

# **2006 Report on the State Bar of California Discipline System**



**The State Bar of California  
April 2007**

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## INTRODUCTION

The State Bar of California (“State Bar”) has been in existence since 1927 as a non-profit public corporation and as the administrative arm of the California Supreme Court in matters involving the admission, regulation and discipline of attorneys.

The State Bar is an integrated bar: all lawyers practicing in California must be active members. As of December 31, 2006, the number of active attorneys in California was approximately 157,546, making the State Bar the largest integrated state bar in the nation. As of that date, there were also 42,561 inactive members of the State Bar.

The State Bar is governed by a Board of Governors, which consists of 22 members and the President of the State Bar. Fifteen board members are lawyers elected by members of the State Bar. The Board of Directors of the California Young Lawyers Association elects a 16th lawyer.

Since 1977, the State Bar has operated with increased involvement by the public. Beginning that year, six “public,” non-lawyer members were appointed to the Board of Governors – four by California’s Governor, one by the Senate Committee on Rules and one by the Speaker of the Assembly.

One of the most important functions of the State Bar is to protect the public, courts and the legal profession from lawyers who fail to adhere to their professional responsibilities. Most of the 2006 annual membership fee of \$395 supports the State Bar’s public protection programs. In 2006, General Fund expenditures totaled approximately \$53,299,000. Of this amount, approximately \$43,455,000 was expended directly on the State Bar’s discipline and related regulatory functions.

As the following pages address in more detail, the units of the State Bar that contribute to the important function of discipline and public protection are:

Office of the Chief Trial Counsel: receives, investigates and prosecutes complaints against California attorneys.

State Bar Court: serves as the administrative arm of the California Supreme Court in the adjudication of disciplinary and regulatory matters involving California attorneys.

Client Security Fund: reimburses victims for losses due to attorney theft or acts equivalent to theft.

Office of Probation: monitors attorneys who have been ordered to comply with certain conditions relating to State Bar disciplinary matters.

Mandatory Fee Arbitration: administers a statewide program for the arbitration of fee disputes between attorneys and their clients.

Professional Competence: assists the State Bar’s ongoing efforts to improve the quality of legal services by maintaining and enhancing the professional standards of California lawyers.

Office of Certification: develops standards for certification and oversight of non-disciplinary regulatory programs relating to the practice of law and administers such programs.

General Fund: is supported by membership fees and provides the resources necessary to operate the State Bar programs and units that further the State Bar’s goal of protecting the public.

The State Bar also offers hundreds of classes, seminars and workshops to attorneys annually to help them meet Minimum Continuing Legal Education (“MCLE”) requirements, making the State Bar one of the largest MCLE providers in the state.

## OFFICE OF THE CHIEF TRIAL COUNSEL

The State Bar Board of Governors, through its Regulation, Admissions and Discipline Oversight Committee, has oversight responsibility for the State Bar's disciplinary activities. The Chief Trial Counsel, who reports directly to this Board Committee pursuant to statute, is responsible for the overall structure, goals and management of the Office of the Chief Trial Counsel ("OCTC"). OCTC's Intake Unit and four Investigation/Trial Units screen, review, analyze, investigate and prosecute allegations of attorney misconduct. OCTC's Audit and Review Unit reviews this work upon request and conducts random audits of OCTC's files.

### **The Intake Unit**

One of the Intake Unit's primary functions is to staff the State Bar's toll-free 1-800 telephone line (1-800-843-9053). Many of the public's initial contacts with the State Bar are made through this 1-800 number. An extensive telephone tree guides callers to information addressing their specific concerns or issues. Callers hear pre-recorded messages and receive answers to their most frequently asked questions. Callers to the 1-800 number may also order complaint forms without speaking directly to staff.

The telephone tree is available in both English and Spanish. OCTC also has staff available that speak Cantonese, Hungarian, Korean, Mandarin, Russian, Spanish and Tagalog for callers who need assistance in those languages. For callers with spoken or written communication needs in other languages, OCTC provides translation services at no charge.

In 2006, 72,916 calls were received at the 1-800 number. However, telephone calls are no longer the primary indicator of the Intake Unit's workload. The State Bar's web site contains extensive information on the attorney discipline system in California, including a digital attorney complaint form for those who wish to download it. In 2006, 47,389 complaint forms were downloaded.

| <b>1-800 Telephone Line: Basic Data</b>   |             |             |             |             |             |
|---|-------------|-------------|-------------|-------------|-------------|
|   | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Total telephone calls received  | 110,343     | 116,800     | 89,823*     | 70,902*     | 72,916*     |
| * OCTC attributes the lower number of calls to the 1-800 telephone number to 1) the addition of 4 new trunk lines in January 2004 and the corresponding reduction in the busy rate and 2) the increased use of the State Bar's web site to obtain information and to download complaint forms. From July 2004 to December 2006, approximately 112,900 complaint forms have been downloaded. |             |             |             |             |             |

The intake process begins with OCTC's receipt of an inquiry: a written complaint by a client, the court, opposing counsel or other member of the public against a California attorney. The State Bar can also open its own inquiry (called a State Bar Investigation, or "SBI") based upon a news article, a court opinion or any other information obtained or received by the State Bar. The Intake Unit evaluates each inquiry received to determine whether it can be resolved immediately or whether it should remain in the Intake Unit for informal, preliminary investigation and resolution. Resolution entails either advancing the inquiry to an Investigation/Trial Unit or closing the inquiry.

| <b>Inquiries (by case number)</b>   |             |             |             |             |             |
|---|-------------|-------------|-------------|-------------|-------------|
|   | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Inquiries opened*   | 11,784      | 11,947      | 12,383      | 11,620      | 11,647      |
| * A single inquiry may include more than one State Bar member. There were 13,029 members included in the 11,647 inquiries opened in 2006. |             |             |             |             |             |

An inquiry is advanced to an Investigation/Trial Unit if the Intake Unit determines that the inquiry, either on its face or following preliminary investigation, alleges facts constituting a violation of the Rules of Professional Conduct and/or the State Bar Act and, assuming the allegations contained in the inquiry are true, would likely result in discipline. Each of the allegations of professional misconduct contained in the inquiries received in 2006 fell into one of the following eight areas: duties to clients (e.g., misrepresentations to client, representation of interests adverse to client's interests); duties to the State Bar (e.g., failure to cooperate in State Bar investigation, failure to comply with discipline); fees (e.g., exorbitant or unconscionable fees, division of fees with non-attorneys); handling of funds (e.g., commingling, misappropriation, failure to properly maintain client trust account records); interference with justice (e.g., advising a client to violate the law, disobedience with a court order); performance (e.g., failure to perform, failure to communicate); personal behavior (e.g., commission of a crime, moral turpitude, practice of law while suspended); or professional employment (e.g., improper solicitation, improper advertisements).

| <b>Allegation Categories by Percent</b> |             |             |             |             |             |
|---|-------------|-------------|-------------|-------------|-------------|
|   | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Duties to clients                       | 15%         | 15%         | 16%         | 16%         | 15%         |
| Duties to State Bar                     | 4%          | 0           | 4%          | 5%          | 5%          |
| Fees                                    | 10%         | 11%         | 12%         | 11%         | 11%         |
| Handling of funds                       | 13%         | 8%          | 10%         | 11%         | 11%         |
| Interference with justice               | 10%         | 12%         | 9%          | 9%          | 11%         |
| Performance                             | 34%         | 38%         | 35%         | 37%         | 34%         |
| Personal behavior                       | 13%         | 14%         | 12%         | 10%         | 12%         |
| Professional employment                 | 1%          | 1%          | 1%          | 1%          | 1%          |
| <u>TOTAL</u>                            | 100%        | 100%        | 100%        | 100%        | 100%        |

An inquiry is closed in the Intake Unit if it does not allege facts constituting a violation of the Rules of Professional Conduct and/or the State Bar Act or if, assuming the facts contained in the inquiry are true, it would not result in discipline.

In 2006, the Inquiry Unit resolved 14,230 inquiries. 3,151 were advanced to an Investigations/Trial Unit. The bases for the closure of the remaining inquiries are detailed on the following page in the table entitled, "Closed Inquiries – Dispositions."

| <b>Inquiries (by member) – Dispositions</b> |             |             |             |             |             |
|---|-------------|-------------|-------------|-------------|-------------|
|   | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Inquiries advanced to investigation         | 3,656       | 2,969       | 3,770       | 3,196       | 3,151       |
| Inquiries closed                            | 10,835      | 10,609      | 10,477      | 9,962       | 11,079      |
| <u>TOTAL</u>                                | 14,491      | 13,578      | 14,247      | 13,158      | 14,230      |

The Intake Unit strives to resolve every opened inquiry within 60 days of its receipt. Therefore, many inquiries opened in late 2006 were resolved in early 2007. Similarly, many inquiries opened in late 2005 were resolved in early 2006. As a result, the number of inquiries opened in any given year does not necessarily equal the number of inquiries resolved that year. For example, the Intake Unit opened 13,029 inquiries by member in 2006 and resolved 14,230 inquiries by member that same year.

| <b>Closed Inquiries (by member) – Dispositions</b>       |               |               |               |              |               |
|--|---------------|---------------|---------------|--------------|---------------|
|  | <b>2002</b>   | <b>2003</b>   | <b>2004</b>   | <b>2005</b>  | <b>2006</b>   |
| Alternative Dispute Resolution                           | 27            | 73            | 149           | 119          | 72            |
| Complaining witness' failure to cooperate                | 392           | 516           | 401           | 258          | 276           |
| Criminal conviction complaint*                           | 612           | 758           | 944           | 905          | 932           |
| Disbarred in separate matter                             | 37            | 51            | 41            | 30           | 39            |
| Duplicate complaint                                      | 156           | 119           | 77            | 56           | 81            |
| Fee arbitration matter†                                  | 481           | 361           | 464           | 535          | 484           |
| Insufficient facts/evidence                              | 6,796         | 6,789         | 6,356         | 5,968        | 6,693         |
| Lack of OCTC jurisdiction                                | 285           | 145           | 151           | 136          | 78            |
| Matter resolved between complaining witness and attorney | 233           | 222           | 280           | 198          | 192           |
| Resigned with charges pending                            | 280           | 262           | 267           | 283          | 347           |
| Other  | 1,536         | 1,313         | 1,347         | 1,474        | 1,885‡        |
| <b><u>TOTAL</u></b>                                      | <b>10,835</b> | <b>10,609</b> | <b>10,477</b> | <b>9,962</b> | <b>11,079</b> |

\* In the case of a criminal conviction complaint where an attorney is charged with a felony or misdemeanor, the Intake Unit closes the inquiry and opens a new case in which the criminal case is monitored. If the attorney is ultimately convicted of a felony, of a misdemeanor involving moral turpitude or of any other misconduct affecting the practice of law, the Intake Unit refers the conviction to the State Bar Court pursuant to Bus. & Prof. Code § 6101. See the table below entitled "Criminal Case Monitoring Activity" and accompanying text for more information.

† In the case of a fee arbitration complaint, the Intake Unit closes the inquiry and refers the complaining witness to the Office of Mandatory Fee Arbitration. See the Office of Mandatory Fee Arbitration data and accompanying text included in this Annual Report below.

‡ This number reflects an adjustment made based on reopened inquiries and the timing of the entry of this data into OCTC's database.

Under the Business and Professions Code, courts and insurers must report specified types of civil activities by attorneys to the State Bar, financial institutions must report insufficient fund activity in client trust accounts to the State Bar and attorneys are required to self-report certain actions to the State Bar.

Specifically, sections 6086.7 and 6086.8(a) of the Business and Professions Code require courts to notify the State Bar of:

- A final order of contempt imposed against an attorney under certain circumstances;
- Any modification or reversal of a judgment in a judicial proceeding that is based in whole or in part on the misconduct, incompetent representation or willful misrepresentation of an attorney;
- The imposition of judicial sanctions against an attorney under specified circumstances;
- The imposition of specified civil penalties upon an attorney; and
- Any judgment against an attorney in any civil action for fraud, misrepresentation, breach of fiduciary duty or gross negligence committed in a professional capacity.

Section 6086.8(b) of the Business and Professions Code requires insurers or licensed surplus brokers providing professional liability insurance to notify the State Bar of every claim or action for damages for fraud, misrepresentation, breach of fiduciary duty or negligence committed in a professional capacity against an attorney who the insurer or licensed surplus broker insures.

Section 6091.1 of the Business and Professions Code requires any financial institution, including any branch, that is a depository for attorney trust accounts to report to the State Bar any instance of insufficient funds presented against an attorney’s client trust account, irrespective of whether the instrument is honored.

Section 6086.8(c) of the Business and Professions Code requires attorneys who do not possess professional liability insurance to report to the State Bar any settlement, judgment or arbitration award regarding every claim or action for damages against the attorney for fraud, misrepresentation, breach of fiduciary duty or negligence committed in a professional capacity.

And section 6068(o) of the Business and Professions Code states that it is the duty of an attorney to report to the State Bar:

- The filing of three or more lawsuits against the attorney in a 12-month period for malpractice or other wrongful conduct committed in a professional capacity;
- Any 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;
- The imposition of judicial sanctions against the attorney under specified circumstances;
- Any indictment or information charging a felony against the attorney;
- Any conviction of the attorney of a felony or of a specified misdemeanor;
- The imposition of discipline against the attorney by any professional or occupational disciplinary agency or licensing board; and
- Any reversal of judgment in a proceeding based in whole or in part upon the attorney’s misconduct, grossly incompetent representation or willful misrepresentation.

