

California State Auditor

B U R E A U O F S T A T E A U D I T S

State Bar of California:

With Strategic Planning Not Yet Completed, It Projects General Fund Deficits and Needs Continued Improvement in Program Administration



April 2007
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CALIFORNIA STATE AUDITOR

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April 26, 2007

2007-030

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As required by Chapter 342, Statutes of 1999, the Bureau of State Audits presents its audit report concerning the State Bar of California's (State Bar) strategic planning, financial outlook, Legal Services Trust Fund Program (legal services program), and disciplinary process.

This report concludes that although the State Bar initiated a strategic-planning process in 2003, many of its departments have not fully completed their plans and selected performance measures, or updated their annual action plans intended to outline steps and timelines for completing their strategic objectives. In addition, the State Bar has determined that its current information technology systems are not sufficient to effectively capture necessary performance measurement data that support the projects identified to achieve its strategic objectives. Because the State Bar has not yet linked its strategic planning process to its budgeting methodology, it cannot ensure that all resources are identified and properly allocated to effectively and efficiently accomplish its statutory mandates.

Moreover, even though it has not fully implemented its strategic planning process, the State Bar is seeking a \$25 increase in the annual membership fees of active members. The State Bar projects that without the fee increase, its general fund expenses will exceed revenues beginning in 2007, resulting in a \$12 million deficit in the general fund balance by December 31, 2010. Our 2005 audit report indicated that statutory changes effective January 2004 might improve the State Bar's ability to recover future disciplinary costs as well as some portion of the \$72.5 million in costs already billed to disciplined members that remain uncollected. Implementation of the new authority remains contingent on the California Supreme Court approving the administrative procedures required to enforce money judgments against disciplined members. However, the State Bar does not anticipate that implementing the law will immediately increase its cost recovery rates since it has found that most of the accumulated billings are owed by disciplined members who have been disbarred or forced to resign and are thus too financially distressed to pay.

The State Bar also needs to improve administration of its legal services program to ensure that it collects all money due from interest on certain trust accounts established by attorneys and properly monitors legal service providers. Finally, while the State Bar has continued to reduce its backlog of disciplinary cases and improved its procedures for disciplinary case processing, it did not always follow these procedures.

Respectfully submitted,

ELAINE M. HOWLE
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SUMMARY

Audit Highlights . . .

Our review revealed that the State Bar of California:

- Began a strategic planning process in 2003; however, development of many departmental plans and performance measures are incomplete.*
- Does not prepare annual budgets based on the results of strategic planning, but rather on projected costs for current levels of staff and resources.*
- Is pursuing an increase in annual membership fees from active members to offset a projected deficit of almost \$12 million in its general fund by December 2010.*
- Continues to await approval of additional authority to collect money related to disciplinary cases, but does not expect the new authority to significantly increase collections in the short term.*

continued on next page . . .

RESULTS IN BRIEF

The State Bar of California (State Bar), established by the California State Constitution, is a public corporation with a mission to preserve and improve the justice system. The California Business and Professions Code guides the State Bar in its efforts to fulfill this mission and to protect the public from the unethical or unauthorized practice of law. A 23-member board of governors (board) establishes policy and guides State Bar functions, such as licensing attorneys and providing programs to promote the professional growth of its members.

Our 1996 audit report indicated that the State Bar was not managing its resources effectively.¹ One of our conclusions was that it needed to improve its strategic-planning process. Although the board adopted a strategic plan in 2004, the State Bar has not fully implemented the departmental planning process intended to achieve the board's vision. The State Bar's executive director initiated a departmental strategic-planning process to improve customer service and to regularly assess staff effectiveness and efficiency. The executive director asked each department to assess functions within its area of responsibility and identify objectives to implement the board's strategic goals, attain desired outcomes, and collect performance data that measure its success.

The executive director's strategic-planning process requires departments to develop three-year plans that identify ways to improve their operations in relation to the State Bar's strategic plan. Each of the departmental plans should also contain an action plan that outlines specific steps to achieve the strategic plan's objectives and identify timelines for completion. Annual updates of these action plans should allow the executive director to identify accomplishments, measure progress, and pinpoint additional areas for focus and direction in order to enhance service.

Although the various departments initially completed their plans in 2005, the State Bar recognized the need for further revision and editing to provide a finished product that would

¹ *State Bar of California: Opportunities Exist to Reduce Fees, Better Control Administration and Planning, and Strengthen an Improved Discipline Process*, Report 96021 (May 21, 1996).

- ☑ *Needs to improve administration of its Legal Services Trust Fund Program to ensure that it maximizes revenue from interest on trust accounts attorneys establish and appropriately completes required monitoring activities.*
 - ☑ *Reduced its backlog of open disciplinary cases to 256 cases, moving closer to its goal of 200 backlogged cases.*
 - ☑ *Needs to continue improving its processing of disciplinary cases by consistently using checklists and conducting random audits.*
-

be useful for both internal and external users. The executive director intended 2006 to be a “shakeout” year for management and staff to assess the plans’ validity and revise them accordingly. However, the State Bar cited several challenges, including a recent department reorganization and the retirement of three key senior managers, that slowed the revision process. As of February 2007, eight of the 15 departmental plans and the associated action plans had not yet been revised. Two others contain addenda to serve as updates but have not been officially revised. The State Bar stated it is committed to revising all the departmental plans by July 2007. According to the executive director, once the first set of revisions is completed, a policy directive will be issued that will further direct the use of the plans, as well as provide guidelines for their ongoing revision.

In addition, the State Bar has determined its current information technology systems are not sufficient to enable it to effectively capture performance measurement data that would support the identified projects to achieve the board’s strategic goals. According to the chief information officer, \$3.4 million to \$5.8 million is needed each year through 2013 to pay for the upgrades he considers necessary. However, the State Bar has not determined how to cover the costs of the upgrades. According to the senior executive for Member Services (senior executive), the departments are expected to identify the objectives and performance measures they can attain, given the existing level of resources and information technology. Their annual updates should identify additional objectives and performance measures that can be achieved with information technology upgrades.

The senior executive also stated that the executive director plans to use the action plans and departmental plans to help justify allocating and reallocating resources both within and among the departments. However, the State Bar’s strategic-planning process still lacks many viable departmental plans that include meaningful performance indicators and action plans. The senior executive told us that annual budgets for the departments are not developed from the results of those planning efforts, but instead the budget process focuses primarily on estimating the cost of current staff and other resources using known or anticipated price increases.

Using financial forecasts completed in December 2006, the State Bar estimates that its general fund expenses will exceed revenues in future years, resulting in a fund deficit of nearly \$12 million by December 31, 2010. For the year ending December 31, 2005, the general fund was substantially

supported by membership fees. In 2001 the State Bar began using some of its general fund to maintain its Public Protection Reserve Fund (reserve fund) to ensure the continuity of its disciplinary system and other essential public protection programs in the event of an unexpected financial emergency, such as in 1997 when the governor vetoed a bill that would have authorized the State Bar to assess and collect base annual membership fees. However, the State Bar projects that by 2010 the combined balances of the general fund and the reserve fund will register a deficit of about \$6.3 million. The State Bar is investigating various options to solve its projected financial dilemma. However, the fact that it has not fully implemented its strategic plan may hamper its efforts to justify its request to the Legislature for a membership fee increase as of January 1, 2008.

The law authorizes the State Bar to recover certain costs related to the public reproof or disciplining of its members; however, its recovery of these costs remains relatively low. Our 2005 audit report indicated that statutory changes effective January 2004 might improve the State Bar's ability to recover future disciplinary costs as well as some portion of the \$72.5 million in costs already billed to disciplined members that remain uncollected.² Implementation of the new authority remains contingent on the California Supreme Court approving the administrative procedures required to enforce money judgments against disciplined members. However, the State Bar does not anticipate that implementing the law will immediately increase its cost recovery rates since it has found that most of the accumulated billings are owed by disciplined members who have been disbarred or forced to resign and are thus too financially distressed to pay.

The State Bar also needs to improve its administration of its Legal Services Trust Fund Program (legal services program), which provides grant funding for free legal assistance to indigent individuals with civil legal matters. In 2006 the State Bar awarded about \$26.7 million to 98 legal service providers. Funding for the program is provided primarily from interest earned on trust accounts attorneys establish to hold client funds that are either nominal in amount or are held only for a short period of time, state budget appropriations, and an allocation of certain court filing fees.

² *State Bar of California: It Should Continue Strengthening Its Monitoring of Disciplinary Case Processing and Assess the Financial Benefits of Its New Collection Enforcement Authority*, Report 2005-030 (April 28, 2005).

The State Bar's efforts to determine the amount of revenue it should be receiving from trust account interest have not been adequate. As of February 2007 about 25 percent of the members had not reported whether they have established such accounts. The \$15.8 million the State Bar reported that it collected in 2006 came from the trust accounts reported by 45 percent of its members. It is possible that the 25 percent who have not reported could make a significant contribution to funding the legal services program. The State Bar believes the majority of its members comply with the program's requirements. However, the State Bar does not maintain the data needed to support its position and states it has no authority to enforce compliance reporting. Further, the State Bar does not monitor legal services program grantees as frequently as it should and does not always document completion of its monitoring steps. As a result, it cannot demonstrate that its monitoring procedures detect whether grantees comply with significant program standards and terms of the grants.

As of December 2006 the State Bar had reduced its backlog of disciplinary cases to 256, the oldest of which dates back to 2003, moving closer to its goal of 200 backlogged cases. Although it created checklists to ensure that staff follow key processing steps and developed random audit procedures to improve its oversight of the processing of disciplinary cases as we recommended in our 2005 audit, it has not always followed those procedures. For example, three of the 30 files we reviewed did not contain properly completed checklists. Further, supervising trial counsel and assistant chief trial counsel who oversee the disciplinary case investigators do not always perform the required random audits.

