

# STATE BAR BACKLOG

SUBMITTED PURSUANT TO  
BUSINESS AND PROFESSIONS CODE SECTION 6140.16



THE STATE BAR OF CALIFORNIA  
MAY 13, 2016

## **INTRODUCTION**

In California, a lawyer is licensed when admitted as a member of the State Bar; only active members of the State Bar may practice law. The State Bar is a constitutional agency established in the judicial branch. In administering the requirements for admission and discipline of California lawyers, the State Bar is an administrative arm of the California Supreme Court. Under its inherent judicial power to regulate admission and discipline, it is the Supreme Court that admits, disbars, or suspends a lawyer from the practice of law.

In 1999, Senate Bill 144 (Schiff and Hertzberg) was passed requiring a biennial performance audit of the State Bar. The most recent audit, completed in June 2015, included the following recommendation:

“To align its staffing with its mission, the State Bar should engage in workforce planning for its discipline system. The workforce planning should include the development and formal adoption of an appropriate backlog goal, an assessment of the staffing needed to achieve that goal while ensuring that the discipline process is not compromised, and the creation of policies and procedures sufficient to provide adequate guidance to the staff of each unit within the discipline system.”

The audit language was eventually added to Senate Bill 387 (2015-2016 Reg. Sess., ch. 537, 2015 Cal. Stat.), the State Bar’s 2016 fee bill.

This report responds to the requirement in Senate Bill 387 that the State Bar develop “an appropriate backlog goal [and] an assessment of the staffing needed to achieve that goal.” The first section of the report reviews the history of the current backlog standard and issues that have arisen in working to meet that standard. The second section of the report provides an overview of the process that the State Bar has followed to develop a new backlog goal and concludes with recommendations regarding both backlog and new factors to be considered in designating cases as “complex.” The final section of the report explains the methodology employed to estimate staffing needs to achieve the new backlog goal and presents those estimates.

## **HISTORY**

Business and Professions code 6094.5 (a) currently defines backlog in the following manner:

“It shall be the goal and policy of the disciplinary agency to dismiss a complaint, admonish the attorney, or forward a completed investigation to the Office of Trial Counsel within six months after receipt of a written complaint. As to complaints designated as complicated matters by the Chief Trial Counsel, it shall be the goal and policy of the disciplinary agency to dismiss, terminate by admonition, or forward those complaints to the Office of Trial Counsel within 12 months.”

In other words, a case enters into “backlog status” under this definition if it has not been closed or filed in State Bar Court within six months (twelve for complex cases) from the date it was received.

In 2009, the State Auditor expressed concerns about the manner in which the State Bar was using the complex designation. The Auditor’s concern related to the failure of the State Bar to report on cases designated complex in Annual Discipline Reports, and also to the changing criteria for defining case complexity. That definition changed in 1988, 1995 and 2006 without full disclosure; a historical review of complex criteria is provided in Appendix A. The State Bar addressed these concerns by including statistical and definitional information regarding complex cases in the Annual Discipline Report.

Concerns regarding case complexity were compounded by State Bar-established targets specifying the maximum number of cases that should be in backlog status at the end of any given year. Prior to 2007, the State Bar had a goal of no more than 200 cases in backlog status at year end. In response to the State Bar’s 2007 state audit, State Bar management indicated that the 200 cases goal was too aggressive and revised it upwards to 250. The State Bar was never able to meet either of these goals.

In 2011, the State Bar’s new Executive Director announced that the State Bar would attempt to eliminate its backlog entirely, and the new annual backlog goal would be zero. Although significant reductions in the backlog were realized, this success was criticized for being achieved at the cost of reducing the severity of discipline sought by the Office of Chief Trial Counsel (OCTC). Although Business and Professions Code 6094.5(a) retains the language about complex cases, the Bar no longer uses this designation.

The current goal is to have no more than 15 percent of cases in backlog at year end. This objective was developed by staff in dialogue with the Board of Trustees Regulation and Discipline Committee. While the goal is currently being met, the State Auditor expressed concern regarding this goal. In its 2015 audit of the State Bar, the State Auditor noted that the number of cases in the State Bar’s total backlog cases of active and suspended cases was increasing even though it was meeting its stated goal, thus, calling into question the validity of this measure.

## **THE STATE BAR’S RESPONSE TO THE LEGISLATIVE MANDATE**

Pursuant to legislative direction to recommend an appropriate backlog goal, an interdisciplinary working group of OCTC staff was established in December, 2015. The Backlog Working Group (BWG) was comprised of eight staff with a combined 125 years of experience working for the State Bar. Members of the Working Group were selected to ensure the representation of staff with experience working in all phases of case processing. A BWG roster is provided as Appendix B.

