

# STATE BAR OF CALIFORNIA

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## ***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 May 2004

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### ***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 May 2004, it reported that as of April 2004 the backlog count was 604. Although the backlog number is higher than the goal of 400, the State Bar stated it is working on bringing the backlog number back to the 250-400 range by the end of the year. As of May 2004, the State Bar plans office-wide to transfer two investigations per investigator to the backlog team to assist in reducing the backlog. In addition, it transferred an investigator position from the Los Angeles office to the San Francisco office to assist in lowering the number of cases that "roll-in" to backlog in the San Francisco office.

**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 complaint files. It also is continuing the implementation of a computer verification system. With automation complete for the Intake Unit, computer verification for the Investigations and Trials units will be completed with the installment of the new graphical user interface for the systems. In addition, beginning November 2003 supervising attorneys have been spot-checking closures every month to verify that files include closing letters and detailed closing memos. The State Bar also continues to employ the internal random review process twice a year for the appropriateness of file resolutions. In addition, it continues to utilize the second-look process to ensure that resolutions are appropriate. The second-look process is in place for complainants who ask for review of the closure of their complaint.

**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 Action: Corrective action taken.***

The State Bar reported that in 2003 it was successful in obtaining amendments to sections 6086(a) and 6140.5(d) of the Business and Professions Code to provide that orders of the California Supreme Court or the State Bar Court imposing disciplinary costs or reimbursements to the Client Security Fund may be enforceable as money judgments. These changes in the law granted to the State Bar inherent authority to pursue civil remedies in the superior courts distinct from its reinstatement proceedings. The State Bar created a working group to establish the processes necessary to implement these new statutes. The State Bar reported that the unique nature of its proceedings posed several procedural and logistical issues. For example, it required consultations with other state agencies with similar statutory authority to collect administrative awards as money judgments in the superior courts. The State Bar also reported that proposed changes to the California Rules of Court and to the Rules of Procedures of the State Bar have been drafted and are awaiting further action pending completion of the 90-day public comment period. In addition, it is reviewing with staff of the Supreme Court and Judicial Council other provisions of the California Rules of Court to determine if any other amendments will be necessary.

**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.***

The State Bar reported that in September 2003 the governor signed Assembly Bill 1708 (AB 1708) that authorizes the State Bar to collect up to \$390 in annual membership fees for 2004. This one-year authorization maintained the same fee level that has been in effect since 2001. The State Bar also reported that AB 1708 amended an existing statute to restrict eligibility for member fee scaling when it showed that there were members with income in six figures who nonetheless scaled and reduced their 2004 payments on grounds that this income was not from the practice of law. The State Bar initially forecast that changes to the scaling provision would

generate \$1.1 million in additional revenue. However, the amount was \$450,000—less than had been anticipated. The State Bar performed a random audit of 100 members who scaled their 2003 fee and found that 9 percent of the sample either would not submit a copy of their tax return or were found to be not eligible to scale their fee, and therefore paid their 2003 fee in full. The State Bar is proposing that its board of governors authorize another more expansive audit of members who have scaled in 2004 to determine if there still exists a significant number of members who may be abusing the scaling provisions. Also, in deference to the State's current dire fiscal condition, the State Bar is currently seeking a one-year fee bill that would maintain mandatory dues at \$390 for the 2005 billing year.