

## State Bar of California

Its Lawyer Assistance Program Lacks Adequate  
Controls for Reporting on Participating Attorneys

May 2011 Report 2011-030



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May 26, 2011

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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 California Business and Professions Code, Section 6145, the California State Auditor presents this audit report concerning the State Bar of California (State Bar).

This report concludes that the Lawyer Assistance Program (assistance program) of the State Bar lacks controls to ensure that the case managers for the program's participants submit reports of noncompliance promptly and consistently to such disciplinary bodies as the State Bar Court of California. Our review of case files for 25 participants in the assistance program showed that it does not have adequate procedures for monitoring case managers to ensure that they are appropriately sending reports of participants' noncompliance, such as missed or positive laboratory testing results for drugs or alcohol. In fact, case managers failed to send six reports to disciplinary bodies when participants missed laboratory tests and failed to send 10 other reports in a timely manner.

Further, the assistance program lacks adequate controls and procedures to ensure that case managers treat all noncompliance issues consistently. The assistance program relies on case managers to bring participants' noncompliance to the attention of the program's evaluation committee when appropriate; however, the program has issued only limited guidance to help case managers determine when to notify the evaluation committee. Further, the assistance program does not have any formal process for monitoring case managers' adherence to policies and procedures. Nine of the 25 participants we reviewed each had 10 or more instances of noncompliance, but we did not always see evidence that the case managers brought these issues to the attention of the evaluation committee.

Finally, the assistance program needs to adopt mechanisms to better gauge its effectiveness in achieving its mission of enhancing public protection and identifying and rehabilitating attorneys who are recovering from substance abuse or mental health issues. Until it develops these mechanisms, the State Bar will be unable to determine how well the assistance program is performing.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

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## Summary

### Results in Brief

The Lawyer Assistance Program (assistance program) of the State Bar of California (State Bar) lacks controls to ensure that the case managers for the program's participants submit reports of noncompliance promptly and consistently. In 2001 the Legislature enacted a law that established the assistance program for active and former members of the State Bar as well as for candidates seeking admission to the State Bar and the practice of law. The assistance program seeks to help attorneys through its career counseling services and short-term counseling, and to rehabilitate attorneys impaired by substance abuse or mental health disorders.

Although the assistance program offers short-term counseling services for issues or concerns affecting attorneys' work productivity, it focuses almost exclusively on a structured recovery program tailored to the needs of participating attorneys. This recovery program comprises two approaches: an open-ended version of the program that focuses on supporting attorneys who seek help (support assistance program) and a version in which attorneys' participation is monitored and verified (monitored assistance program). The support assistance program includes a six-month period of structured rehabilitation activities, oversight by assistance program staff, and participation in group meetings and lab tests when appropriate. However, this version of the program by design does not provide any verification of attorneys' participation and compliance to disciplinary bodies. Participants may enter the monitored assistance program if they want to satisfy a specific monitoring or verification requirement imposed by an employer, the State Bar Court of California (State Bar Court), the Office of the Chief Trial Counsel, or—for cases in which the State Bar has temporarily suspended admission because of the attorney's substance abuse or mental health issues—the Committee of Bar Examiners. Attorneys may also refer themselves into this version if they desire more structure than the support version offers.

With the participant's consent, the monitored assistance program provides to third parties, including disciplinary bodies, verification of an attorney's participation and compliance. Each attorney in the monitored assistance program follows a participation plan, and a case manager tracks his or her progress. The participation plan encompasses rehabilitation activities, such as laboratory testing for alcohol or drugs (lab tests), group therapy, and outpatient treatment. For an attorney participating in the assistance program because of a disciplinary proceeding and who has consented to reporting to third parties, the assigned case manager is required to submit reports to the State Bar Court upon request and to

### Audit Highlights . . .

*Our review of the State Bar of California (State Bar) highlighted the following about its Lawyer Assistance Program (assistance program):*

- » *It has poor monitoring procedures for ensuring case managers appropriately send reports of participants' noncompliance to disciplinary bodies.*
  - *Case managers failed to send immediate reports for six of 34 instances we reviewed for 25 participants that missed lab tests or tested positive for alcohol or drugs.*
  - *When case managers did report noncompliance, some of the reports were not submitted within the required five days—one was submitted 52 days later.*
- » *It does not adequately ensure that case managers treat all noncompliance issues consistently.*
  - *It has limited guidance to help case managers determine when to notify the evaluation committee.*
  - *There is no formal process for monitoring case managers' adherence to policies and procedures.*
  - *One participant failed to comply with his participation plan 20 times during the first three years that he took part in the assistance program—yet the case manager did not bring it to the evaluation committee's attention.*

*continued on next page . . .*

» *Although only 11 percent of its participants have successfully completed the assistance program, the State Bar believes that other factors are a better measure of the program's effectiveness. However, it has not measured the program's effectiveness using these other factors.*

send a report within five days of learning that the participant has not complied with the plan by missing a lab test or group therapy session (the latter are referred to as immediate reports).

Our review of case files for 25 participants in the monitored assistance program showed that the assistance program does not have adequate procedures for monitoring case managers to ensure that they are appropriately sending reports of participants' noncompliance to such disciplinary bodies as the State Bar Court. For the 25 participants, we found 34 instances in which the participants missed lab tests or tested positive for alcohol or drugs. Of these 34 instances, case managers failed to send immediate reports for six instances of missed lab tests to disciplinary bodies. For example, over about two months, one case manager failed to report two lab tests missed by a participant. The participant was terminated from the assistance program shortly thereafter by the evaluation committee; however, we question the effectiveness of the assistance program when it fails to report a participant's noncompliance to the appropriate disciplinary body, as required.

Even when case managers did report noncompliance, they sometimes did not do so within five days as required. In 10 of the 106 instances of noncompliance that case managers did report to the State Bar Court, related to seven of the 25 cases we reviewed, the reports were not submitted within the required five days. For these 10 instances of noncompliance, the case managers sent the reports two to 52 days after the five-day window had elapsed. If the assistance program does not promptly report these instances of noncompliance to the State Bar Court or to the State Bar's Office of Probation, the disciplinary bodies cannot hand down timely discipline, leaving the public unnecessarily at risk of attorneys' practicing law while potentially relapsing in their abuse of drugs or alcohol.

Although the assistance program was unable to explain all of the missed or late reports we found, the director stated that the majority of instances of nonreporting and late reporting occurred when case managers were covering for other case managers who were on leave. Nevertheless, the assistance program will be unable to ensure that case managers are promptly submitting required reports until it implements additional measures to monitor case managers' reporting of participant noncompliance. To avoid the late reporting of noncompliance in the future, the director stated that the assistance program has developed controls that include an automated process for tracking and monitoring case managers' immediate reporting of noncompliance.

