 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.

² 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.

³ 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.)

⁴ 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 2012

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

- The median length of time taken to complete a complaint investigation leading to a prosecution was 234 days in 2010. In 2011, this was reduced slightly, to 212. But in 2012, this figure was cut by an additional 40%, to 129 days.
- The median length of time between the completion of an investigation and the filing of a Notice of Disciplinary Charges was 206 days in 2010. This was reduced by about 20% in 2011, to 160 days. And in 2012, this period was reduced by more than 60% from the 2011 level, to just 58 days.
- The median length of time between the completion of an investigation and the filing of a Stipulation to Discipline (i.e. a “plea agreement”) fell precipitously, from 337 in 2010 to 82 in 2011, and further to 72 in 2012.
- The median total time from the receipt of a complaint to the filing of either a Notice of Disciplinary Charges or a Stipulation to Discipline stood at 414 days in 2010 and 392 days in 2011. In 2012, this fell by 40%, to 235 days.
- The number of complaints in backlog at the pre-filing stage in 2012, in which the investigations have been completed but no disciplinary charges or stipulated disposition

have been reached within six-months after the complaints were first received, was reduced to 227. The comparable figure for 2010 was 822.

- The number of backlog complaints, in which investigations remained open or some other disposition were not reached within six months after their receipt, was 29 at the end of 2012. In 2010, the comparable figure was 1,327.

**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 inquiry, 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 on December 31.⁵ The age of a complaint in the year-end inventories is measured from the date on which the complaint was first received by OCTC.⁶

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 the mandatory fee arbitration program, if the matter is a dispute over the fees charged by the complainant’s lawyer; 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.

⁵ The statistics and information in these tables are generated from each of the thousands of individual cases in the discipline system. New or more complete information in some cases may later become available after a report has been issued. For this reason, the data presented in this report may slightly differ in some of tables in last year’s report.

⁶ 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.

- **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.

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

Activity, January 1 to December 31	2009	2010	2011	2012
Open Inquiries as of January 1	1,837	3,327	2,074	2,397
PLUS:				
New Complaints Received	17,103	17,914	16,156	15,158
LESS:				
Forwarded to Investigation Stage	5,377	6,028	4,967	4,397
Referred Elsewhere	388	385	284	404
Closed with Non-Disciplinary Action	631	663	869	1,044
Resolved Between the Parties	107	173	198	161
Closed with No Action	8,658	9,866	8,798	9,565
Respondent Resigned, Disbarred, or Deceased	322	1,887	586	600
Duplicate Complaints and Errors	<u>130</u>	<u>165</u>	<u>161</u>	<u>141</u>
Sub-Total	15,613	19,167	15,833	16,312
Open Inquiries as of December 31	3,327	2,074	2,397	1,243
Age of Open Inquiries as of December 31	2009	2010	2011	2012
0 to 3 Months	3,096	1,896	2,113	1,230
3 to 6 Months	189	86	234	4
6 to 12 Months	32	59	39	4
1 to 2 Years	8	31	11	5
1 to 5 Years	2	1	0	0
> 5 Years	0	1	0	0
Open Inquiries as of December 31	3,327	2,074	2,397	1,243

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.

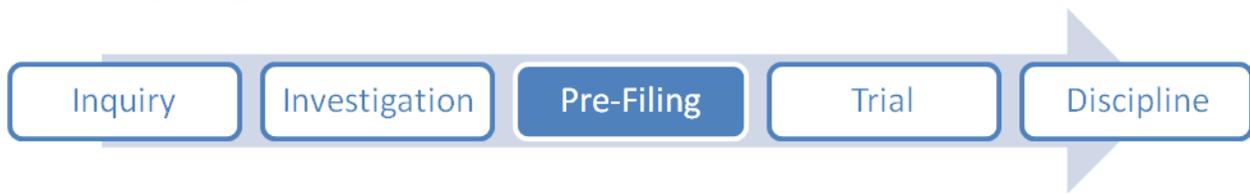
Table 2: Complaints in Open Investigations

