



The State Bar
of California

OFFICE OF THE EXECUTIVE DIRECTOR

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April 30, 2019

Honorable Tani G. Cantil-Sakauye
Chief Justice of California
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102

Honorable Toni G. Atkins
Senate President pro Tempore
State Capitol, Room 205
Sacramento, CA 95814

Honorable Hannah-Beth Jackson
Chair, Senate Committee on Judiciary
State Capitol, Room 2187
Sacramento, CA 95814

Erika Contreras
Secretary of the California State Senate
State Capitol, Room 3044
Sacramento, CA 95814

Hon. Gavin Newsom
Governor of the State of California
State Capitol, Suite 1173
Sacramento, CA 95814

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

Honorable Mark Stone
Chair, Assembly Committee on Judiciary
1020 N Street, Room 104
Sacramento, CA 95814

Dear Chief Justice Cantil-Sakauye, Governor Newsom, Senate President pro Tempore Atkins, Speaker Rendon, Senator Jackson, Assemblymember Stone, Secretary of the Senate Contreras, Members of the Senate Judiciary Committee and Members of the Assembly Judiciary Committee:

The Annual Discipline Report (ADR) provides an overview of the performance of the attorney discipline system, reporting on data elements that are mandated by statute. This year's report supplements the statutorily required data with additional metrics on the discipline system that were developed during 2018. The new metrics reflect the continued focus of the California State Bar on fully implementing the transition away from its previous hybrid regulatory and trade association structure to that of a tightly-focused regulatory agency.

A number of the key elements that are highlighted in this year's ADR include:

Case Prioritization

As part of the State Bar's continued focus on public protection, the Office of Chief Trial Counsel (OCTC) developed a system to prioritize the prosecution of cases against attorneys who present the greatest threat of harm to the public. This system allows OCTC, for the first time, to look beyond the general question of how long it takes to process cases and focus resources on attorneys whose conduct presents a significant, ongoing, or serious threat including cases involving vulnerable victims, such as immigrants and seniors; client abandonment; abusive or frivolous litigants; and, cases of abetting the unauthorized practice of law.

Since implementation in mid-2018, case prioritization has proven effective in achieving its goal: the number of active Priority 1 cases in backlog decreased by 30 percent from the end of 2017 to the end of 2018.

In addition to providing information on case prioritization, the ADR also examines the way in which counts of suspended cases can distort the general backlog number. When multiple cases are filed against an attorney, some of those cases may be suspended while more serious cases are pursued. Seventy one attorneys were responsible for 402 suspended Priority 1 cases in backlog at the end of 2018. Of those 71 attorneys, only 32 were still eligible to practice law.

Stopping the Unauthorized Practice of Law by Non-Attorneys

The State Bar has strengthened its relationships with law enforcement agencies in a continued effort to protect California's most vulnerable communities. In 2018, OCTC contacted District Attorney's offices throughout the state to explain the State Bar's role in combatting the unauthorized practice of law by non-attorneys (NA/UPL). Ongoing meetings have deepened these relationships.

In 2018, OCTC opened 734 NA/UPL cases and referred 492 complaints to law enforcement agencies, a 56 percent increase over the number of such referrals made in 2017. In 2018, OCTC filed six petitions requesting that a Superior Court assume jurisdiction of a practice. The granting of such a petition allows the State Bar to take action to protect the interests of the clients who were victims of the unauthorized practice of law. OCTC worked closely with law enforcement to assist in efforts to pursue criminal charges against these offenders.

The State Bar also continued in its direct outreach to immigrant communities, distributing multilingual fraud alerts, with a special focus on the predatory practices often used to victimize those communities. OCTC staff has participated in on-camera interviews for Univision and Telemundo, and the State Bar has issued news releases when OCTC has taken action against particularly dangerous individuals, using social media to ensure broad dissemination of information. OCTC also monitors Spanish language media to proactively identify potential NA/UPL practices.

Deepening State Bar Reforms

The organizational reforms begun in 2017 continued in 2018 with a focus on identifying changes to State Bar Rules to enhance the efficiency and effectiveness of the discipline system. Changes to Rules included: (1) allowing OCTC to notify attorneys via email of allegations against them; (2) authorizing the State Bar Court to take judicial notice of uncertified Superior Court records; (3) “tolling” cases against attorneys who are placed on inactive status due to mental incapacity or addiction; and, (4) eliminating a balancing test that required OCTC to weigh the potential harm an attorney might suffer from being enrolled involuntarily inactive against the potential harm to the public. These changes are just a few examples of the nine proposed Rule changes submitted in 2018, which have already resulted in streamlined case processing and enhanced public protection.

Development of Comprehensive Discipline System Metrics

The State Bar spent much of 2018 developing metrics that accurately track the efficacy of the discipline system. These metrics were developed, in part, in response to a recommendation by the Bureau of State Audits to more accurately measure how well the discipline system is meeting the State Bar’s core public protection mission. The State Bar’s Board of Trustees adopted performance metrics for all of its operational areas and will assess and revise the new metrics throughout 2019. Ongoing assessment will allow the State Bar to continue improving operations to ensure an ongoing focus on our public protection mission.

Next year’s ADR will include a report on the new discipline system metrics, providing a clear assessment of the effectiveness of the discipline system and the reforms that have been under way for several years. I look forward to reporting on the future success of these efforts.

Sincerely,



Leah T. Wilson
Executive Director



The State Bar of California

180 Howard Street, San Francisco, CA 94105

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, 2019

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 Sections 6086.15 and 6177, Civil Code Section 55.32, subdivision (f)(1), and Insurance Code Section 1872.95, subdivision (a). The Annual Discipline Report describes the performance and condition of the attorney discipline system in the previous calendar year. The following summary is provided under Government Code Section 9795.

The 2018 *Annual Discipline Report* highlights significant improvements to the attorney discipline system which stem from the State Bar's continued focus on its core regulatory functions. Improvements to operations in the Office of Chief Trial Counsel (OCTC) include: (1) prioritizing cases against attorneys who pose the greatest potential harm to the public; (2) directing resources to stop the unauthorized practice of law; and (3) deepening organizational reforms to make OCTC more efficient and effective.

In 2018, the State Bar received 15,973 new complaints against California lawyers. OCTC filed disciplinary charges or stipulations to discipline in 661 cases. Formal discipline was recommended by the State Bar Court in 544 cases, and the Supreme Court disbarred 131 attorneys and suspended another 149. In 2018, the backlog of cases – defined as those open cases at year's end in which OCTC had not filed disciplinary charges or closed within six months after receipt – decreased to 1,759 as of December 31, 2018 compared to 1,853 on December 31, 2017. Active Priority 1 cases in backlog decreased to 197 from 279 during the same period. Detailed information on the complaints, backlog, time for processing complaints, and disciplinary outcomes is contained in the Annual Discipline Report. In addition, the report presents summaries of the cost of the discipline system and the condition of the Client Security Fund.

The following reports, which were submitted separately in prior years, have been incorporated into the 2018 *Annual Discipline Report*, pursuant to Senate Bill No. 36 (Stats. 2017 (2017-2018 Reg. Sess.) ch. 422):

1. Construction-Related Accessibility Demand Letters (Civ. Code § 55.32, subd. (f) (1))
2. Insurance Fraud (Ins. Code § 1872.95, subd. (a))
3. Provision of Financial Services by Lawyers (Bus. & Prof. Code § 6177)

The full report is available for download on the State Bar's website at:

<http://www.calbar.ca.gov/About-Us/Reports>. A printed copy of the report may be obtained by calling 415-538-2352.



The State Bar of California

Annual Discipline Report For Year Ending December 31, 2018

April 30, 2019

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2018 ANNUAL DISCIPLINE REPORT

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INTRODUCTION

The Annual Discipline Report (ADR or Report) provides an overview of the State Bar's attorney discipline system: its workload, operations, initiatives, and performance in fulfilling its statutory obligation to protect the public from attorney misconduct. Although the discipline system is made up of multiple interdependent components of the State Bar, the primary focus of the ADR is the Office of Chief Trial Counsel (OCTC or Chief Trial Counsel).

This introduction to the ADR highlights significant improvements in OCTC during 2018: improvements that stem from the continued reorientation of the State Bar to sharpen its focus on core, regulatory functions. Three changes were essential to the steady improvement in OCTC's operation in 2018:

1. Prioritizing cases against attorneys who pose the greatest potential harm to the public;
2. Directing resources to stop the unauthorized practice of law; and
3. Deepening organizational reforms to make OCTC more efficient and effective.

Historically the ADR has focused narrowly on one metric through which the entirety of OCTC's work was viewed: the backlog, as defined by statute, of outstanding complaints. Although the backlog has declined this year, this Report expands the focus, highlighting organizational innovations that advance the statutory mandate of the State Bar that is not adequately captured in the backlog statistic: public protection.

Having planted the seeds of organizational transformation in previous years, the theme of this year's Report is that meaningful change is a process, not an event. The State Bar and, more importantly, the public it serves, is beginning to reap the benefits of the continued, persistent commitment the State Bar has made to reform.

PRIORITIZING CASES THAT POSE THE GREATEST POTENTIAL HARM TO THE PUBLIC

For many years the success or failure of the State Bar's discipline system was judged by reference to a single statutorily imposed reporting requirement: the backlog of complaints, defined to include all cases that, as of December 31st of the preceding year, were pending beyond six months after receipt without reaching disposition.^{1,2}

Attention to the statutorily defined backlog had the unintended consequence of creating an organizational culture in which incentives were misaligned with the State Bar's primary purpose and responsibility of protecting the public from attorney misconduct. From line staff to the Chief Trial Counsel, OCTC focused almost single-mindedly on resolution of the oldest cases, without regard for the severity of the offense or the danger posed to the public by the alleged perpetrator.

¹ California Business and Professions Code sections 6094.5(a) and 6140.2.

² All further statutory references are to the Business and Professions Code unless otherwise noted.

The statutory requirement to report on backlog was only partly responsible for this organizational challenge. As noted in the sidebar *Criminal Justice System vs. Attorney Discipline System*, the attorney discipline system lacked even the basic conceptual framework and the categories necessary to distinguish between cases of different severity. Absent a clear classification of cases to identify which posed the greatest potential harm to the public, OCTC dutifully sought to reduce the backlog.

This focus directed resources away from new complaints to older cases, without regard for the potential harm to the public of newer complaints, effectively undermining the State Bar's attention to its primary purpose: public protection. The analogy would be to a law enforcement agency addressing vandalism or shoplifting complaints ahead of violent crimes simply because the vandalism cases were older. In the criminal justice system such a focus would be unthinkable. But for many years, the work of the attorney discipline system was filtered almost entirely through the lens of the backlog of complaints, with greater regard for speed than public protection.

Laying the groundwork for case prioritization began in 2017. New leadership in OCTC developed the definitions necessary to classify which cases posed the greatest potential harm to the public. This framework was presented to and approved by the State Bar's Board of Trustees in March 2018. At the end of May, OCTC began implementing the case prioritization system, which involves classifying cases as follows:

- *Priority One (P1)* includes those cases that present significant, ongoing, or serious potential harm to the public; cases involving vulnerable victims including immigrants and seniors; cases

Criminal Justice System vs. Attorney Discipline System

Case prioritization and the pursuit of non-attorney, unauthorized practice of law (NA UPL) cases in OCTC both highlight important similarities and differences between the attorney discipline system and the criminal justice system. Like the criminal justice system, the attorney discipline system has a prosecuting agency, the State Bar's Office of Chief Trial Counsel (OCTC), which brings formal charges against attorneys who are accused of misconduct. Those attorneys have due process rights and may contest the charges filed against them in State Bar Court, where cases are adjudicated by impartial judges who are entirely independent of OCTC. But the attorney discipline system differs from the criminal justice system along a number of key dimensions:

Independent investigative agency

- Most criminal cases are brought to prosecutors from law enforcement agencies that provide the evidentiary foundation of a criminal prosecution; the prosecutor reviews this information and pursues only those with a solid evidentiary basis.
- OCTC receives complaints directly from members of the public who allege that they have been victims of attorney misconduct. The investigation to determine whether there is a basis to pursue disciplinary action must be conducted by OCTC.

Case categorization and prioritization

- Criminal cases are categorized as infractions, misdemeanors and felonies, providing a clear gradation of charge severity. Within each of these categories there are still finer gradations of severity, providing a rational basis for prioritizing the use of resources to pursue offenders whose conduct presents the greatest risk of public harm.
- Prior to case prioritization, the attorney discipline system lacked a clear system for ranking the severity of cases, and focused instead on a statutorily imposed metric, which is based solely on the order in which complaints are received.

Units of Count: Defendants vs. Cases

- Criminal cases are often synonymous with criminal defendants. If a district attorney achieves a conviction on one of multiple charges against a defendant, the outcome is counted as a successful prosecution.
- OCTC is statutorily required to report the status of cases; prosecution of only one case may result in a successful outcome, i.e., attorney discipline, even while many other cases against the same attorney are not actively pursued.

of client abandonment; abusive or frivolous litigants; and, those engaging in or abetting the unauthorized practice of law. OCTC devotes the most investigation and prosecution resources to pursuing P1 cases;

- *Priority Two* (P2) includes those cases that upon initial review do not appear to present significant, ongoing, or serious potential harm but need an expedited assessment to determine whether they do. If, after the initial assessment, a P2 case is determined to pose serious harm to the public, it is reclassified as P1. Cases that remain in the P2 category are handled by Expeditor attorneys and investigators who seek to resolve the cases quickly and with fewer resources than P1 cases require. Other cases that are classified as P2 include cases that are likely to be resolved with non-disciplinary action; non-P1 cases that are likely to be resolved within 60 days of assignment; and cases in which there are multiple complaints against the same attorney that do not rise to the level of P1 cases;
- *Priority Three* (P3) includes cases that do not represent a serious threat to the public but that are likely to be more time-consuming and labor intensive than P2 cases. For example, an attorney with no prior discipline fails to perform in one or more client matters (not evidencing abandonment of a practice) or an attorney who, with gross negligence, misappropriates a sum less than \$25K from a client and has since made restitution;
- *Priority Four* (P4) is assigned to all cases that meet the criteria for P2, but for which there are insufficient resources to expedite the matter.

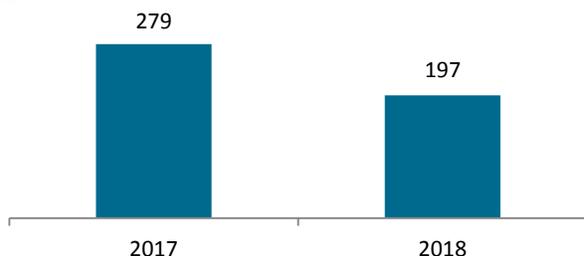
A essential component of implementing the new case prioritization system was staffing newly established *Expeditor* and *Expediting Investigator* positions. These Expeditor positions are critical to freeing up staff to work on cases that pose a significant risk of harm to the public. Expeditors resolve less complicated cases – those that pose a *lower* risk to the public – quickly and with fewer resources. Expeditors and Expediting Investigators are assigned Priority 2 cases that are likely to be resolved within 60 days. When fully implemented, the new case prioritization system will speed the processing of a significant number of Priority 2 cases with fewer staff than are needed to process the Priority 1 cases.

To ensure the consistency of the case prioritization classification and establish a baseline against which to compare OCTC's work, the Bar contracted with an external reviewer to classify every case that had been in backlog on December 31, 2017 and then closed before implementation of the case prioritization system – over a thousand cases. Cases closed after implementation were prioritized by staff assigned to handle those cases. A subsequent review of the prioritization codes assigned by staff evaluated 200 files and found broad consistency in the classification of priority codes: less than seven percent – 13 cases – needed to be reprioritized.

Early indications appear to show that case prioritization is an effective method to align the State Bar's resources with its public protection mission. Using this system, OCTC is working high priority cases (i.e., those cases that represent the most significant threat to the public) first, as opposed to simply working the oldest cases first. As a result, the number of active P1 cases in

backlog was reduced by almost 30 percent between the end of 2017 and the end of 2018 (Figure 1).³ If OCTC had additional resources to fully staff the Expeditor program, it is likely that the number of P1 cases in backlog would be even lower, while P2 and P4 cases would be eliminated entirely from backlog.

Figure 1 – The number of active P-1 cases in backlog declined by almost one third



DIRECTING RESOURCES TO STOP THE UNAUTHORIZED PRACTICE OF LAW

In 2018, OCTC expanded the scope of its work to protect the public from non-attorneys engaging in the unauthorized practice of law (NA/UPL). People who are not authorized to practice law, but do so or hold themselves out as able to do so, have the potential to cause significant harm to an unsuspecting public. The victims in these cases are often members of vulnerable communities, including immigrants.

Although practicing law without a license or holding oneself out as a lawyer when not licensed is a crime, the State Bar does not have the authority to prosecute non-attorneys for criminal activity. Nor does the State Bar have the authority to execute search warrants, make surreptitious recordings, or conduct other undercover activities that are used in the investigation of criminal activity.

OCTC does, however, have some valuable tools to combat this activity. Those tools work best when applied in coordination with law enforcement. For example, the State Bar can seek an order from the Superior Court to assume jurisdiction over a non-attorney's unauthorized law practice and appoint a State Bar attorney to examine files, notify clients of the non-attorney, file notices and motions on behalf of clients, and take possession and control of bank accounts related to the practice, among other things.⁴ But the fact that the court assumes jurisdiction over such a practice, even where the court issues an injunction or imposes civil penalties, is often not enough to prevent further victimization of new clients by the non-attorney. Law enforcement partners are needed to bring meaningful criminal actions against these individuals.

To that end, OCTC launched efforts in 2018 that will continue through 2019 to build and strengthen relationships with law enforcement agencies across the state. Those efforts began

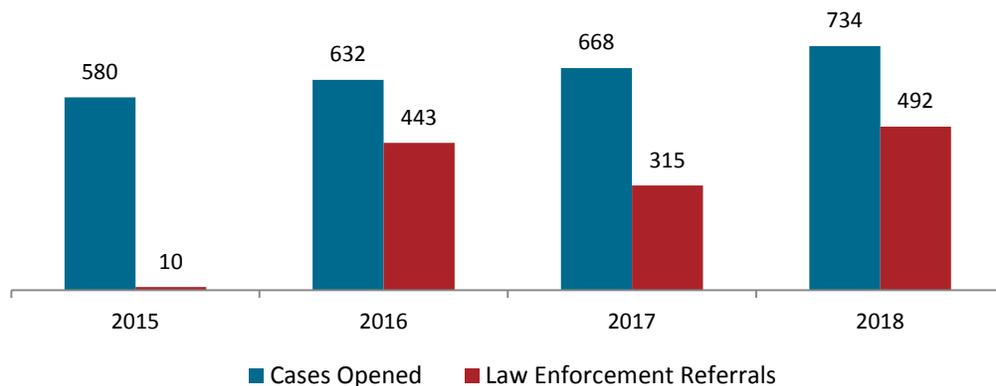
³ Active cases refer to cases that are not suspended. See the discussion of suspended cases in Table 1 on p. 8.

⁴ These cases are referred to as "assumption of practice" cases and are authorized under Business and Professions Code 6126.3(e)(1)-(8). See the sidebar on Vincent Enriquez.

with a letter sent on behalf of OCTC to every District Attorney in California, outlining the tools available to the State Bar and explaining how these complement the tools of law enforcement. Following the initial outreach, members of OCTC’s dedicated NA/UPL team initiated contact with individual District Attorney’s offices throughout the state. The team continues to meet with those offices to explain the role of the State Bar in combatting the unauthorized practice of law, and to discuss ways to coordinate efforts.

In addition to these outreach efforts to law enforcement partners, upon receipt of a complaint that implicates the unauthorized practice of law, the State Bar notifies the relevant District Attorney’s office, so that they may consider filing criminal charges. In 2018, the OCTC opened 734 NA/UPL cases, compared to 668 opened in 2017, and referred 492 such complaints to law enforcement, a 56 percent increase over the 315 referrals made in 2017.

Figure 2 – The Number of NA/UPL Cases Opened and Referred to Law Enforcement Increased Significantly in 2018



Working in concert with law enforcement, OCTC also filed six assumption of jurisdiction cases in 2018 (compared to only one in 2017). Assumption of jurisdiction cases are filed only in the most extreme cases, where a Cease and Desist letter has failed to stop the perpetrator of the UPL or where the actions are affecting a significant number of people. In these cases the assumption of jurisdiction can involve the appropriation of hundreds of case files with essential documents and paperwork that need to be returned to the victims of the non-attorney.

The Office of Chief Trial Counsel also engaged in extensive outreach to immigrant communities and the broader public in 2018, alerting them to the dangers of NA/UPL and the individuals engaged in it. The State Bar distributed multilingual fraud alerts, in hard copy and online, with a special focus on the predatory practices often used to victimize immigrant communities. Recent outreach has included fraud alerts for those seeking help following immigration raids, detentions at the border, and family separations. These alerts have been translated into the five most common languages in California other than English: Spanish, Chinese, Korean, Vietnamese, and Russian.

OCTC's outreach efforts have extended to appearing in on-camera interviews for Univision and Telemundo to discuss assumption of jurisdiction matters and the issuance of fraud alerts, and the State Bar has issued news releases when the office has taken action against particularly dangerous individuals, using social media to disseminate the information as broadly as possible. OCTC issued 121 Cease and Desist letters in 2018 and also began posting these letters to the State Bar website to assist consumers in identifying unauthorized practitioners.

In 2018, OCTC staff were granted access to the Adelanto immigration detention center to help ensure that these vulnerable potential clients and their families do not fall prey to unscrupulous attorneys or those unlawfully holding themselves out as attorneys. OCTC has provided more than 15,000 informational posters about how to file a complaint against an attorney and the unauthorized practice of law to consulates, Centro Legal de la Raza, the ACLU, Public Defender's offices, the California Immigrant Policy Center, California Rural Legal Assistance, and other legal aid organizations.

Seeking to partner with other organizations that have extensive contact with immigrant populations, OCTC has provided 5,000 copies of its informational brochures *How to File a Complaint Against an Attorney* and *Unauthorized Practice of Law* to the United Farm Workers. The State Bar has staffed its Resource Center hotline with service representatives fluent in Spanish and uses an on-demand telephone based interpretation service for over 200 other languages, allowing the State Bar to immediately receive and respond to information from non-English speakers.

Finally, in an effort to proactively identify people engaged in NA/UPL that affects immigrant communities, OCTC began monitoring Spanish language media to identify potential NA/UPL practices. OCTC plans to expand its outreach efforts to immigration consultants and immigration attorneys with the goal of educating advisors and advocates, who are often first to see those who have been victimized or ill-served, about how to report offenders to the State Bar.

Case Study in OCTC's Pursuit of a Non-Attorney Unauthorized Practice of Law Case

One powerful tool the State Bar has for tackling non-attorney unauthorized practice of law cases is seeking an assumption of jurisdiction, or assumption of practice, pursuant to Section 6126.3. The goal in such actions is to seize client files and property and return them to clients so they can seek legitimate representation, to redirect calls and mail from potential clients to The State Bar, and to return stolen property where possible.

Vincent Enriquez was a non-attorney who had operated NVE Associates for at least 10 years. He had never been licensed to practice law, never been registered with the California Secretary of State as a bonded, active Immigration Consultant, nor accredited as an Immigration representative with the Executive Office for Immigration Review.

Mr. Enriquez solicited clients by offering legal services to farmworkers on California's Central Coast, illegally portraying himself as an immigration attorney. Several people in Santa Maria retained and paid Enriquez, who assured them that they qualified for green cards. Enriquez even filed asylum applications on behalf of clients, which resulted in removal proceedings being initiated against two of them. In those two matters Enriquez fraudulently charged over \$12,000 in legal fees.

The State Bar sought and secured an assumption of jurisdiction order from the Superior Court, enjoining and restraining Enriquez from engaging in the unauthorized practice of law, and appointing the State Bar to retrieve and examine all files related to Enriquez' unauthorized practice, freeze any bank accounts, and re-route his phone lines and mail. The State Bar seized hundreds of client files and property and worked to return them to the client victims, and referred the matter to law enforcement authorities.

