

2009 Report on the State Bar of California Discipline System



The full report is available at: <http://www.calbar.ca.gov> > Reports

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

**The State Bar of California
April 2010**

TABLE OF CONTENTS

INTRODUCTION	1
OFFICE OF THE CHIEF TRIAL COUNSEL	2
Toll-Free Telephone Line: Basic Data.....	2
Inquiries (by case number)	3
Allegation Categories by Percent.....	3
Inquiries (by member) – Dispositions.....	4
Closed Inquiries (by member) – Dispositions.....	4
Reportable Actions – Received.....	6
Inquiries and Reportable Actions – Advanced to Investigation/Trial Unit.....	6
Criminal Case Monitoring Activity	6
OCTC – Dispositions	7
Pendency of Open and Closed Complaints	8
Age of Open Complaints at Year’s End	8
Cases Pending Beyond Six (or 12) Months After Receipt Excluded From Backlog	11
Other Disciplinary Matters Received*	12
Other Regulatory Matters Received*	12
6180/6190 Cases.....	13
6126.3 Cases.....	13
Alternative Discipline Program.....	13
Audit and Review Unit – Requests for Review.....	14
Audit and Review Unit – Dispositions	14
STATE BAR COURT	16
Cases Filed and Closed in The State Bar Court	17
Significant State Bar Court Orders Affecting Practice	21
California Supreme Court Jurisdiction and Dispositions	22
Lawyers Assistance Program and Alternative Discipline Program.....	22
CLIENT SECURITY FUND	25
OFFICE OF PROBATION	27
OFFICE OF MANDATORY FEE ARBITRATION	28
Mandatory Fee Arbitration Requests Filed.....	29
Enforcement of Award Activity	30
Activities of Committee on Mandatory Fee Arbitration	31
PROFESSIONAL COMPETENCE	33
OFFICE OF ADMISSIONS, OFFICE OF LEGAL SERVICES AND OFFICE OF THE SECRETARY	41
GENERAL FUND AND MEMBERSHIP FEES	45
GLOSSARY	46

Published April 2010
The State Bar of California
Website: <http://www.calbar.ca.gov/>

180 Howard Street
San Francisco, CA 94105-1639
(415) 538-2000

1149 South Hill Street
Los Angeles, CA 90015-2299
(213) 765-1000

INTRODUCTION

The State Bar of California (“State Bar”) has been in existence since 1927 as a non-profit public corporation and acts 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 law in California must be active members of the State Bar. As of December 31, 2009, the number of active attorneys in California was approximately 169,411 making the State Bar the largest integrated state bar in the nation. As of that date, there were also approximately 45,184 inactive members of the State Bar.

The State Bar is governed by a Board of Governors, which consists of a president and 22 members. 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. Six “public,” non-lawyer members are 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, the courts and the legal profession from lawyers who fail to adhere to their professional responsibilities. Most of the 2009 annual membership fee of \$410 supports the State Bar’s public protection programs. In 2009, General Fund expenditures totaled approximately \$62,802,000. Of this amount, approximately \$52,351,000 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, public protection and other related regulatory functions are:

The Office of the Chief Trial Counsel, which receives, investigates and prosecutes complaints against California attorneys;

The State Bar Court, which serves as the administrative arm of the California Supreme Court in the adjudication of disciplinary and regulatory matters involving California attorneys;

The Client Security Fund, which reimburses victims for losses due to attorney theft or acts equivalent to theft;

The Office of Probation, which monitors attorneys who have been ordered to comply with certain conditions relating to State Bar disciplinary matters;

The Office of Mandatory Fee Arbitration, which administers a statewide program for the arbitration of fee disputes between attorneys and their clients;

Professional Competence Programs, which assist the State Bar’s ongoing efforts to improve the quality of legal services by maintaining and enhancing the professional standards of California lawyers;

The Office of Special Admissions and Specialization, the Member Services Center, the Access and Fairness Department and the Office of the Secretary, which develop standards for certification and oversight of non-disciplinary regulatory programs relating to the practice of law and administer such programs; and

The General Fund, which 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 Committee on Discipline Oversight, 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 telephone line (1-800-843-9053). Many of the public's initial contacts with the State Bar are made through this telephone 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 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, 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 2009, approximately 92,000 calls were received at the toll-free number. Primarily due to an increase in the number of lawyers engaged in professional misconduct targeted at vulnerable homeowners, including loan modification fraud, the number of calls received by the Intake Unit and the number of inquiries opened and forwarded to investigations by the Intake Unit increased dramatically in 2009. 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 2009, 73,314 complaint forms were downloaded.

Toll-Free Telephone Line: Basic Data					
	2005	2006	2007	2008	2009
Total telephone calls received	70,902	72,916	73,259	73,473*	92,039
* Only one-third of the data for May 2008 was captured. As a result, the number of calls in 2008 was greater than 73,473.					

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.

Inquiries (by case number)					
	2005	2006	2007	2008	2009
Inquiries opened*	11,620	11,647	11,739	11,664	14,803
* A single inquiry may include more than one State Bar member. There were 17,038 members included in the 14,803 inquiries opened in 2009.					

An inquiry is advanced to an Investigation/Trial Unit if the Intake Unit determines that the inquiry, either on its face or following a 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 2009 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 of 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).

Allegation Categories by Percent					
	2005	2006	2007	2008	2009
Duties to clients	16%	15%	15%	15%	15%
Duties to State Bar	5%	5%	4%	5%	2%
Fees	11%	11%	13%	14%	18%
Handling of funds	11%	11%	12%	10%	7%
Interference with justice	9%	11%	10%	11%	9%
Performance	37%	34%	35%	34%	35%
Personal behavior	10%	12%	10%	10%	11%
Professional employment	1%	1%	1%	1%	3%
<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 2009, the Intake Unit resolved 15,981 inquiries. 5,378 of those inquiries were advanced to an Investigation/Trial Unit. The bases for the closure of the remaining inquiries are detailed on the following page in the table entitled, "Closed Inquiries – Dispositions."

Inquiries (by member) – Dispositions					
	2005	2006	2007	2008	2009
Inquiries advanced to investigation	3,196	3,151	3,010	2,802	5,378
Inquiries closed	9,962	11,079	10,647	10,845	10,603
<u>TOTAL</u>	13,158	14,230	13,657	13,647	15,981

The Intake Unit strives to resolve every open inquiry within 60 days of its receipt. Therefore, many inquiries opened in late 2008 were resolved in early 2009. As a result, the number of inquiries resolved in any given year does not necessarily equal, and could potentially be greater than, the number of inquiries opened that year. For example, the Intake Unit resolved 15,981 inquiries in 2009 and opened 17,038 inquiries that same year.

Closed Inquiries (by member) – Dispositions					
	2005	2006	2007	2008	2009
Alternative Dispute Resolution	119	72	44	41	15
Complainant's failure to cooperate	258	276	290	476	289
Criminal conviction complaint*	905	932	1,031	725	764
Disbarred in separate matter	30	39	44	59	36
Duplicate complaint	56	81	76	53	59
Fee arbitration matter†	535	484	471	341	252
Insufficient facts/evidence	5,968	6,693	6,604	7,330	7,082
Lack of OCTC jurisdiction	136	78	64	77	93
Matter resolved between complainant and attorney	198	192	151	149	113
Resigned with charges pending	283	347	265	114	57
Other	1,474	1,885‡	1,607	1,480	1,843
<u>TOTAL</u>	9,962	11,079	10,647	10,845	10,603

* 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 warranting discipline, 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 complainant 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 conduct 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 specified 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 based upon 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, regardless 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 2009, the Intake Unit received 3,407 reportable actions.

Reportable Actions – Received					
	2005	2006	2007	2008	2009
Banks	1,946	1,811	2,617	1,979	3,031
Courts	102	134	113	98	103
Insurers	153	152	105	103	139
Self reports by attorneys	70	83	94	149	118
Other	*	*	*	14*	16*
<u>TOTAL</u>	2,271	2,180	2,929	2,343	3,407
* The tracking of Reportable Actions received by other sources, including opposing counsel, began in March 2008.					

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.

Inquiries and Reportable Actions – Advanced to Investigation/Trial Unit					
	2005	2006	2007	2008	2009
Inquiries advanced to investigation	3,196	3,151	3,010	2,802	5,378
Reportable actions advanced to investigation	333	403	558	475	602
<u>TOTAL</u>	3,529	3,554	3,568	3,277	5,980

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 warranting discipline, 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 2009, OCTC received 343 new criminal cases for monitoring by the Intake Unit.

Criminal Case Monitoring Activity					
	2005	2006	2007	2008	2009
Received during reporting period	283	285	266	293	343
Closed during reporting period*	263	310	277	242	200
Pending at reporting period end	362	341	333	402	555
Convictions referred to State Bar Court	92	102	130	90	122
* 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.)

OCTC – Dispositions					
	2005	2006	2007	2008	2009
Warning letter	286	232	131	247	209
Resource letter	30	23	9	35	47
Agreement in lieu of discipline	39	25	28	32	24
Dismissal	2,660	2,015	1,784	2,115	2,480
Termination	300	429	187	155	279
Resignation tendered with charges pending	63	84	93	63	81
Stipulations filed* (with number of complaints contained in the stipulations‡)	168 (296 complaints)	136 (195 complaints)	99 (127 complaints)	115 (155 complaints)	123 (167 complaints)
Notice of disciplinary charges (“NDC”) filed† (with number of complaints contained in the NDCs‡)	347 (544 complaints)	369 (619 complaints)	319 (542 complaints)	369 (660 complaints)	261 (556 complaints)
<p>* These numbers include only those stipulations filed prior to OCTC’s filing of a notice of disciplinary charges (“NDC”).</p> <p>† 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.</p> <p>‡ Stipulations and NDCs may contain more than one complaint against the same attorney.</p>					

The statutory goal of the Investigation/Trial Units is to complete investigations within six months or, in the case of investigations designated as complex, within 12 months after receipt of the complaint. (Bus. & Prof. Code, § 6094.5, subd. (a).) Cases that have not been closed or resolved by these statutory time periods are reported as backlog cases. This statutory backlog at the end of 2009 was 348 cases. Detailed information on the pendency of matters in the Office of the Chief Trial Counsel, as well as the backlog, is included in the two following tables.

