



The State Bar of California

It Is Not Effectively Managing Its System for
Investigating and Disciplining Attorneys Who
Abuse the Public Trust

April 2021

REPORT 2020-030





CALIFORNIA STATE AUDITOR

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April 29, 2021
2020-030

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 Business and Professions Code section 6145 (b) requires, my office presents this report of our audit of the State Bar of California (State Bar) and our findings that the State Bar's reorganization of its discipline system has neither satisfied its statutory requirements nor improved the efficiency or effectiveness of the discipline system.

In 2016 the State Bar reorganized the staffing for its discipline system in response to a review of the system prompted by a requirement established in state law. However, from 2015 through 2020, case processing times for the investigative phase of attorney discipline cases increased by 56 percent, and the backlog of cases increased by 87 percent. These delays allow attorneys under investigation to continue practicing law while their cases are pending, increasing the potential for harm to the public. Moreover, the State Bar has not effectively monitored the impact of its reorganization because it does not adequately measure the performance of its discipline system staff.

State law also requires the State Bar to publish an annual discipline report describing the performance and condition of the discipline system, including the backlog of cases. However, the State Bar's 2019 discipline report did not present complete or consistent information, limiting stakeholders' ability to evaluate the discipline system's performance. For example, it omitted some types of cases from its reported caseload, and it did not include information for other topics for past years—as state law requires. These omissions indicate that the current oversight provided by the Board of Trustees of the State Bar and the board committee responsible for overseeing the discipline report is inadequate.

Finally, the State Bar did not follow its policies when it contracted for examination software. It entered into a contract to obtain state bar exam software—and later entered into a contract amendment for additional security features necessary to remotely administer the state bar examination in response to the COVID-19 pandemic—collectively worth almost \$4 million. However, the State Bar should have assessed and documented that the selected vendor provided the best value, which it did not do.

Respectfully submitted,

A handwritten signature in black ink that reads "Elaine M. Howle". The signature is written in a cursive, flowing style.

ELAINE M. HOWLE, CPA
California State Auditor

Selected Abbreviations Used in This Report

Justice	California Department of Justice
trial counsel's office	The Office of Chief Trial Counsel of the State Bar
State Bar	The State Bar of California
Supreme Court	California Supreme Court

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SUMMARY

Attorneys hold significant responsibility as representatives and advisors of their clients. Their responsibilities include providing clients with an informed understanding of their legal rights and aiding them during certain times of crisis. To ensure that attorneys uphold the trust placed in them, every person admitted and licensed to practice law in California—with limited exceptions—must be a licensee of the State Bar of California (State Bar). The State Bar's core mission is to protect the public from attorneys who would abuse the public's trust. It does so by licensing attorneys, enforcing rules of professional conduct for attorneys, disciplining attorneys when necessary, and supporting greater access to the legal system. The State Bar is also required to issue an Annual Discipline Report (discipline report) that describes the performance and condition of its attorney discipline system. This audit report concludes the following:

The State Bar's Changes to Its Discipline System Have Significantly Reduced That System's Efficiency

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Beginning in 2016, the State Bar reorganized the staffing of its discipline system, converting its discipline staff from specialists to generalists and promoting its most senior attorneys to full-time supervisors. These actions neither addressed the recommendations and statutory requirements that originally prompted the State Bar's review of its discipline system nor produced measurably positive results. In fact, from 2015 through 2020, case processing times for attorney discipline cases increased 56 percent and the backlog of unresolved cases increased 87 percent. The State Bar has not effectively monitored the impact of its reorganization because it does not effectively measure the performance of its discipline system staff.

The State Bar's Discipline Report Does Not Provide All Required Information, and Its Publishing Date Reduces Its Value to Stakeholders

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State law requires that each year, the State Bar publish a discipline report describing the performance and condition of its discipline system, including the number of cases in its backlog. However, the State Bar did not present complete or consistent information in its 2019 discipline report, thus limiting stakeholders' ability to evaluate its administration of the discipline system. For example, the State Bar omitted some types of cases from its caseload metrics and did not provide certain past data necessary for year-to-year comparisons, as state law requires. The amount of information missing from the discipline report suggests that the current oversight provided by the

Board of Trustees of the State Bar (board) and the board committee responsible for overseeing the discipline report is inadequate for producing an accurate description of the State Bar's discipline system. Further, the April 30 statutory deadline for submitting the discipline report limits the amount of time the Legislature has to review it before deliberating on legislation that sets the annual license fees the State Bar may charge attorneys (fee bill).

The State Bar Appropriately Administered the Bar Exam During the COVID-19 Pandemic, but Its Procurement of Exam Software Did Not Comply With Its Policy

In response to the COVID-19 pandemic, the State Bar effectively implemented orders from the California Supreme Court to create a temporary supervised licensure program and to remotely administer the state bar examination (bar exam) for a limited time. In doing so, the State Bar contracted with a software vendor to obtain security features to help ensure the bar exam's integrity. Although the State Bar's procurement policy provides its contract managers with discretion when selecting vendors for the bar exam, it does require them to assess and document that the selected vendor provides the best value. The State Bar's contract manager ignored these requirements. Instead, the manager entered into a contract and a contract amendment worth nearly \$4 million related to bar exams without providing evidence that these agreements represented the best value.

Summary of Recommendations

Legislature

To ensure it has sufficient time to consider the discipline report before reviewing the annual fee bill, the Legislature should amend the report's publishing date.

State Bar

To ensure that it is operating efficiently, the State Bar should assess the impact of its discipline system reorganization, including how the changes have affected its ability to efficiently resolve cases and fulfill its mandate to protect the public.

To ensure that the State Bar's discipline report presents complete and consistent information as state law requires, the board committee responsible for overseeing the discipline report process should review, evaluate, and approve the discipline report before it is issued.

To ensure that it receives the best value for the money it spends, the State Bar should establish documentation standards and templates for contract managers to follow when selecting vendors for the administration of the bar exam.

Agency Comments

The State Bar generally agreed to implement our recommendations; however, it disagreed with certain report statements and conclusions. In addition, it provided information on principles it plans to use in revising its case processing goals.

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INTRODUCTION

Background

The California Constitution establishes three independent branches of state government: the Executive, Legislative, and Judicial. The Judicial Branch is responsible for interpreting the laws of the State and protecting the rights of individuals. The California Supreme Court (Supreme Court) holds the power to admit, disbar, or suspend attorneys, who are considered officers of the court. Attorneys hold significant responsibility as representatives and advisors of their clients. Clients often seek out an attorney during times of crisis, when they are in a particularly vulnerable position, and attorneys are responsible for providing those clients with an informed understanding of their legal rights. To fulfill their role, attorneys are accorded a great degree of trust, as well as certain privileges and responsibilities—they may legally represent their clients, may hold funds on behalf of their clients, and must maintain the confidentiality of the information that their clients provide them.

With limited exceptions, every person who is admitted and licensed to practice law in California must be a member of the State Bar of California (State Bar), which is a public corporation within the Judicial Branch. As the text box shows, state law establishes public protection as the highest priority of the State Bar. The State Bar does this by licensing attorneys, regulating the profession and practice of law, enforcing rules of professional conduct for attorneys, disciplining attorneys who violate rules and laws, and supporting greater access to and inclusion in the legal system. To prevent attorney misconduct, the State Bar encourages ethical conduct through resources such as education programs and a hotline for attorneys seeking guidance on their professional responsibilities.

The State Bar is governed by the 13 member Board of Trustees of the State Bar (board), seven of whom are attorneys appointed by the Supreme Court or the Legislature. As specified in state law, the Legislature and the Governor appoint the remaining six members, who are not attorneys. The board sets out a strategic plan with goals for meeting the State Bar's responsibilities, such as ensuring timely, fair, and appropriately resourced admission, discipline, and regulatory systems for the more than 250,000 lawyers licensed in California. To meet its responsibilities, the board has four committees composed of its own members, including a regulation and discipline committee that oversees the State Bar's management of the attorney discipline process.

The State Bar's Core Mission and Selected Responsibilities

Core Mission

State law establishes that "Protection of the public . . . shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

Selected Responsibilities

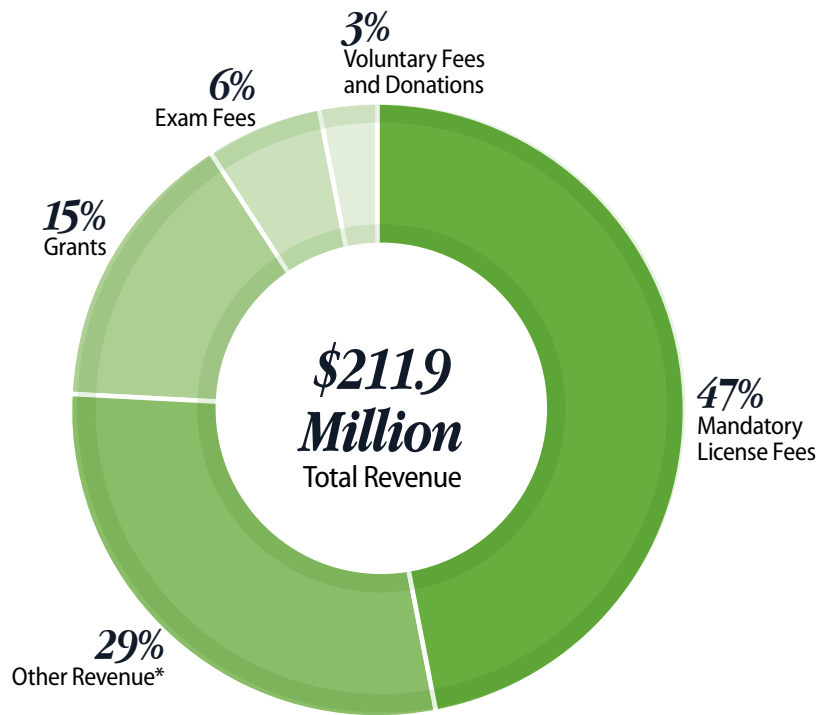
- Formulate and enforce rules of professional conduct for licensees of the State Bar.
- Administer the examination and requirements for admission to the practice of law.
- Establish and administer mandatory continuing legal education.
- Establish and administer a Client Security Fund to relieve or mitigate monetary losses caused by the dishonest conduct of active attorneys.

Source: State law, the State Bar's 2019 annual discipline report, and the State Bar's website.

The State Bar's Revenue Sources

Nearly half of the State Bar's funding comes from mandatory attorney license fees. The Legislature annually passes legislation to set the amount of the State Bar's attorney license fees (fee bill); this license fee revenue funds a large portion of the State Bar's operations, including its discipline system. As Figure 1 shows, the State Bar projected that 47 percent of its revenue in 2020 would come from these licensing fees.