Further, the assistance program lacks adequate controls and procedures to ensure that case managers treat all noncompliance issues consistently. Some components of an attorney's participation plan, such as obtaining a well-being monitor and providing the case manager with written verification of attendance at self-help meetings, do not require immediate reports if the participant fails to complete them, or does not complete them promptly. However, a case manager reports these issues to the State Bar Court upon request. In addition, a case manager may report to the assistance program's evaluation committee a participant's noncompliance with any part of the participation plan, and the committee may then require additional actions by the participant or may terminate the individual from the assistance program. The assistance program relies on case managers to bring noncompliance to the attention of the evaluation committee when appropriate; however, the program has issued only limited guidance to help case managers determine when to notify the evaluation committee, and there is no formal process for monitoring case managers' adherence to policies and procedures. Nine of the 25 participants we reviewed each had 10 or more instances of noncompliance, but we did not always see evidence that the case managers brought these issues to the attention of the evaluation committee. Moreover, the assistance program does not have a control process in place to monitor whether case managers are appropriately and promptly bringing noncompliance issues to the attention of the evaluation committee for further action.

For example, one participant failed to comply with his participation plan 20 times during the first three years that he took part in the assistance program. Nevertheless, the case manager did not bring these issues to the attention of the evaluation committee until nine months into the participant's fourth year, when this attorney had failed to comply 16 additional times. The program director maintained that prior to April 2010, the majority of the participant's noncompliance involved late submission of required information. The director went on to state that beginning in April 2010, the participant's noncompliance demonstrated a pattern of missed lab tests and missed group meetings, and he was scheduled to meet with the evaluation committee in August 2010. However, we found five instances of missed labs that occurred earlier than April 2010, indicating that the pattern of noncompliance was apparent well before the assistance program took any action to rectify the situation. This situation illustrates the assistance program's need for a formal review process for case files to ensure that case managers are appropriately notifying the evaluation committee about noncompliance issues so that the committee can take further actions. The assistance program's director stated that the program is implementing a new process for reviewing case files.

Finally, although only 11 percent of participants have successfully completed the monitored assistance program, the assistance program director asserted that this is not an accurate reflection of the program's overall effectiveness. In order for the State Bar to close a case as a successful completion, the evaluation committee must determine that a participant in the assistance program has maintained continuous sobriety for 36 months, made lifestyle changes to support continuous sobriety, and satisfied the terms of his or her participation agreement. Prior to June 2010 the participant must also have participated in the assistance program for at least five years. Case dispositions maintained by the assistance program show that most participating attorneys did not successfully complete the monitored assistance program. However, the assistance program director indicated that the program does not consider the number of cases ending in successful completion to be the primary indicator of the program's effectiveness in meeting its goals. The director explained that the assistance program is also achieving its mission of enhancing public protection by terminating noncompliant participants from the program, often to face further disciplinary action by the State Bar Court. The director also indicated that the State Bar considers as a success those cases involving participants who were stable and had an established recovery plan, but who did not feel the need to continue participation. Notwithstanding these assertions, the State Bar has not established a mechanism to define and measure success.

Of the 25 cases we reviewed, 14 resulted in participants withdrawing from the assistance program before completion. These 14 cases appear to support the assertion made by the assistance program director. For instance, we found that the participants in six of the 14 cases each had two or fewer instances of noncompliance and that each took part in the program for an average of 30 months. However, until it adopts a mechanism to better gauge its effectiveness, the State Bar will be unable to determine how well the assistance program is performing in meeting its goals.

### **Recommendations**

The assistance program should ensure that case managers are submitting to the appropriate entity the required reports in a timely manner, as required by its policies. Specifically, the assistance program should make certain that the new automated process for tracking and monitoring case managers' reporting of noncompliance is implemented properly and is being used as intended.

To make certain that case managers treat consistently the noncompliance issues that do not require immediate reports to disciplinary bodies, the assistance program should finish implementing its case review process. Further, the assistance program should develop guidelines to help case managers determine when to submit noncompliance issues to the evaluation committee.

Finally, the assistance program should take steps to better gauge its effectiveness. For example, it could measure how long its participants remain in the program and assess the program's impact on any further actions that disciplinary bodies impose on these attorneys. Further, if the assistance program believes that the effectiveness of the program is better measured through other means, it should develop these alternative measures and assess the program's effectiveness in meeting its stated goals.

#### **Agency Comments**

The State Bar agrees with our recommendations and indicated that it is already in the process of implementing them.

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## Introduction

### Background

The California Constitution established the State Bar of California (State Bar), a public corporation within the judicial branch of the government of the State of California (State) that provides services to protect the public and assist California attorneys in meeting their professional obligations. State law requires that every person admitted and licensed to practice law in California belong to the State Bar unless the individual serves as a judge in a court of record. According to its Web site, the State Bar has a membership of nearly 232,000 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, disciplining attorneys who violate laws or rules, and performing various administrative and support duties. The State Bar collects an annual membership fee from each of its members to pay for most of its operations. In addition to charging the annual membership fee, state law authorizes the State Bar to charge each member additional fees that fund specific programs.

One of the most important functions of the State Bar is to protect the public, the courts, and the legal profession from attorneys who fail to fulfill their professional responsibilities. To carry out this function, the State Bar established a disciplinary system that includes receiving, investigating, and prosecuting complaints against attorneys. In addition, the State Bar also administers the Lawyer Assistance Program (assistance program), which seeks to help attorneys through its career counseling services and short-term counseling and to rehabilitate attorneys impaired by substance abuse or mental health disorders.

Enacted in 2001, the Attorney Diversion and Assistance Act created the assistance program. The assistance program's mission includes, among other things, enhancing public protection as well as identifying and rehabilitating attorneys who are recovering from substance abuse or mental health issues. Although it offers short-term counseling services for issues or concerns affecting work productivity, the assistance program focuses almost exclusively on a structured three-year recovery program tailored to the needs of participating attorneys. The assistance program provides peer group support, individual peer support, and professional clinical support geared to the needs of legal professionals. Since its inception, the assistance program has closed 1,302 participant

cases that remained open more than 14 days, including cases for some repeat participants, and 290 cases remained open as of January 2011.

According to the State Bar's human resources manager, the assistance program employs seven case managers and one case management supervisor who monitor participant progress and ensure that participants satisfy the terms of their participation plans. The program also contracts with 18 group facilitators who facilitate participant support meetings and report participant progress to the case managers by entering notes into a shared database. All group facilitators must be licensed mental health professionals. The assistance program also contracts with an outside entity to provide laboratory testing for alcohol or drugs (lab tests), which may be a component of an attorney's participation plan.