RECOMMENDATIONS

To ensure that the strategic plan is fully implemented, the State Bar should do the following:

- Complete revisions of the various departments' plans to realize the board's strategic goals and to include meaningful performance measures.
- Limit performance measurement to indicators that can be tracked on an ongoing basis.
- Ensure that its departments, as part of their departmental plan revision process, identify the objectives and performance

measures that can be attained, considering existing resource levels and information technology capabilities. In addition, on an ongoing basis the various departments should update their annual action plans to incorporate additional information technology upgrades.

- Take the steps necessary to ensure its information technology systems can effectively capture the required performance measurement data to support the projects needed to accomplish strategic-planning objectives or an alternative means of capturing this data, such as using an Excel spreadsheet.

To effectively allocate its resources and justify its annual membership fees, the State Bar should align its budgets with the results of its strategic-planning process.

To ensure it receives all of the revenue available for its legal services program, the State Bar should consider conducting activities, such as interviewing or surveying a sample of members who do not presently report whether they have established trust accounts. This would allow the State Bar to determine whether some members are holding clients' funds that are nominal in amount or held for a short period of time without establishing the required trust accounts and remitting the interest earned to the State Bar. If the State Bar finds that nonreporting members do, in fact, hold client funds where the interest qualifies for remittance, it should seek the authority to enforce compliance reporting.

To properly monitor recipients of grants from its legal services program, the State Bar should ensure that it performs and documents all monitoring reviews.

The State Bar should continue its efforts to reduce its backlog of disciplinary cases to reach its goal of having no more than 200 cases.

The State Bar should ensure that staff use checklists of key tasks when processing case files and fully implement its 2005 policy for random audits of case files by supervising trial counsel.

AGENCY COMMENTS

The State Bar agrees with our recommendations and states that it is taking action to address them. The State Bar indicates that the recommendations will help it to strengthen its strategic planning process, programs and administrative controls, and to further demonstrate fiscal prudence. ■

INTRODUCTION

BACKGROUND

The State Bar of California (State Bar) is a public corporation established by the California State Constitution. The law requires every person admitted and licensed to practice law in a court in California to be a member unless the individual serves as a judge in a court of record. With a membership of more than 200,000, the State Bar is the largest such entity in the country. Division 3, Chapter 4 of California's Business and Professions Code, commonly referred to as the State Bar Act, guides and directs the State Bar in fulfilling its mission and carrying out its responsibilities.

The State Bar's 23-member board of governors (board) establishes policy and guides such functions as licensing attorneys and providing programs to promote the professional growth of members of the State Bar. According to the board's strategic-planning policy, its primary responsibilities are to formulate the long-term vision of the State Bar, cultivate strong relations with all State Bar stakeholders, and ensure the State Bar's fiscal accountability. In the strategic plan adopted by the board, it identifies its strategic vision, issues, and goals for the State Bar.

The State Bar executive director's strategic-planning process to implement the board's vision requires 14 of the State Bar's major departments to develop individual departmental plans that consider their operations in relation to the State Bar's strategic plan. One department, the State Bar Court, does not participate directly in the executive director's strategic-planning process because it was already involved with an outside consultant to develop court performance standards based on the National Center for State Courts' trial court performance standards. However, according to the State Bar, the State Bar Court's departmental plan will be integrated into the overall strategic-planning process when its departmental plan revision is completed in July 2007. These departmental plans are intended to provide direction to each of the departments on a three-year cycle and are to contain program descriptions, objectives, desired outcomes, and measures of performance. Each departmental plan is to include an action plan that shows the tasks for accomplishing the department's objectives, timelines for completion, and staff responsible for each task's completion.

Departments are expected to update their action plans annually and submit them to the executive director who will review their progress and identify additional areas for focus and direction in enhancing service.

According to the State Bar, the planning process should justify the budget process and allow informed decisions about new programs that address particular needs and provide accountability for core statutory programs that consume the vast majority of mandatory fees. One of the most important functions of the State Bar is the protection of the public, courts, and the legal profession from attorneys who fail to adhere to their professional responsibilities. To carry out its responsibility to protect the public from attorney wrongdoing, the State Bar established a disciplinary process that includes receiving, investigating, and prosecuting complaints against attorneys.

Located in San Francisco, Los Angeles, and Sacramento, the State Bar's various departments carry out its responsibilities, including admitting new members, investigating and resolving complaints against members, and disciplining members who violate laws or rules, as well as developing programs and performing various administrative and support duties. The State Bar collects a base annual membership fee from each member to pay for the majority of its operations (just over half). Historically, the State Bar's authority to assess this fee has been provided through annual or biannual legislation to ensure that it is appropriately funded and to provide effective legislative oversight of its functions. In 1997 the governor vetoed a bill that would have authorized the State Bar to continue to assess a base annual membership fee. Consequently, it could only charge and collect certain fees that are separately authorized in statute and which are not part of the base annual membership fee.

Legislation in 1999 reauthorized the State Bar to assess a base annual membership fee of up to \$318 per active member until January 1, 2001, and subsequent legislation set the base fee at \$315. Adding other fees specified in existing statutes brings the total to \$400 per active member for 2007. The State Bar's current authority to assess its base annual membership fee expires on January 1, 2008. Payment of portions of the annual membership fee is optional: a voluntary \$5 contribution funds some of the State Bar's legislative efforts, and another \$5 voluntary contribution funds efforts to eliminate bias in the profession and improve the State Bar's relations with stakeholders. Members can also voluntarily pay amounts to participate in various activities

that relate to specific segments of the legal profession, such as the family law section or the workers' compensation section. For inactive members the fee is \$125.

In addition to the fees just described, the law allows the State Bar to recover its costs associated with the public reproof or disciplining of its members. The law further allows the State Bar to recover from members any payments it makes from the Client Security Fund to satisfy claims from injuries caused by dishonest conduct of active members of the State Bar or other attorneys or legal consultants registered with the State Bar.

The State Bar's Legal Services Trust Fund Program (legal services program) helps to ensure that individuals who meet income eligibility requirements have access to free civil legal services. The legal services program provides funds to California nonprofit corporations that offer free legal services to low-income individuals through legal service providers, and to centers that give free legal training and technical assistance to legal service providers. The legal services program provides funding to legal service providers based on the ratio of the eligible population in the counties served by the projects and the amount of qualifying expenses the legal service providers incur in offering their services.

In 2006 the State Bar awarded legal services program grants totaling about \$26.7 million to 98 qualifying legal service providers. The grants are funded primarily by the interest earned on client funds held by members in short-term trust accounts, by the Equal Access Fund (a state fund established to improve the fair administration of justice for low-income Californians), and by an allocation of certain court filing fees. With the exception of Partnership Grants, legal services program grants from both the trust accounts and the Equal Access Fund are allocated to grant applicants using a statutory formula. Partnership Grants that make legal assistance available to litigants who represent themselves in court comprise 10 percent of the Equal Access Fund money.

The board annually establishes the amount to be distributed from the trust account funds based on expected grant revenue for the year, reduced by both administrative costs and a percentage set aside for a cash reserve. For grant year 2006-07, the board set the distribution at \$12.7 million. In addition, the annual budget act provides funding through the Equal Access Fund to be distributed by the Judicial Council for legal services

in civil matters for indigent persons .³ The Judicial Council contracts with the State Bar to administer the distributions, including on-site monitoring of grantees. For fiscal year 2006–07, the Legislature appropriated about \$10 million to the Equal Access Fund. In addition, Assembly Bill 145, passed in July 2005, allocates to the Equal Access Fund \$4.80 per filing for certain court filing fees, creating a revenue stream of about \$4 million for fiscal year 2006–07, bringing the total available for Equal Access Fund grants to about \$14 million for the fiscal year.

The law also directs the State Bar to contract with the Bureau of State Audits to conduct a performance audit every two years. We issued performance audit reports in April 2001, April 2003, and April 2005 with various recommendations regarding the State Bar’s operations.

SCOPE AND METHODOLOGY

The law requires the Bureau of State Audits to audit the State Bar’s operations from January 1, 2006, through December 31, 2006, but does not specify topics the audit should address. For this audit we reviewed the implementation of the State Bar’s long-range strategic plan, its financial forecasts of expected revenues and expenditures, its administration of the legal services program, and its implementation of the recommendations from our 2005 audit. The 2005 audit assessed how the State Bar monitored its disciplinary case backlog, followed procedures for processing disciplinary cases, prioritized cost recovery efforts, and updated forecasts of revenues and expenditures.

In 2004 the board approved a revised six-year strategic plan for the State Bar. According to the State Bar, its current planning efforts have focused on the annual departmental plans required to align its departments with the board’s strategic goals. We inquired regarding the State Bar’s strategic-planning process and departmental plans and interviewed managers of the departments about the relevance of the performance indicators intended to measure the departments’ achievements of the board’s strategic goals. We interviewed the senior manager responsible for the strategic-planning process regarding the implementation of the State Bar’s departmental plans. We also reviewed a sample of 14 of the departmental plans. We did not

³ The Judicial Council is a state constitutional agency that provides direction to the courts, the governor, and the Legislature concerning court practice, procedure, and administration. The Judicial Council is responsible for ensuring the consistent, independent, impartial, and accessible administration of justice.

review the departmental plan for the State Bar Court that was developed by outside consultants. To determine whether the State Bar's information technology systems support the board's strategic goals, we spoke with the chief information officer and other department managers and reviewed a report prepared by the State Bar's information technology consultant.

To gain an understanding of the State Bar's fiscal future, we reviewed its financial forecasts for 2007 through 2010. We also interviewed key staff to obtain an understanding of the State Bar's proposed increase in the base annual membership fee for active members. To obtain the status of the State Bar's efforts to implement the enhanced authority to recover disciplinary costs and payments from the Client Security Fund, we interviewed key State Bar officials. We also reviewed information regarding the State Bar's annual membership building fund assessment to update our understanding of the fund's status.

To review the legal services program, we examined the pertinent areas of the law that govern program grants and provide the sources of program funding. We interviewed State Bar staff to understand how they collect fund revenue and ensure that their policies are in compliance with state law. To determine whether the State Bar was properly administering the program, we selected a sample of 13 grantees and reviewed their application documents for completeness and compliance with program grant eligibility requirements. We also reviewed the calculations of the allocation of grant funds to the regional areas that make up California's 58 counties and the grant awards to program providers. We found the State Bar properly allocated and awarded legal services program funds. In addition, we reviewed the State Bar's on-site monitoring of grantees' compliance with program and financial requirements.