Figure 1
Mandatory License Fees Are the State Bar's Largest Single Source of Revenue



Source: State law, and the State Bar's 2020 budget.
* Other Revenue includes income from leases and interest.

The Attorney Discipline Process

To protect the public from attorneys who fail to fulfill their professional responsibilities competently, the State Bar administers a discipline system to investigate and prosecute claims of professional misconduct. The State Bar receives complaints from the public by mail or through an online submission form. In addition, the State Bar can initiate inquiries into attorney conduct

based on information it receives from third-party sources. The State Bar may also open cases it calls *reportable actions* based on other information, which includes notifications from banks of insufficient funds related to client trust accounts. The text box identifies some major categories of professional misconduct allegations.

Two of the primary divisions within the State Bar's attorney discipline system are the Office of Chief Trial Counsel of the State Bar (trial counsel's office) and the State Bar Court. For 2020 the State Bar budgeted nearly \$77 million for these divisions. As Figure 2 indicates, the State Bar's process for reviewing complaints of alleged attorney misconduct include multiple levels of reviews, and it closes many complaints at the intake level. For those cases that it does not close at the intake phase, the trial counsel's office investigates and, where appropriate, prosecutes attorneys for violations of the State Bar Act or the State Bar's Rules of Professional Conduct, which establish professional and ethical standards for attorneys to follow. The State Bar Court adjudicates the matters that the trial counsel's office files and, if warranted, recommends that the Supreme Court—which has the final authority in attorney discipline—suspend or disbar the attorney in question. The text box identifies some of the possible outcomes of the State Bar's disciplinary cases.

The State Bar has long struggled to process all of the complaints that it receives each year, which has contributed to its backlog of unresolved cases. State law generally defines the State Bar's backlog as discipline cases that, as of every December 31, remain pending beyond six months from the date of receipt. The State Bar must report its backlog of cases annually to the Governor, specified legislative members and committees, and the Supreme Court. However, state law also permits the chief trial counsel to designate certain complaints

Examples of Allegations of Professional Misconduct

The State Bar receives allegations of attorney misconduct, including the following:

Untimely Communication: When an attorney does not promptly inform a client of those decisions or circumstances that require informed consent or disclosure, according to the State Bar Act or the rules of professional conduct.

Commingling of Funds: When an attorney holds certain funds received for the benefit of a client in an account that holds the attorney's own funds.

Unauthorized Practice of Law: When an individual who is not admitted to the State Bar represents to the public that they are admitted to practice law in California.

Source: State law, the State Bar's Rules of Professional Conduct, and the State Bar's 2019 annual discipline report.

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

Disbarment: A public disciplinary sanction whereby the Supreme Court orders the attorney's name stricken from the roll of California attorneys and the attorney becomes ineligible to practice law.

Suspension: A public disciplinary sanction that generally prohibits a licensee from practicing law or from presenting himself or herself as entitled to practice law for a period of time ordered by the Supreme Court. A suspension can include a period of actual suspension, stayed suspension, or both.

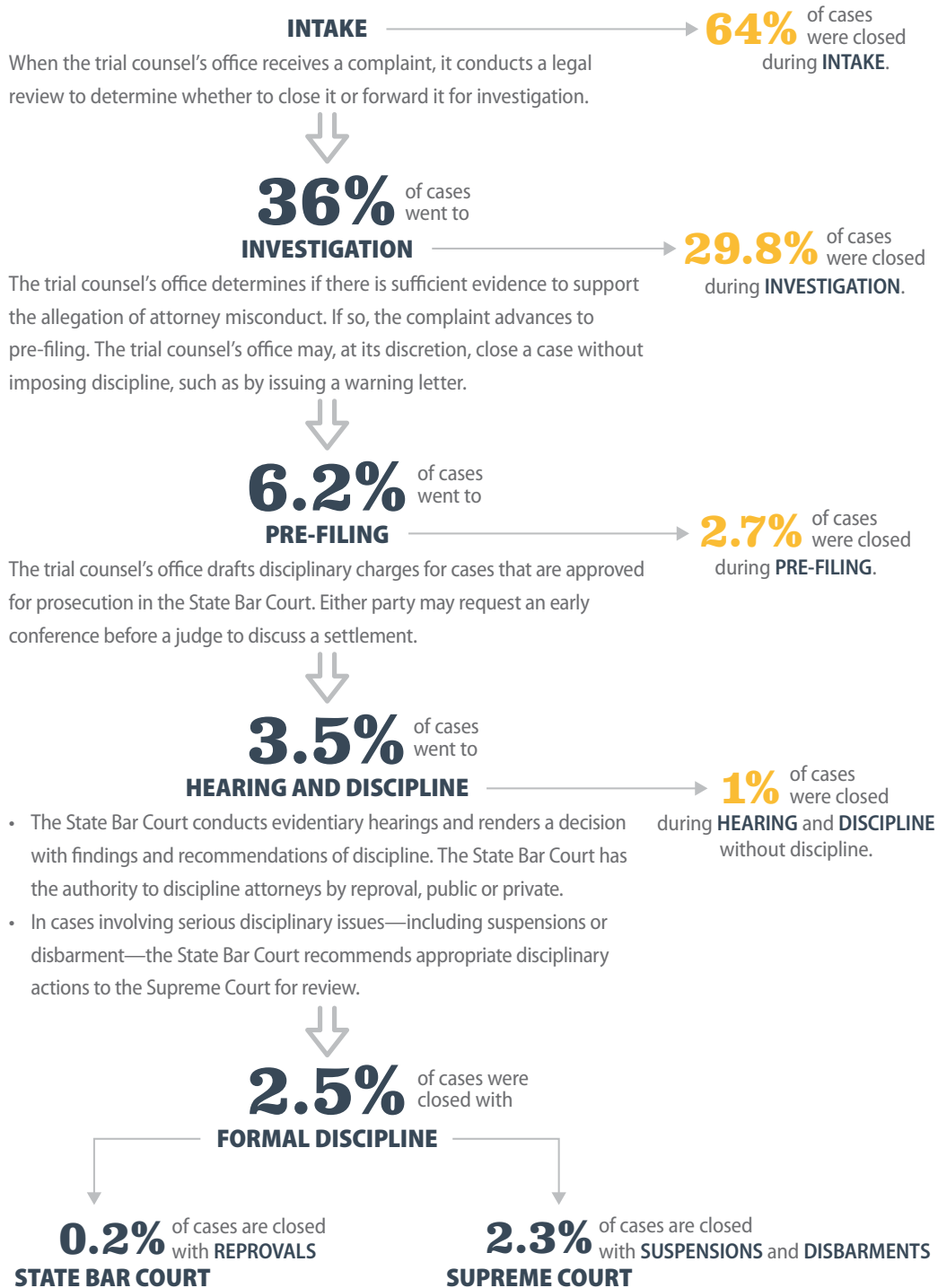
Reproval: The lowest level of court imposed discipline, wherein the State Bar Court reprimands the offending attorney for misconduct. Reprovals may include conditions such as making restitution, completing probation, or completing education on subjects such as ethics or the law. Reprovals can be public or private.

Admonition: A nondisciplinary sanction that may be issued in cases that do not involve a Client Security Fund or a serious offense, and in which the State Bar Court concludes that violations were not intentional or occurred under mitigating circumstances, and no significant harm resulted.

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

Source: State law, Rules of Procedure of the State Bar, the State Bar's Intake Procedures Manual, and the State Bar's 2019 annual discipline report.

Figure 2
The State Bar’s Attorney Discipline Process Includes Multiple Levels of Review



Source: Analysis of the State Bar’s case data, state law, the Rules of Professional Conduct, the Rules of Procedure of the State Bar of California, the State Bar’s *Intake Procedures Manual*, and the State Bar’s 2019 annual discipline report.

Note: Percentages in this figure are derived from the more than 15,700 cases that the State Bar closed in 2019, which include cases opened in previous years.

as *complicated matters*, and it is the goal and policy of the State Bar to resolve those complaints within 12 months. We discuss this distinction later in the audit report.

The Discipline Report

State law requires the State Bar to prepare and issue a discipline report by April 30 each year. It must present this report to the Governor, the chief justice of California, and specified legislative members and committees to enable them—and the general public—to evaluate the attorney discipline system. State law requires that the discipline report include certain statistics describing the performance and condition of the discipline system, and the State Bar must present these statistics in a consistent manner for comparison with the previous three years.

Statutorily Required Audits

State law 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. We have not conducted an in-depth review of the State Bar's attorney discipline system since our 2015 audit, although since that time we have reviewed the State Bar's financial condition, cost control measures, budgeting practices, and funding needs. Therefore, for this audit, we reviewed the State Bar's management of its attorney discipline system by assessing its staffing levels, the timeliness of its investigations, the disposition of its cases, and the level of transparency and accuracy provided by its discipline report. We also reviewed the State Bar's response to the COVID-19 pandemic and its impact on the bar examination and prospective California attorneys. Finally, we reviewed the State Bar's efforts to manage its revenue and expenditures.

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The State Bar's Changes to Its Discipline System Have Significantly Reduced That System's Efficiency

Key Points

- Beginning in 2016, the State Bar reorganized the staffing for its discipline system, in part by converting its discipline staff from specialists to generalists and promoting some of its most senior attorneys to full-time supervisors. However, these actions did not fully address the audit recommendations and statutory requirements that originally prompted the State Bar to review its discipline system.
- Following the reorganization, the State Bar has experienced longer case processing times and an increasing backlog of discipline cases. In fact, the State Bar's backlog grew by 87 percent from the end of December 2015 to the end of June 2020. This growing backlog allows attorneys who are under investigation more time to continue practicing law while their cases are pending, increasing the risk for potential harm to the public.
- The State Bar has not effectively monitored the impact of its reorganization because it does not adequately track performance benchmarks for its discipline system.

The State Bar's Restructuring of Its Trial Counsel's Office Has Not Fulfilled the Requirements of State Law or Addressed Our Prior Recommendations

Following a review of its discipline system, the State Bar implemented changes to the staffing of its discipline system in May 2016, including reorganizing the structure of its trial counsel's office, which investigates and prosecutes cases of attorney misconduct. However, this reorganization did not address key elements of the recommendations and statutory requirements that originally motivated the State Bar to review its discipline system. Our June 2015 report titled *State Bar of California: It Has Not Consistently Protected the Public Through Its Attorney Discipline Process and Lacks Accountability*, Report 2015-030, recommended—and a state law that took effect in 2016 required—that the State Bar implement a workforce plan that included the development of an appropriate backlog goal and an assessment of the staffing needed to achieve that goal. In 2016 the State Bar contracted with the National Center for State Courts for a workforce planning study that included recommendations regarding reengineering its business processes. This 2016 workforce plan made numerous recommendations, including that the State Bar reorganize the structure of its trial counsel's office. The plan suggested that the reorganization would help address concerns about unequal distribution of work and improve staff efficiency and development.

