



THE STATE BAR OF CALIFORNIA

180 Howard Street. San Francisco. CA 94105-1639

Joseph Dunn
Executive Director/Secretary

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December 7, 2010

Attention—Chuck Kocher
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814

Re: 2010-041 Update from the State Bar of California

Dear Mr. Kocher:

The letter dated November 18, 2010, from the State Auditor (copy attached) requested that the State Bar provide an update on five listed recommendations from Report No. 2009-030. Enclosed are the State Bar's responses to each recommendation, prepared on the form prescribed by the State Auditor.

Sincerely,

Joseph Dunn
Executive Director

Enclosures

c: Assembly Judiciary Committee
Senate Judiciary Committee

Elaine M. Howle
State Auditor

Doug Cordiner
Chief Deputy

CALIFORNIA STATE AUDITOR

Bureau of State Audits

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November 18, 2010

2010-041

Judy Johnson, Executive Director
State Bar of California
180 Howard Street
San Francisco, California 94105

Dear Ms. Johnson:

The California Government Code, Section 8548.9 requires the State Auditor to produce an annual report regarding recommendations of the Bureau of State Audits that state agencies have not fully implemented within a year of issuance. According to our review of the State Bar of California's latest progress report to the State Auditor, your agency has not fully implemented some recommendation(s) that were issued more than a year ago. For your convenience, we have enclosed the recommendation(s). As required by the California Government Code, Section 8548.9, we request that for each recommendation your agency either:

1. Provide a written report to the State Auditor, the Senate and Assembly policy committees and budget subcommittees overseeing your agency, and the Department of Finance, explaining why your agency has not fully implemented the recommendation(s), or
2. Notify the State Auditor, the Senate and Assembly policy committees and budget subcommittees overseeing your agency, and the Department of Finance that your agency will begin or continue implementing the recommendation(s) within 90 days, and provide an estimated date by which the recommendation(s) will be fully implemented.

In responding to the State Auditor, we request that your agency complete the enclosed "Update on Recommendation That Is Not Fully Implemented" form and provide the documentary support requested in the form, even if your agency believes that it has already fully implemented a recommendation. The form is provided in Microsoft Word format at <http://www.bsa.ca.gov/SB1452.doc>. We request that your agency complete one form for each identified recommendation. Please mail your completed form(s) and documentary support to the following address: Attention—Chuck Kocher, Bureau of State Audits, 555 Capitol Mall, Suite 300, Sacramento, CA 95814. Also, to facilitate the uploading of your response(s) to the annual report, please email the completed form(s), in Microsoft Word format, to the following email address: ChuckK@bsa.ca.gov.

Judy Johnson, Executive Director
State Bar of California
November 18, 2010
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Two of the outstanding recommendations related to this audit report were initially reported in our earlier report, 2007-030—*State Bar of California: With Strategic Planning Not Yet Completed, It Projects General Fund Deficits and Needs Continued Improvement in Program Administration*, and you recently provided a response regarding those recommendations. When completing the enclosed form for those recommendations, numbers 4 and 5, you may refer to your earlier response on the form or you may provide additional information.

As provided in California Government Code, Section 8546.2, state agencies must respond to this request for information in the form and at intervals prescribed by the State Auditor. Therefore, please provide your response(s) in the form prescribed in this letter **within 10 business days from the date your agency receives this letter**, or no later than December 7, 2010. If you have any questions, please contact Chuck Kocher at (916) 445-0255.

Sincerely,



ELAINE M. HOWLE, CPA
State Auditor

Enclosures

cc: Peggy Van Horn, Chief Financial Officer, State Bar of California
Larry Yee, Acting General Counsel, State Bar of California

**California State Auditor
Bureau of State Audits**

List of Recommendations That Are Not Fully Implemented

State Bar of California, 2009-030, July 2009

State Bar of California: It Can Do More to Manage Its Disciplinary System and Probation Processes Effectively and to Control Costs

As of its most recent progress report to the State Auditor, the State Bar of California had not fully implemented the following recommendations contained within the above referenced audit report:

- **Recommendation No. 1**—To make sure that it is using the most cost-effective methods to recover discipline costs, the State Bar should complete a cost-benefit analysis to determine whether the benefits associated with using collection agencies outweigh the costs. If it determines that the collection agencies are, in fact, cost effective, the State Bar should redirect in-house staff to other disciplinary activities.
- **Recommendation No. 2**—The State Bar should also research the various collection options available to it, such as the Franchise Tax Board's intercept program.
- **Recommendation No. 3**—To fulfill its responsibility to protect the public and its mission to assist attorneys to successfully complete the terms of their probation, the State Bar should ensure that it effectively communicates with and monitors attorneys on probation by doing the following: Continue its efforts to determine the appropriate caseload level for its staff to effectively monitor probationers and adjust staffing as appropriate.
- **Recommendation No. 4**—The State Bar should continue acting on recommendations from our 2007 report related to the following: Take steps to reduce its inventory of backlogged cases.
- **Recommendation No. 5**—The State Bar should continue acting on recommendations from our 2007 report related to the following: Improve its processing of disciplinary cases by more consistently using checklists and performing random audits.

For each recommendation listed above, please complete a separate "Update on Recommendation That Is Not Fully Implemented" form (see attached form). For a form in Microsoft Word format, please go to <http://www.bsa.ca.gov/SB1452.doc>.

For context related to the recommendations above, please refer to report 2010-406 *Implementation of State Auditor's Recommendations*, published in February 2010, online at www.bsa.ca.gov/reports.

UPDATE ON RECOMMENDATION THAT IS NOT FULLY IMPLEMENTED

Please complete a separate "Update on Recommendation That Is Not Fully Implemented" form for each recommendation.

Department Name: _____

Report Number: _____

1) Which recommendation is addressed on this form? Please identify the specific recommendation number noted in the State Auditor's letter. _____

2) Has your agency fully implemented the recommendation? _____

If **Yes**, answer **only** questions 3 and 4 below.

If **No**, answer **only** question 5 and other questions, as directed in question 5.

3) By what date did your agency fully implement this recommendation? _____

4) Explain how your agency has fully implemented the recommendation. Please also provide copies of any supporting documents or other evidence including, but not limited to, documents referenced in your explanation.

5) Does your agency intend to fully implement the recommendation ? _____

If **Yes**, answer **only** questions 6 and 7 below.

If **No**, answer **only** question 8 below.

6) By what date will your agency fully implement the recommendation? _____

7) Please describe your agency's plan for implementing the recommendation.

8) Provide your agency's reason(s) for not fully implementing the recommendation.

Update on Recommendation That Is Not Fully Implemented

Please complete a separate "Update on Recommendation That Is Not Fully Implemented" form for each recommendation.

Department Name: State Bar of California

Report Number: 2009-030 (July 2009)

- 1) Which recommendation is addressed on this form? Please identify the specific recommendation number noted in the State Auditor's letter. 1
- 2) Has your agency fully implemented the recommendation? No
If **Yes**, answer **only** questions 3 and 4 below.
If **No**, answer **only** question 5 and other questions, as directed in question 5.
- 3) By what date did your agency fully implement this recommendation? _____
- 4) Explain how your agency has fully implemented the recommendation. Please also provide copies of any supporting documents or other evidence including, but not limited to, documents referenced in your explanation. _____

- 5) Does your agency intend to fully implement the recommendation? Yes
If **Yes**, answer **only** questions 6 and 7 below.
If **No**, answer **only** question 8 below.
- 6) By what date will your agency fully implement the recommendation? February 1, 2011
- 7) Please describe your agency's plan for implementing the recommendation. The State Bar has determined it is more beneficial and effective to use collection agencies to collect all delinquent accounts for discipline costs and has contracted with a new collection vendor under the Enhanced Collections Program of the Administrative Offices of the Court. The State Bar is currently in discussions with a second collection vendor, to help with handling the larger number of delinquent accounts for the Client Security Fund. The goal is to reach an agreement and implementation on or before February 1, 2011.
- 8) Provide your agency's reason(s) for not fully implementing the recommendation. _____

Update on Recommendation That Is Not Fully Implemented

Please complete a separate "Update on Recommendation That Is Not Fully Implemented" form for each recommendation.

