



THE STATE BAR OF CALIFORNIA

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DRAFT – FOR DISCUSSION PURPOSES ONLY

TO: Discipline Oversight Committee

FROM: William Hebert, Chair

DATE: July 21, 2010

RE: Evaluation of Performance of Discipline Oversight Committee Versus Goals:
2009-2010

INTRODUCTION

In September 2009, State Bar President Howard Miller asked each committee of the Board of Governors to formulate goals for the 2009-2010 Board year. The purpose of this report is to compare the goals adopted by the Discipline Oversight Committee (the “Committee”) at the September 2009 Board meeting versus its performance against those goals as of the July 2010 Board meeting.

The following chart sets forth in each articulated goal of the Committee and its status.

DISCIPLINE OVERSIGHT COMMITTEE – PERFORMANCE AGAINST GOALS

Goal	Description	Status
1	Oversee the recruitment and hiring a new Chief Trial Counsel.	Completed. In June 2010, the Board hired James Towery as the new Chief Trial Counsel.
2	Review proposed changes to the reporting of judicial reportable action data in future Annual Discipline Reports [based upon recommendations of the CCFAJ].	Completed. To be included in next Annual Discipline Report.

Goal	Description	Status
3	Create an attorney surrogate program.	In process. A Task Force chaired by former Board member Richard Frankel has met several times during the year. Draft forms have been circulated for comment. Final forms will be posted on the State Bar Web site for optional use by lawyers in the State.
4	Review and, if approved, forward to the board for consideration, proposed modifications to select sanction standards for attorney discipline.	In process. Out for public comment and to be considered at the July 2010 Board meeting.
5	Review and recommend to the Board of Governors support of rule changes to streamline the process for obtaining the inactive enrollment of attorneys who pose a threat to the public (Bus. & Prof. code 6007(c)).	In process. Part of update to Rules of Procedure. Out for public comment and to be considered at the July 2010 Board meeting.
6	Review and, if approved, adopt proposed performance measures that would assist the Board's evaluation of the discipline system.	Completed.
7	Evaluate staff proposal for Trial practice skills development for deputies through in-house programs and the use of outside programs such as the National Institute on Trial Advocacy.	Completed. See Attachment A for a list of trial practice skill classes attended by OCTC attorneys.
8	If judicial reporting obligations change [for example, as recommended by the CCFAJ], consider additional proposed changes to the reporting of judicial reportable action data in future Annual Discipline Reports, if any.	In process. Started collecting information as of January 1, 2010, the additional information that the CCFAJ recommended be collected. We will be reporting the additional data to the extent it exists in the 2010 annual report

Goal	Description	Status
9	Consider and, if approved, adopt staff proposal for implementing changes to the California Code of Judicial Ethics regarding judicial reportable actions [as recommended by the CCFAJ].	In process. Started collecting information as of January 1, 2010, the additional information that the CCFAJ recommended be collected. We will be reporting the additional data to the extent it exists in the 2010 annual report.
10	Review periodic status reports on OCTCs implementation of state auditor's recommendation re: discipline system: 60 day, six month, twelve-month.	Completed. 12-month review finalized and submitted on July 21, 2010.
11	Review and recommend to the Board of Governors support of proposed legislation for Board consideration that would permit final fee arbitration decisions to be admitted into evidence for limited purposes in discipline proceedings.	Postponed indefinitely. The Office of the Chief Trial Counsel reconsidered this concept and decided not to pursue it at this time.

ROUTINE TASKS OF THE COMMITTEE

In addition to working toward completing these eleven articulated goals, the Committee completed the following routine tasks that fell under its jurisdiction in 2009-2010:

General Oversight of the Discipline System

- The Committee recommended adoption of New Rule 216.5 and Proposed Amendment to Rule 803, Rules of Procedure (The Right of the Victims of Attorney Misconduct to Submit a Victim's Statement at the Mitigation/Aggravation Stage of Disciplinary Proceedings). Board approval: November 2009.
- The Committee released the proposed new Rules of Procedure of the State Bar Court for public comment 5/10.
- The Committee made recommendations on 77 resignations with charges pending. Board approval: various dates.