DEEPENING ORGANIZATIONAL REFORMS TO ENHANCE PRODUCTIVITY

Case prioritization and the expansion of OCTC's work in the area of NA/UPL both address the State Bar's ultimate goal of public protection. To achieve that goal, it has been essential for OCTC to deepen the organizational reforms begun in 2016: identifying structural impediments to efficient and effective case processing; continuing to reengineer existing business processes; and, taking advantage of technology wherever possible.

A large-scale reorganization was undertaken in 2017 in response to a legislative mandate to engage in workforce planning. Those changes, discussed in last year's ADR, involved moving cases more quickly to the Chief Trial Counsel's Enforcement unit and creating teams of attorneys, investigators, and support staff overseen by a supervising attorney. The team structure was designed to streamline case processing by delegating decision-making to line supervisors to approve charging and resolution decisions.

In 2018, as staff became more familiar with and comfortable in the new team structures, OCTC began identifying State Bar Rules and policies that presented obstacles to efficient case processing and sought changes to those Rules and policies.

In March, OCTC proposed modifications to Rule 2409(a) of the Rules of Procedure of the State Bar, allowing for OCTC to notify attorneys of allegations against them electronically. This small but important change eliminates weeks of turn-around time previously required for sending and receiving hard copies of notification through the US mail. The proposal to expressly permit electronic notification was submitted to the Board of Trustees in March, circulated for public comment, and approved by the Board in May.

In the same month, OCTC returned to the Board with additional proposals for rule modifications to streamline case processing. OCTC proposed an amendment to Rule of Procedure 5.104 to expressly authorize the State Bar Court to take judicial notice of uncertified California Superior Court records. At that time, under existing Rules of Procedure, it was unclear whether the State Bar Court required certified court records to take judicial notice of the court records in the State Bar Court. Because of this ambiguity in the Rules, OCTC typically sought certified court records to file with the State Bar Court – an expensive and time-consuming process. After public comment, the proposed change to Rule 5.104 was approved by the Board of Trustees in September.

Another proposed rule change brought to the Board in May by OCTC was a proposal to amend Rule 5.21 to "toll" cases when attorneys are placed on inactive status as a result of mental incapacity or addiction to a controlled substance under Sections 6007(a) and 6007(b). Historically the rule of limitation – under which disciplinary proceedings must begin within five years of the date of the violation – created significant challenges for OCTC where attorneys had been placed on inactive status due to mental incapacity or addiction to a controlled substance.

Although many of these attorneys never return to active status, if the case were suspended during the period of the attorney's incapacitation, OCTC policy required quarterly, written status reports on each of the hundreds of cases in this status. These cases would often linger for years, in backlog. But if OCTC closed the case, the rule of limitation might prevent OCTC from pursuing the investigation if the attorney returned to active status. Following public comment, the rule amendment was approved by the Board of Trustees in July and went into effect immediately, saving valuable resources while retaining the right to pursue a disciplinary case where attorneys seek to reactivate their status.

In the same vein, OCTC also proposed changes to Section 6007. The proposed changes streamlined the involuntary inactive enrollment of attorneys who have caused harm to the public and eliminated a "balancing" test contained within that section of the Business and Professions Code that required an assessment of the potential harm that an attorney might suffer from being enrolled involuntarily inactive. The Legislature approved these proposed changes, which went into effect on January 1, 2019 as part of the State Bar Fee Bill, AB 3249.

These changes to State Bar Rules of Procedure and the Business and Professions Code are just a sampling of the efforts underway in OCTC to systematically review how the work is done to ensure that case processing is as streamlined as possible. Over the course of 2018, OCTC leadership placed more than a dozen agenda items before the Committee on Regulation and Discipline and the full Board of Trustees and submitted nine proposed changes to rules.

By the end of 2018 the discipline system had also concluded the first phase of the launch of a new case management system in OCTC, the State Bar Court, and Office of Probation. Even without full implementation, the new system has allowed for the submission of online complaints, over 1,000 of which had been received by December 31, 2018, about 100 per week. Already fully functional in both English and Spanish, online information and printable complaint forms for attorney misconduct and UPL have also been translated into Chinese, Korean, Vietnamese, and Russian.

FOCUSING ON ACTIVE ATTORNEYS TO IMPROVE PUBLIC PROTECTION

As Table SR-1A in the section on statutorily mandated reporting shows, the total number of cases in backlog at the end of 2018 fell from 1,853 cases at the end of 2017 to 1,759 at the end of 2018, a decline of just over five percent. These cases, however, need to be viewed in the context of their potential harm to the public; the cases that pose the greatest potential harm need to be treated – and reported on – separately.

In addition, it is important to distinguish between *cases* – which are counted for each complaint that has been lodged against an attorney – and the *attorneys* who are the subjects of the complaints. Ultimately it is the attorney who poses the potential harm to the public and the attorney whose conduct needs to be addressed. If an attorney is facing multiple complaints, one of which is expected to lead to disbarment, OCTC focuses its resources on that case. Not only does this improve the chances of securing discipline against an attorney who has engaged

in misconduct, it also frees up resources for other work by placing related or trailing cases against the same attorney in suspended status.

Placing cases in suspended status, though, has on occasion created confusion about the work of OCTC. Because the attorney who is the subject of these complaints is often being prosecuted or has already been placed on inactive status awaiting disbarment, these cases often contribute disproportionately to backlog, even while the attorney no longer poses potential harm to the public.

Table SR-1B in the section on statutorily mandated reporting shows the age of cases in backlog. Of the 146 cases in backlog at the end of 2018 that were more than 5 years old, all but 4 were suspended pending the respondents' disbarment. Of the 12 individual attorneys responsible for the 146 cases, 7 were not eligible to practice law; one was disbarred early in 2019 and 53 of these cases were closed as a result.

Table 1 shows the circumstances under which cases are suspended so that OCTC can pursue the most serious cases against an attorney while conserving resources for other prosecutions.

Table 1 – Case Suspension and Attorney Status

Reason for Suspension	Attorney Status	Basis for Status
State Bar Court has recommended disbarment; other cases against same attorney are suspended pending Supreme Court consideration of the disbarment order.	Inactive (Awaiting disbarment)	Business and Professions Code Section 6007(c)(4)
Failure to appear in State Bar Court (Default); other cases against same attorney are suspended upon entry of default.	Inactive	Business and Professions Code Section 6007(c)(4) Rule 5.85 of Rules of Procedure of the State Bar
OCTC believes respondent will be disbarred on a lead case; other cases against same attorney are suspended pending the outcome of the lead, active case.	May be Active or Inactive	Awaiting State Bar Court Action
Other reasons warranting suspension: <ul style="list-style-type: none"> • Pending outcome of case against attorney in civil court; • Pending outcome of case in criminal court, including case where criminal conviction would result in summary disbarment. 	May be Active or Inactive	Awaiting outcome in other venue

Taking case priority, the number of attorneys responsible for the cases, and case suspension into account provides a more accurate view of the public protection function of the attorney discipline system than simply focusing on cases.

Figure 3 illustrates how case prioritization supports the State Bar’s public protection mission by showing how P1 cases differ from non-P1 cases. This difference can be seen in the proportion of suspended cases compared to the total for P1 and non-P1 cases, the number of cases per attorney and the number of attorneys who remain eligible to practice law. Whereas P1 cases make up about one third of the cases in backlog, over two thirds of the P1 cases were suspended compared to less than 20 percent of the non-P1 cases that were suspended.

Figure 3 – Only 32 Attorneys in Suspended P1 Cases in Backlog Were Still Eligible to Practice Law

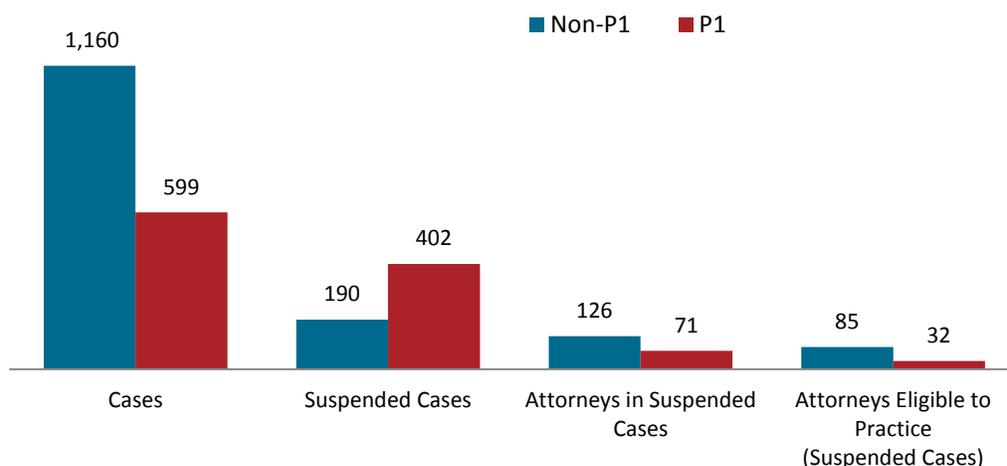


Figure 3 also shows the large number of cases for which attorneys in the P1 category are responsible. Seventy-one attorneys were responsible for the 402 suspended P1 cases in backlog, an average of more than five cases for each attorney who was the subject of a suspended P1 case. Of those 71 attorneys, less than half were still eligible to practice law at the end of 2018.

While OCTC will continue to aggressively prosecute these attorneys who remain eligible to practice, the public protection focus of the office is much more apparent when we distinguish between these different categories of cases and look at the number of attorneys still eligible to practice, as distinct from the number of cases in backlog.

MOVING TOWARD DISCIPLINE SYSTEM METRICS

This year’s ADR, with its focus on case prioritization and the continued reorientation of the work of OCTC, will serve as something of a transition to future reports that will present a more balanced report on the work of the entire discipline system. Metrics that capture the discipline system as a whole have been under development at the State Bar for more than a year, growing in part out of a recommendation by the Bureau of State Audits that the State Bar

“identify key goals and metrics to measure how well its attorney discipline system is meeting the State Bar’s core mission to protect the public from attorney misconduct.”⁶

In support of this recommendation, the State Bar’s five-year strategic plan for 2017-2022 adopted the following goal: “develop and implement transparent and accurate reporting and tracking of the health and efficacy of the discipline system,” which specifically includes the “development of new metrics for measuring the effectiveness of the discipline system including any needed revisions to the statutory backlog metric.”⁷

To implement Strategic Goal 2b, Bar staff began to develop measures that aim to provide a set of balanced metrics to supplement the backlog metric. These metrics are organized by the operational areas involved in the discipline system and include the following:

- The Office of Chief Trial Counsel;
- State Bar Court;
- Office of Probation;
- The Alternative Discipline Program (ADP) of the Lawyer Assistance Program (LAP); and
- Client Security Fund (CSF).

Specific metrics for each of these areas were developed by Bar staff, vetted by the Board of Trustees, modified where necessary, and approved at a meeting of the Board of Trustees in September, 2018. A more detailed discussion of each of the metrics and its purpose can be found in the agenda item from that Board meeting.⁸ Concurrent with this process, metrics were developed for all operational areas of the State Bar. These efforts were merged, with a final set of discipline metrics included on the Board’s January 2019 agenda.⁹ As a preview of data that will be included in next year’s ADR, the metrics are listed below.

OCTC

- Caseload clearance rate;
- Case disposition time at median and 90th percentile;
- Case inventory trends;
- Case management/handling;
- Backlog trends;
- Case prioritization and expedited processing;
- Second Look cases; and
- Walker petitions.

⁶ California State Auditor. *Report 2017-30, The State Bar of California: It Needs Additional Revisions to its Expense Policies to Ensure That it Uses Funds Prudently*. June 2017. <https://www.bsa.ca.gov/pdfs/reports/2017-030.pdf>

⁷ The State Bar of California. *2017-2022 Strategic Plan*. Updated March 2019. See Goal 2b on p. 3. <http://www.calbar.ca.gov/Portals/0/documents/bog/Updated%202017-2022%20Strategic%20Plan.pdf>

⁸ See Report to Board of Trustees, September 14, 2018. <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000022755.pdf>

⁹ Report to Board of Trustees, January 25, 2019. <http://board.calbar.ca.gov/docs/agendaitem/Public/agendaitem1000023500.pdf>

State Bar Court

- Caseload clearance rate;
- On-time case processing (related to various timelines);
- Case disposition time at median and 90th percentile;
- Petition for review (appeals to Supreme Court);
- Remands (cases sent back for reconsideration by Supreme Court); and
- Reversals or changes to the level of discipline by Supreme Court.

Office of Probation

- Successful completion;
- Reasons for non-completion; and
- Satisfaction of restitution orders.

Lawyer Assistance Program

- Participation rate;
- Successful completion; and
- Reasons for termination.

Client Security Fund

- Caseload clearance;
- Case inventory;
- Communication with applicants; and
- Time from final discipline to payment.

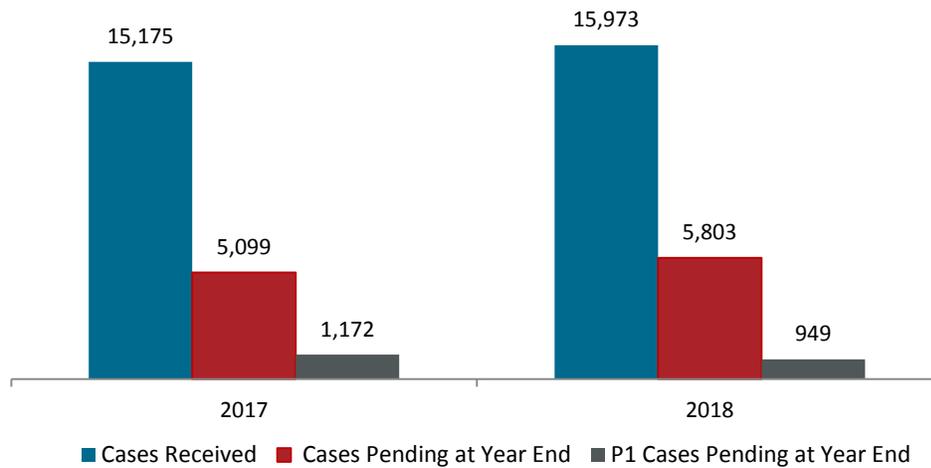
Finally, in addition to the metrics specific to individual, operational units of the discipline system, the Board approved metrics that relate to the efficacy of the discipline system as a whole: measures of recidivism by attorneys who have been disciplined, and measures of procedural fairness of the discipline system.

SELECTED DATA FROM STATUTORILY MANDATED REPORTING TABLES

Case Inventory and Disposition (Table SR-2 on page SR-4)

As shown in Figure 4, there was a 5 percent increase from 2017 to 2018 in the number of new cases received by OCTC. There was also an increase in the total number of cases pending at year end. The number of Priority One cases pending at the end of 2018, however, was about 20 percent lower than the number pending at the end of 2017.

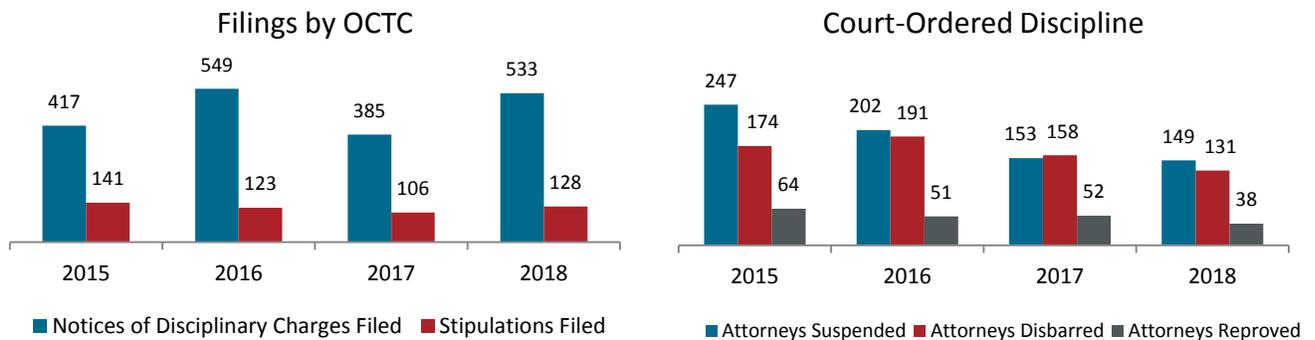
Figure 4 – Case Inventory has Increased; Year-End P1 Case Inventory has decreased



Formal Disciplinary Filings and Outcomes (Table SR-6A on page SR-21)

The number of disciplinary filings in State Bar Court increased 28 percent over the past year, and the number of stipulations⁹ increased 20 percent from 2017 to 2018. Due to the lag between case filing and final discipline in State Bar Court, the lower number of filings in 2017 resulted in a decrease in the number of attorneys disciplined in 2018.

Figure 5 – Filings and Stipulations Increased; the Number of Attorneys Disciplined Decreased

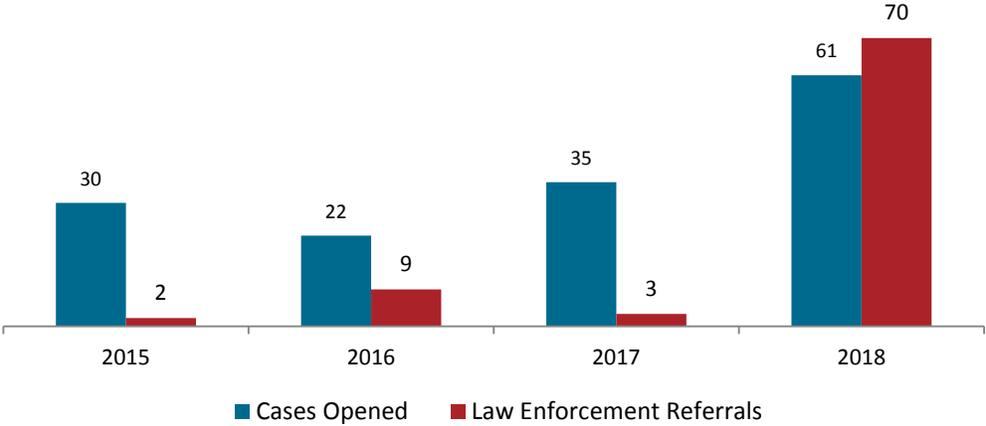


Unauthorized Practice of Law by Former Attorneys (Table SR-8 on page SR-25)

The number of cases of unauthorized practice of law by former attorneys nearly doubled from 2017 to 2018. The number of referrals to law enforcement for such cases increased from 3 to 70.

⁹ When a respondent attorney stipulates to discipline (akin to a plea agreement in criminal court), OCTC does not file charges in State Bar Court.

Figure 6 –UPL Cases Against and Referrals to Law Enforcement of Former Attorneys Increased in 2018



STATUTORILY MANDATED REPORTING

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BACKLOG¹⁰

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

Table SR-1A. Backlog	2015	2016	2017	2018
Complaints	1,155	1,200 [†]	1,600 [†]	1,427
State Bar Initiated Inquiries	98	66	82	101
Probation Referrals	24	20	23	13
Reportable Actions, Reported by Self	45	39	29	36
Reportable Actions, Reported by Others	173	187	118	182
Interim Suspensions and Restrictions	0	0	1	0
Total	1,495	1,512[†]	1,853[†]	1,759

¹¹Defined by statute as those open complaints and cases at year’s end where the State Bar had not filed disciplinary charges or reached other disposition within six months after receipt of the complaints. This Report uses 180 days, as opposed to 6 months, to calculate backlog, which allows for more accurate calculations based on the data structure of The State Bar’s case management system. The following types of cases are excluded from the backlog count:

Criminal Conviction Matters: Criminal charges filed against members of the State Bar are reportable actions, but OCTC only files the matter in State Bar Court after the attorney is convicted in the criminal proceeding, a process the State Bar does not control. Upon conviction, OCTC initiates disciplinary proceedings by transmitting the record of conviction to State Bar Court. Information about criminal conviction matters is provided in Table 3 and Table 4, as well as Appendix D.

Unauthorized Practice of Law (UPL):; Statutory authority is provided to the State Bar for limited action, including pursuit of civil penalties against non-attorneys and assumption of the non-attorney’s practice. Data regarding UPL matters for both former attorneys and non-attorneys is provided in Table 8 and Table 9, respectively. Additional information regarding UPL, notario, and immigration attorney misconduct is provided as Appendix E.

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

[†] Ongoing review and revisions to the underlying data resulted in small changes from the statistical information reported for the previous three years. Reasons for changes to prior year data include the following: (1) cases were reopened, resulting in a change to the case disposition (e.g., a case that was initially closed was reopened for further investigation); (2) case closure dates were changed, sometimes due to a delay in receipt of a Supreme Court discipline order; (3) changes were made to how cases were categorized (e.g., case-level review found some cases categorized as judicial sanctions reported by a court that were, in fact, reported by opposing counsel); and (4) corrections were made with regard to law enforcement referrals (e.g., some cases were reported as law enforcement referrals when the authorization to make such a referral had been obtained, regardless of whether the referral was ultimately made). All prior year data that has changed since the 2017 Annual Discipline Report is marked with the † symbol.

Table SR-1B. Aged Backlog¹²	2015	2016	2017	2018
<u>All Case Types</u>				
181 days - 1 year	596	630 [†]	864 [†]	872
Over 1 year - 2 years	397	436 [†]	521 [†]	433
Over 2 years - 3 years	176	136	163 [†]	174
Over 3 years - 4 years	147	119	98	67
Over 4 years - 5 years	80	107	104	67
Over 5 years	<u>99</u>	<u>84</u>	<u>103</u>	<u>146¹³</u>
Total	1,495	1,512[†]	1,853[†]	1,759
<u>Complaints</u>				
181 days - 1 year	396	501 [†]	763 [†]	678
Over 1 year - 2 years	297	296 [†]	425 [†]	342
Over 2 years - 3 years	156	105	139 [†]	138
Over 3 years - 4 years	136	114	75	62
Over 4 years - 5 years	77	103	100	62
Over 5 years	<u>93</u>	<u>81</u>	<u>98</u>	<u>145</u>
Total	1,155	1,200[†]	1,600[†]	1,427
<u>State Bar Initiated Inquiries</u>				
181 days - 1 year	61	30	29	51
Over 1 year - 2 years	23	22	37	34
Over 2 years - 3 years	6	11	8	13
Over 3 years - 4 years	4	1	7	1
Over 4 years - 5 years	2	2	0	2
Over 5 years	<u>2</u>	<u>0</u>	<u>1</u>	<u>0</u>
Total	98	66	82	101
<u>Probation Referrals</u>				
181 days - 1 year	9	4	7	4
Over 1 year - 2 years	12	6	5	4
Over 2 years - 3 years	1	7	3	1
Over 3 years - 4 years	1	1	6	1
Over 4 years - 5 years	1	1	1	2
Over 5 years	<u>0</u>	<u>1</u>	<u>1</u>	<u>1</u>
Total	24	20	23	13
<u>Reportable Actions, Reported by Self</u>				
181 days - 1 year	26	19	14	17
Over 1 year - 2 years	15	15	13	12
Over 2 years - 3 years	2	4	0	7

¹² During preparation of this report, it was discovered that Table 1B figures reflected the length of time cases were in backlog based on full years, not on 360 day years, as was stated in prior year ADRs. Except as indicated by a [†], the data has not changed, only the row labels have been changed.

¹³ All but 4 of these cases have been suspended pending resolution of other matters OCTC has pursued against the respondents, which will result in the respondents' disbarment. Twelve individual attorneys are responsible for all 146 cases. One of these attorney was disbarred early in 2019 and 53 of these cases were closed as a result.