The Intake Unit evaluates all of these statutorily mandated reports, or “reportable actions.” In 2006, the Intake Unit received 2,180 reportable actions.

| <b>Reportable Actions – Received</b> |             |             |             |             |             |
|--------------------------------------|-------------|-------------|-------------|-------------|-------------|
|                                      | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Banks                                | 3,229       | 2,631       | 2,651       | 1,946       | 1,811       |
| Courts                               | 156         | 118         | 120         | 102         | 134         |
| Insurers                             | 416         | 368         | 214         | 153         | 152         |
| Self reports by attorneys            | 97          | 92          | 87          | 70          | 83          |
| <u>TOTAL</u>                         | 3,898       | 3,209       | 3,072       | 2,271       | 2,180       |

If a reportable action warrants State Bar action or if the attorney fails to satisfactorily respond to the Intake Unit’s letter to him or her regarding the violation alleged in the reportable action, the inquiry is advanced to an Investigation/Trial Unit.

| <b>Inquiries and Reportable Actions – Advanced to Investigation/Trial Unit</b> |              |              |              |              |              |
|--|--------------|--------------|--------------|--------------|--------------|
|  | <b>2002</b>  | <b>2003</b>  | <b>2004</b>  | <b>2005</b>  | <b>2006</b>  |
| Inquiries advanced to investigation  | 3,656        | 2,969        | 3,770        | 3,196        | 3,151        |
| Reportable actions advanced to investigation                                   | 1,060        | 509          | 508          | 333          | 403          |
| <b><u>TOTAL</u></b>  | <b>4,716</b> | <b>3,478</b> | <b>4,278</b> | <b>3,529</b> | <b>3,554</b> |

Under Business and Professions Code section 6101, district attorneys, city attorneys and other prosecuting agencies are required to inform the State Bar if an attorney is charged with a felony or misdemeanor. Upon receipt of such information, the Intake Unit opens a new case in which the Unit monitors the criminal matter to final disposition and, if the attorney is ultimately convicted of a felony, of a misdemeanor involving moral turpitude or of any other misconduct affecting the practice of law, the Intake Unit refers the matter to the State Bar Court. The State Bar Court may issue an order placing the attorney on interim suspension, refer the matter to the State Bar Court's hearing department for hearing on specified issues or recommend to the California Supreme Court that the attorney be summarily disbarred. In 2006, OCTC received 285 new criminal cases for monitoring by the Intake Unit.

| <b>Criminal Case Monitoring Activity</b>  |             |             |             |             |             |
|---|-------------|-------------|-------------|-------------|-------------|
|   | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Received during reporting period  | 278         | 290         | 368         | 283         | 285         |
| Closed during reporting period*   | 423         | 284         | 304         | 263         | 310         |
| Pending at reporting period end   | 263         | 274         | 348         | 362         | 341         |
| Convictions referred to State Bar Court   | 89          | 85          | 74          | 92          | 102         |
| * Criminal cases are closed if: the attorney is acquitted; the charges against the attorney are dismissed; the attorney receives an alternative to sentencing (for example, the court orders the attorney to participate in a diversion program); the attorney is not convicted of a felony or of specified misdemeanors; or the attorney resigns or is disbarred in a separate matter. |             |             |             |             |             |

### **Investigation/Trial Units**

Professional investigators in the Investigation/Trial Units receive and investigate inquiries and reportable actions forwarded from the Intake Unit.

At the conclusion of each investigation, an attorney in the Unit decides whether to close the complaint or otherwise resolve the complaint, for example, through the imposition of an informal, confidential resolution; the filing of a stipulation; or the filing of a notice of disciplinary charges. (See Glossary for definitions of each of these disposition types.)

| <b>Investigations – Dispositions</b>          |             |             |             |             |             |
|---|-------------|-------------|-------------|-------------|-------------|
|   | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Warning letter                                | 69          | 1           | 331         | 286         | 232         |
| Resource letter                               | 98          | 19          | 16          | 30          | 23          |
| Agreement in lieu of discipline               | 39          | 36          | 42          | 39          | 25          |
| Dismissal                                     | 2,867       | 2,205       | 3,051       | 2,660       | 2,015       |
| Termination                                   | 587         | 563         | 568         | 300         | 429         |
| Resignation tendered with charges pending     | 88          | 86          | 82          | 63          | 84          |
| Stipulation filed*                            | 146         | 154         | 217         | 168         | 136†        |
| Notice of disciplinary charges (“NDC”) filed† | 402         | 298         | 405         | 347         | 369‡        |

\* These numbers include only those stipulations filed prior to OCTC’s filing of a notice of disciplinary charges (“NDC”).

† OCTC receives and files NDCs in various types of disciplinary matters. See the table below entitled, “Other Litigation Matters Received” and accompanying text for a description of each of these types of matters, as well as information on regulatory matters received by OCTC. See also the State Bar Court data included in this Annual Report for information on disciplinary and regulatory matters filed by OCTC.

‡ Stipulations and NDCs may contain one or more complaints against the same attorney. The 136 pre-NDC stipulations filed in 2006 contained 195 complaints; the 369 NDCs filed in 2006 contained 619 complaints.

The Investigation/Trial Units strive to complete investigations within 6 months or, in the case of investigations designated as complex, within 12 months after receipt of the complaint. Cases pending beyond that time period without closure or resolution are statutorily defined as backlog cases. The statutory backlog at the end of 2006 was 246 cases, as compared to 315 cases at the end of 2005.

| <b>Open Complaints at Year’s End</b>                         |             |             |             |             |             |
|--|-------------|-------------|-------------|-------------|-------------|
|  | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Open 6 months or less  | 1,312       | 1,278       | 1,316       | 1,019       | 1,247       |
| 7-9 months   | 279         | 185         | 156         | 178         | 173         |
| 10-12 months   | 138         | 127         | 77          | 93          | 59          |
| 13-21 months   | 95          | 214         | 71          | 91          | 66          |
| 21 months plus   | 119         | 53          | 66          | 27          | 25          |
| Total Open   | 1,943       | 1,857       | 1,686       | 1,408       | 1,570       |
| Open more than 6 months                                      | 631         | 579         | 370         | 389         | 323         |
| “Backlog” by statutory definition                            | 401         | 540         | 402         | 315         | 246         |
| Average pendency of open investigations                      | 168 days    | 182 days    | 163 days    | 169 days    | 151 days    |
| Average pendency of closed investigations at time of closure | 210 days    | 202 days    | 197 days    | 190 days    | 187 days    |

The Investigation/Trial Units also take matters worthy of prosecution to trial. Much of the Units’ trial work is reflected in the State Bar Court data included in this Annual Report.

In addition to Original matters (proceedings initiated by OCTC to determine whether an attorney is culpable of violating the Rules of Professional Conduct and/or the State Bar Act and to assess and recommend the appropriate level of discipline), litigation matters handled by the Investigative/Trial Units include other disciplinary matters and regulatory matters. Data on the number of disciplinary and regulatory matters received by OCTC is detailed in the following charts.

| <b>Other Disciplinary Matters Received*</b> |             |             |             |             |             |
|---|-------------|-------------|-------------|-------------|-------------|
|   | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Rule 1-110 violation matters                | 29          | 18          | 18          | 31          | 18          |
| Other jurisdiction matters                  | 23          | 18          | 16          | 38          | 26          |
| Rule 955 violation matters                  | 75          | 65          | 76          | 63          | 45          |

\* This table refers to the number of litigation matters received by OCTC. The State Bar Court data included in this Annual Report lists the number of these types of cases filed by OCTC. See Glossary for definitions for each of these disciplinary matters.

| <b>Other Regulatory Matters Received*</b>  |            |            |            |            |            |
|--|------------|------------|------------|------------|------------|
| Moral character matters  | 7          | 8          | 11         | 13         | 13         |
| Reinstatement matters  | 16         | 21         | 18         | 18         | 10         |
| Inactive enrollment matters pursuant to Bus. & Prof. Code § 6007(b)(1)               | 0          | 1          | 1          | 0          | 1          |
| Inactive enrollment matters pursuant to Bus. & Prof. Code § 6007(b)(2)               | 6          | 4          | 0          | 4          | 11         |
| Inactive enrollment matters pursuant to Bus. & Prof. Code § 6007(b)(3)               | 3          | 3          | 14         | 2          | 5          |
| Inactive enrollment matters pursuant to Bus. & Prof. Code § 6007(c)                  | 23         | 16         | 2          | 3          | 6          |
| Return to active status matters pursuant to Bus. & Prof. Code §§ 6007(b)(2) & (b)(3) | 2          | 5          | 3          | 3          | 2          |
| Relief from actual suspension matters  | 13         | 13         | 17         | 15         | 7          |
| <b><u>TOTAL</u></b>  | <b>271</b> | <b>233</b> | <b>176</b> | <b>190</b> | <b>144</b> |

\* This table refers to the number of litigation matters received by OCTC. The State Bar Court data included in this Annual Report lists the number of these types of cases filed by OCTC. See Glossary for definitions for each of these regulatory matters.

The Investigative/Trial Units also handle 6180/6190 cases, conducted pursuant to Business and Professions Code sections 6180 and 6190. Section 6180 permits the State Bar to petition the state courts to assume jurisdiction over an attorney's law practice where the attorney has died, resigned, become an inactive member of the State Bar, been disbarred or been suspended. Section 6190 permits the State Bar to petition the state courts to assume jurisdiction over an attorney's law practice if the attorney has become incapable of devoting the adequate time and attention to, and of providing the quality of service for, his or her law practice which is necessary to protect the interest of a client and if there is an unfinished client matter for which no other active member of the State Bar has agreed to assume responsibility. In 2006, OCTC opened 35 6180/6190 cases, successfully petitioned the state courts to assume jurisdiction of 24 abandoned law practices and recovered over 6,215 client files.

| <b>6180/6190 Cases</b>  |             |             |             |             |             |
|-------------------------|-------------|-------------|-------------|-------------|-------------|
|                         | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Cases Opened            | 36          | 41          | 31          | 33          | 35          |
| Petitions granted       | 16          | 18          | 14          | 16          | 24          |
| Client files recovered* | 3,568       | 11,282      | 13,626      | 10,531      | 6,215       |

\* The number of client files recovered does not include files that were seized by independent attorneys and that are not housed at the State Bar.

## Audit and Review Unit

In August of 2004, OCTC created a unit called Audit and Review to handle requests from complainants for review or a "second-look" of a decision by OCTC to close his or her complaint without disciplinary action. The Audit and Review Unit resolved 1,429 cases in 2006.

| <b>Audit and Review Unit – Second-Look Requests</b> |             |             |
|---|-------------|-------------|
|   | <b>2005</b> | <b>2006</b> |
| Received during reporting period                    | 1,071       | 1,187       |
| Resolved during reporting period                    | 1,095       | 1,429       |
| Pending at reporting period end                     | 744         | 502         |

The detailed breakdown of the 1,429 cases resolved by the Audit and Review Unit is as follows.

| <b>Audit and Review Unit – Dispositions</b> |              |              |
|---|--------------|--------------|
|   | <b>2005</b>  | <b>2006</b>  |
| Reopen request denied                       | 897          | 1,300        |
| Reopen request granted                      | 54           | 88           |
| Warnings sent to attorney                   | 14           | 9            |
| Other*                                      | 130          | 32           |
| <b><u>TOTAL</u></b>                         | <b>1,095</b> | <b>1,429</b> |

\* These include responses to complaining witnesses who sought additional review after the Audit and Review Unit had denied their second-look requests and files determined not to be second-look requests.

Audit and Review also conducts random audits of OCTC's files twice a year and engages in other specifically designated audit and quality assurance measures. Having this specialized unit has helped OCTC standardize its audit procedures, achieve greater uniformity in its results and provide an additional degree of independence to its audit function.

## Significant Trends in 2006

The number of backlog cases was significantly reduced in 2006. A case becomes a backlog case if, after receipt of the complaint, the case is pending without closure or resolution within 6 months of receipt or, for a case designated as complex, within 12 months of receipt. At the end of 2006, the backlog was at 246 cases. This represents a 23% reduction in the number of backlog cases since the end of 2005 and the first time that the number of backlog complaints at year-end was less than 300 since 1997. In fact, 2006's year-end backlog is the lowest that the number of backlog cases has been at year-end since 1995.

In 2006, OCTC also began implementation of Business and Professions Code section 6126.3 (effective January 1, 2006), which permits the State Bar to apply to a superior court to intervene in and assume jurisdiction over the practice of any non-attorney engaged in the unauthorized practice of law. Section 6126.3(e) sets forth the actions that the State Bar may take in the event that the court grants such a petition. These actions include shutting down the practices, seizing files and returning files to persons and entities that appear to be clients of the non-attorney. The tracking of section 6126.3 cases began in March 2006.

| <b>6126.3 Cases</b>   |              |
|---|--------------|
|   | <b>2006*</b> |
| Cases Opened  | 148          |
| Petitions granted   | 10           |
| Client files recovered                                      | 6,571        |
| * The tracking of section 6126.3 cases began in March 2006. |              |

### **Alternative Discipline Program**

The Alternative Discipline Program (“ADP”), formerly known as the State Bar Court’s Program for Respondents with Substance Abuse and/or Mental Health Issues, completed its fourth full year of operation in 2006. A significant achievement for both OCTC and the State Bar Court, attorneys with substance abuse or mental health issues who are facing disciplinary charges may be referred to the ADP where their cases are handled with the dual objectives of public protection and rehabilitation. Experience is beginning to show that attorneys in the discipline system who participate in a structured recovery program such as the State Bar’s Lawyers Assistance Program (“LAP”) are honoring their obligations to their clients and to the profession. Participating attorneys are paying restitution to their clients and completing ethics education; furthermore, there has been no recidivism to date among the attorneys who have successfully completed the program.