Finally, to assess the State Bar's implementation of recommendations from our 2005 audit, we reviewed its progress in reducing its backlog of disciplinary cases. We also reviewed the State Bar's procedures for processing and monitoring disciplinary cases. ■

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CHAPTER 1

The State Bar of California Has Not Fully Implemented Its Strategic-Planning Process

CHAPTER SUMMARY

In 2001 the board of governors (board) of the State Bar of California (State Bar) began developing and implementing a strategic management cycle to guide State Bar activities. As part of that process, the board developed the State Bar's long-range strategic plan. As an outgrowth of the board's planning activities, State Bar staff engaged in a departmental strategic-planning process intended to enhance operations and build a culture of continuous improvement in the State Bar. Although the board adopted the strategic plan in 2004, the State Bar still has not completed its strategic-planning process. Specifically, the State Bar has not fully developed planning documents for each of its departments that are intended to implement the board's strategic goals and specify the indicators needed to measure departmental performance in meeting those goals. These departmental plans were to include annually updated action plans intended to identify the actions necessary to meet strategic goals and prioritize the allocation of resources.

The State Bar completed the preliminary departmental plans by December 2005 and expected to finalize them during 2006. However, according to the State Bar's executive director, several challenges have slowed the revision process. The State Bar currently expects to complete the revisions to the departmental plans by July 2007.

In addition, the State Bar has begun to evaluate its information technology systems and is concerned that they may not be capable of effectively capturing performance measurement data identified in the departmental plans. The State Bar estimates the cost to upgrade its information technology systems will total \$3.4 million to \$5.8 million per year from 2008 to 2013; however, it has not yet identified a source of funds to pay for these upgrades.

Further, because its strategic-planning efforts are still incomplete, the State Bar has not been able to determine whether it is accomplishing the board's strategic goals and does not currently tie its annual budget to its strategic plan and performance measurement efforts. Rather, the State Bar's budget process focuses primarily on estimating the cost of current staff and other resources using known and anticipated price increases.

THE STATE BAR HAS BEEN SLOW IN IMPLEMENTING ITS STRATEGIC PLAN

Although the board adopted its current strategic plan in 2004, the State Bar has been slow in developing all the departmental plans needed to fully implement the board's vision. The State Bar's executive director told us she initiated a departmental strategic-planning process in late 2003, as an outgrowth of the board's planning activities, that involved 14 of the 15 departments. One department, the State Bar Court, did not participate because it was already involved with an outside consultant to develop court performance standards based on the National Center for State Courts' trial court performance standards. Although the State Bar contracted with an outside consultant to prepare the departmental plan for the State Bar Court, the executive director will use it, in conjunction with the plans for the other 14 departments, to assess the State Bar's performance in meeting the board's strategic goals.

The State Bar's executive director initiated a departmental strategic-planning process in late 2003, as an outgrowth of the board's planning activities, that involved 14 of the State Bar's 15 departments.

According to the executive director, the departmental planning effort she initiated was intended to establish a culture of continuous improvement among personnel by introducing them to the need to focus on customer service and to regularly assess the effectiveness and efficiency of departmental staff performance in providing services; however, the executive director has set no formal policy that outlines the departmental planning process. The executive director indicated that once the first set of department plan revisions are completed, she will issue a policy to further direct the use of the plans and provide guidelines for their ongoing revision.

Because the departmental planning efforts are not yet formally documented, the executive director referred us to the senior executive of the Member Services Department (senior executive) to obtain the history regarding strategic-planning efforts and the State Bar's perspectives on the planning process. The senior executive was the special assistant to the executive director during the development of the State Bar's planning process.

The initial departmental plans were intended to be three-year plans that were to provide objectives, desired outcomes, and performance measures for each of the various departments.

According to the senior executive, the initial departmental plans were intended to be three-year plans that were to provide objectives, desired outcomes, and performance measures for each of the various departments. They were to contain action plans that were intended to be updated annually and include the tasks required to achieve objectives, timelines for their completion, and the names of staff responsible to ensure the tasks are completed. He added that submitting action plans on an annual basis would enable the executive director to identify accomplishments, measure progress, and identify additional areas for focus and direction in enhancing service.

To begin the departmental planning process, the senior executive told us, the executive director instructed each of the 14 departments to consider ways to improve its operations in relation to the strategic plan adopted by the board; develop an operational plan that would define the departmental mission, goals, vision for the future, and program service areas; and agree on reasonable and useful program performance measures for that department. The senior executive stated that to accomplish this, all staff were encouraged to fully participate to give them a stake in the process and to build commitment to the goal of becoming a more efficient and effective agency. The executive director instructed each of the departments to include all ideas and comments from staff in its operational plans recognizing that the plans would require edit and revision.

The initial departmental plans were completed in December 2005. According to the executive director, 2006 was to be a “shakeout” year for the plans so that management and staff would have a chance to assess their validity and perform the necessary edits and revisions to ensure the plans would be useful to staff, the executive director, the board, and outside entities and constituents. Further, the senior executive stated that the plans identified several areas of additional data that various departments would need to track. He noted that the State Bar is currently in the process of identifying procedures for tracking performance data and developing ways staff can effectively use the data. These efforts include assessing the validity and reliability of performance measures, revisiting problematic measures, and confirming data sources. He stated that the executive director is committed to completing all final departmental plans by July 2007.

As of February 2007 eight of the 15 departmental plans and the associated action plans, including those for the State Bar Court, have not been revised.

According to the senior executive, the manager of planning and administration (planning manager) began reviewing plans submitted by the individual departments in July 2006. However, as of February 2007, eight of the 15 departmental plans and the associated action plans, including those for the State Bar Court, had not been revised. Two more departmental plans contain only addenda to the original plans that were intended to serve as updates, but they have not been officially revised. According to the executive director, the inconsistency in the way plans were revised is likely due to the lack of memoranda or policies that lay out a clear process and a set of expectations to provide direction to the various departments. Instead, the departments engaged in a series of meetings with the planning manager to discuss revisions. In addition, the senior executive identified several challenges that have slowed the revision process. He stated that since the departmental planning process began, several departments were reorganized, and in 2004 and 2005 three key senior executives retired: the chief information officer, chief financial officer, and chief trial counsel.

According to the executive director, who once served as the chief trial counsel, she assisted the acting chief trial counsel while conducting a search and interview process for a new chief trial counsel. Moreover, the executive director needed to oversee and ultimately approve the search and hiring of the new chief financial officer and chief information officer. The senior executive told us that the new executives hired in these positions were in orientation and start-up mode for much of 2005 and early 2006. In addition, the senior executive stated that the State Bar's financial system was revamped and a new fiscal software program implemented during 2005 and 2006, further extending the time to complete the departmental planning-revision process. Because of these issues, according to the executive director, she was not able to drive the planning process to completion by the end of 2006, the original time frame targeted for completion.

Although many of the departments have not revised their departmental plans, the State Bar indicated the strategic-planning efforts to date have benefited the departments and impacted their performance. For example, according to the senior executive, the strategic-planning efforts of Member Services have resulted in completion of a member services survey to identify the members' needs for information and the execution of a contract with a marketing firm to build a members' Web site. In addition, the senior executive stated that both the Office of the

Chief Trial Counsel and Member Services were reorganized as a product of strategic planning, resulting in improved efficiency and savings in staff and other resources. The senior executive further indicated that this savings provides an example of how the State Bar's strategic-planning efforts have thus far guided its allocation of resources. We believe these comments underscore the State Bar's need to fully implement the strategic-planning process for all its departments.

THE STATE BAR IS CONCERNED THAT ITS INFORMATION TECHNOLOGY SYSTEMS WILL IMPEDE THE IMPLEMENTATION OF ITS DEPARTMENTAL PLANS

According to the chief information officer, the State Bar's information technology systems are functionally obsolete and severely limit the State Bar's capacity to analyze data and effectively measure and report performance.

In addition to the need to revise many of its departmental plans, the State Bar has determined that it is limited in its technological capacity to capture performance measurement data that support the projects the various departments have identified as necessary to meet their strategic goals. According to the chief information officer, the State Bar's information technology needs are significant and systemwide. He has determined that its information technology systems are functionally obsolete and severely limit the State Bar's capacity to analyze data and effectively measure and report performance. According to the chief information officer, his department is currently involved in 25 small-to-midsize technology updates for various departmental projects; however, he voiced concern that the effectiveness of these projects will be limited by the outdated systems and aging networks.

According to the chief information officer, the State Bar is in the process of hiring consultants to assess the functionality of the information systems in key departments and to determine if updating the systems is cost-beneficial. For example, Gartner Incorporated (Gartner), a consulting firm, performed an assessment of the Admissions department's current system. Gartner's report, issued in November 2006, stated that the department has limited reporting capabilities and limited ability to manage its work flows electronically. For instance, standard reports produced by the existing system do not meet staff needs and the system cannot produce ad hoc reports, report formatting is awkward, and report development is a labor-intensive process. Gartner's report went on to conclude that the current business processes in the department are very labor-intensive and require significant end-user manual data entry and heavy manual interaction for process work flows. Gartner's report also concluded that the Admissions department would experience

significant cost savings if it moved to a modern information system. According to the chief information officer, the State Bar is in the process of hiring other consultants to work on projects to address needs of the State Bar Court and the attorney discipline system and is planning to publish a request for proposal for various entitywide information technology needs.

Information technology improvement is identified as a goal in its strategic plan, but the State Bar indicates it has a limited financial ability to support this goal. A proposal the State Bar is developing to increase its base annual membership fee, further discussed in Chapter 2, indicates that nearly \$2 million per year would be allotted to improvements in information technology systems from 2008 through 2010. However, the State Bar estimates it will need \$3.4 million to \$5.8 million per year through 2013 to cover updates to its hardware and software, network and telephone systems, printing capabilities, and the cost of replacing its aging systems. The fee increase may or may not be approved, however, and the State Bar has indicated it is not realistic to ask for a larger increase or to reallocate funding from other departments.