Pendency of Open and Closed Complaints					
	2005	2006	2007	2008	2009
Average pendency of investigations open at the end of the reporting year	169 days	151 days	165 days	184 days	147 days
Average pendency of closed investigations at time of closure since 1999*	190 days	187 days	186 days	187 days	186 days
Average pendency of investigations closed or forwarded within reporting year†	-	-	-	-	176 days
Average pendency of inquiries closed or forwarded within reporting year†	-	-	-	-	48 days

* This does not include the time that the closed matters were in the Intake Unit.

† The Office of the Chief Trial Counsel began reporting the pendency of both inquiries and investigations closed within the reporting year starting in 2009 based upon the 2009 Recommendations of the Bureau of State Audits (2009-030).

Age of Open Complaints at Year's End					
	2005	2006	2007	2008	2009
Open six months or less	1,019	1,247	1,371	1,158	2,372
Open more than six months	389	323	525	446	556
- Open more than six but not nine months	178	173	257	143	307
- Open more than nine but not 12 months	93	59	122	103	74
- Open more than 12 but not 21 months	91	66	118	141	92
- Open more than 21 months	27	25	28	59	83
Total Open	1,408	1,570	1,896	1,604	2,928
Backlog	315	246	327	290*	348†

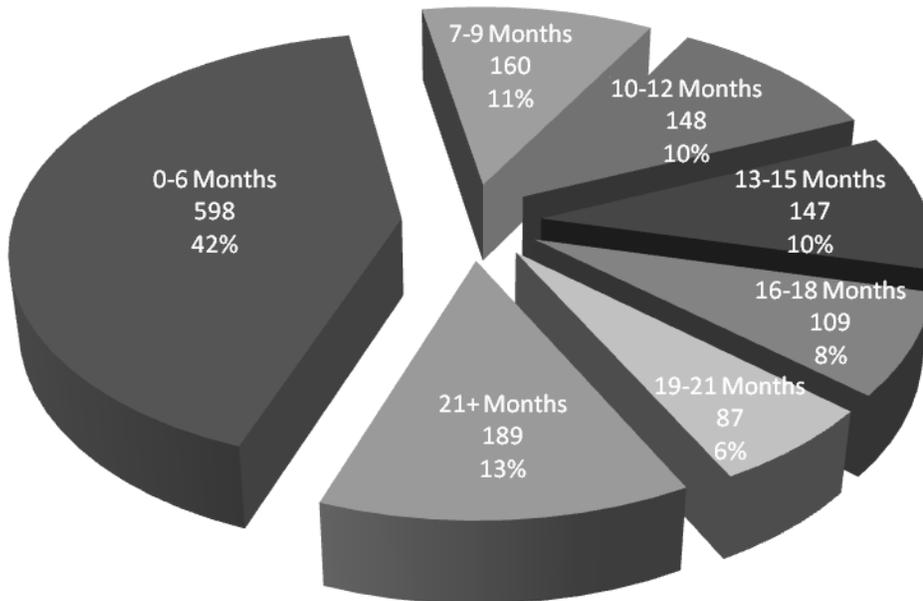
* This number does not include 21 cases in which a Special Deputy Trial Counsel – an active member of the State Bar who is not an employee of the State Bar, a member of the Board of Governors or a Judge Pro Tempore of the State Bar Court – was appointed to act entirely in the Chief Trial Counsel's place or stead as required by rule 2201 of the State Bar of California Rules of Procedure.

† Based upon the 2009 Recommendations of the Bureau of State Audits (2009-030), this number includes inquiries that were assigned to the Intake Unit for over six months. (There were seven such inquiries.) Of the reported matters, 81 were designated as complex matters. This number does not include complaints filed against non-attorneys, cases that have been reopened, cases in which a Special Deputy Trial Counsel was appointed to act in the Chief Trial Counsel's place or stead or cases that have been abated or held. Please see the following table and accompanying text for additional information on why this data is not included.

Business and Professions Code section 6086.15 requires the State Bar to include in its Annual Discipline Report, among other things, “[t]he existing backlog of cases within the discipline system, including, but not limited to, the number of complaints as of December 31 of the preceding year that were pending beyond six months after receipt without dismissal, admonition, or the filing of a notice to show cause.” (This statute was originally adopted in 1992 and last amended in 2001. Today, the Office of the Chief Trial Counsel refers to a “notice to show cause” as a “notice of disciplinary charges”.) When an Investigation/Trial Unit determines that a complaint should be prosecuted, the Unit changes the matter’s status to Notice Open (or NTS/OPN), for the formal preparation of charges and initiation of trial proceedings in the State Bar Court. As of December 30, 2009, there were 1,438

NTS/OPN matters. The following chart details the number and age of those cases. Much of the Investigation/Trial Units' trial work is reflected in the State Bar Court data included in this Annual Report.

NTS/OPN Matters as of December 30, 2009



The Office of the Chief Trial Counsel has reported the number of cases that are in backlog status in compliance with the Business Professions Code. The office also tracks the number of members that are the subject of the backlogged matters. Based upon the 2009 Recommendations of the Bureau of State Audits (2009-030), that information is included in the following table.

Historically, there are various categories of cases that are not reported as being in backlog status for a variety of reasons. These categories include: cases in which the subject of the complaint is a non-attorney, cases that have been reopened, cases that are assigned to a Special Deputy Trial Counsel, cases that have been “held” or “abated” and inquiries that have been assigned to the Intake Unit for over six months. Although inquiries that have been assigned to the Intake Unit for over six months are reported as being in backlog status in this report, the other categories continue to be excluded from the “backlog” count for the reasons set forth below. They are, however, reported in the table that follows.

Non-attorney cases

Business and Professions Code section 6086.15 establishes the State Bar’s backlog reporting requirements with respect to the “existing backlog of cases *within the [State Bar] discipline system.*” (Emphasis added.) Non-lawyers are not subject to discipline by the State Bar. While the State Bar may investigate complaints against non-attorneys, typically allegations of unauthorized practice of law, in conjunction with law enforcement, civil or criminal proceedings against non-attorneys, are state court matters and are thus outside the State Bar discipline system. Thus, complaints against non-attorneys have never been included in the backlog. The investigation of non-lawyers for the unlawful practice of law is within the discretion of the State Bar and subject to available resources.

At the end of 2009, there were 322 non-attorney cases that were pending beyond six months after receipt of the original complaint. These cases are neither designated nor tracked as complex or non-complex matters.

Reopened cases

After the Intake Unit or an Investigation/Trial Unit dismisses a matter, the complainant may request that the Audit and Review Unit conduct a “second-look” at the matter and reopen it. When the Audit and Review Unit receives the case, it has been dismissed and, as such, not a backlog case by definition. Given the volume of second-look requests that the Audit and Review Unit receives annually (1,466 in 2009), it has historically taken the Audit and Review Unit approximately three to six months to conduct the second-look and determine whether the reopen request should be granted or denied or whether other action should be taken. (See the section below entitled “Audit and Review Unit” for additional details.)

The purpose of the backlog statute is to show the number of cases not being completed expeditiously, i.e., not completed within the six or 12 month aspirational goal. The backlog statute does not take into account the amount of time that a case was closed before being reopened. Therefore, it is virtually guaranteed that any case that is reopened by the Audit and Review Unit, no matter how expeditiously the Office of the Chief Trial Counsel resolved it at every stage, will be sent back to an investigation team more than six or 12 months after receipt of the original complaint. Thus, the exclusion of reopened matters from the backlog count represents a more accurate reflection of the efficiency (as measured by time pendency) of the Office of the Chief Trial Counsel’s investigations caseload. For this reason, the Office of the Chief Trial Counsel generally has not included reopened cases in the backlog since 2006.

At the end of 2009, there were four reopened cases that were pending beyond six months (or 12 months in the case of complex matters) after receipt of the original complaint.

“Held” and “abated” cases

The purpose of the backlog statute is to show the number of cases not being completed expeditiously, i.e., not completed within the six or 12 month goal. With respect to abated and held cases, the Office of the Chief Trial Counsel is awaiting the finality of other dispositions, for example where a related civil, criminal or administrative matter is pending and involves the same or substantially similar issues as those in the State Bar matter. There is no substantive work for the Office of the Chief Trial Counsel to do in these matters. Including them in the backlog would merely give the false impression that there is substantive work to be done on these cases. Furthermore, the backlog statute refers to “pending” cases. Cases that are in “held” or “abated” status are not being actively worked and so are not considered “pending” cases within the meaning of the statute. For these reasons, the Office of the Chief Trial Counsel does not include held and abated cases in the backlog. (Once matters are removed from held or abated status, the Office of the Chief Trial Counsel does include them in the backlog if applicable, i.e., if the complaints were received more than six or, in the case of complex matters, 12 months prior.)

At the end of 2009, there were 1,494 held or abated cases that were pending beyond six months after receipt of the original complaint. These cases are neither designated nor tracked as complex or non-complex matters.

Special Deputy Trial Counsel cases

Under rule 2201 of the Rules of Procedure, the Chief Trial Counsel or the Chief Trial Counsel’s designee may appoint one or more Special Deputy Trial Counsel to handle a complaint or inquiry and resulting investigation, if any, where it would be a conflict for the Office of the Chief Trial Counsel to do so.

The cases to which Special Deputy Trial Counsel are appointed are completely outside of the influence or control of the Office of the Chief Trial Counsel for either investigative or tracking purposes and generally do not require the use of any State Bar resources.

The purpose of the backlog statute is to show the number of cases that the Office of the Chief Trial Counsel has not completed expeditiously, i.e., has not completed within the six or 12 month goal. The performance of the Special Deputy Trial Counsel does not reflect the performance or efficiency of the Office of the Chief Trial Counsel. For this reason, the Office of the Chief Trial Counsel does not include cases to which Special Deputy Trial Counsel have been appointed in the backlog.

At the end of 2009, there were 12 Special Deputy Trial Counsel cases that were pending beyond six months after receipt of the original complaint. (In 2009, no cases were designated by a Special Deputy Trial Counsel as complex.)

