

STATE BAR OF CALIFORNIA

Although It Reasonably Sets and Manages Mandatory Fees, It Faces Potential Deficits in the Future and Needs to More Strictly Enforce Disciplinary Policies and Procedures

REPORT NUMBER 2002-030, APRIL 2003

The State Bar of California response as of October 2003

Audit Highlights . . .

The State Bar of California (State Bar) continues to make some improvements since our audit in 2001. For example, it:

- Made further changes to reduce its backlog of disciplinary cases.*
- Continued to ensure that mandatory fees are reasonable and do not support voluntary programs.*

However, the State Bar needs to do the following:

- Ensure that policies and procedures for processing disciplinary cases are being followed.*
 - Monitor its need for an increase in membership fees to avoid a potential deficit in its general fund in the future.*
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Chapter 342, Statutes of 1999, directed the State Bar of California (State Bar) to contract with the Bureau of State Audits to conduct a performance audit of the State Bar's operations from January 1, 2002, through December 31, 2002. We found that the State Bar continues to reduce its backlog of disciplinary cases that resulted from its virtual shutdown in 1998. Overall, the State Bar's efforts have significantly decreased the number of cases in its backlog from 1,340 at the end of 2000 to 401 at the end of 2002. In addition, the State Bar continues to ensure that dues for members are reasonable and are not used to support voluntary functions. However, deficiencies similar to those identified by the State Bar's staff in its 2000 internal random review of disciplinary cases continue to be an issue. Moreover, the State Bar's financial forecast indicates that if fees remain at its current level, the State Bar could face a deficit in its general fund at the end of 2005.

Finding #1: The State Bar has made significant progress in decreasing its backlog of disciplinary cases.

Since our 2001 audit, the State Bar has continued its efforts to decrease its backlog of disciplinary cases. For example, it created a backlog team in its enforcement unit. The backlog team, composed generally of the most experienced investigators, focused exclusively on the backlog cases. The overall goal for 2002 was to have a backlog of no more than 400 cases. The State Bar's efforts significantly decreased the number of cases in its backlog from 1,340 at the end of 2000 to 401 at the end of 2002. According to a backlog reduction report prepared by its staff, the State Bar is currently focusing on not allowing the backlog to increase beyond 400 in 2003. Further, it maintains an "aspirational goal" of reducing the backlog to 250 by the end of

2003, but the report stated that the State Bar's ability to achieve that goal has been negatively impacted by budget constraints and other external factors.

We recommended that the State Bar continue its efforts to reduce its current backlog.

State Bar Action: Partial corrective action taken.

The State Bar reported that it is continuing its efforts to reduce the backlog. In June 2003, it reported that the backlog had risen to 756. However, as of October 2003 the State Bar reduced it to 566 cases. The State Bar stated it maintains its goal of bringing the backlog back down to 400 by the end of 2003.

Finding #2: The State Bar needs to strictly enforce its policies and procedures when processing complaints.

The State Bar's internal random review process indicates that staff do not always follow policies and procedures when processing complaints. Specifically, in 2002, the State Bar identified some of the same type of deficiencies as reported in its random review in 2000. Its two reviews in 2002 identified staff's failure to enter information into the computer database, poor record keeping and file maintenance, and not sending closing letters to complainants or respondents. Because State Bar staff did not always provide proper record keeping and file maintenance, the reviewers sometimes found it difficult to determine if a case had been appropriately handled. However, the reviewers found that the areas of concern were not generally significant enough to have an adverse effect on the overall disposition of a case. To address some of these issues, the State Bar conducted group and individual training, and it issued a training bulletin to remind staff of the policies and procedures.

We recommended that the State Bar require that each file contain a checklist of important steps in the process and potential documents to ensure that employees follow policies and procedures for processing cases. Each applicable item should be checked off as it is performed or received. An employee's supervisor should be responsible for reviewing the checklists to ensure their use. In addition, the State Bar should conduct spot checks of current cases that are being closed. Responsible staff should be required to resolve any issues concerning files determined to be noncompliant.

State Bar Action: Partial corrective action taken.

The State Bar reported that it has implemented the use of checklists to ensure important steps are taken and necessary documents are contained in the files. It also has begun implementation of a computer verification system. This system does not allow a matter to be closed or forwarded unless the file is properly updated. In addition, the State Bar reported that it has postponed until November 2003 the implementation of having supervising attorneys in the Office of the Chief Trial Counsel spot-check closures every month to verify that files include closing letters and detailed closing memos. Instead, the State Bar performed a one-time, large-scale audit of cases closed in 2002. A full analysis of the results was to have been completed by the end of October 2003.

Finding #3: Cost recoveries for the State Bar's client security fund and disciplinary activities continue to be low.

