

Productivity Report of The Office of the Chief Trial Counsel



**Office of the Chief Trial Counsel
June 19, 2009**

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This report contains data regarding numerous key indicators of the performance of the Office of the Chief Trial Counsel (OCTC) for January through May 2009. In order to allow for a comparative assessment OCTC's performance during that time period, this report also contains data on OCTC's performance in those same areas for January through May 2008, and the average of OCTC's performance in those same areas from January through May in the years 2003 to 2007. The vast majority of the estimates for OCTC's January through May performance in 2003 through 2007 were determined by calculating 5/12s of the average of OCTC's year-end performance in those years. Figures calculated in this manner are indicated with a "+" symbol.

The Office of the Chief Trial Counsel staffs the State Bar's Attorney Complaint Hotline.

OCTC's Intake Unit receives written complaints about attorneys from clients, the courts, other attorneys and members of the public. The Intake Unit also staffs the State Bar's Attorney Complaint Hotline number (1-800-843-9053). Many of the public's initial contacts with the State Bar are made through this toll-free number. The number of calls received on the 1-800 number has been dramatically reduced since 2004. We believe the primary reasons for the decrease are, first, the addition of 4 new trunk lines in January 2004 and a corresponding reduction in callers who receive a busy signal, which count as telephone calls received, and, second, the availability of downloadable complaint forms on the State Bar's website commencing in early 2004. (For example, 27,778 complaint forms were downloaded from January to May 2009.) Thus, telephone calls are no longer the primary indicator of the Intake Unit's workload. In fact, despite the decrease in telephone calls, the number of complaints received by the Intake Unit has remained relatively stable. (See "Inquiries Opened" table below.)

Calls To Attorney Complaint Hotline			
	Jan. – May 2009	Jan. – May 2008	2003 - 2007 Avg.
Total telephone calls received	37,157	29,360	35,308 [†]

The Office of the Chief Trial Counsel receives complaints against California attorneys and resolves them.

A written complaint received by OCTC from a client, the court, an opposing counsel or another member of the public against a California attorney is called an inquiry. 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. An inquiry marks the commencement of OCTC's intake process.

Inquiries Opened			
	Jan. – May 2009	Jan. – May 2008	2003 - 2007 Avg.
Inquiries opened (by respondent)	5,987	5,725	5,623 [†]
Inquiries opened (by number of inquiries)	5,143	4,972	4,945 [†]

OCTC may resolve an inquiry by either advancing the inquiry to investigations or closing the inquiry. The inquiry is advanced to investigation if OCTC determines that the inquiry, first, either on its face or following preliminary investigation, alleges facts constituting a violation of the Rules of Professional Conduct and/or the State Bar Act and, second, would likely result in discipline if the allegations contained in the inquiry are true. Otherwise, the inquiry is closed.

Inquiries Resolved			
	Jan. – May 2009	Jan. – May 2008	2003 - 2007 Avg.
Inquiries resolved (by respondent)	6,108	5,612	5,739 [†]
Inquiries resolved (by number of inquiries)	5,182	4,836	5,008 [†]

The Office of the Chief Trial Counsel receives reportable actions regarding California attorneys.

Under the Business and Professions Code, courts and insurers must report specified types of civil activities involving 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) require courts to notify the State Bar of:

- Any final order of contempt imposed against an attorney under certain circumstances;
- Any modification or reversal of a judgment in a judicial proceeding that is based in whole or in part on 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) requires insurers or licensed surplus brokers providing professional liability insurance to notify the State Bar of every claim or action for damages for fraud, misrepresentation, breach of fiduciary duty or negligence committed in a professional capacity against any attorney that the insurer or licensed surplus broker insures.

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

Section 6086.8(c) requires attorneys who do not possess professional liability insurance to report to the State Bar any settlement, judgment or arbitration award regarding any 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) states that it is the duty of an attorney to report to the State Bar:

- The filing of three or more lawsuits against that 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 certain misdemeanors;
- 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.

OCTC’s Intake Unit evaluates all of these statutorily mandated reports, or “reportable actions.”