Before the reorganization, the teams of investigators and attorneys in the trial counsel's office who investigate and prosecute cases (enforcement teams) specialized in specific categories of cases. However, in response to the 2016 workforce plan, the State Bar

converted its enforcement teams from specialists to generalists who review complaints of all types. The State Bar also promoted some of its most senior attorneys to full-time supervisors and established new supervising attorney positions responsible for managing each team. However, these changes did not originate from our audit recommendations or statutory requirements, and none of them addressed the statutory requirements that the State Bar establish an appropriate performance goal for its discipline system and determine the number of staff needed to meet that goal. In May 2016, the State Bar submitted a report to the Legislature with the staffing levels that it estimated it needed to meet the current statutory backlog goal and two alternative backlog goals. Although the report provided multiple options for the Legislature to consider, the State Bar did not identify which backlog goal it had determined was most appropriate, or recommend or advocate for a specific backlog goal.

As the Introduction describes, the State Bar's backlog is generally defined as discipline cases that remain pending beyond six months from receipt as of every December 31. The State Bar officials with whom we spoke were critical of using this measure. For instance, the chief of mission advancement and accountability (chief) explained that staff cannot control many aspects of case processing, such as the time that it takes a court to provide certified documents. The special assistant to the chief trial counsel (special assistant) added that it typically takes six months or more for the federal government to provide requested immigration records, which the State Bar uses when investigating some cases. Despite these concerns, the special assistant acknowledged that the State Bar has not set a target for the number of cases in the backlog; instead, it continues to track, report, and analyze its staffing needs based on the existing six-month performance measure.

The State Bar has not set a target for the number of cases in the backlog.

Although six months may be insufficient for resolving certain cases, the State Bar may take up to 12 months for more complicated cases. However, it has chosen not to take advantage of this option. State law sets a goal and policy of 12 months for the State Bar to reach specified outcomes regarding complaints that the chief trial counsel designates as *complicated matters*. Although in 2016 the State Bar identified criteria for designating an item as a complicated matter, the special assistant explained that the State Bar discontinued use of this designation sometime before July 2017 because the state law allowing this designation conflicts with other parts of the law. As specified, one section of state law sets a goal and policy of resolving or forwarding a

completed investigation to the State Bar Court within 12 months for complaints designated as *complicated*;¹ however, two other sections of state law set a reporting requirement or goal of six months for certain outcomes regarding all complaints.² In addition, these sections of law use differing language for cases that proceed to the State Bar Court, including “filing of a notice of disciplinary charges” and “filing of formal charges.” The State Bar could request that the Legislature clarify state law, including ensuring that references to the backlog allow the longer period for complicated matters. Doing so would provide a backlog measure that more appropriately assesses the State Bar’s performance in processing those cases with timelines over which it has limited control.

Despite its criticism of the six-month measure, the State Bar continues to use it for assessing its staffing needs because it is the goal currently established in law. However, in 2018 the State Bar reported to its board that according to a workload study, the trial counsel’s office needed 58 additional staff to process most cases within six months. In our 2019 report titled *State Bar of California: It Should Balance Fee Increases With Other Actions to Raise Revenue and Decrease Costs*, Report 2018-030, we noted that the State Bar had made several significant changes to its discipline system process and had based its assessment of its staffing needs on a study it conducted before completing these changes. As part of our 2019 report, we recommended a fee increase that would allow the State Bar to hire 19 additional staff, and we recommended that the State Bar analyze performance data to make more informed estimates of its future staffing needs. The special assistant told us that the State Bar hired these 19 staff in 2019 and 2020 and formed them into a new team in September 2020, but it has not yet studied the impact of this new team on caseloads and the backlog.

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The State Bar hired 19 staff in 2019 and 2020 and formed them into a new team but it has not yet studied the impact of this team on caseloads and the backlog.

.....

According to the chief, the State Bar plans to conduct another workload study designed to replicate the study it presented to its board in 2018. The chief stated that the new study is intended to inform a discussion with the Legislature on the necessary level of staff. However, he confirmed that the study will be based on the current statutory

¹ Business and Professions Code section 6094.5.

² Business and Professions Code sections 6086.15 and 6140.2.

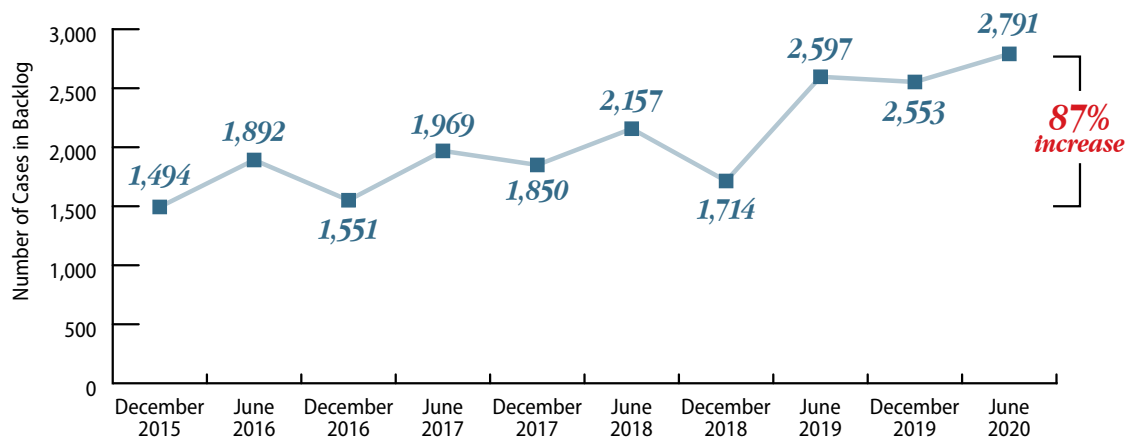
six-month backlog measure. A study based on a measure that the State Bar does not believe is appropriate or achievable does not fulfill the requirements of state law or our recommendation to determine a staffing level based on an appropriate measure. Further, it is not an effective use of resources. Rather, as we recommended and state law required in 2016, the State Bar must develop and recommend an appropriate backlog goal and then assess the staff needed to achieve that goal.

The State Bar's Case Processing Times and Backlog of Cases Significantly Increased Following Its Decision to Reorganize Its Trial Counsel's Office

Two related measures point to problems with the reorganization of the State Bar's discipline system. First, the number of cases in the investigation phase increased from fewer than 1,000 cases in January 2015 to more than 4,000 cases in June 2020. Multiple factors have contributed to this dramatic increase, including a reduction in the number of enforcement staff available for case processing and a reduction in the investigative efficiency of the trial counsel's office. In combination, these factors have contributed to longer case processing times and growth in the second measure that indicates that there is a problem with State Bar's discipline system: an increasing backlog of discipline cases. As Figure 3 shows, the State Bar's backlog increased from 1,494 cases at the end of December 2015 to 2,791 cases at the end of June 2020—an increase of 87 percent. These delays allow attorneys under investigation to continue practicing law while their cases are pending, increasing the potential for harm to the public.

Figure 3

The State Bar's Backlog of Cases Increased by 87 Percent From December 2015 Through June 2020

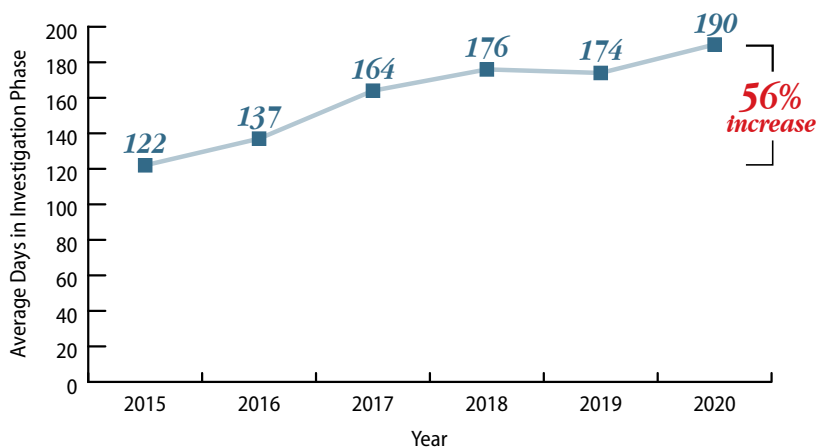


Source: Analysis of the State Bar's case data.

Note: Although the backlog increased overall, the number of cases in the backlog declined near the end of each year. According to the special assistant, this decline was likely due to a focus on reducing the backlog by the mandated backlog reporting date.

The State Bar's implementation of the 2016 workforce plan's recommendations reduced the number of staff available to review cases. The special assistant explained that the State Bar moved 11 senior attorneys who previously carried full caseloads into supervisor positions, reducing the staff available for case processing. The reorganization also converted teams that were previously specialized by groups of complaint types into generalist teams that accept all types of case assignments. However, research on efficiency generally indicates that job specialization improves productivity by increasing expertise in a specific area. In fact, these changes appear to have increased case processing times. We found the percentage of cases that were in the investigation phase for more than one year steadily increased from 1 percent in 2015 to 11 percent in 2020. Further, as Figure 4 indicates, the average number of days the State Bar took to complete its investigation phase increased by 56 percent from 2015 through 2020, reaching 190 days in 2020. Thus, on average, the cases that progressed through the investigation phase exceeded the six-month requirement and became a part of the backlog.

Figure 4
The Average Duration of the State Bar's Investigations Has Increased by More Than 50 Percent From 2015 Through 2020



Source: Analysis of the State Bar's data from 2015 through June 2020.

The special assistant suggested that other factors have contributed to the growing backlog of cases and the longer case processing times, including an increase in the number of complaints and the State Bar's implementation of a new case management system in February 2019. However, our analysis suggests it is unlikely these factors account for the increase either in the backlog or in case processing times. First, although we found that the number of

incoming complaints increased by 6 percent from 2017 through 2018, the total number of complaints increased by only 1 percent from 2015 through 2019. Second, our analysis suggests that the new case management system—which, according to the special assistant, slows case processing but captures more information and thus provides the State Bar with a more powerful tool for data analysis and reporting—slowed case processing speeds for only a short period of time after its implementation. According to the special assistant, a State Bar analysis found a 17 percent average decrease in the number of cases staff resolved per month at the intake phase, and our analysis similarly showed that the average time needed for case intake increased by 25 days from 2018 through 2019. However, this trend has since reversed course: through the first half of 2020, the average time a case remained in the intake phase decreased by 27 days. Further, the State Bar’s analysis did not include other phases of the enforcement process.