OCTC no longer resolves discipline cases involving an impaired attorney allowed to continue to practice law without factoring testing, monitoring and treatment of the attorney into the resolution.

A referral to ADP begins the process. A referral may be made before, after or in lieu of the filing of a Notice of Disciplinary Charges. Following the referral, the attorney will be evaluated by outside professionals for participation in the program. If the attorney has a substance abuse or mental health issue that is causally related to the misconduct, the attorney may be accepted into the ADP, at which point the attorney will sign a contract and stipulation as to facts and culpability. The contract will require participation in the State Bar’s LAP and require compliance with treatment conditions as determined by the evaluation. The ADP judge will issue a decision that includes both a high and low disciplinary recommendation. A recommendation by the State Bar Court for the imposition of the low-end discipline will depend upon successful completion of the ADP imposed and monitored program.

Although participation in the LAP is voluntary on the part of respondents, OCTC urges all impaired attorneys to avail themselves of the Program’s services. In addition, to foster better understanding between OCTC and the LAP, select OCTC Deputy Trial Counsel attend all LAP Oversight Committee meetings and provide information about OCTC’s policies and procedures to the LAP staff at in-service trainings.

| <b>Alternative Discipline Program</b>            |             |             |             |             |
|--|-------------|-------------|-------------|-------------|
|  | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Attorneys referred to the ADP                    | 52          | 64          | 56          | 82          |
| Attorneys evaluated for the program              | 38          | 68          | 73          | 97          |
| Stipulations/contracts entered into by attorneys | 31          | 32          | 50          | 48          |

### **Ethics School and Client Trust Accounting School**

Disciplined attorneys are required to attend a day-long course in ethics covering the Rules of Professional Conduct and selected provisions of the State Bar Act. The course identifies issues and solutions to common ethical situations faced by practitioners. Instructors are experienced prosecutors who interact with the attorneys in the class, discussing such topics as the attorney-client relationship, fees and fee agreements, the scope of employment, performing competently and duties to clients during and upon ending the attorney-client relationship. A separate three-hour course that focuses specifically on managing client trust accounts and related duties also is offered. This course, called Client Trust Accounting School, is required of attorneys who are disciplined for client trust account violations. In recent years, both courses have been made available to members who have not been disciplined for the purpose of assisting them in avoiding common ethical and client trust accounting mistakes. During 2006, 12 courses of Ethics School and 11 courses of Client Trust Accounting School were offered. 317 attorneys completed Ethics School and 99 attorneys completed Client Trust Accounting School.

## **STATE BAR COURT**

The State Bar Court serves as the administrative arm of the California Supreme Court in the adjudication of disciplinary and regulatory matters involving California attorneys. It is the mission of the State Bar Court to hear and decide cases fairly, correctly and efficiently for the protection of the public, the courts and the legal profession. In 2006, the State Bar Court started its 18th year as the nation's first full-time attorney disciplinary and regulatory court.

The State Bar Court has authority to impose public and private reprovls upon California attorneys who are found to have violated the disciplinary provisions of the California State Bar Act or the Rules of Professional Conduct approved by the California Supreme Court. In cases involving the imposition of more serious degrees of discipline, such as disbarment or suspension, the State Bar Court makes findings of fact, conclusions of law and a recommendation for discipline, all of which are transmitted to the California Supreme Court for review and adoption. In the vast majority of cases, the Supreme Court accepts and imposes the State Bar Court's recommendation. However, the Supreme Court may, in its discretion, modify the State Bar Court's factual findings, legal conclusions or recommended discipline or, in the alternative, return the matter to the State Bar Court for further hearing or other action.

The State Bar Court has two venues (San Francisco and Los Angeles) and is composed of two departments – the hearing department and the review department. The hearing department is the trial level of the State Bar Court and is comprised of five full-time judges (three in Los Angeles and two in San Francisco). The Supreme Court appoints two of the hearing judges. The Governor, the Speaker of the Assembly and the Senate Committee on Rules each appoint one hearing judge.

The review department is the appellate level of the State Bar Court. The three-member review department consists of the Presiding Judge and two part-time review judges. The Supreme Court appoints all of the judges of the review department.

In 2006 there was significant judicial transition. Presiding Judge Ronald W. Stovitz retired from the State Bar Court after serving on the bench since the court's inception in 1989. Additionally, the terms of two of the hearing department judges expired in 2006, one in Los Angeles and one in San Francisco.

The Supreme Court appointed hearing judge Joann Remke to serve as the new Presiding Judge of the State Bar Court. Hearing judge Patrice McElroy was re-appointed to the bench in San Francisco by the Supreme Court and the Governor appointed Donald F. Miles to the position of hearing judge in Los Angeles. All judicial appointees will serve for six-year terms.

With the elevation of Judge Remke to Presiding Judge, the State Bar Court began recruiting for her vacated position late in 2006. The Chief Court Counsel/Acting Chief Administrative is working with the Supreme Court's Applicant Evaluation and Nomination Committee to make a recommendation to the appointing authority for this position, the Senate Committee on Rules. The appointee will fill the remainder of her unexpired term

## Significant Trends in 2006

State Bar Court highlights and trends that occurred in 2006 included:

- 1) Filings in the State Bar Court in 2006 increased 4% from 2005 filings: from 771 in 2005 to 803 in 2006.
- 2) The State Bar Court closed approximately 97% of the number of cases as were filed.<sup>1</sup>
- 3) The average pendency of cases in the State Bar Court hearing department decreased from 7 months in 2005 to 6 months in 2006.
- 4) Participation in the Alternative Discipline Program (“ADP”) continued to increase in 2006. (Please see page 17 for further details on the ADP.)
- 5) The State Bar Court continued publication of the *California State Bar Court Reporter* containing the published opinions of the review department in attorney disciplinary and regulatory proceedings.
- 6) All rules were updated to comport with the new numbering system of the California Rules of Court, effective January 1, 2007.

The following charts provide a detailed look at the number and kinds of cases in the State Bar Court in 2006 and previous years.

### Cases Filed and Closed in The State Bar Court

The following charts reflect the number of cases filed and the number of cases closed in the State Bar Court during 2006 as compared to previous years.

| <b>Cases Filed In The State Bar Court: Summary Figures</b> |             |             |             |             |             |
|--|-------------|-------------|-------------|-------------|-------------|
|  | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Disciplinary Matters                                       | 772         | 664         | 750         | 633         | 639         |
| Regulatory Matters   | 173         | 157         | 161         | 138         | 164         |
| <u><b>TOTAL</b></u>  | 945         | 821         | 911         | 771         | 803         |

| <b>Cases Closed In The State Bar Court: Summary Figures</b> |             |             |             |             |             |
|---|-------------|-------------|-------------|-------------|-------------|
|   | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Disciplinary Matters  | 616         | 619         | 706         | 630         | 611         |
| Regulatory Matters  | 179         | 165         | 155         | 139         | 167         |
| <u><b>TOTAL</b></u>   | 795         | 784         | 861         | 769         | 778         |

Detailed figures are provided on the following page.

<sup>1</sup> The number of State Bar Court cases increased slightly: from 769 in 2005 to 778 in 2006.

**Cases Filed and Closed in The State Bar Court: Detailed Figures**

| <b>Cases Filed And Closed – Disciplinary Matters*</b> |       |        |       |        |       |        |       |        |       |        |
|---|-------|--------|-------|--------|-------|--------|-------|--------|-------|--------|
| Case Type   | 2002  |        | 2003  |        | 2004  |        | 2005  |        | 2006  |        |
|   | Filed | Closed |
| Original matter                                       | 556   | 430    | 456   | 424    | 538   | 515    | 427   | 442    | 431   | 382    |
| Conviction referral                                   | 89    | 84     | 90    | 77     | 92    | 71     | 93    | 75     | 104   | 104    |
| Rule 955 violation                                    | 65    | 47     | 46    | 52     | 52    | 48     | 45    | 48     | 41    | 43     |
| Rule 1-110 violation                                  | 17    | 12     | 18    | 21     | 15    | 14     | 20    | 9      | 20    | 29     |
| Probation Revocation                                  | 22    | 24     | 37    | 23     | 36    | 42     | 25    | 35     | 26    | 33     |
| Other Jurisdiction                                    | 23    | 19     | 17    | 22     | 17    | 16     | 23    | 21     | 17    | 20     |
| <u>TOTAL</u>  | 772   | 616    | 664   | 619    | 750   | 706    | 633   | 630    | 639   | 611    |

\* See Glossary for definitions for each of these disciplinary matters.

| <b>Cases Filed And Closed – Regulatory Matters</b> |       |        |       |        |       |        |       |        |       |        |
|--|-------|--------|-------|--------|-------|--------|-------|--------|-------|--------|
| Case Type  | 2002  |        | 2003  |        | 2004  |        | 2005  |        | 2006  |        |
|  | Filed | Closed |
| Arbitration Enforcement                            | 19    | 22     | 12    | 11     | 15    | 13     | 12    | 18     | 23    | 21     |
| Resignation with charges pending                   | 88    | 93     | 77    | 86     | 82    | 74     | 64    | 65     | 81    | 81     |
| Inactive enrollment                                | 20    | 22     | 17    | 20     | 13    | 16     | 13    | 9      | 19    | 19     |
| Interim remedies                                   | 2     | 2      | 2     | 2      | 0     | 0      | 0     | 0      | 1     | 1      |
| Return to Active (Bus. & Prof. Code)               | 2     | 2      | 3     | 2      | 3     | 4      | 3     | 1      | 2     | 4      |
| Return to Active (Arbitration Enforcement)         | 3     | 3      | 3     | 3      | 1     | 1      | 0     | 0      | 8     | 6      |
| Relief from Actual Suspension                      | 14    | 7      | 13    | 17     | 17    | 15     | 15    | 14     | 7     | 9      |
| Reinstatement                                      | 17    | 20     | 21    | 17     | 18    | 21     | 18    | 18     | 10    | 13     |
| Moral Character                                    | 8     | 8      | 8     | 7      | 11    | 11     | 13    | 12     | 13    | 13     |
| Legal Specialization                               | 0     | 0      | 1     | 0      | 1     | 0      | 0     | 2      | 0     | 0      |
| <u>TOTAL</u>                                       | 173   | 179    | 157   | 165    | 161   | 155    | 138   | 139    | 164   | 167    |

\* See Glossary for definitions for each of these regulatory matters.

### Dispositions Of Case Closures Of State Bar Court Cases

| <b>Dispositions of Closed Disciplinary Cases*</b>                           |             |             |             |             |             |
|---|-------------|-------------|-------------|-------------|-------------|
|   | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Disbarment  | 48          | 69          | 60          | 51          | 66          |
| Summary Disbarment  | 2           | 2           | 7           | 7           | 5           |
| Suspension  | 306         | 258         | 287         | 261         | 250         |
| Reprovals   | 104         | 131         | 169         | 144         | 96          |
| Dismissal   | 32          | 41          | 55          | 45          | 58          |
| Termination   | 105         | 105         | 102         | 97          | 116         |
| Revoke Probation  | 13          | 10          | 21          | 24          | 20          |
| Probation   | 0           | 0           | 2           | 0           | 0           |
| Extend probation  | 5           | 1           | 1           | 1           | 0           |
| License to Practice Cancelled   | 1           | 0           | 0           | 0           | 0           |
| Admonition  | 0           | 1           | 0           | 0           | 0           |
| Deny Petition/Application   | 0           | 1           | 2           | 0           | 0           |
| <b><u>TOTAL</u></b>   | <b>616</b>  | <b>619</b>  | <b>706</b>  | <b>630</b>  | <b>611</b>  |
| * See Glossary for definitions for each of these disciplinary dispositions. |             |             |             |             |             |

| <b>Dispositions of Closed Regulatory Cases*</b>  |             |             |             |             |             |
|--|-------------|-------------|-------------|-------------|-------------|
|  | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Relief from Actual Suspension Granted  | 4           | 12          | 9           | 7           | 3           |
| Relief from Actual Suspension Declined   | 1           | 2           | 2           | 4           | 5           |
| Transfer to Inactive Status†   | 28          | 23          | 18          | 12          | 26          |
| Decline Transfer to Inactive†  | 1           | 3           | 1           | 0           | 5           |
| Grant Petition for Reinstatement/Admission Application   | 3           | 9           | 6           | 7           | 4           |
| Deny Petition for Reinstatement/Admission Application  | 10          | 4           | 10          | 8           | 6           |
| Restrict Practice  | 2           | 2           | 0           | 0           | 1           |
| Return to Active Status†   | 5           | 5           | 4           | 2           | 6           |
| Resignation/Charges Pending  | 92          | 84          | 74          | 64          | 79          |
| Dismissal  | 9           | 5           | 14          | 11          | 12          |
| Termination  | 5           | 4           | 2           | 1           | 4           |
| Withdrawn  | 19          | 12          | 15          | 23          | 16          |
| <b><u>TOTAL</u></b>  | <b>179</b>  | <b>165</b>  | <b>155</b>  | <b>139</b>  | <b>167</b>  |
| * See Glossary for definitions for each of these regulatory dispositions.  |             |             |             |             |             |
| † Inactive status may result from either a Bus. & Prof. Code violation or from failure to comply with a Mandatory Fee Arbitration award. |             |             |             |             |             |

## Significant State Bar Court Orders Affecting Practice

The State Bar Court issues various orders that affect the ability of an attorney to practice law (e.g., interim suspension upon conviction of certain crimes, transfer to inactive enrollment upon entry of default, recommendation of disbarment), or that relate to the powers of the Supreme Court that have been delegated to the State Bar Court (e.g., modify probation conditions, extend the time for compliance with the Multistate Professional Responsibility Examination).