### **The Assistance Program Provides Various Levels of Monitoring**

The assistance program offers two versions of its services: a support version and a monitored version. Unlike the monitored version, the support version of the assistance program (support assistance program) does not require an attorney to have a diagnosed substance abuse or mental health disorder in order to participate in the program. Implemented by the State Bar in 2010, the support version serves attorneys who are interested in participating in weekly group meetings but who do not require monitoring or verification of participation. The support assistance program includes a six-month period of structured rehabilitation activities, oversight by assistance program staff, and participation in group meetings and lab tests when appropriate. In addition to furnishing group facilitators, the support assistance program provides volunteer peer counselors who offer ongoing support to participants. Further, because participation in the support assistance program is voluntary and open-ended, there is no set time frame or other indicator that represents completion of the program.

Participants enter the monitored version of the assistance program (monitored assistance program) as the result of an investigation or disciplinary proceeding, or they refer themselves (self-refer) to this version if they desire more structured assistance than the support assistance program offers. The monitored version is also designed for attorneys who want to satisfy a specific monitoring or verification requirement imposed by an employer, the State Bar Court of California (State Bar Court), the Office of the Chief Trial Counsel, or—for cases in

which the State Bar has temporarily suspended an applicant's admission because of a substance abuse or mental health issue—the Committee of Bar Examiners. Before an attorney can formally participate in the monitored assistance program, an evaluation committee consisting of a physician, a clinician, and a local member of the State Bar experienced in recovery must accept the attorney into the program. The evaluation committee also establishes the terms of the participation plan for each participant in the monitored assistance program. To complete the monitored assistance program successfully, a participant must comply with the elements of the participation plan. As described in the text box, the evaluation committee is responsible for determining when a participant has successfully completed the monitored assistance program, and it has the authority to terminate participation if it determines that the participant failed to satisfy the terms of his or her participation plan.

The monitored assistance program tracks participants' attendance at group support meetings, facilitates random lab tests, and requires reports from treatment providers, if applicable. It offers long-term structure and the support of case managers who are responsible for ensuring that participants comply with the details of their participation plans. The monitored assistance program is open to active, inactive, and former members of the State Bar as well as to current candidates for admission to the State Bar, but each applicant must have a diagnosed substance abuse related disorder or a mental health disorder. Before January 2010 all participants were in the monitored assistance program.

Some attorneys who are subject to disciplinary proceedings may qualify to enter the State Bar Court's Alternative Discipline Program (Alternative Discipline), which seeks to identify and refer attorneys with substance abuse or mental health issues to the assistance program so that they may receive treatment and rehabilitation. Alternative Discipline addresses the substance abuse and mental health issues of attorneys against whom formal disciplinary proceedings have been initiated in the State Bar Court. The State Bar Court operates Alternative Discipline to give attorneys who qualify the option of avoiding more stringent

### Criteria for Successful Completion of the Monitored Assistance Program

A participant successfully completes the monitored assistance program when the evaluation committee determines that the participant has done all of the following:\*

- Maintained three years of continuous sobriety or, in cases involving mental health issues, stability.
- Made lifestyle changes sufficient to maintain ongoing sobriety or stability.
- Satisfied the terms of the participation agreement.

### Criteria for Terminating Participants From the Monitored Assistance Program

The evaluation committee may terminate an attorney's participation in the monitored assistance program if it determines that one of the following situations exists:

- The participant will not benefit substantially from the assistance program.
- Further participation by the attorney would be inconsistent with the assistance program's mission of public protection.
- The participant failed to satisfy the terms of the participation agreement.

Source: Lawyer Assistance Program rules, effective January 9, 2010.

\* Before January 2010 a participant was also required to take part in the assistance program for five years, or for as long as the evaluation committee deemed appropriate. When the assistance program revised its rules in January 2010, it did not retain this requirement.

### Examples of the Types of Discipline That California Attorneys May Receive

**Admonition:** A written nondisciplinary sanction issued in cases that do not involve a serious offense and in which the State Bar Court of California (State Bar Court) concludes that violations were not intentional and no significant harm resulted. Either the Office of the Chief Trial Counsel or the State Bar Court may impose an admonition.

**Reproval:** The lowest level of discipline imposed by the California Supreme Court or the State Bar Court. An attorney may receive a reproval that includes duties or conditions; however, reprovals do not involve suspension.

**Probation:** A status in which an attorney retains the legal ability to practice law subject to his or her compliance with terms, conditions, and duties for a specified period.

**Suspension:** A disciplinary action that prohibits a member of the State Bar of California (State Bar) from practicing law or from presenting himself or herself as a lawyer for a time period set by the California Supreme Court.

**Disbarment:** A disciplinary action whereby the California Supreme Court expels an attorney from membership in the State Bar. The attorney's name is stricken from the roll of California attorneys, and the attorney becomes ineligible to practice law.

*Source: The State Bar's 2009 Report on the State Bar of California Discipline System.*

disciplinary actions, such as those detailed in the text box. Among other things, an attorney must be accepted into the assistance program to be eligible for Alternative Discipline. The State Bar Court retains jurisdiction over those attorneys in the assistance program who have pending disciplinary proceedings, and it makes all appropriate judicial decisions, including any determination regarding the attorneys' eligibility to practice law while participating in the assistance program. According to the assistance program's director, the assistance program has no authority to restrict an attorney's ability to practice law.

State laws mandate that participation in the assistance program is confidential unless waived by the participating attorney. An attorney who participates in the monitored assistance program and who requires the assistance program to provide to a third party, such as the State Bar Court, information regarding his or her participation and compliance must sign a release form authorizing the assistance program to release such information. A State Bar Court judge periodically requests reports from the assistance program for specific attorneys participating in Alternative Discipline and in the assistance program. Assistance program policy also requires case managers to report to the State Bar Court and other appropriate entities within five days (referred to as immediate reports)

if participants become noncompliant with certain terms of their participation plans.

### Portions of State Bar Membership Dues Are the Assistance Program's Primary Source of Funding

According to the State Bar's records, the assistance program spent \$2.2 million in 2010. State law requires State Bar members to annually pay fees of \$10 for active members and \$5 for inactive members to provide funding, in whole or in part, for the assistance program. As Table 1 shows, the assistance program recorded \$2.4 million in revenue in 2010. The bulk of this revenue came from member dues. In addition, the State Bar transferred \$500,000 from its Affinity & Insurance Fund because, according to the State Bar's chief financial officer, the costs of the assistance program exceeded the amount of revenue generated from member dues in 2010. The Affinity & Insurance Fund consists primarily of premium commissions that the State Bar receives from sponsoring life and professional liability insurance. The purpose of this fund, which

is also known as the Lawyers Education and Development Fund, is to establish and conduct a lawyer competency program that includes the assistance program.

**Table 1**  
**2010 Revenues and Expenditures for the Lawyer Assistance Program**

Revenue Sources	
Member dues	\$1,870,606
Interest income*	11,115
Interfund transfers†	500,000
Other revenues‡	2,395
<b>Total Revenue</b>	<b>\$2,384,116</b>
Expenditures	
Salary and benefits	\$1,312,705
Overhead costs§	800,027
Assistance loans	43,485
<b>Total Expenditures</b>	<b>\$2,156,217</b>

Source: The Lawyer Assistance Program's (assistance program) revenue and expense history summary provided by the State Bar of California.