Intake Unit inquiries

Business and Professions Code section 6086.15 distinguishes “inquiries” from “complaints”. Specifically, subdivision (a)(2) refers to “inquiries” and “complaints”, while subdivision (a)(1) – the subdivision that requires that the State Bar report on its backlog – refers only to “complaints” and not “inquiries”. For this reason, the Office of the Chief Trial Counsel includes complaints, but historically not inquiries, in the backlog. (Based upon the 2009 Recommendations of the Bureau of State Audits (2009-030), the Office of the Chief Trial Counsel now includes inquiries when reporting the backlog.)

It is worth noting, however, that if a complaint has not been expeditiously handled by the Intake Unit, it will likely appear in the backlog when it moves to an Investigation/Trial Unit. When a case moves from the Intake Unit to an Investigation/Trial Unit, the time that the case spent in Intake is used in calculating when and whether the case is a backlog case. So, for example, if a case spends five months in the Intake Unit before moving to an Investigation/Trial Unit, the case would be a backlog case if the investigation was not completed within one month. For this reason, the Office of the Chief Trial Counsel makes an effort to promptly resolve inquiries.

At the end of 2009, there were seven inquiries that were assigned to the Intake Unit for over six months. As stated above, however, these inquiries are included throughout this report in the 2009 backlog based upon the 2009 Recommendations of the Bureau of State Audits (2009-030).

Cases Pending Beyond Six (or 12) Months After Receipt of the Original Complaint Excluded From Backlog		
	2009	
	By case	By member
Reopened	4 reopened matters	42 members
Assigned to Special Deputy Trial Counsel	12 matters	13 members
Abated/Held*	1,494 matters	294 members
Non attorney*	322 matters	271 non-members
* These cases are neither designated nor tracked as complex or non-complex matters.		

In addition to Original matters (i.e., 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 Investigation/Trial Units include other disciplinary and regulatory matters. Data on the number of disciplinary and regulatory matters received by OCTC is detailed in the following charts.

Other Disciplinary Matters Received*					
	2005	2006	2007	2008	2009
Rule 1-110 violation matters	31	18	27	33	24
Other jurisdiction matters	38	26	19	25	23
Rule 9.20 violation matters†	63	45	54	43	64
* This table refers to the number of disciplinary matters other than original matters received by OCTC. The State Bar Court data included in this Annual Report lists the number of other disciplinary matters filed by OCTC. See Glossary for definitions for each of these disciplinary matters.					
† Prior to January 1, 2007, rule 9.20 was numbered rule 955 and these matters were referred to as Rule 955 violation matters.					

Other Regulatory Matters Received*					
	2005	2006	2007	2008	2009
Moral character matters	13	13	10	19	14
Reinstatement matters	18	10	11	8	22
Inactive enrollment matters pursuant to Bus. & Prof. Code § 6007(b)(1)	0	1	1	2	2
Inactive enrollment matters pursuant to Bus. & Prof. Code § 6007(b)(2)	4	11	1	0	4
Inactive enrollment matters pursuant to Bus. & Prof. Code § 6007(b)(3)	2	5	5	9	5
Inactive enrollment matters pursuant to Bus. & Prof. Code § 6007(c)	3	6	2	0	10
Return to active status matters pursuant to Bus. & Prof. Code §§ 6007(b)(2) & (b)(3)	3	2	2	0	2
Relief from actual suspension matters	15	7	8	9	7
<u>TOTAL</u>	190	144	140	148	177
* This table refers to the number of regulatory matters received by OCTC. The State Bar Court data included in this Annual Report lists the number of regulatory matters filed by OCTC. See Glossary for definitions for each of these regulatory matters.					

The Investigation/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 adequate time and attention to, and of providing the quality of service for, his or her law practice which is necessary to protect the interests 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 2009, OCTC opened 20 6180/6190 cases, successfully petitioned the state courts to assume jurisdiction of ten abandoned law practices and recovered 22,033 client files.

6180/6190 Cases					
	2005	2006	2007	2008	2009
Cases Opened	33	35	27	21	20
Petitions granted	16	24	15	10	17
Client files recovered*	10,531	6,215	6,184	1,569	22,033
* The number of client files recovered does not include files that were being handled by independent attorneys with the client's consent and that are not housed at the State Bar.					

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. The Investigation/Trial Units also handle these actions, which include shutting down the practices, seizing files and returning files to persons and entities that appear to be clients of the non-attorney.

6126.3 Cases				
	2006*	2007	2008	2009
Cases Opened	148	155	132	265
Petitions granted	10	6	11	5
Client files recovered	6,571	2,270	4,861	929
* The tracking of section 6126.3 cases began in March 2006.				

Lawyers Assistance Program and Alternative Discipline Program

In 2002, the California Legislature established the State Bar's Lawyers Assistance Program ("LAP") as a confidential resource for every California attorney whose personal or professional life suffers from substance abuse or dependence and/or mental health concerns such as depression or anxiety. OCTC encourages impaired lawyers to refer themselves to LAP.

Some lawyers are referred to LAP as the result of an investigation or disciplinary proceeding. Some of those disciplinary matters may be referred to the Alternative Discipline Program ("ADP"). ADP cases are handled by the Investigation/Trial Units with the dual objectives of public protection and rehabilitation. Although participation in LAP is voluntary on the part of respondents, a respondent must be accepted into LAP in order to be eligible for ADP.

Alternative Discipline Program					
	2005	2006	2007	2008	2009
Attorneys referred to the ADP	56	82	89	63	51
Attorneys evaluated for the program	73	97	103	74	63
Stipulations/contracts entered into by attorneys	50	48	43	57	24

Audit and Review Unit

In August of 2004, OCTC created a unit called Audit and Review to handle requests from complainants for review of a decision by OCTC to close his or her complaint without disciplinary action. The Audit and Review Unit resolved 1,610 requests for review in 2009.

Audit and Review Unit – Requests for Review					
	2005	2006	2007	2008	2009
Received during reporting period	1,071	1,187	1,270	1,486	1,466
Resolved during reporting period	1,095	1,429	1,609	1,307	1,610
Pending at reporting period end	744	502	163	342	198

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

Audit and Review Unit – Dispositions					
	2005	2006	2007	2008	2009
Reopen request denied	897	1,300	1,411	1,194	1,490
Reopen request granted	54	88	96	59	66
Warning letter sent to attorney	14	9	11	5	11
Other*	130	32	91	49	43
<u>TOTAL</u>	1,095	1,429	1,609	1,307	1,610

* These include responses to complainants who sought additional review after the Audit and Review Unit had denied their requests for review and communications determined not to be requests for review.

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.

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 OCTC 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 2009, OCTC offered 12 courses of Ethics School and 11 courses of Client Trust Accounting School. 231 attorneys completed Ethics School and 73 attorneys completed Client Trust Accounting School.

Significant Trends in 2009

The Office of the Chief Trial Counsel aggressively pursued lawyers engaged in professional misconduct targeted at vulnerable homeowners. In April 2009, the Office of the Chief Trial Counsel created the State Bar's Loan Modification Task Force. By the end of the year, the Office of the Chief Trial Counsel had received more than 3,154 complaints involving 552 members that alleged attorney misconduct in connection with loan modification services. In addition, almost 20,000 attorney files had been removed from the offices of attorneys whose loan modification practices have been shut down. At least 17 attorneys had resigned or had been placed on involuntary inactive enrollment.

In 2009, the Office of the Chief Trial Counsel installed new reportable action screens into its computer system to allow the Office of the Chief Trial Counsel to track reportable actions received against attorneys in a manner consistent with the 2007 Report and Recommendation of the California Commission on the Fair Administration of Justice concerning the professional responsibility and accountability of prosecutors and defense lawyers. Specifically, the CCFAJ recommended that the State Bar include in its annual report on the State Bar's discipline system (1) the number of Reportable Actions received from courts pursuant to each of the four categories in Business and Professions Code section 6068.7(a)¹, (2) any Reportable Actions that involve any one of seven identified categories of egregious conduct² and (3) the number of Reportable Actions related to the conduct of prosecutors and defense lawyers by County³. The CCFAJ further recommended that defense lawyer and prosecutorial data be reported to distinguish public defenders, contract defenders, appointed lawyers and privately retained lawyers and to distinguish district attorneys and city attorneys.⁴ The Office of the Chief Trial Counsel anticipates reporting this information starting in its 2010 Annual Report to be issued next year.

While the statutory backlog as of December 31 of each year has improved significantly since 2004, in 2009, backlog reduction was particularly challenging given the influx of new cases resulting from the misconduct by attorneys offering loan modification services during the economic and housing crisis. Despite an increase in new investigation matters of over 80% in 2009, up 2,591 cases – from 3,070 in 2008 to 5,661 in 2009, the office was able to achieve a 2009 year-end backlog of 348 cases, an increase of only 58 cases from 2008.

¹ These include Contempt (i.e., a final order of contempt issued against an attorney); Reversal (i.e., a modification or reversal of a judgment based upon attorney misconduct); Sanction (i.e., the imposition of judicial sanctions against an attorney); and Judgment (i.e., a judgment issued against an attorney).

² These categories of egregious misconduct include willful misrepresentation, appearance while intoxicated, willful unlawful discrimination, suppression of exculpatory evidence, willful presentation of perjured testimony, willful unlawful disclosure of information and failure to properly identify self.

³ The Office of the Chief Trial Counsel will track this information by the County in which the misconduct occurred.

⁴ The types of prosecutors and defense counsel identified by the Office of the Chief Trial Counsel include Public Defenders, Contract Defense Counsel, Appointed Defense Counsel, Retained Defense Counsel, District Attorneys, City Attorneys and Attorneys General.

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 2009, the State Bar Court started its 21st 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.

Significant Trends in 2009

State Bar Court trends that occurred in 2009 included:

- 1) The State Bar Court closed 17% more cases in 2009 than it did in 2008 and surpassed its goal of a 100% closure rate.
- 2) The State Bar Court is now posting all Notices of Disciplinary Charges, responses and decisions per established State Bar policy.
- 3) 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.

The following charts provide a detailed look at the number and kinds of cases in the State Bar Court in 2009 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 2009 as compared to previous years.