Also, each case that is considered for participation in the State Bar Court's Alternative Discipline Program requires a written decision. Those decisions do not become final until the respondent successfully completes the Alternative Discipline Program or is terminated from the Program. Those decisions are reflected here as interim dispositions.

| <b>Significant Orders Affecting Practice: Summary Figures</b> |             |             |             |             |             |
|---|-------------|-------------|-------------|-------------|-------------|
|   | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Disciplinary Matters  | 454         | 521         | 545         | 625         | 652         |
| Regulatory Matters  | 5           | 0           | 1           | 1           | 2           |
| <u>TOTAL</u>  | 459         | 521         | 546         | 626         | 654         |

## Significant State Bar Court Orders Affecting Practice: Detailed Figures

| <b>Significant Orders in Disciplinary Matters*</b>       |             |             |             |             |             |
|--|-------------|-------------|-------------|-------------|-------------|
|  | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Conviction orders  | 90          | 79          | 78          | 86          | 103         |
| Interim suspension orders†                               | 56          | 74          | 58          | 64          | 75          |
| Professional Responsibility Examination orders           | 44          | 56          | 54          | 86          | 83          |
| Suspension orders – Bus. & Prof. Code § 6007‡ or § 6233§ | 227         | 197         | 181         | 197         | 218         |
| Modification orders                                      | 0           | 85          | 72          | 62          | 64          |
| Alternative Discipline decisions**                       | –           | –           | 64          | 75          | 99          |
| Rejected stipulations                                    | 36          | 22          | 16          | 19          | 1           |
| Extend Probation   | 0           | 1           | 10          | 12          | 7           |
| Vacate Previous Order                                    | 0           | 5           | 11          | 16          | 0           |
| Early Termination of Probation                           | 0           | 0           | 0           | 8           | 0           |
| Miscellaneous††  | 1           | 2           | 1           | 0           | 2           |
| <u>TOTAL</u>   | 454         | 521         | 545         | 625         | 652         |

\* See Glossary for definitions for each of these disciplinary orders.

† This category includes orders of interim suspension as well as orders that lift interim suspension

‡ These orders differ from the category of Suspensions in the "Final Dispositions" section of this report. In those matters, inactive enrollment is the final disposition. In this category, inactive enrollment occurs prior to the final disposition. This category also includes orders lifting the inactive enrollment. Effective 2002, most of these items were re-categorized as Interim Dispositions.

§ Effective 2006, Bus. & Prof. Code § 6233 allows State Bar Court judges to enroll attorneys in the Alternative Discipline Program involuntarily inactive.

\*\* 2004 was the first year for tracking Alternative Discipline Program decisions.

†† This category includes denials of requests for interlocutory review, extensions of conditions of reprobals, and reversal orders.

| <b>Significant Orders in Regulatory Matters*</b> |             |             |             |             |             |
|--|-------------|-------------|-------------|-------------|-------------|
|  | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Modification Order                               | 0           | 0           | 1           | 0           | 2           |
| Inactive enrollment orders†                      | 5           | 0           | 0           | 0           | 0           |
| Vacate Submission                                | 0           | 0           | 0           | 1           | 0           |
| <u>TOTAL</u>                                     | 5           | 0           | 1           | 1           | 2           |

\* See Glossary for definitions for each of these disciplinary orders.  
† These orders may be issued pursuant to Bus. & Prof. Code § 6007.

### **California Supreme Court Jurisdiction and Dispositions**

The Supreme Court has final jurisdiction over all matters relating to attorney discipline and regulation. Generally, the Supreme Court accepts the recommendations of the State Bar Court regarding these matters. On occasion, however, the Supreme Court will remand a case or grant a petition for writ of review, as shown below:

| <b>California Supreme Court Interim Dispositions</b> |             |             |             |             |             |
|--|-------------|-------------|-------------|-------------|-------------|
|  | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Grant Writ of Review                                 | 0           | 0           | 2           | 1           | 0           |
| Remand for Hearing                                   | 1           | 0           | 0           | 3           | 1           |
| <u>TOTAL</u>   | 1           | 0           | 2           | 4           | 1           |

### **Lawyers Assistance Program and Alternative Discipline Program**

Effective January 1, 2002, Business and Professions Code sections 6230, *et seq.*, were added to the State Bar Act. Section 6231 directs the Board of Governors of the State Bar of California to establish and administer an Attorney Diversion and Assistance Program (hereinafter “the Lawyer Assistance Program”). Additionally, section 6140.9 provides that the State Bar shall allocate at least \$10.00 of the annual membership fee paid by active members of the State Bar to offset all or a portion of the cost of establishing and administering the Lawyer Assistance Program. The State Bar has implemented the Lawyer Assistance Program (“LAP”), which primarily addresses the substance abuse and mental health problems of attorneys who are referred to LAP or who voluntarily seek to participate in LAP. LAP offers support and structure to attorneys recovering from these disorders. Experts provide consultations regarding rehabilitation and private support groups are offered to attorneys in LAP. The State Bar Court’s Alternative Discipline Program (“ADP”) addresses the substance abuse and mental health problems of attorneys against whom formal disciplinary proceedings have been initiated in the State Bar Court (hereinafter “respondents”).

ADP represents the first comprehensive program in the United States for addressing the identification, assessment and treatment of substance abuse and mental health problems of respondents in the discipline process. ADP is designed to protect the public, the courts and the legal profession, while respondents with substance abuse or mental health problems receive assistance with rehabilitation. ADP has a close and mutually beneficial relationship with LAP. ADP neither duplicates the LAP processes nor usurps its clinical function. ADP seeks to identify and refer respondents with substance abuse or mental health problems to LAP so that respondents so afflicted may be treated and rehabilitated. A respondent must be accepted into LAP in order to be eligible for ADP.

Cognizant of its public protection responsibilities, the State Bar Court retains jurisdiction over those attorneys in LAP that have pending disciplinary proceedings and makes all appropriate judicial decisions, including any determination regarding the respondent's eligibility to practice law while participating in the ADP.

Commencing in 2002, the State Bar Court implemented a system for handling cases associated with ADP. Three stages were developed for categorizing, the first being the referral stage. In a State Bar Court proceeding, when an issue of substance abuse or mental health is raised, the assigned hearing judge may refer the matter to an ADP judge who presides over ADP in the appropriate venue. This referral is solely for the purpose of determining whether the respondent is a potential candidate for the program.

The second stage, the evaluation stage, is estimated to take approximately 90 days. During the evaluation stage, LAP meets the respondent. The respondent must sign the LAP Participation Agreement, which is provided to the State Bar Court. The agreement, along with other evidence, is used to establish a nexus between the respondent's misconduct and his or her substance abuse or mental health issue. Also, during the evaluation process, the respondent and the Deputy Trial Counsel submit a stipulation as to facts and conclusions of law, which becomes binding on the parties once the attorney is formally accepted into ADP.

In the third stage, if the respondent is determined to be a good candidate for ADP, the assigned hearing judge presiding over the matter prepares a decision stating the high and low levels of discipline. The low level of discipline is the recommended level of discipline to be imposed should the respondent successfully complete ADP, and the high level of discipline is the level to be imposed if the respondent is terminated from the program. The respondent also signs a contract, which details the conditions of the respondent's participation in ADP.

ADP provides oversight of its participants through status conferences held, at a minimum, every three months. In order to determine the respondent's progress, LAP provides written status reports to the ADP Judge upon request. Based on objective data, the reports: (1) confirm the respondent's compliance with the terms and conditions of the LAP Participation Plan, (2) disclose any incidents of non-compliance, and (3) provide any relevant case information which can be appropriately shared with the ADP Judge in open court.

The respondent is required to participate for a minimum term of 36 months from formal admission into ADP. However, with earned incentives, the respondent may complete ADP in a minimum of 18 months. No respondent may complete ADP without a one-year substance-free certificate from LAP, or a recommendation from a mental health professional. It should be noted that probationary conditions may extend beyond the formal ADP term, thereby requiring continued compliance with the respondent's LAP Participation Plan.

The following charts display the participation levels in ADP for the last 5 years and show growing year-over-year activity in the Court:

| <b>Number of Cases Entering Each ADP Stage During Year</b> |      |      |      |      |      |
|--|------|------|------|------|------|
| Participation Level  | 2002 | 2003 | 2004 | 2005 | 2006 |
| Referral   | 59   | 83   | 91   | 87   | 95   |
| Evaluation   | 53   | 75   | 104  | 117  | 116  |
| Full Participation   | 2    | 42   | 72   | 92   | 110  |

| <b>Cases/Respondents fully participating in ADP at end of year</b>                                    |      |      |      |      |      |
|---|------|------|------|------|------|
|   | 2002 | 2003 | 2004 | 2005 | 2006 |
| Cases   | 2    | 44   | 110  | 180  | 249  |
| Respondents*  | 1    | 25   | 53   | 90   | 116  |
| * Many of the cases in ADP are consolidated matters. Many respondents have more than one case in ADP. |      |      |      |      |      |

**CLIENT SECURITY FUND**

The Client Security Fund is a public service of the California legal profession. In 1972, the State Bar sponsored the creation of this Fund to help protect consumers of legal services by relieving or mitigating pecuniary losses caused by the dishonest conduct of California lawyers arising from or connected with the practice of law. In 2006, the Fund’s coverage was expanded to include Foreign Legal Consultants registered with the State Bar and lawyers registered with the State Bar under the Multijurisdictional Practice Program.

The Fund works closely with the Attorney Discipline System in protecting California’s legal consumers. Since its inception in 1972, the Fund has reimbursed applicants approximately \$81 million. The Fund may reimburse an individual victim for losses of up to \$50,000 due to theft or an act equivalent to theft committed by his or her lawyer.

To qualify for reimbursement, an applicant must be able to show that the money or property actually came into the lawyer’s possession and that the loss was caused by the lawyer’s dishonest conduct.

The types of dishonest conduct that may lead to reimbursement from the Fund are:

- Theft or embezzlement of money or the wrongful taking or conversion of money or property;
- Refusal to refund unearned fees paid to the lawyer in advance where the lawyer performed no services whatever, or an insignificant portion of the services the lawyer agreed to perform;
- The borrowing of money from a client without the intention or reasonably anticipated ability to repay the money;
- Obtaining money or property from a client by representing that it would be used for investment purposes when no investment is made; and
- An act of dishonesty or deceit that directly leads to the loss of money or property that actually came into the lawyer’s possession.

In 2006, the Fund received 1,314 new applications and processed 1,302 to closure. Of the 1,302 claims processed, \$5,299,061 was paid on 943 approved claims.

The chart below reflects the activity of the Fund from 2002 to 2006:

| <b>Client Security Fund</b> |              |              |              |              |              |
|-----------------------------|--------------|--------------|--------------|--------------|--------------|
|                             | <b>2002</b>  | <b>2003</b>  | <b>2004</b>  | <b>2005</b>  | <b>2006</b>  |
| Applications filed          | 1,300        | 1,200        | 1,321        | 1,318        | 1,314        |
| Applications processed      | 1,286        | 1,209        | 1,209        | 1,386        | 1,302        |
| Applications paid           | 782          | 701          | 746          | 982          | 943          |
| Amounts requested           | \$14,166,217 | \$12,221,905 | \$13,681,482 | \$11,558,645 | \$11,975,249 |
| Amounts paid                | \$6,597,057  | \$5,859,620  | \$5,681,455  | \$4,648,584  | \$5,299,061  |

The Fund is primarily financed by an annual assessment added to the membership dues paid by California lawyers (currently \$40 per active member and \$10 per inactive member). These assessments are applied only for the purposes of Fund payments and costs associated with the Fund’s administration. The Fund is a cost-effective way of providing victims with reimbursement that is generally not available from any other source. Furthermore, the Fund provides the legal profession with a unique opportunity to promote public confidence in the administration of justice and the integrity of the profession.

Section 6140.5 of the Business and Professions Code requires the Board of Governors to maintain a Client Security Fund. The operation of the Fund is currently governed by the Rules of Procedure, Client Security Fund Matters, adopted by the Board in 1985. Under these Rules, the Board must appoint a seven-member Commission to act as the Board's delegate in administering the Fund. The Rules set forth the scope and purpose of the Fund, the authority of the Commission, the requirements for reimbursement, the application process and the confidentiality of Fund records. A Fund Applicant or Respondent lawyer may seek judicial review of a Commission decision in the superior courts of the State under section 1094.5 of the Code of Civil Procedure.

## OFFICE OF PROBATION

In the significant majority of cases, attorneys against whom discipline other than disbarment is imposed, are placed on probation by the California Supreme Court or by the State Bar Court. During the period of probation, which typically ranges from one to five years, the disciplined attorney is required to comply with specified probation conditions appropriate to his or her misconduct including, among others (a) the submission of written quarterly probation reports attesting to the attorney's compliance with the State Bar Act, Rules of Professional Conduct and specified probation conditions; (b) prompt response to State Bar inquiries about the attorney's probation compliance; (c) restitution of misappropriated funds or unearned attorney fees to clients; (d) abstinence from the use of alcohol or drugs and submission to random, periodic blood or urine testing; (e) completion of continuing legal education courses; (f) preparation and approval of a law office management plan; and (g) attendance at State Bar Ethics School and Client Trust Accounting School. In many cases, the attorney is also required to take and pass the Multistate Professional Responsibility Examination. Attorneys who are disbarred, resign from the practice of law with disciplinary charges pending against them or are actually suspended from the practice of law for a period of 90 days or more also are required to comply with the provisions of rule 955 of the California Rules of Court,<sup>2</sup> which requires the attorney to notify his or her clients of the attorney's disbarment, resignation or suspension and to provide the State Bar Court with an affidavit demonstrating his or her compliance with rule 955.