Activity, January 1 to December 31	2009	2010	2011	2012
Open Investigations as of January 1	1,446	2,770	2,850	1,224
PLUS:				
Forwarded from Inquiry Stage	5,377	6,028	4,967	4,397
Suspended Investigations Re-Opened	57	127	288	45
Other Re-Opened Investigations	<u>28</u>	<u>22</u>	<u>57</u>	<u>42</u>
Sub-Total	5,462	6,177	5,312	4,484
LESS:				
Forwarded to Pre-Filing Stage	949	1,328	1,669	1,320
Forwarded to Trial Stage	75	230	284	61
Forwarded to Imposition of Discipline	0	0	0	1
Suspended	1,083	1,521	1,534	1,167
Referred Elsewhere	117	213	400	182
Resolved Between the Parties	158	190	356	202
Closed with Non-Disciplinary Action	149	284	233	164
Closed with No Action	1,455	2,140	2,124	1,478
Respondent Resigned, Disbarred or Deceased	37	26	118	31
Duplicate Complaints and Errors	<u>115</u>	<u>165</u>	<u>220</u>	<u>80</u>
Sub-Total	4,138	6,097	6,938	4,686
Open Investigations as of December 31	2,770	2,850	1,224	1,022
Age of Open Investigations as of December 31	2009	2010	2011	2012
0 to 3 Months	839	768	594	537
3 to 6 Months	1,111	847	614	465
6 to 12 Months	627	988	11	3
1 to 2 Years	148	210	5	11
2 to 5 Years	45	35	0	6
> 5 Years	0	2	0	0
Open Investigations as of December 31	2,770	2,850	1,224	1,022

Table 3: Complaints in Suspended Investigations

Activity, January 1 to December 31	2009	2010	2011	2012
Suspended Investigations as of January 1	530	1,402	2,510	1,628
PLUS:				
Investigations Suspended	1,083	1,521	1,534	1,167
From Other Stages	<u>119</u>	<u>112</u>	<u>179</u>	<u>98</u>
Sub-Total	1,202	1,633	1,713	1,265
LESS:				
Suspended Investigations Re-Opened	57	127	288	45
Forwarded to Pre-Filing Stage	4	44	155	56
Forwarded to Trial Stage	3	50	221	0
Resolved Between the Parties	0	0	7	0
Closed with Non-Disciplinary Action	1	0	2	2
Closed with No Action	37	32	59	38
Respondent Resigned, Disbarred or Deceased	222	268	1,859	1,286
Duplicate Complaints and Errors	<u>6</u>	<u>4</u>	<u>4</u>	<u>1</u>
Sub-Total	330	525	2,595	1,428
Suspended Investigations as of December 31	1,402	2,510	1,628	1,465
Age of Suspended Investigations, December 31	2009	2010	2011	2012
0 to 3 months	263	33	230	81
3 to 6 months	362	216	289	171
6 to 12 months	334	597	256	311
1 to 2 Years	241	1,343	497	493
2 to 5 Years	194	302	342	387
> 5 Years	8	19	14	22
Suspended Investigations as of December 31	1,402	2,510	1,628	1,465

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	2009	2010	2011	2012
Pre-Filing Matters as of January 1	1,150	1,247	860	195
PLUS:				
Forwarded from Open Investigation	949	1,328	1,669	1,320
Forwarded from Suspended Investigation	4	44	155	56
From Other Stages	<u>8</u>	<u>19</u>	<u>23</u>	<u>56</u>
Sub-Total	961	1,391	1,847	1,432
LESS:				
Forwarded to Trial (Filed)	508	959	1,522	959
Closed With Non-Disciplinary Action	95	223	200	89
Closed With No Action	123	457	495	142
Suspended	99	92	172	95
Resolved Between the Parties	4	8	29	11
Respondent Resigned, Disbarred or Deceased	0	0	1	0
Other Dispositions	<u>35</u>	<u>39</u>	<u>93</u>	<u>29</u>
Sub-Total	864	1,778	2,512	1,325
Pre-Filing Matters as of December 31	1,247	860	195	302
Age of Pre-Filing Matters as of December 31	2009	2010	2011	2012
0 to 3 Months	3	5	2	6
3 to 6 Months	27	33	6	69
6 to 12 Months	238	225	122	190
1 to 2 Years	503	423	48	28
2 to 5 Years	472	173	17	8
> 5 Years	4	1	0	1
Pre-Filing Matters as of December 31	1,247	860	195	302