Table SR-1A. Backlog	2015	2016	2017	2018
Over 3 years - 4 years	2	0	1	0
Over 4 years - 5 years	0	1	0	0
Over 5 years	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>
Total	45	39	29	36
<u>Reportable Actions, Reported by Others</u>				
181 days - 1 year	104	76	50	122
Over 1 year - 2 years	50	97	41	41
Over 2 years - 3 years	11	9	13	15
Over 3 years - 4 years	4	3	9	3
Over 4 years - 5 years	0	0	3	1
Over 5 years	<u>4</u>	<u>2</u>	<u>2</u>	<u>0</u>
Total	173	187	118	182
<u>Interim Suspensions and Restrictions</u>				
181 days - 1 year	0	0	1	0
Over 1 year - 2 years	0	0	0	0
Over 2 years - 3 years	0	0	0	0
Over 3 years - 4 years	0	0	0	0
Over 4 years - 5 years	0	0	0	0
Over 5 years	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total	0	0	1	0
Grand Total	1,495	1,512[†]	1,853[†]	1,759

CASE INVENTORY AND DISPOSITION¹⁴

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

Table SR-2. Inquiries and Complaints	2015	2016	2017	2018
<u>Summary: All Case Types</u>				
Cases Received	15,793	15,248	15,175	15,973
Cases Reopened	120	265	221	232
Closed by OCTC with No Action	13,584	12,958	12,112	13,168
Closed by OCTC with Referral	283	294	255	225
Closed by OCTC With Non-Disciplinary Action	<u>1,847</u>	<u>1,989</u> [†]	<u>1,693</u> [†]	<u>1,462</u>
<i>Total Cases Closed by OCTC</i>	<i>15,714</i>	<i>15,241</i> [†]	<i>14,060</i> [†]	<i>14,855</i>
Filed in State Bar Court	557	672	483	649
Cases Pending in OCTC at Year End	4,646	4,243	5,099 [†]	5,803
Closed by SBC with No Action	80	100 [†]	99 [†]	117 ¹⁵
Closed by SBC With Non-Disciplinary Action	9	5	6 [†]	7
Closed with Discipline Imposed	<u>924</u>	<u>796</u> [†]	<u>571</u> [†]	<u>434</u>
<i>Total Cases Closed by SBC</i>	<i>1,013</i>	<i>901</i> [†]	<i>676</i> [†]	<i>562</i>
Cases Pending in SBC at Year End	1,214	989 [†]	799 [†]	899
<u>Complaints</u>				
Complaints Received	12,308	12,135	12,298	12,832
Complaints Reopened	116	255	210	228
Closed by OCTC with No Action	10,777	10,227	9,652 [†]	10,633
Closed by OCTC with Referral	283	294	254	225
Closed by OCTC With Non-Disciplinary Action	<u>1,467</u>	<u>1,465</u> [†]	<u>1,471</u> [†]	<u>1,251</u>
<i>Total Complaints Closed by OCTC</i>	<i>12,527</i>	<i>11,986</i> [†]	<i>11,377</i> [†]	<i>12,109</i>
Filed in State Bar Court	340	392	282	387
Complaints Pending in OCTC at Year End	3,530	3,539	4,390 [†]	4,957
Closed by SBC with No Action	58	74 [†]	58 [†]	70
Closed by SBC With Non-Disciplinary Action	1	1	0 [†]	0
Closed with Discipline Imposed	<u>593</u>	<u>536</u> [†]	<u>343</u> [†]	<u>263</u>
<i>Total Complaints Closed by SBC</i>	<i>652</i>	<i>611</i> [†]	<i>401</i> [†]	<i>337</i>
Complaints Pending in SBC at Year End	856 [†]	640 [†]	522 [†]	581
<u>State Bar Initiated Inquiries</u>				
Inquiries Initiated	577	556	352	404
Inquiries Reopened	3	3	10	1
Closed by OCTC with No Action	309	311	267 [†]	314
Closed by OCTC with Referral	0	0	0	0
Closed by OCTC With Non-Disciplinary Action	<u>99</u>	<u>253</u>	<u>37</u> [†]	<u>37</u>

¹⁴ Table 2 does not include criminal conviction matters and UPL cases, which are reported separately.

¹⁵ This number includes cases closed for the following reasons: (1) respondent was disbarred in another matter, (2) respondent was ordered inactive pursuant to Rule 5124(g)(1), due to mental health issues, (3) respondent's death, shortly before or after dismissal, and (4) respondent's resignation.

Table SR-2. Inquiries and Complaints	2015	2016	2017	2018
<i>Total Inquiries Closed by OCTC</i>	408	564	304	351
Filed in State Bar Court	83	70	22	36
Inquiries Pending in OCTC at Year End	228	153	190	208
Closed by SBC with No Action	5	9	10	9
Closed by SBC With Non-Disciplinary Action	0	0	0 ⁺	1
Closed with Discipline Imposed	<u>74</u>	<u>102</u>	<u>40</u> ⁺	<u>25</u>
<i>Total Inquiries Closed by SBC</i>	79	111	50	35
Inquiries Pending in SBC at Year End	120	79	51	54
<u>Probation Referrals</u>				
Probation Referrals Received	97	100	116	99
Probation Referrals Reopened	1	0	0	0
Closed by OCTC with No Action	22	32	19	39
Closed by OCTC with Referral	0	0	1	0
Closed by OCTC With Non-Disciplinary Action	<u>2</u>	<u>3</u>	<u>1</u>	<u>1</u>
<i>Total Probation Referrals Closed by OCTC</i>	24	35	21	40
Filed in State Bar Court	59	82	82	78
Probation Referrals Pending in OCTC at Year	65	48	61	42
Closed by SBC with No Action	13	11	13	23
Closed by SBC With Non-Disciplinary Action	0	0	0 ⁺	0
Closed with Discipline Imposed	<u>101</u>	<u>70</u>	<u>71</u> ⁺	<u>74</u>
<i>Total Probation Referrals Closed by SBC</i>	114	81	84	97
Probation Referrals Pending in SBC at Year	109	111	109	91
<u>Reportable Actions, Self-Reported</u>				
Actions Reported	199	174	151	165
Reportable Actions Reopened	0	1	0	0
Closed by OCTC with No Action	182	183	128	141
Closed by OCTC with Referral	0	0	0	0
Closed by OCTC With Non-Disciplinary Action	<u>6</u>	<u>17</u>	<u>11</u>	<u>11</u>
<i>Total Reportable Actions Closed by OCTC</i>	188	200	139	152
Filed in State Bar Court	18	17	25	12
Reportable Actions Pending in OCTC at Year	111	69	56	57
Closed by SBC with No Action	0	3	2	1
Closed by SBC With Non-Disciplinary Action	0	0	0 ⁺	0
Closed with Discipline Imposed	<u>26</u>	<u>16</u>	<u>21</u> ⁺	<u>15</u>
<i>Total Reportable Actions Closed by SBC</i>	26	19	23	16
Reportable Actions Pending in SBC at Year End	23	21	25	21
<u>Reportable Actions, Reported by Others</u>				
Actions Reported	2,607	2,278	2,252	2,463
Reportable Actions Reopened	0	6	1	3
Closed by OCTC with No Action	2,294	2,205	2,045 ⁺	2,041
Closed by OCTC with Referral	0	0	0	0
Closed by OCTC With Non-Disciplinary Action	<u>273</u>	<u>251</u>	<u>173</u> ⁺	<u>162</u>
<i>Total Reportable Actions Closed by OCTC</i>	2,567	2,456	2,218	2,203

Table SR-2. Inquiries and Complaints	2015	2016	2017	2018
Filed in State Bar Court	52	107	67	125
Reportable Actions Pending in OCTC at Year	712	433	401	539
Closed by SBC with No Action	3	2	16 ⁺	13
Closed by SBC With Non-Disciplinary Action	0	0	1 ⁺	0
Closed with Discipline Imposed	<u>130</u>	<u>72</u>	<u>96⁺</u>	<u>57</u>
<i>Total Reportable Actions Closed by SBC</i>	<i>133</i>	<i>74</i>	<i>113⁺</i>	<i>70</i>
Reportable Actions Pending in SBC at Year End	105	138	92	148
<u>Interim Suspensions and Restrictions (Petitions pursuant to Section 6007)</u>				
ISRs Initiated	5	5	6	10
ISRs Reopened	0	0	0	0
ISRs Closed	0	0	1	0
<i>Total ISRs Closed by OCTC</i>	<i>0</i>	<i>0</i>	<i>1</i>	<i>0</i>
Filed in State Bar Court	5	4	5	11
ISRs Pending in OCTC at Year End	0	1	1	0
Petition Denied by SBC	1	1	0	1
Petition Granted by SBC	8	4	5	6
<i>Total ISRs Closed by SBC</i>	<i>9</i>	<i>5</i>	<i>5</i>	<i>7</i>
ISRs Pending in SBC at Year End	1	0	0	4

SELF-REPORTED REPORTABLE ACTIONS

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

Table SR-3. Reportable Actions, Reported by Self¹⁸	2015	2016	2017	2018
<u>Summary: All Reportable Actions, Reported by Self</u>				
Reports Received	249	211	210 ⁺	217
Cases Reopened	0	1	0	0
Cases Closed by OCTC with No Action	208	191	157 ⁺	158
Cases Closed by OCTC with Referral	0	0	0	0
Cases Closed by OCTC w Non-Disciplinary Action	<u>6</u>	<u>17</u>	<u>11</u>	<u>12</u>
<i>Total Cases Closed by OCTC</i>	<i>214</i>	<i>208</i>	<i>168⁺</i>	<i>170</i>
Cases Filed in State Bar Court	49	40	59	47
Cases Remaining in OCTC at Year End	182	141 ⁺	118 ⁺	117
Cases Closed by SBC with No Action	7	7	9	7
Cases Closed by SBC with Non-Disciplinary Action	0	0	0 ⁺	0
Cases Closed with Discipline Imposed	<u>42</u>	<u>51</u>	<u>46⁺</u>	<u>47</u>
<i>Total Cases Closed by State Bar Court</i>	<i>49</i>	<i>58</i>	<i>55</i>	<i>54</i>
Cases Remaining in SBC at Year End	128	103	103	87
<u>Three or more malpractice lawsuits filed within 12 months (§6068, subd. (o)(1))</u>				
Reports Received	2	1	2	2
Cases Reopened	0	0	0	0
Cases Closed by OCTC with No Action	6	1	1	2
Cases Closed by OCTC with Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
<i>Total Cases Closed by OCTC</i>	<i>6</i>	<i>1</i>	<i>1</i>	<i>3</i>
Average Pendency at Closure ¹⁹	299	29	13	63
Median Pendency at Closure	161	29	13	36
Cases Filed in State Bar Court	0	0	0	0
Cases Remaining in OCTC at Year End	0	0	1	0
Average Pendency at Year End	0	0	24	0
Median Pendency at Year End	0	0	24	0
Cases Closed by SBC with No Action	0	0	0	0

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

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

¹⁸ This table only includes actions brought to the attention of the State Bar through attorneys' self-reporting. It does not include actions taken by the State Bar based on the violations of the duties of an attorney set out in these sections which came to the attention of the State Bar through other means, e.g., prosecutorial misconduct cases that came to the attention of the State Bar through news reports or appellate court cases.

¹⁹ Pendency is reported in days.

Table SR-3. Reportable Actions, Reported by Self¹⁸	2015	2016	2017	2018
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by State Bar Court</i>	0	0	0	0
Cases Remaining in SBC at Year End	0	0	0	0
<u>Judgment in civil case for fraud, misrepresentation, gross negligence, etc. (§6068, subd. (o)(2))</u>				
Reports Received	4	5	4	2
Cases Reopened	0	0	0	0
Cases Closed by OCTC with No Action	8	1	4	2
Cases Closed by OCTC with Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>1</u>	<u>0</u>	<u>0</u>	<u>1</u>
<i>Total Cases Closed by OCTC</i>	9	1	4	3
Average Pendency at Closure	178	43	211	120
Median Pendency at Closure	144	43	62	169
Cases Filed in State Bar Court	0	0	1	0
Average Pendency at Filing	0	0	385	0
Median Pendency at Filing	0	0	385	0
Cases Remaining in OCTC at Year End	0	4	3	2
Average Pendency at Year End	0	134	113	484
Median Pendency at Year End	0	113	103	409
Cases Closed by SBC with No Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>1</u>	<u>0</u>	<u>2</u>	<u>0</u>
<i>Total Cases Closed by State Bar Court</i>	1	0	2	0
Average Pendency at Closure	714	0	1,329	0
Median Pendency at Closure	714	0	424	0
Cases Remaining in SBC at Year End	1	1	0	0
Average Pendency at Year End	1,739	2,105	0	0
Median Pendency at Year End	1,739	2,105	0	0
<u>Judicial sanctions imposed (§6068, subd. (o)(3))</u>				
Reports Received	129	111	113	123
Cases Reopened	0	0	0	0
Cases Closed by OCTC with No Action	122	133	100	107
Cases Closed by OCTC with Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>1</u>	<u>11</u>	<u>6</u>	<u>6</u>
<i>Total Cases Closed by OCTC</i>	123	144	106	113
Average Pendency at Closure	192	150	130	99
Median Pendency at Closure	152	81	44	29
Cases Filed in State Bar Court	3	5	7	6
Average Pendency at Filing	452	478	418	590

Table SR-3. Reportable Actions, Reported by Self¹⁸	2015	2016	2017	2018
Median Pendency at Filing	441	412	344	533
Cases Remaining in OCTC at Year End	73	35	35	39
Average Pendency at Year End	219	348	288	331
Median Pendency at Year End	157	257	174	242
Cases Closed by SBC with No Action	0	1	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0 [†]	0
Cases Closed with Discipline Imposed	<u>2</u>	<u>3</u>	<u>6</u> [†]	<u>4</u>
<i>Total Cases Closed by State Bar Court</i>	2	4	6	4
Average Pendency at Closure	611	1,627	861	1,307
Median Pendency at Closure	572	1,350	717	1,115
Cases Remaining in SBC at Year End	8	9	10	12
Average Pendency at Year End	1,242	998	1,071	1,080
Median Pendency at Year End	1,050	724	1,040	950
<u>Felony indictment (§6068, subd. (o)(4))</u>				
Reports Received	19	13	27 [†]	19
Cases Reopened	0	0	0	0
Cases Closed by OCTC with No Action	4	3	9 [†]	5
Cases Closed by OCTC with Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	4	3	9 [†]	5
Average Pendency at Closure	1,370	960	836 [†]	725
Median Pendency at Closure	715	1,189	710	399
Cases Filed in State Bar Court	10	9	13	22
Average Pendency at Filing	366	655	537	461
Median Pendency at Filing	225	333	483	272
Cases Remaining in OCTC at Year End	52	52 [†]	56 [†]	44
Average Pendency at Year End	563	636 [†]	544 [†]	687
Median Pendency at Year End	316	456	261	550
Cases Closed by SBC with No Action	3	3	2	1
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>2</u>	<u>12</u>	<u>10</u>	<u>10</u>
<i>Total Cases Closed by State Bar Court</i>	5	15	12	11
Average Pendency at Closure	941	1,477	1,081	1,275
Median Pendency at Closure	992	1,515	845	946
Cases Remaining in SBC at Year End	43	34	34	43
Average Pendency at Year End	1,361	1,462	1,463	1,282
Median Pendency at Year End	1,185	1,244	1,117	1,124
<u>Conviction of felony, or misdemeanor related to practice of law (§6068, subd. (o)(5))</u>				
Reports Received	31	24 [†]	32 [†]	33

Table SR-3. Reportable Actions, Reported by Self¹⁸	2015	2016	2017	2018
Cases Reopened	0	0	0	0
Cases Closed by OCTC with No Action	22	5	20	12
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>1</u>
<i>Total Cases Closed by OCTC</i>	22	5	20	13
Average Pendency at Closure	350	110	148	101
Median Pendency at Closure	294	123	63	58
Cases Filed in State Bar Court	21	14	21	13
Average Pendency at Filing	113	191	222	183
Median Pendency at Filing	44	173	91	67
Reports Remaining in OCTC at Year End	19	20 ⁺	6 ⁺	16
Average Pendency at Year End	308	429 ⁺	282 ⁺	70
Median Pendency at Year End	90	290 ⁺	156 ⁺	45
Cases Closed by SBC with No Action	4	1	5	5
Cases Closed by SBC with Non-Disciplinary Action	0	0	0 ⁺	0
Cases Closed with Discipline Imposed	<u>14</u>	<u>23</u>	<u>15</u> ⁺	<u>22</u>
<i>Total Cases Closed by State Bar Court</i>	18	24	20	27
Average Pendency at Closure	873	771	706	1,005
Median Pendency at Closure	627	608	673	641
Cases Remaining in SBC at Year End	62	48	44	23
Average Pendency at Year End	715	830	883	726
Median Pendency at Year End	567	698	598	662
<u>Discipline by professional agency or licensing board (§6068, subd. (o)(6))</u>				
Reports Received	39	43	15	25
Cases Reopened	0	1	0	0
Cases Closed by OCTC with No Action	24	30	8	18
Cases Closed by OCTC with Non-Disciplinary Action	<u>1</u>	<u>5</u>	<u>4</u>	<u>1</u>
<i>Total Cases Closed by OCTC</i>	25	35	12	19
Average Pendency at Closure	329	205	178	238
Median Pendency at Closure	207	83	26	60
Cases Filed in State Bar Court	15	12	17	6
Average Pendency at Filing	298	329	437	331
Median Pendency at Filing	267	376	455	208
Cases Remaining in OCTC at Year End	30	27	13	13
Average Pendency at Year End	177	265	382	330
Median Pendency at Year End	59	186	347	291
Cases Closed by SBC with No Action	0	2	2	1
Cases Closed by SBC with Non-Disciplinary Action	0	0	0 ⁺	0
Cases Closed with Discipline Imposed	<u>23</u>	<u>13</u>	<u>13</u> ⁺	<u>11</u>
<i>Total Cases Closed by State Bar Court</i>	23	15	15	12
Average Pendency at Closure	581	753	619	704

Table SR-3. Reportable Actions, Reported by Self¹⁸	2015	2016	2017	2018
Median Pendency at Closure	500	625	613	681
Cases Remaining in SBC at Year End	14	11	15	9
Average Pendency at Year End	678	471	603	758
Median Pendency at Year End	559	425	551	854
Reversal of judgment based on misconduct, gross incompetence, etc. (§6068, subd. (o)(7))				
Reports Received	25	14	17	13
Cases Reopened	0	0	0	0
Cases Closed by OCTC with No Action	22	18	15	12
Cases Closed by OCTC with Non-Disciplinary Action	<u>3</u>	<u>1</u>	<u>1</u>	<u>2</u>
<i>Total Cases Closed by OCTC</i>	25	19	16	14
Average Pendency at Closure	182	150	137	115
Median Pendency at Closure	162	96	91	35
Cases Filed in State Bar Court	0	0	0	0
Cases Remaining in OCTC at Year End	8	3	4	3
Average Pendency at Year End	199	234	208	322
Median Pendency at Year End	97	318	94	216
Cases Closed by SBC with No Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by State Bar Court</i>	0	0	0	0
Cases Remaining in SBC at Year End	0	0	0	0
Settlement or judgment for civil fraud, misrepresentation, gross negligence, etc. (§6086.8, subd. (c))				
Reports Received	0	0	0	0

REPORTABLE ACTIONS, REPORTED BY OTHERS

Section 6086.15, subdivision (a)(4) The number, average pending times, and types of matters reported by other sources pursuant to Sections 6086.7, 6086.8, 6091.1, subdivision (b) of Section 6101, and Section 6175.6.^{20,21}

Table SR-4. Reportable Actions, Reported by Others	2015	2016	2017	2018
<u>Summary: All Reportable Actions, Reported by Others</u>				
Reports Received	2,757	2,413	2,393 [†]	2,580
Cases Reopened	0	6	1	3
Cases Closed by OCTC with No Action	2,406	2,298	2,144 [†]	2,115
Cases Closed by OCTC with Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	273	251	173 [†]	162
<i>Total Cases Closed by OCTC</i>	<i>2,679</i>	<i>2,549</i>	<i>2,317</i>	<i>2,277</i>
Cases Filed in State Bar Court	108	166	126	156
Cases Remaining in OCTC at Year End	872 [†]	574 [†]	516 [†]	666
Cases Closed by SBC with No Action	26	17	36 [†]	26
Cases Closed by SBC with Non-Disciplinary Action	1	4 [†]	1 [†]	1
Cases Closed with Discipline Imposed	194	113	152 [†]	97
<i>Total Cases Closed by State Bar Court</i>	<i>221</i>	<i>134[†]</i>	<i>189[†]</i>	<i>124</i>
Cases Remaining in SBC at Year End	233 [†]	264	197	227
<u>Order of Contempt (§6086.7, subd. (a) (1))</u>				
Reports Received	6	4	1	3
Cases Reopened	0	0	0	0
Cases Closed by OCTC with No Action	3	4	2	1
Cases Closed by OCTC with Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	<i>3</i>	<i>4</i>	<i>3</i>	<i>1</i>
Average Pendency at Closure	81	192	358	4
Median Pendency at Closure	101	121	225	4
Cases Filed in State Bar Court	0	1	0	0
Average Pendency at Filing	0	245	0	0
Median Pendency at Filing	0	245	0	0
Cases Remaining in OCTC at Year End	4	3	1	3
Average Pendency at Year End	178	231	115	259

²⁰ The full text of section 6086.7, section 6086.8, section 6091.1, section 6101, and section 6175.6 is provided in Appendix B. Cases reported pursuant to section 6175.6 are included in a separate annual report to the Legislature, pursuant to section 6177. (The most recent report, dated December 15, 2016, may be accessed at: <http://www.calbar.ca.gov/LinkClick.aspx?fileticket=helYm1fUKpA%3d&tabid=224&mid=1534>). One such action was reported in 2013, with no others during the four year period encompassed by this Report. Since this action was initiated pursuant to a complaint rather than a reportable action reported by a court, it is not included in Table 4.

²¹ The figures in Table 4 differ from those in Table 2 for this category because Table 4 includes reports of criminal conviction matters, which are excluded from Table 2.