As part of the State Bar's process to revise its departmental plans, departments are expected to identify the objectives and performance measures they can attain, considering existing resources and information technology capabilities.

Despite these concerns, the State Bar must implement its planning process to achieve the board's strategic goals. According to the senior executive, as part of the State Bar's process to revise its departmental plans, departments are expected to identify the objectives and performance measures they can attain, considering existing resources and information technology capabilities. The departments will update their action plans to identify the additional objectives and performance measures they can achieve with information technology updates on an ongoing basis.

THE STATE BAR DOES NOT ALLOCATE ITS RESOURCES BASED ON THE RESULTS OF ITS STRATEGIC PLANNING

The State Bar's executive director indicated she plans to use the action plans and departmental plans to help justify allocating and reallocating resources both within and among the departments. However, as previously discussed, the State Bar's strategic-planning process is still incomplete, lacking many viable departmental plans that include meaningful performance indicators and action plans. As a result, the board cannot adopt an annual budget that is based on the results of the State Bar's strategic-planning efforts. Rather, according to the senior executive, the State Bar's budget process has focused primarily

on estimating the costs of current staff and other resources using known or anticipated price increases. However, this budget preparation methodology does not ensure that all resources are identified and properly allocated so that the State Bar effectively and efficiently accomplishes its statutory mandates.

When we asked what the relationship is between its planning and budgeting efforts, the planning manager explained that the planning process justifies the budgeting process, allows management to make informed decisions about new programs that address particular needs, and provides accountability for core statutory programs that consume most of the revenue that comes from mandatory fees. He added that the overall planning process allows staff to monitor performance and recommend adjustments in budgets and activities, as well as provide for year-end accountability.

Full implementation of the State Bar's strategic plan, which should provide justification for its budget, should similarly provide justification for the fees it collects from its members.

However, without fully implementing the revised plans for most of its 15 departments into its strategic-planning process, the State Bar cannot be certain that it is making the best choices in allocating its resources because the evaluation of its programs through updates to its departmental plans are incomplete and the measurements intended to chart its performance have yet to be chosen. In addition, on a one- or two-year cycle, the State Bar must seek authority from the Legislature to collect its base annual membership fee; in fact, its current authority expires on January 1, 2008. Full implementation of the State Bar's strategic plan, which should provide justification for its budget, should similarly provide justification for the membership fees it collects from its members.

According to the chief financial officer, the State Bar is currently implementing a more dynamic budgeting process that will be tied more closely with its strategic plan and performance measurement efforts. She reported that the State Bar has hired new staff to perform budgeting tasks and a consultant with government budget expertise to develop a budget preparation system. The State Bar expects that the new system will enable it to develop an overall budget that aligns with the functional areas defined in the strategic plan and to collect and review performance measures within the context of the budgeting process. The system will also incorporate a format to more clearly identify any key initiatives or changes included in each department's budget. The chief financial officer did not specify a date when implementation of the new budget preparation system will be complete, but expects it to be well under way by 2009.

RECOMMENDATIONS

To ensure that the strategic plan is fully implemented in an effective and timely manner, the State Bar should do the following:

- Complete revisions of the departmental plans that will serve to implement the board's strategic goals and ensure that each departmental plan contains meaningful performance indicators that will measure how successfully goals are being met.
- Limit performance measurement to indicators that can be accurately tracked on an ongoing basis and measure desired outcomes.
- Ensure that its departments, during their departmental plan-revision process, identify the objectives and performance measures that can be attained, considering existing resource levels and information technology capabilities. In addition, on an ongoing basis the departments should revise their annual action plans to update this information given additional information technology upgrades.
- Take the steps necessary to ensure its information technology systems can capture the required performance measurement data to support the projects needed to accomplish strategic-planning objectives, or devise alternative means of capturing this data such as using an Excel spreadsheet. ■

CHAPTER 2

The State Bar of California Projects Deficits in Its General Fund

CHAPTER SUMMARY

Because it estimates the fees it will collect from the increased volume of membership will not keep pace with its rising costs, the State Bar of California (State Bar) forecasts it will face a deficit of nearly \$12 million in its general fund by December 31, 2010. The State Bar uses its general fund to account for membership fee payments and revenues it receives that are not related to other fund activities and to account for the expenses for maintaining, operating, and supporting its attorney disciplinary process. The State Bar established its Public Protection Reserve Fund (reserve fund) in 2001 to set aside a portion of its general fund as a buffer in the event of a revenue shortfall, like that which occurred after 1997 when it was unable to obtain timely statutory authority to assess the base annual membership fee that funds its disciplinary function and other operations it pays for from its general fund. However, use of the reserve fund to mitigate the projected general fund deficit will not likely provide a satisfactory solution to the State Bar's projected imbalance between revenues and expenses in its general fund. It estimates that even if it uses the balance of the reserve fund to partially offset the projected deficit in its general fund, the combined balance in the two funds will still result in a deficit of about \$6.3 million by December 31, 2010.

As discussed in the Introduction, the State Bar's authority to assess a base annual membership fee is temporary, and historically the State Bar has needed the Legislature to reaffirm that authority every one to two years. Its current authority expires on January 1, 2008, unless extended before that date. The State Bar noted that to remedy the expected deficit, it is in ongoing discussions with key members of the Legislature to obtain statutory authority to increase the base annual membership fee for active members. The State Bar has determined it will need a \$25 increase in the fee to eliminate its projected general fund deficit and provide funding for information technology upgrades. However, as discussed in Chapter 1, it has not successfully completed

its strategic-planning process that will allow it to identify the resources it needs to meet its strategic goals and base its budgeting process on these identified resources. This fact could hamper its efforts to justify a fee increase.

In addition, the State Bar does not anticipate that pending approval by the California Supreme Court (supreme court) of procedures to help recover its costs to discipline members or recover payments to members' clients from the Client Security Fund will have an immediate significant impact. This new enhanced collection authority, when implemented, will allow the State Bar to use money judgment authority to attempt to collect costs from disciplined attorneys. However, the State Bar does not expect that its current collection rate will increase appreciably in the near future.

Additionally, although the law currently assesses a yearly \$10-per-member building fee, which the State Bar is accumulating in its building fund, it can only use those funds to acquire and improve facilities or other related capital expenditures. The State Bar anticipates accumulating the funds over the next seven years in anticipation of using the balance as part of a down payment for the purchase of a facility in Los Angeles.

RECENT FORECASTS PROJECT DEFICITS IN THE STATE BAR'S GENERAL FUND

The State Bar predicts that its general fund will show a deficit of \$11.9 million by December 31, 2010.

Based on financial forecasts completed in December 2006, the State Bar estimates it will have a deficit of \$11.9 million in its general fund by December 31, 2010. The State Bar depends on membership fees for about 95 percent of the costs it pays from the general fund. It uses the calendar year as its fiscal year.

Its financial statements for 2006 were unaudited at the time of our audit; therefore, we used 2005 audited financial statement information and the State Bar's financial projections from December 2006 in our review. According to its financial forecast, the State Bar projects that its general fund revenue of \$58.5 million for 2006 will exceed expenses and transfers to other funds by \$3.6 million for that year, resulting in a \$6.4 million general fund balance at the end of 2006. However, the State Bar predicts that its general fund will show a deficit of \$11.9 million by December 31, 2010. According to its financial projections, revenues will increase slightly in 2007 and by \$4.6 million over the following three years, but expenses will also increase, and at a faster pace. Specifically, expenses are

projected to increase by \$13.4 million from 2007 through 2010. As Table 1 shows, in the absence of a fee increase, the State Bar projects general fund expenses will exceed revenues each year from 2007 through 2010, resulting in a deficit of \$11.9 million even after exhausting its projected \$6.4 million general fund balance as of December 2006.

TABLE 1

**State Bar of California's Projections of Its General Fund Revenues, Expenses, and Fund Balance for 2006 Through 2010
(in Thousands)**

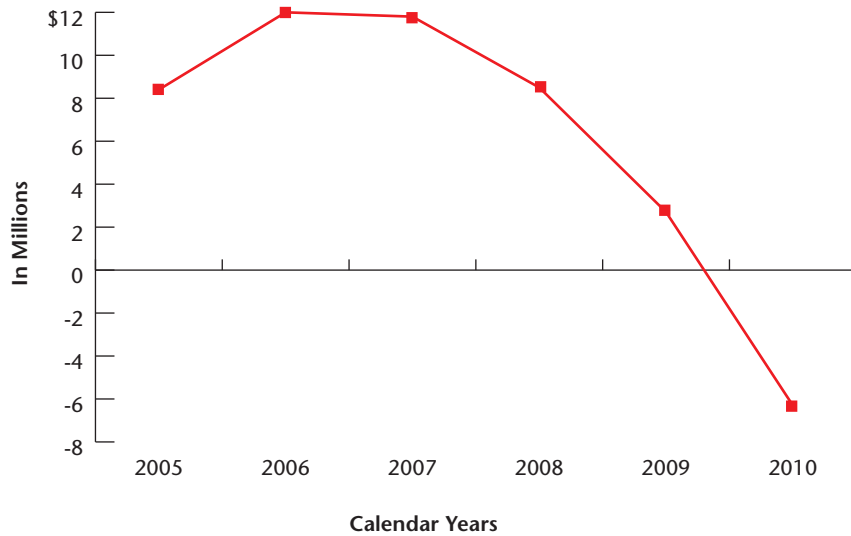
Calendar Year	Revenues	Expenses	Change in Year-End Fund Balance	Fund Balance
2006	\$58,547	\$54,945	\$3,602	\$6,379
2007	58,720	58,890	(170)	6,209
2008	60,182	63,515	(3,333)	2,876
2009	61,809	67,617	(5,808)	(2,932)
2010	63,336	72,291	(8,955)	(11,887)

Source: State Bar of California's December 2006 Financial Outlook for 2006 through 2010.

