

State Bar of California

It Has Not Consistently Protected the Public Through Its Attorney Discipline Process and Lacks Accountability

Report 2015-030

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June 18, 2015

2015-030

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 the California Business and Professions Code, Section 6145 (b), the California State Auditor presents this audit report concerning the system that the State Bar of California (State Bar) uses to impose discipline on attorneys who fail to meet their professional responsibilities and its actions leading up to the purchase of a building in Los Angeles. This report concludes that the State Bar has not consistently fulfilled its mission to protect the public from errant attorneys and lacks accountability related to its expenditures.

The State Bar has struggled historically to promptly resolve all the complaints it receives, potentially delaying the timely discipline of attorneys who engage in misconduct. A primary measurement of the effectiveness of the State Bar's discipline system is the number of complaints it fails to resolve within six months of receipt, which it refers to as its backlog. In 2010 the backlog reached 5,174 cases, prompting the State Bar to take steps to quickly reduce it. Although the State Bar succeeded in decreasing the backlog by 66 percent within a year, it may have compromised the severity of the discipline imposed on attorneys in favor of speedier types of resolutions. In particular, in 2010 and 2011, the years the State Bar focused on decreasing the backlog, the State Bar settled a total of 1,569 cases; more cases were settled in each of those years than in any of the other four years in our audit period. The level of discipline that the State Bar recommended as part of these settlements was, in some cases, inadequate. For example, the California Supreme Court returned for further examination 27 cases that the State Bar settled in 2011 due to the appearance of insufficient levels of discipline. Upon further consideration by the State Bar, 21 of the 27 cases resulted in greater discipline recommendations, including five disbarments. Thus, to reduce its backlog, the State Bar allowed some attorneys whom it otherwise might have disciplined more severely—or even disbarred—to continue practicing law, placing the public at risk.

Moreover, instead of focusing its resources on improving its discipline system—such as engaging in workforce planning to ensure it had sufficient staffing—it instead spent \$76.6 million to purchase and renovate a building in Los Angeles in 2012. The Legislature approved a temporary five-year \$10 special assessment charged to members between 2009 and 2013 as a means to partially finance a new building for the State Bar in Southern California, which generated \$10.3 million—about \$66 million short of the final cost of the Los Angeles building. To finance the remaining cost, the State Bar secured a \$25.5 million loan, sold a parking lot in Los Angeles for \$29 million, and transferred \$12 million between its various funds, some of which the State Bar's Board of Trustees (board) had set aside for other purposes. We also found that the State Bar did not present to its board an analysis of whether it was financially beneficial to purchase a building rather than continuing to lease space. Further, in its April 2012 report to the Legislature—four months before purchasing the building—the State Bar underestimated the total cost by more than \$50 million.

Finally, the State Bar's fund balances over the last six years indicate that the revenues from annual membership fees exceed the State Bar's operational costs—which in part gave the State Bar the flexibility to purchase the Los Angeles building. Although that purchase temporarily decreased the State Bar's available fund balances, we found that they are again beginning to increase. This situation provides an opportunity for the State Bar and the Legislature to reassess the reasonableness of the annual membership fee to ensure that it better aligns with the State Bar's operating costs.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

The California Constitution established the State Bar of California (State Bar) as a public corporation within the judicial branch of California. With the exception of certain judges, every person licensed to practice law in California must belong to the State Bar. Overseen by a 19-member Board of Trustees (board), the State Bar regulates the professional and ethical conduct of its 226,000 members through an attorney discipline system. The State Bar's Office of the Chief Trial Counsel receives complaints, investigates attorneys, and prepares cases for prosecution, while the State Bar Court adjudicates disciplinary and regulatory matters involving attorneys in the State. The State Bar's spending for its discipline system totaled \$38 million in 2014.

Although state law defines the State Bar's highest priority as the protection of the public, it has struggled historically to promptly resolve all the complaints it receives, potentially delaying the timely discipline of attorneys who engage in misconduct. One of the primary measurements of the effectiveness of the State Bar's discipline system is the number of complaints it fails to resolve within six months of their receipt, which it refers to as its backlog. Based on our calculations, in 2010 the State Bar's backlog peaked at 5,174 cases, a 21 percent increase over the prior year. In response to its escalating backlog, the former executive director issued a zero-backlog goal. This goal quickly resulted in a drastic reduction in the State Bar's overall backlog of 66 percent, from 5,174 cases in 2010 to 1,742 cases in 2011.

However, we found that as the State Bar reduced its excessive backlog of disciplinary cases, the severity of the discipline it imposed on attorneys who failed to fulfill their professional responsibilities decreased. In other words, to reduce its backlog, the State Bar allowed some attorneys whom it otherwise might have disciplined more severely—or even disbarred—to continue practicing law, at significant risk to the public. In particular, in 2010 and 2011, the years the State Bar focused its efforts on decreasing the backlog, the State Bar settled a total of 1,569 cases, more cases were settled in each of those years than in any of the other four years in our audit period. The level of discipline that the State Bar recommended as part of these settlements was, in some cases, inadequate. For example, the Supreme Court of California returned for further examination 27 cases that the State Bar settled in 2011 due to the appearance of insufficient levels of discipline. Upon further consideration by the State Bar, 21 of the 27 cases resulted in greater discipline recommendations including five disbarments. The chief trial counsel confirmed that she believes the volume and speed in processing

Audit Highlights . . .

Our audit of the State Bar of California (State Bar), highlighted the following:

- » *While in 2011 the State Bar drastically reduced its backlog of disciplinary cases, the severity of the discipline it imposed on attorneys who failed to fulfill their professional responsibilities decreased.*
- » *The State Bar continues to report fewer cases than the law permits in its backlog—a concern similar to one we raised in our 2009 audit of the State Bar's discipline system.*
- » *The State Bar has not made adequate efforts to align its staffing with its mission of public protection, and its backlog of disciplinary cases has grown by 25 percent since 2011.*
- » *The State Bar did not perform a cost-benefit analysis before receiving board approval to purchase a building in Los Angeles.*
- » *The State Bar spent \$76.6 million to purchase and renovate the building—\$50 million more than it estimated.*
- » *Over the last six years the State Bar's fund balances indicate that revenues collected from membership fees far exceed its operational costs.*

the backlog in 2011 caused the State Bar to lower the quality of its case settlements, and believed that insufficient quality control was a key factor that enabled the State Bar to decrease its backlog.

The State Bar has also not been transparent in reporting the performance of its discipline system to its stakeholders. State law requires the State Bar to prepare an *Annual Discipline Report* (discipline report), a public document that it must present to the governor, the chief justice, and the Legislature to assist them in evaluating the performance of its attorney discipline system. Because the discipline report is the only report that the State Bar submits to the Legislature that describes the performance of its discipline system as a whole, it is critical that this report contain comprehensive, consistent, and useful information. However, our review found a number of significant problems with the information that the State Bar submitted.

State law defines the backlog as the number of cases within the discipline system, including, but not limited to, the number of unresolved complaints as of December 31 that the State Bar had received more than six months earlier. However, even though the State Bar has met the law's minimum requirements related to reporting its backlog, it continues to report fewer cases than the law permits—a concern similar to one we raised in our 2009 audit of the State Bar's discipline system.¹ In particular, because state law defines the State Bar's highest priority as protecting the public, we believe the appropriate method of calculating the State Bar's backlog would be to include every case that affects public protection—a method that the State Bar does not currently use. In addition, over the past six years the State Bar has changed the types of discipline cases that it includes in the backlog it reports without fully disclosing these changes. In all years we reviewed except for one, the changes the State Bar made in its methodology resulted in an increase in the backlog it had previously reported for the prior year. Although the State Bar told us that it made these changes in order to present the backlog in a more complete manner, additional steps are necessary to ensure that its discipline reports contain useful and consistent information.

At the time of our 2009 audit, we believed that the State Bar's stakeholders, including the Legislature, would benefit from having more complete and clear measures of the backlog, and we recommended that the State Bar disclose the composition of the backlog and include an explanation for the cases it excludes. Although the State Bar implemented our recommendation for

¹ *State Bar of California: It Can Do More to Manage Its Disciplinary System and Probation Processes Effectively and to Control Costs*, Report 2009-030.

the two years following our audit, it stopped fully describing the methodology it used to calculate its backlog beginning in its 2011 discipline report and for each year thereafter.

Part of the reason the State Bar has struggled to maintain a reasonable backlog may be that it has not made adequate efforts to align its staffing with its mission of public protection. To meet its zero-backlog goal in 2011, the State Bar shifted staffing resources, employed contractors, and authorized a significant amount of overtime. As previously discussed, this effort often came at the expense of delivering appropriate discipline. However, after decreasing its backlog in 2011, the State Bar generally discontinued its operational changes; subsequently, its backlog began to increase again, and it has grown by 25 percent since 2011. The State Bar's ability to decrease its backlog after making operational changes, and the increase in the backlog after abandoning those changes, suggests that it may need additional staff within its discipline system. However, the State Bar has not conducted any workforce planning to support or refute this supposition.

Further, at a time when we would have expected the State Bar to focus its efforts and resources on its mission of public protection by taking steps such as improving its discipline system, it instead purchased a \$76.6 million building in Los Angeles in 2012. The Legislature approved a temporary five-year \$10 special annual assessment charged to members between 2009 and 2013 as a means to partially pay for the financing, leasing, construction, or purchase of a new facility in Southern California. The special assessment generated \$10.3 million—more than \$66 million short of the final cost of the Los Angeles building. To finance the remaining cost of the building, the State Bar secured a \$25.5 million loan, sold a parking lot in Los Angeles for \$29 million, and transferred \$12 million between its various funds, some of which its board had set aside for other purposes. For example, the State Bar paid for renovations, including information technology (IT) upgrades, to the Los Angeles building in part by using funds its board had designated in its strategic plan for new IT systems, intended to benefit the entire State Bar, not just those working in Los Angeles.

The State Bar might have been able to justify the purchase of its Los Angeles building by performing a thorough cost-benefit analysis to demonstrate that purchasing the building was more financially beneficial than continuing to lease space. However, the State Bar did not perform a cost-benefit analysis before receiving board approval to purchase the building. Further, in its April 2012 report to the Legislature—four months before it ultimately purchased the building—the State Bar underestimated the total cost of the building purchase and renovation by more than \$50 million. Moreover, the State Bar did not adequately consider whether the purchased building

would meet its long-term staffing needs and never presented the board with a cost-benefit analysis that compared the actual costs of leasing space versus purchasing a building.

The State Bar's fund balances over the last six years indicate that the revenues from annual membership fees exceed the State Bar's operational costs—which in part gave the State Bar the flexibility to purchase the Los Angeles building. Although the purchase of the building decreased the State Bar's available fund balances, we found that they are again beginning to increase. Maintaining a reasonable fund balance would allow the State Bar to ensure that it charges its members appropriately for the services that they receive. A general best practice is that an appropriate fund balance would be no more than the amount needed to cover two months of operations. Our analysis showed that the State Bar's 2014 available and unrestricted fund balances equated to between four and nine months' worth of operations and, in total, exceeded this best practice by about \$32 million. Based on our analysis, we believe the State Bar needs to evaluate the revenue it receives and the services it provides. For example, the State Bar could work with the Legislature to reassess its annual membership fee to better align with the State Bar's actual operating costs so that the fund balances do not continue to increase.

Even though our analysis suggests otherwise, the State Bar does not believe that it has excess available revenue. However, the State Bar needs to conduct thorough analyses of its revenues, operating costs, and future operational needs to support this belief. Because the Legislature must authorize the State Bar to collect membership fees on an annual basis, every year the State Bar risks losing its ability to collect the revenue that will fund more than one-half of its general operating activities, which makes long-term planning difficult. According to the acting executive director, the reality of the State Bar's funding creates problems for long-term planning, staff stability, and staff recruiting because the State Bar has no assurance of future annual revenues beyond the existing year, which in turn demands that the State Bar have funds on hand to cover a loss or decrease in funding. Thus, a funding cycle that gives the State Bar greater certainty—for example, a biennial funding cycle—might enhance the State Bar's ability to engage in long-term planning.

Recommendations

The State Bar should adhere to its quality control processes to ensure that the discipline it imposes on attorneys is consistent, regardless of the size of the case-processing backlog, and it should take steps to prevent its management or staff from circumventing those processes.

The State Bar and the Legislature should work together to determine what cases the State Bar should report in the backlog. For example, one method of calculating the backlog would be to include every case that affects public protection that the State Bar does not resolve within six months from the time it receives a complaint. The Legislature should then amend the state law that defines how the State Bar should present the backlog in its discipline report.

The State Bar should implement policies and procedures to restrict its ability to transfer money between funds that its board or state law has designated for specific purposes.

To justify future expenditures that exceed a certain dollar level, such as capital or IT projects that cost more than \$2 million, the State Bar should implement a policy to present accurate cost-benefit analyses to the board to ensure that it has the information necessary to make appropriate and cost-effective decisions.

The Legislature should consider putting a restriction in place to limit the State Bar's fund balances, such as a limit of two months of the State Bar's average annual expenditures.

To provide the State Bar with the opportunity to ensure that its revenues align with its operating costs, the Legislature should consider amending state law to establish, for example, a biennial approval process for the State Bar's membership fees, rather than the current annual process.

To determine a reasonable and justified annual membership fee that better reflects its actual costs, the State Bar should conduct a thorough analysis of its operating costs and develop a biennial spending plan. It should work with the Legislature to set an appropriate annual membership fee based upon its analysis. The first biennial spending plan should also include an analysis of the State Bar's plans to spend its current fund balances.

Agency Comments

The State Bar of California generally agreed with all of the recommendations in our report except for the recommendation related to the organizational structure of the audit and review unit. The State Bar also indicated that it has already begun implementing some of the recommendations.

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Introduction

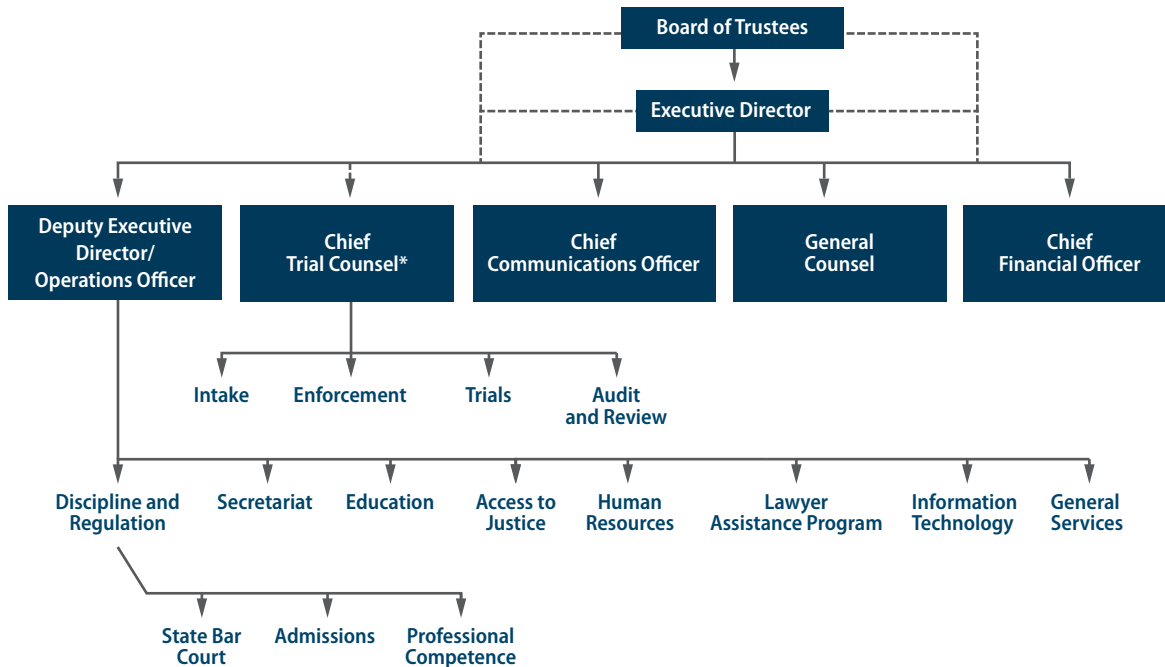
Background

Established by the California Constitution, the State Bar of California (State Bar) is a public corporation within the judicial branch of California. State law requires that every person admitted and licensed to practice law in California belong to the State Bar, unless the individual holds office as a judge in a court of record. With 226,000 members, the State Bar is the largest in the country. It maintains offices in San Francisco and Los Angeles, and its responsibilities include the following:

- Regulating the professional and ethical conduct of attorneys through an attorney discipline system.
- Administering the California bar examination.
- Administering funds to provide access to free or low-cost legal services for the citizens of California.
- Managing the Client Security Fund, which helps protect consumers of legal services by alleviating monetary losses resulting from the dishonest conduct of attorneys.
- Administering requirements of continuing legal education.
- Assisting the governor in the judicial selection process by providing evaluations of candidates for judicial appointment and nomination.

The State Bar is governed by a 19-member Board of Trustees (board) that meets eight times per year. Thirteen of its members are lawyers: State Bar members elect six, and either the California Supreme Court (Supreme Court) or the Legislature appoints seven. Either the governor or the Legislature appoints members of the public to the remaining six positions. In its 2012 strategic plan, the board set the direction for the State Bar, focusing on its mission of public protection by devising, supporting, and enforcing rigorous standards of competence and ethical behavior in the legal profession. To meet its responsibilities, the board has seven committees, including a regulation and discipline committee that oversees the State Bar's management of the attorney discipline process and an audit committee that oversees the State Bar's annual financial audit. In addition, the board delegates many responsibilities to State Bar staff. As Figure 1 on the following page illustrates, the State Bar's various offices implement the responsibilities the board delegates.

Figure 1
Structure of the State Bar of California



Source: State Bar of California's organization charts.

* The chief trial counsel reports to the Board of Trustees, and the executive director has management oversight of the chief trial counsel's resources.