Table SR-4. Reportable Actions, Reported by Others	2015	2016	2017	2018
Median Pendency at Year End	65	191	115	230
Cases Closed by SBC with No Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>
<i>Total Cases Closed by State Bar Court</i>	<i>0</i>	<i>0</i>	<i>1</i>	<i>0</i>
Average Pendency at Closure	0	0	758	0
Median Pendency at Closure	0	0	758	0
Cases Remaining in SBC at Year End	0	1	0	0
Average Pendency at Year End	0	551	0	0
Median Pendency at Year End	0	551	0	0
<u>Modification or reversal of judgment based on misconduct, etc. (§6086.7, subd. (a)(2))</u>				
Reports Received	35	17	19	24
Cases Reopened	0	0	0	0
Cases Closed by OCTC with No Action	26	20	16	21
Cases Closed by OCTC with Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>2</u>	<u>2</u>	<u>0</u>	<u>3</u>
<i>Total Cases Closed by OCTC</i>	<i>28</i>	<i>22</i>	<i>16</i>	<i>24</i>
Average Pendency at Closure	139	220	140	261
Median Pendency at Closure	132	164	44	36
Cases Filed in State Bar Court	1	1	1	1
Average Pendency at Filing	364	454	446	189
Median Pendency at Filing	364	454	446	189
Cases Remaining in OCTC at Year End	19	13	15	14
Average Pendency at Year End	226	316	386	278
Median Pendency at Year End	160	304	142	138
Cases Closed by SBC with No Action	0	0	1	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>1</u>	<u>1</u>	<u>1</u>
<i>Total Cases Closed by State Bar Court</i>	<i>0</i>	<i>1</i>	<i>2</i>	<i>1</i>
Average Pendency at Closure	0	655	707	348
Median Pendency at Closure	0	655	703	348
Cases Remaining in SBC at Year End	1	1	0	0
Average Pendency at Year End	576	464	0	0
Median Pendency at Year End	576	464	0	0
<u>Judicial sanctions imposed (§6086.7, subd. (a)(3))</u>				
Reports Received	69	78	53	84
Cases Reopened	0	1	0	1
Cases Closed by OCTC with No Action	41	55	45	49
Cases Closed by OCTC with Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>7</u>	<u>15</u>	<u>7</u>	<u>15</u>

Table SR-4. Reportable Actions, Reported by Others	2015	2016	2017	2018
<i>Total Cases Closed by OCTC</i>	48	70	52	64
Average Pendency at Closure	260	192	144	189
Median Pendency at Closure	163	126	90	114
Cases Filed in State Bar Court	11	23	13	5
Average Pendency at Filing	495	423	430	539
Median Pendency at Filing	371	337	423	502
Cases Remaining in OCTC at Year End	56	42	30	46
Average Pendency at Year End	237	246	356	264
Median Pendency at Year End	140	178	241	157
Cases Closed by SBC with No Action	1	1	2 ⁺	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	1 ⁺	0
Cases Closed with Discipline Imposed	<u>9</u>	<u>20</u>	<u>15</u> ⁺	<u>16</u>
<i>Total Cases Closed by State Bar Court</i>	10	21	18 ⁺	16
Average Pendency at Closure	839	1,095	733 ⁺	878
Median Pendency at Closure	910	958	685 ⁺	801
Cases Remaining in SBC at Year End	28	30	25	14
Average Pendency at Year End	909	690	922	1,301
Median Pendency at Year End	791	572	810	1,223
<u>Civil Penalty for providing false information to Indian tribe in adoption case (§6086.7, subd. (a)(4))</u>				
Reports Received	0	0	0	0
<u>Prosecutorial misconduct (§6086.7, subd. (a)(5))</u>				
Reports Received	0	0	0	0
<u>Judgment in civil case for fraud, misrepresentation, gross negligence, etc. (§6086.8, subd. (a))</u>				
Reports Received	9	4	3	12
Cases Reopened	0	0	0	0
Cases Closed by OCTC with No Action	9	6	2	7
Cases Closed by OCTC with Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>1</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	9	6	3	7
Average Pendency at Closure	148	156	18	373
Median Pendency at Closure	164	137	6	13
Cases Filed in State Bar Court	1	1	0	2
Average Pendency at Filing	343	827	0	386
Median Pendency at Filing	343	827	0	240
Cases Remaining in OCTC at Year End	6	3	3	6
Average Pendency at Year End	276	569	934	113
Median Pendency at Year End	164	788	1,153	87
Cases Closed by SBC with No Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>1</u>	<u>1</u>	<u>1</u>
<i>Total Cases Closed by State Bar Court</i>	0	1	1	1

Table SR-4. Reportable Actions, Reported by Others	2015	2016	2017	2018
Average Pendency at Closure	0	1,205	844	1,233
Median Pendency at Closure	0	1,205	844	1,233
Cases Remaining in SBC at Year End	2	2	1	2
Average Pendency at Year End	778	799	1,195	594
Median Pendency at Year End	402	768	1,195	327
<u>Claim or action for damages for fraud, misrepresentation, etc. (§6086.8, subd. (b))</u>				
Reports Received	410	231	258	258
Cases Reopened	0	0	0	0
Cases Closed by OCTC with No Action	408	246	257	257
Cases Closed by OCTC with Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	<i>408</i>	<i>246</i>	<i>257</i>	<i>257</i>
Average Pendency at Closure	19	23	3	3
Median Pendency at Closure	8	3	2	3
Cases Filed in State Bar Court	0	0	0	0
Cases Remaining in OCTC at Year End	15	0	1	2
Average Pendency at Year End	238	0	4	4
Median Pendency at Year End	274	0	4	4
Cases Closed by SBC with No Action	0	0	0	0
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	0
Cases Closed with Discipline Imposed	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by State Bar Court</i>	<i>0</i>	<i>0</i>	<i>0</i>	<i>0</i>
Cases Remaining in SBC at Year End	0	0	0	0
<u>Overdraft of attorney trust accounts (§6091.1)</u>				
Reports Received	2,078	1,943	1,918	2,081
Cases Reopened	0	5	1	2
Cases Closed by OCTC with No Action	1,807	1,873	1,723 ⁺	1,706
Cases Closed by OCTC with Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>264</u>	<u>234</u>	<u>164⁺</u>	<u>144</u>
<i>Total Cases Closed by OCTC</i>	<i>2,071</i>	<i>2,107</i>	<i>1,887</i>	<i>1,850</i>
Average Pendency at Closure	109	77	67	58
Median Pendency at Closure	82	39	24	33
Cases Filed in State Bar Court	39	81	53	117
Average Pendency at Filing	360	374	433	360
Median Pendency at Filing	338	360	436	342
Cases Remaining in OCTC at Year End	612	372	351	467
Average Pendency at Year End	137	209	180	161
Median Pendency at Year End	65	102	69	90
Cases Closed by SBC with No Action	2	1	13	13
Cases Closed by SBC with Non-Disciplinary Action	0	0	0 ⁺	0
Cases Closed with Discipline Imposed	<u>121</u>	<u>50</u>	<u>78⁺</u>	<u>39</u>

Table SR-4. Reportable Actions, Reported by Others	2015	2016	2017	2018
<i>Total Cases Closed by State Bar Court</i>	123	51	91	52
Average Pendency at Closure	794	640	690	672
Median Pendency at Closure	687	593	640	603
Cases Remaining in SBC at Year End	74	104	66	132
Average Pendency at Year End	960	962	1,319	972
Median Pendency at Year End	835	613	754	482
<u>Filing of misdemeanor or felony charges (§6101, subd. (b))</u>				
Reports Received	150	136	141 ⁺	118
Cases Reopened	0	0	0	0
Cases Closed by OCTC with No Action	112	94	99	74
Cases Closed by OCTC with Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
<i>Total Cases Closed by OCTC</i>	112	94	99	74
Average Pendency at Closure	451	470	395	315
Median Pendency at Closure	320	245	235	178
Cases Filed in State Bar Court	56	59	59	31
Average Pendency at Filing	332	355	364	285
Median Pendency at Filing	239	249	162	186
Cases Remaining in OCTC at Year End	160 ⁺	141 ⁺	115 ⁺	128
Average Pendency at Year End	512 ⁺	532 ⁺	471 ⁺	516
Median Pendency at Year End	224 ⁺	330 ⁺	254 ⁺	278
Cases Closed by SBC with No Action	23	15	20	13
Cases Closed by SBC with Non-Disciplinary Action	1	4 ⁺	0 ⁺	1
Cases Closed with Discipline Imposed	<u>64</u>	<u>41</u>	<u>56</u> ⁺	<u>40</u>
<i>Total Cases Closed by State Bar Court</i>	88	60 ⁺	76	54
Average Pendency at Closure	836	924 ⁺	983	1,176
Median Pendency at Closure	644	752	922	846
Cases Remaining in SBC at Year End	128 ⁺	126	105	79
Average Pendency at Year End	940	1,018	1,020	1,059
Median Pendency at Year End	793	821	670	833
<u>Criminal Conviction (§6101, subd. (c))</u>				
Reports Received	37	23	24	24
Cases Reopened	0	0	0	0
Cases Closed by OCTC with No Action	18	10	10	16
Cases Closed by OCTC with Referral	0	0	0	0
Cases Closed by OCTC with Non-Disciplinary Action	0	0	0	0
<i>Total Cases Closed by OCTC</i>	18	10	10	16
Average Pendency at Closure	304	191	543	109
Median Pendency at Closure	378	92	143	85
Cases Filed in State Bar Court	14	23	11	12
Average Pendency at Filing	534	254	236	123
Median Pendency at Filing	146	309	87	106

Table SR-4. Reportable Actions, Reported by Others	2015	2016	2017	2018
Cases Remaining in OCTC at Year End	5	8	11	14
Average Pendency at Year End	796	556	136	417
Median Pendency at Year End	254	127	47	412
Cases Closed by SBC with No Action	4	1	9	4
Cases Closed by SBC with Non-Disciplinary Action	0	0	0	1
Cases Closed with Discipline Imposed	9	3	17	16
<i>Total Cases Closed by State Bar Court</i>	13	4	26	21
Average Pendency at Closure	672	613	512	569
Median Pendency at Closure	547	639	460	436
Cases Remaining in SBC at Year End	32	51	36	27
Average Pendency at Year End	987	858	1252	1630
Median Pendency at Year End	544	423	614	943

SPEED OF COMPLAINT HANDLING²²

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

Table SR-5. Speed of Complaint	2015	2016	2017	2018
<u>Complaints</u>				
Pendency at Closure by OCTC without filing				
Average	115	110	115	135
Median	52	38	44	57
Pendency at Filing by OCTC				
Average	305	331	450	466
Median	256	281	386	423
Pendency at Year End in OCTC				
Average	302	294	277	242
Median	104	127	128	88
Pendency at Closure by SBC				
Average	833	1,068 ⁺	909	1,007
Median	710	843 ⁺	688	785
Pendency at Year end in SBC				
Average	1,018 ⁺	930 ⁺	1,078 ⁺	1,038
Median	869	627	796	776
<u>State Bar Initiated Inquiries</u>				
Pendency at Closure by OCTC without filing				
Average	145	121	150	177
Median	91	19	35	85
Pendency at Filing by OCTC				
Average	286	368	408	401
Median	227	274	314	283
Pendency at Year End in OCTC				
Average	274	275	287	272
Median	139	144	153	160
Pendency at Closure by SBC				
Average	660	691	915	988
Median	495	487	690	760
Pendency at Year end in SBC				
Average	723	918	1,167	1,126
Median	463	639	972	892
<u>Reportable Actions, Reported by Self</u>				
Pendency at Closure by OCTC without filing				
Average	211	159	136	117

²² Criminal conviction matters are excluded from the reportable actions included in this section; see footnote 5 for an explanation. Although the pendency issue does not apply to these matters once they are filed in State Bar Court, they are excluded to maintain consistency with case type reporting.

Table SR-5. Speed of Complaint	2015	2016	2017	2018
Median	154	81	48	36
Pendency at Filing by OCTC				
Average	324	373	430	461
Median	279	394	412	408
Pendency at Year End in OCTC				
Average	206	298	290	336
Median	132	239	194	245
Pendency at Closure by SBC				
Average	588	937	744	855
Median	512	816	699	793
Pendency at Year end in SBC				
Average	920	774	790	942
Median	848	551	653	864
<u>Reportable Actions, Reported by Others</u>				
Pendency at Closure by OCTC without filing				
Average	98	77	62	58
Median	76	36	22	30
Pendency at Filing by OCTC				
Average	388	388	432	366
Median	338	356	436	342
Pendency at Year End in OCTC				
Average	150	218	206	172
Median	76	123	76	96
Pendency at Closure by SBC				
Average	798	777	699 ⁺	722
Median	687	662	649	667
Pendency at Year end in SBC				
Average	939	894	1,210	998
Median	798	611	754	579
<u>Probation Referrals</u>				
Pendency at Closure by OCTC without filing				
Average	200	297	376	454
Median	163	234	238	287
Pendency at Filing by OCTC				
Average	92	126	131	133
Median	59	115	83	86
Pendency at Year End in OCTC				
Average	237	369	337	297
Median	132	129	139	88
Pendency at Closure by SBC				
Average	598	585	565	693
Median	569	540	471	462
Pendency at Year end in SBC				

Table SR-5. Speed of Complaint	2015	2016	2017	2018
Average	655	639	684	622
Median	520	397	353	342
<u>Interim Suspensions and License Restrictions</u>				
Pendency at Closure by OCTC without filing				
Average	0	0	33	0
Median	0	0	33	0
Pendency at Filing by OCTC				
Average	4	2	18	59
Median	0	0	7	0
Pendency at Year End in OCTC				
Average	0	31	328	0
Median	0	31	328	0
Pendency at Closure by SBC				
Average	112	48	72	70
Median	89	28	69	71
Pendency at Year end in SBC				
Average	10	0	0	231
Median	10	0	0	77

FORMAL DISCIPLINARY FILINGS AND OUTCOMES²³

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

Table SR-6A. Formal Filings	2015	2016	2017	2018
<u>Notices of Disciplinary Charges</u>				
Number of Filings	417	549	385	533
Average Pendency at Filing	273	311	377	406
Median Pendency at Filing	241	266	337	369
<u>Stipulations to Facts and Discipline</u>				
Number of Filings	141	123	106	128
Average Pendency at Filing	330	357	402	361
Median Pendency at Filing	273	320	344	328
Table SR-6B. Formal Disciplinary Outcomes	2015	2016	2017	2018
<u>Disbarments</u>				
Number of Cases	423	461	321	229
Average Pendency	754	1,165	775	818
Median Pendency	711	866	691	698
Number of Attorneys Disbarred	174	191	158	131
<u>Suspensions</u>				
Number of Cases	528	374	288	273
Average Pendency	816	773	784	817
Median Pendency	600	632	666	679
Number of Attorneys Suspended	247	202	153	149
<u>Public Reprovals</u>				
Number of Cases	46	29	33	25
Average Pendency	563	618	480	734
Median Pendency	423	462	430	599
Number of Attorneys Publicly Reproved	36	26	27	23
<u>Private Reprovals</u>				
Number of Cases	40	30	33	17
Average Pendency	588	648	742	900
Median Pendency	553	443	532	476
Number of Attorneys Privately Reproved	28	25	25	15

²³ This section includes all formal disciplinary filings, including criminal conviction matters and reportable actions not included in other sections of this Report. It does not include State Bar Court filings included in Table 2 that are not formal disciplinary filings.

OTHER MATTERS AND SPECIFIED DEFINITIONS

Section 6086.15, subdivision (a)(7) *The number, average pending times, and types of other matters, including petitions to terminate practice pursuant to section 6180 or 6190, interim suspensions and license restrictions pursuant to section 6007, motions to enforce a binding arbitration award, judgment, or agreement pursuant to subdivision (d) of section 6203, motions to revoke probation, letters of warning, private reprovals, admonitions, and agreements in lieu of discipline.*²⁴

Table SR-7A. Other Matters	2015	2016	2017	2018
<u>Petitions to Terminate Practice pursuant to section 6180 or section 6190</u>				
Petitions Filed	7	6	6	5
Average Pendency at Filing	32	89	1,071	432
Median Pendency at Filing	7	63	70	71
Petitions Granted	5	6	6	5
Petitions Denied	2	0	0	0
<i>Total Cases Disposed by Superior Court</i>	7	6	6	5
Average Pendency at Disposition	51	89	1,071	432
Median Pendency at Disposition	22	63	70	71
<u>Interim Suspensions and Restrictions pursuant to section 6007</u>				
Cases Opened	5	5	6	10
Cases Re-Opened	0	0	0	0
Cases Closed Without Filing	0	0	1	0
Average Pendency at Closure	0	0	33	0
Median Pendency at Closure	0	0	33	0
Cases Filed	5	4	5	11
Average Pendency at Filing	4	2	18	59
Median Pendency at Filing	0	0	7	0
Cases Remaining in OCTC At Year End	0	1	1	0
Average Pendency At Year End	0	31	328	0
Median Pendency At Year End	0	31	328	0
Petitions Granted	8	4	5	6
Petitions Denied	<u>1</u>	<u>1</u>	<u>0</u>	<u>1</u>
<i>Total Cases Disposed by State Bar Court</i>	9	5	5	7
Average Pendency at Disposition	112	48	72	70
Median Pendency at Disposition	89	28	69	71
Cases Remaining in State Bar Court at Year	1	0	0	4
Average Pendency At Year End	10	0	0	231
Median Pendency At Year End	10	0	0	77
<u>Motions to Enforce Fee Arbitration Award</u>				
Cases Opened	5	12	4	1

²⁴ The full text of sections 6180, 6190, 6007, and 6203 is provided in Appendix B.

Table SR-7A. Other Matters	2015	2016	2017	2018
Petitions Granted	0	7	6	0
Petitions Denied	2	5	1	1
<i>Total Cases Disposed by State Bar Court</i>	<i>2</i>	<i>12</i>	<i>7</i>	<i>1</i>
Average Pendency at Disposition	87	64	92	71
Median Pendency at Disposition	60	62	71	71
Cases Remaining in State Bar Court at Year End	3	3	0	0
Average Pendency At Year End	30	61	0	0
Median Pendency At Year End	23	78	0	0
<u>Motions to Revoke Probation</u>				
Cases Opened	12	12	7	7
Petitions Granted	17	13	8	9
Petitions Denied	1	1	0	0
<i>Total Cases Disposed by State Bar Court</i>	<i>18</i>	<i>14</i>	<i>8</i>	<i>9</i>
Average Pendency at Disposition	217	249	169	166
Median Pendency at Disposition	193	171	172	161
Cases Remaining in State Bar Court at Year End	7	5	4	2
Average Pendency At Year End	231	84	131	45
Median Pendency At Year End	162	78	159	24

Table SR-7B. Specified Dispositions	2014	2015	2016	2017
<u>Admonitions</u>				
Cases	2	5 ⁺	1	3
Average Pendency at Disposition	865	914 ⁺	816	1,265
Median Pendency at Disposition	764	950 ⁺	816	1,092
Attorneys Admonished	2	3	1	2
<u>Agreements In Lieu of Discipline</u>				
Cases	46	20	13 ⁺	5
Average Pendency at Disposition	250	368	602 ⁺	689
Median Pendency at Disposition	195	354	502	837
Attorneys Entering into Agreements	46	20	11 ⁺	5
<u>Warning Letters</u>				
Cases	675	596 ⁺	610 ⁺	673
Average Pendency at Disposition	162	186	217 ⁺	273
Median Pendency at Disposition	145	164	184	218
Attorneys Receiving Warning Letters	585	533 ⁺	562 ⁺	604
<u>Private Reprovals</u>				
Cases				
Average Pendency at Disposition	40	30	33	17
Median Pendency at Disposition	588	648	742	900
Attorneys Privately Reproved	553	443	532	476

UNAUTHORIZED PRACTICE OF LAW BY FORMER ATTORNEYS²⁵

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

Table SR-8. UPL by Former Attorneys	2015	2016	2017	2018
Cases Opened	30	22	35	61
Cases Closed Without Filing	26	23	25	38
Average Pendency at Closure	137	210	153	204
Median Pendency at Closure	126	153	138	195
Cases Filed in Superior Court	0	0	0	0
Cases Remaining in OCTC At Year End	10	9	19	43
Average Pendency at Year End	230	75	108	147
Median Pendency at Year End	112	73	142	133
Petitions Granted	0	0	0	0
Petitions Denied	0	0	0	0
Total Cases Disposed by Superior Court	0	0	0	0
Referrals to Law Enforcement	2	9	3	70

²⁵ This table does not include attorneys who are disciplined for practicing law during a time that their license is suspended.

UNAUTHORIZED PRACTICE OF LAW BY NON-ATTORNEYS

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

Table SR-9. UPL by Non-Attorneys	2015	2016	2017	2018
Cases Opened	580	632	668	734
Cases Closed Without Filing	654	913	609	598
Average Pendency at Closure	270	291	107	151
Median Pendency at Closure	252	189	86	162
Cases Filed in Superior Court ²⁶	1	6	1	16
Average Pendency at Filing	880	247	7	189
Median Pendency at Filing	880	91	7	222
Cases Remaining in OCTC At Year End	464	181	243	364
Average Pendency at Year End	353	97	91	142
Median Pendency at Year End	141	81	90	118
Petitions Granted	1	6	1	16
Petitions Denied	0	0	0	0
Total Cases Disposed by Superior Court ²⁷	1	6	1	16
Average Pendency at Disposition	880	247	7	189
Median Pendency at Disposition	880	91	7	222
Referrals to Law Enforcement	10	443	315	492

²⁶Petition to Terminate filed in superior court, pursuant to section 6126.3, to assume the practice of a person holding himself or herself out as entitled to practice law without being an active member of The State Bar.

²⁷ These petitions are almost always granted or denied by the superior court on the day they are filed.

CONSTRUCTION-RELATED ACCESSIBILITY DEMAND LETTERS

Civil Code Section 55.32(f)(1) *Notwithstanding Section 10231.5 of the Government Code, on or before April 30, 2019, and annually as part of the Annual Discipline Report, no later than April 30 thereafter, the State Bar shall report to the Legislature and the Chairs of the Senate and Assembly Judiciary Committees, both of the following with respect to demand letters received by the State Bar: (A) The number of investigations opened to date on a suspected violation of subdivision (b) or (c) of Section 55.31. (B) Whether any disciplinary action resulted from the investigation, and the results of that disciplinary action.*

The laws governing construction-related accessibility claims involving a place of public accommodation were revised by the enactment of Senate Bill 1186 (Stats. 2012, Chapter 383). The purpose of SB 1186 is set forth in uncodified sections of the bill. One of these sections states:

The Legislature finds and declares that a very small number of plaintiffs' attorneys have been abusing the right of petition under Sections 52 and 54.3 of the Civil Code by issuing a demand for money to a California business owner that demands the owner pay a quick settlement of the attorney's alleged claim under those laws or else incur greater liability and legal costs if a lawsuit is filed. These demands for money allege one or more, but frequently multiple, claims for asserted violations of a construction-related accessibility standard and often demand a quick money settlement based on the alleged multiple claims without seeking and obtaining actual repair or correction of the alleged violations on the site. These "pay me now or pay me more" demands are used to scare businesses into paying quick settlements that only financially enrich the attorney and claimant and do not promote accessibility either for the claimant or the disability community as a whole. These practices, often involving a series of demand for money letters sent to numerous businesses, do not promote compliance with the accessibility requirements and erode public support for and confidence in our laws. (SB 1186 uncodified sec. 24.)

SB 1186 contains several requirements and restrictions concerning demand letters and demands for money in construction-related accessibility claims. As of January 1, 2019, the requirement to provide a copy of a demand letter to the State Bar was repealed. The following provisions relate directly to the State Bar:

- Between January 1, 2013 and January 1, 2019, a lawyer was required to timely submit to the State Bar a copy of any demand letter sent in a construction-related accessibility claim and a lawyer's violation of this requirement constitutes a cause for State Bar discipline. (Civ. Code, § 55.32, subd. (a)(2) and Bus. & Prof. Code, § 6106.2, subd. (a).)

- Commencing January 1, 2013, SB 1186 requires a lawyer to timely submit a copy of a complaint to the CCDA and a lawyer’s violation of this requirement constitutes a cause for State Bar discipline. (Civ. Code § 55.32, subd. (b) and Bus. & Prof. Code § 6106.2, subd. (a).) Additionally, commencing on October 10, 2015, AB 1521 amended Civil Code Section 55.32, subdivision (b) to require a lawyer to also notify the CCDA of a case outcome. Although complaints and notifications of a case outcome are not required to be copied to the State Bar, if the State Bar receives information indicating that an attorney has failed to send a copy to or notify the CCDA, the State Bar is required to investigate that possible violation. (Civ. Code sec. 55.32, subd. (c).)
- SB 1186 prohibits a demand letter from including a request or demand for money or an offer or agreement to accept money and also prohibits a lawyer, or other person acting at the direction of a lawyer, from issuing a demand for money to a building owner or tenant. (Civ. Code § 55.31, subd. (b) and (c).) Commencing January 1, 2013, a lawyer’s violation of these prohibitions constitutes a cause for State Bar discipline. (Bus. & Prof. Code § 6106.2, subd. (a).) A copy of a demand letter received by the State Bar from either the sender or recipient of the demand letter shall be reviewed by the State Bar to determine if the prohibition on a demand for money has been violated. (Civ. Code § 55.32, subd. (e).)
- SB 1186 mandates that with respect to potential monetary damages for an alleged construction-related accessibility claim or claims, a demand letter shall not state any specific potential monetary liability for any asserted claim or claims, and may only state: “The property owner or tenant, or both, may be civilly liable for actual and statutory damages for a violation of a construction-related accessibility requirement.” (Civ. Code § 55.31, subd. (b)(1).) Commencing January 1, 2013, a lawyer’s violation of this requirement constitutes a cause for State Bar discipline. (Bus. & Prof. Code § 6106.2, subd. (a).)
- SB 1186 amends the preexisting requirement that an attorney provide a written advisory with a demand letter or complaint sent to or served upon a defendant or potential defendant for any construction-related accessibility claim as specified (Civ. Code § 55.3, subd. (b).) The amendment adds a prominent notice that lawyers are prohibited from making a request or demand for money. A lawyer’s violation of the requirement to provide a written advisory constitutes a cause for State Bar discipline. (Bus. & Prof. Code § 6106.2, subd. (a).)
- Commencing January 1, 2013, SB 1186 requires a lawyer to include his or her State Bar number in a demand letter. (Civ. Code § 55.32, subd. (a)(1).)