The State Bar's Office of Probation monitors the disciplined attorney's compliance with these and other conditions. The Office of Probation also monitors attorneys who have not been disciplined but who must comply with conditions pursuant to the Alternative Discipline Program; an Agreement in Lieu of Discipline; or Business and Professions Code section 6007(h).

The Office of Probation may negotiate and stipulate to modification of the attorney's probation in appropriate cases, subject to approval by a judge of the State Bar Court. The Office of Probation is authorized to bring a motion in the State Bar Court to revoke a disciplined attorney's probation in the event of a violation of the attorney's probation conditions or report the violations to the Office of the Chief Trial Counsel for disciplinary prosecution. In cases involving the attorney's failure to comply with rule 955; with conditions attached to a public or private reproof; or with conditions ordered pursuant to an Agreement in Lieu of Discipline, the Alternative Dispute Program or Business and Professions Code, section 6007(h), the Office of Probation may report the violations to the Office of the Chief Trial Counsel for disciplinary prosecution.

Although it is a separate and independent office, the Office of Probation has reported directly to the Chief Trial Counsel since April 2005.

The chart below reflects some of the activity of the Office of Probation:

| <b>Office of Probation</b>            |             |             |             |
|---------------------------------------|-------------|-------------|-------------|
|                                       | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Files pending at reporting period end | 791         | 800         | 857         |
| Files opened                          | 559         | 606         | 566         |
| Files closed                          | 512         | 559         | 481         |
| Probation revocation motions filed    | 36          | 25          | 26          |
| Referrals to OCTC for prosecution     | 10          | 26          | 97          |

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<sup>2</sup> Effective January 1, 2007, this rule was renumbered rule 9.20.

## MANDATORY FEE ARBITRATION

Pursuant to Business and Professions Code section 6200 *et seq.*, the State Bar administers a statewide program for the arbitration of fee disputes between attorneys and their clients. The State Bar is responsible for overseeing 44 local bar association fee arbitration programs where the majority of fee arbitration requests are filed. The State Bar program has jurisdiction over fee disputes where: 1) there is no local program; 2) the local program lacks jurisdiction; or 3) a party believes that he or she cannot receive a fair hearing through their local bar's program.

### **Fee Arbitration Requests**

In 2006, the Office of Mandatory Fee Arbitration ("MFA Office") received 174 requests for fee arbitration from parties throughout the state, representing a 20% increase over requests filed in 2005. In 2006, 21 requests for removal from a local program to the State Bar program were filed and decided by the State Bar's Presiding Arbitrator.

### **Telephone Intake**

Although the Board Standing Committee on Mandatory Fee Arbitration provides oversight for the entire MFA Program, the MFA Office provides direct information to all attorneys and clients concerning their respective rights and obligations under the mandatory fee arbitration program and the post-arbitration enforcement and litigation procedures. The vast majority of these contacts are made to the MFA Office's main line (415-538-2020). During 2006, a total of 5,791 calls were received at this number.

### **Client Requests for Enforcement of Awards**

By statute, the State Bar has exclusive jurisdiction to enforce arbitration awards requested by clients after an award for a refund of fees has become binding and final. Business and Professions Code section 6203, subdivision (d) authorizes the assessment of administrative penalties and the involuntary inactive enrollment of attorneys who fail to respond to the enforcement request. The MFA Office processes clients' requests for enforcement of fee arbitration awards served by all the state's MFA programs. An attorney's failure to respond to the Client's Enforcement Request results in a motion filed in the State Bar Court requesting that the member be involuntarily enrolled as an inactive member until the award and any administrative penalty assessed have been paid. In 2006, the MFA Office filed 61 Requests for Enforcement of an Award. Of that number, a record 23 motions to enroll attorneys on inactive status were filed in State Bar Court.

The chart below reflects the activity of the MFA Office:

| <b>Mandatory Fee Arbitration Requests Filed</b> |             |             |             |             |             |
|---|-------------|-------------|-------------|-------------|-------------|
|   | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| MFA requests filed with the State Bar           | 134         | 127         | 211         | 144         | 174         |
| MFA requests filed with local bar associations* | 1,710       | 2,570       | 1,771       | 1,661       | 1,475       |
| Requests for enforcement of award filed         | 81          | 86          | 72          | 78          | 61          |

\* This represents the number of cases assigned by the local bar programs requesting reimbursement from the State Bar.

## Department Staffing

The MFA Office consists of a Director, three senior administrative assistants, and one administrative assistant. All staff respond to requests for information concerning the MFA Program and make appropriate internal and external referrals. Two senior administrative assistants administer the State Bar's fee arbitration program, from intake to assignment of the arbitration panel to service of the award. The third senior administrative assistant processes clients' Requests for Enforcement of Awards, prepares orders, monitors installment payments by attorneys, and files motions in the State Bar Court for inactive enrollment of attorneys.

## State Bar Reimbursement to Local Bar Programs

The MFA Office oversees reimbursement available to the local bar programs. It enables local bar associations to contract with the State Bar for the purpose of receiving reimbursement and processes the contracts and quarterly requests for reimbursement by the local bar programs. The State Bar pays a flat fee of \$24 per fee arbitration case assigned by a local bar program. In 2006, the State Bar paid a total of \$35,400 in reimbursement payments to the local bar programs. This payment was for a total of 1,475 fee arbitration matters assigned to arbitration by the programs during that time period. In 2006, the Board of Governors approved an increase of the flat rate reimbursement from \$24 to \$36 effective January 1, 2007.

## The State Bar Committee On Mandatory Fee Arbitration

The MFA Office's Director staffs and coordinates the activities of the State Bar Standing Committee on Mandatory Fee Arbitration ("MFA Committee"). The MFA Committee consists of approximately 16 lawyer and public members, including the State Bar Presiding Arbitrator. The MFA Committee reports to the Board Committee on Regulation, Admission and Discipline. The MFA Committee met six times throughout the year.

The MFA Committee is responsible for reviewing case law and proposing new legislation affecting fee arbitration, providing policy guidance and assistance to the local bar programs, conducting arbitrator training programs for fee arbitrators throughout the state, issuing written training materials for arbitrators and arbitration advisories, and presenting legal education courses on selected topics concerning attorney's fees and the fee arbitration program. All local and State Bar fee arbitration programs must obtain the Board of Governors' approval of its rules of procedures and any amendments made thereto.

## Key Accomplishments in 2005

### Arbitrator Training Programs

The MFA Committee organized and presented a total of eight (8) three-hour fee arbitrator training programs. Free Minimum Continuing Legal Education ("MCLE") credit was offered to attorney arbitrators. A rotating panel of Committee members presents the training program. In addition, a binder of training materials prepared by the MFA office staff, featuring the arbitration advisories, an arbitrator handbook and extensive case law summary and index, is distributed to the attendees who are encouraged to volunteer as a fee arbitrator.

| <b>Activities of Committee on Mandatory Fee Arbitration</b> |             |             |             |             |             |
|---|-------------|-------------|-------------|-------------|-------------|
|   | <b>2002</b> | <b>2003</b> | <b>2004</b> | <b>2005</b> | <b>2006</b> |
| Arbitrator training programs (MCLE credit)                  | 8           | 9           | 6           | 8           | 8           |
| Annual meeting programs (MCLE credit)                       | 2           | 2           | 3           | 3           | 2           |

### State Bar Arbitrator Recruitment Efforts

The State Bar Fee Arbitration panel consists of approximately 380 volunteer arbitrators, consisting of lawyer and lay arbitrators. As a result of concerted efforts by the State Bar to recruit new arbitrators, the Board of Governors appointed 44 new fee arbitrators to serve on the panel this year.

### MCLE programs

The MFA Committee presented two (2) two hour programs on attorney's fees issues for MCLE credit for the State Bar 2006 Annual Meeting in Monterey.

### Arbitration Advisories

In addition to the MCLE programs, the Committee is responsible for identifying issues of administrative or legal significance in the area of fee arbitration and developing them into written advisories for fee arbitrators. The advisories are distributed to local bar program committees and administrators for dissemination to fee arbitrators. These advisories are also available on the State Bar's website. The Committee published two advisories in 2005. It also published two program advisories for local bar program staff on administrative policies.

### Approval of Local Bar Rules of Procedure

The MFA Committee reviews and recommends approval by RAD of local bar program rules of procedures. In 2005, the MFA Committee submitted revisions to the rules of procedure for five local bar programs to RAD for approval. In 2006, the RAD Committee approved rule changes for ten local programs recommended to it by the MFA Committee.

### State Bar Rules of Procedure

The RAD Committee approved revisions to the State Bar Rules of Procedure for Fee Arbitrations recommended to it by the MFA Committee.

### Model Rules of Procedure

The MFA Committee developed Model Rules of Procedure for Fee Arbitrations. The Model Rules are designed for local bar programs to use as a template for updating their local rules of procedure. The MFA Committee distributed the Model Rules to the local programs in March 2005. Since then, local bars have begun to follow the Model Rules in an effort to update their rules. In November 2006, the Board of Governors approved the Model Rules.

### Advice to Local Bar Programs

The MFA Committee and the MFA Office Program Director provides advice and guidance to the 44 local bar fee arbitration programs in the state on an as-needed basis. The issues and questions presented are addressed in regularly scheduled meetings of the Committee. On a daily basis, the Office Director, Presiding Arbitrator and MFA Committee Chair handle most issues raised informally by the local programs. This year, the Director and Presiding Arbitrator held two (instead of the usual one) roundtable sessions for local bar arbitration administrators to ensure that they are current in the law, maintain uniformity between the various administrations, and to promote networking with each other.

## **PROFESSIONAL COMPETENCE**

The State Bar's ongoing Competency-based programs to maintain and improve the quality of legal services available in California significantly contribute to the State Bar's efforts in support of public protection and the effective administration of justice.

### **Rules of Professional Conduct**

In 2005, the State Bar President appointed a task force to conduct a study and prepare a report to the Board of Governors on whether California lawyers should be required to disclose if they maintain professional liability insurance and, if so, how such a requirement should be accomplished. On June 6, 2006, the Insurance Disclosure Task Force submitted an initial report to the Board Committee on Regulation, Admissions and Discipline Oversight. The report contained two proposed rules recommended for public comment circulation. One rule was a proposed amendment to the California Rules of Court and the other was a proposed new Rule of Professional Conduct.

As circulated for public comment, the proposed new Rule of Professional Conduct would require direct disclosure of the absence of insurance to a client. The proposed new Rule of Court would require attorneys to certify to the State Bar whether they are covered by insurance, and provide that the State Bar will make publicly available the identity of individual attorneys who inform the State Bar that they are not insured.

Failure to comply with the new Rule of Court in a timely fashion would result in non-disciplinary, administrative suspension. Supplying false information in response to the new Rule of Court would subject an attorney to appropriate disciplinary action. Violation of the new Rule of Professional Conduct would implicate all the remedies that otherwise apply to a violation of the Rules of Professional Conduct.

Attorneys who are employed as government lawyers or in-house counsel and do not represent clients outside that capacity would be exempt from the insurance disclosure requirements.

The public comment period for these proposed rules ended on September 15, 2006. The task force is in the process of preparing their report and recommendations in response to the public comments received.

### **The Commission for the Revision of the Rules of Professional Conduct**

In addition to the above task force study, the State Bar's Commission for the Revision of the Rules of Professional Conduct ("Commission") continued its multi-year project to conduct a comprehensive review of the State Bar's ethics rules in light of developments over the past 10 years and current trends nationally. The specific charge of the commission is as follows:

"The Commission is to evaluate the existing California Rules of Professional Conduct in their entirety considering developments in the attorney professional responsibility field since the last comprehensive revision of the rules occurred in 1989 and 1992. In this regard, the Commission is to consider, along with judicial and statutory developments, the Final Report and Recommendations of the American Bar Association ("ABA") Ethics 2000 Commission, the American Law Institute's Restatement of the Law Third, The Law Governing Lawyers, as well as other authorities relevant to the development of professional responsibility standards. The Commission is specifically charged to also consider the work that has occurred at the local, state and national level with respect to multidisciplinary practice, multi-jurisdictional practice, court facilitated *propria persona* assistance, discrete task representation and other subjects that have a substantial impact upon the development of professional responsibility standards.

“The Commission is to develop proposed amendments to the California Rules that:

- 1) Facilitate compliance with and enforcement of the rules by eliminating ambiguities and uncertainties in the rules;
- 2) Assure adequate protection to the public in light of developments that have occurred since the rules were last reviewed and amended in 1989 and 1992;
- 3) Promote confidence in the legal profession and the administration of justice; and
- 4) Eliminate and avoid unnecessary differences between California’s rules and the rules of other states, fostering the evolution of a national standard with respect to professional responsibility issues.”

In 2006, the Commission conducted nine daylong meetings. At its meetings, the Commission continued its work to carry out the Board’s charge to conduct a comprehensive study of the rules of professional conduct and to develop proposed amendments. The Commission considered rules 1-100, 1-110, 1-120, 1-200, 1-300, 1-310, 1-311, 1-320, 1-400, 1-500, 1-600, 1-700, 1-710, 1-720, 2-100, 2-200, 2-300, 3-100, 3-110, 3-120, 3-200, 3-210, 3-300, 3-310, 3-320, 3-400, 3-500, 3-510, 3-600, 3-700, 4-100, 4-200, 4-210, 4-300 and 4-400 of the California Rules of Professional Conduct; and proposed new rules comparable to ABA Model Rules 1.14, 3.2, 5.1, 5.2, 5.3 and 8.3. Also considered were initial subcommittee reports on the concept of law firm discipline and proposed amendments to address issues peculiar to class action litigation.