The State Bar created a new prioritization system in March 2018, and the special assistant asserted that one reason for slower case processing times is that since the State Bar began prioritizing higher

The State Bar’s Prioritization of Disciplinary Cases

High Priority (P1): Cases that present significant, ongoing, or serious potential harm to the public, including cases involving vulnerable victims, such as immigrants and the aged; unauthorized practice of law; abandonment of clients; a pattern of or continued engagement in abusive or frivolous litigation; and matters that the State Bar concludes—at its discretion—are appropriate for high priority treatment.

Expedited (P2): Cases that can be easily resolved or that require rapid investigation to determine if more significant harm is occurring or will occur.

Standard (P3): Cases that do not fall within the other two categories and that are not as time-sensitive or do not require as exacting an investigation.

Source: State law and the State Bar policy directive.

priority cases, lower-priority cases have taken longer to resolve. However, our analysis indicates that both higher- and lower-priority cases are taking significantly longer to resolve. As the text box shows, the State Bar places first priority on cases that present a high potential for serious harm to the public rather than those that are either included in or at risk of being added to the backlog. However, we found that the length of time the State Bar took to resolve high-priority cases in the investigation phase increased 14 percent from 2018 to 2020, from 187 days to 214 days. The average time it took the State Bar to resolve lower-priority cases in the investigation phase—which may pose less of a threat to the public but that the State Bar is still obliged to resolve in a timely manner—increased 21 percent, from 188 days in 2018 to 228 days as of June 2020. Because processing times for both higher- and lower-priority cases increased, the separation of cases by priority does not explain the increasing time taken to investigate and process cases.

The State Bar is also disciplining attorneys at a dramatically lower rate for reasons it cannot adequately explain. From 2015 through 2019, the total number of cases that resulted in discipline—including reprimands, suspensions, and disbarments—declined by 54 percent. Expressed as a percentage of total cases closed, cases that concluded with discipline decreased from 5 percent in 2015 to only 3 percent in 2019, as Table 1 shows. The special assistant

believes that the decline is consistent with a nationwide decline in attorney discipline. He cited a number of possible reasons for such a decrease, including his belief that an increase in the number of complaints filed using the State Bar's new online complaint portal may be offsetting a decrease in disciplinable consumer complaints. However, he did not provide data to support these assertions. Because the State Bar cannot definitively explain why discipline has decreased, we are concerned that the decline has continued even as the State Bar began prioritizing the processing of more serious cases in 2018.

Table 1
The State Bar's Discipline of Attorneys Declined Significantly From 2015 Through 2019

YEAR	TOTAL CASES CLOSED	CASES CLOSED WITH DISCIPLINE	PERCENT OF CASES CLOSED WITH DISCIPLINE
2015	16,885	864	5%
2016	16,139	776	5
2017	14,729	530	4
2018	15,674	418	3
2019	15,738	399	3

Source: Analysis of the State Bar's case data from 2015 through 2019.

The increase in the backlog and the time to complete investigations, despite the decline in discipline, indicate that the State Bar's reorganization has not improved its efficiency or effectiveness. Nonetheless, in 2019 the State Bar abandoned a plan to evaluate the results of its reorganization. However, the factors we describe throughout this section—an increase in the average number of cases in the investigation phase, an increase in case processing times, and an increase in the backlog of discipline cases—suggest that unless the State Bar takes steps to address its current process, its backlog will continue to increase.

The State Bar's Lack of Adequate Monitoring Has Hampered Its Ability to Detect Problems in Its Discipline System

The State Bar has not effectively measured the performance of its discipline system staff against internal performance benchmarks (benchmarks), which has hampered its ability to determine whether its reorganization has been effective. In our 2019 report, we recommended that the State Bar develop benchmarks for the duration of each step in its investigation process, and in 2020 the State Bar asserted that it had established these benchmarks. For

example, it established a goal of resolving higher-priority cases and lower-priority cases within 30 days and 45 days of obtaining all evidence, respectively. However, the special assistant confirmed that the State Bar does not have the ability to monitor its performance against these benchmarks because its case management system has limited reporting capabilities. Although he hopes to develop additional reports in the near future, the State Bar is not currently assessing whether it is meeting its benchmarks, which could help identify which aspects of its process are taking longer than it expects.

In addition, the State Bar's caseload in the investigations phase—the number of cases per staff member—doubled from January 2015 to June 2020. However, the special assistant told us he does not use a workload benchmark for staff because the State Bar cannot control the number of cases it receives. Although the State Bar has increased the budgeted positions for the trial counsel's office every year from 2016 through 2020, for a total increase of 18 percent, the special assistant asserted that the trial counsel's office does not have enough staff to ensure an optimal workload and reduce the backlog. However, the State Bar must determine two numbers to persuasively advocate for a specific number of additional staff if it believes they are necessary to reduce the backlog. First, it must develop an appropriate backlog goal, as we recommended in our 2015 report, and work with the Legislature to adopt that goal. Second, it must determine the associated staffing level to meet that goal—as we also recommended in our 2015 report—which requires that it determine the workload benchmark for the number of cases each staff member should be able to process. If the State Bar were assessing its staffing against an appropriate goal as state law requires, it could better justify its requests for the additional resources it believes it needs.

Recommendations

Legislature

To clarify state law and provide more transparency regarding the nature of the existing backlog of discipline cases, the Legislature should do the following:

- Revise state law to remove Business and Professions Code section 6140.2, which has similar requirements for the State Bar's goals and policies for timely case processing but omits the State Bar's authority to designate *complicated matters*.

- Revise Business and Professions Code section 6086.15, subdivision (a)(1), to require the State Bar to include in its discipline report the number of complicated matters as of the end of the reporting period that were pending beyond 12 months after receipt without dismissal, admonition, or the filing of formal charges by the trial counsel's office.

State Bar

To ensure that it is operating efficiently, the State Bar should assess the impact of its discipline system reorganization, including determining how the changes have affected its ability to efficiently resolve cases and fulfill its mandate to protect the public. Based on the assessment's results, the State Bar should determine whether additional changes to its organizational structure are warranted.

To determine if the changes to its discipline process have been effective and to help it identify problems in specific phases of its process before they affect the backlog, the State Bar should implement methods to monitor its enforcement process performance, including comparing the trial counsel staff's performance against its benchmarks.

To reduce its backlog of discipline cases and ensure that it has appropriately allocated resources to all phases of its discipline process, the State Bar should do the following:

- Develop and recommend an appropriate backlog measure and goal as required by state law, including the number of days at which a case should be added to the backlog as well as a goal for the number of cases in the backlog.
- Determine the staffing level necessary to achieve that goal, as required by state law.
- Work with the Legislature to establish this backlog measure and goal and to revise its reporting requirements accordingly. If necessary, the State Bar should also request the additional resources required to meet the goal.

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The State Bar's Discipline Report Does Not Provide All Required Information, and Its Publishing Date Reduces Its Value to Stakeholders

Key Points

- The State Bar does not fully and consistently present required information in its discipline report, limiting the ability of stakeholders to evaluate its administration of its discipline system.
- The deadline established in state law for submitting the annual discipline report limits the amount of time the Legislature has to assess the State Bar's performance before deliberating on the annual fee bill.

The State Bar's Discipline Report Does Not Fully and Consistently Provide Information About Its Discipline System

As we discuss in the Introduction, state law requires the State Bar to issue a discipline report that enables key stakeholders—the Governor, the chief justice of California, and specified legislative members and committees—to evaluate certain aspects of its discipline system for the previous calendar year. State law requires the State Bar to include statistical information and accurate and complete descriptions for 15 topics related to the performance and condition of its discipline system, including the backlog of cases. The information in the discipline report is particularly important because it is the only comprehensive report that the State Bar submits to the Legislature describing the performance and condition of its entire discipline system.

To ensure that the discipline report contains accurate, complete, and consistent information so that stakeholders may compare it to previous years' reports, state law requires the report to include the following:

- Data for the previous calendar year.
- Similar information for the previous three years.
- Accurate and complete data descriptions.

Information from multiple years is useful for determining how effectively the State Bar has used its resources over time and whether changes to the State Bar's fee bill are warranted. Since the State Bar's disciplinary functions support its mission to protect the public, accurate and complete descriptions of the information within the discipline report allow stakeholders to better understand the information they are reviewing and therefore determine if the State Bar is fulfilling that mission.

Nonetheless, the State Bar failed to include accurate and complete information in its most recent report. As Table 2 shows, the State Bar met all three reporting requirements for only two statutorily required topics, and it did not satisfy any reporting requirements for five of the 15 topics. For example, in June 2018, a California Rule of Court was adopted requiring all California attorneys to be re-fingerprinted, which resulted in the State Bar receiving notifications from the California Department of Justice (Justice) regarding criminal charges and convictions against attorneys that had not been previously reported to the trial counsel's office. This affected the State Bar's reporting on metrics related to matters reported by other sources. The State Bar included metrics about criminal conviction cases in its 2018 discipline report and reported in 2019 that the number of attorneys with criminal conviction cases increased from 210 in 2018 to more than 2,300 in 2019.³ However, the State Bar left out these new cases when it disclosed the case statuses, average pending times, and outcomes for matters reported by other sources in 2019. The State Bar reported receiving only about 100 cases involving the filing of criminal charges or convictions in 2019; however, the chief confirmed that this number excludes criminal conviction cases reported by Justice.

The State Bar failed to include accurate and complete information in its most recent report.

According to the chief, the State Bar did not include these cases because it interprets state law to require that it only report information it receives from the prosecuting agency involved in a case or from the court where a conviction occurred, and neither apply to the information that Justice provided. However, we disagree. State law specifically requires the State Bar to report on how it handles felony or certain misdemeanor charges and convictions against California attorneys, whether the State Bar receives this information from prosecuting agencies, from courts, or it is procured by the State Bar through other means—such as the information it obtained from Justice.

³ Criminal conviction cases can include cases in which an attorney is arrested and prosecuted for committing a crime, such as driving under the influence. Once the trial counsel's office becomes aware of such a case it will monitor the case and, if the attorney is convicted, must submit the criminal conviction report to the State Bar Court. The State Bar Court may impose certain discipline or, if appropriate, recommend serious disciplinary issues to the Supreme Court for review.