Reportable Actions Received			
	Jan. – May 2009	Jan. – May 2008	2003 - 2007 Avg.
Banks	1,338	822	971†
Courts	39	48	49†
Insurers	64	53	83†
Attorneys self-reports	49	75	36†
Other*	10	2	N/A
<u>TOTAL</u>	1,500	1,000	1,139†

* Tracking for “Other” Reportable Actions began in March 2008.

If an inquiry or reportable action warrants State Bar action or if the attorney fails to satisfactorily respond to OCTC’s letter to him or her regarding the violation alleged in the inquiry or reportable action, the inquiry or reportable action is advanced to one of OCTC’s four Investigation/Trial Units for investigation then, if appropriate, forwarded for discipline.

Inquiries and Reportable Actions Advanced to Investigation			
	Jan. – May 2009	Jan. – May 2008	2003 - 2007 Avg.
Inquiries advanced to investigation	1,607	1,186	1,341†
Reportable actions advanced to investigation	222	208	193†
<u>TOTAL</u>	1,829	1,394	1,534†

The Office of the Chief Trial Counsel investigates and resolves inquiries and reportable actions received regarding California attorneys.

At the conclusion of each investigation of an inquiry or reportable action, the Investigation/Trial Unit assigned to the matter either closes the complaint or, if OCTC believes that the attorney violated the Rules of Professional Conduct and/or the State Bar Act, forwards the matter to a trial attorney in the unit for discipline.

Investigations Resolved			
	Jan. – May 2009	Jan. – May 2008	2003 - 2007 Avg.
Closed	704	729	857**
Forwarded for discipline	595	552	632**
<u>TOTAL</u>*	1,301	1,285	1,489**
*Cases that were reopened but not resolved by year-end are included in these totals; however, because they were not resolved, these cases are not reflected in the number of closed investigations or the number of investigations forwarded for discipline.			
**This figure represents 5/12s of the average number of investigations closed, forwarded for discipline or reopened but not resolved by year-end during the years 2003 through 2007.			

Matters forwarded for discipline can be resolved in a variety of ways, including through the filing of a stipulation, the filing of a notice of disciplinary charges or the attorney's resignation with charges pending.

Case Dispositions			
	Jan. – May 2009	Jan. – May 2008	2003 - 2007 Avg.
Notice of Disciplinary Charges (NDC) filed	103	131	145†
Matters included	208	239	245†
Resignation with Charges Pending	29	22	34†
Stipulated discipline filed prior to filing of NDC	53	32	65†
Matters included	71	37	108†

OCTC's inventory of open cases is as follows:

Open Case Inventory			
	May 2009	May 2008	2003 - 2007 Avg.
Notice Open	1,342	1,258	806*
Hearing Open**	711	559	563*
Open 6 months or less	1,488	1,262	1,246*
7-9 months	190	277	190*
10-12 months	118	171	96*
13-21 months	186	179	112*
21 months plus	76	56	40*
Total Investigations Open Pending	2,058	1,945	1,684*
"Backlog" by statutory definition	490	560	364*

*This figure represents the inventory average at year-end for the years 2003 through 2007.
 **The Hearing Open inventory is a measurement of the individual cases in open status in State Bar Court. A proceeding or matter may contain one or more cases. OCTC has limited control over the number of cases included in a matter and the number can vary from case to case. As such, the proceedings total may be a more relevant reflection of the work in State Bar Court. The Hearing Open inventory does not include the cases in the Alternative Discipline Program.

The average pendency of OCTC's closed cases is as follows:

Pendency of Closed Cases			
	Jan. – May 2009	Jan. – May 2008	2003 - 2007 Avg.
Average pendency of closed inquiries at the time of closure	49 days	49 days	48 days*
Average pendency of closed investigations at time of closure	186 days	186 days	192 days*

*This figure represents the average pendency in days of closed inquiries or investigations at year-end for the years 2003 through 2007.

The Office of the Chief Trial Counsel handles other disciplinary and regulatory matters in addition to original matters.