The Commission voted to tentatively approve six draft rule amendments and approved 27 draft rules for submission to State Bar’s Board Committee on Regulation, Admissions and Discipline Oversight for public comment authorization.

The public comment deadline on the 27 draft rules was October 16, 2006. The Commission has received about 100 written public comments. In addition, the Commission received testimony from 10 speakers presented at a public hearing on October 7, 2006 that was held in connection with the State Bar’s 2006 Annual Meeting.

The Commission’s E-List, an e-mail distribution group used by the Commission members, liaisons and other subscribers, had 196 postings to 100 subscribers for a total of over 19,600 messages. These messages included meeting notices and materials, as well as information on recent developments in legal ethics, informal comments and discussions about the Commission’s draft rules. Of the 100 total subscribers, 18 were added in 2006. Informal comment letters on various open agenda items were received from 45 interested persons or groups, including comments from the California Attorney General, various District Attorney Offices, Morrison & Foerster, the State Bar ADR Committee and the County Counsels Association/the City Attorney’s Department of the League of California Cities.

In addition to the e-mail messages, the Commission received 41 informal comment letters from various stakeholders and other interested persons.

As part of the 2006 State Bar Annual Ethics Symposium held on May 6, 2006 at the University of Santa Clara School of Law, the Commission presented an educational program on several rule amendment issues under consideration including clients with diminished capacity (ABA Model Rule 1.14), law firm discipline and charging liens as adverse interests. The program evaluation forms submitted by attendees gave the Commission’s panel high marks, including an average mark of 4.6 (our of 5) for significant intellectual or practical content.

### **The Standing Committee on Professional Responsibility and Conduct (“COPRAC”)**

COPRAC’s primary activity is to develop the State Bar’s advisory ethics opinions. COPRAC also assists the Board of Governors by studying and providing comment on the Rules of Professional Conduct and other laws governing the conduct of attorneys.

In 2006, COPRAC prioritized its continued efforts to: 1) respond to the ABA's request for support on matters of national interest and 2) provide input on the Commission's 27 draft rules circulated for public comment.

Regarding COPRAC's efforts to support the work of the Commission, a subcommittee was formed and designated liaisons attended and monitored the meetings of the Commission and reported back to COPRAC. The subcommittee reviewed the Commission's 27 proposed rules and obtained COPRAC approval for the submission of 10 letters to the Commission that addressed 13 individual proposed rules. These comment letters indicated COPRAC's support for 8 proposed rules as drafted and offered suggested revisions for 5 other proposed rules.

Regarding COPRAC's efforts to support the work of the ABA on professional responsibility matters of national interest, COPRAC joined with the ABA's Task Force on the Attorney-Client Privilege to urge the United States Sentencing Commission ("USSC") to reverse the position in its guidelines regarding credits for waiver of the attorney-client privilege. COPRAC's letter to the USSC was copied to the California members of the respective Judiciary Committees of the United States Senate and House of Representatives. In response to the efforts of the ABA, and consistent with the position advocated by COPRAC, the USSC changed its policy on credits for waiver of the attorney-client privilege. The new policy is more protective of the attorney-client relationship and the privilege.

COPRAC also responded to an ABA request that state bar leaders contact their local United States Attorneys and provide guidance on implementing regional policies concerning requests for waivers of the attorney-client privilege and work product protection. In support of the ABA, COPRAC submitted comment letters, in its own name, to the United States Attorneys heading regional offices in California.

## **Ethics Opinions**

COPRAC's formal ethics opinions guide members in maintaining their ethical standards. The non-binding opinions are developed in response to questions posed by bar groups or individual members. In 2006, COPRAC finalized the following opinions:

### Opinions Published in 2006

#### Formal Opinion No. 2006-170

**ISSUE:** Must an attorney comply with rule 3-300 when entering into a contingency fee agreement that contains a provision for a charging lien?

**DIGEST:** The inclusion of a charging lien in the initial contingency fee agreement does not create an "adverse interest" to the client within the meaning of rule 3-300 of the California Rules of Professional Conduct. Unlike a charging lien in an hourly case, the charging lien is a natural corollary of the contingency arrangement. This conclusion is not intended to discourage lawyers from conforming to the standards established in rule 3-300 in their contingency agreements.

#### Formal Opinion No. 2006-171

**ISSUE:** Is an attorney who has withdrawn a fee from a client trust account in compliance with rule 4-100(A)(2), ethically obligated to return any of the withdrawn funds to the client trust account when the client later disputes the fee?

**DIGEST:** Once an attorney has withdrawn a fee from a client trust account in compliance with rule 4-100(A)(2), those funds cease to have trust account status. As such, there is no obligation to return to the trust account amounts that are later disputed by the client.

Opinions Circulated for Public Comment Period in 2006:

Proposed Interim Opinion No. 04-0002 (90-day Comment Period deadline: March 23, 2006)

ISSUE: Must an attorney comply with rule 3-300 when entering into a contingency fee agreement that contains a provision for a charging lien?

DIGEST: The inclusion of a charging lien in the initial contingency fee agreement does not create an "adverse interest" to the client within the meaning of rule 3-300 of the California Rules of Professional Conduct. Thus, an attorney entering into a contingency fee agreement need not comply with the requirements of rule 3-300 merely because the agreement includes a charging lien against any recovery in the case. Unlike a charging lien in an hourly case, the charging lien is a natural corollary of the contingency arrangement, protecting the attorney while permitting clients to have access to the courts they may not otherwise be able to afford.

Proposed Interim Opinion No. 05-0008 (90-day comment period deadline: August 9, 2006)

ISSUE: Is an attorney who has withdrawn a fee from a client trust account in compliance with rule 4-100(A)(2), ethically obligated to return any of the withdrawn funds to the client trust account when the client later disputes the fee?

DIGEST: Once an attorney has withdrawn a fee from a client trust account in compliance with rule 4-100(A)(2), those funds cease to have trust account status. As such, there is no obligation to return to the trust account amounts that are later disputed by the client.

Proposed Interim Opinion No. 05-0009 (90-day comment period deadline: January 2, 2007)

ISSUES: 1) May an attorney ethically accept payment of earned fees from a client by credit card?  
2) May an attorney ethically accept payment of fees not yet earned from a client by credit card?  
3) May an attorney ethically accept payment of advances for costs and expenses from a client by credit card?

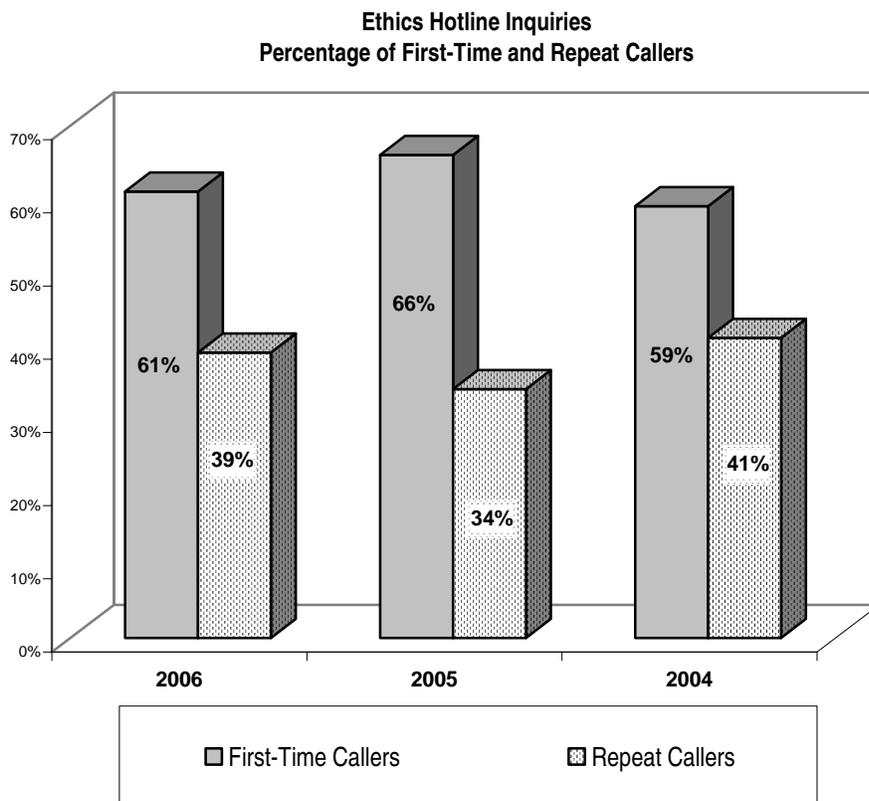
DIGEST: 1) An attorney may ethically accept payment of earned fees from a client by credit card. In doing so, however, the attorney must discharge his or her duty of confidentiality.  
2) Likewise, an attorney may ethically accept a deposit for fees not yet earned from a client by credit card, but must discharge his or her duty of confidentiality.  
3) By contrast, an attorney may not ethically accept a deposit for advances for costs and expenses from a client by credit card because the attorney must deposit such advances into a client trust account and cannot do so initially because they are paid through a merchant account subject to the credit card issuer's control and invasion.

## Ethics Hotline

The State Bar's toll-free statewide confidential service (1-800-2-ETHICS) provides California attorneys with information and research assistance on ethical questions. In 2006, Ethics Hotline staff answered 22,402 calls, distributed 775 packets of local bar association and State Bar ethics opinions to interested persons and made approximately 6,400 referrals to online resources posted at the State Bar's website. The chart provided below identifies the types of ethical issues most frequently raised by the Ethics Hotline inquirers in the year 2006.

| Frequently Named Ethics Issues by Percent             |      |      |
|---|------|------|
|   | 2005 | 2006 |
| Attorney Advertising and Solicitation                 | 10%  | 10%  |
| Client Confidential Information                       | 7%   | 7%   |
| Communications with Clients, Adverse Party and Others | 12%  | 9%   |
| Conflicts of Interest                                 | 15%  | 16%  |
| Fees and Costs for Legal Services                     | 17%  | 17%  |
| Misconduct/Moral Turpitude/Trial Conduct              | 9%   | 8%   |
| Unauthorized Practice of Law                          | 7%   | 7%   |

The Ethics Hotline staff obtains voluntary demographic data from the Ethics Hotline inquirers. Among the information obtained is whether the inquirer is a first-time or repeat caller to the Ethics Hotline. The information is provided in the chart below and includes data from 2006 and the two preceding years.



## **Publications**

### California Compendium on Professional Responsibility

The State Bar publishes the California Compendium on Professional Responsibility (“Compendium”), a compilation of local, state and national ethics information. It is updated annually. In 2006, 410 Compendium updates and new subscriptions were sold. Two of the Compendium’s key components are its collection of all of the COPRAC ethics opinions and its comprehensive topical index. These components are available as free online electronic resources at the State Bar website. This free online availability may be contributing to decreased interest in subscriptions to the hard copy reference book.

### California Rules of Professional Conduct and State Bar Act

California Rules of Professional Conduct and State Bar Act (“Publication 250”) is a convenient resource book which includes: The California Rules of Professional Conduct (past and present), the State Bar Act, California Rules of Court related to the State Bar and members of the State Bar, various statutes relating to discipline and attorneys and the duties of members of the State Bar, the Minimum Continuing Legal Education Rules and Regulations and the Rules and Regulations Pertaining to Lawyer Referral Services (including Minimum Standards for a Lawyer Referral Service in California). In 2006, approximately 3,000 copies of Publication 250 were sold. As is the case with the Compendium, free online availability of the State Bar rules and other selected codes contained in this publication may be contributing to decreased sales.

### Handbook on Client Trust Accounting for California Attorneys

The Handbook on Client Trust Accounting for California Attorneys (“Handbook”) is a practical guide created to assist attorneys in complying with the record keeping standards for client trust accounts that went into effect on January 1, 1993. The Handbook includes a copy of the standards and statutes relating to an attorney’s trust accounting requirements, a step-by-step description of how to maintain a client trust account and sample forms. In the Fall of 2006, the book was updated to address recent developments concerning a lawyer’s use of overdraft protection features on a client trust account. This update included the addition of a new Appendix 6 that provides the full text of State Bar Formal Opinion No. 2005-169. In 2006, 81 copies of the Handbook were sold. A free full-text online version of the Handbook was downloaded from the Bar’s website approximately 94,400 times during 2006.

### Ethics School Program Videotape

The Ethics School Program Videotape was produced in 1994 and was designed to offer the highlights of the State Bar’s Ethics School Program touching on the following four topics: formation of the attorney/client relationship, withdrawal from employment, client trust accounting and reportable actions. The program is approved for one hour of Minimum Continuing Legal Education (“MCLE”) credit in legal ethics.

## **Special Projects**

### Annual Statewide Ethics Symposium

COPRAC conducted its 10th Annual Ethics Symposium on May 6, 2006 at Santa Clara University School of Law in Santa Clara. The theme of the Symposium was “Protecting and Using Confidential Information.” Three COPRAC sponsored panel discussions were presented entitled “Preserving Confidentiality in a Technological Age,” “Inadvertent Disclosure: The Linking of Ethics and Evidence?,” and “Using Client Secrets – Reconciling the Duty of Confidentiality with a Lawyer’s Right to Defend Himself or Others.” Members of the Rules Revisions Commission conducted a fourth panel discussion entitled “Rules Revision Update.” A fifth presentation was given

on the ABA Presidential Task Force on Attorney-Client Privilege. The Honorable Jeremy D. Fogel (Judge, U.S. District Court, Northern District of California) delivered a keynote speech and State Bar President James Heiting and Dean Donald Polden presented opening remarks. There were 44 paid participants and a number of other attendees registered for the Symposium. The Activity Evaluation Results submitted by the attendees gave the Symposium high marks in all categories. The highest rating was in the category of significant intellectual and practical content.

