

# STATE BAR OF CALIFORNIA

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## ***It Should Continue Strengthening Its Monitoring of Disciplinary Case Processing and Assess the Financial Benefits of Its New Collection Enforcement Authority***

REPORT NUMBER 2005-030, APRIL 2005

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### ***Audit Highlights . . .***

***Our review revealed that the State Bar of California:***

- Continued to monitor its backlog of disciplinary cases and reported 402 cases in the backlog at the end of 2004.***
  - Continued to conduct semiannual reviews of disciplinary case files; however, it noted deficiencies similar to those found in its 2002 reviews.***
  - Developed a checklist for case files and adopted a policy to spot check active cases as we recommended, but the checklist is not comprehensive and staff have not consistently performed the spot checks.***
  - Obtained additional legal authority to collect money related to disciplinary cases, but needs approval of administrative procedures before it can implement the new authority.***
  - Is pursuing an increase in revenues from membership fees to help reduce projected deficits.***
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### **State Bar of California's response as of April 2006**

**A**s required by Chapter 342, Statutes of 1999, the Bureau of State Audits conducted a performance audit of the State Bar of California's (State Bar) operations covering January 1, 2004, through December 31, 2004. In planning this audit, we followed up on three principal areas identified during our 2003 audit: the State Bar's processing of disciplinary cases, cost recovery as part of processing disciplinary cases, and the use of mandatory and discretionary funds to support State Bar functions.

Our report concluded that the State Bar continued to monitor its backlog of disciplinary cases that resulted from its virtual shutdown in 1998. In addition, the State Bar's semiannual reviews of randomly chosen disciplinary cases in 2004 disclosed deficiencies similar to those found in its 2002 random reviews. To address these deficiencies and in response to our 2003 audit recommendations, the State Bar developed a brief checklist to guide staff in processing disciplinary cases. However, its staff did not always use the checklist and it is not sufficiently comprehensive. The State Bar also adopted a policy to spot check open disciplinary cases to ensure that staff are maintaining files properly and handling complaints correctly. However, we found that staff did not consistently perform the requisite number of spot checks and sometimes failed to document the results.

Further, the State Bar's recoveries of disciplinary costs and Client Security Fund payments remained low. Therefore, to subsidize these costs, it used a larger portion of the membership fees it collected than it would have if its recovery rates were higher. Although a law effective in January 2004 improved its ability to recover past and future costs, the State Bar has not yet been able to use this new authority because it is waiting for approval of certain administrative procedures by the California Supreme Court. Finally, the State Bar is pursuing a revenue increase to help reduce projected deficits in its general fund and Client Security Fund. Specifically, we found:

**Finding #1: The State Bar continued to monitor its case backlog while seeing little change in the number of disciplinary cases it processed.**

The State Bar processed almost the same number of cases through its intake and enforcement units in 2004 as it did in 2002. In addition, although it reported that its backlog of disciplinary cases increased to 540 cases in 2003, the backlog it reported at the end of 2004 was 402 cases, which is almost identical to the backlog at the end of 2002. Even though the State Bar maintains an “aspirational goal” of reducing the backlog to 250 cases, it believes that having a backlog of about 400 cases may reflect the norm.

We recommended that the State Bar continue its efforts to control its backlog of disciplinary cases.

***State Bar’s Action: Corrective action taken.***

The State Bar reported that it has reorganized the Office of the Chief Trial Counsel, in part, to address structural and reporting issues that have historically contributed to the creation of the backlog. In particular, it eliminated the separate trial unit and investigation unit and created four trial and investigation units that it believes will result in greater teamwork in performing adequate investigations and preparing cases for trial. The State Bar also stated that, since September 1, 2005, its deputy trial counsel, rather than investigators, oversees all disciplinary investigations. By December 2005, the State Bar reported a reduced backlog of 315 cases, the lowest year-end backlog level since 1997 when the backlog was at 253 cases. By continuing to focus on the disposition of existing backlog cases and avoiding the roll-in of new cases into the backlog, it is the goal of the Chief Trial Counsel to further reduce the backlog to about 200 cases by the end of 2006.

**Finding #2: The State Bar needs to fully implement its procedures and policies for monitoring disciplinary case processing.**

The State Bar’s random reviews of its disciplinary case files indicate that staff still have not consistently followed policies and procedures when processing complaints filed against its members. In particular, in its 2004 semiannual reviews of randomly chosen case files, the State Bar identified some of the same deficiencies as it identified in 2002 reviews. To address some of these issues, and in response to the recommendations we made in our 2003 report, the State Bar developed a checklist to ensure that staff complete important steps in processing complaints and include all necessary documents in every case file. Further, in 2004 the State Bar instituted a policy requiring team leaders to periodically spot check active files. However, we found that staff have not consistently used the checklist and it is not sufficiently detailed. In addition, we found little evidence of compliance with the spot-check policy.

We recommended that the State Bar:

- Establish a written policy requiring staff to maintain a checklist of the important steps involved in processing disciplinary cases and include all necessary documents in every case file, rather than relying on an informal instruction that the checklist be used.
- Develop a checklist that is more comprehensive than the current investigation file reminder, such as the tool that the audit and review unit uses when it randomly reviews disciplinary case files.

- Make supervisors responsible for ensuring that each case file includes a checklist and that staff use it.
- Enforce its policy of spot checking the files of active disciplinary cases and require team leaders to document the results of their spot checks.