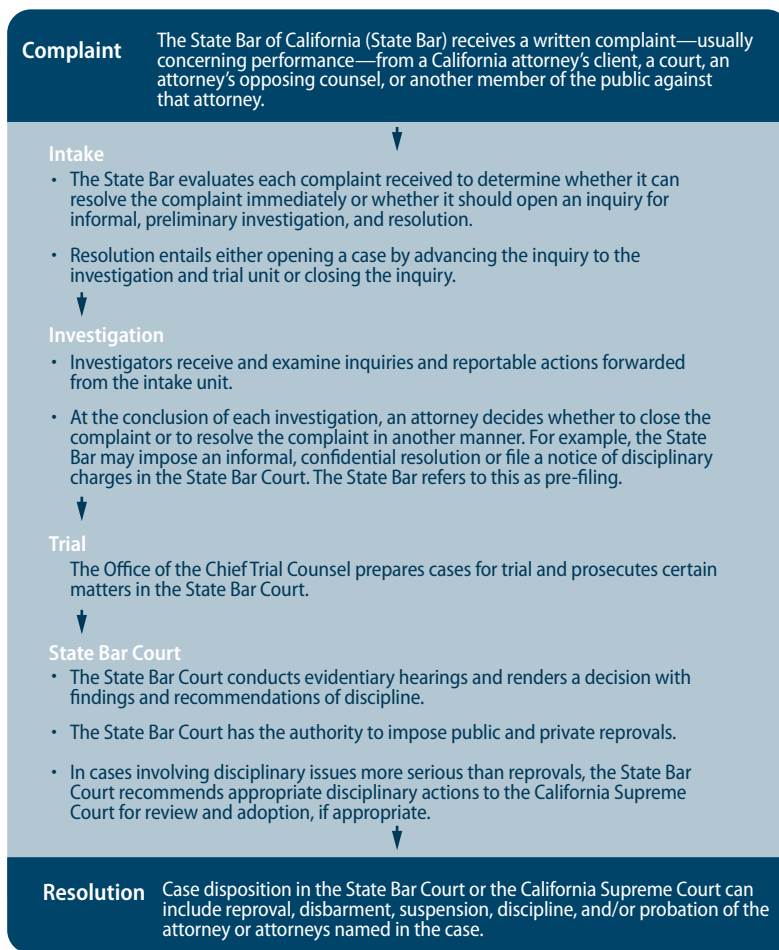
The State Bar has experienced significant managerial turnover in recent years, leaving several high-level managerial positions vacant or filled by interim employees. Currently, the State Bar employs an acting executive director and an acting general counsel. In addition, the chief financial officer is on administrative leave and the director of budget and performance analysis position was vacant as of February 2015. Moreover, the current chief trial counsel, who oversees intake, enforcement, trials, and audit and review assumed an interim role for that position in mid-September 2011 and was confirmed by the Legislature in May 2012.

The State Bar's Attorney Discipline System

State law defines the State Bar's highest priority as protecting the public in exercising its licensing, regulatory, and disciplinary functions. To protect the public from attorneys who fail to fulfill their professional responsibilities, the State Bar established a discipline system that receives, investigates, and prosecutes complaints against attorneys, as shown in Figure 2. As part of the discipline system, the State Bar's Office of the Chief Trial Counsel receives complaints against attorneys, investigates those complaints, and may initiate and prosecute disciplinary

proceedings in the State Bar Court when allegations of attorneys' unethical conduct appear to be valid. The State Bar dedicates many of its resources to its discipline system. In December 2014 the State Bar employed 536 staff. Of these, more than half—281 staff—worked within the discipline system.

Figure 2
The State Bar of California's Attorney Discipline System

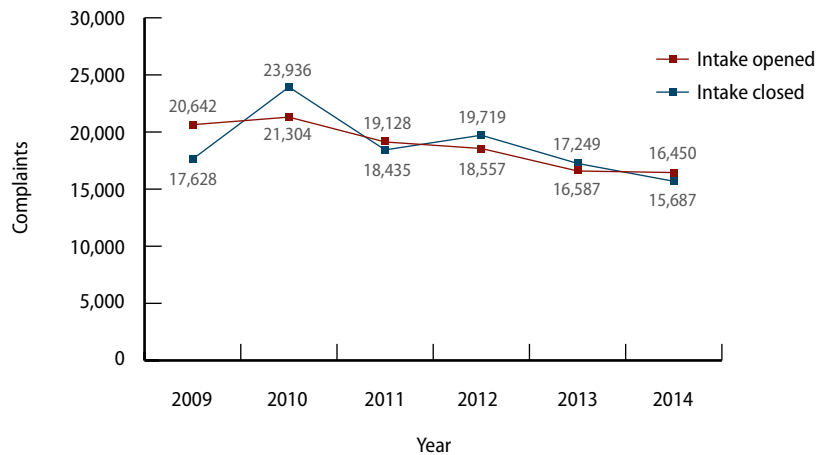


Sources: The deputy chief trial counsel of the State Bar, and the State Bar's 2014 *Annual Discipline Report*.

The discipline process begins with the intake stage in the State Bar's intake unit. The intake unit—within the Office of the Chief Trial Counsel—receives complaints and may initiate inquiries into attorney conduct in response. In addition, the State Bar can initiate inquiries into attorney conduct based on information received from anonymous sources or media reports. Finally, the State Bar's intake unit also receives, investigates, and prosecutes what it calls *reportable actions*. Reportable actions include insufficient funds notifications

from banks related to attorneys' client trust accounts. As shown in Figure 3, the number of complaints the intake unit has opened has generally declined over the past five years, from about 21,000 in 2009 to 16,000 in 2014.

Figure 3
Complaints Opened and Closed in the State Bar of California's Intake Unit
2009 Through 2014



Source: California State Auditor's analysis of data obtained from the State Bar of California's Discipline Case Tracking System.

If the intake unit determines that a complaint warrants further investigation, it forwards the case to the investigation stage of the State Bar's discipline system. At the investigation stage investigators and attorneys determine whether to bring disciplinary proceedings in the State Bar Court. In the prefiling stage, the Office of the Chief Trial Counsel prepares a notice of disciplinary charges, but before filing charges, it attempts to negotiate a stipulation to facts and proposed discipline. After it files disciplinary charges, the Office of the Chief Trial Counsel prosecutes the case in the State Bar Court. The number of cases the State Bar Court opened and closed peaked at around 2,500 in 2011 and has generally declined through 2014, as we describe further in the Appendix. Attorneys who settle disciplinary complaints or whom the State Bar Court finds culpable of violating its Rules of Professional Conduct or state law may be subject to several different types and levels of discipline, including suspension or disbarment, which prohibits them from practicing law. The Supreme Court must review the State Bar Court's recommended discipline for suspension or disbarment, and may adopt more severe levels of discipline for other types of discipline the State Bar Court recommended, but the State Bar Court has the authority to impose reprimands—discipline for misconduct not warranting suspension or disbarment.

The State Bar's audit and review unit gives complainants a medium through which they can appeal cases that the State Bar closes without filing of disciplinary charges. The State Bar established the audit and review unit in 2004, but the Office of the Chief Trial Counsel closed it in 2010 to devote the unit's staff to helping reduce the backlog of disciplinary cases. The State Bar reopened the audit and review unit in 2011. In 2014 the audit and review unit received 1,029 requests for review and resolved 1,466 requests, some of which had been submitted in prior years. The unit's functions also include random checks on approximately 500 closed cases per year to ensure that the Office of the Chief Trial Counsel's actions are appropriate. These random checks may result in the State Bar reopening cases for further investigation or in recommendations for staff training.

State law requires the State Bar to submit an *Annual Discipline Report* to the Legislature to provide measurements of the efficiency and effectiveness of its discipline system. A key component of these reports is the number of the State Bar's backlogged disciplinary cases and the average length of time it takes for it to process a case. State law requires the State Bar to set its case-processing goal at six months after receipt of a written complaint.² State law also defines the backlog as including the number of complaints as of December 31 of the preceding year that have been pending for six months or more after their receipt without dismissal, admonition, or the filing of a notice to show cause (although state law does not limit the backlog to this definition). In 2014 the State Bar reported that its backlog was 1,973 disciplinary cases. We discuss the backlog and case-processing time in Chapter 1.

The State Bar's Revenues, Expenditures, and Financial Processes

The State Bar does not receive appropriations from the State to fund its operations. Instead, mandatory membership fees and other funding sources pay for the majority of its activities. Historically, annual legislation has given the State Bar the authority to assess the membership fee; however, in 1997 the governor vetoed the annual fee bill, and as a result, the State Bar was unable to assess a fee for 1998 and 1999. For 2014 state law authorized a base annual membership fee of \$315 for active members and \$75 for inactive members.

In past years, state law also authorized the State Bar to charge members additional fees for specific purposes. For example, from 2008 through 2013 state law authorized the State Bar to collect an additional \$10 from each active member to pay for upgrades

² State law allows the goal for complaints designated as complicated matters by the Office of the Chief Trial Counsel to be set at 12 months; however, the State Bar no longer designates cases as complex or non-complex.

to information technology (IT) systems. State law also authorized the State Bar to collect an additional \$10 from each member from 2009 through 2013 as a means to pay for the costs of financing, constructing, purchasing, or leasing facilities to house State Bar staff in Southern California. Members also have the option of deducting certain amounts from their membership fees. For example, members have the option of deducting \$5 if they do not want to support the State Bar's lobbying and related activities. As shown in Table 1, in 2014 active State Bar members paid between \$380 and \$420 in membership fees. Inactive members paid between \$105 and \$145 for that same year.

Table 1
2014 Membership Fees for Active State Bar of California Members

	MINIMUM FEE	MAXIMUM FEE
Required fees		
Base fee	\$315	\$315
Discipline	25	25
Client Security Fund	40	40
Lawyer Assistance Program/diversion fund	10	10
Legal services, voluntary assistance	–	30
Optional deductions		
Optional deduction for legislative activities	(5)	–
Optional deduction for elimination of bias	(5)	–
Total membership fee	\$380	\$420

Sources: California State Auditor's review of the California Business and Professions Code and State Bar of California documents.

In 2014 membership fees amounted to \$82 million of the State Bar's \$140 million in total revenues, or 59 percent. The remaining revenue sources include examination application fees, grants, and fees from sections—voluntary organizations of attorneys and affiliates who share an area of interest, such as family law. The State Bar organizes its revenues into 26 different funds, some of which we describe in Table 2. While state law sometimes limits the use of the State Bar's revenue sources, the board restricts all of its funds except for its general fund—that is, the State Bar can use these restricted funds only for specific purposes. For example, the State Bar established an IT Special Assessment Fund after receiving legislative authority to assess the previously mentioned \$10 IT assessment fee from its members. State law limited the use of these funds to only the costs of upgrading the State Bar's IT systems, including purchasing and maintenance costs of both computer hardware and software. The board restricted the uses of this fund for upgrading, replacing, or maintaining various IT systems,

including modernizing its computer systems and networking infrastructure. Even though the board places administrative restrictions on these funds, it does allow the State Bar to make transfers among funds. From 2009 through 2014, the State Bar made 50 transfers amounting to \$64.2 million. As shown in Table 3 on the following page, the State Bar’s overall fund balance at the end of 2014 was \$138 million.

Table 2
A Selection of the State Bar of California’s Funds

FUND	DEFINITION
General Fund	Accounts for membership fees and resources of the State Bar of California (State Bar), including the revenues and expenses of maintaining, operating, and supporting its attorney discipline system. It also includes State Bar resources not related to other fund activities.
Admissions Fund	Accounts for the State Bar’s fees and expenses related to administering the bar examination and other requirements for the admission to the practice of law in California.
San Francisco Building Fund	Accounts for the State Bar’s physical facilities, including purchasing, constructing, and equipping furnishings, land, and buildings.
Building Special Assessment Fund	Contains revenue collected from the additional \$10 building assessment fee, which the Legislature authorized for the State Bar’s finance, lease, construction, or purchase of a new building in Southern California.
Client Security Fund	Accounts for revenue collected from annual assessments and maintains funds from which members’ clients can be reimbursed for pecuniary losses resulting from attorneys’ dishonest conduct, which State Bar rules set for an amount not to exceed \$100,000 per application. The annual assessments can also be used for the costs of administration including, but not limited to, the costs of processing, determining, defending, or insuring claims against the fund.
Elimination of Bias and Bar Relations Fund	Accounts for revenue collected from optional annual assessments included in members’ annual membership fees to fund programs to eliminate bias in the judicial system and legal profession and to increase participation of attorneys who have been underrepresented in the administration and governance of the State Bar’s programs and activities such as female, ethnic minority, gay, lesbian, and disabled attorneys.
Information Technology (IT) Special Assessment Fund	Accounts for revenue collected from a special assessment fee for technology included in members’ annual membership fees during 2008 and 2013 to upgrade the IT system, including purchasing and maintenance costs of both computer hardware and software.
Los Angeles Facilities Fund	Accounts for all activities related to the property the State Bar purchased in Los Angeles in 2012.
Legal Education and Development Fund	Accounts for competency-based education programs whose major purpose is to reduce the severity and frequency of professional liability claims.
Legislative Activities Fund	Accounts for activities in support or defense of lobbying, funded by members electing to support these activities.
Public Protection Fund	Assures the continuity of the State Bar’s discipline system and its other essential public protection programs.
Technology Improvements Fund	Used to fund technology projects that the State Bar had previously funded through its general fund.

Key

- Unrestricted funds:** Funds that the State Bar can use to finance day-to-day operations without constraints established by debt covenants, enabling legislation, board restrictions, or other legal requirements.
- Board restrictions imposed:** Funds that the State Bar’s Board of Trustees have restricted for specific uses and purposes.
- Legally restricted funds:** Funds that may only be used for purposes specified in law.

Sources: State Bar’s annual financial report for 2013, the State Bar’s 2013 *Statement of Expenditures of Mandatory Membership Fees and Independent Auditor’s Report*, and the *State Bar’s Board of Trustees Policy Manual*.

Note: Although the State Bar maintains 26 program funds, we included definitions only for those that we refer to in this report.

Table 3
State Bar of California's Total Revenues, Expenditures, and Fund Balances
2009 Through 2014
(Dollars in Millions)

	2009	2010	2011	2012	2013	2014
Beginning fund balance	\$105.2	\$99.0	\$100.2	\$107.3*	\$135.0	\$130.9
Total revenue	132.7	131.4	133.0	158.1	137.4	140.0
Total expenditures	(138.9)	(130.2)	(145.0)	(130.4)	(141.5)	(132.8)
Fund balance	\$99.0	\$100.2	\$88.2	\$135.0	\$130.9	\$138.1

	2009		2010		2011		2012		2013		2014	
	DOLLARS	PERCENTAGE	DOLLARS	PERCENTAGE	DOLLARS	PERCENTAGE	DOLLARS	PERCENTAGE	DOLLARS	PERCENTAGE	DOLLARS	PERCENTAGE
Restricted	\$47.2	48%	\$46.5	46%	\$33.9	38%	\$73.4	54%	\$44.1	34%	\$43.3	31%
Unrestricted	18.5	19	21.6	22	22.6	26	11.2	8	8.6	7	20.2	15
Invested in capital assets	33.3	34	32.1	32	31.7	36	50.4	37	78.2	60	74.6	54

Sources: State Bar of California's (State Bar) audited financial statements for 2009 through 2014.

Note: Percentages do not always total 100 percent due to rounding.

* State Bar restated its 2012 beginning fund balance due to a change in accounting for liabilities of its Client Security Fund.

The State Bar is statutorily required to attempt to recover certain costs it incurs from the attorneys it disciplines. The law further requires the State Bar to recover from disciplined attorneys any payments that it makes from its Client Security Fund, which the State Bar uses to relieve or mitigate financial losses resulting from the improper conduct of its members arising from or connected to the practice of law. To determine the costs it may recover from disciplined attorneys, the State Bar uses a formula—an amount primarily based on how far the case proceeds through the discipline system before resolution. Typically, the State Bar adds these costs to the disciplined members' next membership fee statements.

Prior Audits Conducted by the California State Auditor

Our July 2009 audit 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, included 14 recommendations to the State Bar related to the efficiency and effectiveness of its discipline system. In that report, we found that the State Bar did not present backlog information in a consistent manner in its annual discipline reports to the Legislature to allow for year-to-year comparisons. We reported that the State Bar had limited its stakeholders' and the Legislature's ability to measure the effectiveness of its discipline system because it periodically changed the types of cases it included in its calculation of the backlog without identifying those changes in its annual discipline reports. We recommended that the State Bar identify the composition of each year's

backlog to allow for year-to-year comparisons, as the law requires, and that it also report the types of cases it does not include in the backlog and the reasons for those choices.

In addition, our 2009 report included recommendations for the State Bar to improve the efficiency of its discipline system. We reported that even though the costs for the discipline system, which accounted for nearly 80 percent of the State Bar's general fund expenditures, had escalated from \$40 million to \$52 million from 2004 through 2008, the number of disciplinary inquiries that it opened during that time had declined. We recommended that the State Bar separately account for its personnel costs and other expenses associated with the various functions of the discipline system, noting that it could accomplish this through a study of staff time and resources devoted to specific functions. We also recommended that the State Bar implement recommendations from its audit and review unit and from other audits, including our April 2007 audit titled *State Bar of California: With Strategic Planning Not Yet Completed, It Projects General Fund Deficits and Needs Continued Improvement in Program Administration*, Report 2007-030, which included recommendations that the State Bar take steps to reduce its inventory of backlogged cases and that it follow its IT plan.

As we discuss throughout this report, the State Bar has yet to fully address some of the recommendations from our 2009 audit. However, the State Bar has successfully implemented a recommendation related to improving its discipline cost-recovery processes. In our 2009 audit we recommended that the State Bar research the various collection options available to it, such as the Franchise Tax Board's intercept program. This program intercepts income tax refunds, lottery winnings, and unclaimed property disbursements when individuals have delinquent debts owed to government agencies and California colleges. The disciplinary costs the State Bar recovered increased from 21 percent in 2008—the year before we released our report—to 43 percent in 2014. The State Bar joined the intercept program in 2014, which will likely further increase the percentage of disciplinary costs it recovers. In addition, we issued reports in 2011 and 2013 related to the State Bar's Lawyer Assistance Program and contracting practices, respectively. The State Bar implemented all of the recommendations from these reports.

Scope and Methodology

The California Business and Professions Code requires the State Bar to contract with the California State Auditor to audit the State Bar's operations every two years, but it does not specify topics that the audit should address. For this audit, we focused our efforts on the State Bar's discipline system and its finances. We list the objectives and the methods we used to address them in Table 4 on the following page.

Table 4
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
1 Review and evaluate the laws, rules, and regulations significant to the audit objectives.	<ul style="list-style-type: none"> • Reviewed relevant laws and other background materials related to the State Bar of California (State Bar). • Reviewed the Rules of Procedure of the State Bar. • Reviewed the California Constitution.
2 Determine the State Bar's total revenues, expenditures, and fund balances for 2009 through 2014.	<ul style="list-style-type: none"> • Identified total membership fees the State Bar billed and collected. • Identified and quantified other sources of the State Bar's revenue. • Identified the State Bar's total expenditures. • Identified the total cost of the State Bar's Los Angeles building. • Reviewed documentation prepared by the State Bar related to the purchase of the Los Angeles building and evaluated related communication with stakeholders. • Determined the cost of the State Bar's discipline process. • Reviewed the State Bar's 2012–16 information technology (IT) strategic plan and evaluated the State Bar's related IT expenditures. • Identified the State Bar's total fund balance and the fund balances for each of its individual funds. • Identified and quantified fund transfers.
3 For 2009 through 2014, determine and assess the number of cases, case-processing time, and outcome of each case within each stage of the State Bar's discipline process (intake, investigations, State Bar Court).	<ul style="list-style-type: none"> • Used the State Bar's discipline tracking data to determine the number of cases and case-processing times within each stage of the discipline process. • Reviewed the State Bar's discipline tracking data for trends in the outcomes of discipline cases. • Reviewed documents sent to the State Bar from the California Supreme Court related to attorney discipline cases. • Reviewed the State Bar's compliance with discipline policies and procedures for a selection of 29 intake cases, 15 investigations cases, and five State Bar Court cases.
4 Determine and assess the State Bar's backlog of discipline cases for 2009 through 2014.	Used the State Bar's discipline tracking data to determine and assess the backlog of discipline cases and identified backlog trends.
5 Determine the efficiency, effectiveness, and transparency of the State Bar's discipline system for 2009 through 2014.	<ul style="list-style-type: none"> • Interviewed State Bar staff to determine and evaluate the State Bar's methodology for calculating and reporting its backlog and case-processing time. • Documented and evaluated the State Bar's annual discipline reports. • Reviewed and evaluated discipline reports that the State Bar provided to the Board of Trustees. • Obtained and evaluated discipline policies, procedures, and processes. • Obtained and evaluated the State Bar's staffing levels and used the State Bar's discipline tracking data to determine caseloads. • Reviewed workforce planning best practices. • Interviewed State Bar staff to evaluate internal controls related to the discipline process.
6 Evaluate the efficacy of the State Bar's audit and review unit for 2009 through 2014.	<ul style="list-style-type: none"> • Evaluated the roles, responsibilities, and history of the State Bar's audit and review unit. • Reviewed the audit and review unit's audit reports. • Collected documentation demonstrating the State Bar's implementation of the audit and review unit's recommendations.