#### Annual Meeting Programs

The Committee participated in four programs at the State Bar Annual Meeting held in Monterey in October 2006. The four programs sponsored by COPRAC were entitled "Recent Significant Developments Affecting the Law of Lawyers," "Other People's Money: An Overview of Client Trust Accounting," "Recognizing and Responding to Potential Conflicts of Interests" and "The Ethical Perils of Setting, Protecting and Collecting your Fees." One of COPRAC's programs was selected for videotaping to be made available as part of the State Bar's online MCLE resources.

#### Local and Specialty Bar Association Outreach Programs

In cooperation with local and specialty bar associations, State Bar staff and COPRAC conduct outreach ethics programs at various locations. In 2006, COPRAC conducted these presentations at the Association of Corporate Counsel - America, San Francisco Bay Area Chapter; the Orange County Bar Association's Client Relations and Mandatory Fee Arbitration Committees; and the Orange County Bar Association generally.

#### **Competence Resources on the State Bar Website**

In 2006, the ethics and competence-related resources on the Bar's website were updated and enhanced, including the addition of the following: 1) Rules Revision Commission meeting agendas, materials and action summaries, and creation of a new electronic public comment form that can be completed and submitted online; 2) year 2006 updates to the California Rules of Professional Conduct, the State Bar Act and other provisions governing the duties of attorneys; 3) COPRAC draft opinions and rule amendments circulating for public comment; 4) COPRAC formal advisory ethics opinions; and 5) updates to the Professional Competence online ethics newsletter.

## **OFFICE OF CERTIFICATION**

The Office of Certification developed standards for 13 certification and public protection programs and protected the public by efficiently administering objective standards for such programs.

In October 2006, the Office of Certification undertook a major reorganization. The Office of Certification became the Office of Special Admissions and Specialization and is now part of the Office of Admissions. The Office of Special Admissions and Specialization administer the Legal Specialization, Multijurisdictional Practice, *Pro Hac Vice*, Out-of-State Attorney Arbitration Counsel, Military Counsel, Foreign Legal Consultants, Practical Training of Law Students and Minimum Continuing Legal Education (“MCLE”) Providers programs.

Three programs previously administered by the Office of Certification – the Member Minimum Continuing Legal Education Program, Law Corporations and Limited Liability Partnerships – were transferred to the Member Services Center. In addition, the Lawyer Referral Services Program was assigned to the Access and Fairness Department, and the Office of the Secretary now maintains the Special Masters list.

### **Legal Specialization**

(California Rules of Court rule 983.5<sup>3</sup> and State Bar Rules & Regulations)

The Legal Specialization Program certifies attorneys who specialize in the following areas of law: appellate, criminal, estate planning, trust and probate, family, immigration and nationality, bankruptcy, taxation and worker’s compensation. In 2006, a new franchise and distribution law specialty was added. To become a certified specialist, an attorney must pass a written examination, possess special education and experience, and undergo peer review. Certified specialists must recertify every five years. Currently, there are approximately 4,100 certified legal specialists.

In addition, the State Bar currently has accredited five entities who certify attorneys in the following areas: accounting malpractice, business bankruptcy, consumer bankruptcy, creditor’s rights, civil trial advocacy, elder law, family trial advocacy, juvenile law (child welfare), legal malpractice and medical malpractice.

### **Multi-jurisdictional Practice**

(California Rules of Court rules 964-967<sup>4</sup> and State Bar Rules and Regulations)

Effective November 15, 2004, four categories of out-of-state attorneys are permitted to provide certain limited legal services in California under four separate Rules of Court: Attorneys currently licensed in another United State jurisdiction and residing in California can register with the State Bar to become Registered Legal Services Attorneys under rule 964<sup>5</sup>, permitting such attorneys to provide limited legal services to certain non-profit legal service entities. Similarly, attorneys currently licensed in another United State jurisdiction and residing in California can register with the State Bar to become Registered In-House Counsel under rule 965<sup>6</sup>, permitting such attorneys to be employees of certain corporations and legal entities and to provide limited legal services to their employers. Neither Registered Legal Service Attorneys nor Registered In-House Counsel can make any appearance in a California court or arbitration proceeding. At the end of 2006 there were approximately 13 Registered Legal Services Attorneys and 650 Registered In-House Counsel. Registered Legal Services Attorneys and Registered In-House Counsel must renew their registration annually and comply with an initial MCLE

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<sup>3</sup> Effective January 1, 2007, this rule was renumbered rule 9.35.

<sup>4</sup> Effective January 1, 2007, these rules were renumbered rules 9.45-9.48.

<sup>5</sup> Effective January 1, 2007, this rule was renumbered rule 9.45.

<sup>6</sup> Effective January 1, 2007, this rule was renumbered rule 9.46.

requirement. In-House Counsel must also comply with ongoing MCLE requirements as long as they remain registered with the State Bar. In addition, rules 966 and 967<sup>7</sup> permit out-of-state attorneys not residing in California to come to California temporarily and engage in limited activities relating to certain litigation and non-litigation matters.

### ***Pro Hac Vice***

(California Rules of Court rule 983<sup>8</sup>)

Attorneys licensed in other United States jurisdictions who intend to appear in California courts on particular cases must file a copy of a *pro hac vice* application with the State Bar. Such attorneys cannot reside in California. The State Bar assists the judicial system by maintaining a statewide record of those applications. In 2006, approximately 2,700 *pro hac vice* applications were filed with the State Bar.

### **Out of State Attorney Arbitration Counsel**

(California Rules of Court rule 983.4<sup>9</sup> and State Bar Rules & Regulations)

Attorneys licensed in other United States jurisdictions who intend to represent a party in the course of, or in connection with, arbitration proceedings in California must file an application for permission to do so with the State Bar. Such attorneys cannot reside in California. In 2006, approximately 300 applications were filed with the State Bar.

### **Military Counsel**

(California Rules of Court rule 983.1<sup>10</sup>)

Attorneys licensed in other United States jurisdictions who serve as judge advocates in California may appear in California courts under *pro hac vice*-like standards if they are made available by the Judge Advocate General to represent persons in the military service in California.

### **Registered Foreign Legal Consultants**

(California Rules of Court rule 988<sup>11</sup> and State Bar Rules & Regulations)

Attorneys licensed to practice in foreign jurisdictions who wish to practice the law of that jurisdiction in California must become a Registered Foreign Legal Consultant with the State Bar. To register, foreign attorneys must be currently licensed in the applicable foreign jurisdiction, have actively practiced the law of the foreign jurisdiction for a required number of years, provide specified security for claims for malpractice and pass a moral character review. Registered Foreign Legal Consultants can only practice the law of the foreign jurisdiction in which they are licensed and not the law of California. At the end of 2006 there were 35 Registered Foreign Legal Consultants practicing the law of 23 different foreign jurisdictions.

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<sup>7</sup> Effective January 1, 2007, these rules were renumbered rules 9.47 and 9.48, respectively.

<sup>8</sup> Effective January 1, 2007, this rule was renumbered rule 9.40.

<sup>9</sup> Effective January 1, 2007, this rule was renumbered rule 9.43.

<sup>10</sup> Effective January 1, 2007, this rule was renumbered rule 9.41.

<sup>11</sup> Effective January 1, 2007, this rule was renumbered rule 9.44.

## **MCLE Providers**

(Business & Professions Code section 6070, California Rules of Court rule 958<sup>12</sup> and State Bar Rules & Regulations)

The State Bar must approve courses taken by Members to fulfill their MCLE requirements. Courses offered by Approved Providers are acceptable to the State Bar. Persons who are not Approved Providers can obtain approval from the State Bar for individual courses. During 2006, the State Bar received approximately 1,325 applications for Approved Provider status and individual course approval. The State Bar renewed the Approved Provider status of 410 providers in 2006. At the end 2006, there were approximately 1,400 Approved Providers.

## **MCLE**

(Business & Professions Code section 6070, California Rules of Court rule 958<sup>13</sup> and State Bar Rules & Regulations)

With the exception of exempt members, all active members of the State Bar must meet MCLE requirements every three years. During 2006, the State Bar sent MCLE compliance cards to approximately 54,500 of its Group 1 members (last names A-G). During 2006, the State Bar suspended approximately 360 members for non-compliance, most of whom were Group 2 members (last names H-M). In addition, during 2006, the State Bar received 330 member credit requests.

## **Law Corporation**

(Business and Professions Code section 6160 *et seq.* and State Bar Rules & Regulations)

Attorneys who wish to practice law as a professional law corporation must be registered with the State Bar. Registration requirements include showing corporate structure, possessing security for claims and having an approved name. Law corporations renew their registrations annually. At the end of 2006, there were 7,150 registered law corporations

## **Limited Liability Partnerships**

(State Bar Rules & Regulations)

Professional partnerships wishing to practice law as a Limited Liability Partnership (“LLP”) must register with the State Bar. Among other things, LLPs must provide evidence of registration with the Secretary of State and a list of partners, and have an approved name. The LLPs must renew their registrations annually. At the end of 2006, there were 2,239 LLPs.

## **Practical Training of Law Students**

(California Rules of Court rule 983.2<sup>14</sup> and State Bar Rules & Regulations)

Law students who meet certain requirements may provide legal services under the supervision of a California licensed attorney. In 2006, the office processed approximately 1,550 Practical Training of Law Students certification applications and approximately 400 extensions.

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<sup>12</sup> Effective January 1, 2007, this rule was renumbered rule 9.31.

<sup>13</sup> Effective January 1, 2007, this rule was renumbered rule 9.31.

<sup>14</sup> Effective January 1, 2007, this rule was renumbered rule 9.42.

**Lawyer Referral Services**

(Business & Professions Code section 6155 and State Bar Rules & Regulations)

The State Bar must certify entities that operate for the direct or indirect purpose of referring potential clients to attorneys in California. These may be non-profit or for-profit entities. At the end of 2006, there were 65 certified lawyer referral services.

**Special Masters**

(State Bar Rules & Regulations and California Penal Code section 1524)

An attorneys who wishes to serve as a special master appointed by courts of record to accompany peace officers conducting searches for documentary evidence under the control of attorneys, physicians and clergy must submit an application to the State Bar. The State Bar maintains the list of attorneys who qualify for special master appointment. At the end of 2006 there were approximately 375 qualified special masters.

## GENERAL FUND AND MEMBERSHIP FEES

In 2006, the annual membership fee for active members was \$395. Members who declared that their gross annual income from all sources was less than \$40,000 were eligible for a waiver of 25 percent of the annual membership fee.

Most of the annual membership fee supports the State Bar's General Fund. A portion of the annual membership fee is assessed for the Client Security Fund (\$40), for the Building Fund (\$10) and for the Lawyer Assistance Program (\$10). The annual membership fee does not support the program for admission to the State Bar, which is a self-supported program. The annual membership fee does not support other programs considered non-germane to the practice of law; those programs are supported by voluntary contributions.

The State Bar's General Fund provides resources to operate programs that serve both the public and the Bar's active and inactive members. These programs include the attorney disciplinary system, administration of justice, governance, administration of the profession, program development and communications. The charts below show the annual expenditures for General Fund programs and the sub-programs within the Discipline Program that are supported by membership fees. For 2006, the Probation Unit is listed as a sub-program of Discipline. This sub-program was previously reported as part of the Office of Chief Trial Counsel. In 2003, the State Bar began allocating administrative costs to General Fund programs and sub-programs to better represent the true cost of these operating units. In prior years no such allocation was made and only direct program costs were reported.

| <b>GENERAL FUND</b>  |               |                   |
|--|---------------|-------------------|
| <b>2006 Unaudited Actual Program Expenditures (Dollars in Thousands)</b> |               |                   |
| <b>Program</b>   | <b>Amount</b> | <b>Percentage</b> |
| Discipline   | \$43,454      | 81.53%            |
| Administration of Justice  | 710           | 1.33%             |
| Governance   | 3,596         | 6.75%             |
| Administration of the Profession   | 1,309         | 2.46%             |
| Program Development  | 1,436         | 2.59%             |
| Communications & CBJ   | 2,671         | 5.01%             |
| Miscellaneous Non Departmental Expense                                   | 123           | 0.23%             |
| <u>TOTAL</u>   | \$53,299      | 100%              |

| <b>DISCIPLINE</b>   |               |                   |
|---|---------------|-------------------|
| <b>2006 Unaudited Actual Discipline Sub-Program Expenditures (Dollars in Thousands)</b> |               |                   |
| <b>Discipline Sub-Program</b>   | <b>Amount</b> | <b>Percentage</b> |
| Office of Chief Trial Counsel   | \$32,090      | 73.85%            |
| State Bar Court   | 7,725         | 17.78%            |
| Probation Unit  | 694           | 1.60%             |
| Fee Arbitration Program   | 780           | 1.79%             |
| Professional Competence   | 2,166         | 4.98%             |
| <u>TOTAL</u>  | \$43,455      | 100.00%           |

## GLOSSARY

### **Arbitration Enforcement**

A regulatory proceeding in which the State Bar Court may enforce a Mandatory Fee Arbitration award by placing a member on involuntary inactive status until the award has been paid.

### **Admission Application**

A petition filed by a State Bar applicant seeking a determination that the applicant has the good moral character required for admission to membership in the State Bar. The State Bar Court may grant or deny the application.

### **Admonition**

A written non-disciplinary sanction issued in cases that do not involve a Client Security Fund matter or a serious offense. An admonition may be imposed by the Office of the Chief Trial Counsel or by the State Bar Court pursuant to rule 264 of the Rules of Procedure of the State Bar of California.