Department Name: State Bar of California

Report Number: 2009-030 (July 2009)

- 1) Which recommendation is addressed on this form? Please identify the specific recommendation number noted in the State Auditor's letter. 2
- 2) Has your agency fully implemented the recommendation? No
If **Yes**, answer **only** questions 3 and 4 below.
If **No**, answer **only** question 5 and other questions, as directed in question 5.
- 3) By what date did your agency fully implement this recommendation? _____
- 4) Explain how your agency has fully implemented the recommendation. Please also provide copies of any supporting documents or other evidence including, but not limited to, documents referenced in your explanation. _____

- 5) Does your agency intend to fully implement the recommendation? Yes
If **Yes**, answer **only** questions 6 and 7 below.
If **No**, answer **only** question 8 below.
- 6) By what date will your agency fully implement the recommendation? By September 2011
- 7) Please describe your agency's plan for implementing the recommendation. The State Bar will follow the recommendation and re-explore legislation in the next legislative session to authorize its participation in the Franchise Tax Board's intercept program or other statutory programs, notwithstanding policy reasons for legislative denial of a similar proposal in 2001. (California State Auditor, Report No. 99030, p. 21; Sen. Com. on Judiciary, Analysis of Sen. Bill No. 352 (2001-2002 Reg. Sess.) as amended April 30, 2001, p. 7.)
- 8) Provide your agency's reason(s) for not fully implementing the recommendation. _____

Update on Recommendation That Is Not Fully Implemented

Please complete a separate "Update on Recommendation That Is Not Fully Implemented" form for each recommendation.

Department Name: State Bar of California

Report Number: 2009-030 (July 2009)

- 1) Which recommendation is addressed on this form? Please identify the specific recommendation number noted in the State Auditor's letter. 3
- 2) Has your agency fully implemented the recommendation? Yes
If **Yes**, answer **only** questions 3 and 4 below.
If **No**, answer **only** question 5 and other questions, as directed in question 5.
- 3) By what date did your agency fully implement this recommendation? July 21, 2010
- 4) Explain how your agency has fully implemented the recommendation. Please also provide copies of any supporting documents or other evidence including, but not limited to, documents referenced in your explanation. Based on the consultant's review of staffing and existing resources and the experience of the Probation Unit in meeting mission goals with its current staffing level, the State Bar has set a caseload of 170 for probation deputies. To make appropriate adjustments as may be needed, the State Bar is continuing to monitor and evaluate this caseload on the effectiveness of staff to communicate and monitor probationers.
- 5) Does your agency intend to fully implement the recommendation? _____
If **Yes**, answer **only** questions 6 and 7 below.
If **No**, answer **only** question 8 below.
- 6) By what date will your agency fully implement the recommendation? _____
- 7) Please describe your agency's plan for implementing the recommendation. _____

- 8) Provide your agency's reason(s) for not fully implementing the recommendation. _____

Update on Recommendation That Is Not Fully Implemented

Please complete a separate "Update on Recommendation That Is Not Fully Implemented" form for each recommendation.

Department Name: State Bar of California

Report Number: 2009-030 (July 2009)

- 1) Which recommendation is addressed on this form? Please identify the specific recommendation number noted in the State Auditor's letter. 4
- 2) Has your agency fully implemented the recommendation? No
If **Yes**, answer **only** questions 3 and 4 below.
If **No**, answer **only** question 5 and other questions, as directed in question 5.
- 3) By what date did your agency fully implement this recommendation? _____
- 4) Explain how your agency has fully implemented the recommendation. Please also provide copies of any supporting documents or other evidence including, but not limited to, documents referenced in your explanation. _____

- 5) Does your agency intend to fully implement the recommendation? See response to 7) below.
If **Yes**, answer **only** questions 6 and 7 below.
If **No**, answer **only** question 8 below.
- 6) By what date will your agency fully implement the recommendation? _____
- 7) Please describe your agency's plan for implementing the recommendation. The Office of Chief Trial Counsel continues to take steps to reduce its inventory of backlogged cases. (See attached.)
- 8) Provide your agency's reason(s) for not fully implementing the recommendation. _____

Update on Recommendation That Is Not Fully Implemented

Please complete a separate "Update on Recommendation That Is Not Fully Implemented" form for each recommendation.