By using the balance in its reserve fund, the State Bar could forestall a deficit until 2010 without an increase in the base annual membership fee. It established the reserve fund to set aside a portion of its general fund to ensure the continuity of its disciplinary system and other essential public protection programs in the event of unexpected financial emergencies, as occurred after 1997 when the State Bar was unable to obtain timely statutory authorization to assess and collect annual fees. As such, use of the reserve fund to mitigate the State Bar's projected general fund deficit will not likely provide a satisfactory solution to the projected fiscal deficit. The State Bar's audited financial statements as of December 31, 2005, show the reserve fund had a balance of \$5.6 million. However, as the Figure on the following page shows, even if the \$5.6 million balance in the reserve fund was used to partially offset the projected deficit in the general fund it would still result in a projected deficit of \$6.3 million by the end of 2010.

FIGURE

State Bar of California’s Projected Deficit in the Combined Balances of Its General Fund and Public Protection Reserve Fund



Source: State Bar of California’s December 2006 Financial Outlook for 2006 to 2010.

Note: Assumes no increase in membership fees.

The State Bar developed its forecast using historical expense information with incremental increases based on several assumptions, mostly regarding labor costs. Staff salaries and benefits are the primary factors affecting the expense forecasts; however, a projected increase in annual technology investment from nothing in 2006 and 2007 to \$1.7 million in 2008 and 2009 and \$1.8 million in 2010 is also a significant contributor to the projected fund deficit. In compiling its financial projections the State Bar used unaudited 2006 financial results and certain assumptions for the three-year period 2007 to 2010. These include the assumption that 53 percent of its staff would be eligible for a 5 percent merit increase in salary in 2008. The State Bar assumed that 36 percent of its staff would be eligible for 5 percent merit increases in 2009 and 33 percent would be eligible for a 5 percent increase in 2010. These salary assumptions are based on the number of staff who have not reached the top of the salary range for their respective job classifications and, therefore, would be eligible for one or more merit salary increases over the three-year period. The State Bar also assumed a 3 percent cost-of-living salary increase for its staff and an 18 percent increase in the cost of medical and fringe benefits in each of the three years.

Other assumptions included a 5 percent increase in the costs for administration and support activities and a 3 percent increase in the cost for other expenditures each year. Incremental revenue increases are assumed to come from growth in the number of members. The State Bar assumed that total membership would increase almost 3 percent per year.

THE STATE BAR IS PURSUING AN INCREASE IN MEMBERSHIP FEES TO ELIMINATE PROJECTED DEFICITS

To offset the large impact of expected increases in salary and benefit costs and to partially cover its information technology needs, the State Bar is in ongoing discussions with key members of the Legislature to obtain authority to increase base annual membership fees for active members that, if successful, would become effective January 1, 2008, and would be charged to active members from 2008 through 2010. The \$25 additional fee assessment is projected to raise a total of \$12 million in revenue over the three-year period for the State Bar. Table 2 shows the proposed changes in membership fees. The State Bar is not proposing a fee increase for inactive members who currently pay \$125 per year.

TABLE 2

Proposed Changes in Annual Membership Fees for Active Members

	Current Fees	Proposed Fees	Difference
Base annual fee	\$315	\$340	\$25
Client Security Fund	40	40	0
Disciplinary system	25	25	0
Building Fund	10	10	0
Lawyers Assistance Program	10	10	0
Totals	\$400	\$425	\$25

Sources: California Business and Professions Code; State Bar of California Draft Fee Requirements 2008–2010.

As previously discussed, while the State Bar developed its financial forecasts using historical expense information with incremental increases based primarily on labor cost assumptions, it currently does not prepare its budgets using annual departmental work plans developed through its

strategic-planning process. This may hamper the State Bar's efforts to justify a fee increase that is not yet based on sound strategic planning for effective and efficient operations.

THE STATE BAR ANTICIPATES THAT RECOVERY OF CERTAIN COSTS WILL IMPROVE ONLY SLIGHTLY WITH THE IMPLEMENTATION OF CHANGES IN STATE LAW

Our 2005 audit found that the State Bar continued to have trouble recovering its costs of disciplining members and the payments made to attorneys' clients from the Client Security Fund. The law allows the State Bar to recover its costs associated with the public reproof or disciplining of its members. The law further allows the State Bar to recover from members any payments it makes from the Client Security Fund to satisfy claims from injuries caused by the dishonest conduct of active members of the State Bar or other attorneys or legal consultants registered with the State Bar, including the cost to process clients' claims. According to the State Bar's chief financial officer, the Client Security Fund is self-supporting and does not use money from the general fund. However, most of the costs of disciplinary actions are supported by the State Bar's general fund. Therefore, any increase in the collection of the State Bar's disciplinary costs would reduce its projected general fund deficit. Nonetheless, the State Bar believes that implementation of the enhanced collection authority contained in the law will result in only a slight improvement in its immediate ability to collect outstanding reimbursable costs and fines.

The proposed rule would require the superior court of the relevant county to immediately enter a judgment against the attorney for the amount the State Bar certifies the attorney owes for disciplinary costs or Client Security Fund payments.

Statutory changes that became effective January 2004 are intended to improve the State Bar's ability to recover not only future disciplinary and Client Security Fund costs but also some portion of the \$72.5 million in outstanding billings for previous cases. To implement the 2004 statutory changes, the State Bar proposed to the supreme court that the California Rules of Court be amended to allow the State Bar to carry out the statute. The proposed rule, which the State Bar submitted to the supreme court in February 2005, would require the superior court of the relevant county to immediately enter a judgment against the attorney for the amount the State Bar certifies the attorney owes for disciplinary costs or Client Security Fund payments. After obtaining the money judgment, the State Bar would be able to garnish the attorney's wages or obtain judgment liens on real property the attorney owns. However, as of March 2007 the State Bar had not been able to use this new authority because it was still waiting for approval by the supreme court.

According to the State Bar's chief financial officer, in anticipation of the supreme court's approval, the State Bar is attempting to organize available information regarding the Client Security Fund payments and attorney disciplinary matters. The State Bar is trying to find the most current addresses of debtors and merge that information with other pertinent data, such as case numbers, restitution orders, and amounts owed. The resulting database, which the State Bar created in-house and is still in the process of testing, is intended to automatically calculate interest and other collection costs.

In addition, the State Bar proposed a pursuit policy for moving forward with collections once the amendment to the Rules of Court is approved by the supreme court. The purpose of the policy is to guide State Bar staff in determining which cases will be affected by the rule, and therefore should be pursued, and which cases will be most fruitful in terms of projected collections, staff's ability to find the debtors, and the debtors' ability to pay.

Even after the rule is approved, the State Bar does not expect an immediate change in the collection of unpaid disciplinary costs or Client Security Fund restitution ordered by the supreme court.

However, even after the rule is approved, the State Bar does not expect an immediate change in the collection of unpaid disciplinary costs or Client Security Fund restitution ordered by the supreme court. According to the State Bar's chief assistant general counsel, the disciplined attorneys whose debts make up most of the unpaid amount—referred to by the State Bar as the top 100—were disbarred or resigned with disciplinary charges pending. According to the chief assistant general counsel, these attorneys are generally financially distressed and unable to repay clients or the State Bar at the time of their disbarment or resignation. The chief assistant general counsel explained further that these disciplined attorneys have no immediate expectancy of continuing or returning to the practice of law—unlike those who receive only a public reproof or suspension—and therefore have no incentive to seek reinstatement of their membership in the State Bar or lack the immediate financial means to pay the disciplinary costs or Client Security Fund restitution. As a result, according to the chief assistant general counsel, the State Bar's outside counsel estimates it will take five to 10 years after the entry of a judgment and recording of an abstract of judgment before the State Bar might expect significant collections from this group of disciplined attorneys.

The chief assistant general counsel further stated that, according to the State Bar's outside counsel, in five to 10 years some of the disciplined attorneys will have sufficient earnings to seek loans

and will want to reestablish their credit. This is also about the time that a disbarred attorney may want to seek reinstatement to practice law. Moreover, he stated that the State Bar's outside counsel also noted that credit-reporting agencies will pick up abstracts of judgments that have been recorded in county recorders' offices, but that if the State Bar wanted to directly report the debts, it would need procedures in place to comply with the requirements of the federal Fair Credit Reporting Act. Under the Fair Credit Reporting Act, an attorney who has been disbarred or who has resigned has a limited right to bring a lawsuit to dispute the information on his or her debt. The chief assistant general counsel stated that the State Bar is still considering the costs and benefits of reporting judgments to credit-reporting agencies.

According to the chief assistant general counsel, the State Bar also does not expect a significant increase in collections from disciplined attorneys who have already made some payments to the State Bar. These attorneys have been publicly reprimanded or suspended but have agreed to pay as a condition to continue or return to the practice of law. If these attorneys are not able to pay disciplinary costs or Client Security Fund restitution in a single payment, they agree to pay in installment plans approved by the State Bar Court. The State Bar Court is the administrative arm of the supreme court responsible for adjudicating disciplinary and regulatory matters involving California attorneys. Because these disciplined attorneys are already making installment payments, the State Bar does not anticipate a significant increase in the amount of collections as a result of the approval to use money judgments to collect debts.

FUNDS ACCUMULATING IN THE STATE BAR BUILDING FUND ARE EARMARKED FOR THE PURCHASE OF A FACILITY IN LOS ANGELES

The law specifies the allowable uses for the building fund: to pay the costs of financing, constructing, purchasing, or leasing facilities for the State Bar.

The State Bar's building fund is financed by a special dues assessment of \$10 per member mandated by the Business and Professions Code. The law specifies the allowable uses for the building fund: to pay the costs of financing, constructing, purchasing, or leasing facilities for the State Bar. As a result, balances in the building fund are not available to pay for general regulatory purposes. Presently, building fund income is primarily derived from three sources: members' building fund assessments, interest on the fund balance, and tenant rental income at the San Francisco headquarters.

