



THE STATE BAR OF CALIFORNIA

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

Date: November 30, 2009

To: Members, Board of Governors

From: William Hebert, Chair Discipline Oversight Committee

Re: November 13, 2009 Board Planning Session Breakout Topic I – State Audit of Discipline System

Summary of Breakout Topic I – State Audit of Discipline System Discussion

1. We are on track to complete all recommendations identified in by the State Auditor in its July 2009 Report (2009-030) within the Auditor's required one-year deadline.

The Timekeeping for Resource Allocation Study will be used to assist with the Office of the Chief Trial Counsel Metrics' Committee's efforts to assess and evaluate the performance of the Office of the Chief Trial Counsel.

2. Issues regarding Lawyer Assistance Program diversion discussed in items 2, 3, and 4 in the "Discipline Issues" section and of the "Policy Considerations" section in the following outline:

Discipline System Issues:

1. Cost of the discipline system continues to be the linchpin of budget planning. Recent Bureau of State Audits' (BSA) report noted that "cost of discipline system has escalated... while disciplinary inquiries opened has declined"

"Even though the State Bar does not separately track its discipline costs by function within the Office of the Chief Trial Counsel, at our request, the chief financial officer was able to provide approximations of these costs based on an estimate of the time State Bar staff spent on each function within the disciplinary system during a year. The intake and State Bar Court functions are separately accounted for and therefore did not need to be estimated. Once having arrived at these estimates for the functions, the chief financial officer then applied the same percentage estimates for each of the functions to the total discipline costs for each of the preceding five years; therefore, this is not a precise estimate because this is not a

process that the State Bar normally uses in its management of the disciplinary system. Although we were not able to verify management's estimates, we were able to match the sum of the estimates for the investigation, trial, and audit and review functions to the total discipline costs appearing in the State Bar's audited financial statements for 2004 through 2007. Based on the estimates, we determined that these three functions of the Office of the Chief Trial Counsel—investigations, trials, and audit and review—account for 48 percent of the enforcement program area's expenses.

The estimated costs for these three functions of the Office of the Chief Trial Counsel show larger increases in some functions than in others. For example, according to the estimates provided by the chief financial officer, investigation costs have increased nearly 30 percent from under \$12 million in 2004 to \$15 million in 2008.

As recommended by the BSA the State Bar will contract to conduct a time study of staff time and resources devoted to various functions within the discipline system. Data will be collected to various State Bar offices to document tasks performed, time spent on each task, how often tasks are performed. Such data will be gathered from a random sample of personnel and cases in various offices.

2. Statutory LAP program exceeds statutory authorization by 1 million dollars in pursuit of legislative mandate for a "Cadillac" system.
3. Alternative Discipline System (ADP) —a by-product of the LAP—substantially increased the costs and resources to the disciplinary system and the LAP—with mixed results.
4. Board with OCTC, SBC, and LAP support passed significant restrictions on access to the ADP.

Policy Considerations:

1. What additional steps, if any, should Board consider to reduce costs of the LAP in addition to ADP restrictions and new proposed rules for cheaper and more efficient member LAP participation? Some possibilities:
 - a. True diversion program –low level offenses referred to LAP or other provider within the existing OCTC structure of agreements in lieu of discipline (ALD)

- b. Open ADP monitoring to entities other than the LAP—currently exclusively LAP program monitoring.
 - c. Focus LAP on a broader range of attorney assistance, career counseling, stress reduction, and attorneys in need of services who are not yet in the discipline system.
- 2. What additional steps, if any, should the Board consider to reduce discipline costs in its interaction with the LAP and ADP? Some possibilities:
 - a. Consider further restrictions on the ADP; require joint agreement by OCTC and respondent for participation in program; elimination of system altogether.
 - b. Eliminate LAP exclusivity as provider of monitoring services.