Sources: California State Auditor's analysis of state law, planning documents, and information and documentation identified in the table column titled *Method*.

Assessment of Data Reliability

In performing this audit, we obtained electronic data files extracted from the information systems listed in Table 5. The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of the computer-processed information that we use to support our findings, conclusions, or recommendations. Table 5 describes the analyses we conducted using the data from these information systems, our methods for testing them, and the results of our assessments. Although these determinations may affect the precision of the numbers we present, there is sufficient evidence in total to support our audit findings, conclusions, and recommendations.

Table 5
Methods Used to Assess Data Reliability

INFORMATION SYSTEM	PURPOSE	METHOD AND RESULT	CONCLUSION
The State Bar of California (State Bar)	We analyzed data for the period of 2009 through 2014 for all purposes, except where noted.	<ul style="list-style-type: none"> We performed data-set verification procedures and electronic testing of key data elements and did not identify any significant issues. 	Sufficiently reliable for the purpose of this audit.
Discipline Case Tracking System (discipline database)	<ul style="list-style-type: none"> To calculate the number of complaints opened and closed in the intake unit. To calculate the number of investigation, trial, and State Bar Court cases opened and closed. 	<ul style="list-style-type: none"> To test the accuracy of the State Bar's discipline database, we traced key data elements to supporting documentation for a selection of 29 complaints during the period 2009 through 2014 and found no errors. We also tested 29 cases during the period 2009 through 2014 and found no errors. 	Sufficiently reliable for the purpose of this audit.
Data tracking complaints against attorneys from receipt through final disposition.	<ul style="list-style-type: none"> To determine the average case processing time, total caseload, and the number of cases backlogged. To identify case allegations and allegation categories. To determine the number of attorneys who settled a case with the State Bar in 2010 or 2011. For these attorneys, we determined the number who had a new post-settlement case that resulted in the State Bar Court imposing discipline and the number that were ultimately disbarred. 	<ul style="list-style-type: none"> To test the completeness of the State Bar's discipline database, we haphazardly selected 29 complaints and 29 cases from the State Bar's source documents and traced them back to the discipline database. We found the data to be complete. 	
	<ul style="list-style-type: none"> To determine the number of previously disciplined attorneys for whom the State Bar imposed discipline between 2009 and 2014. To determine the number of previously disciplined attorneys for whom the State Bar settled cases between 2009 and 2014. For these attorneys, we determined the number who were subsequently disbarred. 	These purposes required data related to all discipline cases, including data from before our audit period of 2009 through 2014. However, we did not perform accuracy and completeness testing on data from prior to 2009.	
	To make a selection of State Bar complaints and cases open during the period from 2009 through 2014.	This purpose did not require a data reliability assessment. Instead, we gained assurance that the population was complete. See the completeness testing described above.	Complete for the purpose of this audit.

Sources: California State Auditor's analysis of various documents, interviews, and data from the State Bar.

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Chapter 1

THE STATE BAR OF CALIFORNIA DID NOT CONSISTENTLY DISCIPLINE ATTORNEYS OR EFFECTIVELY COMMUNICATE WITH ITS STAKEHOLDERS

Chapter Summary

The State Bar of California's (State Bar) consistent and effective discipline of attorneys who engage in misconduct is a crucial measure of its success in fulfilling its mission to protect the public. Unfortunately, possibly because of the State Bar's focus on eliminating its backlog of cases, this did not always occur during the period we reviewed. A key statistic to measure the effectiveness of the State Bar's attorney discipline system is its backlog of disciplinary cases—that is, those cases that it failed to process within six months. When the State Bar maintains an excessive backlog, it potentially enables errant attorneys to continue to practice law for extended periods of time while their cases are pending and may also prevent the State Bar from resolving cases sufficiently, as we found in 2010 and 2011. Specifically, based on our calculations, in 2010 the State Bar's backlog peaked at 5,174 cases, up from 4,276 in the prior year. In response to the escalating backlog, the former executive director issued a zero-backlog goal in mid-2011. Although the State Bar decreased its backlog by 66 percent over that same year, the severity of the discipline it imposed on attorneys declined and the number of settlements it reached increased. It appears that rather than settling some cases for lower-levels of discipline, the State Bar should have sought more severe forms of discipline. For example, the California Supreme Court (Supreme Court) returned 27 cases the State Bar settled in 2011 because of the appearance of insufficient levels of discipline. After further review by the State Bar, 21 of these 27 cases went on to receive greater discipline recommendations, including five disbarments.

Given the importance of the backlog as an indicator of the State Bar's performance, we would have expected it to effectively communicate this indicator and other key disciplinary statistics to its stakeholders. However, the State Bar reports less than what the law permits related to its backlog and did not consistently report attorney discipline statistics in its *Annual Discipline Report* (discipline report)—the only comprehensive report related to the attorney discipline system that the State Bar submits to the Legislature.

To decrease its backlog in response to the 2011 goal, the State Bar made a number of operational changes, including realigning its staff, increasing its reliance on temporary employees, and

authorizing overtime. However, in 2012 the State Bar discontinued most of these operational changes; subsequently, the backlog increased from 1,834 cases in 2012 to 2,174 cases in 2014. We believe this increase suggests that the State Bar needs to evaluate whether to make permanent changes to its operations that would speed up its processing of cases and improve its discipline process. However, the State Bar has not conducted any workforce planning—the process that aligns staffing with an organization’s strategic missions and critical needs—to determine the necessity for such changes.

The State Bar’s Backlog of Disciplinary Cases Negatively Affected the Severity of Discipline That It Imposed on Attorneys

When the State Bar focused its efforts on reducing its excessive backlog of disciplinary cases, the severity of the discipline it imposed on attorneys who failed to fulfill their professional responsibilities decreased. Specifically, based on our calculations, we found that in 2010 the State Bar’s backlog peaked at 5,174 cases.³ This peak was likely in part a consequence of the Supreme Court in 2005 criticizing the State Bar for failing to sufficiently discipline an attorney who was ultimately disbarred. To address the increasing backlog, the former executive director announced a zero-backlog goal in mid-2011, and the backlog decreased by 66 percent over the same year. However, the severity of the discipline the State Bar imposed on attorneys also declined during this time period. As a likely result, in 2012, the Supreme Court returned 27 cases to the State Bar for further consideration of the recommended discipline in light of the applicable attorney discipline standards. Thus, in its efforts to reduce its backlog, the State Bar may have been too lenient on attorneys deserving of greater discipline, or even disbarment, potentially at significant risk to the public.

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To Reduce Its Excessive Backlog of Attorney Disciplinary Cases, the State Bar Implemented an Unrealistic Zero-Backlog Goal in 2011

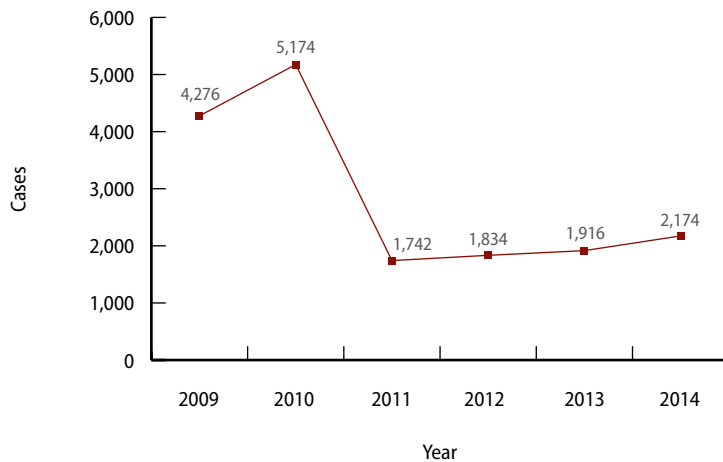
The attorney discipline process plays an indispensable role in ensuring that the State Bar carries out its mission to protect the public. The discipline process includes receiving, investigating, and prosecuting complaints and, if warranted, recommending sanctions against attorneys found culpable of misconduct. According to the State Bar, the performance of its discipline system is a crucial measure of its success in fulfilling its mission, and a key statistic to measure that performance is the six-month benchmark for

³ Because we have concerns with the manner in which the State Bar calculated and reported its backlog from 2009 through 2014, we calculated the State Bar’s backlog using data from its discipline system. We describe our concerns with the State Bar’s methods later in this chapter.

resolving complaints. State law identifies as backlogged any cases that the State Bar does not close within this time frame. When the State Bar does not resolve cases in a timely manner, it allows potentially dishonest or incompetent attorneys to continue practicing law while their cases are pending in the backlog.

In 2010 the State Bar's backlog of disciplinary cases reached a peak of 5,174 cases, as we show in Figure 4. The likely reasons for this excessive backlog were twofold. First, according to the chief trial counsel, the number of complaints against attorneys involved in home loan modifications increased significantly, which put a strain on the State Bar's discipline system. In support of the chief trial counsel's assertion, we observed that the number of complaints related to home loan modifications increased from 2,258 to 4,071, as we show in Table 6 on the following page, or 80 percent, from 2009 through 2010. The table also shows that the State Bar's total caseload reached a peak of about 35,250 cases in 2010.

Figure 4
California State Auditor's Analysis of the State Bar of California's Backlog of Disciplinary Cases as of December 31 2009 Through 2014



Source: California State Auditor's analysis of data obtained from the State Bar of California's Discipline Case Tracking System.

Table 6
Total Allegations and Caseload
2009 Through 2014

ALLEGATION*	2009	2010	2011	2012	2013	2014
Debt resolution complaint	47	167	139	27	23	4
Duties to client	2,969	1,919	1,447	1,901	1,995	2,057
Duties to State Bar of California (State Bar)	563	681	603	460	648	515
Fees	3,593	4,973	3,811	3,214	2,992	1,915
Funds	1,551	1,600	1,616	1,777	1,808	1,657
Immigration fraud complaint	0	0	0	0	20	19
Interference with justice	1,711	1,495	1,401	1,013	1,188	1,209
Loan modification complaint	2,258	4,071	4,307	2,869	2,713	1,151
No complaint articulated	18	39	5	1	3	0
Performance	6,699	7,911	6,010	5,248	4,820	3,803
Personal behavior	2,192	2,900	3,440	2,135	1,968	1,743
Professional employment	565	245	724	211	222	202
Unauthorized practice of law	311	170	33	7	43	51
Would have been sent to enforcement	0	0	0	0	0	1
Total allegations	22,477	26,171	23,536	18,863	18,443	14,327
Total caseload†	29,094	35,250	31,456	27,935	24,155	24,083

Source: California State Auditor's analysis of data obtained from the State Bar's Discipline Case Tracking System.

* Allegation represents the number of allegations received in each year.

† Caseload represents the sum of cases opened during the year and cases which had not yet been closed from prior years.

In addition, the backlog likely increased because the State Bar took steps beginning in 2006 to impose harsher discipline on errant attorneys. Specifically, as we noted in our July 2009 audit,⁴ the Supreme Court criticized the State Bar in 2005 for failing to bring all possible charges against an attorney who was ultimately disbarred. The Supreme Court also criticized the State Bar for failing to follow internal guidelines that delineate the appropriate actions that the State Bar should take against attorneys who repeatedly violate professional or legal standards. In response, in 2006 the State Bar's former chief trial counsel directed staff to apply sanction standards consistently and to take more disciplinary cases to trial if warranted. A year after the former chief trial counsel's direction, the backlog had increased by about 34 percent.

⁴ *State Bar of California: It Can Do More to Manage Its Disciplinary System and Probation Processes Effectively and to Control Costs*, Report 2009-030.

In late 2010 the State Bar shifted staffing resources from their normal functions, as well as taking other actions, to address the increasing backlog. Further, in mid-2011 the former executive director issued a zero-backlog goal, directing staff to completely eliminate the backlog. This goal resulted in a quick and drastic reduction in the backlog, causing it to decrease by 66 percent over the course of a single year—from 5,174 cases in 2010 to 1,742 cases in 2011.

The Backlog Appears to Have Resulted in the State Bar Deciding to Settle More Cases and Disbar Fewer Attorneys

By prioritizing reduction of the backlog, the State Bar may have put the public at risk because it settled more cases for less severe levels of discipline than it otherwise might have. A settlement is defined as a stipulation between the Office of the Chief Trial Counsel and an attorney that includes an agreement on facts, conclusions, and the type of discipline imposed. Settlements can also be agreements in lieu of discipline for low-level misconduct. Some of the discipline imposed as part of the settlements the State Bar negotiated during the period of backlog reduction should have resulted in more severe forms of discipline—and in some cases, in disbarment. We define the various outcomes of disciplinary cases, including disbarments, in the text box. According to the chief trial counsel, in general, settling a case requires fewer resources than taking a case through trial and ultimately to the Supreme Court—the venue in which the State Bar seeks a disbarment.

In 2010 and 2011, during the years the State Bar focused its efforts on decreasing the backlog, the State Bar settled more cases than in any of the other four years in our audit period and it appears that some settlements should have resulted in more severe forms of discipline. In particular, the State Bar settled 1,569 cases with 1,258 attorneys during 2010 and 2011. The State Bar later imposed discipline on 131 of these 1,258 attorneys for a new complaint that was initiated after the settlement and ultimately disbarred 28 of them. The chief trial counsel agreed that the State Bar's volume and speed in processing the backlog in 2011 negatively affected the quality of its case settlements. In fact, in 2012 the Supreme Court returned 27 settlements it received from the State Bar due to the appearance of insufficient levels of discipline—all of which the State Bar had settled during 2011. After

Definitions of the Outcomes of the State Bar of California's Disciplinary Cases, in Order of Severity

Dismissal: The disposal or end of a disciplinary matter for reasons such as insufficient evidence without a finding of culpability for misconduct by the attorney.

Admonition: A written nondisciplinary sanction issued in cases that do not involve a serious offense and in which the State Bar Court concludes that no significant harm resulted. Only the State Bar Court may impose an admonition.

Reproval: The lowest level of court-imposed discipline and the only level of discipline the State Bar Court is authorized to impose. An attorney may receive a reproval that includes duties or conditions; however, reprovals do not involve suspension. Reprovals can be either public or private.

Suspension: A public disciplinary sanction that prohibits a member from practicing law or from presenting himself or herself as a lawyer for a period of time set by the California Supreme Court.

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

Source: State Bar's 2014 Annual Discipline Report, and the State Bar's deputy chief trial counsel.

further review, the State Bar indicated that 21 of these 27 cases received more severe discipline recommendations, including five disbarments.

Moreover, the State Bar settled cases for attorneys who had past disciplinary histories and who likely posed the greatest risk to the public. In particular, as we show in Table 7, the State Bar imposed discipline on 225 attorneys in 2010 and 310 attorneys in 2011 who had been disciplined in the past. During those same two years, the State Bar settled cases for 191 of these attorneys with a prior disciplinary history—a disproportionately high number of settlements compared to the other years in our audit period. The number of formerly disciplined attorneys who received settlements and were later disbarred for another case increased after 2009 as well. Although we acknowledge that there were likely extenuating circumstances that we did not evaluate that contributed to the State Bar settling these cases, our analysis demonstrates the detrimental effect on members of the public who may have received services from these attorneys after the State Bar settled their cases.

Table 7
Disciplinary History for Attorneys With Prior Discipline With Whom the State Bar of California Settled Cases
2009 Through 2014

	2009	2010*	2011*	2012	2013	2014
Number of attorneys with prior discipline who received subsequent discipline	147	225	310	203	217	200
Number of previously disciplined attorneys who received settlements	37	84	107	42	53	66
Number of attorneys who received settlements and were subsequently disbarred	4	10	7	8	0	0

Source: California State Auditor's analysis of data obtained from the State Bar of California's Discipline Case Tracking System.

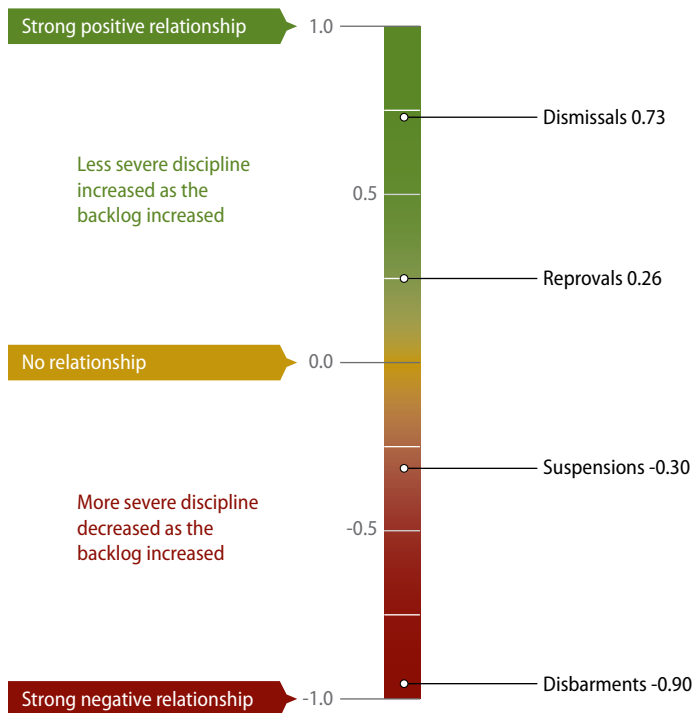
Note: As more time passes, the number of disbarred attorneys who initially received settlements from 2009 through 2014 may increase.

* Includes one attorney who also received a settlement in 2009.

Furthermore, the severity of several types of discipline that the State Bar imposed from 2009 through 2014 strongly statistically correlates to its backlog. A statistical correlation, expressed as a number ranging from -1.0 to 1.0, shows the extent to which one variable increases or decreases in relation to another. A positive coefficient indicates that one variable increases with an increase in the other variable, while a negative coefficient denotes a decrease in one variable with an increase in the other. As we show in Figure 5, the least severe outcomes of discipline cases—dismissals and reprimands—increased as the backlog increased. Conversely, the most severe forms of discipline—suspensions and disbarments—

decreased as the backlog increased. The increased backlog most strongly correlated with decreased disbarments. We caution that correlation does not necessarily prove causation. In other words, the relationships we noted do not necessarily demonstrate that the increased backlog caused the changes in the severity of the State Bar’s discipline. However, the strength of the relationship between these variables indicates that they are linked.

Figure 5
Strength of the Relationships Between the State Bar of California’s Backlog and the Types of Discipline It Imposed



Source: California State Auditor’s analysis of data obtained from the State Bar of California’s Discipline Case Tracking System.

Note: During the period we reviewed, there were not enough admonition cases to make a statistical correlation.

