



THE STATE BAR
OF CALIFORNIA

INTER-OFFICE
COMMUNICATION

DATE: October 26, 2010

TO: Joseph Chairez, Chair, RAD Committee
William Gailey, Vice-Chair, RAD Committee
Members, RAD Committee

FROM: Jim Towery

SUBJECT: OCTC Status Report

This will be the first of what I anticipate will be periodic status reports that I will be providing to RAD in advance of each RAD meeting. My goal is to improve OCTC's communications to RAD, and to provide RAD with clear and concise status reports. These reports will consist of two parts: first, a brief narrative executive summary; and second, a "dashboard" of various metrics which describe the workload, challenges and accomplishments of OCTC. I welcome any feedback you have on this reporting format. My goal is to provide information that is helpful to you in your role of providing policy guidance to OCTC. In short, I would appreciate knowing if this format is helpful, and if there are improvements we can make to the information we provide you.

Overview of OCTC Workload

OCTC continues to experience an increased and heavy workload, most likely a result of the struggling state economy. Part of the explanation for this is the continuing receipt of complaints based upon alleged misconduct by attorneys in loan modification cases. These "loan mod" cases account for roughly one third of the total workload of our office, and there is no indication that that portion is declining.^a Beyond the loan mod cases, however, we continue to see an increase in the number and severity of complaints. OCTC staff, who deal with the public, report an increase in the intensity of client complaints: the clients appear more angry and determined than in the past.

As shown by the attached dashboard, our incoming telephone calls remain fairly constant at around 7,000 per month. Our number of inquiries opened, reflecting our receipt of written complaints, has trended upward in the past two years. The dramatic increase in our workload is shown by the number of open investigations, which historically was around 1,500 cases, increased to approximately 2,500 in 2009, and this year is averaging 3,500 cases. This has led to a marked increase in the number of cases in our investigative backlog (cases older than six months), where that backlog has increased from 300 at the end of 2009 to close to 1,000 at present.

^a While some of the players in recent loan modification investigations have been subject to prosecution by other agencies (local, state and federal), the vast majority of loan mod cases involving attorneys have come to the State Bar. The state statute enacted in October 2009 (SB 94), prohibiting advance attorney fees in loan mod cases, has yet to stem the tide of complaints against California attorneys.

Tackling the Investigative Backlog

OCTC typically goes through a cyclical process in which the investigative backlog receives more intense attention during the final quarter of the year. That cycle is occurring this year as well, with some new wrinkles. OCTC investigators were classified as non-exempt in the past year. Accordingly, OCTC has sought and received permission to pay overtime to the investigators to assist in addressing this backlog. Investigators (and their supervisors) are now working weekends and longer days to address the backlog. In addition, we have modified our policies to be more aggressive in resolving our investigations of minor misconduct. We are also focusing upon attorneys who have multiple matters in investigation. While we believe that all of these steps will reduce the investigation backlog by year-end, we are certain the year-end backlog for 2010 will not be as low as the 300 or so cases where it has been in recent years. We simply have too many cases in investigation to reach that level.

Tackling the “Notice Open” Inventory of Cases Awaiting Notice-Drafting

Over the past five years, there has been a steady increase in the number of cases in our “Notice Open” inventory. Simply stated, this inventory consists of cases with completed investigations, where the case is awaiting the drafting of disciplinary charges (or other disposition). This inventory has grown from roughly 600 cases in 2005 to over 1,200 cases in 2008. The inventory peaked at over 1,400 cases in January 2010, and now stands at just under 1,200 cases. Since our office typically files approximately 300 notices per year, this inventory represents several years’ worth of accumulated cases requiring notice-drafting. Some cases have been in this status for two to four years, which is not acceptable under any standard.

We have taken a number of steps to address this inventory, including setting aggressive goals, making staffing changes and instituting new policies, all of which are aimed at focusing more resources on resolving cases and using our resources in a more efficient way. Primarily we have made a decision to increase the number of attorneys devoted to drafting notices. We have established a special notice-drafting team with roughly one third of all our lawyers involved. This team is being led by Supervising Trial Counsel Dane Dauphine in Los Angeles and Don Steedman in San Francisco. We have set a goal to reduce the Notice Open inventory to 500 within a year, and to address the oldest cases first. We have enlisted support from the Office of General Counsel. And we are making a concerted effort to resolve or dismiss the cases involving only minor misconduct, and to more efficiently settle cases at all stages. This will be a difficult challenge, but we are cautiously optimistic that we can bring this inventory under better control.

Other OCTC Activities

While OCTC is focusing upon the investigative backlog and the Notice Open inventory, the normal work of the office goes on. We continue to process the normal work of trials and appeals, moral character cases, reinstatement petitions and so forth. Let me simply highlight some of the other activities of the office over the past three months:

- **The Loan Modification Task Force:** Under the leadership of Supervising Trial Counsel Suzan Anderson, the loan mod task force continues to achieve remarkable results. We have now removed 17 lawyers from practice, either by resignations or stipulated disbarments. Our task

force is receiving national recognition for its leadership and initiative in tackling this persistent problem.

- **Technology Initiative:** With the guidance of the Bar's IT office, we have begun the process of seeking to acquire a modern case management system that will greatly increase our efficiency and productivity. The IT office is now working on the RFP process. Our goal is to bring this to the Board in May 2011 for approval of a contract. Our current technology is very ancient; we are very excited about this initiative.
- **Meeting with Respondents' Counsel:** On September 21, we held a meeting between the leadership of OCTC and the leadership of the Association of Disciplinary Defense Counsel (ADDC). It was a very cordial and productive meeting, and we identified several areas of potential cooperative work, including updating disciplinary standards.
- **Responding to the Report of the Northern California Innocence Project (NCIP) on Prosecutorial Misconduct:** The NCIP released its report a few weeks ago, in part criticizing the State Bar for disciplining so few prosecutors who have been cited by courts for prosecutorial misconduct. In large part the criticism is unfair, because the State Bar is seldom notified by either courts or prosecutors about such incidences, despite the fact that both courts and prosecutors have a statutory duty to report these matters to us. Regardless, we have made a decision to carefully review the report to ascertain whether we now want to open investigations on any of the matters cited in the NCIP report. Under the leadership of Deputy Trial Counsel Cydney Batchelor of our office, we are taking a balanced and fair approach to the issue. We will focus upon recent cases involving prosecutorial misconduct found by the courts to be sufficiently harmful to overturn a conviction.
- **The Alternative Discipline Program (ADP).** We continue to seek ways to limit the negative effects of the ADP program. We are developing an alternative true diversion program for minor misconduct. Our office will also identify cases in ADP that are no longer appropriate for diversion.

Conclusion

An appropriate analogy is that OCTC is like a district attorney's office in the midst of a crime wave. Our resources have not grown; in fact, there has been no growth in our resources for over twenty years during which period the membership in the State Bar has grown substantially. In response to this crime wave, OCTC has had no alternative but to prioritize, prioritize, prioritize. We are seeking to move the minor misconduct out of the system as quickly and efficiently as possible so that we can concentrate our resources on those attorneys who pose the greatest threat to the public. Our employees are working hard at all levels. By the end of the year, we anticipate that the productivity metrics—those that judge how many cases we have processed—will show significant gains during 2010. That is the fair measure by which to judge the effectiveness of our California disciplinary system.

We will be pleased to answer any questions you have or to provide any additional information that you seek. Thank you.

Jim Towery
Chief Trial Counsel