***State Bar's Action: Corrective action taken.***

The State Bar reported that it has developed a more comprehensive checklist and directed its staff to begin using the checklist effective July 1, 2005. In addition, the State Bar stated that it has issued a policy directive that addresses the monthly random audits of open investigation files, as well as the requirement to document the results of the random audits using a checklist form developed for that purpose.

**Finding #3: Changes in state law may improve the State Bar's recovery of disciplinary costs and Client Security Fund payments.**

The State Bar's cost recovery rates in 2004 were comparable to its recovery rates in 2002; however, they remained low compared with the total amounts billed. Specifically, the State Bar's cost recovery rates in 2004 for discipline and the Client Security Fund were 40.5 percent and 10.7 percent, respectively. Therefore, the State Bar used a larger portion of its membership fees to subsidize its disciplinary activities and the Client Security Fund than it would have with a higher recovery rate. In the past, the State Bar had little success in recovering costs from disbarred attorneys or attorneys who resigned, in part, because it lacked specific authority to pursue recovery of debts under the Enforcement of Judgments Law. However, based on amendments to the Business and Professions Code, effective in January 2004, the State Bar now has the requisite legal authority, which may improve its ability to recover not only future costs but also some portion of the \$64 million in billed costs that remain unrecovered since 1990.

To enable it to carry out the statute, the State Bar has proposed to the California Supreme Court that the California Rules of Court be amended. The proposed amendments, which the State Bar submitted to the supreme court in February 2005, would require the superior court clerk of the relevant county to immediately enter a judgment against an attorney for the amount the State Bar certifies the attorney owes for disciplinary costs or Client Security Fund payments. After obtaining the money judgment, the State Bar would be able to garnish wages or obtain judgment liens on real property the attorney owns. Until the Supreme Court approves the proposed procedures, the State Bar cannot exercise the money judgment authority.

We recommended that the State Bar prioritize its cost recovery efforts to focus on attorneys who owe substantial amounts related to disciplinary costs and payments from the Client Security Fund.

***State Bar's Action: Partial corrective action taken.***

The State Bar reported that it is still awaiting the Supreme Court's approval of the proposed rule of court for the procedures needed to begin filing of money judgments. In March 2006, the Clerk of the Supreme Court requested the State Bar to make certain nonsubstantive changes to the proposed rule of court and to resubmit its proposal. The State Bar's executive director expected approval of the changes by the board of governors in May 2006. The State Bar

also indicated that it continues to monitor the responses from disciplined attorneys to the demand letters that have been mailed in its two pilot projects—one targeting the most recently disciplined attorneys and another targeting the 100 disciplined attorneys who owe the most in disciplinary costs. As of April 2006, the State Bar reported that collections as a result of the first and second pilot projects have totaled \$48,112 and \$24,411, respectively. Further, the State Bar indicated that in each matter that remains unpaid, it continues retrieving relevant documents from the files of disciplined attorneys so that it can file requests for money judgments when the proposed rule is adopted.

The State Bar also indicated that it has attained a favorable ruling in the lawsuit that one disbarred attorney who received a demand letter for repayment of disciplinary costs had filed in federal court challenging the constitutionality of the amendments permitting the State Bar to enforce disciplinary costs as money judgments. However, the attorney has appealed and the matter is now pending in the Ninth Circuit.

Finally, the State Bar reported that it has completed its review of attorneys with court-ordered restitution from the list of the 100 attorneys owing the most in Client Security Fund reimbursements and reconciled the amounts these members owe. It found that Client Security Fund restitution was ordered only in one matter. Therefore, the State Bar believes that the benefit of the new collection enforcement authority will be largely prospective.

**Finding #4: The State Bar is pursuing a revenue increase to help reduce projected deficits.**

Based on the State Bar's financial forecast, the combined balance of its general fund, which accounts for activities related to the disciplinary system, and its Public Protection Reserve Fund, which was established to ensure the continuity of the disciplinary system, will sink into a deficit of \$13.8 million by the end of 2008 unless revenues from membership fees increase.

The forecast assumes a significant increase in staff salaries and wages beginning in 2006 and no change in membership fees. For its general fund the State Bar predicts that expenses will exceed revenues starting in 2005, which will eventually use up the surplus in the general fund. The State Bar also predicts that its Client Security Fund, which it uses to help alleviate the financial losses suffered by clients of dishonest attorneys, will have a deficit by the end of 2006. To avoid projected deficits, the State Bar has proposed a bill that would increase its membership fees by \$5 for active members and \$95 for inactive members and would change the criteria for active members to qualify for a partial fee waiver. If approved, these changes would become effective on January 1, 2006.

We recommended that the State Bar continue to update its forecasts for key revenues and expenses as new information becomes available. For example, the State Bar should closely monitor the results of its enhanced collection enforcement authority and the benefits it may have on recovery of disciplinary costs and Client Security Fund payments.

***State Bar's Action: Partial corrective action taken.***

The State Bar reported that its fee bill for 2006 and 2007 was signed into law in September 2005. The authorized fees are slightly different than those discussed in the audit report. The State Bar indicated that its recently updated financial forecast for the general fund that includes 2005 actual operating results projects a modest surplus of \$266,000 at the end of 2007. In addition, the State Bar indicated that it will continue to monitor key 2006 revenues and expenses on a quarterly basis, including monies collected through cost collection efforts, and will update its financial forecast accordingly.