According to the chief trial counsel, a key factor that enabled the State Bar to decrease its backlog in 2011 was its insufficient quality control at a time when staff were trying very hard to meet what she believed to be an arguably unrealistic goal. Specifically, when the chief trial counsel assumed office in October 2011, she learned that the State Bar did not require review by management, supervisors, or peers before filing or settling cases. She also described several operational changes that the State Bar used to reduce the backlog related to shifting staffing resources, which we discuss later in this chapter.

Since assuming office, the chief trial counsel has taken steps to monitor the backlog and to ensure quality control over case processing.

Since assuming office, the chief trial counsel has taken steps to monitor the backlog and to ensure quality control over case processing. Specifically, she noted that the management of the Office of the Chief Trial Counsel monitors the backlog weekly and submits monthly reports to the Board of Trustees (board). Furthermore, in late 2011 she began providing training and development programs for State Bar staff, and in 2012 she implemented a policy requiring managerial review of all decisions on cases, including settlements. Moreover, the State Bar updated its attorney sanction standards in 2014 and again in 2015, according to the deputy chief trial counsel, to provide more clarity and certainty for the appropriate levels of discipline.

The State Bar Has Not Been Transparent When Reporting Its Backlog and Other Attorney Discipline Statistics

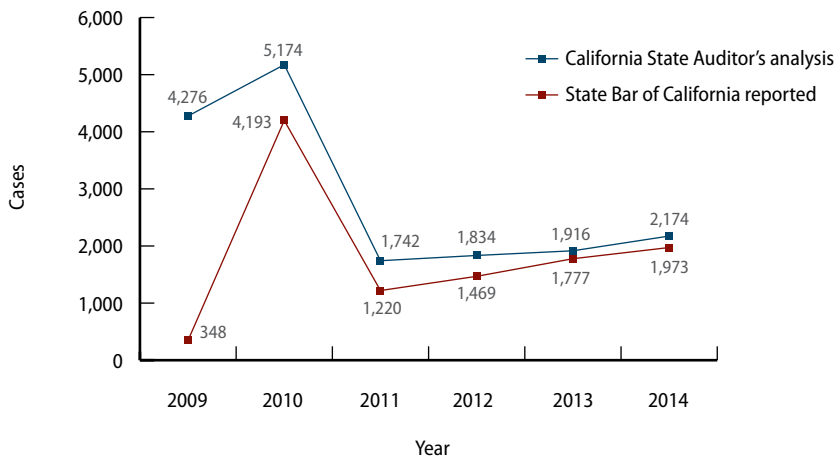
The State Bar has made missteps in its reporting of attorney discipline statistics to its key stakeholders, including the Legislature. State law requires the State Bar to prepare a discipline report, a public document that it must present to the governor, the chief justice, and specified legislative members and committees to enable them to evaluate the performance of its attorney discipline system. According to state law, the State Bar must include specific information in the discipline report, such as its existing backlog of discipline cases and the speed with which it has handled complaints. However, the State Bar reports less than what the law permits related to its backlog. Moreover, the State Bar has frequently changed its criteria and methodologies for how it gathers the information included in its discipline reports and, more importantly, did not always fully disclose the changes made in its criteria and methodologies. Despite improvements in recent years, because the discipline report is the only report that the State Bar must submit to the Legislature that describes the performance of its discipline system as a whole, it is critical that it contain useful and consistent information.

Despite Recent Improvements, the State Bar Continues to Report Less Than What the Law Permits Related to Its Backlog

The state law that requires the State Bar to submit the discipline report defines the backlog as the number of cases within the discipline system, including, but not limited to, the number of unresolved complaints as of December 31 that the State Bar had received more than six months earlier. However, in each of the past six years, the State Bar reported less than what the law permitted related to its backlog—the same concern that we raised in our 2009 report—and as a result, the State Bar's stakeholders may not be fully informed about the status of the

backlog. To illustrate, we calculated the State Bar’s backlog using its Discipline Case Tracking System and compared it to what the State Bar reported in each of its discipline reports from 2009 through 2014. As we show in Figure 6, even though the backlog reported by the State Bar has become closer to the backlog we calculated in recent years, our calculation still reveals a backlog that is slightly higher than what the State Bar reported in 2014.

Figure 6
State Bar of California Reported Backlog Versus California State Auditor’s Analysis of Backlog 2009 Through 2014



Sources: State Bar of California’s (State Bar) *Annual Discipline Reports* for 2009 through 2014, and the California State Auditor’s analysis of data obtained from the State Bar’s Discipline Case Tracking System.

The differences between how we calculated the State Bar’s backlog and the State Bar’s method for calculating its backlog primarily relate to the types of discipline cases included. In particular, because state law defines the State Bar’s highest priority as protecting the public by exercising its licensing, regulatory, and disciplinary functions, we believe the appropriate method of calculating the State Bar’s backlog would be to include every case that affects public protection. Currently, the State Bar does not include every such discipline case. In Table 8 on the following page, we show the types of cases that the State Bar reported as its backlog since 2009, as well as all the types of cases that affect public protection. By not including all the types of cases that affect public protection, the State Bar limits its stakeholders’ ability to assess the performance of the discipline system.

Table 8
Types of Cases the State Bar of California Included in the Calculation of Its Backlog
2009 Through 2014

DESCRIPTION	2009	2010	2011	2012	2013	2014
Suspended cases		✓	✓	✓	✓	✓
Cases six to 12 months old designated as complex		✓	✓	✓	✓	✓
Non-complex investigations			✓	✓	✓	✓
Stipulations not yet filed				✓	✓	✓
Closed cases that were later reopened		✓	✓	✓	✓	
Violations of previously imposed discipline					✓	✓
Professional misconduct in other jurisdictions					✓	✓
Failure to comply with the duties of disbarred, resigned, or suspended attorneys					✓	✓
Complaints	✓	✓	✓	✓	✓	✓
State Bar of California (State Bar) initiated	✓	✓	✓	✓	✓	✓
Reportable actions in intake*					✓	✓
Probation referrals					✓	✓
Resignation processing, with charges pending					✓	✓
The State Bar does not include the cases below this line in its backlog calculation						
Enforcement of a fee arbitration decision						
Monitoring an attorney's conviction in another court						
Disbarred or resigned attorneys practicing law						
Unauthorized practice of law						
Violation of the conditions of probation						
Inactive enrollment for mental illness, harm, or other cause						
Petition to assume jurisdiction over a law practice						
<div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 20px; height: 10px; background-color: #4f81bd; border: 1px solid black; margin-bottom: 5px;"></div> <div style="font-size: 0.8em; margin-bottom: 5px;">The State Bar does not include all case types that can have an effect on public safety in its backlog calculation.</div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 20px; height: 10px; background-color: #993366; border: 1px solid black; margin-bottom: 5px;"></div> <div style="font-size: 0.8em; margin-bottom: 5px;">Includes a resignation processing case type, which does not have a significant effect on public safety, in its backlog calculation.</div> </div>						

Sources: State Bar's chief trial counsel and former budget director.

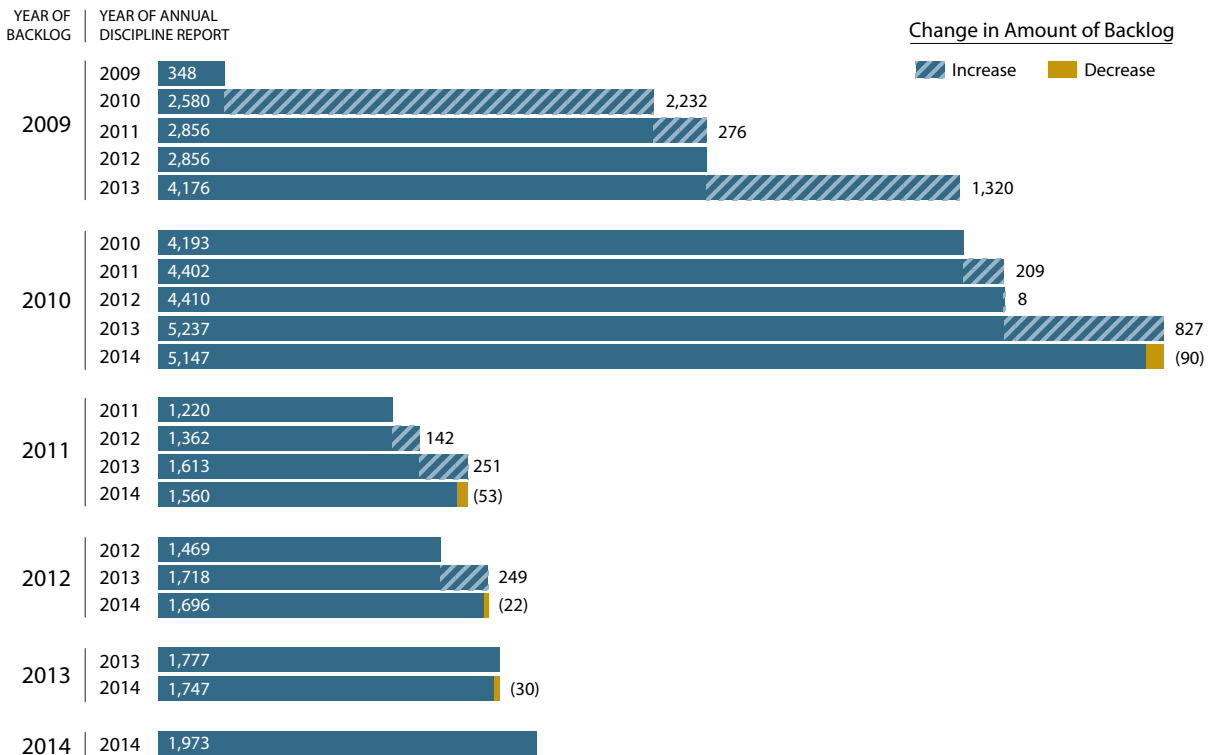
* According to the chief trial counsel, before 2013 the State Bar included reportable actions in its backlog count only if it forwarded the case to be investigated.

Moreover, the State Bar used a different methodology each year to calculate its case backlog and presented the backlog in a manner that was inconsistent with the prior year's report, which may have further limited the discipline report's usefulness. As we show in Table 8, the State Bar added or removed different types of cases when reporting its backlog for each year from 2009 through 2014. For example, in the 2009 discipline report, the State Bar included only complex cases that were older than 12 months in the backlog; however, in the 2010 discipline report, it modified its calculation of the backlog by also counting complex cases that were between six and 12 months old. In another example, the State Bar did not begin counting *reportable actions*—mandatory notifications of

attorney misconduct—in the backlog until the 2013 report. Most recently, in 2014 the State Bar began to report reopened cases in the backlog only for the years they were open rather than also reporting them for the years they were closed.

In all years we reviewed except for one, the changes the State Bar made in its methodology resulted in it increasing the prior year’s backlog from what it had previously reported to the Legislature, as shown in Figure 7. For example, the 2012 discipline report indicated that the State Bar’s backlog for 2012 was 1,469 cases. A year later, in its 2013 discipline report the State Bar reported that the 2012 backlog should have been 1,718 cases—249 more cases than it reported in its 2012 report. This increase occurred because it added six types of cases to the backlog.

Figure 7
Backlog Counts That the State Bar of California Reported in Its 2009 Through 2014 Annual Discipline Reports



Sources: State Bar of California’s (State Bar) *Annual Discipline Reports* for 2009 through 2014.

Note: State law requires the State Bar to report the current year’s backlog, as well as the backlog for the three previous years.

The former director of Budget and Performance Analysis (former budget director), who was responsible for compiling the discipline report, stated that the State Bar changed its backlog calculation

from year to year in order to report information in a more complete manner. He also told us that he changed the methodology when he learned which cases and calculations he should and should not include; however, the State Bar did not fully disclose the changes in the methodologies in its discipline report. State law requires the State Bar to report information in its discipline report in a consistent manner to allow for year-to-year comparisons. To mitigate the difficulty of comparing discipline reports that use different backlog methodologies, the State Bar includes in its discipline reports the backlog numbers for the four preceding years that it determined using the most current year's methodology. However, without an accompanying explanation for everything that changed and why, the State Bar falls short of the law's requirements and risks misleading those who rely upon the report's content to make critical decisions.

At the time of our 2009 audit, we believed that the State Bar's stakeholders, including the Legislature, would benefit from having more complete and clear measures of the backlog. Although we did not recommend a change to state law or that the State Bar include additional types of cases in the backlog, we recommended that the State Bar disclose the composition of the backlog and include an explanation for the cases it excludes. The State Bar implemented our recommendation in its 2009 and 2010 discipline reports, which it published in the two years following our audit; however, it stopped fully describing the methodology it used to calculate its backlog beginning in its 2011 discipline report and for each year thereafter. For example, in its 2011 report the State Bar highlighted its backlog reduction in its report. However, it began including unfiled settlement cases in its backlog in its 2012 discipline report and did not mention the addition of these cases in the report. Because the State Bar did not disclose this change, a reader might not notice that it had adjusted the backlog number it reported for 2011 to include unfiled stipulations, increasing the backlog it previously reported by 133 cases.

Without a more specific definition of backlog in state law, the State Bar may continue to report less than what the law permits and may again change its methodology without fully disclosing the changes in its discipline reports.

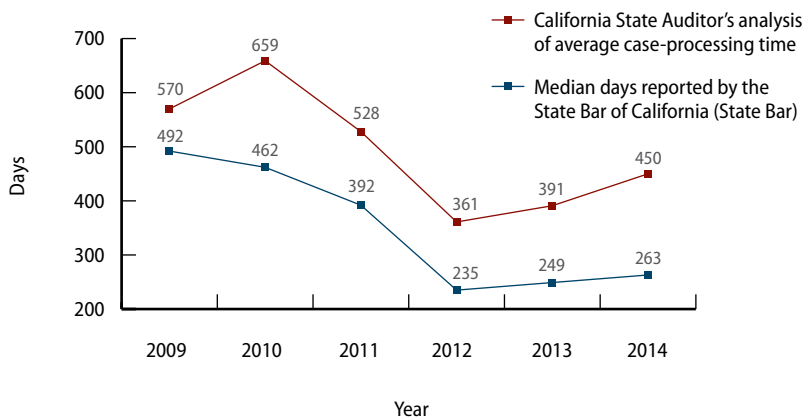
As a result of the State Bar's failure to fully implement our 2009 recommendation, we are concerned that without a more specific definition of backlog in state law, the State Bar may continue to report less than what the law permits and may again change its methodology without fully disclosing the changes. The former budget director stated that the State Bar would benefit from additional discussion with the Legislature to better define what it would like the backlog to include. We commend the State Bar's efforts to include more types of cases in its backlog, but additional steps are necessary to ensure that it reports useful and consistent information related to its backlog of discipline cases.

The State Bar Has Used Inconsistent Case-Processing Metrics

Weaknesses related to the manner in which the State Bar presents case-processing times in its discipline reports may also impede the reports’ usefulness to stakeholders. As it did with its backlog reporting, it changed the methodology it uses to report case-processing times without specifically disclosing the change. In particular, in the 2009 and 2010 reports, the State Bar presented case-processing time using an average number of days. Then, in the 2011 and 2012 reports, it used both the average and median number of days to express case-processing time, and began including the 90th percentile of case-processing times—a measure that indicates the number of days within which the State Bar processes 90 percent of its cases. The State Bar again changed its methodology—without disclosing the change—in its 2013 and 2014 discipline reports, when it stopped reporting the average days for case-processing time.

By excluding the average case-processing time, the State Bar now emphasizes in its report summaries only the statistic that shows its case-processing time in a more favorable light. For example, the summaries to the 2013 and 2014 discipline reports highlight only the median case processing times. Although the median statistic can provide valuable information, the State Bar chose to include only the measure that depicts a faster case-processing time in its report summary and to exclude the measure that paints a different picture. As shown in Figure 8, the median case-processing time was consistently lower than the average each year from 2009 to 2014. Moreover, the introductions to the 2013 and 2014 discipline reports states that they present data based on the *average* times for processing complaints through the discipline system rather than the *median* times—a statement that is misleading to readers.

Figure 8
 State Bar of California’s Average and Reported Median Case-Processing Times
 2009 Through 2014



Sources: State Bar’s Annual Discipline Reports for 2009 through 2014, and the California State Auditor’s analysis of data obtained from the State Bar’s Discipline Case Tracking System.

In its 2012 and 2013 reports the State Bar highlighted its success in decreasing the case-processing time reported in its discipline reports by choosing a more favorable measure with which to depict its efficiency in processing cases.

According to the former budget director who prepared the data for the discipline report, he believed that the median was a more reliable statistic to use than the average because it did not include the outliers—a small number of cases with high or low case-processing times. His rationale related to outliers is valid; however, the State Bar should have disclosed the methodology change, as well as the rationale for the change, in its discipline reports. We believe that presenting both the median and the average will increase the amount of information available to stakeholders.

Moreover, in its 2012 and 2013 discipline reports the State Bar chose to highlight its success in decreasing the case-processing time by selectively comparing its current median to past medians when they were at their highest points. This decision appears to indicate that the State Bar has chosen the more favorable measure with which to depict its efficiency in processing cases. As an example, in its letter to the Legislature and governor accompanying its 2013 discipline report, the State Bar noted that its median case-processing time for 2013 was 249 days, compared to 492 days and 462 days in 2009 and 2010, respectively. However, the State Bar omitted its median case-processing times of 392 days and 235 days in 2011 and 2012, respectively. If the State Bar had included the 2012 statistic in the letter, it would have disclosed the fact that its median case-processing time had increased slightly, from 235 days in 2012 to 249 days in 2013.

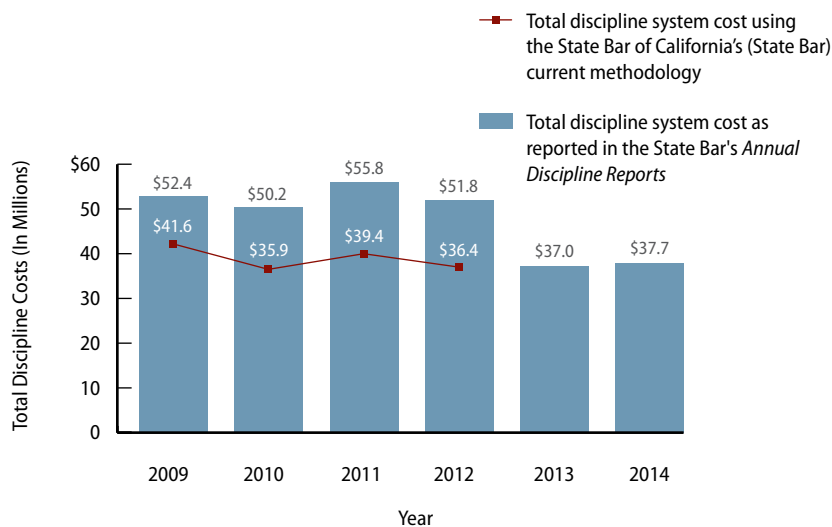
We also expressed concerns in our 2009 audit with the manner in which the State Bar reported case-processing times. In particular, we found that the State Bar calculated case-processing times by averaging its case-processing times from 1999 forward rather than reporting a separate average for each year. At that time, we concluded that this methodology did not meaningfully measure its yearly case-processing times because it included data from years other than the relevant reporting year and because the number of cases from which the State Bar computed the averages continued to grow. We recommended that the State Bar discontinue using this methodology. Although the State Bar implemented our recommendation, its current method of reporting case-processing times produces results that are once again less useful than they could be.