Department Name: State Bar of California

Report Number: 2009-030 (July 2009)

- 1) Which recommendation is addressed on this form? Please identify the specific recommendation number noted in the State Auditor's letter. 5
- 2) Has your agency fully implemented the recommendation? Yes
If **Yes**, answer **only** questions 3 and 4 below.
If **No**, answer **only** question 5 and other questions, as directed in question 5.
- 3) By what date did your agency fully implement this recommendation? March 2009
- 4) Explain how your agency has fully implemented the recommendation. Please also provide copies of any supporting documents or other evidence including, but not limited to, documents referenced in your explanation. To ensure that checklists of significant tasks are consistently used to improve processing of disciplinary cases, regular reminders and training sessions have been provided to Office of Chief Trial Counsel staff. In addition, Supervising Deputy Trial Counsel and managers are conducting monthly random audits of opened investigative files.
- 5) Does your agency intend to fully implement the recommendation? _____
If **Yes**, answer **only** questions 6 and 7 below.
If **No**, answer **only** question 8 below.
- 6) By what date will your agency fully implement the recommendation? _____
- 7) Please describe your agency's plan for implementing the recommendation. _____

- 8) Provide your agency's reason(s) for not fully implementing the recommendation. _____

Attachment to Answer 7)

**State Bar of California
Report No. 2009-030 (July 2009)
Update on Recommendation 4 in State Auditor's Letter**

Because of the significant increase in complaints opened for investigations in 2009 and 2010, as reported to the Bureau of State Audits by the State Bar in November 2010, the State Bar anticipates a significant increase in the number of cases that must be reported as backlogged as of December 31, under Business and Profession Code sections 6086.15 and 6094.5.¹ As of December 2, 2010, the number of pending investigations still open and not completed within the six- and 12-month goals of Section 6094.5 was 720 cases (“investigative backlog”). At the same time, under Section 6086.15, the inventory of cases where the investigations have been completed but notice of disciplinary charges have not yet been filed, was 1,093 (“notice opened inventory”), a reduction from the number reported as of December 31, 2009. To address the continued backlog, the State Bar’s Office of Chief Trial Counsel (OCTC) has taken the following measures:

1. Goals

OCTC has set a goal of reducing the investigative backlog to 550-600 cases by the end of 2010 and continuing to reduce the Notice Open Inventory to 500 in 12 months. OCTC also adopted a goal to reduce the average age of the inventory, so that 75% of all cases would have charges filed or otherwise be resolved in six months, 95% in twelve months, and 100% in 18 months.

2. Creation of Notice Drafting Teams

In August 2010, OCTC created dedicated teams of notice drafting attorneys. Over a dozen attorneys are involved - more than one quarter of the line attorney staff. This required shifting a number of attorneys from other duties to dedicated notice drafting. OCTC has, on occasion, used such teams in the past to significantly reduce the inventory of backlog cases.

3. Everyone Pitches In

In November, the Chief Trial Counsel instructed all attorneys not assigned to the notice drafting team to do two Notice Open cases per month, for a trial period of six months.

¹ A major cause of the increase in the State Bar’s inventory of backlogged cases was the influx of a massive number of complaints regarding attorney misconduct in loan modification services. This occurred simultaneously with the collapse of the American housing market in late 2008 and early 2009, and the resulting need for legal services by many consumers seeking to avoid foreclosure or relief from their mortgages. Although the work of the OCTC Loan Modification Task Force has set a national model of cooperating with local, state and federal agencies that are also pursuing loan modification misconduct, the increased workload and number of complaints has resulted in a much larger inventory of backlogged cases.

This directive applies to every attorney in the office, from the most junior trial attorneys to the Chief Trial Counsel.

4. Obtaining Assistance from other State Bar Attorneys

OCTC has received assistance from other departments in the State Bar. Specifically, the Office of General Counsel has volunteered to draft a total of 75 notices prior to January 31, 2011. OCTC is researching other ways to bring more attorney resources to this project.