Original matters are those proceedings initiated by an inquiry or reportable action and forwarded for discipline. OCTC also handles other litigation matters that are initiated by rule or law. These include the following disciplinary matters:

- Rule 1-110 (former Rule 9-101) violation matters to determine whether an attorney has willfully failed to comply with a condition or conditions attached to a private or public reproof as required by Rule 1-110 of the Rules of Professional Conduct and, if so, the discipline to be imposed;

- Business and Professions Code section 6049.1 matters to determine whether a member should be disciplined for professional misconduct committed in another jurisdiction; and
- Rule 9.20 (former Rule 955) matters to determine whether an attorney has adhered to a Supreme Court order requiring the attorney to comply with rule 9.20 of the California Rules of Court.

Other litigation matters handled by OCTC also include the following regulatory matters:

- Moral character matters in which an applicant for membership in the State Bar appeals an adverse moral character determination made by the Committee of Bar Examiners;
- Reinstatement matters to determine whether an attorney should be reinstated to membership in the State Bar after the attorney's resignation with or without charges pending or disbarment;
- Business and Professions Code section 6007(b)(1), 6007(b)(2), 6007(b)(3) and 6007(c) matters to determine whether an attorney should be enrolled as an inactive member pursuant to the Business and Professions Code; and
- Standard 1.4(c)(ii) matters, conducted pursuant to standard 1.4(c)(ii) of the Standards for Attorney Sanctions for Professional Misconduct, in which a member seeks to be relieved from actual suspension imposed pursuant to a Supreme Court order.

Other Litigation Matters Handled			
	Jan. – May 2009	Jan. – May 2008	2003 - 2007 Avg.
Disciplinary matters	43	39	44†
Regulatory matters	26	17	24†
<u>TOTAL</u>	69	56	68†

The Office of the Chief Trial Counsel assumes jurisdiction over the practices of non-attorneys engaged in the unauthorized practice of law and of attorneys that have died, resigned, become inactive members of the State Bar, been disbarred or been suspended.

OCTC also handles 6126.3 cases, 6180 cases and 6190 cases, conducted pursuant to Business and Professions Code sections 6126.3, 6180 and 6190, respectively. Section 6126.3 permits the State Bar to petition the state courts to assume jurisdiction over the legal practice of any non-attorney engaged in the unauthorized practice of law. 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 where the attorney has become incapable of devoting adequate time and attention to his or her law practice, and of providing the quality of legal service necessary to protect the interest of a client, if there is an unfinished client matter for which no other active member of the State Bar has agreed to assume responsibility.

6126.3 Cases			
	Jan. – May 2009	Jan. – May 2008	2006 – 2007 Avg.
Cases opened	94	56	63
Petitions granted	3	4	3
Client files recovered	812	2,521	1,842

6180/6190 Cases			
	Jan. – May 2009	Jan. – May 2008	2003 - 2007 Avg. *
Cases opened	7	12	14†
Petitions granted	6	7	7†
Client files recovered***	3,681	1,298	3,987†

*These figures represent 5/12s of the average number of cases opened, petitions granted or client files recovered during the years 2003 to 2007.

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

The Office of the Chief Trial Counsel reviews those cases in which a complainant seeks review of a decision to close his or her complaint without disciplinary action.

In August of 2004, OCTC created a separate unit called Audit and Review to handle requests from complainants for a review or “second-look” of a decision by OCTC to close his or her complaint without disciplinary action.

Second-Look Request Inventory			
	Jan. – May 2009	Jan. – May 2008	Jan. – May 2007
Received during reporting period	622	499	564
Resolved during reporting period	714	535	843
Pending at reporting period end	250	127	223

A detailed breakdown of the second-look requests resolved by the Audit and Review Unit is as follows:

Second-Look Request Dispositions			
	Jan. – May 2009	Jan. – May 2008	Jan. – May 2007
Second-look request denied	667	479	750
Second-look request granted	27	25	45
Warnings sent to attorney	5	2	7
Other*	15	29	41
<u>TOTAL</u>	714	535	843
**“Other” dispositions include responses to complainants seeking additional review after the denial of their second-look requests and correspondence from complainants that were determined not to be second-look requests.			