The State Bar Has Not Ensured That Its Discipline Reports Contain Useful and Consistent Information

The State Bar limited the ability of stakeholders to use its discipline reports to assess the cost-effectiveness of its discipline system because, in 2012, it changed the methodology it employed to

calculate its general fund discipline costs and did not disclose the change. As a result, the costs of the discipline system seemed to decrease significantly when in fact they remained relatively constant. Specifically, as we show in Figure 9, the State Bar reported that its 2012 discipline costs were \$51.8 million, which included administration costs. However, in the 2013 discipline report, the State Bar excluded administration costs from its discipline costs, and as a result, the State Bar reported a lower amount of \$36.4 million for discipline costs for 2012. According to the director of finance, the State Bar decided to remove the administrative costs from the total discipline system expenditures because managers within the State Bar had no control over these costs. We do not disagree with the State Bar's current methodology of calculating discipline expenditures; however, by not disclosing the change in the methodology, the State Bar may have misled the Legislature and others to believe that discipline costs had decreased.

Figure 9
State Bar of California's Discipline System Expenditures
 2009 Through 2014



Sources: California State Auditor's analysis of the State Bar's accounting reports and *Annual Discipline Reports* for 2009 through 2014.

Note: Beginning in 2012 the State Bar revised its reporting of discipline costs to exclude administration costs, but began to include them again in 2014.

The problems that we identified with the discipline reports may partly be due to the fact that the State Bar has not established adequate controls to verify the reports' reliability. Although the board approved a resolution in 2014 specifying the types of information that the State Bar should include in the discipline reports, it has not taken sufficient steps to ensure that they contain accurate and

The State Bar has not established adequate controls to verify the reliability of its discipline reports—for the past five reports, no one verified the way the information was gathered or how the calculations were made.

complete information. For example, the board does not review the discipline report before the State Bar submits it to the Legislature. Moreover, the State Bar has no policy or procedure that dictates how it will compile or review the discipline reports. In fact, the former budget director compiled the data for the past five discipline reports, but no one verified the way the information was gathered or how the calculations were made. According to the vice president of the board, the board's faith in the accuracy and completeness of the discipline reports was based on its review of metrics reported throughout the year, the involvement of the acting general counsel, and its trust in the competence and skill of the staff compiling the reports.

The State Bar Has Not Performed Adequate Workforce Planning, Which May Have Limited the Effectiveness of Its Discipline System

As previously discussed, the State Bar was able to decrease its backlog after making operational changes in response to its former executive director's zero-backlog goal in mid-2011. However, after abandoning all but one of those changes, the State Bar's backlog is once again increasing. Because many of the 2011 operational changes involved devoting more staff resources to case processing, the recent increase in the backlog suggests that additional staff may be necessary within the State Bar's discipline system. However, the State Bar has not conducted any workforce planning to support or refute this supposition. Workforce planning is the process that aligns staffing with an organization's strategic mission and critical needs. Thus far, the State Bar's efforts to align its staffing with its mission have fallen short.

The State Bar Has Not Established Consistent Goals for Processing Disciplinary Cases

Establishing a mission and strategic goals is critical to ensuring the successful outcome of an organization's operations and is typically the first step in workforce planning. State law identifies the State Bar's mission as the protection of the public through exercising its licensing, regulatory, and disciplinary functions and, according to the State Bar, the attorney discipline system plays an indispensable role in carrying out this mission. The State Bar defines the size of its backlog as a key measure of the performance of its attorney discipline system. Thus, we would have expected the State Bar to have established and thoroughly analyzed and documented a goal for an acceptable backlog that would assist it in meeting its mission. However, it has not done so. In particular, although it set a zero goal for its backlog in 2011 and a subsequent goal of keeping its backlog of active cases to less than 15 percent, the State Bar did not document either of those goals. Since 2007 the State Bar has changed its backlog goal four times: from 200, to 250, to zero, to less than 15 percent of all active cases (its current goal).

The State Bar does not include suspended cases—cases that are on hold for various reasons, such as anticipated disbarment in another matter—in its current backlog goal.

The State Bar's backlog goal changed, in part, as a result of changing leadership within the State Bar. For example, a former chief trial counsel noted that the 2007 goal of 200 cases in backlog was too aggressive and subsequently increased the goal to 250 cases—a goal that the State Bar still did not meet. The chief trial counsel stated that the current goal of maintaining less than 15 percent of active cases in its backlog originated from discussion with the board's regulation and discipline committee (discipline committee). She believes that active cases, rather than suspended cases, are the most relevant measure on which to base the backlog goal, even though the State Bar reports both types of cases in its discipline report. As of December 31, 2014, the goal of having less than 15 percent of all active cases in its backlog equates to having no more than about 480 active cases in backlog.

Although the State Bar has met the 15 percent goal consistently since the Office of the Chief Trial Counsel implemented it in 2011, its total backlog—including both active and suspended cases—has increased each year since that time, indicating that the goal may not be effective in reducing the overall backlog. Moreover, the vice president of the board stated that she views having less than 10 percent of active cases in the State Bar's backlog as an indicator that the Office of the Chief Trial Counsel is processing cases efficiently. Thus, additional steps are necessary to ensure that the State Bar has a reasonable and documented goal for its backlog that can assist it in accomplishing its mission of public protection.

The State Bar Has Not Determined the Sufficiency of Its Staffing Level for the Discipline System

Workforce planning requires an organization to identify the staffing levels it needs to fulfill its goals once it has defined them; however, the State Bar has not determined the necessary staffing level to minimize its backlog while at the same time ensuring the effectiveness of its attorney discipline system. As noted previously, the State Bar was able to significantly decrease its backlog from 5,174 cases in 2010 to 1,742 cases in 2011. According to the chief trial counsel, in addition to compromising the quality control of cases, the significant decrease in the backlog was a result of the following operational changes:

- Reassigning staff from working on other duties within the Office of the Chief Trial Counsel to focus exclusively on decreasing the backlog.

Additional steps are necessary to ensure the State Bar has a reasonable and documented goal for its backlog that can assist it in accomplishing its mission of public protection.

The State Bar's ability to decrease its backlog by making operational changes, and the subsequent increase in backlog after it discontinued those operational changes, suggests that the State Bar needs to evaluate whether it needs to make permanent changes to its operations.

- Authorizing a significant amount of staff overtime.
- Increasing its reliance on contract employees.

In 2012 the Office of the Chief Trial Counsel disbanded the staff that had been assigned to work exclusively on the backlog and began significantly decreasing its overtime costs. In addition, the chief trial counsel stated that she transitioned her staff to a new staffing model to prosecute cases and implemented missing quality control measures. Potentially as a result of these changes, the backlog increased from 1,742 cases in 2011 to 2,174 cases in 2014—a 25 percent increase. The State Bar's ability to decrease its backlog by making operational changes, and the subsequent increase in backlog after it discontinued those operational changes, suggests that the State Bar needs to evaluate whether it needs to make permanent changes to its operations.

In particular, the State Bar may need more staff within the Office of the Chief Trial Counsel to maintain its backlog at acceptable levels. For example, in 2010 the Office of the Chief Trial Counsel had 163 permanent staff and three temporary employees who processed discipline cases. The next year, the Office of the Chief Trial Counsel hired two additional permanent staff and seven temporary employees for this activity. However, since 2012 the Office of the Chief Trial Counsel's total number of staff has declined, and in 2014 it employed only two more staff than it did in 2010—the year the backlog reached its highest point. Moreover, since 2009 the Office of the Chief Trial Counsel has increasingly relied on temporary employees, which also indicates that its current number of permanent employees may be insufficient.

Further, the relationship that we previously noted between the size of the State Bar's backlog and severity of discipline it imposes may be relevant because the State Bar's backlog has increased over the past three years. For example, the State Bar should determine the relationship between its staff resources and its ability to process cases quickly so that it can arrive at a justified staffing level. Moreover, the State Bar should investigate whether a small backlog allows it to seek disbarment for a larger number of attorneys when appropriate because it has available resources to pursue those cases. According to the chief trial counsel, settling a case generally requires fewer resources than processing a case through trial; thus, if the State Bar has insufficient resources, it may have an incentive to settle more cases before a trial than it otherwise would.

The chief trial counsel noted that having more staff within the Office of the Chief Trial Counsel would be beneficial. According to the acting executive director, the State Bar has had difficulty hiring additional employees because it cannot compensate them

at levels comparable to the private sector. The chief trial counsel also cited deficiencies in the State Bar's recruiting and stated that she has not requested any additional positions in part because of budgetary constraints and the lack of space in the new Los Angeles building. In an effort to increase staff productivity, she implemented a training program and addressed staff performance issues. Nevertheless, the State Bar has not taken the steps necessary to determine whether its staffing is sufficient.

The State Bar Has Established Only Limited Case-Processing Policies and Procedures, to Which Its Staff Inconsistently Adhere

Workforce planning requires that an organization provide its staff with the necessary tools to perform their jobs effectively. However, the State Bar has yet to fully implement this step. In particular, although the State Bar recently created a draft of a policy and procedures manual for its intake unit, it does not have an investigations manual containing the policies and procedures needed to guide staff in accomplishing their duties. The State Bar does have some policy directives which, among other things, guide staff in their work. However, the manager of investigations believes an updated, unified policy manual is critical, as the lack of a central resource for staff has caused confusion and inconsistencies.

We found evidence of the detrimental effect of the State Bar's failure to establish such updated policies and procedures in our review of investigation case files. Specifically, our review found varying levels of documentation in the files. For example, the files inconsistently included an investigation plan, which is a document that the State Bar requires investigations staff to use. The investigation plan functions as a roadmap for how the investigator intends to conduct the investigation, based on the specific needs of the case, and it should be updated continually as the case progresses. According to the investigations manager, if the supervising attorney decides that the investigation plan is unnecessary because, for instance, prosecution is already pending, the State Bar can waive the investigation plan and place a memo in the file to document that the plan is not required. Of the 15 investigation files we reviewed during our audit, five did not contain investigation plans, but only one contained the required waiver memo.

We also found investigation files that did not contain evidence of an interview with the complaining witness. In some cases, the complaining witness does not cooperate with an investigation or cannot be contacted, and the investigator will document evidence in the file supporting his or her attempts to perform an interview. In other cases, the supervising attorney may make a determination that an interview is not needed and place a waiver in the file.

The State Bar does not have an investigations manual containing the policies and procedures needed to guide staff in accomplishing their duties and to ensure uniformity in the quality of its investigations.

However, we found four investigation files that did not contain evidence of the interview or a reason for its absence. Without a set of updated policies to ensure uniformity in the quality of its investigations, the State Bar cannot provide assurance that each case received the level of attention that it required.

Lacking Independence and Stability, the State Bar's Audit and Review Unit Does Not Provide Effective Oversight of the Office of the Chief Trial Counsel

The State Bar's audit and review unit lacks the independence and stability needed to provide effective oversight of the Office of the Chief Trial Counsel's processing of disciplinary cases. Created in August 2004, the audit and review unit has two functions: to perform random audits of closed cases and to perform reviews when complainants request that the State Bar reexamine closed cases. As of January 2015 the unit consisted of four staff attorneys who perform reviews and a supervising attorney. The unit contracts with an independent attorney to conduct its random audits.

To perform its audit function, the State Bar's policies require that twice a year the audit and review unit review at least 250 recently closed disciplinary cases. As part of this review, it must complete a checklist to determine whether staff followed State Bar policies and if their actions were consistent with case law. After each semiannual review, the audit and review unit must prepare a report of the deficiencies it found that offers recommendations for improvement, which it must then submit to the Office of the Chief Trial Counsel for implementation. Our review of these reports found that the audit and review unit generally recommended that the Office of the Chief Trial Counsel's managers meet to discuss how to prevent future deficiencies and recommended that the office train staff on the problem areas it identified. In addition, the audit and review unit recommended that the Office of the Chief Trial Counsel follow up on concerns it observed with the handling of specific cases.

The State Bar was not able to provide sufficient evidence that the Office of the Chief Trial Counsel implemented the audit and review unit's recommendations.

However, the State Bar was not able to provide sufficient evidence that the Office of the Chief Trial Counsel implemented the audit and review unit's recommendations. We reported in our 2009 audit that the State Bar's audit and review unit could be more effective if it ensured that its recommendations were implemented. Since the release of that report, the State Bar implemented a policy directing the Office of the Chief Trial Counsel to provide any recommended staff training and to conduct managers' meetings to discuss audit findings. Although the State Bar asserted that the Office of the Chief Trial Counsel conducted the recommended meetings and training for all 11 of the reviews that the audit and review unit issued after the State Bar implemented this policy, it was only able

to provide complete evidence that it held meetings and trainings for six of the reviews. Thus, the State Bar cannot demonstrate that the semiannual audits have provided the intended benefit of ensuring that the Office of the Chief Trial Counsel's actions are appropriate and consistent with its policies and procedures and that it complies with statutory provisions and case law precedent.

In addition, although the State Bar indicated that the audit and review unit selects the closed cases at random, its process allows for the Office of the Chief Trial Counsel to replace cases that cannot be readily located. Currently, a systems analyst who reports directly to the chief trial counsel selects the cases using the random number generator function in her spreadsheet software. She provides the list of cases to the file retention unit within the Office of the Chief Trial Counsel to locate the supporting case files. However, the file retention unit does not always select the cases on the systems analyst's list; instead, it selects only the files from the list that are readily available. If the file retention unit cannot locate a case file, it will replace the missing file with a different file of its choosing. Consequently, when we reviewed four cases, we identified two instances in which the file retention unit replaced cases the system analyst had selected. However, the State Bar does not track when the file retention office replaces cases. For both cases we identified, the supervisor of the audit and review unit indicated that the originally selected cases had been unavailable because they were still under investigation and therefore were not considered closed. Nonetheless, the State Bar compromises the random selection process when it replaces cases without the involvement of the audit and review unit.

The audit and review unit's other function is to review complainant requests to reopen closed cases, known as second-look reviews, and to grant those requests when appropriate. As part of the second-look review, the audit and review unit will reopen a case when it finds the Office of the Chief Trial Counsel abused its discretion in closing a case or when the complainant provides new material evidence. According to the Office of the Chief Trial Counsel's internal reports, the audit and review unit received 1,029 requests for second-look reviews in 2014. It resolved 1,466 requests during that time, resulting in the reopening of 97 cases.⁵ The only other option available to complainants who wish to appeal the Office of the Chief Trial Counsel's decisions to close cases is to submit a Walker Petition—a petition for review—to the Supreme Court. According to the State Bar, the Supreme Court will order in favor of a complainant's request to reopen a case only if it determines that the Office of the Chief Trial Counsel arbitrarily failed or refused to take appropriate action on the matter. The State Bar believes the process of submitting a Walker Petition requires more effort for a complainant due to the amount of documentation required.

The State Bar cannot demonstrate that the semiannual audits have provided the intended benefit of ensuring that the Office of the Chief Trial Counsel's actions are appropriate and consistent with its policies and procedures.

⁵ The audit and review unit also resolved some requests originating in prior years.

The supervisor of the audit and review unit directly reports to and receives an annual appraisal from the chief trial counsel—the same person whose actions the supervisor is in a position to question.

Without notifying the board, the former chief trial counsel disbanded the second-look review function of the audit and review unit in 2010 and redirected the unit's staff to help reduce its discipline case backlog. As a result, complainants who wanted to dispute case closures had to file Walker Petitions during this time rather than requesting second-look reviews from the audit and review unit. Subsequently, the number of Walker Petitions increased from 203 to 435, or 114 percent, from 2009 to 2010. The State Bar reinstated the audit and review unit's second-look review function in February 2011, at which time the number of Walker Petitions submitted declined drastically, to 193 in 2011. Given the important benefits that the audit and review unit provides to complainants, we question why the former chief trial counsel disbanded its review function, especially without notifying the board. Although the current chief trial counsel stated that she does not believe the audit and review unit should have been disbanded and she has no plans to do so in the future, she acknowledged that there are currently no policies or procedures in place to prevent the State Bar from dismantling the audit and review unit in the future.

The audit and review unit is unable to ensure that it operates effectively because it is part of the Office of the Chief Trial Counsel. In fact, the unit's supervisor directly reports to the chief trial counsel and receives an annual performance appraisal from her. Moreover, the independence of an agency's audit function is critical to assuring that audits are objective and are not subject to undue influence. When an auditor reports directly to the auditee—in this case, the chief trial counsel—it creates a risk that the auditee will be able to minimize or fail to act upon findings resulting from an audit or review. We believe a change to the State Bar's organizational structure related to the audit and review unit would increase the independence and effectiveness of its audits and ensure the unit's stability in providing reviews. Specifically, the audit and review unit should cease reporting to the chief trial counsel and should instead report to a separate individual or body.

Recommendations

To ensure that its backlog does not adversely affect the quality of the discipline it imposes on attorneys who fail to fulfill their professional responsibilities, the State Bar should adhere to its quality control processes. Further, it should take steps to prevent its management or staff from circumventing those processes, such as requiring the presentation to the board of any proposed changes to quality control.

To ensure that it consistently counts and reports its backlog of disciplinary cases, the State Bar and the Legislature should work together to determine what cases the State Bar should include in its backlog. For example, one method of calculating the backlog would be to include every case that affects public protection that the State Bar does not resolve within six months from the time it receives a complaint. The Legislature should then amend the state law that currently defines how the State Bar should present the backlog in its discipline report. In the interim, the State Bar should comply with our 2009 recommendation to fully disclose the types of cases it includes and excludes from its backlog calculation, as well as any methodology changes from the prior year.

To provide clear and reliable information to the Legislature, the governor, and the public, the State Bar should define how it calculates case-processing speeds in its discipline report and should report this metric using the same method each year. If the State Bar elects to continue presenting the median case-processing time, it should also present the average case-processing time. Finally, it should fully disclose any methodology changes from the methodology used in the prior year.

To assure the Legislature and the public that the data in the State Bar's discipline reports are accurate, the board should implement controls over the accuracy, consistency, and sufficiency of the data gathered and methods used to compute the information included in the report. For example, the board could expand the role of an existing board committee—such as the regulation and discipline committee—to include a review of the discipline report and the underlying discipline statistics.

To align its staffing with its mission, the State Bar should engage in workforce planning for its discipline system. The workforce planning should include the development and formal adoption of an appropriate backlog goal, an assessment of the staffing needed to achieve that goal while ensuring that the discipline process is not compromised, and the creation of policies and procedures sufficient to provide adequate guidance to the staff of each unit within the discipline system.

To ensure that the audit and review unit's random audits of closed case files provide an effective oversight mechanism, the State Bar should follow its policy to conduct and record meetings and trainings related to the audit report's recommendations. Additionally, the audit and review unit should oversee the retrieval of cases files for audit to ensure that it maintains control over its random selection of cases.

To ensure that the review function within the audit and review unit continues to provide a means for complainants to appeal the State Bar's decisions on closed cases, the State Bar should implement a policy that prohibits the chief trial counsel from dissolving the review function of the audit and review unit. Alternatively, at a minimum, it should require board approval for such an action.