Since our 2001 audit, the State Bar's cost recovery rates improved slightly, although the rates remain low. Specifically, the Client Security Fund cost recovery rates increased from 2.5 percent in 2000 to 10.9 percent in 2002. A similar increase occurred in the cost recovery rates from the disciplinary process. In 2002, these amounts increased from 28.8 percent to 36.4 percent. Because cost recoveries are still low, the State Bar used more of its membership fees to subsidize support for its Client Security Fund and disciplinary process than it might otherwise need to.

The State Bar believes that other recovery methods, such as the State's offset program, may not be feasible. One cost recovery method that may be available is the collection of money debts under the California Enforcement of Judgments Law. However, according to the executive director, the State Bar's position is that state statutes explicitly define the specific circumstances and methods by which it is to impose and collect its disciplinary costs, and thus the Legislature has implicitly excluded other methods more generally provided in the law.

When our audit report was issued in April 2003, the executive director told us that the State Bar was seeking a legislative amendment, similar to statutory language applicable to costs imposed in disciplinary proceedings of the Department of Consumer Affairs, to help it strengthen its collection enforcement authority. Because existing state law does not

explicitly state that the State Bar can use the methods provided in the Enforcement of Judgments Law, the State Bar believes it needs statutory language that states it can do so. This language would provide the State Bar independent authority to pursue legal action for these costs.

We recommended that the State Bar pursue a legislative amendment that would help it strengthen its enforcement authority over collections related to client security and disciplinary costs.

State Bar and Legislative Action: Corrective action taken.

The State Bar reported that on September 6, 2003, the governor approved Assembly Bill 1708 (AB 1708). Effective January 1, 2004, sections 6086.10(a) and 6140.5(d) of the Business and Professions Code will provide that court orders, which impose disciplinary costs or require the reimbursement of the Client Security Fund by attorneys who have been suspended, disbarred, or the subject of a public reproof, will be enforceable as a money judgment. The remedy will apply retroactively to all court orders imposing disciplinary costs or Client Security Fund reimbursements. The State Bar reported that these changes would permit it to obtain writs and abstracts of judgments and seek orders of examinations in the superior courts. In addition, the recording of abstract judgments would then typically be reflected in the reports of credit agencies. Further, the State Bar reported that it created a working group of staff to establish the processes and procedures necessary to implement these new statutes on the effective date of January 1, 2004.

Finding #4: Although it continues to ensure that mandatory fees are reasonable and do not support voluntary programs, the State Bar faces potential deficits in the future.

For the year 2002, the State Bar's financial records for the general fund indicate that it charged a reasonable level of fees. The general fund's revenues of \$46.4 million exceeded its expenses by \$2.5 million. However, because the board of governors approved transfers to other funds of \$5.9 million, its general fund balance declined from \$6.6 million in 2001 to \$3.3 million in 2002. A financial forecast prepared by the State Bar predicts that in 2003 through 2007, if membership fees remain at \$390 a year, general fund expenses will exceed its revenues. Although the State Bar's general fund balance is

expected to decrease as a result of its expenses increasing faster than its revenues, a deficit is not expected to occur until the end of 2005 because of the newly created Public Protection Reserve Fund. As of January 1, 2001, the State Bar established this fund to provide a hedge against the unexpected and to assure continuity of its disciplinary system and other essential public protection programs. However, if State Bar expenses continue to exceed its revenues, a deficit in the combined available balance for the general fund and Public Protection Reserve Fund is anticipated by the end of 2005 that will continue to grow through 2007.

We recommended that the State Bar continue to monitor for the necessity of a fee increase to ensure that mandatory fees are set at a reasonable level to meet its operational needs.

State Bar Action: Partial corrective action taken.

In June 2003, the State Bar reported that because of the State's current fiscal situation it was seeking a one-year fee bill that would maintain mandatory dues at \$390 for the 2004 billing year. The State Bar expected to rely on existing reserves to balance the general fund budget for 2004 and anticipated proposing a multi-year fee bill with a tiered fee increase that would support ongoing operations without relying on reserves. In October 2003, the State Bar reported that the 2004 general fund budget was balanced by transferring the revenue allocated to the Lawyer Assistance Program back to the general fund; enhancing member revenue by restricting eligibility for reduced fees for certain categories of members (member fee scaling); eliminating the general fund contribution to the Public Protection Reserve Fund; eliminating 16 positions; and reducing proposed non-personnel expenditures. The State Bar also reported that AB 1708 was signed in September 2003, authorizing it to collect up to \$390 per member in annual membership fees for 2004. This authorization maintains the same fee level in effect since 2001. AB 1708 also amends existing statute to restrict eligibility for member fee scaling and allows the State Bar to enforce the collection of disciplinary costs incurred in the general fund and reimbursements to the Client Security Fund as money judgments to be included in an individual's membership fee. The State Bar is hopeful this legislation will provide additional funding and ease pressure to increase member fees. Finally, the State Bar reported that it would continue to review its operations for improvements in efficiency, with staff reductions, as appropriate.

