

# State Bar of California

## Its Lawyer Assistance Program Lacks Adequate Controls for Reporting on Participating Attorneys

### REPORT NUMBER 2011-030, ISSUED MAY 2011

This report concludes that the Lawyer Assistance Program (assistance program) of the State Bar of California (State Bar) lacks controls to ensure that the case managers for the program's participants submit reports of noncompliance promptly and consistently to such disciplinary bodies as the State Bar Court of California. Our review of case files for 25 participants in the assistance program showed that it does not have adequate procedures for monitoring case managers to ensure that they are appropriately sending reports of participants' noncompliance, such as missed or positive laboratory testing results for drugs or alcohol. In fact, case managers failed to send six reports to disciplinary bodies when participants missed laboratory tests and failed to send 10 other reports in a timely manner.

Further, the assistance program lacks adequate controls and procedures to ensure that case managers treat all noncompliance issues consistently. The assistance program relies on case managers to bring participants' noncompliance to the attention of the program's evaluation committee when appropriate; however, the program has issued only limited guidance to help case managers determine when to notify the evaluation committee. Further, the assistance program does not have any formal process for monitoring case managers' adherence to policies and procedures. Nine of the 25 participants we reviewed each had 10 or more instances of noncompliance, but we did not always see evidence that the case managers brought these issues to the attention of the evaluation committee.

Finally, the assistance program needs to adopt mechanisms to better gauge its effectiveness in achieving its mission of enhancing public protection and identifying and rehabilitating attorneys who are recovering from substance abuse or mental health issues. Until it develops these mechanisms, the State Bar will be unable to determine how well the assistance program is performing.

In the report, the California State Auditor (state auditor) made the following recommendations to the State Bar. The state auditor's determination regarding the current status of recommendations is based on the State Bar's response to the state auditor as of November 2011.

#### **Recommendation 1.1—See pages 17—20 of the audit report for information on the related finding.**

The assistance program should ensure that case managers are submitting to the appropriate entity the required reports in a timely manner, as required by its policies. Specifically, the assistance program should make certain that the new automated process for tracking and monitoring case managers' reporting of noncompliance is implemented properly and is being used as intended.

#### ***State Bar's Action: Fully implemented.***

The assistance program implemented an automated mechanism to assist the director, case managers, and administrative assistants in tracking and monitoring the immediate report filing process.

#### **Recommendation 1.2—See pages 20—22 of the audit report for information on the related finding.**

To make certain that case managers treat consistently the noncompliance issues that do not require immediate reports to disciplinary bodies, the assistance program should finish implementing its case file review process. Further, the assistance program should develop guidelines to help case managers determine when to submit noncompliance issues to the evaluation committee.

***State Bar's Action: Fully implemented.***

According to the State Bar, it has fully implemented its annual case review process, which requires case managers to meet on a monthly basis and review a random selection of case files. The review process involves an assessment of each selected case and a discussion of any changes that may be required. At the end of the case review process, the case management supervisor is required to follow up to ensure each case manager has made the necessary changes. In addition, the assistance program has developed guidelines to help case managers determine when to submit noncompliance issues to the evaluation committee.

**Recommendation 1.3—See pages 22—24 of the audit report for information on the related finding.**

Finally, the assistance program should take steps to better gauge its effectiveness. For example, it could measure how long its participants remain in the program and assess the program's impact on any further actions that disciplinary bodies impose on these attorneys. Further, if the assistance program believes that the effectiveness of the program is better measured through other means, it should develop these alternative measures and assess the program's effectiveness in meeting its stated goals.

***State Bar's Action: Partially implemented.***

The State Bar states that the assistance program has undertaken the process of identifying performance measures to supplement those that are currently in place and reported in the annual report to the Board of Governors. According to the State Bar, assistance program staff has met with the Board Committee on Member Oversight to receive its input and guidance in this process so that meaningful measures can be developed to assist the State Bar's stakeholders in further evaluating the effectiveness of the program. For example, staff has discussed with the Member Oversight Committee two separate preliminary studies gauging the impact on attorneys by length of time participating in the program. These studies suggest that participants in the assistance program for six months or longer have shown positive results on the rate of disciplinary sanctions imposed. According to the State Bar, further analysis of this nature will be developed in the 2011–12 board year.