



THE STATE BAR OF CALIFORNIA

OFFICE OF THE CHIEF TRIAL COUNSEL

I. General Overview of the Attorney Disciplinary System

The highest priority for the State Bar and the Board of Trustees in exercising their regulatory and disciplinary functions is the protection of the public.¹ The protection of the public is “paramount” to any other competing interest.² The Office of the Chief Trial Counsel (OCTC) is responsible for reviewing allegations of lawyer misconduct, investigating and prosecuting matters before the State Bar Court. OCTC has “exclusive jurisdiction” to review inquiries/complaints, conduct investigations and determine whether to file formal charges in State Bar Court.³

A. Intake Process

Disciplinary investigations and proceeding may arise from different sources such as public complaints, referrals from other regulatory or law enforcement agencies, and reportable actions (eg. reports from financial institutions or courts). The State Bar may also initiate a disciplinary investigation on its own.⁴ For example, OCTC may open an investigation based upon media coverage concerning potential unethical conduct by a licensed California attorney. Likewise, the receipt of evidence in one disciplinary proceeding may warrant opening a separate investigation concerning another attorney or distinguishable acts of misconduct.

¹ Business and Professions Code section 6001.1. All further uses of the term “section” or “sections” shall refer to the Business and Profession Code.

² *Id.*

³ Rules of Procedure of the State Bar of California, rule 2101. All further uses of the term “rule” or “rules” shall refer to the Rules of Procedure of the State Bar of California.

⁴ Section 6044.

Most cases within the disciplinary system, however, arise from a consumer complaint.

Consumers with [complaints](#) about an attorney may call the State Bar's toll-free Complaint Hotline number at (800) 843-9053 or file a complaint form with OCTC's Intake Department. Specially trained complaint analysts in the Office of Intake receive calls to the Complaint Hotline and determine the nature of the allegation. If a possible violation of the State Bar's Rules of Professional Conduct or State Bar Act appears to exist, the complaint analyst explains the formal complaint process to the caller and may assist the caller in initiating that process. Complainants may obtain a copy of the State Bar's complaint form from the State Bar's website at www.calbar.ca.gov or directly from the Office of Intake. Once the complaint form is filled and received, the Office of Intake begins the formal information gathering process.

If there is reasonable cause to proceed with a complaint,⁵ the Office of Intake forwards the complaint for investigation/enforcement. In some cases, however, OCTC has no jurisdiction. Where appropriate, OCTC will refer the caller to an appropriate agency. In other cases, by intervening, OCTC may successfully re-establish a positive attorney/client relationship between the two parties.

B. Matters Designated for Outside Examiner

Pursuant to rule 2201, a Special Deputy Trial Counsel (commonly referred to as an Outside Examiner) shall be appointed to conduct the investigation of a complaint/inquiry and necessary disciplinary proceedings arising from a complaint/inquiry regarding:

- an attorney member of the Board of Trustees;
- a member who has a current or recent personal, financial, or professional relationship to the State Bar, its employees or a member of the Board of Trustees, or to avoid the appearance of impropriety;
- a member employed by the State Bar;

⁵ See rule 2401.

- a member of the governing board of any other entity of the State Bar.

OCTC's Office of Intake is authorized to receive such complaints and conduct a preliminary review to determine whether an Outside Examiner is warranted. If OCTC determines that the complaint is not sufficiently specific, is not from a credible source, or the allegations (if proven) would not result in discipline, OCTC may close the matter without investigation. If, however, the complaint appears appropriate for investigation or the Office of Intake is unable to make a closing determination, OCTC shall appoint an Outside Examiner to conduct an investigation and any further proceedings.⁶

In addition to the aforementioned circumstance, the Chief Trial Counsel must recuse herself from and, subsequently, an Outside Examiner appointed to:

- an inquiry/complaint involving the Chief Trial Counsel;
- where the Chief Trial Counsel believes that recusal would further the interests of justice;
- where the Chief Trial Counsel believes there is substantial doubt as to her capacity to be impartial; or
- where a person aware of the facts would reasonably entertain a doubt that the Chief Trial Counsel could be able to be impartial.⁷

C. Investigation and Pre-Filing Process

Matters forwarded for investigation are assigned to an OCTC investigator and OCTC attorney (trial counsel). It is OCTC's goal to resolve complaints within six months from receipt by the filing of formal charges, dismissal or other resolution. Complaints pending in investigation or other pre-filing status that are more than six months old are commonly referred to as "backlog."⁸

⁶ Rule 2201(a)-(g).