\* Derives from the interest earned on the unused member dues in the state treasury and on agency securities throughout the year.

† Transferred from the Affinity & Insurance Fund. The major revenue source for this fund is commissions received for State Bar sponsored life insurance and professional liability insurance. The purpose of this fund is to establish and conduct a lawyer competency program that includes the assistance program.

‡ Includes revenue from seminars and workshops conducted by assistance program staff.

§ Includes internal support costs for human resources, general counsel, and information technology as well as costs incurred for travel and training, among other things.

|| Although the assistance program loaned \$72,326 during 2010, the amount shown reflects \$28,841 in loan repayments.

In its 2009 annual report, the State Bar noted that the assistance program's expenditures were lower than in previous years due to expenditure reductions that included eliminating two staff positions. The State Bar further reduced its planned expenditures for the assistance program in 2010, and the program's 2011 budget does not include any transfers from the Affinity & Insurance Fund as a source of revenue. According to the program director, budget reductions have resulted in the elimination of a case manager position, but caseloads remain within acceptable limits.

**Qualifying Participants in the Assistance Program May Borrow Money From the State Bar's Financial Assistance Plan**

State law also directs the State Bar to establish a financial assistance plan to ensure that no member is denied acceptance into the assistance program solely because of the member's lack of ability

to pay. Participants are required to pay for all treatment costs, including group therapy, inpatient or outpatient treatment, and lab tests. However, attorneys who qualify can receive financial assistance in the form of loans from the financial assistance plan to cover lab tests and group therapy costs. Using financial assistance plan funds, the State Bar pays the group facilitator or testing facility directly on behalf of the participant.

According to the assistance program's records, loans from the financial assistance plan have a high default rate. From the beginning of the assistance program as of March 2011, the financial assistance plan has paid about \$2 million on behalf of 344 participants, but it has collected just \$101,000 from 50 participants. Until 2007 the assistance program had no formally documented process to collect loan payments from participants as they became due. In 2007, when the first participants completed the program, the assistance program began actively managing assistance loan balances and sent letters and collection coupons to former participants with outstanding loan balances. In 2008 the State Bar contracted with a collection agency to perform collection activities on accounts with delinquent balances. According to the State Bar's records, 226, or 66 percent, of the 344 assistance program cases that received financial assistance are in default, and the State Bar has assigned those accounts to the collection agency.

In response to the high default rate, the State Bar made two significant changes to the financial assistance plan in January 2010. The State Bar shortened to 12 months the length of time that it will provide financial assistance to participants, and it limited the amount that it will pay on behalf of a participant to only group facilitation and lab testing fees. In 2010 the assistance program recorded \$72,326 in loans to participants and \$28,841 in repayments, for a net loan expenditure of \$43,485.

### **The Assistance Program Conducts Outreach to Attorneys**

State laws also require the State Bar to actively engage in outreach activities to increase attorneys' awareness of the assistance program. The assistance program has developed a continuing education course for bar members and self-study materials that discuss substance abuse and mental health issues. In addition, the assistance program conducts outreach to the legal community through the California Bar Journal, pamphlets available at the State Bar offices, and through information published on the State Bar Web site.

## Scope and Methodology

The California Business and Professions Code requires the State Bar to contract with the Bureau of State Audits (bureau) to conduct a performance audit of the State Bar's operations every two years, but it does not specify topics that the audit should address. For this audit, our objective was to review and assess the State Bar's management of its assistance program, including but not limited to, the cost, length, effectiveness of its process, and related benefits and outcomes.

To determine whether the assistance program's policies and procedures comply with the requirements established in laws and regulations, we reviewed and compared the key policies and procedures with applicable requirements in the law and regulations. We also interviewed appropriate assistance program staff.

To evaluate the expenditure and funding structure of the assistance program, we examined financial summary reports provided by the State Bar. We compared the information in this report to the State Bar's most recent audited statement of expenditures for 2009 to gain assurance concerning the accuracy of the report. We also evaluated the status of assistance program loans by reviewing the report of financial assistance loan balances maintained by the State Bar's office of finance and by interviewing its chief financial officer.

To assess whether the State Bar monitors and reviews its progress toward meeting its goals, we interviewed key members of the assistance program staff and reviewed the goals and performance measures as outlined in the State Bar's strategic plan. We also inquired with appropriate staff to determine whether the State Bar has assessed the effectiveness of the assistance program using its performance measures. As part of assessing the State Bar's management of the assistance program, we determined whether it has appropriate procedures in place to check group facilitator and case management supervisor credentials, and we obtained the job requirements for case managers and the case management supervisor. We reviewed the State Bar's procedures for its contract compliance review of group facilitators, and we interviewed key State Bar personnel, including the assistance program's director and the deputy executive director of the State Bar. We verified the certification status for all 18 group facilitators and for the case management supervisor, using the information available on the California Department of Consumer Affairs' Web site. Each of these individuals had valid licenses as required by their position or contract.

To ascertain whether case managers are appropriately sending immediate reports for monitored cases, using the data obtained from the assistance program, we randomly selected 25 attorneys who

participated in the assistance program at any time since the program's inception in 2002.<sup>1</sup> To determine the number and disposition of assistance program cases, we reviewed the data obtained from the assistance program. According to the State Bar, the data include all cases in which potential participants completed the intake stage of the assistance program. To base our determinations on cases involving attorneys whose participation was more than just an initial contact, we included in our audit only those cases that were open for more than two weeks.

We also determined whether participants who successfully completed the assistance program subsequently returned. We reviewed the assistance program's list of 149 cases closed after successful completion and determined whether any participants reentered the program, either as self-referrals into the support assistance program or in response to further discipline by the State Bar Court.

The U.S. Government Accountability Office, whose standards we follow, requires us to assess the reliability of computer-processed data. We assessed the reliability of the assistance program's data for the purposes of determining the number and type of participant case dispositions and the length each participant stayed in the program by testing the completeness and accuracy of the data. To test the completeness of the data, we haphazardly sampled 29 hard-copy files for cases opened since the beginning of the assistance program, to ensure that the data we received included those cases. To check the accuracy of the data, we selected a random sample of 29 cases from the data and traced key data elements to source documentation. We found no inconsistencies in the completeness and accuracy testing. Using the results of our testing, we concluded that the data were sufficiently reliable for the purposes of determining the number and type of participant case dispositions and the length of time that each participant stayed in the program.