Discipline Day

- The Committee sponsored Discipline Day on October 22, 2009 in Los Angeles.

Public Hearings on the Discipline System

- The Committee sponsored and chaired public hearings on the Discipline System on December 8, 2009 (San Francisco) and December 10, 2009 (Los Angeles).

Client Security Fund

- The Committee recommended the adoption of new Client Security Fund Rules. Board approval: November 2009.

Fee Arbitration and Consideration of Local Bar Rules

- The Committee recommended adoption of the following Local Bar Fee Arbitration Rules, which were subsequently approved by the full Board:
 - Kern County, November, 2009.
 - Riverside County, January, 2010.
- Effective January, 2010, the Board granted the Discipline Oversight Committee the authority to give final approval of Fee Arbitration Rules for local bars. Thereafter, the Committee approved the following Fee Arbitration Rules:
 - Yolo County, March 2010.
 - North San Diego, March 2010.
 - Solano County Bar Association, May 2010.
 - North Santa Barbara Bar Association, May, 2010.
 - San Luis Obispo County Bar Association, May 2010.

Fee Arbitration Rules and Forms

- The Committee recommended adoption of the new “Notice of Your Rights After Arbitration” form. Board approved: November, 2009.
- The Committee recommended adoption of new Fee Arbitration Model Rules. Board approved: March, 2010.
- The Committee recommended adoption of a sample Fee Arbitration agreement. The Board approved: March, 2010.
- The Committee recommended approval of a Revision to the “Notice of Your Rights After Arbitration Form” based upon new Supreme Court precedent. Board approved: May, 2010.
- The Committee recommended approval of “Proposed Revisions to the State Bar Guidelines and Minimum Standards for the Operation of Mandatory Fee Arbitration Programs.” The Board approved: May, 2010.

ATTACHMENT A
Office of the Chief Trial Counsel
Trial Skill Training Courses
2009-2010

Training Date	Title of Training	Participants	Training Company/Presenter
1/28/09	Making Your Case: The Art of Persuading Judges	SF: 1-Attorney	Bar Association of San Francisco
2/17/09	Destined for Appeal: Appellate Tips for the Trial Lawyer	SF: 1-Attorney	Bar Association of San Francisco
4/2/09	Loan Modifications Issues	15-Attorneys 5-Investigators 4-Paralegals	MCLE
4/30/09	Loan Modification Issues	SF: 18-Attorneys 12-Investigators 4-Paralegals	Department of Real Estate (DRE)
5/27/09	Prosecutorial Misconduct	SF: 18-Attorneys	Cydney Batchelor/Don Steedman
5/29-5/31/09	ABA Appellate Practice Institute	SF: 1-Attorney	American Bar Association
6/11/09	Ethical Violations in Loan Modifications	10-Attorneys	MCLE
6/13-6/21/09	National Institute for Trial Advocacy - Building Trial Skills: Western	SF: 2-Attorneys	NITA
7/12-7/15/09	120 th Annual Association of Certified Fraud Examiners (ACFE) Conference	SF: 1-Attorney	Association of Certified Fraud Examiners

Training Date	Title of Training	Participants	Training Company/Presenter
10/23/09	American Board of Trial Advocates - Masters in Cross Examinations	3-Attorneys	ABOTA
10/30/11/6/09	National Institute for Trial Advocacy - Building Trial Skills: Pacific	1-Attorney	NITA
4/21/10	Duty to Disclose Exculpatory Evidence	SF: 18-Attorneys	Allen Blumenthal
5/19/10	Roundtable: Evidence Code 788 and Impeaching with a Criminal Conviction	SF: 18-Attorneys	Manuel Jimenez
6/3-6/5/10	National Institute for Trial Advocacy -Deposition Skills: Southern California	2-Attorneys	NITA
6/11/10	American Board of Trial Advocates - Masters in Cross Examination	7-Attorneys	ABOTA