The legislative history of SB 1186 makes clear that the State Bar retains prosecutorial discretion to determine what, if any, disciplinary action should be taken in a particular case. As the September 1, 2012 Senate Judiciary Committee analysis notes, at pages 22-23:

The author notes that “even though certain acts shall be subject to discipline, the commencement of an actual disciplinary action is at the prosecutorial discretion of the State Bar’s Office of Chief Trial Counsel. Nothing in the bill would require the State Bar

to bring an action for any offense, and it is certainly possible that the State Bar may just send the lawyer offending the provision an advisory letter for a first violation.”

DEMAND LETTERS RECEIVED, INVESTIGATIONS OPENED, AND DISCIPLINARY ACTION

From January 1, 2013, through December 31, 2018, the State Bar received 1,787 copies of demand letters. Of the 1,787 demand letters received, 51 involved possible violations of the prohibitions against demands for money and/or specific statements of monetary liability, which were investigated by the Office of Chief Trial Counsel. The demand letters received from July 26, 2017 to December 31, 2018 were carefully reviewed and did not contain any indicators of these violations and no investigations of these violations were initiated. Table SR-10 shows the number of letters received in each 12 month period since the first report, and the number of investigations undertaken.

Table SR-10. Demand Letters	2013	2014	2015	2016	2017	2018	Total
Number of Letters Received*	222	240	347	348	585	45	1,787
Investigations of Suspected Violations of Civil Code Section 55.35, subd.(b) or (c)	6	21	6	3	15	0	51

As noted in last year’s report, the 51 letters were sent by 19 different attorneys. One attorney sent 2 letters on the same date. One attorney sent 6 letters on the same date, and a seventh letter one week later. One attorney sent 6 letters on the same date, and 2 letters relating to matters covered by the original letters, but to different addressees, 22 days later. One attorney sent 3 demand letters in a two month period. One attorney sent 3 letters over a span of 25 months. One attorney sent 15 letters over the span of six months. The other 13 attorneys each sent 1 letter. The breakdown of the resulting action based on the investigation of these 51 demand letters was set forth in some detail in the 2017 report, which is accessible on the State Bar’s website at http://www.calbar.ca.gov/Portals/0/documents/reports/Construction-Related_%20Accessibility_Demand_Report_2017.pdf.

* Prior reports were based on an July-July reporting period. The numbers provided in Tables 12 and 13 reflect calendar year numbers, consistent with other reporting provided in the Annual Discipline Report.

INSURANCE FRAUD

Insurance Code Section 1872.95 (a) Within existing resources, the Medical Board of California, the Board of Chiropractic Examiners, and the State Bar shall each designate employees to investigate and report on possible fraudulent activities relating to workers' compensation, motor vehicle insurance, or disability insurance by licensees of the board or the bar. Those employees shall actively cooperate with the Fraud Division in the investigation of those activities. (b) The Medical Board of California and the Board of Chiropractic Examiners shall each report annually, on or before March 1, to the committees of the Senate and Assembly having jurisdiction over insurance on their activities established pursuant to subdivision (a) for the previous year. The State Bar shall include this report in its Annual Discipline Report on or before April 30. That report shall specify, at a minimum, the number of cases investigated, the number of cases forwarded to the Fraud Division or other law enforcement agencies, the outcome of all cases listed in the report, and any other relevant information concerning those cases or general activities conducted under subdivision (a) for the previous year. The report shall include information regarding activities conducted in connection with cases of suspected automobile insurance fraud.

In 1999, the Legislature enacted the Organized Crime Prevention and Victim Protection Act (Assembly Bill 1050, Stats. 1999, ch. 885) to provide for a focused, coordinated effort by all appropriate agencies and organizations to deal more effectively with fraudulent activities related to automobile and other specified insurance claims. Among other things, the act requires the Medical Board of California, the Board of Chiropractic Examiners, and the State Bar to report annually to the committees of the Legislature having jurisdiction over insurance about complaints alleging possible fraudulent activities relating to workers' compensation, motor vehicle insurance, or disability insurance by licensees of the board or the State Bar. Table SR-12 provides information about investigation of insurance fraud from 2015 through 2018.

Table SR-11. Insurance Fraud	2015	2016	2017	2018
<u>Workers' Compensation</u>				
Investigations Initiated	14	2	1	2
Suspended Pending Disbarment*	9	9	9	9
Suspended Pending Criminal Proceedings*	1	1	1	1
Closed by OCTC with No Action	4	2	1	1
Pending in Investigation at Year End	0	0	0	1
Referrals to Fraud Division	0	0	0	0
Referrals to Law Enforcement	10	0	0	0
<u>Motor Vehicle</u>				
Investigations Initiated	3	2	1	1
Closed by OCTC with No Action	3	2	1	1
Referrals to Fraud Division	0	0	0	0
Referrals to Law Enforcement	0	0	0	0
<u>Disability</u>				
Investigations Initiated	0	0	0	0

*These 10 cases are all against the same attorney, and remain suspended pending the final outcome of criminal proceedings against the attorney.

PROVISION OF FINANCIAL SERVICES BY LAWYERS

Business and Professions Code Section 6177 *The State Bar by April 30 of each year shall include in its Annual Discipline Report information on the number of complaints filed against California attorneys alleging a violation of this article. The report shall also include the type of charges made in each complaint, the number of resulting investigations initiated, and the number and nature of any disciplinary actions taken by the State Bar for violations of this article.*

In 1999, the Legislature enacted Article 10.5 of the State Bar Act regulating the sale of financial products, including long-term care insurance and life insurance, by lawyers to clients who are elders or dependent adults (Bus. & Prof. Code, §§ 6175-6176; added by Senate Bill number 72 (Stats. 1999, Ch. 454)). These sales must be fair and reasonable to the clients, and lawyers must make specific written disclosures.²⁸

The State Bar received no complaints alleging violations of Article 10.5 for the period 2015 through 2018. Since 2001, the State Bar has received 20 complaints alleging violations of the financial products statutes. Table SR-13 provides a summary of the resolution of those complaints.

Table SR-12. Financial Services Complaints	
Closed in Investigation	11
Resignation with Charges Pending	2*
Disbarment	7**

*2 attorneys

**1 attorney

²⁸ The full text of Section 6175.3, which governs the provision of legal services by lawyers to elder and dependent adults, is included in Appendix B.

CONDITION OF THE CLIENT SECURITY FUND

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

The Client Security Fund (CSF), established by Bar-sponsored legislation in 1972, represents one of the State Bar's major efforts to achieve its public protection goals. The CSF is designed to compensate legal consumers for monetary losses caused by the dishonest conduct of California attorneys. The CSF Commission, appointed by the State Bar Board of Trustees, administers the CSF and makes decisions on applications for reimbursement according to CSF rules. The CSF is financed by an annual assessment added to attorney licensing fees, which is used only for purposes of paying the reimbursements and administering the CSF. The assessment is currently \$40 for active attorneys and \$10 for inactive attorneys.

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

Beginning in 2009, the average yearly applications to the CSF tripled and remained well above the historic average through 2013. The increase was due to loan modification fraud schemes perpetrated by some California attorneys. The CSF had been surviving on an accumulated surplus that was exhausted in 2014 and now relies only on the revenue received every year. The number of new applications received in 2018 has decreased to more typical levels – the CSF received approximately 990 new applications in 2018.

In 2018, the CSF's revenue was \$8.3 million. The CSF paid out \$9.15 million on 877 applications filed against 285 attorneys. The cash balance at the end of the year was \$473,000.

CSF began the year with a budget of \$6.4 million available for reimbursements. In March of 2018 the Board of Trustees approved an initial decrease in the CSF reserve to allocate an additional \$800,000 for reimbursements. In May of 2018 the Board amended the reserve policy for CSF and allocated an additional \$1.7 million for CSF reimbursements. Also in May, the Board transferred \$250,000 from the Lawyer Assistance Program reserve to CSF. This resulted in a budget of \$9.15 million for reimbursements in 2018. The remaining budget was used for the administrative costs of the CSF and to maintain an appropriate reserve consistent with the revised Board policy.

At year end, there were 2,800 open CSF applications. Based on historical experience, the State Bar estimates that reimbursements related to these applications will total approximately \$20 million. At the current rate of CSF revenue, it will take more than three years to pay out reimbursements on the pending inventory. During this time new applications will continue to be filed and will add to the amount that is estimated to qualify for reimbursement.

If the assessment remains at \$40, annual revenue to the CSF will continue to be approximately \$8 million. Approximately \$2 million is allocated for the administrative costs of the Fund while

the remaining \$6 million is designated for reimbursements. The amount that it is estimated CSF will reimburse on the new applications filed in 2018 is \$9.2 million, or approximately \$3 million more than the current annual revenue for reimbursements. The need for an increase in the CSF assessment was the subject of a detailed report that was mandated by and provided to the Legislature in March of 2018. An increase in the assessment is needed to allow CSF to pay victims in a more timely manner. The State Bar estimates that a one-time increase of \$80 per active attorney would allow the CSF to pay the existing applications that are eligible for reimbursement and meet the ongoing need. Statutory changes implemented in 2019 will allow the State Bar to participate in the Franchise Tax Board’s Court Ordered-Debt Program, which is also expected to bring increased reimbursements to the CSF.

Table SR-13. 2018 Client Security Fund Payments

Attorney²⁹	Number of CSF Claims Paid	Total Amount Paid
1	80	\$579,306
2	9	\$424,465
3	13	\$348,864
4	72	\$335,353
5	2	\$224,000
6	46	\$204,428
7	1	\$183,500
8	3	\$179,157
9	2	\$174,900
10	15	\$167,595
11	12	\$160,341
12	9	\$148,594
13	20	\$148,250
14	3	\$146,763
15	3	\$140,823
16	4	\$138,056
17	19	\$129,731
18	4	\$112,131
19	1	\$112,000
20	2	\$110,000
21	5	\$101,298
22	2	\$100,350
23	1	\$100,000
24	1	\$100,000
25	1	\$100,000
26	1	\$100,000
27	1	\$100,000
28	1	\$100,000

²⁹ Attorney names are not provided, as CSF rules require confidentiality under certain circumstances.

Attorney²⁹	Number of CSF Claims Paid	Total Amount Paid
29	2	\$95,300
30	12	\$94,926
31	2	\$90,980
32	2	\$90,300
33	1	\$85,000
34	6	\$81,000
35	3	\$80,066
36	12	\$78,120
37	1	\$75,951
38	1	\$75,856
39	9	\$73,382
40	2	\$72,380
41	8	\$71,500
42	1	\$68,854
43	1	\$66,667
44	1	\$65,000
45	3	\$62,904
46	17	\$60,461
47	1	\$60,000
48	12	\$58,137
49	1	\$56,920
50	14	\$54,913
51	2	\$52,000
52	8	\$51,700
53	13	\$46,881
54	1	\$45,000
55	8	\$44,053
56	1	\$43,852
57	1	\$42,000
58	13	\$41,311
59	1	\$41,180
60	1	\$40,080
61	1	\$40,000
62	1	\$37,500
63	3	\$37,418
64	1	\$35,000
65	2	\$34,835
66	1	\$34,000
67	1	\$32,333
68	6	\$32,066
69	2	\$32,050
70	13	\$31,972
71	1	\$31,000

Attorney²⁹	Number of CSF Claims Paid	Total Amount Paid
72	3	\$30,128
73	1	\$30,000
74	3	\$29,531
75	5	\$28,500
76	1	\$28,500
77	2	\$26,500
78	3	\$25,468
79	8	\$25,288
80	3	\$25,178
81	2	\$25,000
82	1	\$25,000
83	1	\$23,550
84	1	\$22,750
85	1	\$22,750
86	7	\$22,000
87	2	\$21,715
88	6	\$20,990
89	5	\$20,000
90	3	\$19,500
91	2	\$19,372
92	3	\$19,000
93	1	\$18,000
94	4	\$18,000
95	1	\$17,994
96	1	\$17,923
97	1	\$17,588
98	5	\$16,500
99	5	\$16,350
100	2	\$16,333
101	7	\$16,150
102	1	\$16,000
103	2	\$15,947
104	3	\$15,900
105	1	\$15,568
106	1	\$15,000
107	1	\$15,000
108	1	\$15,000
109	5	\$14,905
110	1	\$14,500
111	4	\$13,765
112	3	\$13,550
113	1	\$13,000
114	3	\$12,949

Attorney²⁹	Number of CSF Claims Paid	Total Amount Paid
115	5	\$12,923
116	2	\$12,718
117	2	\$12,500
118	2	\$12,373
119	2	\$12,045
120	1	\$12,000
121	1	\$12,000
122	2	\$11,990
123	2	\$11,953
124	2	\$11,900
125	4	\$11,895
126	2	\$11,400
127	1	\$11,274
128	2	\$11,200
129	1	\$11,000
130	4	\$10,750
131	1	\$10,645
132	1	\$10,500
133	2	\$10,343
134	1	\$10,000
135	1	\$10,000
136	1	\$10,000
137	3	\$10,000
138	1	\$10,000
139	1	\$10,000
140	1	\$9,800
141	1	\$9,666
142	2	\$9,500
143	3	\$9,395
144	3	\$9,330
145	3	\$8,650
146	3	\$8,650
147	2	\$8,600
148	4	\$8,400
149	2	\$8,300
150	2	\$8,100
151	1	\$8,000
152	2	\$7,992
153	2	\$7,750
154	2	\$7,580
155	1	\$7,500
156	1	\$7,500
157	1	\$7,500

Attorney²⁹	Number of CSF Claims Paid	Total Amount Paid
158	1	\$7,500
159	1	\$7,500
160	3	\$7,000
161	1	\$7,000
162	2	\$6,950
163	1	\$6,926
164	2	\$6,917
165	1	\$6,610
166	1	\$6,500
167	1	\$6,500
168	2	\$6,500
169	1	\$6,400
170	1	\$6,400
171	1	\$6,350
172	2	\$6,244
173	2	\$6,116
174	1	\$6,000
175	1	\$6,000
176	1	\$6,000
177	2	\$6,000
178	3	\$5,706
179	1	\$5,692
180	1	\$5,660
181	1	\$5,600
182	1	\$5,500
183	2	\$5,500
184	1	\$5,274
185	3	\$5,200
186	1	\$5,138
187	1	\$5,031
188	1	\$5,000
189	2	\$5,000
190	1	\$5,000
191	1	\$5,000
192	1	\$5,000
193	1	\$5,000
194	1	\$5,000
195	1	\$5,000
196	1	\$4,966
197	2	\$4,860
198	3	\$4,650
199	1	\$4,600
200	1	\$4,500

Attorney²⁹	Number of CSF Claims Paid	Total Amount Paid
201	1	\$4,466
202	1	\$4,225
203	1	\$4,221
204	1	\$4,000
205	2	\$4,000
206	1	\$4,000
207	1	\$3,975
208	1	\$3,750
209	1	\$3,646
210	1	\$3,600
211	1	\$3,500
212	1	\$3,500
213	1	\$3,393
214	1	\$3,333
215	1	\$3,300
216	1	\$3,250
217	1	\$3,200
218	2	\$3,100
219	2	\$3,000
220	1	\$3,000
221	1	\$3,000
222	2	\$3,000
223	1	\$3,000
224	1	\$3,000
225	1	\$2,995
226	1	\$2,965
227	1	\$2,890
228	1	\$2,880
229	1	\$2,774
230	1	\$2,765
231	1	\$2,700
232	1	\$2,700
233	1	\$2,685
234	1	\$2,500
235	1	\$2,500
236	1	\$2,500
237	1	\$2,500
238	1	\$2,500
239	1	\$2,495
240	1	\$2,495
241	1	\$2,410
242	1	\$2,333
243	1	\$2,232

Attorney²⁹	Number of CSF Claims Paid	Total Amount Paid
244	1	\$2,166
245	2	\$2,085
246	1	\$2,030
247	1	\$2,000
248	1	\$2,000
249	1	\$2,000
250	1	\$2,000
251	1	\$2,000
252	1	\$2,000
253	1	\$2,000
254	1	\$2,000
255	1	\$2,000
256	1	\$1,995
257	2	\$1,987
258	1	\$1,900
259	1	\$1,900
260	1	\$1,800
261	1	\$1,800
262	1	\$1,748
263	1	\$1,585
264	1	\$1,540
265	1	\$1,500
266	1	\$1,500
267	1	\$1,500
268	1	\$1,500
269	1	\$1,500
270	1	\$1,500
271	1	\$1,500
272	1	\$1,200
273	1	\$1,200
274	1	\$1,000
275	1	\$1,000
276	1	\$1,000
277	1	\$995
278	1	\$985
279	1	\$900
280	1	\$667
281	1	\$625
282	1	\$600
283	1	\$500
284	1	\$300
285	1	\$250
Total	877	\$9,150,841

COST OF THE DISCIPLINE SYSTEM

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

Table SR-14 reflects the budgeted cost of programs included in the Supreme Court’s November 2016 order approving an interim special regulatory assessment, which authorized the State Bar to assess 2017 attorney licensing fees for discipline-related functions.³⁰

Table SR-14. Cost of the Discipline System³¹	
Chief Trial Counsel	45,436,400
Probation	1,412,300
Mandatory Fee Arbitration	184,400
State Bar Court	12,005,600
Professional Competence	2,508,900
Attorney Regulation and Consumer Resources	4,934,200
Communications (70%) ³²	542,500
Licensee Billing (73%) ³³	480,400
General Counsel (76.3%) ³⁴	2,720,300
Total	70,225,000

³⁰ The Court’s order included funding for activities of the California Young Lawyers Association (CYLA) related to the discipline system. The CYLA is no longer a part of the State Bar, so those costs are not included in Table 11.

³¹ The 2018 audit was not completed prior to the ADR submission date; figures reflect actual costs as of April 24, 2019.

³² This percent reflects the portion of Office of Communications resources devoted to its principle roles, which are to help Californians understand how to access the resources of the discipline system and to ensure that attorneys understand their professional ethical obligations.

³³ This percent reflects the portion of Office of Finance licensee billing resources dedicated to collecting licensing fees and discipline costs.

³⁴ This percent reflects the portion of Office of General Counsel resources dedicated to supporting The State Bar’s discipline programs.

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APPENDICES

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APPENDIX A
Glossary of Attorney
Discipline Report Terminology

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

BACKLOG: Cases with pendency in OCTC of more than 180 days on December 31. The backlog includes complaints, State Bar initiated inquiries, Probation referrals, reportable actions (excluding criminal conviction matters. Excluded from the backlog, in addition to criminal conviction matters, are unauthorized practice of law cases, motions to enforce fee arbitration, motions to revoke probation and interim suspension and restrictions (petitions pursuant to section 6007). See footnote 10 for a full discussion of the excluded case types.

CASE: An individual complaint, Office of Probation referral, State Bar initiated inquiry, reportable action, motion to enforce fee arbitration, motion to revoke probation, motion to terminate practice,* or motion to impose interim suspension or license restrictions (petitions pursuant to section 6007).

CASE INITIATION DATE:

- For *complaints*: the date on which the written complaint is received in the Intake Unit³⁵
- For *probation referrals*: the date on which the referral is received in OCTC
- For *State Bar initiated inquiries*: the date on which the inquiry is received in the Intake Unit
- For *reportable actions*: the date on which the report is received in the Intake Unit
- For *motions to enforce fee arbitration*: the date on which the Mandatory Fee Arbitration Program files the motion in State Bar Court
- For *motions to revoke probation*: the date on which the Office of Probation files the motion in State Bar Court
- For *petition to terminate practice*:* the date on which the case is opened in the Intake Unit
- For *petition to impose interim suspension or license restrictions pursuant to section 6007*: the date on which the case is opened in the Intake Unit

* While section 6086.15 directs the State Bar to report on “motions to terminate practice,” the State Bar refers to these as “motions to assume jurisdiction pursuant to section 6180 or 6190 (for attorneys) or 6126.3 (for non-attorneys).”

³⁵ Complaints received after 4:30 p.m. or on non-business days are deemed received on the next business day.

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COMPLAINT: A written complaint submitted by a complaining witness to OCTC:

- A single written complaint that lists multiple respondents is counted as a separate complaint against each respondent;
- A single written complaint signed by multiple complaining witnesses (e.g. a married couple) against a respondent is counted as one complaint; and
- Independently submitted written complaints against a single respondent are counted separately

COURT CLOSING DATE:

- For cases filed in State Bar Court, the date the court records as the closing date of the case.
- For initial 6180/6190/6126.3 petitions filed in Superior Court resulting in denial or dismissal of OCTC's petition, the date on which OCTC closes the case.
- For initial 6180/6190/6126.3 petitions filed in Superior Court resulting in Superior Court jurisdiction (i.e., granting the petition), the case remains open until OCTC closes the case following the Superior Court granting a petition to terminate Superior Court jurisdiction.³⁶

DISPOSITIONS (OCTC):

- *Closed with Non-Disciplinary Action:* Closed with a warning letter, directional letter, resource letter, or agreement in lieu of discipline
- *Closed with Referral:* Closed upon referral to other processes or agencies, including mandatory fee arbitration, law enforcement,³⁷ and alternative dispute resolution
- *Filed in State Bar Court:* Formal filing, including Notice of Disciplinary Charges, Stipulation to Facts and Discipline, or petition pursuant to section 6007
- *Filed in Superior Court:* Petition pursuant to section 6180, section 6190, or section 6126.3 filed in superior court
- *Closed with No Action:* Closed by OCTC with no further action

DISPOSITIONS (STATE BAR COURT):

- For complaints, State Bar Inquiries, Probation Referrals and Reportable Actions:
 - *Discipline Imposed:* Disbarment, suspension, probation, reapproval, revocation of probation, or extension of probation³⁸
 - *Closed with Non-Disciplinary Action:* Admonition or the granting of a petition pursuant to section 6007
 - *Closed with No Action:* Closed by the Court with dismissal, termination or denial of petition

³⁶ This may occur many months or years after the initial assumption of jurisdiction petition is granted.

³⁷ A referral to a law enforcement agency is not, by itself, a reason for closing a case; this disposition captures the number of closed cases that included a referral to a law enforcement agency.

³⁸ A case is disposed with "Discipline Imposed" only after a final order of the California Supreme Court imposing discipline becomes effective, or when the State Bar Court issues a reapproval.

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DISPOSITIONS (SUPERIOR COURT):

- *Petition Granted*: Initial petition for assumption of jurisdiction pursuant to section 6180, section 6190, or section 6126.3³⁹ is granted by a superior court.
- *Petition Denied/Dismissed*: Closed upon denial or dismissal by the court of an initial petition to assume jurisdiction over a practice pursuant to section 6180, section 6190, or section 6126.3

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

MOTION TO ENFORCE RESULT OF FEE ARBITRATION: A motion filed in State Bar Court by the State Bar's Mandatory Fee Arbitration Program to enforce the outcome of a binding fee arbitration⁴⁰

MOTION TO REVOKE PROBATION: A motion filed by Probation in State Bar Court to revoke probation of a licensed attorney under Probation supervision⁴¹

PENDENCY IN STATE BAR COURT: Number of days from the Initial Filing Date to the Court Closing Date⁴²

PENDENCY IN SUPERIOR COURT: Number of days from the Case Initiation Date until the date the Superior Court ruled to either grant or deny the initial petition to assume jurisdiction over a practice pursuant to section 6180, section 61090, or section 6126.3.

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

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

³⁹ This is treated as the disposition of the case for the purposes of the Annual Discipline Report. However, the case technically remains open until the seized practice is fully resolved, which often takes years.

⁴⁰ OCTC plays no role in these proceedings.

⁴¹ OCTC plays no role in these proceedings.

⁴² Includes any appellate review and time taken to receive the final order from the Supreme Court, as well as any time during which proceedings are abated while a respondent is participating in the Alternative Discipline Program, which provides monitored support for attorneys receiving substance abuse or mental health treatment who have stipulated to certain facts, conclusions of law, and the level of discipline to be imposed in State Bar Court, prior to entering the Program.