We also reviewed the policies and procedures in place for noncompliance reports sent to the State Bar Court. We used the assistance program's data to randomly select 25 disciplinary cases. However, we found that the information about participants' disciplinary involvement is self-reported by the participants and is not verified through reports of disciplinary proceedings. Therefore, using the participants' reports of disciplinary proceedings, we judgmentally selected cases to replace those that did not actually have disciplinary proceedings. In reselecting cases, we made sure

<sup>1</sup> As we mention in the Background section, only the monitored version of the assistance program provides verification and compliance reports to disciplinary bodies when consented to by the participant. Therefore, our review of case files for program effectiveness focused exclusively on those participants in the monitored version of the assistance program.

that our total sample of cases was proportionally representative of the volume of cases in each of the three assistance program office locations.

Our review of participant files included examining reports of participants' noncompliance. For two kinds of noncompliance—missed and positive lab tests—we obtained the laboratory testing facility's list of all missed and positive lab tests for each participant to determine whether case managers appropriately reported each one. If evidence in the file indicated that a noncompliance report should be present but was not, we verified with Alternative Discipline that it had received the report.

In addition, we interviewed appropriate staff to understand the assistance program's policies and procedures for reporting noncompliance to the evaluation committee. We found that the assistance program did not have written policies regarding reporting noncompliance to the evaluation committee before 2008. Therefore, from the sample of 25 cases previously discussed, we identified those that were closed after 2008 and judgmentally selected additional cases for a total of 25 cases closed after 2008. We reviewed these 25 cases to ensure that case managers followed policies for reporting all noncompliance to the State Bar Court upon request. We also reviewed these cases to determine whether the case managers consistently reported noncompliance issues to the evaluation committee for further actions.

Finally, we determined whether the State Bar implemented recommendations from the bureau's 2007 and 2009 audit reports. We assessed the State Bar's efforts to implement the 22 recommendations from the bureau's prior audit reports and determined it had fully implemented 20 of them. The Appendix discusses the two recommendations that the State Bar has yet to fully implement.

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## Audit Results

### **The Lawyer Assistance Program Does Not Always Ensure That Case Managers Follow Its Policies and Procedures**

The Lawyer Assistance Program (assistance program) administered by the State Bar of California (State Bar) does not have adequate controls to ensure that its case managers are appropriately reporting the progress of attorneys in the State of California (State) who take part in the monitored version of the assistance program (monitored assistance program). Our review of case files found that case managers did not always report to disciplinary bodies within five days (referred to as immediate reports), or improperly delayed reporting in instances when participants missed their laboratory testing for unauthorized substances (lab tests) or group therapy sessions. The inconsistent reporting by case managers to the State Bar Court of California (State Bar Court) means judges may not have been informed of some participants' noncompliance and thus might not have taken additional disciplinary action against the attorneys. We also found that the assistance program relies on case managers to determine when to elevate to the evaluation committee noncompliance issues; however, it does not have adequate controls or procedures to ensure that case managers treat all instances of noncompliance consistently. Without additional controls and procedures in place, the assistance program cannot be assured that it is accurately tracking and consistently reporting participants' progress and compliance.

As we discussed in the Introduction, the assistance program requires case managers to send to the State Bar Court immediate reports about attorneys in the monitored assistance program when they do not comply with certain terms of their participation plans. As we note in the Introduction, the assistance program does not provide verification of participation for attorneys in the support version of the assistance program. Thus, as we note in the Scope and Methodology, our review concerned only those attorneys in the monitored assistance program who were participating as part of a judge's disciplinary order.

### ***The Assistance Program's Case Managers Sometimes Failed to Report or Were Late Reporting Noncompliance to Disciplinary Bodies as Required***

Our review of 25 participants' cases revealed that case managers sometimes failed to send immediate reports about instances in which the participants missed tests for the detection of alcohol or drugs.

### Events That Case Managers Must Report to the State Bar Court of California Within Five Days of Learning About Them:

- The participant is terminated or withdraws from the Lawyer Assistance Program (assistance program).
- The participant leaves treatment against advice.
- The participant has a lab test that detects alcohol or drugs.\*
- The participant had an unexcused missed lab test and failed to notify his or her case manager.\*
- The participant has an unexcused absence from a group therapy session.\*

Source: The Lawyer Assistance Program's policy manual.

\* Effective June 2010 the assistance program changed the requirement for a case manager to send an immediate report from two instances to a single instance.

As the text box shows, assistance program policies require case managers to send to the State Bar Court reports within five days of the case managers' receiving notifications about certain types of noncompliance by attorneys who take part in the monitored assistance program because of disciplinary proceedings. The laboratory testing facility, the participant's support group facilitator, and other treatment providers are responsible for notifying the case manager about a participant's failure to comply with his or her participation plan. The State Bar Court operates the Alternative Discipline Program, which seeks to identify and refer to the monitored assistance program those attorneys with substance abuse or mental health issues so that they may receive treatment and rehabilitation. The State Bar Court reviews these immediate reports to determine whether a participant is complying with the terms of the disciplinary order and whether the State Bar

Court should take further disciplinary actions, such as those described in the Introduction to this report.

In the cases of the 25 participants we reviewed, there were 34 instances of noncompliance when participants tested positive for drugs or alcohol, or missed lab tests. We found that case managers failed to send an immediate report notifying the State Bar Court of a participant's noncompliance in six of the 34 instances related to five participants. Each participant makes a daily phone call to the laboratory testing facility's automated system, which randomly determines whether to require the participant to submit to a lab test that day. The attorney's case manager is required to send an immediate report to the State Bar Court if the participant tests positive for alcohol or drugs, or misses a lab test. However, case managers failed to send at least one immediate noncompliance report for five participants who missed their required lab testing. For example, over about a two-month period, one case manager failed to report two lab tests missed by a participant. The evaluation committee eventually terminated the participant for noncompliance; however, we question the effectiveness of the assistance program when it puts the public at unnecessary risk by failing to report participant noncompliance as required. If the State Bar Court does not receive these reports, it may be unaware of attorneys' noncompliance with their participation plans, and it would thus be unable to proceed with additional disciplinary actions.

Besides failing to send immediate reports, case managers sometimes did not report attorneys' missed lab tests and other instances of attorneys' noncompliance within the required five days. Specifically, for the 25 cases we reviewed, we found 106 instances of noncompliance requiring immediate reports for which a report was sent to the State Bar Court. In 10 of these instances, related to seven attorneys' cases, the case managers did not submit their reports within five days. Instead, the reports were sent two to 52 days after the five-day deadline had elapsed. For example, one case manager did not report a missed lab test until 52 days after it was required, and reported another missed lab test seven days late. Missed lab tests are the type of noncompliance most commonly reported late, constituting six of these 10 instances. If the assistance program does not promptly report missed lab tests to the State Bar Court or to the State Bar's Office of Probation (probation office), these disciplinary bodies cannot hand down timely discipline, leaving the public unnecessarily at risk of attorneys' practicing law while potentially abusing drugs or alcohol.