Cases Filed in the State Bar Court: Summary Figures										
	2005		2006		2007		2008		2009	
	Filed	Closed								
Disciplinary Matters	633	630	639	611	561	435	610	469	537	576
Regulatory Matters	138	139	164	167	153	105	124	123	148	119
Total	771	769	803	778	714	540	734	592	685	695

Detailed figures are provided on the following page.

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

Cases Filed And Closed – Disciplinary Matters*										
Case Type	2005		2006		2007		2008		2009	
	Filed	Closed								
Original matter	427	442	431	382	350	298	427	308	318	403
Conviction referral	93	75	104	104	134	76	98	79	134	92
Rule 9.20 violation (formerly Rule 955)	45	48	41	43	38	34	25	37	41	28
Rule 1-110 violation	20	9	20	29	14	10	21	13	15	13
Probation Revocation	25	35	26	33	6	8	21	10	11	20
Other Jurisdiction	23	21	17	20	19	9	14	18	10	14
Pre-filing matters **	--	--	--	--	--	--	4	4	8	6
<u>TOTAL</u>	633	630	639	611	561	435	610	469	537	576

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

** Pre-filing matters were previously tracked manually. Starting in 2008, the State Bar Court has initiated reporting on these case types.

Cases Filed And Closed – Regulatory Matters										
Case Type	2005		2006		2007		2008		2009	
	Filed	Closed								
Arbitration Enforcement	12	18	23	21	12	10	9	13	3	3
Resignation with charges pending	64	65	81	81	94	51	63	60	81	50
Inactive enrollment	13	9	19	19	12	10	10	12	15	14
Interim remedies	0	0	1	1	0	0	0	0	0	0
Return to Active (Bus. & Prof. Code)	3	1	2	4	3	1	1	3	2	2
Return to Active (Arbitration Enforcement)	0	0	8	6	2	4	4	4	3	3
Relief from Actual Suspension	15	14	7	9	8	11	9	6	7	11
Reinstatement	18	18	10	13	11	7	8	12	22	18
Moral Character	13	12	13	13	10	10	19	13	15	17
Legal Specialization	0	2	0	0	1	1	1	0	0	1
<u>TOTAL</u>	138	139	164	167	153	105	124	123	148	119

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

Dispositions Of Case Closures Of State Bar Court Cases

Dispositions of Closed Disciplinary Cases*					
	2005	2006	2007	2008	2009
Disbarment	51	66	55	57	71
Summary Disbarment	7	5	11	6	10
Suspension	261	250	170	245	255
Reprovals	144	96	95	67	106
Dismissal	45	58	34	37	56
Termination	97	116	64	46	57
Revoke Probation	24	20	4	7	17
Probation	0	0	0	0	0
Extend probation	1	0	2	0	0
License to Practice Cancelled	0	0	0	1	0
Admonition	0	0	0	1	2
Deny Petition/Application	0	0	0	2	1
Withdrawn	0	0	0	0	1
<u>TOTAL</u>	630	611	435	469	576
* See Glossary for definitions for each of these disciplinary dispositions.					

Dispositions of Closed Regulatory Cases*					
	2005	2006	2007	2008	2009
Relief from Actual Suspension Granted	7	3	3	1	4
Relief from Actual Suspension Declined	4	5	5	0	5
Transfer to Inactive Status†	12	26	8	19	13
Decline Transfer to Inactive†	0	5	2	1	1
Decline Re-transfer to Active†	0	0	0	1	0
Grant Petition for Reinstatement/Admission Application	7	4	2	5	4
Deny Petition for Reinstatement/Admission Application	8	6	8	9	14
Restrict Practice	0	1	0	0	0
Return to Active Status†	2	6	5	7	5
Resignation/Charges Pending	64	79	46	38	29
Deny Resignation/Charges Pending**	--	--	--	19	16
Dismissal	11	12	14	7	4
Termination	1	4	4	1	1
Withdrawn	23	16	8	15	23
<u>TOTAL</u>	139	167	105	123	119
* See Glossary for definitions for each of these regulatory dispositions.					
**2008 was the first year the State Bar Court started tracking denied requests to resign with charges pending					
† 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.

Significant Orders Affecting Practice: Summary Figures					
	2005	2006	2007	2008	2009
Disciplinary Matters	625	652	692	745	644
Regulatory Matters	1	2	3	6	5
<u>TOTAL</u>	626	654	695	751	649

Significant State Bar Court Orders Affecting Practice: Detailed Figures

Significant Orders in Disciplinary Matters*					
	2005	2006	2007	2008	2009
Conviction orders	86	103	145	108	87
Interim suspension orders†	64	75	91	88	80
Professional Responsibility Examination orders	86	83	68	57	45
Suspension orders – Bus. & Prof. Code § 6007‡ or § 6233§	197	218	209	282	293
Modification orders	62	64	64	59	45
Alternative Discipline decisions	75	99	81	123	70
Rejected stipulations	19	1	15	3	2
Extend/Modify Probation	12	7	3	10	11
Vacate Previous Order	16	0	4	12	4
Early Termination of Probation	8	0	1	0	0
Miscellaneous†††	0	2	11	3	7
<u>TOTAL</u>	625	652	692	745	644

* 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.

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

Significant Orders in Regulatory Matters*					
	2005	2006	2007	2008	2009
Modification Order	0	2	0	0	2
Inactive enrollment orders†	0	0	0	1	0
Vacate Submission	1	0	3	5	3
<u>TOTAL</u>	1	2	3	6	5

* 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:

California Supreme Court Interim Dispositions					
	2005	2006	2007	2008	2009
Grant Writ of Review	1	0	0	0	0
Remand for Hearing	3	1	0	0	2
<u>TOTAL</u>	4	1	0	0	2

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 these cases, 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.

In 2008, the State Bar Board of Governors approved new rules for handling ADP cases, which took effect July 1, 2008. The rule changes implemented new guidelines and limitations for participation in the ADP.

The following charts display the participation levels in ADP for the last five years:

Number of Cases* Entering Each ADP Stage During Year					
Participation Level	2005	2006	2007	2008	2009
Referral	87	95	116	64	54
Evaluation	117	116	138	104	83
Full Participation	92	110	76	114	53

Cases/Respondents fully participating in ADP at end of year					
	2005	2006	2007	2008	2009
Cases	180	249	246	307	275
Respondents*	90	116	127	154	135
* 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 Office of the Chief Trial Counsel in protecting California's legal consumers. Since its inception in 1972, the Fund has reimbursed applicants over \$93 million. The Fund may reimburse an individual victim for losses of up to \$50,000. Effective January 1, 2009, the Board of Governors increased the maximum payment to an applicant from \$50,000 to \$100,000 for losses occurring on or after January 1, 2009. The Board also eliminated the "marriage penalty" by allowing spouses to be treated as separate applicants.

Beginning in August of 2009, the filing rate for new applications began to increase significantly due to loan modification losses. On December 31, 2009, the Fund had 3,028 applications pending as compared to the 902 pending at year end 2008. The Client Security Fund estimates that at least 2,000 of the 3,028 cases pending are based on loan modification losses.

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 2009, the Fund received 3,028 new applications and processed 741 to closure. Of the 741 claims processed, \$3,461,950 was paid on 378 approved claims.

The chart below reflects the activity of the Fund from 2005 to 2009:

Client Security Fund					
	2005	2006	2007	2008	Unaudited 2009
New applications filed	1,318	1,314	1,013	825	3,028
Dollar amount requested in new applications	\$11,558,645	\$11,975,249	\$10,764,876	\$11,290,084	\$19,469,661
Number of applications paid	982	943	607	479	378
Dollar amount paid	\$4,648,584	\$5,299,061	\$4,352,110	\$4,638,272	\$3,461,950
Number of applications closed (paid/denied/terminated)	1,386	1,302	1,023	902	741
Dollar amount requested in all processed applications	\$11,209,108	\$11,975,249	\$10,764,876	\$11,337,183	\$9,231,884

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, for example: (a) submitting written quarterly probation reports attesting to the attorney's compliance with the State Bar Act, Rules of Professional Conduct, and specified probation conditions; (b) promptly responding to State Bar inquiries about the attorney's probation compliance; (c) returning misappropriated funds or unearned attorney fees to clients; (d) abstaining from the use of alcohol or drugs and submitting to random and/or periodic blood or urine testing; (e) completing continuing legal education courses; (f) preparing a law office management plan; and (g) attending 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 9.20 of the California Rules of Court,⁵ 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 9.20.

The 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 stipulate to modification of the attorney's probation in appropriate cases (subject to approval by a judge of the State Bar Court) or respond to any motions for modification. If a disciplined attorney violates his or her probation conditions, the Office of Probation is authorized to bring a motion in the State Bar Court to either revoke the attorney's probation or report the violation to the Office of the Chief Trial Counsel for disciplinary prosecution. In cases involving the attorney's failure to comply with rule 9.20; 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 reports directly to the senior executive of the State Bar Court.

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

Office of Probation					
	2005	2006	2007	2008	2009
Files pending at reporting period end	800	857	940	867	782
Files opened	606	566	458	455	543
Files closed	559	481	377	529	619
Probation revocation motions filed	25	26	6	21	11
Referrals to OCTC for prosecution	129*	97	115	136	130
* In previous Annual Discipline Reports, these numbers represented only probation referrals. In this Report, they also represent referrals for failures to comply with reproof conditions, Agreements in Lieu of Discipline and rule 9.20 orders.					

⁵ Prior to January 1, 2007, this rule was numbered rule 955.

OFFICE OF MANDATORY FEE ARBITRATION

Overview of Charge and Responsibilities

Pursuant to Business and Professions Code section 6200 *et seq.*, the State Bar's Mandatory Fee Arbitration ("MFA") Office administers a statewide program for the arbitration of fee disputes and/or costs between attorneys and clients. In California, the arbitration of fee and cost disputes is mandatory for the attorney upon the client's request. However, if the parties previously agreed in writing to resolve fee disputes through the program, then the attorney may require the client to participate.