In December 2006 the State Bar's Office of General Counsel issued a memorandum to the board explaining the history of the building fund. According to the memorandum, the building fund was created in 1958 to permit the State Bar to purchase or construct buildings in San Francisco and Los Angeles for its operations. The original yearly assessment, in place from 1958 to 1968, was \$5 per member. Starting in 1971, legislation temporarily reauthorized the building fund and the related fee until further legislation passed in 1986 increased the annual assessment to \$10 per member. In 1998 the State Bar purchased its current headquarters building in San Francisco. Revenue from the building fund was used to cover the cost associated with the purchase and operation of the headquarters facility. Because income from the building fund has been insufficient to cover all the building-related expenses, the State Bar's lease obligations for its facilities in Los Angeles and Sacramento and other remaining occupancy costs have been paid for by the general fund.

The State Bar is accumulating revenue in its building fund until 2014 to help provide financing for the purchase of a building in Los Angeles.

According to its general counsel, as of September 2006 the State Bar has satisfied its mortgage obligation on its headquarters. The State Bar is currently leasing its Los Angeles facility. At the board meeting on December 19, 2006, State Bar staff proposed that the State Bar accumulate building fund fee revenues until 2014 to assist in the purchase of a building in Los Angeles. It estimates that \$15 million should be accumulated by that time to provide a partial down payment toward the building purchase and improvements. The board approved this action in January 2007.

In the past the law required the State Bar to submit plans prior to entering into any agreement for the construction, purchase, or lease of a facility to the Judiciary Committee of the Legislature for review. For example, the Judiciary Committee reviewed the purchase of the headquarters building on Howard Street in San Francisco. We asked the chief financial officer of the State Bar if, although the law does not specifically require it to do so, the State Bar planned to submit its plan to purchase a new facility in Los Angeles to the Judiciary Committee for review. According to its chief financial officer, the lease on the Los Angeles office runs through 2014. Once the State Bar has a final plan to address its real property needs, it will ensure that the Legislature is informed of the plan in the manner that the Judiciary Committee desires at that time.

RECOMMENDATIONS

To ensure that it maximizes collection efforts and its ability to implement the Rules of Court as soon as the supreme court approves procedures allowing their use, the State Bar should do the following:

- Complete its database and input all available information on the Client Security Fund and disciplinary debtors.
- Implement its proposed policy for pursuing debtors.
- Complete its assessment of the costs and benefits of reporting judgments to credit-reporting agencies.

To effectively allocate its resources and justify its membership fees, the State Bar should align its budgets with the results of its strategic-planning process. ■

CHAPTER 3

The State Bar of California Needs to Improve Its Legal Services Trust Fund Program and Attorney Discipline System

CHAPTER SUMMARY

For grant year 2006–07 the State Bar of California (State Bar) awarded \$26.7 million in grant funds from the Legal Services Trust Fund Program (legal services program) to provide civil legal assistance to indigent Californians. The funds for the program come primarily from interest on trust accounts attorneys establish for certain client funds, state budget appropriations, and an allocation of certain court filing fees. The State Bar does not ensure that all attorneys comply with the law requiring them to remit the interest on these trust accounts to the State Bar to support the legal services program. It reported that in 2006 it received about \$15.8 million from attorneys' trust accounts; however, the State Bar does not know whether about 25 percent of the practicing attorneys in California handle client funds for which the interest earnings should be submitted to support the legal services program. Additionally, the State Bar is responsible for on-site monitoring of grantees. However, during 2004 through 2006 it did not adequately perform or document monitoring reviews of legal services program grantees to determine whether they complied with the program's requirements.

A 2005 Bureau of State Audits' report assessed the efforts of the State Bar to address the backlog of disciplinary cases it began accumulating after temporarily losing its statutory authority in 1997 to assess a base annual membership fee. In 2005 the State Bar had 315 backlogged disciplinary cases. As of December 2006 the State Bar had reduced the backlog to 256 with the oldest cases dating back to 2003. This progress moved the State Bar closer to its goal of having no more than 200 backlogged cases.

Our 2005 audit also addressed the State Bar's inability to process disciplinary cases efficiently. In response, the State Bar created checklists to ensure that staff follow significant processing

steps and developed random audit procedures to improve its oversight of the processing of disciplinary cases. However, the State Bar has not fully implemented either of these policies. Three of the 30 files we reviewed did not contain properly completed checklists, and supervising trial counsels who oversee the disciplinary case investigators do not always perform the random audits required by the State Bar's policy.

THE STATE BAR DOES NOT KNOW WHETHER ALL MEMBERS COMPLY WITH STATUTORY REQUIREMENTS THAT PROVIDE FUNDING FOR THE LEGAL SERVICES PROGRAM

The law requires that attorneys place client funds that are nominal in amount or are held for a short period of time in an interest-bearing trust account and remit the interest to the State Bar.

To partially fund the State Bar's legal services program, the law requires that an attorney or law firm that receives or disburses client funds that are nominal in amount or are held for a short period of time must deposit those funds in an interest-bearing trust account. The law provides that attorneys may deposit those client funds in a single unsegregated trust account and that the interest earned is to be remitted to the State Bar. According to the Business and Professions Code, the interest earned from the trust accounts should be paid directly to the State Bar to provide funding for the legal services program. If the client funds are not nominal in amount or are not held for a short period of time by the attorneys, they may be held in trust accounts established for the clients and the interest remitted to the clients rather than to the State Bar. The State Bar provides guidance to its members regarding how to determine when client funds should be deposited in an unsegregated trust account and the proper use of those accounts through its publication, *Handbook on Client Trust Accounting for California Attorneys*, and through the Rules of Professional Conduct and State Bar policy placed on its Web site. Essentially, when the cost of establishing and maintaining a trust account for an individual client's funds will exceed the interest that will be earned, members should deposit the client funds collectively with similar funds of other clients in an unsegregated trust account. However, the State Bar does not know whether all attorneys who hold client funds that may meet such criteria place the funds in the required trust accounts and report them to the State Bar.

Under its guidelines for attorneys regarding unsegregated trust accounts, the State Bar asks members to report when changes in their employment status or client base affects whether they handle client funds covered under the legal services program. Specifically, the State Bar asks attorneys to report whether

The State Bar asks attorneys to report whether they have opened or closed trust accounts, or no longer handle such client funds; however, it does not investigate the non-reporting attorneys.

they have opened or closed trust accounts or no longer handle such client funds. However, it does not investigate the nonreporting attorneys to determine whether they should establish unsegregated trust accounts that will remit interest to the State Bar. According to its deputy executive director, in the past the State Bar used compliance cards to request individual attorneys to confirm their compliance with the program, but it was difficult to enforce and punish attorneys for not returning the cards when many are not subject to the requirement and the State Bar has no authority to mandate compliance reporting. According to the deputy executive director, the State Bar would need an amendment to the statutes or to the Rules of Court to gain the authority to mandate compliance reporting from its members.

Consequently, the State Bar does not know if all its members who handle qualifying client funds establish unsegregated trust accounts and provide the interest earnings to the State Bar. According to the State Bar, as of February 2007, about 45 percent of the 155,793 actively practicing attorneys reported they have established trust accounts that qualify for the legal services program; another 30 percent reported they do not handle such client funds; and the remaining 25 percent did not comply with the State Bar's request to report. The State Bar reported that during 2006 alone it received over \$15.8 million from the interest earned on unsegregated trust accounts. Because only 45 percent of the practicing attorneys report that they have established such accounts and because the State Bar recognizes in its handbook that most attorneys will at some point handle client funds that are nominal in amount or held for a short period of time, it is reasonable to expect that some portion of the attorneys who did not report do, in fact, handle client funds that should be deposited in an unsegregated trust account.

The State Bar believes that the attorneys who comprise the 25 percent of its membership who have not reported on their compliance are mostly government attorneys, in-house counsel, and others who would be exempt from the trust account requirement because they do not handle client funds. According to the deputy executive director, a demographic survey of the State Bar's members found that 23 percent belonged to this group. He stated that through its historic experience, the State Bar has found that law firms and private practitioners who have trust accounts are very attentive to providing compliance information because of the strict requirements of the Rules of Professional Conduct regarding such accounts. He further

stated that members who do not have trust accounts are not very sensitive to the compliance process. However, the deputy executive director said the State Bar does not maintain data to demonstrate that the 23 percent of its membership found to be exempt from the trust account requirements by the survey are among the 25 percent who did not report on their compliance with the trust account requirements. In particular, it is unclear how many of the survey respondents might be included in the 30 percent who reported that they do not handle qualifying client funds.

THE STATE BAR DOES NOT CONSISTENTLY PERFORM ON-SITE MONITORING OF GRANT RECIPIENTS UNDER THE LEGAL SERVICES PROGRAM

The State Bar has not consistently performed on-site monitoring of the grantees of the legal services program. For grant year 2006–07, the State Bar awarded grants totaling about \$26.7 million to 98 legal aid service providers. As discussed in the Introduction, the legal services program is funded primarily by interest on trust accounts remitted by State Bar members, annual appropriations to the Equal Access Fund to be distributed by the Judicial Council, and a portion of certain court filing fees. The Judicial Council contracts with the State Bar to administer Equal Access Fund appropriations, including distributing the funds to grantees and monitoring them for compliance with the legal services program requirements. The Judicial Council’s contract requires the State Bar to conduct monitoring on a three-year rotational basis that reviews one-third of the grantees each year. However, because the State Bar does not consistently perform these monitoring reviews, it cannot be certain that interest from members’ trust accounts are used according to program guidelines and does not meet its contractual obligation to monitor grantees’ use of the money from the Equal Access Fund.

Because the State Bar does not consistently perform required monitoring visits, it cannot be certain that funds from members’ trust accounts are used according to program guidelines and does not meet its contractual obligation.

The State Bar’s monitoring process for the legal services program comprises two components: program monitoring and fiscal monitoring. According to the State Bar, these two components are typically performed at the same time, meaning that program-monitoring staff and fiscal-monitoring staff work jointly. The program-monitoring component focuses on grantees’ compliance with the Standards for Providers of Civil Legal Services to the Poor, established by the American Bar Association. The fiscal-monitoring component focuses on grantees’ compliance with the Standards for Financial

Management Systems and Audits, developed by the State Bar. The State Bar has a policy of issuing a report and a monitoring letter to summarize its recommendations for the grantee after on-site monitoring is completed.