*One case manager did not report a missed lab test until 52 days after it was required, and reported another seven days late.*

Although the assistance program was unable to explain all of the instances of missed or late reports we found, the director stated that the majority occurred when case managers were covering for other case managers while they were on leave. Nevertheless, the assistance program will be unable to ensure that case managers are promptly submitting the required reports until it implements additional measures to monitor case managers' reporting of participant noncompliance.

Established in 2002, the assistance program, according to its staff, did not develop written policies for monitoring participants until 2005, when it formalized some limited policies. However, the 2005 policies did not delineate when the case managers should send immediate reports to disciplinary entities, nor did it include the process for closing cases. The assistance program director stated that until 2006, the program had insufficient staff resources to document the policies that the program was following. Since 2008 the assistance program has developed written policies that include how case managers are to handle attorneys who began participating but are eventually not accepted into the program, those who withdraw, those who are terminated, and those who successfully complete the program.

The director stated that the assistance program has developed controls that include an automated process for tracking and monitoring case managers' immediate reporting of noncompliance. The process will summarize all of the reportable noncompliance and will email the report to the administrative assistant, case managers, and director on a daily basis. This report is intended to assist case managers in complying with timely reporting requirements and to

help the director monitor the reporting. The director asserted that this process will be accessible to the State Bar Court, the Office of the Chief Trial Counsel, and the State Bar's probation office staff. However, the assistance program did not begin developing these controls until we brought this issue to its attention. Because the program did not implement these controls until April 2011, we were unable to determine their effectiveness.

***The Assistance Program Lacks Adequate Controls and Procedures to Ensure That Case Managers Treat All Noncompliance Issues Consistently***

Not only has the assistance program failed to ensure that case managers provide immediate reports on participants' noncompliance, but the program has also failed to develop sufficient controls or procedures for handling all noncompliance issues consistently. According to the director of the assistance program, the assistance program relies on its case managers to bring to the attention of its evaluation committee many noncompliance issues. The assistance program has issued limited guidelines specifying when case managers should notify the evaluation committee about a participant's return to the use of drugs or alcohol. However, the assistance program's policy manual includes no documented procedures governing when case managers should bring to the attention of the evaluation committee any failures by attorneys to satisfy other terms of their participation plans. Moreover, the assistance program does not have a control

process in place to monitor whether case managers are appropriately and promptly bringing noncompliance issues to the attention of the evaluation committee for further actions.

Assistance program policies call for individual participation plans that outline the structured rehabilitation activities that participants must perform to complete the program. As the Introduction explains, the assistance program's evaluation committee determines the activities or components of the participation plans, and it has the authority to terminate participants from the program for failing to comply adequately with the terms of their individual participation plans. As the text box explains, an attorney's noncompliance with some components of his or her participation plan does not require case managers to submit immediate reports; instead, case managers report these types of noncompliance to the State Bar Court upon request. Additionally, when any compliance issue arises with a participant, the case manager may notify the

**Examples of Participation Plan Directives That Do Not Require Immediate Reports for Noncompliance**

- Obtain a well-being monitor and arrange to have the monitor submit quarterly reports to the Lawyer Assistance Program (assistance program).
- Arrange to have the therapist submit quarterly progress reports to the assistance program.\*
- Provide the case manager with written verification of attendance at self-help meetings.
- Engage in psychiatric medication management and arrange to have the physician submit quarterly progress reports to the assistance program.

Sources: The Lawyer Assistance Program's policy manual and sample participation plans.

\* Although failure to participate in therapy requires an immediate report for noncompliance, failure by the therapist to submit quarterly progress reports does not.

evaluation committee, which in turn may amend the participation plan to impose additional requirements or may terminate the attorney's participation in the assistance program.

Except when covering cases of relapse—a return to alcohol or drug use after a period of abstinence—the assistance program's policy manual includes no documented procedures governing when case managers should bring to the attention of the evaluation committee any failures by attorneys to satisfy the terms of their participation plans. According to the director, the assistance program relies on case managers to exercise clinical judgment in determining when to request the intervention of the evaluation committee. Nevertheless, the assistance program's lack of clear guidelines for notifying the evaluation committee of noncompliance highlights the program's potential risk of treating participants inconsistently.

In addition, the assistance program's monitoring of case managers does not include a formal review of case files, which compounds the risk of case managers treating participants inconsistently. In fact, nine of the 25 participants we reviewed had 10 or more instances of noncompliance. For example, one participant failed to comply with his participation plan a total of 36 times during the four-year period he was in the assistance program. Specifically, during the first three years after signing his participation plan he had 20 instances of noncompliance, including missed lab tests that required immediate reports and missing well-being monitor reports that do not require immediate reports. However, the case manager did not schedule him to meet with the evaluation committee until nine months into his fourth year, during which the participant had an additional 16 instances of noncompliance. The program director maintained that prior to April 2010 the majority of the participant's noncompliance resulted from late submission of required information. The director went on to state that beginning in April 2010 the participant's noncompliance demonstrated a pattern of missed lab tests and missed group meetings, and he was then scheduled to meet with the evaluation committee in August 2010. However, we found five instances of missed lab tests predating April 2010, indicating that the pattern of noncompliance was apparent well before the assistance program took any action to rectify the situation. This example illustrates the need for a formal review process of case files to ensure that case managers are appropriately bringing noncompliance issues to the attention of the evaluation committee for further actions.

The director stated that the assistance program is in the process of adopting a formal case file review process. Further, she noted that the review process, which has been used in the Los Angeles office, ensures that each active case is reviewed at least once per year. Specifically, the case managers and the case management

***One participant failed to comply with his participation plan a total of 36 times during the four-year period he was in the assistance program.***

supervisor jointly review selected files on a monthly basis to assess various components, including the participant's compliance with the participation plan, group participation or attendance, and any positive lab test results. Based on the review, the supervisor follows up with the case manager to ensure implementation of the suggested plan of action. Although we were unable to review this control because it was still being implemented, it appears that the assistance program is taking corrective action in this matter.

### **The Assistance Program Could Do More to Measure Its Effectiveness**

Case dispositions maintained by the assistance program show that most participating attorneys did not complete the monitored assistance program. Nevertheless, according to the assistance program director, this is not a reflection of the program's effectiveness. She noted that many participants who withdrew could be considered successes because they received the necessary tools and structure through the program to continue on their own. Our review of the case files for some of the participants who withdrew from the assistance program before completion appears to corroborate this assertion. However, the assistance program's inability to accurately report participants' noncompliance undermines the effectiveness of the program. Although the assistance program does track some performance measures, such as feedback from participants and the number of State Bar members who seek services, it has not formally assessed the program's effectiveness.

