



THE STATE BAR  
OF CALIFORNIA

INTER-OFFICE  
COMMUNICATION

DATE: February 17, 2011

TO: Joseph Chairez, Chair, Regulation, Admissions & Discipline Committee  
William Gailey, Vice-Chair, Regulation, Admissions & Discipline Committee  
Members, Regulation, Admissions & Discipline Committee

FROM: Jim Towery, Chief Trial Counsel

SUBJECT: OCTC Status Report

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I am happy to report that I've survived my first six months as Chief Trial Counsel. I continue to familiarize myself with our dedicated and experienced staff of support persons, complaint analysts, investigators, and attorneys who pull together, appropriately evaluate, and when necessary, litigate a tremendous volume of work facing our office. Although I am very mindful that many challenges remain ahead, I am pleased with the direction in which our office is heading. I'm confident that we will make significant gains in many areas this year, especially with some of the major initiatives we've put into place as described below.

**Vertical Major Misappropriation and Loan Modification Teams.** In order to more efficiently and expediently prosecute the small number of lawyers who cause a disproportionate amount of harm to the public, OCTC reorganized its attorney and investigator staff into two vertical teams. In the misappropriation area, we have described the approach and general composition of the Major Misappropriation Team, led by Senior Trial Counsel Joseph Carlucci, in a separate agenda item on the RAD's action agenda for this meeting.

In the loan modification area, despite OCTC's efforts to tackle loan modification misconduct by lawyers through education and aggressive prosecution, we have yet to experience a tangible reduction in the number of new complaints about loan modification misconduct by lawyers. Consistent with prior reports to you, one third of our total workload consists of loan modification misconduct complaints. To improve prosecutorial efficiencies, we have expanded our loan mod task force (led since it started in March 2009 by Suzan Anderson) into a larger vertical prosecution team which will handle all loan mod work in our Los Angeles office. The new team is led by Assistant Chief Trial Counsel Victoria Molloy. Within that team, we are going to have a smaller unit focusing upon bringing 6007(c) petitions to seek immediate removal of the worst offenders. Suzan Anderson will lead that unit.

**New Rules Transition Committee.** Chaired by Senior Trial Counsel Kimberly Anderson, a newly formed committee is considering the practice and procedural issues raised by the new State Bar Court rules of procedure effective January 1, 2011. We have started to develop office-wide protocols to address the key areas of impact, such as discovery requests and responses, stipulated discovery plans and deposition motions, and handling defaults. We believe that this approach will create uniform

responses by OCTC attorneys, establish and reflect best practices, and continue our leadership role nationally in prosecuting attorney misconduct cases.

**Response to Northern California Innocence Project (NCIP) Report on Prosecutorial Misconduct.**

We have been working hard to analyze the comprehensive findings we made to respond to the NCIP Report. In the meantime, our office is providing educational outreach efforts about prosecutorial reporting requirements as well as the general issues raised in the Report. I recently participated in programs for the California Conference of District Attorneys and the Sacramento County District Attorney's office. Cydney Batchelor will share the table with the authors of the Report on a panel discussion in April at the 15<sup>th</sup> Annual Ethics Symposium in Irvine. Cydney, Donald Steedman, and Murray Greenberg have already reached out to prosecutorial agencies in Los Angeles, San Diego, and Santa Clara counties with many more invitations pending from other offices to provide similar educational programs.

**Case Management System for OCTC.** This project concerns the replacement of OCTC's antiquated data management and case tracking system. A contract has been approved to bring in an outside vendor's software program and a RFP will issue to solicit and evaluate bids on the project.

**Audit and Review Unit.** OCTC is reinstating its Audit & Review Unit, which we suspended in June 2010 to focus attorney resources on notice-drafting efforts. Random audits of closed cases are being conducted to cover the last audit period we skipped to ensure ongoing compliance with internal procedures consistent with the Bureau of State Auditor's recommendations. Once our standard closing letters are revised, the internal review process will be reinstated and staffed by two attorneys, fewer than half the former number of attorneys in place last year.

**Overview of OCTC Workload**

**Calls Received.** As shown by the attached dashboard, our incoming telephone call volume continues to be steady, approximately over 6,500 calls in January, on par with last year's monthly averages.

**Inquiries Opened.** Our number of inquiries opened, reflecting our receipt of written complaints- also reflected in the attached dashboard- decreased slightly, but is almost 1,400 in January. This number is consistent with the trend over the last two years.

**Open Investigations.** The dramatic increase in our workload this past year continues, as reflected by the number of open investigations. Five years ago, this workload was around 1,500 cases. In 2009, this number increased to almost 2500. In 2010, we averaged 3,500 open cases per month during our peak. At year end of 2010, the number was just over 3,000. This trend continues, as we averaged 3,200 open investigations in January.

**Notice Open Inventory of Cases awaiting Notice-Drafting.** The notice open inventory, which rose steadily over the past five years, consists of cases with completed investigations, where the case is awaiting the drafting and filing of disciplinary charges or other resolution. This inventory grew steadily from roughly 600 cases in 2005 to a peak of over 1,400 cases in January 2010. We are making measured headway, as the inventory now stands at close to 900 cases. The median time at present for a case pending in the Notice Open inventory is approximately 203 days.

Our ambitious goal is to reduce the notice open inventory to 500 cases by year's end. We also adopted a goal to reduce the average age of the inventory, so that 75% of all cases would have charges filed or otherwise be resolved in six months, 95% in twelve months, and 100% in 18 months.

**Conclusion.**

Consistent with my goal of improving OCTC's communication with and responsiveness to Board members and other interested stakeholders, since RAD's last meeting, I have held two Discipline Day orientations for Board members (north and south). We had the pleasure of hosting a detailed two day orientation for Joe Dunn with our managers to help familiarize him with our processes. We are presently coordinating efforts to improve our communications with and service as counsel to the Committee of Bar Examiners. In addition, we are meeting with the Association of Attorney Discipline Counsel (ADDC) on February 23, 2011.

As always, please let me know if you have any questions or comments about this update.