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

PETITION TO TERMINATE PRACTICE: * A petition filed by OCTC in Superior Court to close down and assume responsibility for the practice of an attorney, former attorney, or non-attorney pursuant to section 6180, section 6190, or section 6126.3

PROBATION REFERRAL: Notification from Probation to OCTC of the failure of an attorney under Probation supervision to comply with the terms of probation

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

- *Self-Reported:* Reports received from licensed attorneys regarding themselves pursuant to section 6068, subdivision (o) and section 6086.8, subdivision (c)
- *Other-Reported:* Reports received from specified mandated reporters pursuant to section 6086.7, section 6086.8, subdivisions (a) and (b), section 6091.1, section 6101, subdivision (b), and section 6175.6

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

SUSPENDED MATTERS: Matters that are abated by OCTC or after filing in State Bar Court. This action is usually taken where there are other investigations or cases pending against a respondent and prosecution of those other complaints is likely to result in disbarment of the lawyer. Suspended matters pending more than six months from receipt without the filing of disciplinary charges are included in the backlog

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

APPENDIX B
Business and Professions Code Sections
Governing the Annual Discipline Report

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

BUSINESS AND PROFESSIONS CODE SECTION 6086.15

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

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

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

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

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

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

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

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

(8) The number, average pending times, and outcomes of complaints involving a State Bar member who has been disbarred or who has resigned, and is engaged in the

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unauthorized practice of law, including referrals to district attorneys, city attorneys, or other prosecuting authorities, or petitions to terminate practice pursuant to Section 6180.

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

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

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

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

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

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

TABLES 3 AND 4: REPORTABLE ACTIONS

BUSINESS AND PROFESSIONS CODE SECTION 6068

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

(a) To support the Constitution and laws of the United States and of this state.

(b) To maintain the respect due to the courts of justice and judicial officers.

(c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.

(d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

(e) (1) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.

(2) Notwithstanding paragraph (1), an attorney may, but is not required to, reveal confidential information relating to the representation of a client to the extent that the attorney reasonably believes the disclosure is necessary to prevent a criminal act that the

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attorney reasonably believes is likely to result in death of, or substantial bodily harm to, an individual.

(f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.

(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.

(h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.

(i) To cooperate and participate in any disciplinary investigation or other regulatory or disciplinary proceeding pending against himself or herself. However, this subdivision shall not be construed to deprive an attorney of any privilege guaranteed by the Fifth Amendment to the Constitution of the United States, or any other constitutional or statutory privileges. This subdivision shall not be construed to require an attorney to cooperate with a request that requires him or her to waive any constitutional or statutory privilege or to comply with a request for information or other matters within an unreasonable period of time in light of the time constraints of the attorney's practice. Any exercise by an attorney of any constitutional or statutory privilege shall not be used against the attorney in a regulatory or disciplinary proceeding against him or her.

(j) To comply with the requirements of Section 6002.1.

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

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

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

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

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

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

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

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

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

(5) The conviction of the attorney, including any verdict of guilty, or plea of guilty or no contest, of a felony, or a misdemeanor committed in the course of the practice of law, or

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in a manner in which a client of the attorney was the victim, or a necessary element of which, as determined by the statutory or common law definition of the misdemeanor, involves improper conduct of an attorney, including dishonesty or other moral turpitude, or an attempt or a conspiracy or solicitation of another to commit a felony or a misdemeanor of that type.

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

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

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

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

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

BUSINESS AND PROFESSIONS CODE SECTION 6086.8

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

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

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

BUSINESS AND PROFESSIONS CODE SECTION 6086.7

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

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

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

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

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

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

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

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

BUSINESS AND PROFESSIONS CODE SECTION 6091.1

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

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

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

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

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

(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).

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BUSINESS AND PROFESSIONS CODE SECTION 6101

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

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

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

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

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

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

BUSINESS AND PROFESSIONS CODE SECTION 6175 ET SEQ.

§6175

As used in this article, the following definitions apply:

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

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

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

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

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

§6175.3

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

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

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

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

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

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

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

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

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

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§6175.4

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

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

(2) An order enjoining the violation.

(3) Restitution of property.

(4) Punitive damages.

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

(b) A client may seek and be awarded, in addition to the remedies specified in subdivision (a), an amount not to exceed ten thousand dollars (\$10,000) where the trier of fact (1) finds that the client has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct, (2) makes an affirmative finding in regard to one or more of the factors set forth in subdivision (b) of Section 3345 of the Civil Code, and (3) finds that an additional award is appropriate. Judgment in a class action may award each class member the additional award where the trier of fact has made the foregoing findings.

§6175.5

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

§6175.6

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

TABLES 7A AND 7B: OTHER MATTERS

BUSINESS AND PROFESSIONS CODE SECTION 6180

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

BUSINESS AND PROFESSIONS CODE SECTION 6190

The courts of the state shall have the jurisdiction as provided in this article when an attorney engaged in the practice of law in this state has, for any reason, including but not limited to excessive use of alcohol or drugs, physical or mental illness, or other infirmity or other cause, become incapable of devoting the time and attention to, and providing the quality of service for, his or her law practice which is necessary to protect the interest

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of a client if there is an unfinished client matter for which no other active member of the State Bar, with the consent of the client, has agreed to assume responsibility.

BUSINESS AND PROFESSIONS CODE SECTION 6007

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BUSINESS AND PROFESSIONS CODE SECTION 6203

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

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

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

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otherwise in the same manner as provided in Chapter 4 (commencing with Section 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

(c) Neither party to the arbitration may recover costs or attorney's fees incurred in preparation for or in the course of the fee arbitration proceeding with the exception of the filing fee paid pursuant to subdivision (a) of this section. However, a court confirming, correcting, or vacating an award under this section may award to the prevailing party reasonable fees and costs incurred in obtaining confirmation, correction, or vacation of the award including, if applicable, fees and costs on appeal. The party obtaining judgment confirming, correcting, or vacating the award shall be the prevailing party except that, without regard to consideration of who the prevailing party may be, if a party did not appear at the arbitration hearing in the manner provided by the rules adopted by the board of trustees, that party shall not be entitled to attorney's fees or costs upon confirmation, correction, or vacation of the award.

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

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

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

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

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

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

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

(5) A request for enforcement under this subdivision shall be made within four years from the date (A) the arbitration award was mailed, (B) the judgment was entered, or (C)

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the date the agreement was signed. In an arbitrated matter, however, in no event shall a request be made prior to 100 days from the date of the service of a signed copy of the award. In cases where the award is appealed, a request shall not be made prior to 100 days from the date the award has become final as set forth in this section.

TABLE 9: UNAUTHORIZED PRACTICE OF LAW BY NON-ATTORNEYS

BUSINESS AND PROFESSIONS CODE SECTION 6126.3

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

(b) The State Bar, or the superior court on its own motion, may make application to the superior court for the county where the person described in subdivision (a) maintains or more recently has maintained his or her principal office for the practice of law or where he or she resides, for assumption by the court of jurisdiction over the practice to the extent provided in this section. In any proceeding under this section, the State Bar shall be permitted to intervene and to assume primary responsibility for conducting the action.

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

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

(2) The interest of the applicant.

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

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

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subject of the application. The court may prescribe additional or alternative methods of service of the application and order to show cause, and may prescribe methods of notifying and serving notices and process upon other persons and entities in cases not specifically provided herein.

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

- (1) Examine the files and records of the practice and obtain information as to any pending matters that may require attention.
- (2) Notify persons and entities who appear to be clients of the person of the occurrence of the event or events stated in subdivision (a) of Section 6126, and inform them that it may be in their best interest to obtain other legal counsel.
- (3) Apply for an extension of time pending employment of legal counsel by the client.
- (4) With the consent of the client, file notices, motions, and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained.
- (5) Give notice to the depositor and appropriate persons and entities who may be affected, other than clients, of the occurrence of the event or events.
- (6) Arrange for the surrender or delivery of clients' papers or property.
- (7) Arrange for the appointment of a receiver, where applicable, to take possession and control of any and all bank accounts relating to the affected person's practice.
- (8) Do any other acts that the court may direct to carry out the purposes of this section.

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

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

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communications by or to the appointed members to the same extent as it would have applied to communications by or to the person described in subdivision (a).

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

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

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

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

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

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entitled to reimbursement therefor from the person described in subdivision (a) or his or her estate.

BUSINESS AND PROFESSIONS CODE SECTION 6126.7

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

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

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

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

(A) The nature and severity of the misconduct.

(B) The number of violations.

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

(D) The wilfulness of the misconduct.

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

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

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

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

APPENDIX B

CONSTRUCTION-RELATED ACCESSIBILITY DEMAND LETTERS

CIVIL CODE 55.32

(a) An attorney who provides a demand letter, as defined in subdivision (a) of Section 55.3, shall do all of the following:

- (1) Include the attorney's State Bar license number in the demand letter.
- (2) Within five business days of providing the demand letter, send a copy of the demand letter, and submit information about the demand letter in a standard format specified by the California Commission on Disability Access on the commission's Internet Web site pursuant to Section 8299.08.1 of the Government Code, to the commission.

(b) An attorney who sends or serves a complaint, as defined in subdivision (a) of Section 55.3, shall do both of the following:

(1) Send a copy of the complaint and submit information about the complaint in a standard format specified by the California Commission on Disability Access on the commission's Internet Web site pursuant to Section 8299.08.1 of the Government Code to the commission within five business days of sending or serving the complaint.

(2) Notify the California Commission on Disability Access within five business days of judgment, settlement, or dismissal of the claim or claims alleged in the complaint of the following information in a standard format specified by the commission on the commission's Internet Web site pursuant to Section 8299.08.1 of the Government Code:

(A) The date of the judgment, settlement, or dismissal.

(B) Whether or not the construction-related accessibility violations alleged in the complaint were remedied in whole or in part after the plaintiff filed a complaint or provided a demand letter, as defined by Section 55.3.

(C) If the construction-related accessibility violations alleged in the complaint were not remedied in whole or in part after the plaintiff filed a complaint or provided a demand letter, as defined by Section 55.3, whether or not another favorable result was achieved after the plaintiff filed the complaint or provided the demand letter.

(D) Whether or not the defendant submitted an application for an early evaluation conference and stay pursuant to Section 55.54, whether the defendant requested a site inspection, the date of any early evaluation conference, and the date of any site inspection.

(c) A violation of paragraph (2) of subdivision (a) or subdivision (b) shall constitute cause for the imposition of discipline of an attorney if a copy of the demand letter, complaint, or notification of a case outcome is not sent to the California Commission on Disability Access in the standard format specified on the commission's Internet Web site pursuant to Section 8299.08.1 of the Government Code within five business days. In the event the State Bar receives information indicating that an attorney has failed to send a copy of the demand letter, complaint, or notification of a case outcome to the California Commission on Disability Access in the standard format specified on the commission's Internet Web site pursuant to Section 8299.08.1 of the Government Code within five business days, the

APPENDIX B

State Bar shall investigate to determine whether paragraph (2) of subdivision (a) or subdivision (b) has been violated.

(d) Notwithstanding subdivisions (a) and (b), an attorney is not required to send to the California Commission on Disability Access a copy of any subsequent demand letter or amended complaint in the same dispute following the initial demand letter or complaint, unless that subsequent demand letter or amended complaint alleges a new construction-related accessibility claim.

(e) A demand letter or notification of a case outcome sent to the California Commission on Disability Access shall be for the informational purposes of Section 8299.08 of the Government Code. A demand letter received by the State Bar from the recipient of the demand letter shall be reviewed by the State Bar to determine whether subdivision (b) or (c) of Section 55.31 has been violated.

(f) (1) Notwithstanding Section 10231.5 of the Government Code, on or before April 30, 2019, and annually as part of the Annual Discipline Report, no later than April 30 thereafter, the State Bar shall report to the Legislature and the Chairs of the Senate and Assembly Judiciary Committees, both of the following with respect to demand letters received by the State Bar:

(A) The number of investigations opened to date on a suspected violation of subdivision (b) or (c) of Section 55.31.

(B) Whether any disciplinary action resulted from the investigation, and the results of that disciplinary action.

(2) A report to be submitted pursuant to this subdivision shall be submitted in compliance with Section 9795 of the Government Code.

(g) The California Commission on Disability Access shall review and report on the demand letters, complaints, and notifications of case outcomes it receives as provided in Section 8299.08 of the Government Code.

(h) The expiration of any ground for discipline of an attorney shall not affect the imposition of discipline for any act prior to the expiration. An act or omission that constituted cause for imposition of discipline of an attorney when committed or omitted prior to January 1, 2019, shall continue to constitute cause for the imposition of discipline of that attorney on and after January 1, 2019.

(i) Paragraph (2) of subdivision (a) and subdivision (b) shall not apply to a demand letter or complaint sent or filed by an attorney employed or retained by a qualified legal services project or a qualified support center, as defined in Section 6213 of the Business and Professions Code, when acting within the scope of employment in asserting a construction-related accessibility claim. The Legislature finds and declares that qualified legal services projects and support centers are extensively regulated by the State Bar of California, and that there is no evidence of any abusive use of demand letters or complaints by these organizations. The Legislature further finds that, in light of the evidence of the extraordinarily small number of construction-related accessibility cases brought by regulated legal services programs, and given the resources of those programs, exempting regulated legal services programs from the requirements of this

APPENDIX B

section to report to the California Commission on Disability Access will not affect the purpose of the reporting to, and tabulation by, the commission of all other construction-related accessibility claims.

INSURANCE FRAUD

INSURANCE CODE SECTION 1872.95

(a) Within existing resources, the Medical Board of California, the Board of Chiropractic Examiners, and the State Bar shall each designate employees to investigate and report on possible fraudulent activities relating to workers' compensation, motor vehicle insurance, or disability insurance by licensees of the board or the bar. Those employees shall actively cooperate with the Fraud Division in the investigation of those activities.

(b) The Medical Board of California and the Board of Chiropractic Examiners shall each report annually, on or before March 1, to the committees of the Senate and Assembly having jurisdiction over insurance on their activities established pursuant to subdivision (a) for the previous year. The State Bar shall include this report in its Annual Discipline Report on or before April 30. That report shall specify, at a minimum, the number of cases investigated, the number of cases forwarded to the Fraud Division or other law enforcement agencies, the outcome of all cases listed in the report, and any other relevant information concerning those cases or general activities conducted under subdivision (a) for the previous year. The report shall include information regarding activities conducted in connection with cases of suspected automobile insurance fraud.

PROVISION OF FINANCIAL SERVICES BY LAWYERS

BUSINESS AND PROFESSIONS CODE SECTION 6175.3

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

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

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

(c) The disclosure states that the lawyer shall receive a commission and sets forth the amount of the commission and the actual percentage rate of the commission, if any. If the actual amount of the commission cannot be ascertained at the outset of the transaction, the disclosure shall include the actual percentage rate of the commission or

APPENDIX B

the alternate basis upon which the commission will be computed, including an example of how the commission would be calculated.

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

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

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

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

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

BUSINESS AND PROFESSIONS CODE SECTION 6175.4

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

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

(2) An order enjoining the violation.

(3) Restitution of property.

(4) Punitive damages.

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

(b) A client may seek and be awarded, in addition to the remedies specified in subdivision (a), an amount not to exceed ten thousand dollars (\$10,000) where the trier of fact (1) finds that the client has suffered substantial physical, emotional, or economic damage resulting from the defendant's conduct, (2) makes an affirmative finding in regard to one or more of the factors set forth in subdivision (b) of Section 3345 of the Civil Code, and (3) finds that an additional award is appropriate. Judgment in a class action may award each class member the additional award where the trier of fact has made the foregoing findings.

BUSINESS AND PROFESSIONS CODE SECTION 6175.5

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

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BUSINESS AND PROFESSIONS CODE SECTION 6175.6

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

BUSINESS AND PROFESSIONS CODE SECTION 6176

Nothing in this article shall be deemed to limit, reduce, or preclude enforcement of any obligation, statute, State Bar Rule of Professional Conduct, or court rule, including, but not limited to, those relating to the lawyer's fiduciary duties, that are otherwise applicable to any transaction in which a lawyer is involved.

BUSINESS AND PROFESSIONS CODE SECTION 6176

The State Bar by April 30 of each year shall include in its Annual Discipline Report information on the number of complaints filed against California attorneys alleging a violation of this article. The report shall also include the type of charges made in each complaint, the number of resulting investigations initiated, and the number and nature of any disciplinary actions taken by the State Bar for violations of this article.

APPENDIX D: CRIMINAL CONVICTION MATTERS AND SECTION 6095 REPORTING

BUSINESS AND PROFESSIONS CODE SECTION 6095

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

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

APPENDIX C

Criminal Conviction Matters and Section 6095 Reporting

The body of the Annual Discipline Report provides information required by section 6086.15, which includes reports made by superior courts and prosecutors about criminal charges and convictions involving attorneys, as well as self-reporting by attorneys on such matters. This Appendix supplements the statutorily mandated data to provide a more comprehensive understanding of the State Bar's role in monitoring criminal convictions. In addition, this Appendix includes reporting on felony dispositions, as required by section 6095(b).

Business and Professions Code section 6101 requires any prosecuting agency to notify the State Bar of any felony or misdemeanor charges filed against an attorney, and requires any court in which an attorney is convicted of a crime to transmit a certified copy of the record of conviction to the State Bar. In addition, section 6068, subdivision (o), requires an attorney to report any felony indictment or charges, as well as conviction of any felony and certain misdemeanor charges.⁴³

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

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

The State Bar may not initiate disciplinary action against an attorney who has been charged with a crime until the case has reached finality in the superior court. Until then, OCTC tracks those cases that it is aware of, checking periodically with the courts to determine when a case is disposed.

After evaluating the data on Criminal Conviction Matters in 2017, the Bar determined that it should have entered into a contract with the California State Department of Justice (DOJ) to receive Subsequent Arrest Notification (SAN) on all licensed attorneys.⁴⁴ To rectify this oversight, the Board of Trustees sought the promulgation of a new California Rule of Court, requiring that all licensed attorneys in California be re-fingerprinted so that the DOJ could match fingerprint records against information on arrests and dispositions of criminal cases and report that back to the State Bar.

The new Rule, California Rule of Court 9.9.5, went into effect on June 1, 2018, and by the end of 2018 approximately 75,000 attorneys had complied with the rule. Future Annual Discipline Reports will include data on criminal conviction matters that is reported by the Department of Justice through the SAN process.

⁴³ The full text of sections 6101 and 6068 is provided in Appendix B.

⁴⁴ Although referred to by the Department of Justice as "Subsequent Arrest Notification," the notifications include arrests and dispositions of criminal matters reported by all counties to the Department of Justice.

APPENDIX C

Table C1. Criminal Conviction Matters

	2015	2016	2017	2018
New Cases Opened	268	232	249	250
Closed Without Action	181	161	170	136
Filed in State Bar Court	105	114	125	99
Year-End Inventory	369	337	291	300

In addition to the data provided in Table C1, during the period 2015 to 2018, reports were received regarding 1,262 felony charges and 1,406 misdemeanor charges filed against a total of 701 attorneys. Theft-related charges accounted for 26 percent of felonies reported during this time period, followed by crimes related to fraud, which amounted to 8 percent. Fifty-four percent of misdemeanors were traffic-related.

Seventy-three percent of felony charges were reported as being filed in California's jurisdiction, 22 percent were reported as federal violations, and the remaining 5 percent were reported as having been filed in other states. Ninety-three percent of misdemeanor charges reported were filed within California, with the remaining 7 percent filed in other state and federal courts.

SECTION 6095 REPORTING⁴⁵

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

As discussed above, it is impossible for the State Bar to be aware of the disposition of all criminal proceedings in the superior courts. However, when a court reports a felony conviction to the State Bar, an investigation is opened and a case may be filed in State Bar Court. Table C2 provides information about the disposition of disciplinary proceedings for reported felony convictions and other convictions of which the State Bar has become aware.

⁴⁵ The full text of section 6095 is provided in Appendix B.

APPENDIX C

Table C2. Disposition of Felony Convictions

	2015	2016	2017	2018
Felony Convictions	23	23	16	8
Cases filed in State Bar Court	24	31	27	18
Average days from conviction to filing in Court ⁴⁶	151	222	134	181
Median days from conviction to filing in Court	82	97	84	74
Cases disposed in State Bar Court	23	44	32	35
Average days from filing to disposition in Court	612	712	634	773
Median days from filing to disposition in Court	417	623	472	502
State Bar Court Dispositions				
Disbarment	11	33	23	25
Dismissal	3	2	0	1
Suspension	8	5	7	9
Termination Due to Resignation	1	1	0	0
Reproval	0	0	0	0
Termination Due to Death	0	0	2	0

⁴⁶ Both attorneys and courts are required to report felony convictions. As discussed in the body of the Report, superior courts may not timely report convictions to The State Bar. Any resultant delays in discovery of felony convictions may lead to the extended pendency between conviction and filing in Court.

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APPENDIX D

Unauthorized Practice of Law, Notario, and Immigration Attorney Related Complaints

The statutes governing the contents of the Annual Discipline Report identify certain types of non-attorney complaint data for inclusion. This Appendix is designed to provide additional data regarding the Unauthorized Practice of Law (UPL), notario, and immigration-related attorney discipline system activity. The State Bar is committed to addressing the unauthorized practice of law as a part of its public protection mission.

UNAUTHORIZED PRACTICE OF LAW GENERALLY

Section 6125 provides that: “No person shall practice law in California unless the person is an active member of the State Bar.” Section 22440 makes it unlawful for any person, other than a person authorized to practice law or authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services, to engage in business or act in the capacity of an immigration consultant, except as provided by sections 22440 through 22449 of the code.

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

The Business and Professions Code does not define the “practice of law.” However, California courts have defined it to include:⁴⁷

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

IMMIGRATION ATTORNEY MISCONDUCT

Attorneys must comply with the Rules of Professional Conduct and the State Bar Act and are subject to discipline for violating the law. This includes violating section 6157.5 (advertising of legal services related to immigration services not including a statement the provider is an active member of the State Bar), section 6242 (demanding/accepting advance fees for Immigration Reform Act services), and section 6103.7 (threatening to report immigration status of party or witness or his or her family member in employment dispute).

UNAUTHORIZED PRACTICE OF LAW: NOTARIO

Business and Professions Code section 6126.7, subdivision (a), prohibits any person who is not an attorney from literally translating from English into another language in any document or

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

APPENDIX D

advertisement any words, including notary, that imply that the person is an attorney. Violation of this prohibition is generally referred to as a *notario* matter, which is a type of UPL.

The legal authority for prosecuting those engaged in the unlicensed practice of law is found in several sections of the Business and Professions Code; as reflected in Table D2, the State Bar's avenues for addressing non-attorney misconduct represent a limited subset of the broader array of available remedies.

Table D1 provides information about UPL and immigration-related complaints received in 2018, as well as the number of active cases in both categories.

Table D1. 2018 UPL and Immigration-Related Complaints

Immigration-related Attorney Complaints Received	489
<u>Current Status of Active Immigration Attorney Complaints*</u>	
Cases in Intake	4
Cases in Enforcement	
Investigation	192
Pre-Filing	36
Post-Filing	<u>33</u>
Total Active Cases	265
Non-Attorney (NA) Complaints Received	734
State-Bar Initiated Complaints re NA	109
Cease and Desist/Notice of Violation Letters Issued	121
Petits. to Assume Jurisdiction Pursuant to Section 6126.3	6
<u>Current Status of Active NA Complaints*</u>	
Cases in Intake	56
Cases in Enforcement	
Investigation	332
Filed in Superior Court	<u>20</u>
Total Active Cases	408
Immigration-related NA Complaints Received ⁴⁸	147
State-Bar Initiated Complaints re NA	26
Cease and Desist/Notice of Violation Letters Issued	27
Petits. to Assume Jurisdiction Pursuant to Section 6126.3	4
<u>Current Status of Active Immigration-related NA Complaints*</u>	
Cases in Intake	5
Cases in Enforcement	
Investigation	57
Filed in Superior Court	<u>7</u>
Total Active Cases	69

*As of February 2019

⁴⁸ Immigration-related NA complaints are a subset of NA complaints.