Table 2
The State Bar's 2019 Discipline Report Omitted Required Information About Its Discipline System

STATUTORILY REQUIRED TOPICS	REPORTING REQUIREMENTS			NUMBER OF REQUIREMENTS MET
	DATA FOR THE PREVIOUS CALENDAR YEAR*	SIMILAR INFORMATION FOR THE PREVIOUS THREE YEARS*	ACCURATE AND COMPLETE DATA DESCRIPTIONS*	
Backlog of cases within the discipline system	X	X	X	0
Number of inquiries and complaints and their disposition	X	X	X	0
Matters self-reported by licensees	✓	✓	X	2
Matters reported by other sources, including outside organizations	X	X	X	0
Complaint handling and disposition processing times as specified	X	X	X	0
Disciplinary charges and formal disciplinary outcomes	X	X	X	0
Other matters, such as interim suspensions, admonitions, and agreements in lieu of discipline	✓	✓	X	2
Former attorneys engaged in the unauthorized practice of law	X	✓	X	1
Non-attorneys engaged in the unauthorized practice of law	X	✓	X	1
Client Security Fund's condition and payouts	✓	X	✓	2
Accounting of the discipline system cost by function	✓	X	✓	2
Disposition of attorney felony allegations [†]	X	✓	X	1
Investigations of improper demand letters related to construction-related accessibility claims [†]	✓	✓	✓	3
Insurance fraud investigations [†]	✓	✓	✓	3
Alleged violations of requirements related to lawyers selling financial products to elders and dependent adults [†]	✓	✓	X	2
Number of topics that met this requirement	7 out of 15	8 out of 15	4 out of 15	

Source: State law, the State Bar's 2018 and 2019 discipline reports, and interviews with State Bar staff.

* State law requires the State Bar to include multiple metrics or measures for many of the discipline report topics. If the State Bar failed to meet the reporting requirement for any of the metrics or measures, we designated it as not having met the requirement for the related topic.

† State law does not establish that the discipline report must include similar information for the previous three years or accurate and complete data descriptions for these topics. Nevertheless, these requirements represent best practices, and for that reason, we assessed whether the State Bar's discipline report included this information.

State law also requires that for 11 topics, the State Bar must include in the discipline report similar information for the previous three years to allow for year-to-year comparisons, and we used this criteria as a best practice to assess four other topics in the report as well. However, the State Bar included three years of information for only eight of the 15 topics. For example, the State Bar reported only one year's worth of information for the two financial metrics that Table 2 lists—the Client Security Fund's condition and payouts, and the discipline system costs. According to the chief, the State Bar does not include previous years' information for these financial topics because it interprets state law to require only three years of information for statistical information and it does not consider these specific financial topics to be "statistical." However, state law does not differentiate between reporting financial and other statistical information, and therefore the State Bar should provide the previous three years of information for all topics required by the law. Further, without financial information from prior years, it is more difficult for stakeholders to compare changes in spending to changes in the performance and condition of the discipline system.

The State Bar's lack of adequate oversight over the discipline report approval process may explain why the report has not consistently met statutory requirements.

The State Bar's lack of adequate oversight over the discipline report approval process may explain why the report has not consistently met statutory requirements. Our 2015 audit report also identified issues with the discipline report, and we recommended that the State Bar improve its oversight, in part by conducting a review of both the discipline report and the underlying discipline statistics. In response, the State Bar amended a board committee's responsibilities in 2016 to include overseeing the discipline report process. However, the committee reviewed only one of the four reports the State Bar published after 2016. Although the board and its executive committee approved the discipline reports in the other three years, the numerous issues described above clearly illustrate that the board's review of the 2019 report was deficient. Further, the State Bar has not adopted policies or procedures outlining how it will compile or review the report to ensure that the information is consistent with state law. The board's policy clearly assigns the committee the responsibility to oversee the report process and the underlying discipline statistics. However, whether the committee or the board itself reviews the report, the amount of information missing from the 2019 report suggests that the current oversight is inadequate for producing an accurate and complete description of the State Bar's discipline system.

Revising the Publishing Date for the Discipline Report Would Provide the Legislature More Time to Evaluate the State Bar's Performance

State law requires the State Bar to issue its discipline report to the Legislature and other stakeholders by April 30 each year. However, that date hampers the Legislature's ability to review the State Bar's performance before it introduces the annual fee bill. As the Introduction describes, the Legislature is responsible for setting attorneys' annual license fees through this bill. These fees are particularly important because they represent nearly half of the State Bar's annual revenue and they fund the discipline system. However, the Legislature typically introduces and begins deliberating on the fee bill before it receives the discipline report. For example, in 2019 the Legislature introduced the 2020 fee bill in January and began reviewing the bill in March. Consequently, it had already introduced and begun discussing the fee bill before the State Bar published its discipline report on April 30.

Because the discipline report is the only report describing the performance and condition of the State Bar's entire discipline system, the Legislature should consider changing the report's deadline to give itself additional time for review before addressing the fee bill. If the State Bar submitted the discipline report annually in October, the Legislature would have time to more thoroughly review its contents before introducing the fee bill in January. For the State Bar to submit a report in October, the Legislature would need to alter the requirement that the report contain information from the prior *calendar* year. Requiring the report to include information for a period from July 1 through June 30, aligned with the state fiscal year, would provide the State Bar with the same amount of time to compile the report as it currently has while providing the Legislature with more time to review the State Bar's performance before introducing the fee bill.

Recommendations

Legislature

To provide itself sufficient time to review the discipline report before considering the annual fee bill, the Legislature should do the following:

- Amend state law to require the State Bar's discipline report to cover the 12 months from July 1 through June 30 of the previous year and to require that the State Bar submit the discipline report annually by October 31.

- In the year in which it amends the discipline report's time period, require the State Bar to report information for both the prior calendar year and the newly defined period to ensure that stakeholders can compare the information for the newly defined period to prior years.

State Bar

To ensure that the State Bar's discipline report presents accurate, complete, and consistent information as state law requires, the board should require the designated committee to review, evaluate, and approve the discipline report before submitting it to the board. Additionally, the committee should develop procedures outlining how the State Bar should compile the report in accordance with statutory requirements. The committee should approve these procedures for the State Bar's use before finalizing its 2021 discipline report.

To ensure that users of the discipline report can compare information from year to year, the State Bar should describe in each discipline report any changes it makes to its approach to calculating metrics and, for that year, provide information calculated under both its old and new methods.

The State Bar Appropriately Administered the Bar Exam During the COVID-19 Pandemic, but Its Procurement of Exam Software Did Not Comply With Its Policy

Key Points

- At the direction of the Supreme Court, the State Bar developed a provisional licensure program for recent law school graduates who were negatively affected by bar exam delays caused by the COVID-19 pandemic. In addition, to avoid the risks associated with in-person contact during the pandemic, the State Bar modified how it administered the bar exam, allowing applicants to take the October 2020 bar exam remotely.
- The State Bar did not follow its contracting policy when it entered into software agreements worth nearly \$4 million related to the bar exam. As a result, it did not verify that it was using its resources responsibly.

The State Bar Effectively Implemented the Supreme Court's Directive to Modify Its Admission Practices and Its Administration of the Bar Exam in Response to the COVID-19 Pandemic

The Supreme Court directed the State Bar to delay offering the bar exam multiple times because of the COVID-19 pandemic. In order to practice law in California, an applicant must pass the bar exam, which state law allows an applicant to take twice a year, and maintain an active license. Consequently, the bar exam delays prevented recent law school graduates from becoming attorneys. When the Supreme Court postponed the July 2020 bar exam for a second time, it required the State Bar to mitigate the impact the postponement would have on these graduates' employment prospects and livelihoods. Specifically, it directed the State Bar to implement a temporary supervised provisional licensure program (temporary licensure program) and arrange to administer the bar exam remotely.

In October 2020, the Supreme Court authorized the State Bar to administer its proposed temporary licensure program for eligible 2020 law school graduates beginning in November 2020. The program allows a provisionally licensed lawyer to provide legal services under the direction of a supervising lawyer. The supervising lawyers must be licensees in good standing with the State Bar, among other things, and they must agree to assume professional responsibility for the work of the provisionally licensed lawyers. Applicants must meet a number of criteria, including having been eligible to sit for the bar exam at some point from December 2019 through December 2020, and they must have submitted a complete application for determination of moral character to the State Bar. According to the State Bar, it had received about 1,500 applications for a provisional license as of February 2021, and it had approved about 700 of these applications. The remainder consisted primarily of incomplete applications. The State Bar will terminate

approved applicants' provisional licenses under certain circumstances, such as if it sanctions the applicants for misconduct, if the applicants are admitted to the State Bar, and when the program ends in June 2022.

In addition, following the Supreme Court's August 2020 order modifying how and when it should administer the bar exam, the State Bar amended an existing contract with its software vendor, ExamSoft, to obtain remote proctoring services for the October 2020 exam. The State Bar had previously signed a five-year, \$3 million contract with ExamSoft in May 2020 providing it with software that applicants install on their personal computers or use on the State Bar's computers in order to take the exam.⁴ This contract provided the software for 10 bar exam dates expected to occur from July 2020 through February 2025.⁵ The State Bar amended this contract in August 2020 to include ExamSoft's verifying applicants' identity, recording applicants for the duration of the exam, and reviewing the recordings to identify suspicious behavior. This amendment was exclusive to the October 2020 bar exam and cost the State Bar an additional \$830,000.

The amendment to obtain remote proctoring services was exclusive to the October 2020 bar exam and cost the State Bar an additional \$830,000.

According to the State Bar, about 8,900 applicants of the 9,300 applicants who took the exam in October 2020 did so remotely.⁶ Subsequently, the State Bar reviewed nearly 3,200 videos that the software and human review had flagged for possible violations, such as the applicants' leaving the camera's view or using other electronic devices, and it ultimately found fewer than 50 violations of examination rules and policies. The State Bar signed another contract amendment with ExamSoft in January 2021 for an additional \$1.3 million to obtain

⁴ The records that the State Bar provided indicate that it has contracted with ExamSoft since at least 2003 to provide software for bar exams.

⁵ The State Bar pays ExamSoft according to the total number of individuals who register to take the bar exam; therefore, the actual amount the State Bar pays may be more or less than the original contract amount.

⁶ The State Bar provided in-person examinations on a case-by-case basis to applicants requesting certain testing accommodations and to applicants who indicated they lacked a testing environment conducive to taking the exam.

remote proctoring services for the February 2021 exam after the Supreme Court issued an order in November 2020 directing it to also administer that bar exam remotely.