The majority of fee arbitration requests are filed with the 44 local bar associations' mandatory fee arbitration programs, which the State Bar, through the MFA Committee, authorize by approving the programs' rules of procedure. The State Bar's MFA Program provides fee arbitration where: 1) there is no local bar program; 2) the local bar program lacks jurisdiction; or 3) a party asserts that he or she cannot receive a fair hearing through the local bar program. Program filing fees are charged to the petitioner to perfect the fee arbitration request. In 2009, the MFA program received in filing fee revenue.

In addition, the State Bar MFA Office has exclusive statutory authority under the MFA statutes to assist clients with enforcement of a final arbitration award or judgment requiring a refund of unearned attorney's fees. Under Business and Professions Code section 6203(d), an attorney may be ordered to pay administrative penalties, and is subject to involuntary inactive enrollment for failure to pay the client a fee arbitration award or civil judgment confirming an award.

Significant Trends in 2009

Requests for Enforcement of Unpaid Awards on the Rise

Enforcement requests from clients requesting State Bar assistance with unpaid awards or judgments requiring the attorney to refund unearned attorney's fees rose to 88, an increase of 30% over last year.

Updates in the Law

The State Bar's MFA Committee revised the Notice of Your Rights after Arbitration to explain the post-MFA right to request a second arbitration in lieu of trial of parties with a pre-existing arbitration clause based on a 2009 California Supreme Court case. As a result of this case, the MFA Committee created new resource and training materials.

Record Number of Arbitrator Training Programs

The State Bar's MFA Committee continues to be a national leader in developing resources and training for volunteer fee arbitrators serving MFA programs throughout California. Model Rules of Procedure for Fee Arbitrations were revised and approved by the Board of Governors in 2008. The MFA Committee held a new record presenting twelve training courses for volunteer fee arbitrators. The three hour basic programs and two hour advanced programs are free of charge to lawyers and laypersons and provide free CLE credit for nearly 300 attorneys.

Education of Members and Local Bar Support: Committee members and the Director also offered a number of CLE courses discussing attorney's fee law, strategies for resolving fee disputes, and the benefits of fee arbitration/mediation to local bar associations' members. In 2009, Committee members and the Director presented a total of five such programs through the state, some of which were tailored to substantive practice areas, such as family and criminal law.

Mandatory Fee Arbitration Cases

The chart below reflects the MFA Program's statewide activity:

Mandatory Fee Arbitration Requests Filed					
	2005	2006	2007	2008	2009
MFA requests filed with the State Bar	144	174	123	106	104
MFA cases involving panel assignment by local bar programs*	1,661	1,475	1,546	1,718	1,284**
Requests for enforcement of award filed	78	61	70	62	88
* This number is based on the number of reimbursement requests from local bars. The State Bar pays to participating local bar programs a flat \$36 fee per MFA case assigned to a mediator or arbitrator.					
** This number excludes the fourth fiscal quarter pending submission.					

The number of fee arbitration requests filed with the State Bar program appears to remain steady with last year's number, when that year experienced a significant decline. That decline was attributed to the concerted effort by State Bar staff to redirect fee arbitration cases to one of the eight (8) local bar programs in Los Angeles County.

Client's Request for Enforcement of Award Cases

If a mandatory fee arbitration program issues an arbitration award requiring a refund of fees from an attorney in favor of the client, the State Bar has exclusive jurisdiction to help a client with enforcement of the award once the award has become binding or a judgment. Requests are accepted from all clients free of charge and regardless of the program origin of the award. Informal efforts are made by the MFA office to obtain payment in full or installments by the member before commencing formal enforcement proceedings. Most cases resolve informally.

Business and Professions Code section 6203, subdivision (d) authorizes the State Bar to petition the State Bar Presiding Arbitrator to assess administrative penalties against an attorney who fails to respond to the enforcement request. Penalties are added to the member's bar dues for the following calendar year. If the award debtor does not cooperate with the State Bar's enforcement efforts, the statute provides that the State Bar will request the State Bar Court to enroll the attorney on involuntarily inactive status until the award or judgment is paid to the client. If an order is filed placing an attorney on involuntary inactive status, the attorney may petition the Court to return to active status upon showing that the award or judgment and any administrative penalties assessed have been paid.

The MFA Office accepted 88 enforcement requests from clients in 2009, an increase of 30% over last year. Staff continued last year's elimination of a backlog of enforcement requests, by closing 102 cases in 2009 after payment by the attorney of the award or judgment or for other reasons, such as settlement or client abandonment. The Presiding Arbitrator issued a record high of 24 orders assessing administrative penalties against uncooperative attorneys, a jump from only seven orders the year before.

The MFA office filed three motions to enroll attorneys on inactive status. The State Bar Court granted two motions in 2009 involuntarily enrolling attorneys on inactive status for failure to pay an award or judgment and continued the third to allow the attorney to pay according to a court approved installment plan.

Enforcement of Award Activity					
	2005	2006	2007	2008	2009
Orders Filed Assessing Administrative Penalties	–*	19	16	7	24
Motions Filed To Enroll Attorney Inactive	13	23	12	6	3
Attorneys Involuntarily Enrolled Inactive	6	19	5	6	2
* The number of orders filed assessing penalties was not tracked prior to 2006.					

The State Bar’s Panel of Arbitrators

Unlike local bar programs located at the county level, the State Bar’s Mandatory Fee Arbitration panel must be prepared to assign single and three member panel cases for arbitration hearing in all 56 counties. There is also a natural annual attrition of volunteers due to death, retirement, relocation, etc. Therefore, the Office and the MFA Committee actively recruits new volunteers from all counties in the state to serve on its panel. In 2009, the State Bar’s Fee Arbitration Department increased by adding 47 new fee arbitrators last year for a total of 504 volunteer fee arbitrators (lawyer and non-lawyers).

Telephone Intake

The MFA Office provides direct information to attorney members, the public, and clients throughout the state concerning their respective rights and obligations under the MFA Program as well as under post-arbitration enforcement of award and litigation procedures. The MFA Office also responds to daily calls and emails from local bar administrators seeking assistance from the State Bar on procedural issues on fee arbitration cases filed locally. Calls to the office’s main line are answered live during office hours and voice messages left after hours are returned within 24 hours. During 2009, a total of 5,549 calls were placed to the MFA Office, down slightly from 5,917 calls the previous year.

MFA Office Staffing

The State Bar’s MFA Office consists of a Director, three senior administrative assistants, and one administrative assistant. All staff respond to requests for information made by telephone or written correspondence concerning the MFA Program and make appropriate internal and external referrals. Two senior administrative assistants administer the State Bar’s fee arbitration program, handling telephone intake, assignment of volunteer fee arbitrators to a single or three-member arbitration panel, and service of State Bar Court fee arbitration awards. Staff also handles all procedural issues that arise during the course of a fee arbitration case, including requests for waiver of filing fees, and challenges to jurisdiction, arbitrators, and hearing dates.

A third senior administrative assistant processes the clients’ requests for enforcement of award matters under direct supervision of the Director. Processing requests for enforcement of award matters includes intake, assessing jurisdictional challenges, communicating with and processing orders from the volunteer Presiding Arbitrator, monitoring installment payments by attorneys, drafting pleadings and compiling exhibits to file in the State Bar Court in support of motions for involuntary inactive enrollment of members who fail to comply with awards or civil judgments requiring a refund of unearned fees to the client.

The administrative assistant supports the work of the office by opening and entering new cases, processing reimbursement requests with local bars, maintains internal records of arbitrators and local bar program rosters, supports the Director with special projects and supports the work of the office generally.

The Director supervises office staff, staffs the MFA Committee, provides direct support and guidance to the local bar programs with an immediate response, oversees the MFA Office’s fee arbitration and enforcement of award

caseloads, consults with the Presiding Arbitrator on legal issues in cases, prepares pleadings for and appears in State Bar Court as Special Deputy Counsel on enforcement of award matters. In addition, the Director performs outreach to and support of local bars and frequently lectures on MFA best practices, fee arbitrator training, and attorney education seminars through CEB, the ABA National Forum on Client Protection, local bar associations, and Executives of California Lawyers' Associations ("ECLA").

State Bar Reimbursement to Local Bar Fee Arbitration Programs

Any approved local bar MFA program may choose to enter a contract with the State Bar for the purpose of receiving a \$36 flat fee reimbursement payment for fee arbitration or fee mediation cases that it assigns. The MFA Office processes the contracts annually and local bar requests for reimbursement submitted quarterly by the local bar programs. For 2009 excluding the fourth fiscal quarter⁶, the State Bar will have paid a total of \$46,224 in reimbursement payments to the local bar programs for a total of 1,284 fee arbitration or fee mediation matters assigned by programs with 2009 reimbursement contracts with the State Bar. This amount parallels the reimbursement total paid last year to local bar programs.

The State Bar's 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 16 lawyer and public members, including the State Bar's Presiding Arbitrator. The MFA Committee reports to the State Bar Board of Governors' Discipline Oversight Committee "DOC" (formerly Committee on Regulation, Admissions and Discipline "RAD") and is assigned two Board liaison members. The MFA Committee met six times in 2009.

The MFA Committee is responsible for reviewing case law, proposing and monitoring new legislation affecting fee arbitration, providing policy guidance and assistance to the local bar programs, conducting fee arbitrator training programs for fee arbitrators throughout the state, developing training materials and advisories for fee arbitrators and guidance for program staff, and presenting legal education courses on selected topics concerning attorney's fees and the fee arbitration program. The MFA Committee reviews local bar rules and makes recommendations to the Board for their approval.

In 2009, the MFA Committee also rolled out a stipulated award template and advisory to standardize settlements made at the arbitration hearing and instruct arbitrators in preparing stipulated awards. A stipulated award requiring the lawyer to refund fees to the client that has been paid may be enforced by the State Bar. By providing a template for local bar use, the MFA Committee encourages client protection in the event of the need for enforcement and insulation of the arbitrator from potential litigation brought by parties over the arbitrator's scope of authority.

Key Accomplishments of the MFA Committee in 2009

Activities of Committee on Mandatory Fee Arbitration					
	2005	2006	2007	2008	2009
Fee arbitrator training programs (MCLE credit)	8	8	10	11	12
Annual meeting programs (MCLE credit)	3	2	3	2	2
Arbitration Advisories	2	0	2	2	1
Program Advisories	2	1	3	3	1

⁶ Reimbursement for the fourth fiscal quarter of 2009 has not been included in this report.

