



THE STATE BAR
OF CALIFORNIA

INTER-OFFICE
COMMUNICATION

DATE: April 25, 2011

TO: Joseph Chairez, Chair, Regulation, Admissions and 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

Case Management System Procurement.

Chaired by IT's Bill Walker, a new project team began working on the purchase of an off the shelf software program to replace OCTC's antiquated AS-400 data system. This team consists of managers and staff from IT and OCTC, with outside consultant Scott Coplan of Coplan and Company. The team has been meeting intensively in recent weeks to update scripts and technical requirements for a new system. The team's goal is to develop a request for purchase (RFP), solicit and evaluate bids on the project and present a purchase recommendation to the Board at its July 2011 meeting.

High Profile Cases.

Recently, OCTC has been successful prosecuting several high profile cases handled by our Major Misappropriation Team. In a matter prosecuted by Deputy Trial Counsel Melanie Lawrence, attorney Sandra Smith stipulated to be placed on inactive enrollment pending formal charges for misappropriating \$379,000 from an estate client while she was the estate's administrator. In another matter, prosecuted by Senior Trial Counsel Joseph Carlucci, attorney Eric J. Siegler stipulated to disbarment following an investigation for misappropriation of \$170,000 from a client. Siegler also agreed to pay restitution to the client, plus interest. Siegler's case marks the first disbarment stipulation following the Team's creation in February of this year.

In the area of loan modification misconduct, Deputy Trial Counsel Brooke Schafer represented the State Bar in an April 14, 2011 hearing to place Michael T. Pines on interim inactive status pending charges that he advocated violating the law to reclaim homes repossessed in foreclosure proceedings. The matter is submitted and a decision will issue after April 28.

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

We have completed our review and analysis of the NCIP report issued October 2010. In early March, I met with NCIP Director Kathleen Ridolfi to discuss our analysis and next steps.

Our next steps include: (1) designate all cases involving prosecutorial misconduct allegations (current and future) as major cases; (2) formulate a new policy directive, including factors to be considered when investigating and resolving these cases; (3) conduct trainings for staff investigators and attorneys about how to implement the policies; and (4) conduct trainings for prosecutors about the State Bar's disciplinary process and the reporting obligations imposed on prosecutors and the courts. Deputy Trial Counsel Cydney Batchelor is leading a series of training programs for prosecutors throughout the state. She also participated as a panelist on the NCIP report for the 2010 Annual Ethics Symposium on April 9, 2011.

Overview of OCTC Workload

Calls Received. As shown by the attached dashboard, our incoming telephone call volume saw a leap to 8,000 calls in March, on par with last year's highest month volume (also March.)

Inquiries Opened. The number of inquiries opened reflects receipt of written complaints. As reflected in the attached dashboard, this number returned to over 1,300, about the same level we saw in January, after the volume dipped briefly in February. While this number is consistent with the general trend over the last two years, it is lower than the 2010 peak of 1,800 one year ago when the loan modification crisis intensified.

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 in 2011, as we averaged 3,200 open investigations monthly through March.

Investigative Backlog. Beginning with the 2010 Annual Report, OCTC will begin to include in its backlog count two categories of cases traditionally reported elsewhere: the complex cases pending between six and twelve months without resolution and the Notice Open inventory at year's end. For purposes of evaluating case management, however, reporting its investigative backlog separately remains a meaningful measure of productivity. Therefore, the reference to "backlog" in the dashboards for RAD refers to OCTC's investigative backlog.

In March, the investigative backlog rose to over 700 matters, roughly double the backlog count at year's end in 2010. Historically, there is an upward trend in the backlog until the end of the third quarter, which is drawn back down by year's end. However, one of OCTC's goals is to manage this backlog better to smooth out these expected cycles by preventing cases from rolling into backlog during the year.

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 continue to make

measured headway, as the inventory now stands at close to 750 cases. This represents a 46% increase in productivity from where we stood this time last year. We are well on our way to meeting our goal to reduce the notice open inventory to 500 cases by year's end.

OCTC Dispositions. While not reflected in the dashboards, warning letters from Investigations/Trials increase by 30% since this time last year. This was not at the expense of dropping cases. To the contrary, we increase our stipulations to discipline to 54 this quarter compared to 34 in Q1 last year (a 59% increase.)

Conclusion

In brief, the status of OCTC at present is a combination of both encouraging and challenging components. The encouraging aspects include the significant reduction in the notice open inventory, the marked increase in stipulated discipline, and the potential for a modest decrease in incoming complaints. The challenging aspects include the stubborn investigative backlog, the age of that backlog, and the continuing influence of loan modification misconduct complaints.

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