Assistance program procedures require staff, when closing a case, to record the manner in which each participant left the program. According to assistance program records, from the inception of the program through January 2011, the assistance program closed 1,302 cases that were open for more than two weeks. Participants' withdrawals from the program led to the closure of 76 percent of these cases. As Table 2 shows, the top three reasons recorded for attorneys leaving the assistance program are that the participant withdrew before completing the program, that he or she successfully completed the program, or that the assistance program's evaluation committee terminated the participant from the program. For the State Bar to categorize a case as successfully completed, the evaluation committee must determine that a participant has maintained continuous sobriety, or stability in cases related to mental health, for 36 months, made lifestyle changes to support continuous sobriety or stability, and satisfied the terms of his or her participation agreement. Prior to June 2010 the participant was also required to have participated in the assistance program for at least five years. Since 2002, 149 participants, or 11 percent of the 1,302 closed cases, have successfully completed the program.

*Since 2002, 149 participants, or 11 percent of the 1,302 closed cases, have successfully completed the program.*

**Table 2**  
**Reasons for Case Closures for Both Disciplinary and Self-Referred Participants in the Lawyer Assistance Program Since Its 2002 Inception Through January 2011**

REASON FOR CASE CLOSURE	NUMBER OF CASES	PERCENTAGE OF TOTAL CASES
Withdrawal from program	986	76%
Successful completion	149	11
Termination	89	7
Not accepted/denied*	39	3
Other†	39	3
<b>Total</b>	<b>1,302</b>	

Source: Participant database maintained by the State Bar of California (State Bar).

\* These include attorneys that enrolled and began participation in the program, but whose applications were ultimately not accepted by the evaluation committee.

† Includes cases closed due to, among other reasons, participants' disbarment and resignations from membership in the State Bar.

Although only 11 percent of the cases closed involved participants who successfully completed the assistance program, the director indicated that the program does not regard the number of cases ending in successful completion as the primary indicator of the program's effectiveness in meeting its goals. The director explained that the assistance program is also achieving its mission of enhancing public protection by terminating the participation of noncompliant attorneys, often to face further disciplinary action by the State Bar Court. The director also stated that the State Bar views as successful those cases involving participants who are stable and have established recovery plans but who did not feel the need to continue participation.

Our review of the case files for some participants who withdrew from the assistance program before completion appears to support the assertion made by the assistance program's director. Specifically, of the 25 case files we reviewed, 14 related to participants who withdrew before completing the program. Six of the 14 cases had two or fewer instances of noncompliance during the participant's time in the assistance program. These six attorneys participated in the program for an average of 30 months. For example, one participant missed only two support group meetings during 31 months in the program. This sequence of events does not meet the criteria for successful completion outlined in the assistance program rules; nonetheless, the participant appears to have maintained sobriety for nearly three years. Although these six participants did not complete the program successfully as described above, they all generally complied with the terms of their participation plans.

*Until the assistance program implements more robust controls to monitor case managers' reporting of participants' noncompliance to disciplinary bodies, its ability to enhance public protection will be diminished.*

Further, of the 149 cases recorded by assistance program staff as successful completions, there were only two instances in which the participants later reenrolled in the program. For example, one participant withdrew from the program in 2005 and then reentered and completed the program successfully in May 2009. In September 2009 the participant reentered the program for a third time. However, this case does not appear to be representative of most participants who successfully completed the program.

Nevertheless, until the assistance program implements more robust controls to monitor case managers' reporting of participants' noncompliance to disciplinary bodies, such as the State Bar Court, the ability of the program to fulfill a significant part of its mission of enhancing public protection will be diminished. Specifically, until the assistance program can report participants' noncompliance consistently, the State Bar Court will not be able to react promptly to impose additional disciplinary measures to better protect the public from potentially impaired attorneys.

Further, the assistance program needs to develop better means of measuring its effectiveness. Although our review of sampled cases appears to corroborate the director's assertion that some participants who withdrew from the assistance program benefited, the assistance program has not demonstrated its effectiveness. The assistance program's director believes that the effectiveness of the program cannot be measured solely based on the number of successful participants. For example, she noted that the assistance program's educational materials and its outreach efforts also have a positive impact on helping to address substance abuse and mental health issues among attorneys. However, although the State Bar annually reports data on such areas as the number of attorneys the assistance program served, and those that participated in the monitored assistance program or received short-term counseling services, it has not assessed the effectiveness of the assistance program using the measures it believes are important. Until it adopts mechanisms to better gauge the assistance program's effectiveness, the State Bar will be unable to determine the program's success in meeting its goals.

### **Recommendations**

The assistance program should ensure that case managers are submitting to the appropriate entity the required reports in a timely manner, as required by its policies. Specifically, the assistance program should make certain that the new automated process for tracking and monitoring case managers' reporting of noncompliance is implemented properly and is being used as intended.

To make certain that case managers treat consistently the noncompliance issues that do not require immediate reports to disciplinary bodies, the assistance program should finish implementing its case file review process. Further, the assistance program should develop guidelines to help case managers determine when to submit noncompliance issues to the evaluation committee.

Finally, the assistance program should take steps to better gauge its effectiveness. For example, it could measure how long its participants remain in the program and assess the program's impact on any further actions that disciplinary bodies impose on these attorneys. Further, if the assistance program believes that the effectiveness of the program is better measured through other means, it should develop these alternative measures and assess the program's effectiveness in meeting its stated goals.

We conducted this audit 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. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the scope section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA  
State Auditor

Date: May 26, 2011

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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

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## Appendix

### Status of Prior Audit Recommendations

The California Business and Professions Code, Section 6145(b), requires the State Bar of California (State Bar) to contract with the Bureau of State Audits (bureau) to conduct a performance audit of the State Bar's operations every two years. In 2009 the bureau assessed the State Bar's management of its disciplinary system and probation processes.<sup>2</sup> In that report, the bureau recommended several ways in which the State Bar could improve its management of its disciplinary system, and included recommendations from the bureau's 2007 audit of the State Bar that it had not fully implemented as of 2009. In the bureau's 2011 report on the status of recommendations not fully implemented by state agencies after one year,<sup>3</sup> we noted that the State Bar had not implemented four of the 22 recommendations from the 2009 audit. We conducted additional follow-up work during our current audit and determined that the State Bar has fully implemented 20 of the 22 recommendations as of April 2011. We discuss below the status of the two recommendations—originally included in the 2007 audit—that the State Bar has not fully implemented.

In our 2009 audit report about the State Bar, we recommended that it continue to act on a recommendation from the 2007 audit related to reducing its inventory of backlogged disciplinary cases. As Figure A on the following page indicates, according to the State Bar's annual report on its disciplinary system for 2010, the State Bar had 388 backlogged disciplinary cases at the end of 2008 and 409 at the end of 2009. Although the backlog declined to 350 at the end of 2010, the State Bar has not reduced the number of backlogged disciplinary cases to meet its goal of having no more than 250 backlogged cases.