5. Enhanced Settlement Authority

OCTC has taken a number of steps to improve the settlement process. Enhanced settlement authority has been given to line attorneys acting within the established guidelines that ensure public protection. The State Bar is working with respondents' counsel to create a system for dedicated settlement days overseen by the State Bar Court.

6. More Rapid Resolution of Minor Misconduct Cases

There are a large number of pending cases in our disciplinary system, in all phases of investigation and prosecution, that involve only minor misconduct such as a matter where an attorney's failure to perform services did not significantly harm the rights of a client. In order to focus resources on the more serious cases, such as loan modification cases, it is imperative that the minor misconduct cases be moved through the system more quickly and resolved, when appropriate, at earlier stages than required at present. Accordingly, OCTC attorneys are now encouraged and authorized to resolve minor misconduct cases at the earliest possible stages with such remedies as warning letters, directional letters, and even dismissal where appropriate.

7. Prioritization

As a preliminary step to more efficient handling of matters pending in investigations, matters are subjected to a consistent prioritization based on the seriousness of the alleged acts of misconduct, with all matters rated on a 1-3 scale with one being the highest priority. This has allowed OCTC to identify and dispose of the lowest rated matters (those that do not involve serious infractions or harm to clients) with a variety of non-disciplinary remedies, including warning letters and directional letters.

8. Intake Guidelines

OCTC has revised its Intake policies to clarify the threshold for screening the sufficiency allegations before a matter is sent from Intake to Investigation.

9. Centralized Decision-Making Regarding Further Investigations

A common problem in getting disciplinary charges filed is that many attorneys seek further investigation before the filing of such charges. This is partly due to the differences between each attorney's determinations of the sufficiency of evidence necessary in a completed investigation. To bring more uniformity to these decisions, OCTC has now centralized the authority to request further investigation with two senior attorneys. In addition, when further investigation is necessary, these two attorneys will assure that the investigators give a high priority to cases returned for further investigation.

10. Uniform Office Policies to Draft More Concise Notices

OCTC has instructed its attorneys who draft notices of disciplinary charges to use a common format, incorporating short concise statements rather than lengthy pleadings. This efficiency will also help reduce our inventory.

The attitude of OCTC as it approaches this challenge is one of determination. OCTC has put in place a number of policies and procedures to reduce the backlog while preserving public protection. OCTC staff understands the primary mission of the State Bar of California is public protection and is dedicated to that mission.



THE STATE BAR OF CALIFORNIA

180 Howard Street
San Francisco, Ca 94105
(415) 538-2000

Report title: Report to California State Auditor
Update on Recommendations Not Fully Implemented
Statutory citation: Government Code section 8548.9, subdivision (c)
Date of report: December 7, 2010

The State Bar of California has submitted a report to the Legislature in accordance with Government Code section 8548.9, subdivision (c). Under Government Code section 8546.2, the California State Auditor has requested the State Bar to provide updates on implementing five recommendations in its Report No. 2009-030 (July 2009). Under Government Code section 8548.9, copies of the reports are provided to the Senate and Assembly Judiciary Committees, which oversee the State Bar.

The following summary of the report is provided under the requirements of Government Code section 9795.

The report provides the State Auditor with updates on five recommendations listed by the State Auditor in its 2009 audit of the State Bar.

Recommendation 1: the State Bar has determined that it is more beneficial and effective to use collection vendors under the Enhanced Collections Program of the Administrative Offices of the Courts to collect all delinquent disciplinary costs.

Recommendation 2: the State Bar will seek legislation authorizing it to participate in the Franchise Tax Board's intercept program during the 2011 legislative calendar.

Recommendation 3: the State Bar has determined a caseload for probation unit deputies to allow for the effective monitoring of probationers.

Recommendation 4: the State Bar has taken steps to reduce the inventory of backlogged cases.

Recommendation 5: the State Bar's Office of Chief Trial Counsel is conducting monthly random audits of open investigative files, as well as regular training and reminders, to ensure consistent use checklists and to improve its processing of disciplinary cases.

The full report can be accessed here:

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

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