Fee Arbitrator Training Programs

In 2009, 199 attorneys received free CLE credit for basic arbitrator training offered by the MFA Committee. Another 96 attorneys received free CLE credit for the advanced program launched two years ago to address more refined issues in fee arbitration. In 2009, an arbitration training program was webcasted live.

MCLE Programs

The MFA Committee presented two (2) programs on attorney's fees issues for MCLE credit at the State Bar's 2008 Annual Meeting in Monterey. The programs were entitled "Mediating Attorney Client Fee Disputes" and "Attorney's Fees-Practically, Ethically." The latter was selected for videotaping.

In addition, the Director and various current and former Committee members presented a CLE brown bag program for the Sonoma County Bar Association's family law section, the Lake County bar, The Bar Association of San Francisco and Beverly Hills Bar Association.

Arbitration Advisories

In addition to the MCLE programs, the MFA Committee is responsible for identifying MFA-related legal issues and developing them into written advisories for fee arbitrators. The advisories are distributed to local bar program committees, administrators, and volunteer fee arbitrators. These advisories are also posted on the State Bar's website. The Committee published an arbitration advisory in 2009 entitled, "The Arbitrator's Role in Accepting Settlement Agreements as Stipulated Awards."

Program Advisories

The MFA Committee issues advisories on procedural and administrative issues that may arise to assist local bar program administrators. In 2009, the MFA Committee issued an advisory for local bar programs entitled, "Asserting Arbitral Immunity as a Defense to Actions against the Program or Arbitrators."

Approval of Local Bar Rules of Procedure

In 2009, based upon the recommendation of the MFA Committee, the Board of Governors approved new or amended rules of procedure for six (6) local bar programs. This brings into compliance the great majority of the 44 local bar programs that either adopted Model Rules of Procedure for Fee Arbitrations or select Model Rules.

Articles

The MFA Program Director and member of the MFA Committee co-authored an article published in the November 2009 issue of California Litigation journal entitled, "Mandatory Fee Arbitration Survives Schatz' Shots."

Advice to Local Bar Programs

The MFA Committee and the MFA Office's Director provide advice and guidance to the 45 local bar arbitration programs and parties on an as-needed basis. Most of the issues that are raised informally by the local programs or parties are handled as they arise by the MFA Office Director, the Presiding Arbitrator and MFA Committee Chair. Other issues and questions presented are addressed in regular MFA Committee meetings.

PROFESSIONAL COMPETENCE

The State Bar's Professional Competence programs maintain and improve the quality of legal services available in California. The programs focus on attorney professional responsibility standards and support the State Bar's goals of public protection and the effective administration of justice.

Rules of Professional Conduct

On November 20, 2008, the State Bar filed a memorandum with the Supreme Court requesting approval of proposed new Rule of Professional Conduct 3-410. This new rule was approved by the Supreme Court on August 26, 2009 to become operative on January 1, 2010. The new rule requires that a member who does not have professional liability insurance disclose that fact in writing to a client, at the time the member is engaged, whenever it is reasonably foreseeable that the total amount of the member's legal representation of the client in the matter will exceed four hours. If a member who has professional liability insurance at the time of engagement later ceases to have the insurance, the member must inform the client in writing within thirty days after the member knows or should know that he or she no longer has insurance. The rule would exempt: government lawyers or in-house counsel whose only client is the entity employer; members who render legal services in an emergency; and members who previously provided the disclosure to a returning client. The Board of Governors adopted the proposed rule as a public protection measure to provide information that a client may consider relevant to employing an attorney.

On May 29, 2009, the State Bar filed a memorandum with the Supreme Court requesting approval of proposed new Rule of Professional Conduct 1-650. This new rule was approved by the Supreme Court on July 29, 2009 and became operative on August 28, 2009. The new rule is derived from American Bar Association Model Rule 6.5 and applies to a lawyer's participation in limited legal services programs, such as pro bono advice clinics. The new rule limits a lawyer's exposure to conflicts of interest only to representations where the lawyer knows that a real or imputed conflict exists. The rule also limits conflicts imputed to a lawyer's firm as a result of the attorney's participation in a limited legal services program. The Board of Governors adopted the proposed rule to clarify the application of conflicts of interests standards to client representations arising from limited legal service programs. The rule removes potential barriers to responsible participation by attorneys and law firms in important access to justice activities.

The Commission for the Revision of the Rules of Professional Conduct

In addition to the adoption of rules 3-410 and 1-650, 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 ten 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 *in 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 2009, the Commission conducted sixteen days of meetings, including a meeting at the 2009 State Bar Annual Meeting in San Diego and at these meetings, considered 86 rule amendment matters that included: 53 rules approved for submission to the Board for adoption; and 33 rules approved for submission to the Board Committee on Regulation and Admissions for public comment authorization.

A group of eight draft rules was distributed for public comment with a deadline of October 23, 2009 and 64 written public comments were received. On September 12, 2009, a public hearing on the eight draft rules was held in San Diego.

A group of eleven draft rules was distributed for public comment with a deadline of November 13, 2009 and 143 written public comments were received. On November 10, 2009, a public hearing on the eleven draft rules was held in San Francisco.

The Commission's E-List, an e-mail distribution group used by the Commission members, liaisons, and other subscribers, had the following activity: 298 postings to 109 subscribers for a total of over 32,482 messages. These messages included meeting notices and materials, as well as, information on recent developments in legal ethics, and informal comments and discussions about the Commission's draft rules. Of the 109 total subscribers, 23 were added in 2009. In addition to the e-list messages, three informal comment letters were received from interested persons.

As part of the 2009 State Bar Annual Ethics Symposium held on May 2, 2009 at the University of San Diego School of Law, the Commission presented an educational program on several key rule amendment issues under consideration including: fees for legal services; confidentiality; imputation of conflicts of interest; candor to a tribunal; and special responsibilities of prosecutors. The program evaluation forms submitted by the symposium attendees gave the Commission's panel good marks, including an average mark of 4.3 (out 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.

Regarding COPRAC's charge to assist in the consideration of proposed amendments to the Rules of Professional Conduct, COPRAC representatives attended and monitored the meetings of the Commission. In 2009, COPRAC studied 19 proposed new and amended rules issued for public comment by the Commission. Following study, COPRAC submitted 16 written comment letters to the Commission indicating its general agreement with the proposed rules but also recommending some modifications.

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 2009, COPRAC issued the following opinions:

Opinions Published in 2009

FORMAL OPINION NO. 2009-176

ISSUES: In a lawsuit prosecuted by Attorney A against Defendant, Client has a statutory right to seek an award of attorney's fees. Attorney B, Defendant's counsel, makes a settlement offer, conditioned on Client's waiver of his statutory right to attorney's fees, that is insufficient to compensate Attorney A for her fees. (1) May Attorney A bar the settlement notwithstanding Client's desire to accept it? (2) Does Attorney B violate any ethical obligation by recommending or conveying the fee-waiver settlement offer in this case? (3) Does Attorney B violate any ethical obligation by recommending or conveying fee-waiver settlement offers in cases generally?

DIGEST:

1. A lawyer must inform the client of a fee-waiver settlement offer and consummate the settlement in accordance with the client's wishes even if it reduces the likelihood of recovering some or all of his or her fees.
2. A lawyer does not violate any ethical obligation by recommending or conveying a fee-waiver settlement offer in a given case.
3. A lawyer does not violate any ethical obligation by recommending or conveying fee waiver settlement offers in cases generally.

FORMAL OPINION NO. 2009-177

ISSUE: In what manner may an attorney maintain her rights in a charging lien when her former client demands that the attorney endorse a settlement check jointly payable to the client and his current and former attorneys without violating the requirement of rule 4-100 of the California Rules of Professional Conduct that the attorney promptly pay or deliver funds to which the client is entitled?

DIGEST: When responding to a request to endorse a settlement check made jointly payable to a client and his or her current and former attorneys where the former attorney has asserted a valid lien on the settlement proceeds, the former attorney must take prompt steps to find a reasonable method or methods of delivering the undisputed portion of the proceeds to which the client is entitled. The former attorney does not violate rule 4-100 by refusing to use a method that would extinguish the attorney's charging lien, but has a duty to consult governing legal authorities and make a reasonable determination of the amount to which he or she is entitled under the circumstances. If the client does not agree to proposed reasonable methods for delivering the undisputed portion or does not agree with the former attorney's determination of the amount of the proceeds that

undisputedly belong to the client, the attorney must promptly seek resolution of the fee dispute through arbitration or judicial determination, as appropriate.

FORMAL OPINION NO. 2009-178

ISSUES: Is it ethically proper for an attorney who is settling a fee dispute with a client to include a general release and a Civil Code section 1542 waiver in the settlement agreement? Does the existence of a legal malpractice claim against the attorney alter the ethical propriety of including a general release and section 1542 waiver in the settlement agreement?

DIGEST: An attorney must promptly disclose to the client the facts giving rise to any legal malpractice claim against the attorney. When an attorney contemplates entering into a settlement agreement with a current client that would limit the attorney's liability to the client for the lawyer's professional malpractice, the attorney must consider whether it is necessary or appropriate to withdraw from the representation. If the attorney does not withdraw, the attorney must:

1. Comply with rule 3-400(B) by advising the client of the right to seek independent counsel regarding the settlement and giving the client an opportunity to do so;
2. Advise the client that the lawyer is not representing or advising the client as to the settlement of the fee dispute or the legal malpractice claim; and
3. Fully disclose to the client the terms of the settlement agreement, in writing, including the possible effect of the provisions limiting the lawyer's liability to the client, unless the client is represented by independent counsel.

Opinions Circulated for Public Comment in 2009:

Proposed Interim Opinion No. 06-0006 (90-day public comment deadline: February 3, 2009).
See issue and digest above, Formal Opinion No. 2009-178.

Proposed Interim Opinion No. 08-0002 (90-day public comment deadline: January 4, 2010).

ISSUES: Does an attorney violate the duties of confidentiality and competence he or she owes to a client by: 1) using a computer to which the organization employing the attorney and its supervisors have access; 2) using computer software to which the software developer has access; or 3) using a public or home wireless connection?