The State Bar's actions effectively implemented the Supreme Court's orders related to the temporary licensure program and the remote administration of the October 2020 bar exam. Its actions provided eligible graduates an opportunity to practice law in California under the supervision of an eligible California attorney while waiting to take the bar exam. Further, the State Bar administered the bar exam remotely for the first time while taking steps to preserve the bar exam's integrity through the acquisition of additional services to verify applicants' identity and to monitor for suspicious behavior. However, as we describe in the next section, the State Bar should have documented that it received the best value when contracting for these services.

The State Bar Entered Into Multimillion Dollar Agreements Without Adequately Justifying the Vendor It Selected

The State Bar's procurement policy provides its staff with significant levels of discretion when selecting vendors for the administration of the bar exam. However, the State Bar did not follow its contracting policy when it entered into software agreements related to the bar exam. Although state law requires the State Bar to use formal competitive bidding procedures and obtain at least three competitive bids or proposals for information technology-related goods and services in excess of \$100,000, it provides an exception from competitive bidding for contracts related to licensing or proficiency testing examinations, such as the bar exam (exam exemption). In these instances, the State Bar's procurement manual gives contract managers the authority to select the vendor to provide the required goods or services, rather than requiring competitive bidding. The State Bar used the exam exemption to approve both the five-year, \$3 million contract with ExamSoft and the \$830,000 contract amendment we describe in the previous section.

However, the State Bar entered into these contracts without meeting its own requirement to evaluate whether it would receive the best value for the money that it spent. According to the State Bar's procurement manual, when using a bidding exemption—such as the exam exemption—contract managers must use some type of evaluation to select a vendor that provides the State Bar with the best value, as the text box

Selected Best Value Evaluation Strategies and Documentation Requirements

Contract managers who use the competitive bidding exemption must document their efforts taken to determine best value, including the following:

- Vendors solicited
- Evaluation criteria
- Manager's determination and reasoning

The State Bar's procurement manual outlines the type of evaluations that contract managers can use to select a vendor that provides the best value, including the following:

- Conduct online price checks
- Review a third-party analysis
- Compare the vendor's products or services to other similar solutions

Source: State law, the *State Contracting Manual*, and the *State Bar's General Procurement Manual*.

describes. Further, contract managers must document their efforts to determine the best value for a contract and must maintain these records within their department.

The State Bar's ExamSoft contract manager stated that she did not document how she determined that ExamSoft provided the best value before submitting the April 2020 contract or the August 2020 amendment. She also stated that she did not perform a best-value analysis, in part because the State Bar was not sure whether any other vendor could meet its technical needs. However, she could not provide any documentary support for this conclusion either. The chief administrative officer (administrative officer) confirmed that for the ExamSoft agreements, the State Bar did not enforce its procurement policies related to documenting the best value because of its knowledge about and history of contracting with ExamSoft. In response to our concerns, he stated that the State Bar developed policies requiring that contract managers submit to its procurement unit descriptions of their justification for using a competitive bidding exemption and of their best-value analysis. Until it enforces these policies, the State Bar risks engaging in the kinds of practices that its general procurement manual is meant to prevent, such as failing to determine whether more cost-effective alternatives exist.

Recommendation

State Bar

To ensure that it receives the best value for the money it spends, the State Bar should establish documentation standards and templates for contract managers to follow when using the exam exemption.

Other Areas We Reviewed

To address the audit objectives, we also reviewed the State Bar's efforts to manage its revenue and expenditures in a manner that fully supports its mission of protecting the public.

The State Bar's General Fund

The State Bar uses its general fund to maintain, operate, and support its attorney discipline system. It had a general fund surplus for 2020, and it has taken steps to maintain its general fund reserve level. It has an ongoing policy requiring it to maintain a minimum reserve level in its general fund that equates to two months (or 17 percent) of its operating expenses. In its 2021 adopted budget, the State Bar projected that its general fund revenue would exceed its expenses by nearly \$6 million in 2020, increasing its operating reserve to a projected \$18.5 million. This amount equals about 21 percent of its expenses, which is above its minimum reserve requirement. The State Bar's chief financial officer attributed the 2020 surplus to decreases in personnel expenses, supplies costs, and equipment costs, all of which were because of the COVID-19 pandemic. For example, the State Bar projected that in 2020 it spent 11 percent less than budgeted for personnel costs. The State Bar projects a general fund reserve balance level of 19 percent for 2021, which is more than its 17 percent minimum and less than its 30 percent maximum reserve-level requirements.

Potential Revenue From the State Bar's Real Estate

The State Bar has made some efforts to increase revenue and reduce costs associated with its real estate properties. In October 2020, the State Bar refinanced the loan on its Los Angeles building and thereby reduced its annual debt service through 2027 by \$1.2 million. Further, the State Bar commissioned a space usage study of its San Francisco office in 2020 to determine how it can more effectively occupy this building and how it can increase revenue by vacating unneeded space that it can then lease to tenants. The study identified a 20 percent vacancy rate for its staff's workspace and a low usage rate for many of its conference rooms.

According to the State Bar's administrative officer, the COVID-19 pandemic has created uncertainty about the demand for the space it leases to tenants. Further, the administrative officer explained that the State Bar will need to assess the extent to which teleworking will continue in the long term in order to plan for its future space needs. The State Bar's interim executive director also explained that due to the challenges and uncertainties associated with the COVID-19 pandemic, the State Bar does not currently know how successful it will be in leasing existing vacant tenant space, or when it will make decisions regarding any underutilized space that it currently occupies itself.

We conducted this audit under the authority vested in the California State Auditor by Government Code sections 8543 et seq. 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 and Methodology 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,

A handwritten signature in black ink that reads "Elaine M. Howle". The signature is written in a cursive, flowing style.

ELAINE M. HOWLE, CPA
California State Auditor

April 29, 2021

APPENDIX

Scope and Methodology

We conducted this audit pursuant to the audit requirements contained in the Business and Professions Code. For this audit, we assessed the State Bar's management of its attorney discipline system by reviewing its staffing levels, the timeliness of its investigations, and its disposition of cases, as well as the transparency of the information it provides to stakeholders in its discipline report. We also reviewed the State Bar's response to the COVID-19 pandemic and its impact on the state bar examination and on prospective California attorneys. The following table lists the audit objectives and the methods we used to address them.

Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
<p>1 Review and evaluate the laws, rules, and regulations significant to the State Bar's operations.</p>	<p>Reviewed relevant laws, regulations, and other background materials.</p>
<p>2 Evaluate the State Bar's management of its attorney discipline system, including but not limited to the following:</p> <ul style="list-style-type: none"> a. The resources, including the level of staff devoted to the attorney discipline system. b. The timeliness of its investigations and disposition of cases. c. The effectiveness of this system in protecting the public from attorneys who engage in inappropriate conduct. d. The level of transparency the State Bar provides in its reports to the Legislature that provide various measures of its discipline process. 	<ul style="list-style-type: none"> • Reviewed the State Bar's policies and interviewed staff regarding its processes for investigating and disciplining attorneys accused of misconduct, including its reorganization of its trial counsel's office beginning in 2016, its implementation of a new case prioritization process in 2018, and its implementation of the new case management system in 2019. • Assessed the total backlogged cases for each month of the audit period and interviewed staff to determine reasons for the increasing backlog and case processing times. • Calculated the average number of case processing days by phase and case priority level, and the number of pending cases per month by phase to determine correlations between timeliness and staff workload. • Determined the outcomes of closed cases and calculated the percentage of closed cases that involved disciplinary actions. • Evaluated internal benchmarks and performance metrics for the trial counsel's office and reviewed a selection of 10 backlog cases that the State bar processed during 2018 and 2019. We could not test the majority of the cases processed in 2018 against the State Bar's internal benchmarks because its case management system did not contain the information necessary, such as when an initial interview was conducted. We tested five cases processed in 2019 and found that three did not meet at least one of the internal benchmarks. However, the State Bar could not provide specific reasons for these delays, and stated that it had suspended some internal benchmarks to alleviate increased staff workload due to an increase in complaints and changes made in anticipation of its new case management system. • Reviewed and analyzed the State Bar's discipline reports and interviewed staff to determine if the reports included accurate, consistent, and sufficient data regarding the attorney discipline system.

AUDIT OBJECTIVE	METHOD
<p>3 Summarize and evaluate the State Bar's recent efforts to manage its revenue reserves and expenditures to fully support its public protection mission.</p>	<ul style="list-style-type: none"> Reviewed the State Bar's general fund revenues, expenditures, and reserve balance from 2015 through 2020 and documented changes that led to a 2020 general fund surplus. Compared a selection of the State Bar's travel and reimbursement policies against California Department of Human Resource's requirements and found no material differences. We also assessed the State Bar's process for using its real property based on our previous audit recommendations.
<p>4 Identify the impact of the COVID-19 pandemic on the bar exam and on prospective California attorneys by determining the following:</p> <ol style="list-style-type: none"> The State Bar's response to the pandemic and its work with stakeholders to administer the exam safely, responsibly, and in a timely manner. Best practices of other state bars to administer their respective exams. 	<ul style="list-style-type: none"> Reviewed Supreme Court letters and decisions involving changes to the 2020 bar exam and approval of a provisional licensure program as a result of the COVID-19 pandemic. Reviewed and analyzed the State Bar's policies and documents and interviewed staff to identify how the State Bar planned, implemented, and administered the October 2020 bar exam and the provisional licensure program. Reviewed and assessed New York's, Oregon's, and Texas's responses to the COVID-19 pandemic and compared their actions to the steps California took to modify its admission practices and its administration of the bar exam in response to the pandemic. We found California took steps similar to those taken by these states. Reviewed the 2018 and 2019 statements of economic interests filed by the board, the Committee of Bar Examiners, and the State Bar's executive management and admissions division staff. We determined that none of these individuals disclosed a financial interest in ExamSoft.
<p>5 Review and assess any other issues that are significant to the audit.</p>	<p>Reviewed and analyzed the State Bar's procurement manual and interviewed the State Bar's staff to determine its process for evaluating vendors and entering into contracts for the bar exam, including requirements associated with competitive bidding exemptions.</p>

Source: Analysis of state law and audit workpapers.

Assessment of Data Reliability

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. In performing this audit, we relied on the State Bar's case management data. To evaluate these data, we reviewed existing information about the data, interviewed staff knowledgeable about the data, performed electronic testing of the data, and traced a sample of the data to supporting documents. We found that these data were sufficiently reliable for the purposes of this audit.