To provide independent oversight of the Office of the Chief Trial Counsel and assurance that it properly closes its case files, the audit and review unit should report to an individual or body that is separate from the chief trial counsel, such as the executive director or the board.

Chapter 2

THE STATE BAR OF CALIFORNIA DEDICATED A SIGNIFICANT PORTION OF ITS FUNDS TO PURCHASING A BUILDING IN LOS ANGELES AND DID NOT FULLY DISCLOSE CRITICAL FINANCIAL INFORMATION

Chapter Summary

The State Bar of California's (State Bar) primary mission is the protection of the public through its attorney discipline system. However, the State Bar's financial priorities over the past six years did not consistently reflect that mission: Rather than using its financial resources to improve its attorney discipline system, the State Bar dedicated a significant portion of its funds to purchase and renovate a building in Los Angeles in 2012. Although the Legislature approved \$10.3 million for this building, the State Bar ultimately spent approximately \$76.6 million on it. Facilitating this purchase required the State Bar to transfer \$12 million between its various funds, some of which its Board of Trustees (board) had set aside for other purposes. For example, the State Bar paid for renovations, including information technology (IT) upgrades, to the Los Angeles building in part by using funds its board had designated for new IT systems, even though the State Bar's strategic plan identified the new systems as a high priority.

The ultimate responsibility for ensuring that the State Bar spends funds prudently rests with the board, which should have ensured that the State Bar's decision to purchase the Los Angeles building was justified and financially beneficial. However, the State Bar did not fully communicate its questionable financial decisions regarding this new building to the board because it never presented its board with comprehensive cost estimates of purchasing versus leasing a building. Moreover, only four months before it purchased the Los Angeles building, the State Bar informed the Legislature in an annual report that a building would cost \$26 million—a third of the \$76.6 million the State Bar ultimately paid. In addition, the State Bar could offer no evidence that it informed the Legislature of its final decision to purchase the Los Angeles building even though state law required it to do so. As a result, key decision makers and stakeholders lacked the information necessary to make informed financial decisions related to the purchase of the Los Angeles building or to understand its impact on the State Bar's other financial priorities.

The State Bar's fund balances over the last six years indicate that the revenues from annual membership fees exceeded the State Bar's operational costs, which gave the State Bar the flexibility

to purchase the Los Angeles building. Although the purchase of the building decreased the State Bar's available fund balances, we found that these balances are again beginning to increase, calling into question whether the revenues the State Bar collects are reasonable. However, the State Bar has not conducted certain long-term planning—such as a thorough analysis of its revenues, operating costs, and future operational needs—that would justify the revenues it collects. Because the Legislature must authorize the State Bar to collect membership fees, which fund a significant portion of its operations, on an annual basis, long-term planning is difficult. Thus, a funding cycle that gives the State Bar a greater certainty of funding—for example, a biennial funding cycle—could enhance its ability to engage in long-term planning.

The State Bar Made Questionable Financial Decisions When Purchasing Its Los Angeles Building

State law requires that public protection be the State Bar's highest priority, and we believe that includes the responsibility to spend revenues in such a way so as to protect the public from attorneys' unlawful or inappropriate acts. However, the State Bar has not sufficiently met its responsibilities. In particular, rather than using its available fund balances to improve its attorney discipline system—such as ensuring that the staffing levels for its discipline-related functions are adequate—the State Bar spent \$76.6 million to purchase and renovate a building in Los Angeles. Moreover, the State Bar purchased this building without a thorough cost-benefit analysis and used some funds designated for new IT projects and other board-restricted funds.

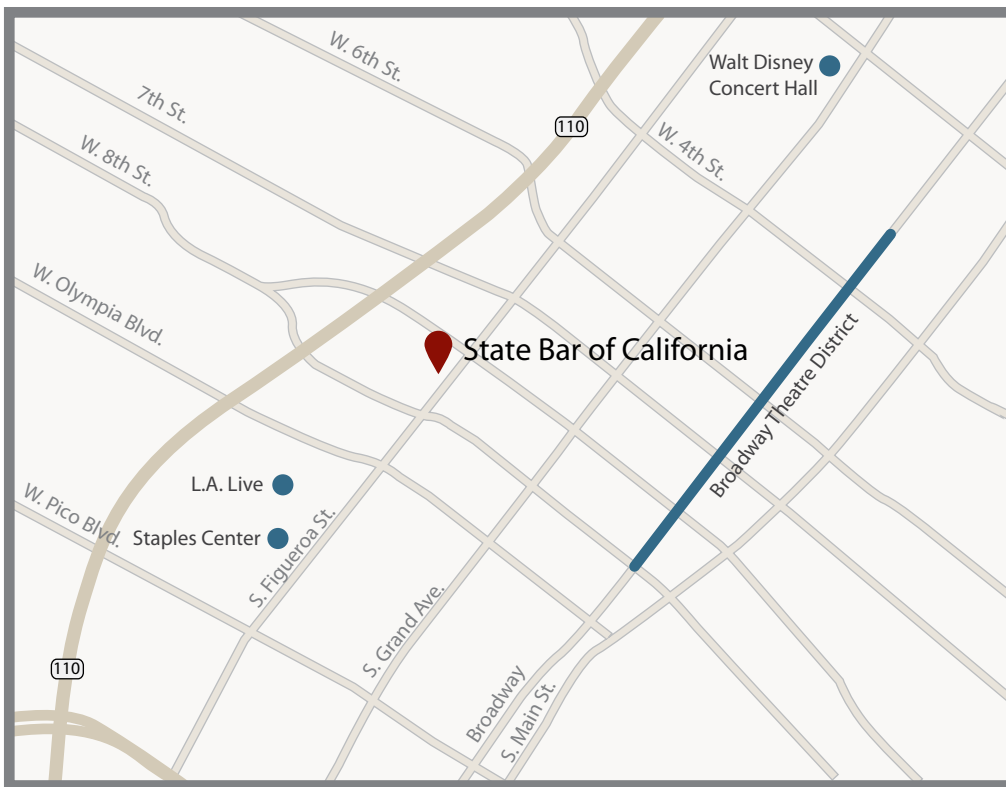
The State Bar spent \$76.6 million to purchase and renovate a building in Los Angeles without a thorough cost-benefit analysis and used funds designated for new IT projects and other board-restricted funds.

The State Bar Used Fund Balances and Resources Set Aside for Other Purposes to Purchase and Renovate a Building in Los Angeles

In 2012 using various sources of funds, including fund balances that had been growing over time, the State Bar purchased and renovated a new building located in downtown Los Angeles, as shown in Figure 10, spending a total of approximately \$76.6 million. In anticipation of the State Bar's Los Angeles lease expiring in January 2014, the Legislature had approved a temporary five-year \$10 special assessment charged to members between 2009 and 2013 as a means to pay for the financing, leasing, construction, or purchase of a building in Southern California. According to the acting executive director, the last time the Legislature authorized the State Bar to collect a \$10 building special assessment was in 1986, and at that time the purpose of the assessment was to cover the cost of the State Bar's properties. When the State Bar again sought a special assessment in 2008, it did not provide the

Legislature with any analyses of the estimated cost to purchase a new building in Southern California. Ultimately, the special assessment collected between 2009 and 2013 generated only \$10.3 million—about \$66 million short of the final cost of the Los Angeles building.

Figure 10
Map of Los Angeles Building

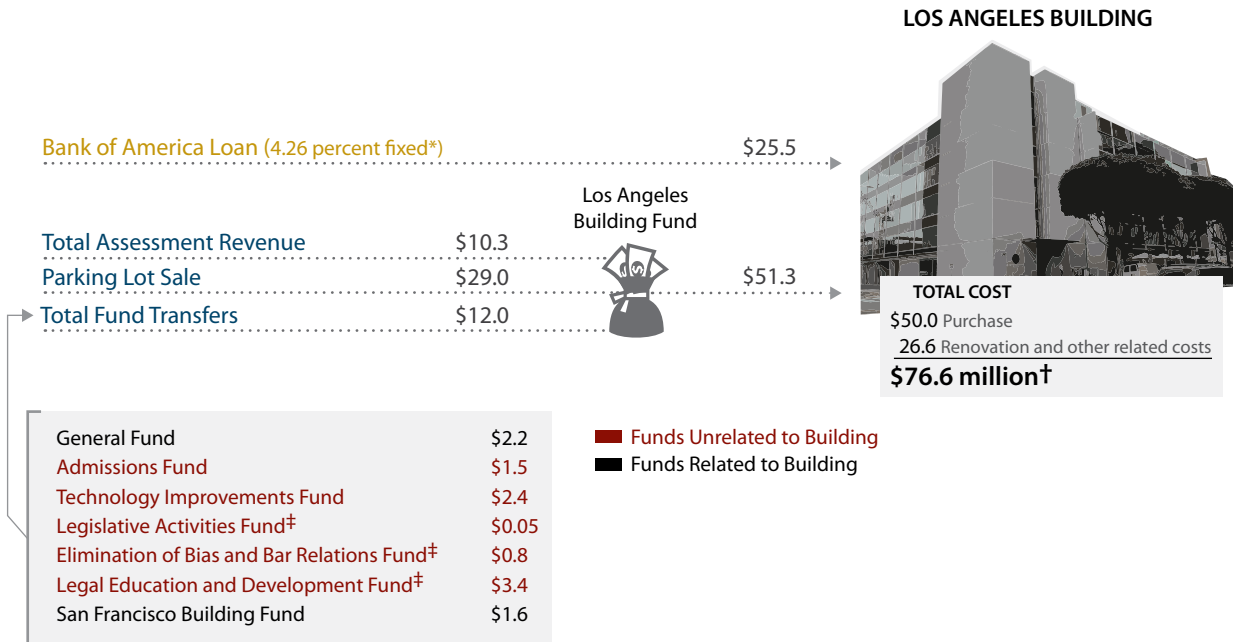


Source: Google Maps, 845 South Figueroa Street, Los Angeles, CA 90017.

To finance the remaining cost of the Los Angeles building, the State Bar secured a \$25.5 million loan, sold a parking lot in Los Angeles for \$29 million, and engaged in a series of fund transfers amounting to \$12 million, as shown in Figure 11 on the following page. Two of the transfers—\$1.6 million from the San Francisco Building Fund and \$2.2 million from the State Bar’s general fund—were reasonable uses of funds to help purchase the Los Angeles building, given the purposes of those two funds. However, our analysis found that approximately \$8.2 million of the \$12 million that the State Bar transferred from other funds to pay for its new building came from funds whose purposes bore little relation to the Los Angeles building. For example, in 2013 the State Bar transferred \$4.3 million

from the Administration of Justice Fund, which includes funds to pay for programs that seek to eliminate bias in the judicial system and legal profession and increase participation by attorneys who are underrepresented in the State Bar’s administration and governance, fund legal education and development services, and also fund legislative activities. In another example, in 2012 the State Bar transferred \$1.5 million to the Los Angeles Facilities Fund from the Admissions Fund, which receives fees from individuals taking the State Bar examination and which the State Bar uses to pay for expenses related to developing and administering the examination. Finally, the State Bar made three transfers totaling \$3.1 million in 2012 to fund its IT plan, and subsequently in 2013 transferred \$2.4 million from its Technology Improvements Fund to its Los Angeles Facilities Fund. Without receiving these three transfers, the Technology Improvements Fund would not have had enough funding to make the transfer to the Los Angeles Facilities Fund.

Figure 11
Financial Resources the State Bar of California Used to Purchase Its Los Angeles Building
(In Millions)



Sources: California State Auditor’s analysis of data from the State Bar of California’s (State Bar) accounting system and the State Bar’s audited financial statements for 2012 and 2013.

* The State Bar must maintain \$4.6 million as a debt service reserve fund per the loan agreement, which it maintains in its Public Protection Fund.

† According to the State Bar, the total cost of the building as of December 2014 was \$74.6 million. However, it was unable to reconcile the difference between that amount and the \$76.6 million we cited above. Therefore, we used the amount reported in the audited financial statements.

‡ The Administration of Justice Fund includes the Legislative Activities Fund, Elimination of Bias and Bar Relations Fund, and Legal Education and Development Fund.

In a January 2015 report to the board, the State Bar acknowledged that it made excessive fund transfers totaling \$5.8 million for the purpose of purchasing the Los Angeles building, including transferring board-restricted funds. It specifically cited its \$1.5 million transfer from the Admissions Fund and a \$4.3 million transfer from the Administration of Justice Fund, which it considered to be a loan. The acting executive director stated that the \$1.5 million transfer from the Admissions Fund was justified because a large portion of admission staff works in the Los Angeles building. However, the acting executive director could not explain how the State Bar determined that the \$1.5 million was a reasonable amount to transfer, nor could he provide analysis to support the other transfers. He indicated that the former chief financial officer—who no longer works at the State Bar—was more knowledgeable about the fund transfers. Subsequently, after we began inquiring about these transfers, the State Bar repaid the \$4.3 million to the Administration of Justice Fund in April 2015, which it made effective as of December 2014. The acting general counsel explained that the State Bar repaid the funds to avoid the interest costs for the remaining term of the loan.

Irrespective of the State Bar’s explanations for the fund transfers, it does not have a policy to prevent it from transferring revenues to unrelated funds or using them for unrelated purposes. As described in the Introduction, except for the general fund, each of the State Bar’s funds either has a specific board-defined purpose or acts as a repository for revenues collected for a specific statutory purpose. We believe sound policies and procedures to use transferred revenues only for their originally intended purpose would prevent the questionable uses of funds. The State Bar plans to develop these policies and procedures by July 2015.

The State Bar also made a troubling financial decision related to the Los Angeles building purchase when it used \$4.6 million from its Public Protection Fund as collateral for the \$25.5 million loan it used to buy the building. The State Bar created the Public Protection Fund to assure continuity of its attorney discipline system and other essential public protection programs in the event that state law should ever cease to authorize it to collect membership fees. Currently, the State Bar’s 15-year loan agreement requires it to maintain a \$4.6 million deposit as a debt service reserve—which the State Bar maintains in the Public Protection Fund—until it repays the loan. Because this fund had a \$6.5 million fund balance as of December 2014, only \$1.9 million would have been available at that time to support the operation of the discipline system should the State Bar have been unable to assess fees for a year. Further, according to the acting general counsel, if the State Bar were to default on the \$25.5 million loan for the Los Angeles building, it would lose the \$4.6 million in the Public Protection Fund—money that is critical to ensuring public protection related to the attorney discipline system in the event of a financial emergency.

The State Bar used \$4.6 million from its Public Protection Fund as collateral for the purchase of the Los Angeles building—money that is critical to ensuring public protection related to the attorney discipline system in the event of a financial emergency.

In its April 2012 report to the Legislature on its preliminary plans for Southern California facilities, the State Bar underestimated the total cost of the purchase and renovation of the Los Angeles building by more than \$50 million.

The State Bar Did Not Sufficiently Justify Its Decision to Purchase the Los Angeles Building

The State Bar might have been able to justify the purchase of its Los Angeles building by performing a thorough cost-benefit analysis to demonstrate that purchasing the building was more financially beneficial than continuing to lease space. However, it did not perform a cost-benefit analysis before receiving board approval to purchase the building, and its April 2012 report to the Legislature on its preliminary plans for Southern California facilities underestimated the total cost of the purchase and renovation by more than \$50 million.

Moreover, the State Bar did not adequately consider whether the purchased building would meet its long-term staffing needs. In April 2012 the State Bar estimated that its Los Angeles operations could be housed in a 100,000- to 105,000-square-foot building, less than the 121,000 square feet it was occupying at the time. The building the State Bar ultimately purchased was 111,000 square feet. As we discussed in Chapter 1, the chief trial counsel told us that she would like to hire more staff in Los Angeles, but along with budget and recruiting difficulties, there is not adequate space in the new building to accommodate additional staff.

According to the acting executive director, the State Bar wanted to use the special building fee assessment to purchase a new building, if feasible. As previously discussed, this building assessment generated \$10.3 million in revenue. The legislation adopting the \$10 building assessment required that the State Bar rebate its members the full amount collected if it did not enter into an agreement to purchase a new building in Southern California by January 2014. We would have expected the State Bar to ask for an extension on this required rebate rather than purchasing a building that it did not have sufficient cash to purchase; however, the acting general counsel did not know whether the State Bar previously asked for an extension.

The State Bar's decision to purchase the Los Angeles building also substantially limited its ability to provide a rebate to members to reduce its fund balances. Reducing the State Bar's fund balances through member rebates has historical precedent: The Legislature required the State Bar to rebate each member \$10 in 2012, for a total of approximately \$2.2 million, because the State Bar's general fund had a large surplus. After purchasing the Los Angeles building, the State Bar's capital assets increased from \$32 million to \$102 million, or 219 percent. At the same time, its unrestricted fund balance for all funds decreased from \$29.7 million to \$8.5 million, or 71 percent, from 2011 through 2013. The unrestricted balance—prior to the decrease—may have otherwise been available to rebate to the State Bar's members.

The State Bar Failed to Implement Its IT Strategic Plan

The fund transfers to the Los Angeles Facilities Fund may have also hindered the State Bar from implementing all elements of its IT strategic plan. The State Bar's 2012–16 strategic plan (strategic plan) stated that the State Bar would retire and replace all four of its main software applications, including its Discipline Case Tracking System, by 2016. In total, the State Bar listed six IT projects in its strategic plan, which the text box describes, for an estimated cost of \$9.6 million. Between 2011 and 2013 the State Bar used funds collected from a \$10 fee assessment authorized by the Legislature to fund those IT projects and to upgrade IT infrastructure. The IT fee generated \$5.2 million over those three years. In addition, in 2012 the State Bar transferred \$1.2 million from its former Discipline Fund to pay for the Office of the Chief Trial Counsel's case management system, \$1 million from the Admissions Fund to pay for the admissions system, and \$944,000 from the general fund to pay additional costs. In total, these sources provided the State Bar with \$8.3 million—about \$1.3 million less than the \$9.6 million it needed to fully fund the IT strategic plan.

However, the State Bar did not use some of these funds for their designated purposes. Rather, it used \$2.4 million in funds it originally designated for its new member system and IT contingencies to pay for a technology package of audio-visual equipment, a security system, and an office acoustical system at the Los Angeles building. The documents that the State Bar provided to the board related to this transfer do not include any justification for changing the use of these funds. According to the acting executive director, the State Bar has delayed the new member system, in part, until it identifies another funding source. The senior director of the State Bar's Office of Information Technology (senior IT director) stated that the State Bar has not completed the IT strategic plan for a variety of reasons, including changes in leadership and project management since 2012. Further, he stated that the State Bar encountered scope changes on the first project it started because the project was larger than estimated. The senior IT director noted that the Office of the Chief Trial Counsel's case management system—one of the State Bar's highest IT priorities—has suffered from a variety of delays

Technology Improvement Projects Included in the State Bar of California's 2012–16 Strategic Plan

Office of the Chief Trial Counsel's Case Management System
Replacement of the Office of the Chief Trial Counsel's legacy prosecutorial application with a fully integrated commercial off-the-shelf system that allows the State Bar of California (State Bar) to better manage discipline cases.

State Bar Court's Case Management System
Replacement of the State Bar Court's legacy case management system with a fully integrated commercial off-the-shelf system that allows the State Bar Court to better manage court cases.

Admissions Information Management System
Replacement of the Office of Admissions' legacy examination and grading system with a fully integrated commercial off-the-shelf system that tracks accommodation petitions; moral character determinations; and communications with applicants, institutions, and others.