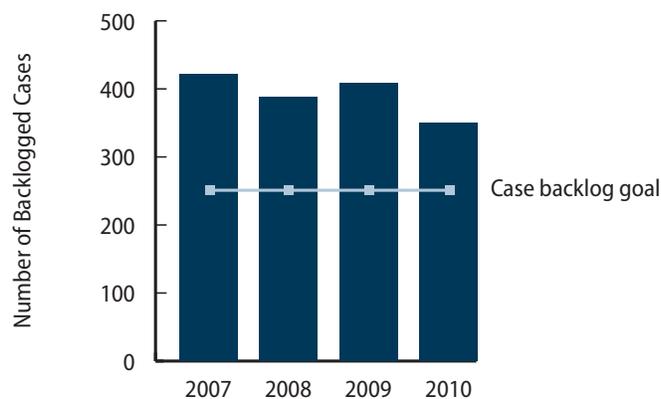
Staff at the Office of the Chief Trial Counsel indicated that an increasing number of new disciplinary complaints have made reducing the backlog more difficult than it might otherwise be. Specifically, the staff noted that since the audit report's release in July 2009, a significant increase in complaints has occurred because of the recession, the mortgage crisis, and attorney misconduct involving loan modification issues. According to the staff, the State Bar determined that many of these cases represent a new, immediate threat of harm to the public, and it focused resources

<sup>2</sup> The Bureau of State Audits' report titled *State Bar of California: It Can Do More to Manage Its Disciplinary System and Probation Processes Effectively and to Control Costs* (Report 2009-030, July 2009).

<sup>3</sup> The Bureau of State Audits' report titled *Recommendations Not Fully Implemented After One Year: The Omnibus Audit Accountability Act of 2006* (Report 2010-041, January 2011).

on resolving these issues, giving some of these cases higher priority over older cases in the system. Nevertheless, the State Bar has been unable to reduce the inventory of backlogged disciplinary cases to meet its goal.

**Figure A**  
**Disciplinary Case Backlogs and the State Bar of California's Case Backlog Goal Since 2007**



Source: The State Bar of California's *Attorney Discipline Report* for the year ending December 31, 2010.

The 2009 audit also included a recommendation that the State Bar continue to implement a recommendation from the 2007 audit to improve its processing of disciplinary cases by more consistently using checklists. The State Bar indicated that it continues to ensure that staff use checklists consistently and effectively. However, our review of disciplinary cases found that the State Bar does not always follow its checklist policies.

In response to the bureau's audit report on the State Bar in 2005, the State Bar established a policy that directs staff to use checklists to record significant tasks completed during certain phases of the processing of disciplinary cases. The policy, updated in 2009, requires staff to complete new and existing checklists as a disciplinary case moves through the intake, investigation, and trial phases of case processing. In our current review of three case files, all eight checklists were present in each file as required, but four checklists were incomplete, and supervisors had not signed off as approving six of the checklists. The State Bar minimizes the value of these checklists when they are not completed by staff or approved by supervisors. Thus, the State Bar has yet to fully implement our recommendation that it consistently use checklists for discipline cases.

*(Agency response provided as text only.)*

The State Bar of California  
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May 6, 2011

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 May 2011

Dear Ms. Howle:

Please find enclosed the response of the State Bar of California to State Audit Report 2011-030 (May 2011).

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.

Yours truly,

*(Signed by: Joseph L. Dunn)*

Senator Joseph L. Dunn, Ret.  
Executive Director/CEO

**Recommendation No. 1**

The assistance program should ensure that case managers are submitting to the appropriate entity the required reports in a timely manner, as required by its policies. Specifically, the assistance program should make certain that the new automated process for tracking and monitoring case managers' reporting of noncompliance is implemented properly and being used as intended.

**Response**

The State Bar agrees with this recommendation. In April 2011, the Lawyer Assistance Program implemented an automated mechanism to assist the LAP Director, case managers and administrative assistants in tracking and monitoring the immediate report filing process. The system is fully documented, in production and performing effectively.

**Recommendation No. 2**

To make certain that case managers treat consistently the noncompliance issues that do not require immediate reports to disciplinary bodies, the assistance program should finish implementing its case review process. Further, the assistance program should develop guidelines to help case managers determine when to submit noncompliance issues to the evaluation committee.

**Response**

The State Bar agrees with this recommendation. For eighteen months, the case management staff in southern California has participated in a case review pilot program accomplishing both a thorough annual review and consistent responses to noncompliance issues. As a result of the success of the pilot program, the review process is being implemented statewide on a permanent basis. In addition, guidelines for advising the evaluation committee of non-compliance will be added to the LAP Policy Manual.

**Recommendation No. 3**

The assistance program should take steps to better gauge its effectiveness. For example, the program could measure how long its participants remain in the program and assess the program's impact on any further actions that disciplinary bodies impose on these attorneys. Further, if the assistance program believes that the effectiveness of the program is better measured through other means, it should develop these alternative measures and assess the program's effectiveness in meeting its stated goals.

**Response**

The Lawyer Assistance Program has undertaken the process of identifying performance measures to supplement those that are currently in place and reported in the Annual Report to the Board of Governors. Staff plan to meet with the Member Oversight Committee of the Board of Governors during 2011 to receive its input and guidance in this process so that meaningful measures can be developed to assist the Bar's stakeholders in further evaluating the effectiveness of the program.

## Status of Prior Audit Recommendations

### Recommendation No. 1

In our 2009 audit report about the State Bar, we recommended that it continue to act on a recommendation from the 2007 audit related to reducing its inventory of backlogged disciplinary cases. The State Bar has not reduced the number of backlogged disciplinary cases to meet its 2007 goal of having no more than 250 backlogged cases.

#### Response

OCTC continues to strive to maintain the lowest possible backlog consistent with office workloads and priorities. OCTC has and will implement additional strategies to help insure continued improvement in both the number and age of the backlog.

### Recommendation No. 2

The 2009 audit also included a recommendation that the State Bar continue to implement a recommendation from the 2007 audit to improve its processing of disciplinary cases by more consistently using checklists. The State Bar indicated that it continues to ensure that staff uses checklists consistently and effectively. However, our review of disciplinary cases found that the State Bar does not always follow its checklist policies.

#### Response

Intake has implemented an automated checklist and has shown much improved compliance in the use of checklists. In the most recent review of Intake files OCTC achieved a 97% compliance in the use of checklists. The Intake checklists were also found to be accurate in the vast majority of cases. With regard to the Investigation and Trial units, the use of checklists has been less consistent and continues to show need for improvement. OCTC will undertake additional training with regard to the use of checklists by investigators and trial attorneys. The office will evaluate the use of the automated checklist in Intake and determine whether automation of the investigation and trial checklists would be helpful to insure greater compliance and accuracy.

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