### **Agreement in Lieu of Discipline**

An agreement between the member and the Office of the Chief Trial Counsel in lieu of disciplinary prosecution, pursuant to Business and Professions Code sections 6068(l) and 6092.5(i).

### **Alternative Discipline Program Decision**

A decision written by a State Bar Court Judge before a member can be enrolled in the Alternative Discipline Program (“ADP”). These decisions include findings of facts, conclusions of law and a “high” and “low” disciplinary recommendation. The “low” level of discipline is recommended if the member successfully completes ADP. The “high” level of discipline is recommended if the member does not successfully complete ADP. The State Bar Court categorizes these decisions as interim dispositions because a State Bar Court judge must subsequently issue a final decision once the member completes ADP, either successfully or unsuccessfully.

### **Backlogged complaints**

Complaints that have been pending in investigation longer than six full months from the date of receipt (or 12 months if the case is designated as complex) without dismissal, admonition of the member involved or the forwarding of a completed investigation for prosecution.

### **Business and Professions Code sections 6007(b)(1), (b)(2), (b)(3) and (c)**

Business and Professions Code sections 6007(b)(1), (b)(2), (b)(3) and (c) state that a member may be involuntarily enrolled as an inactive member if: the member asserts a claim of insanity or mental incompetence (Bus. & Prof. Code § 6007(b)(1)); a court issues an order assuming jurisdiction over the member’s practice (Bus. & Prof. Code § 6007(b)(2)); the member is unable to practice law because of a mental infirmity or illness or because of the habitual use of intoxicants or drugs (Bus. & Prof. Code § 6007(b)(3)); or the member is judged to present a substantial threat of harm to clients or the public (Bus. & Prof. Code § 6007(c)).

### **Client Trust Accounting School**

A four-hour program designed to provide members with practical information on the proper maintenance and handling of client trust accounts.

### **Complaint**

A communication, which is found to warrant an investigation of the alleged misconduct of a member, which, if the allegations are proven, may result in discipline of the member.

**Conviction Order**

An order issued by the State Bar Court Hearing Department in a conviction referral proceeding at the direction of the State Bar Court Review Department.

**Conviction Referral**

A formal disciplinary proceeding initiated after a member's criminal conviction to determine whether the conviction involves moral turpitude or other misconduct warranting discipline and, if so, to assess the appropriate level of discipline. A conviction referral proceeding is commenced by a referral order from the State Bar Court Review Department directing the Hearing Department to hold a hearing, file a conviction order and recommend the discipline to be imposed, if any, or to take other action on the issue or issues stated in the order.

**Deny Petition/Application**

See Probation, Denial of Petition/Application to Revoke.

**Disbarment**

A disciplinary action whereby the California Supreme Court expels an attorney from membership in the State Bar. The attorney's name is stricken from the Roll of California Attorneys and the attorney becomes ineligible to practice law. A member convicted of certain crimes may be summarily disbarred pursuant to Business and Professions Code section 6102(c).

**Dismissal**

The closure of a disciplinary proceeding and dismissal of charges by the State Bar Court or the Office of the Chief Trial Counsel, generally in the interest of justice, pursuant to an agreement in lieu of discipline or for some other specific reason, such as the case has no merit or there is insufficient evidence to prosecute the case.

**Ethics School**

An eight-hour program that focuses upon general principles of professional responsibility and law practice management and is designed to educate members in methods they can utilize to avoid complaints being made to the State Bar.

**Inquiry**

A communication concerning the conduct of a member of the State Bar received by the Office of the Chief Trial Counsel which is designated for evaluation to determine whether any action is warranted by the State Bar.

**Interim remedies**

A proceeding to determine whether the State Bar Court should order interim remedies short of involuntary inactive enrollment pursuant to Business and Professions Code section 6007(h), including, but not limited to, the restriction or supervision of the member's practice or the imposition of probation conditions.

**Inactive Enrollment**

The transfer of an active member to inactive status. A member on inactive status cannot practice law. The transfer can be made involuntarily pursuant to the Business and Professions Code section 6007(b) or (c) where 1) a member asserts a claim of insanity or mental incompetence, 2) a court issues an order assuming jurisdiction over a member's practice, 3) a member is unable to practice law because of a mental infirmity or illness or because of the habitual use of intoxicants or drugs, or 4) a member is judged to present a substantial threat of harm to clients or the public pursuant; or pursuant to the Mandatory Fee Arbitration Program's request to enroll a member involuntarily inactive due to the member's non-compliance with a Fee Arbitration Award. (See Arbitration

Enforcement.) A member may request the State Bar Court to lift an involuntary inactive enrollment. (See Return to Active Status.)

### **Referral Order**

Issued by the State Bar Court Review department to commence a conviction referral proceeding. Directs the State Bar Court Hearing Department to hold a hearing, file a conviction order and recommend the discipline to be imposed, if any, or to take other action on the issue or issues stated in the referral order.

### **Return to Active Status**

If a member is transferred inactive status involuntarily, pursuant to either Business and Professions Code section 6007(b)(1), (b)(2), (b)(3) or (c) or pursuant to an Arbitration Enforcement order, the member may request that the State Bar Court lift the involuntary inactive enrollment and return the member to active status. The court may either grant or deny the member's request.

### **Legal Specialization**

The Office of Certification's Legal Specialization Program's certification, or approval of the certification, of a member as a legal specialist in specified areas of the law. Also a type of regulatory proceeding, usually initiated by a member, in which the State Bar Court reviews a determination by the Legal Specialization Program that the member does not qualify for certification or recertification as a legal specialist.

### **License to Practice Cancelled**

A disciplinary action whereby the State Bar Court recommends to the Supreme Court that a member's license to practice law be cancelled.

### **Modification Order**

A disciplinary action whereby the State Bar Court issues an order that significantly modifies a stipulation or a decision in either a disciplinary matter or a regulatory matter.

### **Moral Character**

A moral character proceeding is a regulatory matter in which an applicant appeals an adverse moral character determination made by the Committee of Bar Examiners to the State Bar Court to determine whether the applicant possesses the requisite good moral character for admission to membership in the State Bar.

### **Notice of Disciplinary Charges**

A document filed in State Bar Court containing formal charges against a member.

### **Other Jurisdiction**

A disciplinary proceeding in which the State Bar Court determines whether a member should be disciplined in California for professional misconduct committed in another jurisdiction pursuant to Business and Professions Code section 6049.1, which states that, with limited exception, a finding that a member has committed professional misconduct in another jurisdiction is conclusive evidence that the member is culpable of professional misconduct in California.

### **Original matter**

A formal disciplinary proceeding initiated by the Office of the Chief Trial Counsel to determine whether a member violated the Rules of Professional Conduct or the State Bar Act and, if so, to assess the appropriate level of discipline to be imposed.

**Petition for Reinstatement**

A petition seeking readmission to the practice of law and to membership in the State Bar filed by a former member who resigned or was disbarred. The State Bar Court may grant or deny the petition.

**Private Reproval**

A censure or reprimand issued by the Supreme Court or the State Bar Court that is not a matter of public record unless imposed after the initiation of formal disciplinary proceedings. No period of suspension is imposed. The reproval may be imposed with duties or conditions.

**Probation**

A status whereby a member retains the legal ability to practice law subject to his or her compliance with terms, conditions and duties for a specified period of time.

**Probation, Denial of Petition/Application to Revoke**

A disciplinary action whereby the State Bar Court denies a member's motion for the revocation of the member's probation.

**Probation, Early Termination**

A disciplinary action whereby the State Bar Court terminates a member's probation before the original end date.

**Probation, Extend**

A disciplinary action whereby the State Bar Court extends a member's previously imposed probation term.

**Probation, Revocation**

Probation imposed in a prior discipline case is revoked based on the member's violation of one or more terms of that probation. *Also* a formal disciplinary proceeding whereby the State Bar Court recommends the revocation of a member's probation imposed in a prior discipline case based on the member's violation of one or more terms of that probation.

**Probation Monitor**

A practicing attorney who monitors a disciplined member's compliance with probation and other conditions. A probation monitor's duties are detailed in rule 2702 of the Rules of Procedure of the State Bar of California.

**Professional Responsibility Examination Orders**

A disciplinary action whereby the State Bar Court extends the time that a member has been given to take and pass the Multistate Professional Responsibility Examination ("MPRE"). The requirement to take and pass the MPRE is associated with discipline in a previously decided matter.

**Public Reproval**

A censure or reprimand issued by the Supreme Court or the State Bar Court that is a matter of public record. No period of suspension is imposed. The reproval may be imposed with duties or conditions.

**Reinstatement**

Readmission by the Supreme Court to the practice of law and to membership in the State Bar of a former member who resigned or was disbarred. A reinstatement matter is a regulatory proceeding in which the State Bar Court determines whether a resigned or disbarred member should be readmitted to membership. In order to be readmitted, the former member must demonstrate rehabilitation and present moral qualifications, as well as present learning and ability in the law. (*See also* Petition for Reinstatement.)

**Remand for Hearing**

An order by the Supreme Court remanding a proceeding back to the State Bar Court for rehearing. The Supreme Court may remand any disciplinary or regulatory proceeding.

**Reproval**

The lowest level of discipline imposed by the Supreme Court or State Bar Court. A reproval may be imposed with duties or conditions; however, suspension is not imposed. Reprovals can be either public or private.

**Request for Further Proceedings**

A request from a complaining witness after being advised that the complaint has been dismissed or the member has been admonished.

**Resignation Tendered with Charges Pending**

A written relinquishment of the right to practice law and resignation as a member of the State Bar by a member who is the subject of an investigation by the Office of the Chief Trial Counsel, a disciplinary proceeding under the Rules of Procedure of the State Bar, or a criminal charge or investigation. Supreme Court acceptance of a resignation is required to make it effective; however, as soon as a member submits a resignation in proper form, the member is transferred to inactive status and cannot practice law. An administrative case is opened in the State Bar Court when a member tenders a resignation with charges pending; however, no State Bar Court judicial action is required in the case.

**Resignation Tendered without Charges Pending**

A written relinquishment of the right to practice law and resignation as a member of the State Bar by a member who is not the subject of an investigation by the Office of the Chief Trial Counsel, a disciplinary proceeding under the Rules of Procedure of the State Bar, or a criminal charge or investigation.

**Resource Letter**

A letter from the Office of the Chief Trial Counsel to a member who probably violated, or potentially will violate, the Rules of Professional Conduct and/or the State Bar Act, where the violation is minimal in nature and would not lead to discipline of the member. The letter refers the member to various resources that may assist the member in avoiding problems and/or the filing of complaints against him or her in the future.

**Restrict practice**

A request received by the State Bar Court to restrict a member's practice for the purpose of protecting present and future clients pursuant to Business & Professions Code section 6007(h). Requests may include, but are not limited to, requests for restrictions as to the scope of the member's practice, the imposition of monetary accounting procedures and review of the member's performance by probation or other monitors. The court may grant or decline the request.

**Rule 1-110**

Rule 1-110 of the Rules of Professional Conduct requires a member to comply with conditions attached to public or private reprovals or other discipline administered by the State Bar. In a Rule 1-110 Violation disciplinary proceeding, the State Bar Court determines whether a member failed to comply with rule 1-110.

**Rule 955**

Rule 955 of the California Rules of Court, in part, requires members who are suspended from the practice of law to notify their clients, co-counsel, opposing counsel and courts in which they frequently practice that they are

suspended. In a Rule 955 Violation proceeding, the State Bar Court determines whether a member violated a Supreme Court order to comply with rule 955. Effective January 1, 2007, this rule was renumbered rule 9.20.

### **Stipulation**

An agreement between a member and the Office of the Chief Trial Counsel regarding a statement of facts, conclusions of law and the appropriate proposed disciplinary disposition. The stipulation is filed by the Office of the Chief Trial Counsel in the State Bar Court, which may accept, reject or, with the consent of the parties, order its modification.

### **Suspension**

A disciplinary action that prohibits a member from practicing law or from holding himself or herself out as a lawyer for a period of time set by the California Supreme Court. A suspension may be either stayed or actual.

### **Suspension, Interim**

The prohibition of a member from practicing law or from holding himself or herself out as a lawyer as a result of being convicted of a crime. An interim suspension order is disciplinary action in which the State Bar Court orders the interim suspension of a member. A State Bar Court order that lifts an interim suspension may also be referred to as an interim suspension order.

### **Suspension, Relief from Actual**

A suspended member may file a request for relief from actual suspension with the State Bar Court. Pursuant to Standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, the suspended member is required to prove his or her rehabilitation, present fitness to practice and present learning and ability in the law prior to returning to active status. The State Bar may grant or decline the requested relief.

### **Termination**

A proceeding closed due to an external cause, such as death of the member, disbarment in a separate matter or resignation with charges pending.

### **Vacate Previous Order**

A disciplinary action whereby the State Bar Court issues an order that vacates a significant order in a disciplinary proceeding.

### **Vacate Submission**

A disciplinary action whereby the State Bar Court issues an order that vacates the submission of a matter for decision.

### **Warning Letter**

A letter from the Office of the Chief Trial Counsel to a member who violated the Rules of Professional Conduct and/or the State Bar Act, but the violation is minimal in nature, does not involve significant harm to the client or the public and does not involve the misappropriation of client funds. The letter explains that, in the exercise of the Office of the Chief Trial Counsel's prosecutorial discretion, the matter was closed without disciplinary action.

### **Writ of Review**

A request that the Supreme Court review a State Bar Court proceeding filed by a party to a disciplinary proceeding. The Supreme Court can either grant or deny the request. The Supreme Court may also review the case on its own motion.