DIGEST: To comply with his or her duties of confidentiality and competence, an attorney must take appropriate steps to evaluate: 1) the level of security attendant to the use of a particular technology in the course of representing a client; 2) the legal ramifications to a third party who intercepts, accesses or exceeds authorized use of the electronic information; 3) the degree of sensitivity of the information; 4) the possible impact on the client of an inadvertent disclosure of privileged or confidential information or work product; and 5) whether reasonable precautions may be taken when using the technology to increase the level of security. With regard to use of a computer to which the organization employing the attorney and its supervisors have access, the attorney must consider the purpose of, and limitations on, the access and whether the organization itself or an individual with access may have an interest in the information that is in conflict with the client's interest.

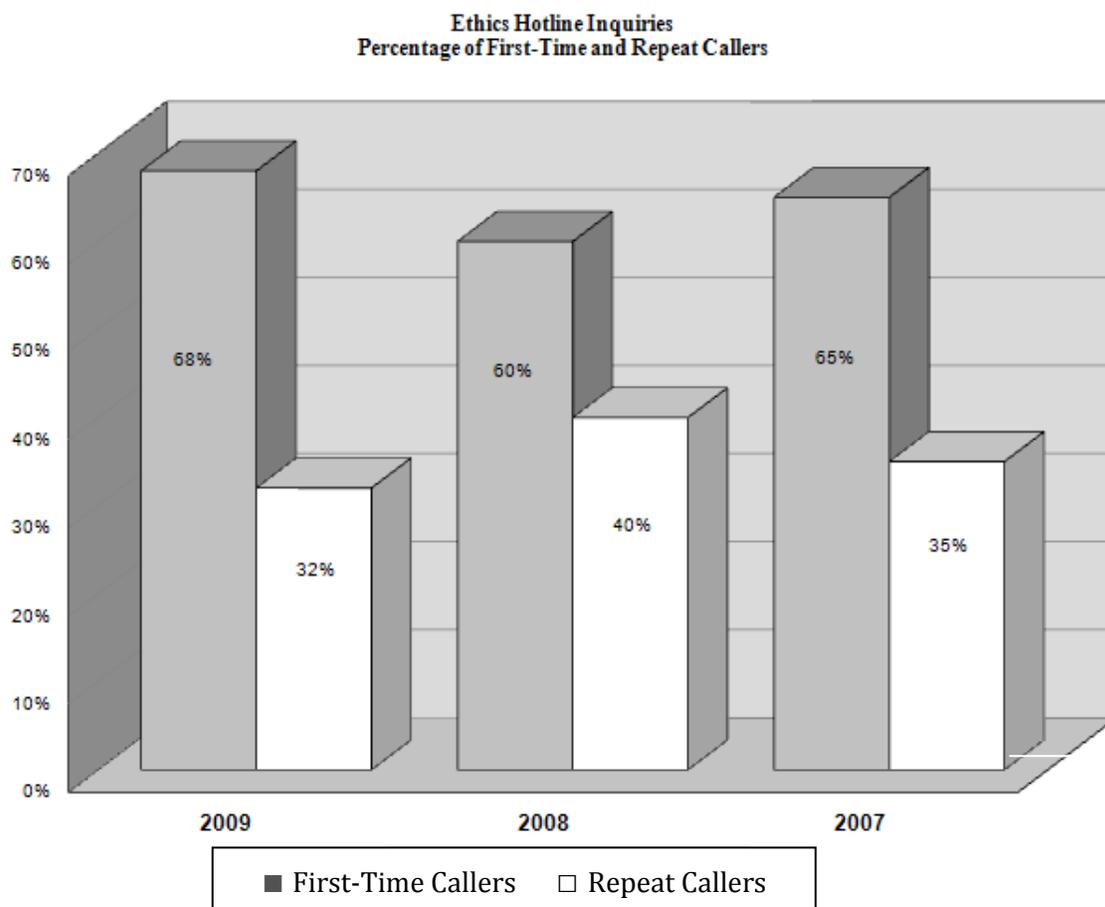
The attorney may need to take precautions to ensure that any interested persons will not be able to access the information or, absent informed client consent, the attorney may need to consider whether he or she can competently represent the client without using the computer in connection with the representation. With regard to access to confidential information by a software developer, the attorney may use the software as long as the attorney does not have a reason to believe the information will be used improperly. However, he or she may need to discuss the issue with the client to determine appropriate methods of proceeding if the information at issue is highly sensitive or the software developer has an adverse interest in the matter. With regard to use of a public or home wireless connection, the attorney risks violating his or her duties of confidentiality and competence unless appropriate precautions are taken, such as using an adequate encryption device and a personal firewall. Depending on the situation, including if the information at issue is of a highly sensitive nature, the attorney may need to avoid using the wireless connection entirely, or notify the client of possible risks associated with use of the wireless connection and seek the client's informed consent to do so. Generally, the attorney should not use an unsecured public wireless connection that does not require a password for access.

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 2009, Ethics Hotline staff answered 23,165 calls, distributed 598 packets of local bar association and State Bar ethics opinions to interested persons and made 5,682 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 2009, as compared to 2008.

Frequently Named Ethics Issues by Percent		
	2009	2008
Fees and Costs for Legal Services	18%	17%
Attorney Advertising and Solicitation	13%	12%
Conflicts of Interest	11%	12%
Communications with Clients, Adverse Party and Others	10%	11%
Misconduct/Moral Turpitude/Trial Conduct	9%	6%
Client Confidential Information	7%	9%
Competence	7%	7%
Unauthorized Practice of Law	7%	6%

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 2009 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 2009, 640 Compendium updates and new subscriptions were sold, with more sales expected to post in early 2010. 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. In 2009, the online PDF version of the Compendium Index posted at the Bar’s website was downloaded more than 86,000 times.

California Rules of Professional Conduct and State Bar Act

California Rules of Professional Conduct and State Bar Act (“Publication 250”) is a desktop 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 regarding the attorney discipline system and the duties of members of the State Bar, the Minimum Continuing Legal Education Rules and the Rules Pertaining to Lawyer Referral Services (including Minimum Standards for a Lawyer Referral Service in

California). In 2009, approximately 1,500 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. In 2009, the online PDF version of the Rules of Professional Conduct posted at the Bar's website was downloaded more than 138,700 times.

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 2009, a free full-text online version of the Handbook was downloaded from the Bar's website more than 126,500 times.

Special Projects

Annual Statewide Ethics Symposium

COPRAC's 13th Annual Statewide Ethics Symposium was held on May 2, 2009 at the University of San Diego School of Law. Of the panels presented, the trial publicity panel entitled "Beyond the Headlines – What Can You Ethically Say About Your Big Case?" received the highest marks from attendees on overall teaching effectiveness, teaching methods and significant current intellectual or practical content. This panel was presented by COPRAC member Wendy Mazzarella, Linda Deutsch, Mark Geragos and Prof. Laurie Levenson. In their opening remarks and keynote address, State Bar President Holly Fujie and Erwin Chemerinsky, Founding Dean, UC Irvine School of Law, presented a timely and relevant commentary on the legal profession that was well received. A copy of the activity evaluation form summarizing the attendees' rankings on various criteria is attached. Use of a new online program evaluation form was successful, with a response rate of 42% of the paid attendees. In addition, suggestions for future Symposium topics were received through this survey. Of the program evaluation forms submitted, 85% of the attendees gave the Symposium a rating of 4 or 5 (on a scale of 1 to 5, with 5 as the highest possible rating) in response to the question "To what extent were your personal objectives satisfied?" and 89% gave this same high rating in response to the question "To what extent did the activity contain significant current intellectual or practical content?"

Annual Meeting Programs

COPRAC conducted four educational programs at the State Bar Annual Meeting held in San Diego. The COPRAC sponsored programs were entitled "Conflicts for Lawyers: How to Get Yourself Disqualified, Sued and Disciplined," "Ethics Update 2009: Significant Developments in the Law of Lawyering," "How to Avoid Involuntary Pro Bono Work: Forming the Attorney-Client Relationship and Collecting Attorneys Fees," and "Other People's Money: An Overview of Client Trust Accounting." The Office of Professional Competence also sponsored two additional programs. The first program was entitled "Legal Ethics in the Global Digital Age," and was presented by: former State Bar Board of Governor Judy Gilbert; Commission Consultant, Kevin Mohr; former COPRAC member Willis Baughman; and former San Diego County Bar Ethics Committee chair, Heather Rosing. This program was selected for a simultaneous video webcast which made the program available to online attendees. The second program, entitled "Legal Jeopardy," was co-sponsored by the San Diego Chapter of the American Inn's of Court. The program evaluation forms submitted by attendees gave the COPRAC programs good marks, including an average mark of 4.6 out of a possible 5 in response to the question of "to what extent did the program contain significant current intellectual or practical content."

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. More than 20 outreach presentations were conducted in 2009, including presentations for the San Diego County Bar Association, the California Municipal Utilities Association, and the ABA General Practice Solo & Small Firm Division.

Competence Resources on the State Bar Website

In 2009, the ethics and competence-related resources on the Bar's website were maintained and updated, including the following: 1) Rules Revision Commission meeting agendas, materials and action summaries, and the posting of a public comment circulation and electronic public comment form to receive online comment submissions for the fourth and fifth groups of rules circulated in 2009; 2) year 2009 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; and 4) COPRAC formal advisory ethics opinions. The chart below lists selected web pages administered by Professional Competence and the activity in terms of downloads and visits (a.k.a. "hits").