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, in which case the Review Department's decision on appeal will constitute the final decision of the State Bar Court. 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	2009	2010	2011	2012
Trial - Hearing Dept Matters as of January 1	527	384	562	981
PLUS:				
Forwarded from Pre-Filing Stage	508	959	1,522	959
From Active Investigations	75	230	284	61
From Suspended Investigations	3	50	221	0
Returned From Supreme Court	14	51	7	170
Abated Matters and Defaults Made Active	45	74	134	389
Returned From ADP	102	111	56	19
From Other Stages	<u>5</u>	<u>5</u>	<u>6</u>	<u>10</u>
Sub-Total	752	1,480	2,230	1,608
LESS:				
Forwarded for Imposition of Discipline	415	983	1,273	1,048
Matter Closed	127	74	141	108
Matters Abated or Pending Default	168	98	285	388
Referred to ADP	110	65	32	17
Appealed	53	57	51	103
Returned To Other Stages	<u>22</u>	<u>25</u>	<u>29</u>	<u>33</u>
Sub-Total	895	1,302	1,811	1,697
Trial - Hearing Dept Matters as of December 31	384	562	981	892
Age of Trial - Hearing Dept Matters, December 31	2009	2010	2011	2012
0 to 3 Months	21	2	14	6
3 to 6 Months	12	9	59	39
6 to 12 Months	49	75	296	287
1 to 2 Years	100	218	442	295
2 to 5 Years	182	218	165	261
> 5 Years	20	40	5	4
Trial - Hearing Dept Matters as of December 31	384	562	981	892
Matters by Filing Type	2009	2010	2011	2012
Notice of Disciplinary Charges	573	844	1,089	1,199
Stipulation to Discipline	150	625	1,083	400
Other	29	11	56	9
Total	752	1,480	2,230	1,608

Table 6: Complaints in Review Department

Activity, January 1 to December 31	2009	2010	2011	2012
Open Appeals as of January 1	36	50	39	24
PLUS:				
Forwarded from Trial Stage	53	57	51	103
From Other Stages	<u>4</u>	<u>5</u>	<u>10</u>	<u>4</u>
Sub-Total	57	62	61	107
LESS:				
Forwarded for Imposition of Discipline	41	68	68	57
Dismissals	0	2	4	0
Other Results	<u>2</u>	<u>3</u>	<u>4</u>	<u>0</u>
Sub-Total	43	73	76	57
Open Appeals as of December 31	50	39	24	74
Age of Open Appeals, December 31	2009	2010	2011	2012
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 2 Years	2	2	3	23
2 to 5 Years	40	29	19	48
> 5 Years	8	8	2	3
Open Appeals as of December 31	50	39	24	74

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 complete when the Supreme Court's final order on discipline is implemented.

The age of complaints in the discipline stage as of December 31, 2012, like those in each of the other stages, is measured from when a complaint was first received in the discipline system.

Table 7: Complaints in Discipline Stage

Activity, January 1 to December 31	2009	2010	2011	2012
Complaints in Discipline Stage as of January 1	136	229	668	500
PLUS:				
Forwarded from Trial Stage	415	983	1,273	1,048
Forwarded from Appeal	41	68	68	57
From Other Stages	<u>46</u>	<u>236</u>	<u>88</u>	<u>14</u>
Sub-Total	502	1,287	1,429	1,119
LESS:				
Discipline Imposed	384	794	1,578	1,246
Dismissed	3	0	5	2
Other Results	<u>22</u>	<u>54</u>	<u>14</u>	<u>173</u>
Sub-Total	409	848	1,597	1,421
Complaints in Discipline Stage as of December 31	230	668	500	198
Age of Complaints in Discipline Stage, December 31	2009	2010	2011	2012
0 to 3 Months	0	0	0	0
3 to 6 Months	0	10	34	0
6 to 12 Months	4	146	96	28
1 to 2 Years	51	235	218	72
2 to 5 Years	140	187	133	96
> 5 Years	34	90	19	2
Complaints in Discipline Stage as of December 31	229	668	500	198
Disciplinary Outcomes	2009	2010	2011	2012
Disbarment	106	198	482	456
Suspension	278	593	1,095	790
Other	0	3	1	0
Total Discipline Imposed	384	794	1,578	1,246

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

Age of Open Complaints Inquiry, Investigation, and Pre-Filing Stages	2009	2010	2011	2012
0 to 3 Months	4,201	2,701	2,939	1,854
3 to 6 Months	<u>1,689</u>	<u>1,182</u>	<u>1,143</u>	<u>709</u>
Open Complaints, Non-Backlog	5,890	3,883	4,082	2,563
6 to 12 Months	1,231	1,869	428	508
1 to 2 Years	900	2,007	561	537
2 to 5 Years	713	511	359	401
> 5 Years	<u>12</u>	<u>23</u>	<u>14</u>	<u>23</u>
Open Complaints, Backlog	2,856	4,410	1,362	1,469
Total Open Complaints, December 31	8,746	8,294	5,444	4,032
Backlog Complaints by Stage	2009	2010	2011	2012
Inquiry Stage	42	92	50	9
Investigation Stage, Open	820	1,235	16	20
Investigation Stage, Suspended	777	2,261	1,109	1,213
Pre-Filing Stage	1,217	822	187	227
Open Complaints, Backlog	2,856	4,410	1,362	1,469

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 90th 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 2012, the median time to file formal charges was 235 days from the time a complaint was received, as compared to 392 days in 2011. Ninety percent (90%) of the time charges were filed in 529 days or less, as compared to 806 days in 2011 and 1,123 in 2010.