APPENDIX D

OUTREACH AND EDUCATION EFFORTS

In 2017, the State Bar's outreach and education activities were again geared toward immigrant populations most vulnerable to UPL, notario, and immigration attorney related misconduct, and included participation in the following activities:

- Immigration Seminar co-sponsored by the San Diego District Attorney's office and Talamantes Immigration Law Firm;
- National Conference of Vietnamese Attorneys; and
- Cabrera Victims Assistance Workshop.⁴⁹

In March, OCTC spoke with detainees at the Immigration and Customs Enforcement Processing Center in Adelanto about their experiences with attorneys and non-attorneys who assisted them with their immigration matters, and provided attorney and non-attorney complaint forms in six languages. OCTC also provided educational posters and flyers for posting in the Adelanto detainee dormitories with information about immigration fraud.

ONGOING ACTIVITIES

OCTC participates in state and nationwide efforts to protect the immigrant community.

- Nationwide activities:
 - Quarterly UPL teleconference coordinated by the Federal Trade Commission; and
 - Monthly teleconferences with federal attorney discipline authorities who field complaints about alleged misconduct in Immigration Court and other federal jurisdictions.
- Statewide activities:
 - Workshops and meetings with city attorneys' offices and the Attorney General's Office related to notario fraud and Immigration fraud-prevention; notice about the right to report a complaint, which is required in all contracts for immigration services pursuant to section 6243;
 - Ongoing media outreach to educate the public about UPL by non-attorneys, awareness of potential immigration-related fraud, and how to file complaints with the State Bar. The State Bar's Office of Communications works with Spanish language television, print and web-based media, and uses its active social media presence in these efforts.
 - The State Bar website provides UPL complaint forms in English, Spanish, Chinese, Korean, Russian, and Vietnamese. Additionally, the State Bar's Call Center has two Spanish speakers on staff and has on-demand access to interpretation in over 200 languages.

⁴⁹ This workshop was organized by the Department of Consumer & Business Affairs to assist the victims of Oswaldo Cabrera, a non-attorney successfully prosecuted for unauthorized practice of law by the California Attorney General's Office.

APPENDIX D

BACKGROUND AND STATUTORY FRAMEWORK

Table D2. Statutory Authority for UPL Prosecution

Legal Authority	Who Prosecutes	Remedies
Section 6030	State Bar initiates civil action	Provides for injunction where there has been a violation or threatened violation of the UPL statutes.
Section 6126, subdivision (a) (non-attorneys and attorneys no longer entitled to practice law)	District Attorney/ Attorney General/ City Attorney	Misdemeanor – Up to 1 year County Jail and/or fine of up to \$1,000 for first offense. For second offense, minimum of 90 days County Jail, except where the interests of justice would be served by a lesser sentence or a fine.
Section 6126, subdivision (b) (attorneys who have been disbarred, suspended, involuntarily enrolled as inactive, or who resigned with charged pending)	District Attorney/ Attorney General/ City Attorney	May be charged as a misdemeanor or a felony. If misdemeanor, up to 6 months County Jail; if felony 16mos/2 or 3 years State Prison.
Section 6126.3, subdivision (a) (non-attorneys and attorneys no longer entitled to practice law)	State Bar or Superior Court initiates civil proceedings	In addition to any criminal proceedings pursuant to Section 6126, or any contempt proceedings pursuant to Section 6127, the court has jurisdiction for a civil action under this section when a person engages in UPL or holds him or herself out as an attorney.
Section 6126.3, subdivision (b) (same as 6126.3(a))	State Bar or Superior Court	Section 6126.3 (b) provides that the State Bar, or the Court on its own motion, may make an application to the superior court for the county where the person maintains or has recently maintained his or her principal office for the practice of law or where he or she resided, for assumption by the court of jurisdiction over their practice. The State Bar may intervene and assume primary responsibility for conducting the action.
Section 6126.4 (makes 6126.3 applicable to immigration consultants pursuant to Chapter 19.5 (commencing with Section 22440) who hold themselves out as practicing or entitled to practice law)	State Bar or Superior Court initiates civil proceedings	Assume jurisdiction over practice as per 6126.3.
Section 6126.5 (relief available in the enforcement actions)	District Attorney/ Attorney General/ City Attorney	Court may award relief for any person who obtained services offered or provided in violation of 6125 or 6126 including damages, restitution, penalties, reasonable attorneys' fees to rectify errors made in the UPL, prejudgment interest and appropriate equitable relief.

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Legal Authority	Who Prosecutes	Remedies
Section 6126.7, subdivision (a) (forbids a non-attorney from use of words such as “notario” in advertising, letterhead, etc.)	State Bar	Provides for penalty not to exceed \$1,000 per day for each violation.
Section 6127 (contempt of court for acting as an officer of the court without authority or advertising as such without being a member of the State Bar)	Not specified so State Bar can bring	Order re contempt.
Section 22442.3 (Forbids use, with the intent to mislead, of words such as “notario” in advertising, letterhead, etc. by an immigration consultant)	Injured party or District Attorney/ Attorney General/ City Attorney	Provides for penalty not to exceed \$1,000 per day for each violation.
Section 22445	Injured party or District Attorney/ Attorney General/ City Attorney	Civil penalties not to exceed \$100,000 for each violation of this chapter that regulates activities of immigration consultants.

STATE BAR’S ADVANCEMENT OF THESE REMEDIES

The vast majority of all cases are initiated by complaints from the public. In addition, however, OCTC can independently generate a case pursuant to its ongoing monitoring of Spanish-language print and radio ads for use of the word *notario*. In 2018, there were 109 State Bar initiated non-attorney inquiries opened.

Complaints are reviewed by OCTC staff, which conducts preliminary investigation, including identifying the internet advertising used by the respondent. In many cases, OCTC also contacts the complainant to get more details, and sometimes contacts the respondent for additional information. If a complaint sufficiently alleges a UPL violation, the matter is assigned to OCTC’s NA/UPL team for further investigation. Investigation activity may involve additional internet searches, Secretary of State filings research, field visits, and, as needed, follow up with the complainant and respondent. Any combination of the following activities may ensue from this additional investigatory period:

CEASE AND DESIST LETTER

If the investigation determines that the complaint involves an isolated instance, staff may send a “Cease and Desist” (CND) letter to the respondent.

APPENDIX D

The CND letter serves as a warning, putting the respondent on notice that certain services/actions may violate the law and constitute UPL. Excerpts of the CND letters for both UPL and notario matters are provided below. All of these matters are now posted on the State Bar's website at:

<http://www.calbar.ca.gov/About-Us/News-Events/California-Bar-Journal/Attorney-Discipline/UPL-Cease-and-Desist-Notices/category/upl-cess-and-desist-notices>:

NOTICE: (UPL)

You are hereby on notice that, based upon our investigation and your actions described above, it is the opinion of the State Bar Office of Chief Trial Counsel ("OCTC") that you have engaged in the unauthorized practice of law.

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

NOTICE: (Notario)

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

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

ASSUMPTION OF JURISDICTION

Where there is sufficient evidence to conclude that an individual has engaged in UPL and the interest of clients or interested persons will be prejudiced, the State Bar may make application to the superior court, pursuant to section 6126.3, for the assumption of jurisdiction over the practice by the superior court. If the superior court grants the application and makes an order assuming jurisdiction, the State Bar acts under direction of the superior court to wind down the practice. These proceedings are typically filed on an ex parte basis in an attempt to prevent the destruction of files or other evidence. In such cases, OCTC is required to give notice unless there is good cause to believe that harm would result (e.g., client property or other evidence would

APPENDIX D

be destroyed) from the provision of notice. Table SR-9 of the Report provides information on section 6126.3 filings (referred to as petitions to terminate) for the last four years.

LAW ENFORCEMENT REFERRALS

Historically, OCTC referred UPL cases to law enforcement only after a complete investigation has been done; beginning in 2016, OCTC began making referrals concurrent with ongoing investigations, in an effort to expedite the criminal investigation of these matters. The State Bar routinely refers matters to law enforcement agencies for prosecution. In 2018, the State Bar made 492 law enforcement referrals based on 734 individual complaints.

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APPENDIX E
Outreach to Law Enforcement



**The State Bar
of California**

OFFICE OF CHIEF TRIAL COUNSEL

180 Howard Street, San Francisco, CA 94105

415-538-XXXX

First.Last@calbar.ca.gov

January 25, 2018

District Attorney
County

Dear :

I am the Chief Trial Counsel of the State Bar of California. My office is responsible for the investigation and prosecution of disciplinary complaints against California attorneys. Also, my office has statutory authority to investigate the unauthorized practice of law by both non-attorneys and by disbarred, resigned, and suspended attorneys. In appropriate cases, my office can petition the superior courts to assume jurisdiction over the illegal practices of such non-attorneys and former or suspended attorneys.

As I mentioned at the recent District Attorney roundtable at the CDAA Winter Workshop, developing and maintaining a close working relationship with all of the District Attorneys and with their respective offices is critical to protecting the public. The Office of Chief Trial Counsel is committed to sharing information and providing assistance to prosecutors and state and local law enforcement agencies throughout the state to provide assistance in the investigation and prosecution of the unauthorized practice of law, insurance fraud, and other attorney and non-attorney misconduct. We are committed to working with your office and providing support to you, whenever appropriate, in your investigation and criminal prosecution of California attorneys or non-attorneys who engage in the unauthorized practice of law or other crimes involving the practice of law.

We would like to encourage you and your prosecutors to share information with our office as well. As you know, Business and Professions Code section 6101, subdivision (b), requires district attorneys, city attorneys, and other prosecuting agencies to notify the State Bar of the pendency of any action in which an attorney has been charged with a felony or misdemeanor. The statute specifies that the notice shall identify the attorney, describe the crimes charged, and the alleged facts. The notice should be provided as soon as the prosecuting agency learns that the defendant is an attorney and the notice should include (1) the identity of the attorney; (2) the crime(s) with which he or she is charged; and (3) the alleged facts supporting the charge.

APPENDIX E

Your office may use the enclosed Report by Prosecuting Agency form to report the charging or conviction of an attorney. You can fill out the form online on the State Bar's website at <http://www.calbar.ca.gov/About-Us/Forms> under "Reportable Actions" and email it to sbnotice.prosecutor@calbar.ca.gov or fax to the State Bar's Intake Unit at (213) 765- . In the alternative, you may also provide written notification of the charging or conviction to , a Supervising Attorney in our Intake Unit, in the Los Angeles office of the State Bar, located at 845 S. Figueroa Street, Los Angeles, California 90017. Please provide a copy of the charging document. If you wish to discuss a matter relating to the criminal conduct of an attorney, please feel free to contact Ms. directly at (213) 765- .

The alleged facts supporting a charge is often of crucial importance to our investigations. Unfortunately, when members of my office reach out to a prosecution agency to get a copy of the law enforcement report that details the facts of alleged crimes committed by attorneys, they are often told that they cannot provide the report to us. Business and Professions Code section 6054 provides that state and local law enforcement agencies must cooperate with the State Bar in connection with any investigation or proceeding regarding the admission or discipline of attorneys, including providing the State Bar with state and local summary criminal history information. We believe that the statute envisions broad cooperation, rather than limiting the cooperation to the two named categories, state and local summary criminal history information. Instead, the Legislature specifically identified these two categories because criminal history information is subject to special confidentiality concerns; by identifying criminal history information, the Legislature was seeking to expand, not limit, the ability of prosecutorial agencies to assist the State Bar. Business and Professions Code section 6054 authorizes prosecution agencies to provide law enforcement reports to the State Bar. Business and Professions Code section 6044.5 also envisions an exchange of information between the State Bar and other agencies responsible for criminal enforcement.

Further, providing law enforcement reports to our office does not constitute a waiver of exemptions under the California Public Records Act. The statutes referenced above provide the State Bar the authority to receive law enforcement reports without requesting them under the California Public Records Act. Further, State Bar discipline investigation records and Office of Chief Trial Counsel records are exempt from disclosure under Bus. & Prof. Code § 6086.1(b) and specifically exempt from the CPRA under Gov. Code § 6254(f).

Finally, to allay any civil liability concerns, Business and Professions Code section 6094 provides a privilege from civil liability for communications to the State Bar relating to lawyer misconduct.

Therefore, please convey to all members of your office that providing police reports, pictures, videos, toxicology reports, witness contact information, preliminary hearing transcripts, etc. to our office is both authorized and appropriate.

If you have any questions or concerns relating to the attorney discipline system or if you would like to discuss performance-related problems involving attorneys, please contact , a Supervising

APPENDIX E

Attorney in our Intake Unit, in the Los Angeles office of the State Bar, located at 845 S. Figueroa Street, Los Angeles, California 90017. You may contact Ms. [REDACTED] at (213) 765- [REDACTED]. Please also feel free to contact me directly at (213) 765- [REDACTED]. You may also obtain information about the discipline system generally or about a specific attorney's current membership status and eligibility to practice law by accessing the State Bar of California's website at www.calbar.ca.gov.

I look forward to developing and maintaining a positive and productive working relationship with your office. Please don't hesitate to contact me if you have any questions, need additional information, if you would like to report an instance of alleged attorney misconduct, or if I can be of assistance to you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'SJM', followed by a horizontal line.

Steven J. Moawad
Chief Trial Counsel

APPENDIX E



The State Bar *of California*

OFFICE OF CHIEF TRIAL COUNSEL

180 Howard Street, San Francisco, CA 94105

415-538-XXXX

First.Last@calbar.ca.gov

November 9, 2018

District Attorney
County

Dear :

RE: Non-Attorney Unauthorized Practice of Law

Dear :

I am currently the Interim Chief Trial Counsel of the State Bar of California. The mission of the State Bar of California is to protect the public through its primary functions of licensing, regulating and disciplining attorneys, advancing the ethical and competent practice of law, and supporting greater access to, and inclusion in, the legal system. The primary responsibility of my office is the investigation and prosecution of disciplinary complaints against licensees of the State Bar of California.

As part of our efforts to protect the public, we also focus on the unauthorized practice of law by non-attorneys. Persons who are not authorized to practice law, but yet do so, or hold themselves out as able to do so, have the potential of causing significant harm to an unsuspecting public, and often times, vulnerable communities. To that end, my office has a specialized unit of attorneys and investigators who investigate persons who may be engaged in such conduct.

The State Bar does not have authority to prosecute non-attorneys for criminal activity, nor do we have authority to execute search warrants, make surreptitious recordings, or conduct other undercover activities that are used in the investigation of criminal activity. However, the State Bar does have access to a number of valuable tools in combating the unauthorized practice of law. I would like to highlight some of these tools for you and to discuss how we can use our collective authority to respond to this significant public protection concern.

When we find evidence of a non-attorney engaging in the unauthorized practice of law, we have two options: issue a cease and desist notice or initiate civil proceedings to shut down the unlawful law practice pursuant to Business and Profession Code section 6126.3.

Most notably, under Business and Professions Code section 6126.3, my office can apply to the Superior Court to assume jurisdiction over the law practice of a non-attorney when the non-attorney

APPENDIX E

advertises or holds him/herself out as entitled to practice law or otherwise practices law. We can also seek injunctive relief under Business and Professions Code section 6030. If an application to assume jurisdiction over the practice is granted, the court will appoint my office to, among other things, seize records and files, notify clients and return client files, freeze bank accounts, and redirect mail and phone calls. In so doing, we can effectively shut down such a practice, alert unknowing clients, and return property to them. While the State Bar returns files to clients, we do not represent them in their underlying matters. Significantly, the State Bar has no legal authority to seek restitution on behalf of victims. Criminal prosecution is required to get restitution.

My office also investigates non-attorneys who violate Business and Professions Code sections 6450 et. seq. governing paralegals; Business and Professions Code sections 22440 et. seq. governing Immigration Consultants, and Business and Professions Code sections 6400 et. seq. governing legal document preparers and; Business and Professions Code section 6126.7 governing non-attorneys who literally translate from English to another language, in advertisement and business related materials, words or titles such as “notary public” or “lawyer” that imply the person is an attorney. Each of these carry different penalties, some of which are limited to civil penalties but others which include criminal penalties.

However, the fact that we assume jurisdiction over such a practice, where the court issues an injunction or imposes civil penalties, is often not enough to prevent further such conduct of the non-attorney. Without law enforcement partners such as yourselves, who have jurisdiction to bring meaningful criminal actions against these individuals, they may be undeterred.

Our office has been referring to various law enforcement agencies complaints of the unauthorized practice of law that we receive in our office. Your office may have received some of those referrals. We do that so you will be aware of potentially criminal conduct in your jurisdiction and so that, where appropriate, we can work together to respond to individuals who are preying on the public.

We are interested in improving our process of referring matters to agencies such as yours and discussing opportunities to partner in this important area. We have had recent opportunities to meet with a few law enforcement agencies in different counties to discuss these issues. The meetings have successfully led to more collaborative efforts between our offices. We hope to have a similar working relationship with your office including supporting any prosecutorial action you may choose to take.

If you'd like more information about our specialized unit or the work we do, or are interested in scheduling a time to meet with us, please contact me at 213-765- or at melanie.lawrence@calbar.ca.gov. We look forward to collaborating with you on this important issue.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Melanie Lawrence', with a long horizontal flourish extending to the right.

Melanie J. Lawrence
Interim Chief Trial Counsel

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APPENDIX F
Outreach to Courts



**The State Bar
of California**

OFFICE OF CHIEF TRIAL COUNSEL

180 Howard Street, San Francisco, CA 94105

415-538-XXXX

First.Last@calbar.ca.gov

July 20, 2018

Hon.
Judge of the Superior Court of California
County of

Dear Judge :

I am currently the Interim Chief Trial Counsel of the State Bar of California. The mission of the State Bar of California is to protect the public through its primary functions of licensing, regulating and disciplining attorneys, advancing the ethical and competent practice of law, and supporting greater access to, and inclusion in, the legal system. The primary responsibility of my office is the investigation and prosecution of disciplinary complaints against licensees of the State Bar of California.

I am aware that every year my office has sent a letter to judicial officers throughout the state requesting judicial officers to report specific instances of attorney misconduct to our office. I understand that, at times, some judicial officers have been frustrated because the State Bar has not informed judicial officers what, if any, discipline results from their report to the State Bar. The frustration with the lack of regular communication has led to skepticism about the effectiveness of the attorney discipline system.

I want to assure you that we recognize the crucial role that judicial officers play in the attorney discipline system. In order to address potential shortcomings in our communications, we have made some internal modifications in how we identify and process reports from judicial officers. Among the changes is to the form that is available for your use when making a report to the State Bar. We have clarified in the form that the judicial officer submitting the form, will be identified as the complainant and apprised of the status. However, if at any time after submitting the form the judicial officer notifies us that he/she prefers not to receive further information about the status of the complaint, we will act accordingly. Otherwise, the judicial officer should expect to receive status updates as the complaint progresses.

As you know, courts are required to notify the State Bar of many types of attorney misconduct. These Reportable Actions include the following:

- A final order of contempt imposed against an attorney that may involve grounds warranting discipline. The court entering the final order must transmit to the State Bar a copy of the relevant minutes, the final order and the reporter's transcript, if one exists. (Bus. & Prof. Code § 6086.7, subd. (a)(1).)
- A modification or reversal of a judgment based in whole or in part on the misconduct,

APPENDIX F

incompetent representation or willful misrepresentation of an attorney. (Bus. & Prof. Code § 6086.7, subd. (a)(2).)

- The imposition of judicial sanctions against an attorney, except for sanctions for failure to make discovery or monetary sanctions of less than \$1,000. (Bus. & Prof. Code § 6086.7, subd. (a)(3).)
- A judgment against an attorney in any civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity. Written notice of the judgment must be provided to the State Bar within 20 days of the judgment. (Bus. & Prof. Code § 6086.8, subd. (a).)
- The imposition of a civil penalty upon an attorney pursuant to section 8620 of the Family Code regarding adoption of children with Indian tribal affiliations. (Bus. & Prof. Code § 6086.7, subd. (a)(4).)
- The finding of bad faith by a prosecuting attorney in withholding exculpatory evidence. (Bus. & Prof. Code § 6086.7, subd. (a)(5).)
- The conviction of an attorney of any crime. The clerk of the court in which the attorney was convicted is required to transmit a certified copy of the record of conviction to the State Bar within 48 hours after the conviction.¹ (Bus. & Prof. Code, § 6101, subd. (c).)
- The finding of violation by a lawyer selling financial services to a client who is an elder or dependent adult without required disclosure of the lawyer's commission (Bus. & Prof. Code § 6175.6.)

The conduct of attorneys in the courtroom and in the course of litigation often gives rise to disciplinary complaints that judicial officers are not required to report.² As a result, the effectiveness of the attorney discipline system requires a close working relationship between all California judicial officers and the State Bar. Often judicial officer reports of attorney misconduct involve the willful violation of court orders (Bus. & Prof. Code, § 6103) or improper public comments by counsel regarding pending court proceedings (rule 5-120, Rules of Professional Conduct).

In addition, consistent with the 2007 Report and Recommendation of the California Commission on the Fair Administration of Justice concerning the professional responsibility and accountability of prosecutors and defense lawyers, you may also report any egregious conduct of prosecutors and defense counsel, including: (1) 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 and unlawful disclosure of victim or witness information; and (7) failure to properly identify oneself in interviewing victims or witnesses.

Your help in directing the clerks of your court to provide the above-referenced information to the State Bar on a timely basis would be of great assistance so that the State Bar can fulfill its duty to investigate these matters and determine the appropriateness of initiating disciplinary action against the attorney. (Bus. & Prof. Code § 6086.7, subd. (c).)

When reporting attorney misconduct, whether or not the report is required by statute, you or your agent may use the Discipline Referral Form designed for use by judicial officers. To use that form, simply click the link in this letter, fill the form out online, print the form, sign it, and mail the form to:

APPENDIX F

**Office of the Chief Trial Counsel – Intake Unit The State Bar of California
845 S. Figueroa Street
Los Angeles, California 90017-2515**

Additionally, you can also make a report or discuss an attorney performance problem, by contacting Mr. _____, Assistant Chief Trial Counsel of our Intake Unit. **Mr. _____ telephone number is (213) 765- _____.**

One caveat about the timing of State Bar investigations, however: we are highly sensitive to the prejudicial effect that a State Bar investigation may have on a pending trial or proceeding. Therefore, while we encourage you to report attorney misconduct at any time and we are always willing to speak with you about attorney misconduct in pending proceedings, in most cases, the court is in the best position to deal with conduct as it occurs, and the State Bar will generally only pursue an investigation once the trial or proceeding has been concluded.

In addition to our role in the attorney discipline system, my office has statutory authority to investigate the unauthorized practice of law by both non-attorneys and by disbarred, resigned, and suspended attorneys. In appropriate cases, my office can also petition the superior courts to assume jurisdiction over the illegal practices of such non-attorneys or former or suspended attorneys. You can find detailed information about an attorney's current license status and his or her current eligibility to practice law from the Look Up a Lawyer feature on the State Bar of California's website at www.calbar.ca.gov.

I would also like to call your attention to the Lawyer Assistance Program ("LAP"). The LAP is available to provide confidential and comprehensive assistance to California attorneys with substance abuse and/or mental health issues. Participation in the LAP is voluntary and may, in appropriate cases, either be in lieu of discipline or as an adjunct to discipline through the State Bar's Alternative Discipline Program. It is LAP's goal to provide assistance to these attorneys before their conduct results in a disciplinary complaint, investigation, or proceeding. The LAP can be reached at (877) LAP-4-HELP [527-4435] and is available to provide assistance to you in dealing with an attorney. Alternatively, the LAP can make direct contact with the attorney at your request. All LAP activities are conducted confidentially.

I would like to do what I can to ensure an ongoing dialogue with you regarding the regulation of attorney conduct and to encourage judicial officers to report attorney misconduct even when such a report is not required by statute. If you have any questions, concerns, need additional information, or have any suggestions as to how we can more effectively collaborate to improve the attorney discipline system, please do not hesitate to contact me. My direct telephone number is (213) 765- _____.

Respectfully,



Melanie J. Lawrence
Interim Chief Trial Counsel

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APPENDIX G Lawyer Assistance Program⁵⁰

Introduced by Senator John Burton, the Attorney Diversion and Assistance Act (Sen. Bill No. 479, Stats. 2001, ch. 129) became effective January 2002. The act added language to the Business and Professions Code (Sections 6230 et seq.) requiring the State Bar to create a program to assist attorneys with substance abuse and/or mental health issues. As a result of the legislation, the State Bar of California created the Lawyer Assistance Program (LAP) to “identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety.”⁵¹

The State Bar collects \$10 from every active attorney and \$5 from inactive attorneys to operate the program. Statute requires participants to be responsible for all expenses related to treatment and recovery. There are two major components of LAP: monitored LAP and support LAP. Monitored LAP provides a long-term, structured environment designed to help those attorneys who request, or are required to provide, continued verification of compliance with the steps necessary to succeed in recovery. Support LAP is a less stringent program designed for those who seek assistance with their recovery but do not require the monitoring or verification of their participation.