⁷ Rule 2201(i).

⁸ Section 6094.5 sets one benchmark for closing or completing investigations of complaints within six months after receipt of the complaint and within 12 months for cases designated as complex. A mandated goal under section 6086.15, however, states that backlog includes all complaints that have not been resolved (dismissal, admonition, or filing of formal charges) within six months of receipt of the complaint.

Pursuant to section 6044, the State Bar may investigate all matters affecting or relating to the State Bar and its affairs, the practice of law, and the discipline of members of the State Bar. The State Bar's investigative powers include taking evidence by subpoena and deposition.⁹

During the investigation process, OCTC must notify a respondent in writing of the allegations forming the basis for the investigation and provide the member at least two weeks to submit a written explanation. Pursuant to rule 2409, an extension of time shall be granted only upon written request to OCTC and for good cause.

Upon conclusion of the investigation, OCTC makes a determination whether to file formal charges, enter into a proposed settlement/stipulation, close or otherwise resolve the case. If OCTC determines that formal charges are warranted, it sends written notice to the respondent advising that OCTC intends to file formal charges and notifies the respondent of the right to request an Early Neutral Evaluation Conference (ENEC), pursuant to rule 5.30(A). Either party may request an ENEC, which the State Bar Court must hold within 15 days of the request. At the ENEC, a hearing department judge provides the parties with an oral evaluation of the facts, charges and potential sanction. If the parties resolve the matter in the way that requires court approval (eg. stipulated settlement), OCTC must document the resolution and submit it to the ENEC judge for approval or rejection.¹⁰

D. State Bar Court Proceedings

The State Bar of California is the only state bar in the nation with independent professional judges dedicated to ruling on attorney discipline cases. The independent State Bar Court hears the charges and has the power to recommend that the California Supreme Court suspend or disbar those attorneys found to have committed acts of professional misconduct or convicted of serious crimes. For lesser offenses, the State Bar Court may issue public or private reprovations, which do not require Supreme Court approval.

⁹ See section 6049.

¹⁰ Rule 5.30(B).

Unless a stipulated settlement as described above is filed, the filing of a Notice of Disciplinary Charges initiates formal disciplinary proceeding before the State Bar Court.¹¹ Pursuant to the rules, the State Bar Court shall schedule trial to commence no later than 125 days after the NDC is served.¹²

II. OCTC's Vertical Model of Prosecution

In 2012, OCTC transitioned to a vertical model of prosecution which replaced an assembly-line approach to case development. Under the former assembly-line approach, a complaint would move through four different attorneys before being tried to completion. For example, an Intake attorney would conduct the preliminary review of a complaint. If forwarded for investigation, a new attorney (legal advisor) would assume the case during the investigation phase. Upon completion of the investigation, a third attorney (notice drafter) would assume the case for settlement or filing purposes. If the case did not settle, a fourth attorney would assume the case for trial. This approach did little to promote staff accountability and proved inefficient for obvious reasons. By July 2011, OCTC was struggling with a backlog inventory of more than 1,500 complaints and faced a potential backlog inventory of nearly 3,000 by December 2011.

Under the current vertical model of prosecution, cases forwarded from Intake to Investigations are assigned to one investigator and one trial counsel, both of whom are responsible for the case until conclusion of trial, settlement or closure. The vertical model allows the trial attorney to develop and shape the case from the beginning. It fosters greater staff responsibility and promotes a more uniformed approach to OCTC's investigations and prosecutions.

III. OCTC's Audit and Review

In 2011, OCTC reestablished its Audit & Review Unit, which conducts bi-annual random audits of open cases and conducts "second-look" reviews of closed cases. The "second-look" review is an internal reconsideration process offered to complainants. If OCTC closes a cases, the complainant is

¹¹ See rule 5.41(A).

¹² Rule 5.102(C).

notified in writing of the ability to request a “second look” or review of that closing decision. If the complainant makes that request, an Audit & Review attorney is assigned to reevaluate the matter. The Audit & Review attorneys are specially assigned to the unit to ensure that a fresh set of eyes reconsiders the matter.