Member Records and Billing System
Replacement of the legacy membership database that will contain complete member profiles for each attorney on the State Bar's member association list, including all membership dues, fees, discipline history, active and inactive status history, and the sections in which the attorney is enrolled.

Content and Document Management System
An electronic filing system that will support a near paperless discipline system and data exchange between State Bar units.

Online E-Portal
Upgrades to the State Bar's website and intranet to ensure that all of its information and online services are in readily accessible formats.

Sources: State Bar's 2013 report to the Legislature, *Report of the State Bar on Information Technology*; its February 2012 *State Bar Five Year Strategic Plan 2012–16*; and the State Bar's senior director of information technology.

because of scope, leadership, and project management changes. He believes that the State Bar will complete the Office of the Chief Trial Counsel's case management system in 2016.

As a result of these decisions, the State Bar does not have enough remaining funds to complete the six IT projects it identified in its strategic plan. As shown in Table 9, as of December 2014 the State Bar had not completed any of the projects and had spent only a total of \$1.52 million on them, even though it began collecting the IT fee over four years ago. The acting executive director stated that the State Bar is working on a funding plan to ensure that it completes the IT projects. As of December 2014 the State Bar had only \$5.81 million available for IT projects, but needs at least \$8.14 million to complete all six proposed IT projects.

Table 9
State Bar of California's Total Information Technology Expenditures, Planned Expenditures, and Remaining Funds
(Dollars in Millions)

2012-16 STRATEGIC PLAN COSTS	PROJECT BUDGET	ACTUAL EXPENDITURES AS OF DECEMBER 2014	MINIMUM PROJECT COSTS REMAINING	PERCENTAGE OF BUDGET REMAINING	PERCENTAGE OF WORK REMAINING*
Office of the Chief Trial Counsel's Case Management System	\$1.90	\$0.67	\$1.23	65%	60%
State Bar Court's Case Management System	1.20	0.13	1.07	90	70
Admissions System	2.00	0	2.00	100	95
Member Records and Billing System	1.90	0	1.90	100	100
Systems Integration	0.30	0.36	0	0	20
Content and Document Management System	0.90	0.36	0.54	60	40
Online E-Portal	0.40	0	0.40	100	95
Contingency [†]	1.00	0	1.00	100	NA
Totals	\$9.60	\$1.52	\$8.14	85%	
REMAINING FUNDS AVAILABLE					
			\$4.60		
			1.21		
			\$5.81		

The State Bar of California (State Bar) needs at least an additional \$2.33 million to complete the projects in its information technology (IT) strategic plan.

Sources: State Bar's accounting system and its February 2012 *State Bar Five-Year Strategic Plan 2012-16*.

NA = Not applicable.

* These percentages are estimates from the State Bar's senior director of IT, as of April 2015.

† The Contingency budget is a reserve the State Bar included in the budget to accommodate variations in project costs.

The State Bar Did Not Adequately Communicate Its Financial Decisions to the Board or the Legislature

The ultimate responsibility for ensuring that the State Bar spends funds prudently rests with the board. We, therefore, would have expected the board to ensure that the State Bar's decision to purchase the Los Angeles building was justified and financially beneficial. However, the State Bar did not adequately communicate its financial decisions to the board, limiting its ability to provide appropriate oversight. Further, the State Bar did not fully communicate its financial decisions to the Legislature, and as a result, decision makers lacked the information necessary to understand the impact of the purchase of the Los Angeles building.

The State Bar Did Not Give Its Board Adequate Information to Understand the Full Cost of the Los Angeles Building

The State Bar did not provide its board with enough information to understand the costs and benefits of purchasing or leasing a new building, to identify the full cost of the Los Angeles building, or to understand the fund transfers that the State Bar ultimately made to purchase the Los Angeles building. Although state law and board rules give the board the authority to make financial and property decisions related to the State Bar—including transferring funds among the State Bar's various funds—the board cannot make informed, thoughtful decisions if it does not have adequate information.

According to the director of general services (services director) for the State Bar, who acted as the project manager of the Los Angeles building purchase and renovation, the State Bar presented the board only with options to buy a building rather than also including options to lease space. Our review of the State Bar's communication with its board supports the services director's statement. Specifically, the State Bar's communication with its board about the Los Angeles building included the following:

- **August 2012:** The board's operations committee authorized staff to proceed with an offer to purchase the Los Angeles building, not to exceed a \$50 million purchase price and a total cost of \$70 million to acquire, renovate, and improve the property for tenancy.
- **September 2012:** In a closed session the State Bar presented the board's operations committee with cost comparisons for purchasing three different buildings in downtown Los Angeles. This presentation estimated that the State Bar would need no more than \$15 million for tenant improvements.

The State Bar presented the board only with options to buy a building rather than also including options to lease space.

However, although the presentation asserted that leasing would cost about twice the annual operating costs of purchasing a new building, the State Bar did not include any actual cost estimates of future leasing options. Moreover, this cost comparison was not presented to the board until a month after it had authorized the State Bar to purchase the selected building in Los Angeles and had approved the building's purchase price and budget for tenant improvements in August 2012.

- **October 2012:** According to the services director, the State Bar gave the full board a presentation similar to the one presented to the board's operations committee and the board amended the State Bar's budget to include the Los Angeles building purchase and estimated tenant improvements costs. However, this was a month after the State Bar completed the building purchase.

Thus, the information presented to the board did not support the notion that purchasing a building would be less expensive than leasing one. Further, the State Bar's initial estimate that tenant improvements would cost no more than \$15 million was incorrect. By 2015 this cost had increased to nearly \$21 million due to refinement of the initial estimate and the State Bar's decision to make technology upgrades to the Los Angeles building.

The State Bar did not always provide the board with enough information to make informed decisions about the fund transfers it made to purchase the Los Angeles building.

Moreover, the State Bar did not always provide the board with enough information to make informed decisions about the fund transfers it made to purchase the Los Angeles building. Although our analysis confirmed that the board approved the transfers to the Los Angeles Facilities Fund, on one occasion the State Bar did not fully inform the board about which funds it transferred. Specifically, in January 2013 the board approved a resolution allowing the State Bar to make transfers of up to \$4.5 million to the Los Angeles Facilities Fund from a fund it called the "Administration of Justice Fund." However, the State Bar instead transferred \$4.3 million from three different funds: \$782,000 from the Elimination of Bias and Bar Relations Fund, \$3.5 million from the Legal Education and Development Fund, and \$52,000 from the Legislative Activities Fund. According to the former budget director, the State Bar combines these three funds under the umbrella category of Administration of Justice Fund for budget purposes because the three funds are for substantially similar uses. However, the board policy manual that defines each of the State Bar's funds does not indicate that the State Bar combined these funds into an Administration of Justice Fund. Based on the documentation the State Bar provided to the board, the board would not know which funds the State Bar used to purchase the Los Angeles building.

As described earlier, in January 2015 State Bar staff acknowledged that some of the transfers to the Los Angeles Facilities Fund involved board-restricted funds and suggested that the board reverse the transfers. For example, the State Bar suggested that the board reverse a \$1.5 million transfer from the Admissions Fund to the Los Angeles Facilities Fund that it approved in 2012. The board had previously restricted the spending of funds from the Admissions Fund to expenses related to administering the requirements for admission to the practice of law in California. According to the acting executive director, the staff's suggestion to reverse the transfer caused the board members to question the State Bar's lack of transparency when reporting to the board as opposed to the propriety of the fund transfer, and consequently the board had not taken any action to reverse the transfer as of April 2015. Both the acting executive director and the vice president of the board stated that the board can supersede the restrictions it places on funds. However, the meeting minutes do not provide evidence that the board openly discussed superseding a previous fund restriction when approving the transfer from the Admissions Fund.

Further, the board needs to have full and complete information to make informed financial decisions. According to the current board treasurer, the most recent annual budget proposal the State Bar submitted to the board in January 2015 was inadequate because it lacked cost-center-level detail. He explained that the board directed the State Bar to submit a more detailed budget, similar to what the State Bar submits to the Legislature, because the budget the board approves should be comparable to the budget the State Bar provides to the Legislature. In response to the board's direction, in March 2015 the State Bar submitted to the board a more detailed budget with expenditures by cost center. Also in March 2015, the board's executive committee released for public comment a draft rule adopting an open records requirement for the State Bar, including financial records. According to the board treasurer, this rule would allow public access to the State Bar's financial records, which the public does not currently have.

The State Bar Did Not Fully Inform the Legislature of the Purchase of the Los Angeles Building

When it approved the \$10 increase in State Bar fees in 2008 so that the State Bar could acquire a building in Southern California, the Legislature required the State Bar to submit annual reports over the five-year period the fee increase was in place. Specifically, state law required the State Bar to report annually to the Legislature its preliminary plans for determining whether to construct, purchase, or lease a new office location in Southern California. However, the State Bar did not appropriately apprise the Legislature of its plan

In January 2015 State Bar staff acknowledged that some of the transfers to the Los Angeles Facilities Fund involved board-restricted funds and suggested that the board reverse the transfers.

The State Bar could offer no evidence that it informed the Legislature of its decision to purchase the Los Angeles building, even though state law required it to do so.

to purchase the Los Angeles building or that the purchase and other related costs had significantly increased. In its April 2012 report to the Legislature—four months before the board approved the purchase of the building—the State Bar estimated that the Los Angeles building would cost \$26 million for the purchase and renovation of the building and relocation of staff. The report cited three potential funding sources for the building’s purchase: approximately \$10.1 million in revenue collected from the \$10 special building assessment included on its members’ annual fee statements, a \$16 million long-term loan, and an unstated amount from the sale of a parking lot the State Bar owned in Los Angeles. The 2012 report indicated that “it appears likely that the proceeds [of the parking lot sale] would enable the State Bar to extinguish most or all of the remaining loan balance and thus own its Los Angeles building outright.” After purchasing the Los Angeles building, the State Bar submitted two reports to the Legislature in February 2013 and 2014 that mentioned the building purchase; however, neither identified that the \$26 million estimate it had earlier reported to the Legislature had soared to \$76.6 million.

Most troubling is the fact that the State Bar could offer no evidence that it informed the Legislature of its decision to purchase the Los Angeles building, even though state law required it to do so. Specifically, in addition to requiring it to report annually on preliminary plans, state law required the State Bar’s board to submit its proposed decision and cost estimate to the Legislature’s Assembly and Senate judiciary committees at least 60 days before entering into any agreement for the purchase of a building in Southern California. The acting general counsel confirmed that the State Bar did not submit the required written report, asserting that it instead reported the proposed purchase verbally to several legislative staff. The acting general counsel also explained that the State Bar provided the legislative staff with a printed presentation showing the Los Angeles building the State Bar had chosen and other cost options, but he was unable to locate a copy of this handout.

Moreover, the State Bar did not accurately or fully communicate the status of the IT strategic plan to the Legislature. State law required that the State Bar report to the Legislature on the use of its \$10 IT special assessment fee by April 1 of each year. However, the April 2013 report did not accurately reflect the actual status of the State Bar’s IT projects. For example, the State Bar reported to the Legislature that it had not started the member records and billing system (member system) replacement project but planned to complete it by 2015. However, three months later, the State Bar requested that the board approve a \$2.4 million fund transfer from the Technology Improvements Fund by redirecting funds that it had “earmarked for the replacement of the [member system] in 2015”

and IT contingencies to pay for technology improvements for the new Los Angeles building. According to board documents, making this transfer “could delay the replacement of that system if the [State Bar] is unable to identify other resources for the project.”

In addition to the reports related to the \$10 IT assessment fee, state law required the State Bar to report annually on the status of its strategic plan implementation. However, in its 2014 report to the Legislature on the strategic plan’s status, the State Bar did not communicate that it had redirected \$2.4 million in funding designated to develop the member system and IT contingencies to pay for technology improvements for the new Los Angeles building, as discussed previously. Instead, the 2014 report stated that the State Bar still intended to fully implement the new member system. According to the senior IT director, the State Bar has not yet sought new funding sources for the member system because it does not plan to begin its development until after completion of three other IT systems: the Office of the Chief Trial Counsel’s case management system, the State Bar Court’s case management system, and the admissions system. As a result, it is unclear when it will replace the existing member system. Moreover, the State Bar’s 2013 and 2014 reports did not include how much funding the State Bar had available and how much it had spent to date on each IT project.

In its 2014 report to the Legislature, the State Bar did not communicate that it had redirected \$2.4 million in funding designated to develop the member system and IT contingencies to pay for technology improvements for the Los Angeles building.

The State Bar’s Fund Balances Indicate that Revenue From Annual Membership Fees Exceeded the State Bar’s Operational Costs

The State Bar’s fund balances over the last six years indicate that the revenues from annual membership fees exceeded the State Bar’s operational costs. As we discussed earlier in this chapter, using the accumulated fund balances and other sources, the State Bar purchased a \$76.6 million building in Los Angeles, even though the State Bar did not sufficiently justify the purchase. Although that decision decreased the State Bar’s unrestricted fund balance from \$29.8 million in 2011 to \$8.6 million in 2013, it is again beginning to increase: the unrestricted balance grew from \$8.6 million in 2013 to \$20.2 million in 2014. As shown in Table 3 on page 14, the State Bar maintained a combined fund balance of approximately \$138 million in 2014, representing its 26 funds—the equivalent of about one year of its operating expenditures.

This trend suggests a continuous incongruence between the State Bar’s revenues and expenditures. A potential explanation is that the level of the State Bar’s membership fee has not taken into account the growth in the number of State Bar members. Specifically, the State Bar’s total expenditures have decreased by 4 percent over the past six years, while its membership fee revenues have increased steadily by about 12 percent. Even though the membership fee

If the number of members joining the State Bar continues to grow, the growth in revenues from the membership fee will likely continue to outpace the growth in expenditures, increasing fund balances.

increased only slightly for active members, rising from \$410 to \$420 over the same time period, the outpacing of fee revenues collected compared to expenditures is more likely the result of a 10 percent increase in the number of paying State Bar members—from 205,000 members in 2009 to 226,000 in 2014. If the number of members joining the State Bar continues to grow, the growth in revenues from the membership fee will likely continue to outpace the growth in expenditures. In turn, the State Bar's fund balances will also continue to grow.

Maintaining a reasonable fund balance would allow the State Bar to ensure that it charges its members appropriately for the services they receive. Other than a policy its board adopted in November 2013 that instituted a general fund policy of two weeks' operating expenditures, which we believe is too low given the uncertainty of its membership fee revenue each year, the State Bar does not have policies or procedures that justify or govern its total fund balances. However, according to its former acting chief financial officer, the State Bar is currently developing these policies. The Government Finance Officers Association (GFOA)—a professional association of public officials dedicated to enhancing and promoting the professional management of government financial resources—cited a general best practice related to fund balances that could benefit the State Bar. Specifically, the GFOA noted that an appropriate fund balance in an entity's general fund should be no less than two months of operating revenues or expenditures.

To provide the State Bar with an example of what its fund balances should be based on the GFOA guidance, we computed the equivalent of two months' worth of expenditures the State Bar averaged over our six-year audit period and compared the result to the State Bar's 2014 fund balances. Because the State Bar's 26 funds generally serve different purposes and are funded from different sources, we conducted this analysis by grouping these funds into the following four general categories based on their purpose and funding source:

1. Funds that support the State Bar's general operating activities, including its general fund, the San Francisco Building Fund, and the Technology Improvements Fund.
2. Funds that provide a public benefit, such as indigent services and attorney assistance programs.
3. Funds that are supported by a specific fee or their own revenue sources apart from the annual membership fee, such as the admission fee for the State Bar examination.

4. Funds that are either legally restricted or otherwise unavailable, such as the Client Security Fund and Los Angeles Facilities Fund. Some of these funds we considered unavailable because they are invested in capital assets.

As we show in Table 10, the State Bar’s 2014 fund balances exceed the GFOA’s recommended fund balances in all of the categories, and the State Bar maintains the majority of the excess fund balances in the fourth category of legally restricted funds or funds that are otherwise unavailable because they are invested in capital assets.

Table 10
Four Categories of the State Bar of California’s Funds and Their Fund Balances
 (Dollars in Millions)

	CATEGORY 1 GENERAL OPERATING ACTIVITIES	CATEGORY 2 INDIGENT CLIENT SERVICES AND ATTORNEY ASSISTANCE	CATEGORY 3 FUNDS SUPPORTED BY SPECIFIC FEES OR OTHER REVENUE SOURCES	CATEGORY 4 LEGALLY RESTRICTED OR OTHERWISE UNAVAILABLE
2014 actual fund balance	\$22.9	\$6.7	\$20.9	\$87.5
Best practice fund balance	10.8	3.4	4.6	3.9
Difference	(12.1)	(3.3)	(16.3)	(83.6)
Number of months of operating expenses	4 months	4 months	9 months	NA
Total fund balance available, categories 1 through 3	(\$31.7)			

Sources: California State Auditor’s analysis of the State Bar of California’s audited financial statements for 2009 through 2014.
 NA = Not applicable.

Based on our analysis, we believe the State Bar needs to evaluate the revenue it receives and the services it provides for the first three categories. In particular, the first category—general operating activities—exceeds the recommended fund balance by \$12.1 million, and we believe this presents an opportunity for the State Bar to work with the Legislature to reassess the membership fees to better align with the State Bar’s actual operating costs so that the fund balances do not continue to increase.

The State Bar indicated that it has planned uses for the fund balances in the first category. For example, the acting executive director stated that the State Bar has approximately \$7.3 million in building improvements planned over the next four years for its San Francisco building, including fire and life safety system upgrades; elevator modernization; and heating, ventilation, and air conditioning upgrades. Taking into consideration the State Bar’s planned projects, the acting executive director stated that the State Bar expects a deficit in available funds in the first category. Be that as it may, it is likely the State Bar would have been able to fully fund

these improvements if it had not used some of its funds that support operating activities for the purchase and renovation of its Los Angeles building, as we discussed earlier in this chapter.

The fund balance for the second category indicates that the State Bar may be able to expand the services it currently provides that serve a public benefit. However, the acting executive director does not believe that this category contains excess funds that could potentially be available for additional programs—unless the revenue sources increase. Specifically, the acting executive director noted that a portion of the funds in this category are devoted to administering grants that help fund legal services programs serving indigent Californians, and to the extent that these revenue resources increase, the State Bar will administer the increased amount. In addition, he stated that funds in this category support the Lawyer Assistance Program and relations with local, national, and international bar associations. Nevertheless, this category contained a \$6.7 million fund balance at the end of 2014—\$3.3 million over the GFOA's recommended best practice amount.

The fund balance for the third category suggests the State Bar may have opportunities to decrease the amounts it charges members for specific services or to expand the services it provides with these funds. In particular, this category exceeds the recommended fund balance by \$16.3 million, or four and a half times the recommended best practice amount. Again, the State Bar does not believe it has excess funds in this category. For example, the acting executive director stated that the Admissions Fund—which receives support from various sources including applicant fees, fees for study aids, and interest income—has no excess funds because the State Bar directs them to the admissions process and the cost of this process continues to rise. However, because the State Bar used some of the funds in this third category to purchase the Los Angeles building, it may again choose to use them for purposes other than what the acting executive director described.