Table 9: Time to Filing

Time to Filing	2009	2010	2011	2012
Median	480	414	392	235
Mean	567	537	448	297
90th Percentile	1,057	1,123	806	529

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 2012, the median time to close a complaint without action was 59 days from the date the complaint was received, compared to 91 days in 2011. Ninety percent (90%) of the complaints closed without action were closed within 157 days of receipt, compared to 302 days in 2011.

Table 10: Time to Close Complaint With No Action

Time to Close Complaint With No Action	2009	2010	2011	2012
Median	63	88	91	59
Mean	99	128	136	80
90th Percentile	196	261	302	157

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 2012, the median time to complete an investigation forwarded to the pre-filing stage was 129 days from the date the investigation was opened, compared to 212 days in 2011. Ninety percent (90%) of the investigations forwarded to the pre-filing stage had been open 176 days or less, compared to 519 days in 2011.

Table 11: Time to Complete Investigation

Time to Complete Investigation Stage	2009	2010	2011	2012
Median	199	234	212	129
Mean	267	278	262	139
90th Percentile	538	483	519	176

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 2012, the median time to file a stipulation was 72 days from the completion of the investigation, compared to 89 days in 2011 and 337 days in 2010. Ninety percent (90%) of stipulations filed in 2012 were filed within 393 days of the completion of the underlying investigation, compared to 602 days in 2011 and 964 days in 2010.

The median time to file a notice of disciplinary charges in 2012 was 58 days from the completion of the investigation, compared to 160 days in 2011 and 206 days in 2010. Ninety percent (90%) of NDCs filed in 2012 were filed within 335 days of the completion of the underlying investigation, compared to 728 days in 2011 and 791 days in 2010.

Table 12: Time to Complete Pre-Filing Stage

Time to Complete Pre-Filing Stage	2009	2010	2011	2012
Stipulation Filed				
Median	304	337	89	72
Mean	338	453	206	120
90th Percentile	692	964	602	363
Notice of Disciplinary Charges Filed				
Median	260	206	160	58
Mean	321	323	265	115
90th Percentile	681	791	728	335

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 2012, the median time to complete the litigation stage in which a stipulation was filed was 42 days from the filing. In ninety percent (90%) of such matters, the litigation stage was completed within 76 days.

The median time to complete litigation in 2012 was 154 days from the date on which a Notice of Disciplinary Charges was filed. Ninety percent (90%) of NDC litigations completed in 2012 were completed within 273 days of the initial filing.

Table 13: Time to Complete Trial Stage

Time to Complete Trial Stage	2009	2010	2011	2012
After Stipulation Filed				
Median	42	38	38	42
Mean	43	43	39	46
90th Percentile	64	61	51	76
After Notice of Disciplinary Charges Filed				
Median	228	218	176	154
Mean	294	260	249	172
90th Percentile	532	484	539	273

DISCIPLINARY OUTCOMES

Disciplinary Outcomes

Business and Professions Code section 6086.15, subdivision (a)(6), requires the *Annual Discipline Report* to report on formal disciplinary outcomes⁷ imposed after the filing of disciplinary charges. The following tables show the disciplinary outcome by the number of complaints and by the number of respondents.⁸

Table 14: Disciplinary Outcomes by Complaint

Disciplinary Outcomes (by Complaint)	2009	2010	2011	2012
Disbarment	106	198	482	456
Suspension	278	593	1,095	790
Other	0	3	1	0
Total	384	794	1,578	1,246

Table 15: Disciplinary Outcomes by Respondent

Disciplinary Outcomes (by Respondent)	2009	2010	2011	2012
Disbarment	32	58	89	90
Suspension	149	217	304	169
Other	0	2	1	4
Total	181	277	394	263

⁷ 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*.

⁸ 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.

- **Lawyers** in California have 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**⁹, under Business and Professions Code sections 6086.7 and 6086.8, must notify the State Bar of any of the following:

⁹ 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 a 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 amended canon was not amended to require reporting in the categories recommended by the CCFJA. See Cal. Code Jud. Ethics, Canon 3D(2), as amended eff. January 1, 2013.