The State Bar Court’s Alternative Discipline Program (ADP) provides an alternative disciplinary path for attorneys with substance abuse and/or mental health issues. Participation is contingent on the following: 1) the Court’s approval of a stipulation of facts and conclusions of law signed by the parties; 2) evidence that substance abuse or mental health issues causally contributed to the attorney’s misconduct; and 3) acceptance into LAP. The extent and severity of the respondent’s stipulated misconduct, including the degree of harm suffered by his or her clients, if any, are factors in determining eligibility for ADP. The stipulation includes a lower level of discipline that will be imposed if the program is completed successfully, and a higher level of discipline that will be imposed if the attorney does not complete the program.

Table G provides information about participation in the LAP through the ADP or pursuant to a referral as part of the discipline process.⁵²

Table G. Participation in LAP through
the ADP or the Discipline System

	2016	2017	2018
Case Intakes	31	41	32
Case Closings	34	35	29

⁵⁰ The Lawyer Assistance Program 2018 Annual Report may be found on the State Bar’s website at <http://www.calbar.ca.gov/Portals/0/documents/2018-Annual-LAP-Report.pdf>.

⁵¹ Section 6230.

⁵² Referrals to LAP may be made by an OCTC attorney, the respondent’s attorney, or the State Bar Court.

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APPENDIX H Office of Probation

The Office of Probation (OP) is responsible for monitoring attorney compliance with conditions imposed by State Bar Court and California Supreme Court disciplinary orders. The length of time a respondent attorney spends on probation, and the number and type of conditions all vary depending on the nature of the charges and severity of the discipline imposed.⁵³

An ALD is an agreement between the Office of Chief Trial Counsel (OCTC) and a respondent attorney in lieu of formal disciplinary action. The responsibility for monitoring these agreements has been transferred to OCTC, effective September 15, 2016.

Rule 9.20 imposes certain requirements on attorneys when they resign from the State Bar with no disciplinary charges pending. On January 26, 2017, the Board of Trustees approved a new procedure that requires attorneys to submit a declaration with their resignation affirming that they have complied with the requirements of Rule 9.20. This procedural change prevents these attorneys – over whom Probation has no authority because they are not the subject of any discipline – from becoming part of the caseload of Probation deputies.

Table H. Probation Average Monthly Caseloads

Probation Monitoring Category	2015	2016	2017	2018
Rule 9.20 ⁵⁴	176	179	134	73
Alternative Discipline Program	6	4	5	4
Agreement in Lieu of Discipline ⁵⁵	55	17	0	0
Suspension/Probation Conditions	662	607	520	397
Reproval with Conditions	119	88	81	70
Other	2	2	2	2
Total	1,020	897	742	546

⁵³ The OP participated in the 2016 Workforce Planning evaluation, a legislatively mandated effort intended to align the State Bar's resources with its primary public protection mission. The resulting report included a recommendation to reduce OP caseloads by eliminating monitoring that does not align with the primary function of the OP. Specifically, the OP is no longer responsible for monitoring Agreements in Lieu of Discipline (ALD) and compliance with California Rules of Court, rule 9.20 (Rule 9.20).

⁵⁴ As discussed above, a change to the procedures for resignation with no disciplinary charges pending, which was implemented in early 2017, has eliminated OP monitoring of Rule 9.20 compliance under those circumstances. OP continues to monitor Rule 9.20 compliance imposed as a condition of probation.

⁵⁵ As discussed above, as of September 15, 2016, OP no longer monitors agreements in lieu of discipline.

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APPENDIX I
Potential Conflicts of Interest: Rule 2201

The purpose of State Bar Rule of Procedure 2201 is to ensure impartiality in disciplinary decision-making and to avoid the appearance of bias. Rule of Procedure 2201 requires the recusal of Chief Trial Counsel (CTC) in any case involving individuals with close ties to the State Bar. Pursuant to Rule 2201, all complaints against attorneys who are identified as falling into a Rule 2201 category are automatically referred to a Special Deputy Trial Counsel (SDTC) Administrator, who conducts a preliminary review to determine whether to close the matter or appoint an SDTC to investigate the matter further. The revised rule allows the Administrator and SDTC to be compensated for services rendered and for reimbursement of costs and expenses in all rule 2201 matters. Table I provides information about cases falling under Rule 2201, both prior to and since its revision.

Table I. Complaints Subject to Rule 2201⁵⁶

	2016	2017	2018
Closed without Investigation	56	66	56
Closed after Investigation	9	68	78
Pending assignment to SDTC	5	6	16 ⁵⁷
Pending in Investigation	38	47	73
Total	108	187	223

⁵⁶ These cases are included among the complaints reported in the body of the Annual Discipline report; this data is provided to highlight the number of cases that fall under this rule. Inconsistency in how this data was tracked makes it difficult to provide reliable data for years prior to 2016.

⁵⁷ These cases were received in late 2018 during the transition to a new SDTC Administrator. Of the 16 cases received, 9 were closed without investigation and 7 were assigned to SDTCs by the new Administrator, in January 2019.

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APPENDIX J
Second Look and Walker Petitions:
Requests for Review of Decisions to Close Complaints

When the State Bar’s Office of Chief Trial Counsel OCTC notifies complainants that there are not sufficient grounds to pursue disciplinary action, the complainants are advised of their right to request a review of that decision, commonly referred to as a “second look” review. The purpose of the second look is to ensure that the case was closed properly and, if not, to refer the complaint back to OCTC to be reopened for investigation. As such, the second look process serves a function akin to an appeal of a decision.

Prior to July 2016, requests for review were conducted within OCTC by a special unit devoted to this process, the Audit and Review Unit (A&R). Since then, these reviews are conducted in the Complaint Review Unit (CRU) of the Office of General Counsel (OGC).

Complainants are advised in OCTC’s closing letters that they may request that CRU review the decision to close their complaint by submitting a written request for review to CRU within 90 days of the date of OCTC’s closing letter. The procedures used by CRU to conduct second look reviews were adopted in large part from procedures previously used by A&R and include a review of materials contained in the file as well as any new documentation submitted by the complainant.

CRU fully reviews the file in second look cases, as well as any other material submitted by the complainant, and assesses the full range of allegations made against the attorney. If there is significant new evidence or other good cause to recommend that the matter be reopened, CRU prepares a reopening memorandum which describes the case and the reasons for CRU’s recommendation, and makes suggestions for further investigation. The reopening memorandum is then transmitted to OCTC. As a general rule, CRU will not recommend that a matter be reopened unless there is a reasonable possibility that a disciplinary violation can be proven by clear and convincing evidence.

Upon deciding not to reopen a closed complaint, CRU prepares a closing letter to the complainant that contains a clear explanation of the reasons for declining to recommend reopening a case. Closing letters also notify complainants of their right to request California Supreme Court review pursuant to *In re Walker* (1948) 32 Cal.2d 488. CRU’s closing letters explain the process for requesting review of the decision by the California Supreme Court.

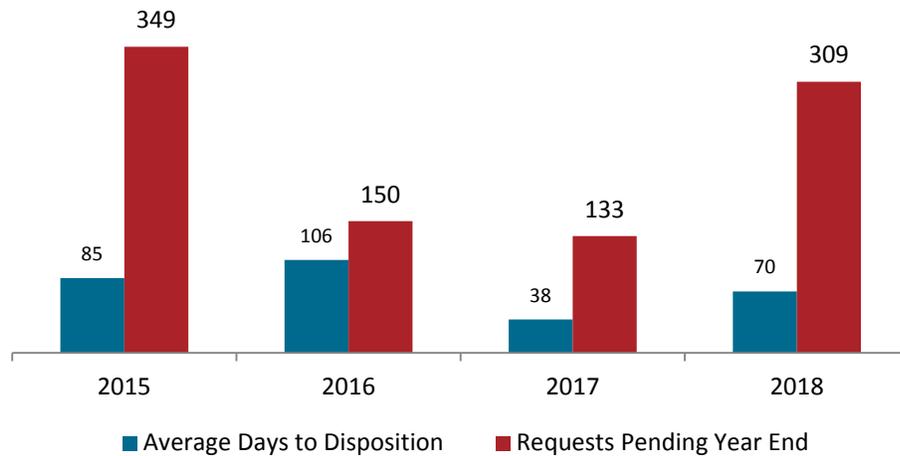
Table J1. Second Look Review

	2015	2016	2017	2018
Requests Received	1,288	1,149	919	1,292
Reviews Completed	1,335	1,350	869	1,116
Recommendation to Reopen	61	92	46	41
Closed	1,274 (95%)	1,258 (93%)	823 (95%)	1,075 (96%)
Average Days to Disposition	85	106	38	70 ⁵⁸
Requests Pending Year End	349	150	133	309 ⁵⁹

⁵⁸ The increased time to disposition in 2018 was caused by an increase in the number of requests received, exacerbated by vacancies in the CRU. In spite of these factors, the total number of completed reviews increased by more than 21%. As of the beginning of 2019, the CRU is staffed at 3.5 FTE, and expects to be fully staffed (4.0 FTE) by early summer 2019.

APPENDIX J

Chart J. Second Look Review



In re Walker provides that a member of the public may challenge a decision by the State Bar to close a complaint by filing a petition in the Supreme Court. A Walker petition may not be filed until after a Second Look request has been submitted to and denied by the State Bar A&R/CRU. For a petition to be granted, the complainant must demonstrate that the State Bar has arbitrarily failed or refused to grant a hearing on colorable charges. Table J2 provides information about the number and disposition of Walker petitions that reached disposition in the Supreme Court in each of the past four years.

Table J2. Walker Petitions

	2015	2016	2017	2018
Total Petitions Disposed	95	76	130	104
Granted	2	0	0	1
Denied	91 (96%)	74 (97%)	127 (98%)	101 (97%)
Stricken ⁶⁰	2	2	3	1
Average Days to Disposition	47	40	40	47

⁵⁹The increased year-end inventory was largely due to the filing of 101 requests for review by a single complainant, coupled with the CRU vacancies discussed in footnote 61.

⁶⁰Cases were stricken due to untimely filing or failure to present the case to Audit and Review prior to filing with the Supreme Court.

APPENDIX K

California's Attorney Discipline System

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

In California's attorney discipline system, communication and information concerning alleged misconduct of California lawyers is handled by the State Bar's Office of Chief Trial Counsel (OCTC). OCTC investigates those complaints involving allegations of professional misconduct and may initiate and prosecute disciplinary proceedings in State Bar Court (Court). The Hearing Department of the Court conducts evidentiary hearings and renders a decision with findings and recommendations of discipline that are reviewable by the Court's Review Department. In each case, the Court's final decision and accompanying record are then transmitted to the Supreme Court. In cases where the Court recommends the suspension or disbarment of a lawyer, the Supreme Court undertakes an independent determination of the discipline to be imposed. Discipline occurs with a final decision and order of the Supreme Court.⁶¹ Following is a more detailed description of the attorney discipline process.

INQUIRY

The disciplinary process typically begins with receipt of a written complaint in OCTC. Staff in OCTC receive and review complaints that allege ethical misconduct by an attorney or the unauthorized practice of law by a non-attorney. OCTC conducts the initial review of a complaint to determine whether to close it or forward it for investigation. If a complaint sufficiently alleges misconduct, OCTC assigns it for investigation. If it does not, OCTC closes the complaint.

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

⁶¹ Public and private reprovings are also considered formal discipline; issuance of a reproof by the Court does not require Supreme Court action.

APPENDIX K

INVESTIGATION

Investigations are carried out by investigators in OCTC, under the guidance and supervision of OCTC attorneys. Investigators may interview witnesses and respondents, subpoena and analyze bank records, obtain court documents, and otherwise evaluate and analyze the case to determine whether there is clear and convincing evidence of attorney misconduct that would allow OCTC to bring disciplinary proceedings in Court. After a determination to proceed with disciplinary proceedings, the complaint advances to the pre-filing stage.

When multiple complaints are made against the same attorney, OCTC may focus its resources and prosecutorial efforts on those complaints most likely to result in disbarment. In such an event, the investigation of the other complaints may be suspended or “held.” If the Supreme Court orders the attorney's disbarment, prosecution of the suspended cases will no longer be necessary and the remaining complaints will not be investigated further.⁶² If the attorney is not disbarred, however, OCTC may re-activate any suspended investigations. If an attorney is the subject of a criminal prosecution or party to civil action for the same misconduct, OCTC may suspend its investigation until the criminal or civil proceedings have concluded.

PRE-FILING

Before finalizing formal charges, OCTC evaluates the evidence gathered during the investigation and any subsequent information received from the respondent or other source. Where OCTC has determined there is sufficient evidence to file a Notice of Disciplinary Charges, OCTC will notify the respondent in writing of the intent to file such charges and the attorney's right to request a confidential Early Neutral Evaluation Conference (ENE). Either party may request an ENE before a State Bar Court judge who will orally evaluate the facts, charges, and potential for discipline. Prior to the ENE, OCTC must provide the ENE judge with a draft or summary of the charges and OCTC's settlement position. Regardless of whether either party requests an ENE, OCTC also provides the respondent an opportunity to request informal discovery and to discuss potential settlement. If the parties are unable to reach a resolution or the respondent does not respond to OCTC's written notice, OCTC will proceed to file charges.

After the filing of formal charges, the parties may explore the appropriateness of participation in the Alternative Discipline Program (Program) for respondents with substance abuse and/or mental health concerns. Participation is contingent upon the following: 1) the Court's approval of a stipulation of facts and conclusions of law signed by the parties; 2) evidence that the respondent's substance abuse or mental health issue causally contributed to the misconduct; and 3) respondent's acceptance into the State Bar's Lawyer Assistance Program (LAP). The extent and severity of the respondent's stipulated misconduct, including the degree of harm suffered by his or her clients, if any, are factors in determining eligibility for the Program. The stipulation includes the level of discipline that will be imposed if the program is completed successfully, and a higher level of discipline that will be imposed if the attorney does not complete the program. If the respondent successfully completes the Program, the disposition may be dismissal of the charges or proceeding or some other level of discipline less than

⁶² Complainants in cases dismissed under these circumstances are eligible for reimbursement through the Client Security Fund.

APPENDIX K

disbarment; if the respondent does not complete the Program, the higher level of discipline will be imposed.

HEARING AND REVIEW

After the filing of disciplinary charges, OCTC prosecutes the case in the Hearing Department, which is the trial level of the Court. Five full-time judges hear and decide cases, and make recommendations to the Supreme Court in cases where proposed discipline includes suspension or disbarment. If the discipline is limited to reproof, it can be imposed by the Court without review by the Supreme Court.

The Review Department is the appellate level of the State Bar Court, consisting of the presiding judge and two other review judges. The three-judge panel acts on a statewide basis to conduct de novo reviews of Hearing Department decisions and orders in cases in which at least one of the parties has sought review. Review judges review and decide cases, and make recommendations to the Supreme Court in cases in which one or both of the parties have sought review of a Hearing judge's decision, exercise temporary suspension and other powers delegated to it by the Supreme Court according to rule 9.10, California Rules of Court; and conduct discretionary interlocutory review on issues materially affecting the outcome of the Hearing Department cases.

SUPREME COURT

Upon the filing of the Court's decision and the record, the Supreme Court conducts its own independent determination and action. Discipline is not imposed until the Supreme Court issues its final order or decision.

Chart K1 on the following page shows the flow of client complaints, as described above. Charts K2 and K3 on the subsequent pages reproduce the brochure published on the State Bar's website in English and Spanish and provided to members of the public who contact the State Bar.

Chart K1: Client Complaint Process



The State Bar of California

Client Complaint Process

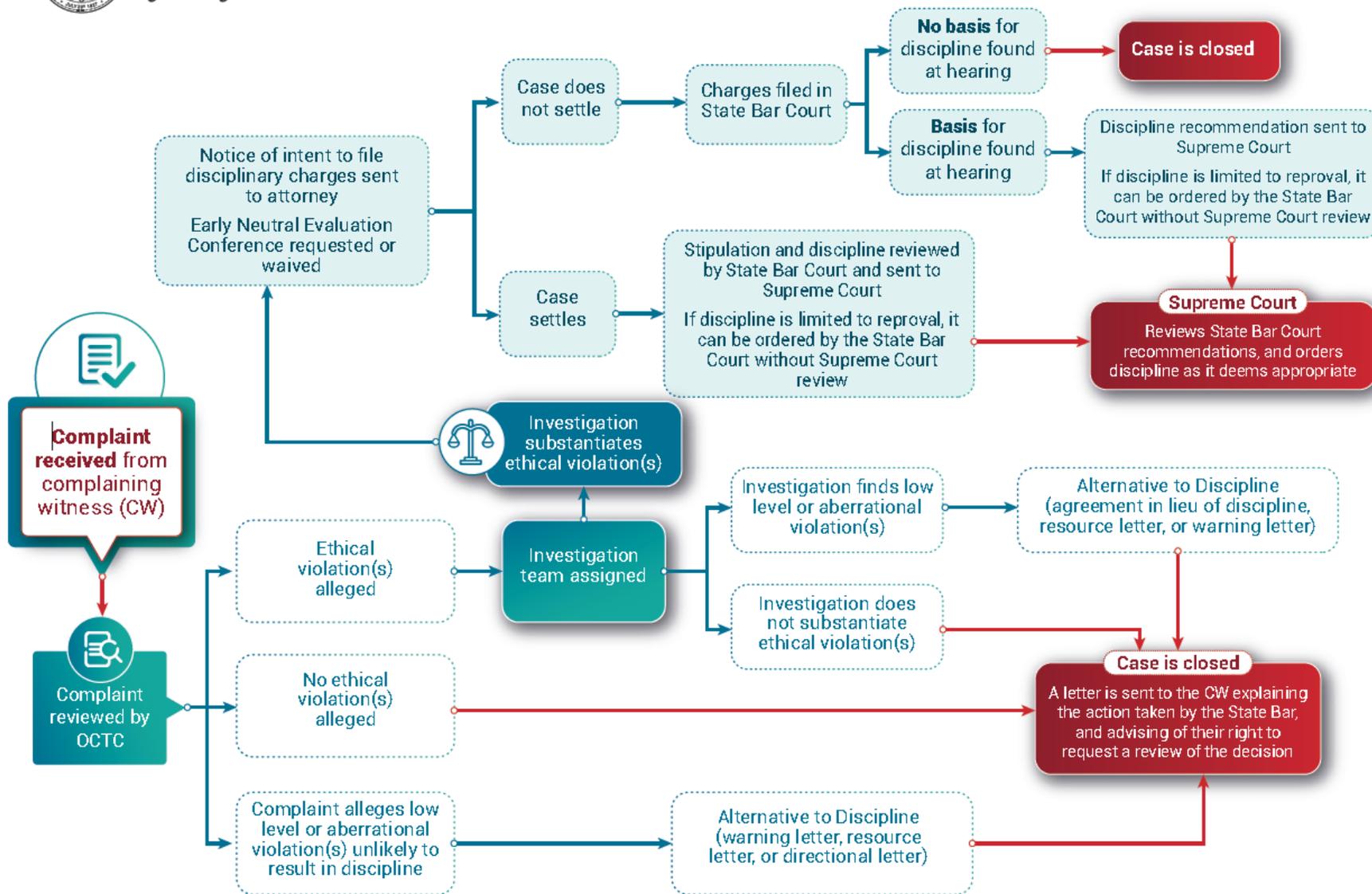
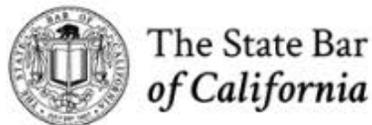


Chart K2: Client Complaint Brochure



What Happens After I File a Complaint Against an Attorney?

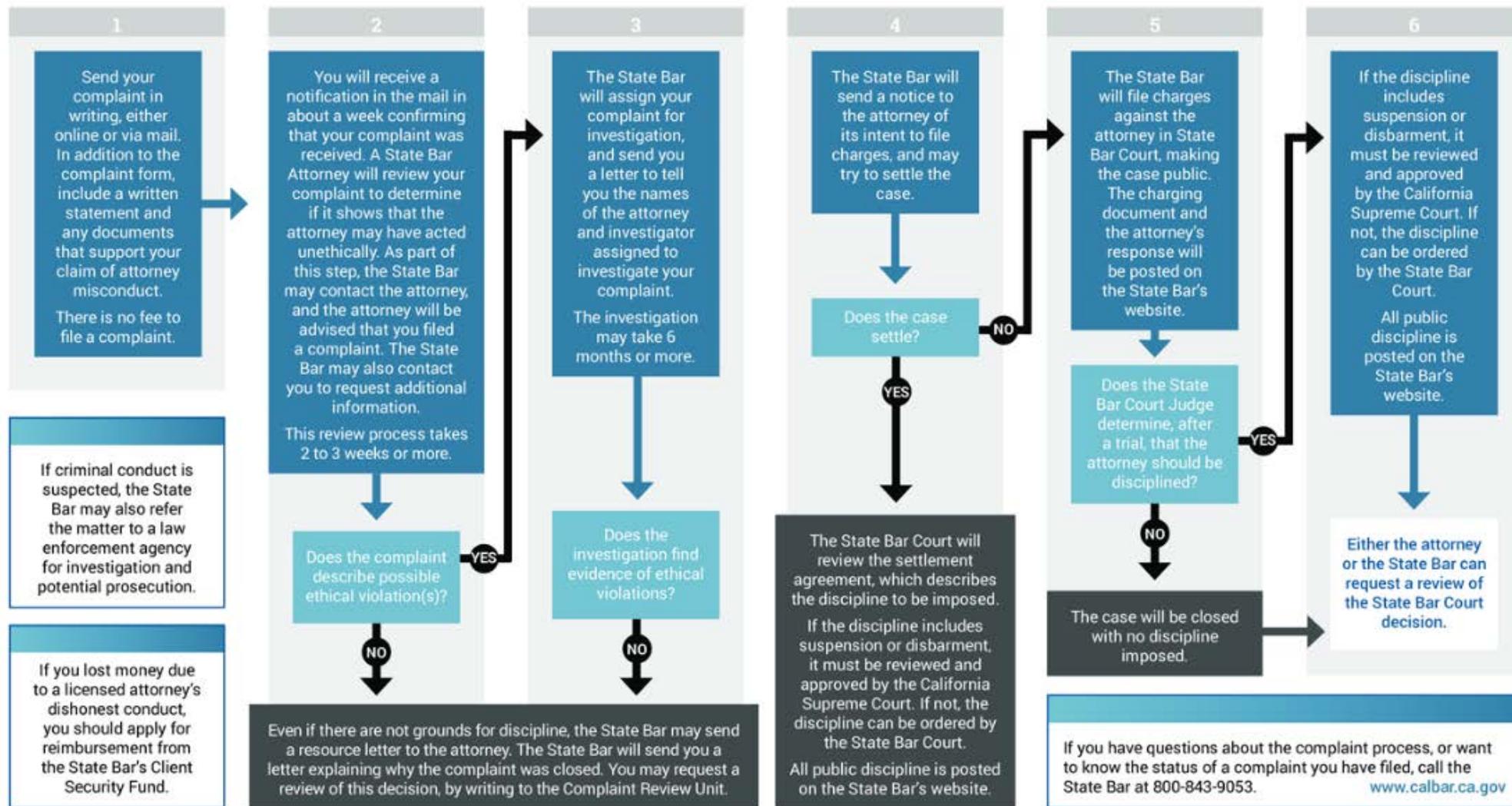
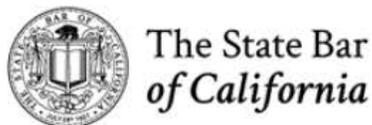


Chart K3: Client Complaint Brochure (Spanish)



¿Qué sucede cuando presento una queja contra un abogado?