For the three-year period from January 1, 2004, through December 31, 2006, 12 grantees did not receive required program-monitoring visits, and 51 did not receive fiscal-monitoring visits.

Despite the State Bar's plan for program-monitoring visits scheduled for the three-year period from January 1, 2004, through December 31, 2006, 12 grantees did not receive required program-monitoring visits, and 51 did not receive fiscal-monitoring visits. In particular, the State Bar conducted 31 program-monitoring visits in 2006 but only one fiscal-monitoring visit, for which it did not issue a report. In 2005 the State Bar completed 27 program-monitoring visits and 36 fiscal-monitoring visits, three more than required.

The State Bar asserts that it was unable to complete its scheduled fiscal monitoring reviews of the legal services program in 2006 because of staffing and recruitment difficulties. According to the deputy executive director, the compliance auditor and the senior accountant positions that perform the fiscal-monitoring visits were vacant, and the State Bar was recruiting for these positions in 2006. In addition, he stated that the long-standing director of the program retired in 2006 and recruitment for that position is also underway. As a result, existing staff have had to cover the duties of these vacancies and have been overextended. He also stated that the State Bar anticipates that these positions will be fully staffed in 2007. The senior grants administrator indicated that the State Bar plans to perform all of the fiscal-monitoring visits that were not performed in 2006 in addition to meeting the monitoring requirements for 2007.

THE STATE BAR DOES NOT RETAIN ADEQUATE DOCUMENTATION TO DEMONSTRATE THAT IT PERFORMS COMPLETE MONITORING REVIEWS OF ALL GRANTEES

The State Bar performs on-site monitoring of recipients of legal services program grants to gain assurance that grant funds are used in accordance with the requirements of the legal services program. As discussed in the Introduction, annual budget act appropriations provide money to the Equal Access Fund to be distributed by the Judicial Council. The Judicial Council contracts with the State Bar to administer the distribution of the funds, including on-site monitoring of grantees. However, according to interviews with State Bar staff and based on the seven files we reviewed, the State Bar does not retain

the documentation needed to demonstrate that staff have completed all the steps in the monitoring process. A checklist based on the American Bar Association's quality control standards guides the program-monitoring component of the reviews. The checklist developed for program monitoring has two areas of overview: governance and client access. Although the checklist provides an overview of pertinent items to be reviewed based on the quality control standards, the State Bar cannot demonstrate that staff consistently use the checklist or retain enough documentation of their monitoring steps to show that they reviewed all the items on the checklist. Therefore, the State Bar does not always maintain the evidence needed to show that all grantees met statutory requirements.

According to the senior grants administrator, staff do not always complete the checklist because they are so familiar with the standards that they do not need to follow the checklist to ensure that they perform all the steps.

According to the senior grants administrator, staff do not always complete the checklist because they are so familiar with the standards that they do not need to follow the checklist to ensure that they perform all the steps. For instance, verification of adequate legal research resources, access to specialized legal training, and physical space requirements are all checklist items that are to be reviewed for compliance with American Bar Association standards. The senior grants administrator indicated that because the standards have not changed since 1986, monitoring staff are very familiar with the standards and the checklists, and therefore do not always check off all the items but use the checklist as a guide during monitoring. However, without completed checklists documenting that staff consistently perform all required monitoring procedures and complete documentation showing the results of on-site monitoring work, the State Bar cannot demonstrate it has thoroughly performed the on-site monitoring to meet the requirements of its contract with the Judicial Council. As stated earlier in this section, the Judicial Council provides significant grant funding for the legal services program through the Equal Access Fund. In addition, completion of the on-site monitoring and documentation showing the results of the monitoring is important to the State Bar's internal and external accountability of its program oversight responsibilities.

IN RESPONSE TO OUR PRIOR RECOMMENDATIONS, THE STATE BAR HAS REDUCED ITS BACKLOG OF DISCIPLINARY CASES

One of the challenges for the State Bar since it temporarily lost its authority to collect a base annual membership fee in 1997 has been to reduce its disciplinary case backlog. As a

A disciplinary case is considered part of the backlog when it has not been resolved within six months of the receipt of a written complaint or within 12 months of receipt if the Office of the Chief Trial Counsel designates it as a complicated matter.

result of significant layoffs in the Office of the Chief Trial Counsel, the division responsible for handling disciplinary cases, the State Bar faced a backlog of 2,217 disciplinary cases by the end of 1998. These disciplinary cases represent the State Bar's response to reports of members' misconduct. A disciplinary case is considered part of the backlog when it has not been resolved within six months of the receipt of a written complaint or within 12 months of receipt if the Office of the Chief Trial Counsel designates it as a complicated matter. At the end of 2004 the State Bar reported a disciplinary case backlog of 402 cases, almost identical to the backlog it reported at the end of 2002. In our 2005 audit report we recommended that the State Bar continue its effort to reduce the backlog. At the end of 2006, the State Bar had reduced the backlog to 256 cases with the oldest open case dating back to 2003. Ten of the 256 backlogged cases had previously been closed and were reopened for further investigation. However, as of December 2006 six of those cases met the criteria for backlogged cases, and four had been reopened for less than six months.

In its one-year response to our 2005 audit report, the State Bar reported that effective September 1, 2005, it reorganized the Office of the Chief Trial Counsel to more efficiently process disciplinary cases. The State Bar feels the reorganization addresses structural and reporting issues that had historically contributed to the creation of the backlog and organizationally aligns disciplinary case staff under supervisors responsible for closing disciplinary cases.

Specifically, the State Bar reported it had eliminated the separate trial courts and investigation units within the Office of the Chief Trial Counsel and replaced them with teams that will handle both investigations and trials. The State Bar believes the creation of these investigation and trial units will result in greater cooperation and teamwork in performing adequate investigations and preparing cases for trial. In addition, the State Bar reported that the Office of the Chief Trial Counsel has implemented a significant change in the oversight of all disciplinary investigations that elevates the responsibility for directing investigations from investigators to the deputy trial counsel. Further, supervising trial counsel

State Bar's Backlog Status at Year-End

2000	1,340
2001	809
2002	401
2003	540
2004	402
2005	315
2006	256

Sources: 2005 Bureau of State Audits' report on the State Bar of California; Office of the Chief Trial Counsel, State Bar of California.

and assistant chief trial counsel are now responsible for monitoring the age of investigations and focusing on the completions of backlogged cases.

The text box shows the number of backlogged cases the State Bar reported as of the end of each year from 2000 through 2006. Our audit in 2005 confirmed the balance reported at year-end 2004, and our current audit confirms the balance reported at year-end 2006. The text box shows that the State Bar has reduced the number of backlogged cases in each year except 2003. According to the State Bar, the spike in 2003 resulted from an unusual series of investigations and prosecutions relating to a particular law group and involved 21 investigators, seven paralegals, and two attorneys from the Office of the Chief Trial Counsel.

The State Bar stated that its target goal is to reduce the backlog to no more than 200 cases on an ongoing basis. The chief trial counsel identified 200 as the target for backlogged cases largely as a motivational tool for staff. This target is also based on the historical number of backlogged cases since 1989 when the law was changed to allow the chief trial counsel to designate certain complaints as complicated matters, thereby creating the current structure for reporting the number of open cases. The assistant chief trial counsel told us that the State Bar did not meet its goal in 2006 because of several factors, including having investigators out on leave or assigned to special activities and the loss of nine investigators who accepted a separation incentive package offered in mid-2006.

The State Bar asserted that the historical number of backlogged cases spiked in reaction to the loss of State Bar staff. However, even prior to this, it acknowledged a running number of backlogged cases. With its experience of processing disciplinary cases, coupled with its understanding that it will take additional effort to lower the total number of backlogged cases and that some incoming cases will require additional work and time to settle, the State Bar currently feels that a total of 200 backlogged cases is an aggressive goal.

THE STATE BAR NEEDS CONTINUED IMPROVEMENT IN PROCESSING DISCIPLINARY CASES

A large part of the State Bar's budget is spent on operating and supporting the attorney discipline system. Through this system, the State Bar investigates complaints against attorneys accused of illegal or unethical behaviors or practices. The attorney discipline system also imposes penalties on attorneys found to have engaged in misconduct. In 2005 about \$42.5 million, representing more than 82 percent of the general fund's total operating expenses, was spent on the discipline system. In both our 2003 and 2005 audit reports, we recommended that the State Bar improve its discipline case processing. Among the recommendations included in our 2005 report were that the State Bar (1) establish a written policy requiring the use of a comprehensive checklist of important steps in processing disciplinary cases and (2) make supervisors responsible for ensuring that each case file includes a checklist and that staff use it. In response the State Bar developed three checklists for use in the processing of disciplinary complaints, investigations, and proceedings. A memorandum addressed to the assistant chief trial counsel stated that staff must use the checklists starting July 1, 2005.

In response to our 2005 report the State Bar developed three checklists for use in the processing of disciplinary complaints, investigations, and proceedings.

We found that State Bar staff are generally using the checklists throughout the various stages of disciplinary investigations. However, our testing noted that the checklists are not always used as directed in the 2005 policy. Specifically, of the 30 files that we reviewed, two contained incomplete checklists that were also unsigned by the complaint analyst's legal advisor, and one file was missing a required checklist.

The checklists were developed to help ensure that important steps in case intake and investigation and the trial process are completed as required. These steps include maintaining written communication with the complainant and the responding attorney, collecting documents as potential evidence, noting all the violations that may have occurred, and ensuring the accuracy of the coding and logging information collected. The timely completion of these steps is critical to resolving cases properly.

Although it was designed to help improve the handling of disciplinary cases, the State Bar has not fully implemented the spot-check policy directive.

In addition, our 2005 audit recommended that the State Bar enforce its policy of spot-checking files of open disciplinary cases and requiring team leaders to document the results of these spot checks. In response, the chief trial counsel issued a 2005 policy directive requiring monthly random audits of open disciplinary files. The policy directive states that each supervising trial counsel shall randomly check one open disciplinary file each month for each investigator he or she supervises. The policy also requires the supervising trial counsel to provide biannual reports to the assistant chief trial counsel summarizing the results of the random audits along with recommendations for training or other remedial actions that should be taken.