Even though the State Bar disagrees that it has excess available revenue in these three categories, the State Bar needs to conduct a thorough analysis of its revenues, operating costs, and future operational needs to support this assertion. However, as we described in Chapter 1, the State Bar has not conducted a critical piece of this analysis—a workload analysis—to determine the level of staffing needed in its discipline system. If the State Bar conducts a workload analysis that concludes it needs more staff to operate the discipline system, the State Bar should devote more of its monetary resources to accomplishing that goal. The State Bar should also examine its use of contractors and temporary employees, which provide more staffing flexibility but can be more costly than employing permanent staff, to ensure that those expenditures are necessary and justified.

If the State Bar conducts a workload analysis that concludes it needs more staff to operate the discipline system, it should devote more of its monetary resources to accomplishing that goal.

Because the Legislature must authorize the State Bar to collect membership fees, which fund a significant portion of its operations on an annual basis, the type of long-term planning we suggest is challenging. As mentioned in the Introduction, more than half of the State Bar's general operating activities—including its discipline functions—are financed through membership fees. According to the acting executive director, the reality of the State Bar's funding creates problems for long-term planning, staff stability, and staff recruiting because the State Bar has no assurance of future annual revenues beyond the existing year, which in turn demands that the State Bar have funds on hand to cover a loss or decrease in funding. According to the acting executive director, any regular funding cycle that would give the State Bar certainty of funding for a multiyear period would enhance its ability to engage in longer-term planning on staffing levels and other operational cost needs.

Recommendations

To ensure that it spends revenues from the membership fee appropriately, the State Bar needs to implement policies and procedures to restrict its ability to transfer money between funds that its board or state law has designated for specific purposes.

To ensure that it can justify future expenditures that exceed a certain dollar level, such as capital or IT projects that cost more than \$2 million, the State Bar should implement a policy that requires accurate cost-benefit analyses comparing relevant cost estimates. The policy should include a requirement that the State Bar present the analyses to the board to ensure that it has the information necessary to make appropriate and cost-effective decisions. In addition, the State Bar should be clear about the sources of funds it will use to pay for each project.

To justify any future special assessment that the State Bar wants to add to the annual membership fee, the State Bar should first present the Legislature with the planned uses for those funds and cost estimates for the project for which the State Bar intends to use the special assessment.

To ensure that it adequately informs the Legislature about the status of the IT projects in its strategic plan, the State Bar should annually update the projects' cost estimates, their respective status, and the funds available for their completion.

To ensure that the State Bar's fund balances do not exceed reasonable thresholds, the Legislature should consider putting a restriction in place to limit its fund balances. For example, the Legislature could limit the State Bar's fund balances to the equivalent of two months of the State Bar's average annual expenditures.

To provide the State Bar with the opportunity to ensure that its revenues align with its operating costs, the Legislature should consider amending state law to, for example, a biennial approval process for the State Bar's membership fees rather than the current annual process.

To determine a reasonable and justified annual membership fee that better reflects its actual costs, the State Bar should conduct a thorough analysis of its operating costs and develop a biennial spending plan. It should work with the Legislature to set an appropriate annual membership fee based upon its analysis. The first biennial spending plan should also include an analysis of the State Bar's plans to spend its current fund balances.

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: June 18, 2015

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

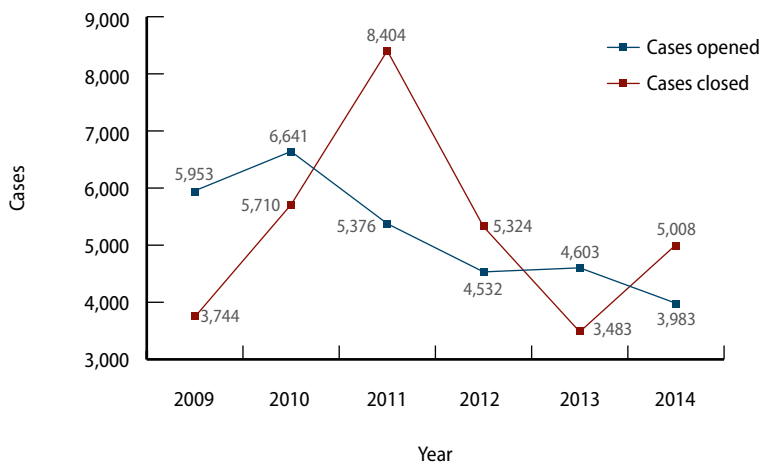
Appendix

DISCIPLINE CASES THAT THE STATE BAR OF CALIFORNIA OPENED AND CLOSED FROM 2009 THROUGH 2014

The State Bar of California (State Bar) established a discipline system that includes receiving, investigating, and prosecuting complaints and, if warranted, recommending sanctions against attorneys found culpable of misconduct. The Office of the Chief Trial Counsel’s intake unit evaluates each complaint it receives to determine whether the complaint should be closed, resolved informally, or forwarded for investigation and possible prosecution. We show the number of complaints opened and closed by the intake unit in Figure 3 on page 10.

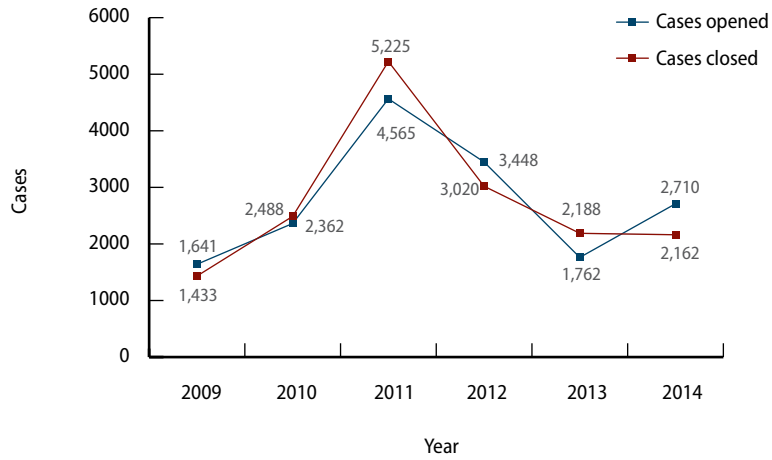
Once a complaint proceeds to an investigation, investigators from the Office of the Chief Trial Counsel interview witnesses, collect documents, and develop evidence. At the conclusion of each investigation, an attorney decides whether to close the complaint or resolve it in another manner, including an informal confidential resolution or the filing of a *Notice of Disciplinary Charges* in the State Bar Court. Figures A.1 and A.2 show the number of investigation cases opened and closed and the number of cases opened and closed in the trial unit from 2009 through 2014.

Figure A.1
 State Bar of California’s Investigation Cases Opened and Closed
 2009 Through 2014



Source: California State Auditor’s analysis of data obtained from the State Bar of California’s Discipline Case Tracking System.

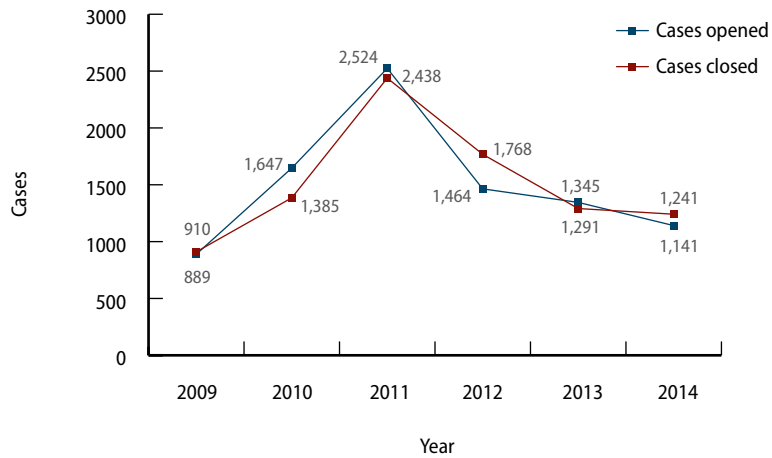
Figure A.2
Cases Opened and Closed in the State Bar of California's Trial Unit
2009 Through 2014



Source: California State Auditor's analysis of data obtained from the State Bar of California's Discipline Case Tracking System.

After the filing of the *Notice of Disciplinary Charges*, the State Bar adjudicates the case in the State Bar Court. The State Bar Court has the authority to impose public and private reprovls. In cases involving disciplinary issues more serious than reprovls, the State Bar Court recommends appropriate disciplinary actions to the California Supreme Court for review and adoption. The number of cases opened and closed in the State Bar Court peaked at around 2,500 in 2011 and has generally declined through 2014, as shown in Figure A.3.

Figure A.3
Cases Opened and Closed in the State Bar Court
2009 Through 2014



Source: California State Auditor's analysis of data obtained from the State Bar of California's Discipline Case Tracking System.



THE STATE BAR OF CALIFORNIA

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June 3, 2015

Elaine M. Howle, State Auditor*
Bureau of State Audits
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Re: State Bar of California Response to State Audit Report 2015-030

Dear Ms. Howle:

Please find enclosed the responses of the State Bar of California to the State Audit Report No. 2015-030.

In Attachment A are the State Bar's responses to each of the 15 recommendations in the report. Attachment B contains the State Bar's comments and observations to some of the details in the report. The State Bar agrees generally with all of the recommendations, while as noted in Attachment B, there may be disagreements with some of the details. ①

Commencing with the 2010 annual discipline report, the former executive director assumed executive oversight of the annual report in order to provide greater transparency and to ensure accurate performance reporting of the State Bar's discipline system to our stakeholders. In 2011, substantial changes were made to the State Bar's backlog goal and management structure of the Office of Chief Trial Counsel. Since 2012, the current chief trial counsel has made a series of operational changes designed to improve the efficiency and quality of State Bar prosecutions. Further, this year, the Board of Trustees commenced a review of its fiscal controls and procedures to assure greater financial accountability and that the State Bar's public protection programs are reasonably and sufficiently funded. The recommendations in your report will help to advance these efforts.

Consistent with your request, the State Bar's responses, as well as this cover letter, is being submitted in an encrypted secured email to Kathleen Fullerton, Team Leader (KathleenF@auditor.ca.gov), in a PDF format.

Thanks to Ms. Fullerton and her team for their work on the report.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Hawley".

Robert A. Hawley
Deputy & Acting Executive Director
The State Bar of California

* California State Auditor's comments appear on page 69.

ATTACHMENT A

RESPONSES TO RECOMMENDATIONS

Chapter 1

Recommendation No. 1

To ensure that its backlog does not adversely impact the quality of the discipline it imposes on attorneys who fail to fulfill their professional responsibilities, the State Bar should adhere to its quality control processes. Further, it should take steps to prevent its management or staff from circumventing those processes, such as requiring the presentation to the board of any proposed changes to quality control.

Response to Recommendation No. 1

The State Bar agrees with this recommendation. The board will adopt appropriate oversight policies to implement this recommendation and to prevent a repetition of the situation identified in the report when the audit and review unit was eliminated and its quality control processes were circumvented without the knowledge of the board.

Recommendation No. 2

To ensure it consistently counts and reports it[’s] backlog of disciplinary cases, the State Bar and the Legislature should work together to determine what cases the State Bar should include in its backlog. For example, one method of calculating the backlog would be to include every case that affects public protection that the State Bar does not resolve within six months from the time it receives a complaint. The Legislature should then amend the state law that currently defines how the State Bar should present the backlog in its annual discipline report. In the interim, the State Bar should comply with our 2009 recommendation to fully disclose the types of cases it includes and excludes from its backlog calculation, as well as any methodology changes from the prior year.

Response to Recommendation No. 2

The State Bar agrees with this recommendation. The definition of the backlog has remained largely unchanged since it was first adopted in 1986. At that time it was “the number of complaints as of December 31 of the preceding year, which were pending beyond six months after receipt without dismissal, admonition, or the filing of a notice [of disciplinary charges].” In 2001, when the definition was moved from section 6094.5 to section 6086.13 of the Business and Professions Code, the phrase “including, but not limited to” was added. (Stats. 2001, ch. 745 (Sen. Bill. 1191), §§ 3, 4, eff. Oct. 12, 2001.) Since 2011, the State Bar significantly changed the format and its methodology for reporting the backlog in its annual discipline report for the preceding calendar year. The most significant

changes occurred with the reports for 2010 and 2013, when other types of cases not previously counted were added. A review of the types of cases counted and the benchmark for measuring the timeliness of processing of those cases is appropriate. Meanwhile, to fully disclose the types of cases counted, the State Bar will note any change in methodology and its effect in the respective data tables, as well as continuing to include that information other parts in its annual discipline report.

Recommendation No. 3

To provide clear and reliable information to the Legislature, the governor, and the public, the State Bar should define how it calculates case-processing speeds in its annual discipline report and report this metric using the same method each year. If the State Bar elects to continue presenting the median case-processing time, it should also present the average case-processing time. Finally, it should disclose any methodology changes from the methodology used in the prior year.

Response to Recommendation No. 3

The State Bar agrees with this recommendation.

Recommendation No. 4

To assure the Legislature and the public that the data in the State Bar's annual discipline reports are accurate, the board should implement controls over the accuracy, consistency, and sufficiency of the data gathered and methods used to compute the information included in the annual discipline report. For example, the board could expand the role of an existing board committee—such as the regulation and discipline committee—to include a review of the annual discipline report and the underlying discipline statistics.

Response to Recommendation No. 4

The State Bar agrees with this recommendation.

Recommendation No. 5

To align its staffing with its mission, the State Bar should engage in workforce planning for its discipline system. The workforce planning should include the development and formal adoption of an appropriate backlog goal, an assessment of the staffing needed to achieve that goal while ensuring that the discipline process is not compromised, and the creation of policies and procedures sufficient to provide adequate guidance to the staff of each unit within the discipline system.

Response to Recommendation No. 5

The State Bar agrees with this recommendation.

Recommendation No. 6

To provide independent oversight of the Office of Chief Trial Counsel and assurance that it properly closes its case files, the audit and review unit should report to the executive director rather than to the chief trial counsel.

Response to Recommendation No. 6

② The State Bar agrees generally with this recommendation to ensure that the Office of Chief Trial Counsel is complying with established policies and procedures in its review and closing of complaints. There is great value in making the audit function independent of the Office of Chief Trial Counsel. A separate, bar-wide audit unit – to conduct analysis and internal audits of the Office of Chief Trial Counsel and other State Bar operations – may be a more appropriate mechanism for providing oversight. However, housing this function in the office of the executive director and including the authority to conduct “second-looks” at closed complaints to direct that they be reopened is problematic. Under existing law, the chief trial counsel serves under the regulation and discipline oversight committee of the board and not under the direction of the chief executive officer. The State Bar’s former complainants grievance panel had the authority to review and recommend the reopening of cases, but this process created delays and frustrations for complainants. In 1995, the Legislature repealed the panel and permitted the State Bar to adopt Rule 2601 of the Rules of Procedure delegating the discretion to reopen cases back to the Office of Chief Trial Counsel. The State Bar will undertake to develop an audit function consistent with this recommendation that also fits the statutory and operational structure of the State Bar.

Recommendation No. 7

To ensure that the audit and review unit's random audits of closed case files provide an effective oversight mechanism, the State Bar should follow its policy to conduct and record meetings and trainings related to the audit report's recommendations. Additionally, the audit and review unit should oversee the retrieval of cases files for audit to ensure that it maintains control over its random selection of cases.

Response to Recommendation No. 7

The State Bar agrees with this recommendation.

Recommendation No. 8

To ensure that the review function within the audit and review unit continues to provide a means for complainants to appeal the State Bar's decisions on closed-cases, the State Bar should implement a policy that prohibits the chief trial counsel from dissolving the review function of the audit and review unit. Alternatively, at minimum it should require the board to approve such an action.

Response to Recommendation No. 8

The State Bar agrees with this recommendation.

Chapter 2

Recommendation No. 9

To ensure that it spends revenues from the membership fee appropriately, the State Bar needs to implement policies and procedures to restrict its ability to transfer monies between funds that its board or state law has designated for specific purposes.

Response to Recommendation No. 9

The State Bar agrees with this recommendation. The board has already commenced consideration of this issue.

Recommendation No. 10

To ensure that it can justify future expenditures that exceed a certain dollar level, such as capital or IT projects that cost more than \$2 million, the State Bar should implement a policy that requires accurate cost-benefit analyses comparing relevant cost estimates. The policy should include a requirement that the State Bar present the analyses to the board to ensure it has the information necessary to make appropriate and cost-effective decisions. In addition, the State Bar should be clear about the sources of funds it will use to pay for each project.

Response to Recommendation No. 10

The State Bar agrees with this recommendation. The board will include this issue in its review of fiscal and control policies, which it began in January.

Recommendation No. 11

To justify any future special assessment that the State Bar wants to add to the annual membership fee, the State Bar should first present the Legislature with the planned uses for those funds and cost estimates for the project for which the State Bar intends to use the special assessment.

Response to Recommendation No. 11

The State Bar agrees with this recommendation.

Recommendation No. 12

To ensure that it adequately informs the Legislature about the status of the IT projects in its strategic plan, the State Bar should annually update the projects'

cost estimates, their respective status, and the funds available for their completion.

Response to Recommendation No. 12

The State Bar agrees with this recommendation.

Recommendation No. 13

To ensure that the State Bar's fund balances do not exceed reasonable thresholds, the Legislature should consider putting a restriction in place to limit its fund balances. For example, the Legislature could limit the State Bar's fund balances to the equivalent of two months of the State Bar's average annual expenditures.

Response to Recommendation No. 13

The State Bar agrees with this recommendation. The board had begun review of reserves and will work with the Legislature on this issue.

Recommendation No. 14

To provide the State Bar with the opportunity to ensure that its revenues align with its operating costs, the Legislature should consider amending state law to, for example, a biennial approval process for the State Bar's membership fees rather than the current annual process.

Response to Recommendation No. 14

The State Bar agrees with this recommendation.

Recommendation No. 15

To determine a reasonable and justified annual membership fee that better reflects its actual costs, the State Bar should conduct a thorough analysis of its operating costs and develop a biennial spending plan. It should work with the Legislature to set an appropriate annual membership fee based upon its analysis. The first biennial spending plan should also include an analysis of the State Bar's plans to spend its current fund balances.

Response to Recommendation No. 15

The State Bar agrees with this recommendation.

Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE STATE BAR OF CALIFORNIA

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

The State Bar included in its response one other document ("Attachment B") that we have not included in our report. The contents of this document range from minor suggested text changes to detailed explanations for the State Bar's decisions, particularly those related to the cases the State Bar settled in 2011. After reviewing the content of "Attachment B," we made those changes to the report that we believed were warranted. "Attachment B" can be obtained by contacting the California State Auditor's office.

①

The intent of our recommendation is to increase the independence and effectiveness of the audit and review unit's audits and ensure its stability in providing reviews. As we state on page 40, the current reporting structure of the audit and review unit creates a risk that the chief trial counsel may be able to minimize or fail to act upon findings resulting from an audit or review. Moreover, we state on the same page that, without notifying the State Bar's Board of Trustees, the former chief trial counsel disbanded the second-look review function of the audit and review unit in 2010 and redirected the unit's staff to help reduce its discipline case backlog. Although we continue to believe our conclusion is valid based on the above factors, after reviewing the State Bar's concerns with this recommendation, we modified the text to give the State Bar more options for reorganizing the audit and review unit's structure.

②