(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.¹⁰

¹⁰ 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	2009	2010	2011	2012
Lawyer Self Reports	118	165	152	172
Other Sources:				
Banks	3,031	2,929	2,338	2,418
Insurers	139	140	105	180
Courts	103	126	149	130
Other	<u>16</u>	<u>16</u>	<u>8</u>	<u>12</u>
Sub-Total	3,289	3,211	2,614	2,815
Total Received	3,407	3,376	2,766	2,987
Forwarded to Investigation Unit	602	1,093	563	238

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 reprovais, 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	2009	2010	2011	2012
Petitions to Terminate Practice	9	8	16	8
Interim Suspensions & License Restrictions	9	8	6	4
Interim Suspensions After Criminal Convictions	56	51	59	13
New Criminal Conviction Monitoring Matters	134	158	143	132
Private Reprovals, Restricted	35	28	46	27
Private Reprovals, Public Disclosure	15	9	16	15
Public Reprovals	49	53	55	28
Admonitions	1	2	0	0
Warning Letters	349	658	675	402
Agreements In Lieu of Discipline	19	21	34	31
Total	676	996	1050	660

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

Costs of the Discipline System by Function

Function	2011	2012
<u>General Fund</u>		
Chief Trial Counsel	29,012	26,586
Probation	734	804
Mandatory Fee Arbitration	599	607
State Bar Court	6,837	6,860
Professional Competence	<u>1,584</u>	<u>1,555</u>
Support Services*	<u>17,029</u>	<u>15,360</u>
General FundTotal	55,795	51,772
Client Security Fund	9,224	8,170
<hr/>		
Total	65,019	59,942

*Support services costs attributable to the discipline system only; 2012 figures are unaudited.

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. That trend continued in the three following years with 3,875 new applications in 2010, 3,411 new applications in 2011, and 2,767 new applications in 2012. As of the end of 2012, 1,466 applications were paid in the total amount of approximately \$6.9 million.

The table below reflects the activity of the Fund for 2009 through 2012.

Table 19: Client Security Fund Activity

Client Security Fund Activity				
Dollars (in thousands)	2009	2010	2011	2012
Applications outstanding at the beginning of the year	11,872	22,125	34,514	45,327
PLUS: Prior year's outstanding applications adjustment	16	100	194	109
New Applications	19,469	23,232	26,086	25,113
LESS: Applications paid	3,462	3,331	7,820	6,871
Applications denied	1,930	2,869	2,586	3,093
Applications withdrawn	3,840	4,743	5,061	5,067
Applications outstanding at the end of the year	22,125	34,514	45,327	55,518
Applications payout ratio	39.38%	33.67%	42.22%	48.17%
Number of Applications				
Applications outstanding at the beginning of the year	710	2,997	6,112	7,345
PLUS: New applications filed	3,028	3,875	3,411	2,767
LESS: Applications paid	378	267	1,534	1,466
Applications denied	52	138	54	112
Applications withdrawn	311	355	590	733
Applications outstanding at the end of the year	2,997	6,112	7,345	7,801

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 2012, the Ethics Hotline received and responded to more than 14,500 calls—which together with return or follow-up calls totaled more than 22,600 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, 2012, there were 3 legal services lawyers and 987 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 2012, 784 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 2012, 2,466 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 2012, 52 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 2012, 2,617 students (2,293 students submitting new applications and 324 students submitting recertification applications) 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 2012, 4,507 lawyers were certified specialists and another 332 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 2012, providers filed approximately 1,907 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 and enforces California lawyers’ compliance with their continuing legal education requirements every three years. In July 2012, the State Bar placed 419 lawyers on involuntary inactive status for failure to comply. Additional members were placed in involuntary inactive status for noncompliance as a result of audits that included: 5 members in February 2012 as a result of the 2011 audit of 636 members and 19 members in December 2012 as a result of the 2012 audit of 2,600 members. (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 2012, 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.¹¹
- ***Probation.*** The Office of Probation monitors the compliance of disciplined lawyers on probation. In 2012, the number of cases ranged between 1,108 and 1,275 per month – an increase in caseload as compared to 2011, when the number of cases ranged between 904 and 1,127 per month. Probation referred 180 lawyers to OCTC for possible discipline for failing to meet the terms of their probation and filed 21 motions to revoke probation.
- ***Mandatory Fee Arbitration Program.*** This statewide program received 75 requests to arbitrate fee disputes between lawyers and clients, and closed 65 cases. Arbitration awards,

¹¹ http://www.calbar.ca.gov/Portals/0/documents/lap/2013_LAP_Annual_Report_ATT2012.pdf

in favor of clients, that remain unpaid may be enforced through a process administered by the program and brought in State Bar Court. In 2012, 65 requests for enforcement and refund payments were made to 50 clients. The State Bar Court placed four lawyers on involuntary inactive enrollment for failing to pay a fee arbitration award. Staff also handled 5,978 calls from the public, attorneys and local bar associations about the Mandatory Fee Arbitration process.

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:

..*.*

(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).