Although it was intended to help improve the handling of disciplinary cases, the State Bar has not fully implemented the policy directive. For one trial and investigation team, the supervising trial counsel did not conduct the required random audits for three months, primarily because of illness according to the assistant chief trial counsel. That supervising trial counsel also was given permission to do half the amount of audits required, one for each investigator every two months, because of his numerous additional responsibilities and the relatively high number of investigators under his supervision. In another trial and investigation team, the supervising trial counsel failed to complete random audits for seven of 12 months. According to a report submitted January 11, 2007, to the deputy chief trial counsel for the Los Angeles office, he was given permission not to perform random audits during the second half of 2006 because of increased duties. Further, the State Bar could not provide the written communication concerning corrections of deficiencies discovered in the random audits for seven of the 11 audits for which supervising trial counsels requested corrective action. As a result, the State Bar does not fully benefit from the policy intended to improve and monitor its processing of disciplinary cases.

RECOMMENDATIONS

To ensure that it receives all the trust account interest income available for its legal services program, the State Bar should consider conducting activities, such as interviewing or surveying a sample of members who do not report whether they have established trust accounts. This would allow the State Bar to determine whether some members are holding clients' funds without establishing trust accounts and remitting the interest to the State Bar. If the State Bar finds that the nonreporting

members do, in fact, hold client funds that are nominal in amount or are held for a short period of time, it should seek the authority to enforce compliance reporting.

To properly monitor recipients of grants under its legal services program, the State Bar should ensure that it performs and documents all required monitoring reviews; in addition, it should develop a plan to perform the fiscal on-site monitoring visits that were not performed while staying current with its ongoing monitoring requirements.

The State Bar should continue its efforts to reduce its backlog of disciplinary cases to reach its goal of having no more than 200 cases.

The State Bar should ensure that staff use checklists of significant tasks when processing case files and fully implement its 2005 policy directive for random audits of case files by supervising trial counsel.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,



ELAINE M. HOWLE
State Auditor

Date: April 26, 2007

Staff: Norm Calloway, CPA, Project Manager
Bruce Smith, CPA
Sunny Andrews, MSW
Mandy Trilck

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Agency's comments provided as text only.

The State Bar of California
180 Howard Street
San Francisco, California 94105-1639

April 13, 2007

Elaine M. Howle, State Auditor*
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: State Bar of California Response to State Audit Report of April, 2007

Dear Ms. Howle:

Please find enclosed the response of the State Bar of California to State Audit Report 2007 - 030 (April 2007).

Consistent with your request, we have submitted this written response in the envelope provided and the entire response, including this cover letter, has been reproduced on the enclosed diskette, using a Microsoft Word file.

I wish to extend my thanks to the audit team and appreciate their hard work in preparing the report. We look forward to working with you and your staff as this process continues.

Sincerely yours,

(Signed by: Judy Johnson)

Judy Johnson
Executive Director

Enclosure

* California State Auditor's comment appears on page 49.

Response to State Audit Report (4/13/07)

Agency Comments

The review of the operations and performance of the State Bar of California by the Bureau of State Audits is informative and helpful. The recommendations will help the State Bar strengthen its strategic planning process, programs and administrative controls and further demonstrate fiscal prudence.

We agree with the recommendations contained in the report and will develop plans to address them promptly. As required, we will periodically update the Bureau of State Audits on our progress in implementing the recommendations.

Chapter 1: The State Bar Of California Has Not Fully Implemented Its Strategic Planning Process

Recommendation

To ensure that the strategic plan is fully implemented the State Bar should complete revisions of the departmental plans that will serve to implement the board's strategic goals for all departments and ensure that each plan contains meaningful performance indicators that will measure how successfully goals are being met.

Response

We agree. Revised plans for seven out of 14 departments remain to be completed, and all 14 departments plans will be completed with meaningful performance measures on or before July 1, 2007. The departmental plans are developed at the direction of the Executive Director, who uses these departmental plans and other required and customary reports to measure staff performance in pursuit of board goals and to evaluate and monitor the overall State Bar work-product.

Recommendation

The State Bar should limit department plan performance measurement to indicators that can be accurately tracked on an ongoing basis and measure desired outcomes.

Response

We agree. We do note that efficient tracking of performance measures is reduced by the State Bar's Information Technology-limited capacity.

Recommendation

The State Bar should ensure that its departments, during their departmental plan revision process, identify the objectives and performance measures that can be attained, considering existing resource levels and information technology capabilities. In addition, on an ongoing basis the department should revise their annual action plans to update this information given additional information technology upgrades.

Response

We agree.

Recommendation

The State Bar should take the steps necessary to ensure its information technology systems can capture the required performance measurement data to support the projects needed to accomplish strategic planning objectives, or devise alternative means of capturing this data such as using an Excel spreadsheet.

Response

We agree in concept. However, as described in the 2007 audit report, the State Bar's Information Technology system is obsolete. The reporting capacity of the State Bar is dated and limited to manual data retrieval that must be integrated with data from multiple sources. If data can be captured from other sources, we will do so and use tools such as Excel spreadsheets to assist in storing, maintaining, and reporting on performance. Deriving meaningful data from manual entry from multiple sources is slow, inefficient, and resource intensive.

Chapter 2: The State Bar Of California Projects Deficits In Its General Fund

Recommendation

To ensure that it maximizes collection efforts and its ability to implement the Rule of the Court as soon as the California Supreme Court approves procedures allowing its use, the State Bar should complete its database and input all available information on the Client Security Fund and disciplinary debtors; implement its proposed policy for pursuing debtors; complete its assessment of the costs and benefits of reporting judgments to credit reporting agencies.

Response

We agree. The database is being created in phases. We are currently in Phase 3 of the design stage and are meeting regularly with all affected offices to coordinate the design of this database. Some initial testing/verification of data imported from the existing member database is underway. Once design is complete, all available data will be imputed, the database will be tested and staff will be trained. Following Supreme Court action on this rule, a pursuit policy will be implemented and a cost/benefit assessment will be prepared as it relates to the use of credit reporting agencies.

Recommendation

To effectively allocate its resources and justify its membership fees, the State Bar should align its budgets with the results of its strategic planning process.

Response

We agree. The State Bar is currently developing a budget preparation system that will enable it to align budgets with functional areas as defined in the strategic plan.

Chapter 3: The State Bar Of California Needs to Improve Its Legal Services Trust Fund Program And Attorney Disciplinary System

Recommendation

To determine whether the State Bar receives all of the trust account income available for its legal services program, the State Bar should consider conducting activities, such as interviewing or surveying a sample of members who do not presently report whether they have established trust accounts, to determine whether some members are holding clients' funds without establishing trust accounts and remitting the interest to the State Bar. If the State Bar finds that non-reporting members do, in fact, hold client trust funds that are nominal in amount or for a short period of time, it should seek the authority to enforce compliance reporting.

Response

We agree. The State Bar currently works with banks to identify attorney trust account holders who do not report compliance. We will develop and implement a process to communicate with a sample of non-reporting members to help us determine what percentage of attorneys, such as those working with large firms or public agencies, are not required to hold an account. We will also explore appropriate avenues to enhance compliance reporting within the standards of cost effectiveness.

Recommendation

To properly monitor recipients of grants under its legal services program, the State Bar should ensure that it performs and documents all required monitoring reviews and should develop a plan to perform the fiscal audits that were not performed while staying current with its ongoing audit requirements.

Response

We agree. As noted in the Audit Report, "the State Bar properly allocated and awarded legal services program funds." The Audit Report notes "inconsistency" in performing on-site monitoring visits. The on-site visit is one element of the State Bar's monitoring of the fiscal soundness of trust fund recipients. Other elements of the monitoring process include the receipt and analysis of independently audited or reviewed financial statements from grant recipients as well as review of quarterly financial reports of recipient expenditures of trust fund grant money. We believe this financial information provides a high degree of confidence that recipients are expending grant monies in compliance with grant terms. The State Bar will develop a plan and timetable to bring the monitoring site visits current. The State Bar will also review its use of monitoring checklists and other tools to improve its documentation of the monitoring process. The State Bar will work cooperatively with our Equal Access Fund grant partner the Judicial Council/Administrative Office of the Courts in developing the State Bar's improvement plan.

Recommendation

The State Bar should continue its efforts to reduce its backlog of disciplinary cases to reach its goal of having no more than 200 open backlog cases.

Response

We agree. As recognized in the Audit Report, the State Bar considers a backlog of 200 an “aggressive goal.” As such, currently unforeseen circumstances may prevent us from reaching a backlog of 200 every year.

Recommendation

The State Bar should ensure that staff use checklists of key tasks when processing case files and fully implement its 2005 policy for random audits of case files by supervising trial counsel and assistant chief trial counsel.

Response

We agree. We appreciate the State Auditor’s recognition that only 3 of 30 checklists reviewed had any deficiencies – a compliance rate of 90%. Further, only 1 of 30 files reviewed lacked a checklist – a compliance rate of approximately 97%. Regarding full implementation of the 2005 policy for random audits, we agree that there is room for improvement in compliance. We appreciate the State Auditor noting the reasons for non-compliance and we will undertake to have other competent staff members perform the random audit process if the primarily responsible individuals are unavailable to perform the task.

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COMMENT

California State Auditor's Comment on the Response From the State Bar of California

To provide clarity and perspective, we are commenting on the response to our audit report from the State Bar of California (State Bar). The number below corresponds with the number we have placed in the margin of the State Bar's response.

- The State Bar's response suggests that we concluded its information technology system is obsolete. However, the comments in our report regarding the obsolescence of the systems are the assertions of the State Bar.

As described in the Scope and Methodology section of our report, we spoke with the State Bar's chief information technology officer and reviewed a report prepared by its information technology consultant; however, we did not perform any procedures to assess the capabilities of the State Bar's information technology systems.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State
Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press