The State Bar of California

OFFICE OF THE EXECUTIVE DIRECTOR

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SENT VIA ENCRYPTED EMAIL

April 9, 2021

Ms. Elaine M. Howle*
California State Auditor
620 Capital Mall, Suite 1200
Sacramento, CA 95814

RE: State Bar of California Response to Audit Report 2020-030, for the period of January 1, 2019, to December 31, 2020

Dear Ms. Howle:

The State Bar welcomes suggestions for positive change, and audits provide a unique opportunity to re-examine the State Bar's processes and procedures, and its compliance with those processes and procedures as well as state law. Having an independent set of eyes review our work can bring clarity and fresh ideas. Audits such as this one also serve to push us forward in bringing resolution to proposals and plans that we have been working on for some time and help to identify areas for further improvement. We are in general agreement with the recommendations for improvement and will implement virtually all of them, perhaps with some modifications discussed below and as further study indicates. We strongly disagree with some of the statements in the remainder of the text, but believe it is more productive to focus on the recommendations and how the State Bar will implement the auditor's recommendations.

STATE BAR RESPONSE TO AUDIT RECOMMENDATIONS

RECOMMENDATIONS FOR THE LEGISLATURE

Recommendation: To clarify state law and provide more transparency regarding the nature of the existing backlog of discipline cases, the Legislature should:

- Revise state law to remove Business and Professions Code section 6140.2, which has similar requirements for the State Bar's goals and policies for timely case processing but omits the State Bar's authority to designate *complicated matters*.

April 2021

Elaine M. Howle

April 9, 2021

Page 2

- Revise Business and Professions Code Section 6086.15, subdivision (a)(1), to require the State Bar to report in the Annual Discipline Report the number of complicated matters as of the end of the reporting period that were pending beyond 12 months after receipt without dismissal, admonition, or the filing of formal charges by the trial counsel's office.

Response: The State Bar agrees that reform of the metrics used to measure how the State Bar performs its mission of protecting the public from the malfeasance or misfeasance of attorneys is needed. In 2016, the State Bar proposed such changes to the Legislature in a report entitled, *State Bar Backlog*, submitted pursuant to Business and Professions Code section 6140.16. The State Bar has refined its thinking on this issue over the years and has shared with the auditor a proposed revised approach to measure the effectiveness of the State Bar in managing its discipline system and protecting the public. This revised approach places the focus and priority on the cases that pose the most harm to the public, as opposed to those that are simply the oldest, as the current statutory backlog measure does. These new principles for case processing goals are included in the supplemental information section below. The State Bar will be working with the Legislature to more fully develop these principles and agree upon appropriate measures. Adoption of these changes would render this recommendation moot.

①

Recommendation: To provide the Legislature sufficient time to consider the discipline report before reviewing the annual fee bill, [the Legislature] should:

- Amend state law to require the State Bar's discipline report to cover the 12 months of July 1 through June 30 of the previous year[sic], and require that the State Bar submit the discipline report annually by October 31.
- In the year that the discipline report's time period is amended, require the State Bar to report information for both the prior calendar year and the newly defined period to ensure that stakeholders can compare the information for the newly defined period to prior years.

Response: The State Bar has no concerns with this proposal.

RECOMMENDATIONS FOR THE STATE BAR

Recommendation: To ensure that it is operating efficiently, the State Bar should assess the impact of its discipline system reorganization, including how the changes have affected its ability to efficiently resolve cases and fulfill its mandate to protect the public. Based on the assessment's results, the State Bar should determine whether additional changes to its organizational structure are warranted.

Response: The State Bar agrees with the recommendation to conduct an assessment to determine whether and, if so, how the restructuring of the Office of Chief Trial Counsel (OCTC) impacted the office's ability to resolve cases and fulfill its public protection mandate.

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Based on currently available information, the State Bar believes that the reorganization was a positive move. These structural changes were implemented based on recommendations from the National Center for State Courts (NCSC) as part of its workforce planning report. The State Bar contracted with NCSC to conduct the workforce planning review directed by Business and Professions Code section 6140.16. The reorganization yielded positive changes in several ways, including the elimination of redundant levels of review. And while the State Bar was not authorized to impose a licensing fee increase until 2020, the State Bar nonetheless allocated discrete resources to OCTC to increase the office's total number of staff. ②

The State Bar believes that a comprehensive assessment of the reorganization will reveal that factors other than the reorganization explain some of the statistical trends noted in the Auditor's report. OCTC's work is largely complaint driven and as a result, the rate at which complaints are submitted drives OCTC's workload. Starting in July 2018, complaints increased substantially. In October 2018, when the State Bar launched an online complaint portal, which allowed people to file a complaint online for the first time, complaints rose yet further. Overall, in 2018 and 2019, the number of complaints increased by four and five percent respectively, and OCTC managed that increased volume with largely the same resources it had before the increase. The rate of complaints subsequently decreased, which explains the Auditor's note that the number of complaints rose only one percent between 2015 and 2019. However, that one percent figure obscures the surge in case volume that OCTC managed in 2018 and 2019, which was a significant contributor to the increased case processing times noted in the report. ③

In addition, in February 2019, the State Bar fully launched a new case management system, moving from a legacy computer system and largely paper-based process paper-based computer system to a modern electronic, paperless system. While the change was past due and will generate long-term benefits, the transition negatively impacted OCTC's productivity in the short term. In addition, the impact of the COVID-19 pandemic on 2020 cannot be overlooked. Besides the challenge of launching remote work for hundreds of staff almost overnight, delays arose because those entities on which OCTC relies for evidence (e.g., banks and courts) were slow to respond to requests for information, and the State Bar Court temporarily halted proceedings. ④

Finally, while the 2020 fee increase allowed the hiring of staff to form a new OCTC team in the Los Angeles office, the pandemic impacted the ability to onboard and train those staff as quickly as desired. The staff were onboarded over the course of the year, with the new team formally constituted in September 2020. Most new staff to the office take six months to a year to develop sufficient expertise to carry a full caseload. Thus, the full benefit of the new resources will not be realized until later in 2021.

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Recommendation: To determine if the changes to its discipline process have been effective and to help it identify problems in specific phases of its process before they affect the backlog, the State Bar should implement methods to monitor its enforcement process performance, including comparing the trial counsel staff's performance against internal case processing benchmarks.

⑤ *Response:* The State Bar agrees with the recommendation. The State Bar had already begun to implement such changes prior to the audit. Staff have developed a wide range of customized management and operational reports that were not included in the new case management system when it launched. These new reports will provide the State Bar and its Board of Trustees a more detailed view of the inventory, individual performance, and the performance of the office overall. As recently as December 2020, several key reports were launched that reflect current inventory, number of newly assigned cases, and the number of dispositions by individual attorneys and investigators as well as by teams.

The State Bar continues to develop additional reports, including one to determine whether OCTC team members are able to accomplish relevant investigative tasks consistent with interim case-processing benchmarks. These benchmarks set time frames for interim steps in an investigation and are intended to encourage the prompt disposition of discipline matters as a whole. The report is expected to be in production soon and will be used to evaluate case processing and determine whether the benchmarks are reasonable in light of current resources.

Recommendation: To reduce its backlog of discipline cases and ensure that it has appropriately allocated resources to all phases of its discipline process, [the] State Bar should do the following:

- Develop and recommend an appropriate backlog measure and goal as required by state law – including the number of days at which a case should be added to the backlog as well as a goal for the number of cases in backlog.
- Determine the staffing level necessary to achieve that goal, as required by state law.
- Work with the Legislature to establish this backlog measure and goal, and revise its reporting requirements accordingly. If necessary, it should also request the additional resources required to meet the goal.

⑥ *Response:* As described above, in 2016 the State Bar proposed to the Legislature new metrics which would supersede the current statutory backlog measure. Since that time, recognizing that the focus on backlog inadvertently creates incentives to work cases in the order in which they arrive, regardless of their severity, OCTC adopted a case prioritization method. The fundamental purpose of this approach is to protect the public from misconduct that poses the greatest threat to the public while attempting to process all cases as expeditiously as current resources permit. The approach formed the basis of the State Bar's recently developed principles for measuring our effectiveness in protecting the

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public. We believe these principles are superior to the current backlog measure. We look forward to working with the Legislature to continue to formulate and implement these improved measures to monitor and improve the effectiveness of the State Bar in protecting the public.

Recommendation: To ensure that the State Bar's discipline report presents accurate, complete, and consistent information, as state law requires, the board should require the designated committee to review, evaluate, and approve the annual discipline report before submitting the report to the Board. Additionally, the committee should develop procedures outlining how the State Bar should compile the report in accordance with statutory requirements. The committee should approve these procedures for the State Bar's use before finalizing its 2021 discipline report.

Response: As the audit report notes, each Annual Discipline Report discussed in the audit was reviewed either by the Board of Trustees itself, the Executive Committee based on its delegated authority from the Board, or the Board's Regulation and Discipline Committee.

Because the Regulation and Discipline Committee includes nearly all Board members, in several years the Board determined that it would be more efficient and enable the most comprehensive review to have the full Board review the report in the first instance. Requiring review first by the Regulation and Discipline Committee, followed by the entire Board, would have been redundant and inefficient, because both bodies include essentially the same people. The Board will consider whether to revise its formal procedures in light of the Auditor's recommendations. ⑦

The State Bar agrees with the Auditor that guidelines should be adopted for the review process to create a quality-control check and ensure that the Board review is as effective as possible.

Recommendation: To ensure that users of the discipline report can compare information from year to year, whenever the State Bar changes how it calculates a metric, it should describe the change in the discipline report and, for that year, provide information calculated under both its old and new methods.

Response: The State Bar agrees with this recommendation. The State Bar strives to adhere to this practice by noting when changes are made to how the data is reported. The State Bar notes that the Annual Discipline Report provides extensive, detailed information on the discipline system. The report is a lengthy and complicated document. Last year, it was nearly 100 pages long and included 18 statutorily mandated tables, 7 comparative figures, and countless other calculations and statistical analyses, along with other information. The Auditor notes instances in which some data points among the hundreds reported did not comply precisely with each requirement for presentation, in many instances because the Auditor interpreted a particular statutory requirement differently than the State Bar. In

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each case of such disagreement over the statutory interpretation, the State Bar is happy to adopt the Auditor's preferred statutory interpretation.

Recommendation: To ensure that it receives the best value for the money it spends, the State Bar should establish documentation standards and templates for contract managers to follow when selecting vendors for the administration of the bar exam.