2009 Professional Competence Web Resources – Activity Detail	
Webpage	Approx. Number of Downloads/Visits
2009 California Rules of Professional Conduct pdf	138,700 downloads
Trust Accounting Handbook pdf	126,500 downloads
Loan Modification Ethics Alert pdf	109,200 downloads
Rules of Professional Conduct html pages	120,600 visits
The State Bar Act html pages	119,400 visits
Ethics Opinions html pages	57,400 visits
Ethics Information html pages	33,300 visits
COPRAC html pages	26,100 visits
Ethics Hotline html pages	23,700 visits

OFFICE OF ADMISSIONS, OFFICE OF LEGAL SERVICES AND OFFICE OF THE SECRETARY

The Office of Admissions

In 2009, the Office of Special Admissions and Specialization was dissolved, and the programs and services were reorganized, and the various departments were merged with the Office of Admissions. The Office of Admissions, in addition to qualifying applicants for the regular practice of law in California, manages special programs that allow qualified individuals who are not State Bar of California members to practice law in California under limited circumstances: Multijurisdictional Practice, *Pro Hac Vice*, Out-of-State Attorney Arbitration Counsel, Military Counsel, and Foreign Legal Consultants. The Practical Training of Law Students Program, which allows law students to gain legal experience in a supervised environment, the Legal Specialization Program, which directly certifies qualified California attorneys as certified legal specialists in eleven areas of law, and the Minimum Continuing Legal Education (“MCLE”) Providers Program that authorizes education providers to offer approved courses are also managed by this office.

Legal Specialization

(California Rules of Court rule 9.35 and State Bar Rules & Standards)

The Legal Specialization Program certifies attorneys who specialize in the following areas of law: admiralty and maritime, appellate, bankruptcy, criminal, estate planning, trust and probate, family, franchise and distribution, immigration and nationality, legal malpractice, taxation and workers’ compensation. 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 4,235 certified legal specialists.

In addition, the State Bar currently has accredited five entities that certify attorneys in the following areas: business bankruptcy, civil trial advocacy, consumer bankruptcy, creditors’ rights, criminal trial advocacy, elder law, family law trial advocacy, juvenile law (child welfare), legal malpractice, medical malpractice and Social Security disability. There are approximately 315 specialists certified by the accredited entities.

Multi-jurisdictional Practice

(California Rules of Court rules 9.45-9.48 and State Bar Rules)

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 9.45, 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 9.46, 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 2009, there were approximately 16 Registered Legal Services Attorneys and 790 Registered In-House Counsel. Registered Legal Services Attorneys and Registered In-House Counsel must renew their registration annually and comply with an initial MCLE requirement. In-House Counsel must also comply with ongoing MCLE requirements as long as they remain registered with the State Bar. In addition, rules 9.47 and 9.48 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 9.40)

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 2009, approximately 2,900 pro hac vice applications were filed with the State Bar.

Out of State Attorney Arbitration Counsel

(California Rules of Court rule 9.43 and State Bar Rules)

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 2009, approximately 800 initial applications were filed with the State Bar.

Military Counsel

(California Rules of Court rule 9.41)

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 military service in California. There currently are no attorneys registered in this program.

Registered Foreign Legal Consultants

(California Rules of Court rule 9.44 and State Bar Rules)

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 2009, there were 48 Registered Foreign Legal Consultants practicing the law of 25 different foreign jurisdictions.

MCLE Providers

(Business & Professions Code section 6070, California Rules of Court rule 9.31 and State Bar Rules)

Education providers who wish to offer courses to members to satisfy MCLE requirements must comply with education criteria to become providers. Education providers who are not Multiple Activity Providers can obtain approval from the State Bar for individual courses as Single Activity Providers. During 2009, the State Bar received approximately 1,520 applications for provider status and individual course approval. The State Bar renewed the Multiple Activity Provider status of 435 providers in 2009. Currently, there are approximately 1,300 Multiple Activity Providers.

The Legal Specialization Program, through its Advisory Commissions, supervises the quality of proposed continuing legal education programs that may be attended by attorneys seeking education units to meet the 45 hours of approved education for certification or the 60 hours of approved education for recertification. There are approximately 250 approved providers and individually approved programs.

Practical Training of Law Students

(California Rules of Court rule 9.42 and State Bar Rules)

Law students who meet certain requirements may provide legal services under the supervision of a California licensed attorney. In 2009, approximately 1,840 Practical Training of Law Students certification applications and approximately 830 extensions were approved.

Member Services Center

The Member Services Center (“MSC”) regulatory duties include the responsibility of maintaining the State Bar membership roll, monitoring member compliance with MCLE requirements, administering the Law Corporation and Limited Liability Partnership certification programs and administering the State Licensing Match System program.

Membership Records

(Business and Professions Code section 6002, The Rules of the State Bar)

The MSC maintains the State Bar membership roll. Members are required to maintain a current address with the State Bar of California. In 2009, the MSC processed 52,623 address changes. The MSC also process non-disciplinary status changes in accordance with the Rules of the State Bar. In 2009 there were 7,261 such status changes. The MSC staff also performed the actual status changes required by discipline orders (approximately 1,400), processed voluntary resignations (approximately 281) and created membership records for new admittees (6691). As custodians of the membership roll, the MSC is also responsible for issuing certificates of standing requested by members and other regulatory agencies. In 2009, the MSC produced almost 9,000 of these certificates.

Minimum Continuing Legal Education Compliance

(Business & Professions Code section 6070, California Rules of Court rule 9.38 and State Bar Rules & Regulations)

With the exception of exempt members, all active members of the State Bar must meet Minimum Continuing Legal Education (“MCLE”) requirements every three years. Effective July 1, 2009, the State Bar placed 355 members of MCLE compliance Group 2 (last names H-M) on administrative inactive status for failure to comply with MCLE requirements. This represents 0.75% of the original 47,334 members who were due to report compliance in 2009. On December 1, 2009, MSC started the compliance reporting process for the 58,145 Group 1 members (last names A-G) due to report compliance in 2010. In addition, during 2009, the State Bar received 370 member credit request applications.

Law Corporation

(Business and Professions Code section 6160 *et seq.* and State Bar Law Corporation Rules)

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 2009 there were approximately 7700 registered law corporations.

Limited Liability Partnerships

(State Bar LLP 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 2009, there were approximately 2,400 registered LLPs.

State Licensing Match System Program

(Family Code section 17520 and the Rules of the State Bar)

Family Code section 17520 requires the State Bar of California to participate in a program aimed at increasing compliance with judgments or orders of child and family support. The California Department of Child Support Services (“DCSS”) provides the State Bar with a list of member’s who are not in compliance with their child support obligations. The MSC performs the statutory notification requirements and unless the member obtains the necessary DCSS release suspends them. The MSC also reinstates suspended members upon receipt of a DCSS release. In 2009, the MSC sent out 136 initial notices of intent to suspend members and actually suspended 29 members who failed to bring themselves into compliance by the suspension deadline.

Office of Legal Services

The Lawyer Referral Services Program, previously assigned to the Access and Fairness Department, is now supervised by the Office of Legal Services.

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 2009, there were 61 certified lawyer referral services

Office of the Secretary

The Special Masters List, which was previously maintained by the Office of Certification, is now maintained by the State Bar Office of the Secretary.

Special Masters

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

An attorney 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 2009 there were approximately 246 qualified special masters.

GENERAL FUND AND MEMBERSHIP FEES

In 2009, the annual membership fee for active members was \$410. 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 (\$340) supports the State Bar's General Fund. A portion of the annual membership fee is assessed for the Client Security Fund (\$40), for the IT Special Assessment Fund (\$10), 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. The Probation Unit is listed as a sub-program of Discipline. Prior to 2007, this sub-program was 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.

GENERAL FUND		
2009 Unaudited Actual Program Expenditures (Dollars in Thousands)		
Program	Amount	Percentage
Discipline	52,325	83.3%
Administration of Justice	897	1.40%
Governance	2,801	4.50%
Administration of the Profession	2,624	4.20%
Program Development	1,392	2.20%
Communications & CBJ	2,855	4.50%
Miscellaneous Non Departmental Expense	(92)	(.10)%
<u>TOTAL</u>	62,802	100%

DISCIPLINE		
2009 Unaudited Actual Discipline Sub-Program Expenditures (Dollars in Thousands)		
Discipline Sub-Program	Amount	Percentage
Office of Chief Trial Counsel	38,409	73.40%
State Bar Court	9,958	19.0%
Probation Unit	903	1.70%
Fee Arbitration Program	789	1.50%
Professional Competence	2,292	4.40%
<u>TOTAL</u>	52,351	100%

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 and where the Court concludes that the violation or violations were not intentional or occurred under mitigating circumstances and no significant harm resulted. If within two years after the issuance of an admonition to a respondent, another disciplinary proceeding is initiated against that respondent based upon other alleged misconduct, the proceeding resolved by admonition will be reopened upon motion of the Office of the Chief Trial Counsel filed within 30 days after the initiation of the second proceeding. 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.

Alternative Dispute Resolution

A procedure for resolving a complaint without the formality of a State Bar Court proceeding, such as through fee arbitration or mediation.

Backlogged Complaints

Under Business and Professions Code section 6086.15, 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)).

Cancelled

See License to Practice Law Cancelled.

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.

Disbarment, Summary

A disciplinary action whereby a member is disbarred by the California Supreme Court without the formality of a State Bar Court proceeding. A member convicted of certain crimes may be summarily disbarred, with or without a recommendation by the State Bar Court, 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 Law Cancelled

A disciplinary action whereby the California Supreme Court cancels an attorney's license to practice law. The attorney's name is stricken from the roll of California attorneys and the attorney becomes ineligible to practice law.

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 filed in the State Bar Court by a former member who resigned or was disbarred, which initiates a reinstatement matter. Pursuant to rule 665 of the State Bar Rules of Procedure, in order to be reinstated the former member must demonstrate rehabilitation, present moral qualifications and present learning and ability in the law. The State Bar Court may grant or deny the petition. (*See also* Reinstatement; *compare* Suspension, Relief from Actual.)

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 of

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

Probation, Extension of

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

Probation, Revocation of

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 Order

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 Reprimand

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 reprimand 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 initiated by the filing of a Petition for Reinstatement in which the State Bar Court determines whether a resigned or disbarred member should be readmitted to membership. (*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.

Reprimand

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

Request for Further Proceedings

A request from a complainant 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 reprovls 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 9.20

Rule 9.20 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 9.20 violation proceeding, the State Bar Court determines whether a member violated a Supreme Court order to comply with rule 9.20. Prior to January 1, 2007, this rule was numbered rule 955.

Rule 955

See 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. (*Compare* Petition for Reinstatement.)

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.

Withdrawal

In the context of a regulatory proceeding, a withdrawal disposition represents an order issued by the judge allowing the initiating party to withdraw the request to have their matter heard. This order terminates the case

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.