- ⑧ *Response:* The State Bar agrees with this recommendation and has already implemented it. The procurement policy regarding competitive bidding exemptions has been updated to require that a best value analysis be documented in a new Best Value Memo template which must be submitted with the procurement requisition. Procurement requisitions submitted without the required documentation will be rejected. The memo will be reviewed by Procurement staff to verify that the analysis is sufficient and justified. Office directors have been instructed to ensure that contract managers and other staff members involved in the procurement of goods and services are aware of this policy change, and the written instructions for completing procurement requisitions in the Oracle system have also been updated.
- ⑨ The State Bar notes that the recent ExamSoft situation was unique because, due to industry consolidation and the last-minute need to adopt a remote, online exam, ultimately ExamSoft was the only vendor available for recent online administrations of the bar exam. Nonetheless, the Auditor is correct that best practices must be followed at all times.

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SUPPLEMENTAL INFORMATION

MEASURING THE STATE BAR'S EFFORTS TO PROTECT THE PUBLIC

As briefly mentioned above, OCTC continues to identify and prioritize the cases that represent the greatest danger to the public using a case prioritization system developed in 2018. The purpose of case prioritization is to marshal resources in a way that best protects the public from attorneys who pose the greatest threat. Highest priority cases include those that present significant, ongoing, or serious potential harm to the public; cases involving vulnerable victims including immigrants and seniors; cases of client abandonment; abusive or frivolous litigants; and, cases involving engaging in or abetting the unauthorized practice of law. OCTC devotes the most investigative and prosecutorial resources to pursuing these cases.

Given the increase in complaints filed during 2018 and 2019 and the numbers of criminal conviction matters opened in 2019 following the refingerprinting of all attorneys, the case prioritization system has proven to be an invaluable tool for protecting the public from misconduct that poses the greatest threat of harm. OCTC's focused implementation of case prioritization has demonstrated results: In 2020, for every 100 new highest priority cases received, OCTC resolved 146, up from 136 per 100 cases in 2019, and 126 per 100 cases in 2018. In other words, in 2018 and 2019 OCTC resolved 26 percent and 36 percent more high-priority cases than it received, and in 2020 it resolved 46 percent more cases than it received. At the same time, OCTC also improved its caseload clearance for lower priority cases—resolving 113 for every 100 new cases received in 2020, compared to 97 per 100 in 2019 and 94 per 100 in 2018.

⑩

As described above, the State Bar has refined its thinking on the statutory backlog measure over the years and has recently formulated principles for creating case-processing goals and measuring the State Bar's effectiveness in protecting the public. The *Principles for Revised Case-Processing Goals for the State Bar's Office of Chief Trial Counsel*, shared with the auditor and briefly with legislative staff, are included as Attachment A.

In recent years the State Bar has initiated extensive and continuing efforts to evaluate the fairness and effectiveness of the discipline system. Just a few examples include:

- In 2019 the State Bar initiated a study to determine if there is disparity by race, ethnicity, or gender in the State Bar's discipline system. Subsequently the Board of Trustees directed action to address the higher number of complaints made against African American male attorneys and their greater likelihood of being unrepresented, factors that resulted in more frequent and severe discipline for that demographic.
- In 2020 OCTC began issuing quarterly goals for case processing, to ensure consistent year-round efforts to resolve cases expeditiously.

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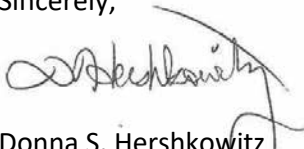
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- In September 2020, the Board of Trustees approved the creation of a new Ad Hoc Commission on the Discipline System to conduct an intensive study of the overall operation of the discipline system, building on reforms implemented since 2016. The commission will be looking to ensure a fair and effective discipline system by evaluating processes, policies, and procedures to ensure that they have had their intended effect, do not create inequity, and further the State Bar's public protection mission and goals.
- In 2018, the State Bar launched an online complaint portal for both attorney misconduct and unauthorized process of law complaints in English and Spanish to make it easier to file complaints and provide greater access to the discipline system. In 2019 the system was expanded to four additional languages: Chinese, Korean, Russian, and Vietnamese.
- The State Bar refined reports and metrics presented every other month to the Regulation and Discipline Committee to provide more meaningful tools for the committee to exercise its oversight and assess the health and efficacy of the discipline system in protecting the public.

We look forward to incorporating the audit report's suggestions into our ongoing evaluations of the fairness and effectiveness of the discipline system and otherwise making the changes noted above as part of our efforts toward continuous improvement.

Sincerely,



Donna S. Hershkowitz
Interim Executive Director

ATTACHMENT A

Principles for Revised Case-Processing Goals for the State Bar's Office of Chief Trial Counsel¹

Purpose: To provide a more meaningful rubric to examine the performance of the State Bar in carrying out its mission to protect the public through its handling of attorney misconduct matters

Key Principles:

- Consistent with Standard of Judicial Administration 2.2(b) regarding trial court delay-reduction measures, the State Bar's goals of the Office of Chief Trial Counsel (OCTC) for case processing and disposition times are intended to encourage the prompt disposition of the matters submitted to the Office of Chief Trial Counsel. The goals apply to the overall inventory and are not meant to create deadlines for individual cases. The goals should be applied in a fair, practical, and flexible manner.
- Because many attorneys in the system have multiple complaints against them, the measure of whether the State Bar is protecting the public is whether an attorney has been disciplined, not how many cases have been disciplined.
- The best measure of OCTC's efforts to protect the public should distinguish between attorneys who are eligible to practice law and those who are not. Attorneys who are not eligible to practice law do not pose the same risk to the public.
- Case-processing and case-disposition goals should not be tied only to what has been accomplished as of December 31 of a given year. Case-processing and case-disposition timelines are important year-round.

Goals:

- OCTC's goals for case processing and disposition should set time frames to encourage effective case management, following the same model established for civil case dispositions, i.e.: ⑥
 - X% of cases disposed by ## months
 - Y% of cases disposed by ## months
 - Z% of cases disposed by ## months²
- Timelines and/or goals for percent of cases disposed within those times will differ by priority level.
- The State Bar will establish goals for different case types—such as those initiated from client complaints, those initiated from bank reports of overdrawn client trust accounts, etc.

¹ Minor edits were made to this document following submission to the State Auditor and legislative staff for clarification purposes.

² To provide greater context, the goal for managing unlimited civil cases is that 75 percent are disposed of within 12 months, 85 percent are disposed of within 18 months, and 100 percent are disposed of within 24 months. More ambitious goals are set for limited civil cases. See Standard of Judicial Administration 2.2(f).

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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 response to our audit from the State Bar. The numbers below correspond to the numbers we have placed in the margin of the State Bar's response.

The State Bar's suggestion that our legislative recommendation is moot is premature. Whether or not the Legislature adopts the State Bar's proposed changes to the backlog measure, the Legislature will still need to ensure that the various sections of the Business and Professions Code are consistent with each other.

①

The State Bar's assertion that its reorganization was a "positive move," resulting in "positive changes," is not supported by demonstrably positive results. The State Bar indicates that the reorganization eliminated redundant levels of review. However, the dramatic increase in the backlog of attorney discipline cases and in the time to complete investigations indicate that the State Bar's reorganization has not improved the efficiency or effectiveness of its discipline system. We look forward to reviewing the results of the State Bar's assessment of the reorganization as part of our post-audit review process.

②

The State Bar's focus on the 2018 and 2019 time period distorts the overall trend in complaints. Because the reorganization began in early 2016, the starting point of a relevant comparison period would begin at the end of 2015. As we state on page 16, the number of complaints increased by only 1 percent from 2015 through 2019. Thus, the number of complaints received in 2019 is not significantly different than the number of complaints received in 2015, prior to the reorganization, and we stand by our conclusion that it is unlikely the change in the number of complaints during 2018 or 2019 accounts for the increase in either the backlog or case processing times.

③

The State's Bar's discussion of the impact of the COVID-19 pandemic on its operations in 2020 is irrelevant to the report's conclusions and recommendations. The backlog and case processing times were steadily increasing well before 2020, as Figure 3 on page 14 and Figure 4 on page 15 show.

④

- ⑤ The State Bar's discussion of the wide range of customized management and operational reports it has developed is not relevant to our recommendation. According to the State Bar, these reports are not related to the performance of its discipline system staff in meeting the internal benchmarks it has established. As we describe on page 18, the special assistant confirmed that the State Bar does not monitor its staff's performance against its internal benchmarks because it has not yet developed the reports necessary to do so. As a result, the State Bar is not currently assessing whether it is meeting its benchmarks, which has hampered its ability to determine whether its reorganization has been effective.
- ⑥ The State Bar's principles for revised case-processing goals do not contain sufficient information to accurately assess how they would be implemented. As we recommend on page 19, the State Bar should develop and recommend an appropriate backlog measure and goal, including the number of days at which a case should be added to the backlog as well as a goal for the number of cases in the backlog. However, the number of goals and factors that the State Bar describes suggest that it anticipates creating multiple backlog measures. Such an approach increases the difficulty of assessing the State Bar's overall case management. Although different time frames may be appropriate for different types of cases, a single backlog figure that can be compared to prior periods helps ensure that stakeholders can easily understand the overall health of the discipline system.
- ⑦ If the board believes the regulation and discipline committee's review is redundant or unnecessary, it should revise its policies. However, based on the number of errors we identified in the 2019 discipline report, as Table 2 on page 23 shows, the board's current review process is not sufficient to ensure an accurate description of the discipline system's performance.
- ⑧ We did not assess the policies and documents to which the State Bar refers. The State Bar provided this information after we had completed our fieldwork, and we did not have the opportunity to review them. However, as we state on page 30, until it enforces these policies, the State Bar risks engaging in the kinds of practices that its procurement manual is meant to prevent, such as failing to determine whether more cost-effective alternatives exist. We look forward to reviewing the updated policy and documents as part of our post-audit review process.

The State Bar's focus on its contract amendment with ExamSoft misrepresents the nature of its practices. When it entered into the \$3 million contract with ExamSoft there was no last-minute need to adopt a remote, online exam. Nor, from the information we reviewed, was ExamSoft the only vendor available. However, as we describe on page 30, the State Bar ignored its exam exemption requirement for assessing whether it was receiving the best value for both the initial ExamSoft contract and the contract amendment. Because the requirement that it determine the best value is the only requirement established for contracts under the exam exemption, the State Bar effectively bypassed all of its contracting safeguards when entering into the ExamSoft contract and amendment.

⑨

We do not have sufficient data to address the statistics the State Bar presents for cases resolved during all of 2020. The data we obtained contained records for case activity through September 2020, and we limited our analysis to case activity through June 2020. Nevertheless, our analysis indicates that during the period we reviewed the backlog grew and both higher- and lower-priority cases took longer to resolve.

⑩