The charge of the BWG was two-fold. First, the BWG was charged with recommending a new backlog definition – i.e., to define the maximum number of days after receipt of a case before it becomes “backlogged.” Second, the BWG was charged with developing

criteria to be used in designating a case “complex” and estimating the associated case processing timeframes for these cases. The BWG approached its charge by conducting several activities, some concurrently, others sequentially. These activities are described below:

#### **REVIEWING OTHER ATTORNEY DISCIPLINE SYSTEMS**

In addition to reviewing historical information regarding the State Bar’s prior backlog goals and complex definitions, the BWG reviewed information provided by the Chief Bar Counsels from other jurisdictions, including Louisiana, New Mexico, Georgia, Hawaii, Illinois, Massachusetts, Washington and Colorado. A summary of these responses is provided as Appendix C.

#### **DOCUMENTING CURRENT CASEFLOW**

Drawing on the experience of subject-matter experts who comprised the BWG, the group documented in detail each activity in the complaint processing continuum. A structured, iterative review of these activities and the time associated with them was then conducted to refine the estimates. This type of evaluation, sometimes referred to as a “Delphi” process, draws on the intimate knowledge that subject-matter experts have of a topic while constantly subjecting that knowledge to data that might clarify or contradict the impressions of the group.

This work resulted in preliminary estimations of the number of days required for each case-processing activity. In addition to articulating case processing timeframes, the BWG identified a host of factors that might result in a case being designated as complex. There were two initial sessions in total; the results of that effort are provided as Appendix D.

#### **SURVEYING OCTC STAFF**

A survey was disseminated to all OCTC staff to solicit feedback on the initial Delphi results. Respondents were asked to comment on the estimated timeframes established by the BWG, as well potential complex factors. If respondents disagreed with the BWG timeframes, they were asked to provide an alternative number of days and explain specifically why a different amount of time was required for that phase of case processing. Similarly, if respondents disagreed with a complex designation, they were asked to state the reason(s) for their disagreement.

The overall response rate for the survey was 89 percent. Survey results were reviewed by the BWG and modifications to the timeline were made accordingly. Certain activities, as well as complex designation criteria, required additional research; individual BWG members were tasked with more in-depth work on these issues.

#### **DEVELOPING A PRELIMINARY COMPLEX DESIGNATION**

As reflected in Appendix D, the original list of complex designation factors developed by the BWG was quite lengthy. This list reflects the reality of the work – there are a host of scenarios that can lead to a case taking longer to investigate and process, many of which are not unique to any particular type of discipline matter.

However, the BWG was able to discard some of the proposed factors by keeping in mind the following:

- The criteria had to be quantifiable
- The criteria needed to be easily understood by stakeholders
- The criteria needed to be limited (not all cases could be complex)

The initial list of 18 complex factors was winnowed to six factors based on these criteria. The six were later reduced to the four contained in this report following a final review by the BWG.

## BACKLOG WORKING GROUP RESULTS

### CASE PROCESSING TIMELINES

The BWG ultimately developed two recommended case processing timeframes – Feasible and Enhanced. These can best be understood as follows:

- The Feasible backlog goal represents the number of days that would be required for case processing with only modest increases in the resources available;
- The Enhanced backlog goal represents a shorter time frame than the Feasible goal and would require a more substantial increases in resources.

Table 1 displays Feasible and Enhanced timeframes:

Table 1: Proposed Backlog Goals

<b>Case Stage</b>	<b>Feasible Goal (days)</b>	<b>Enhanced Goal (days)</b>
Intake	58	50
Investigation	108	86
Pre-Filing	71	56
<b>Subtotal through Pre-Filing</b>	<b>237</b>	<b>192</b>
<i>Additional days for Stipulation</i>	22	17
<b>Total for Stipulations</b>	<b>259</b>	<b>209</b>
<i>Additional days for Filing NDC</i>	1	1
<b>Total for Filing NDC</b>	<b>238</b>	<b>193</b>

The Feasible backlog goal recommendation is 259 days for stipulated cases and 238 days for cases that are filed in State Bar Court; the Enhanced backlog goal is 209 days for stipulated cases and 193 days for cases filed in State Bar Court.<sup>1</sup> As a point of comparison, the 2015 Annual Discipline Report reflects an average number of days from initiation to complaint filing of 305 days, with the oldest case filed in 2015 being 388

<sup>1</sup> Note that stipulated cases take longer on average due to the negotiation over the stipulation and the transmittal of the document between the two sides.

days old. Thus, even the more modest, Feasible Goal would represent an improvement of 15 percent on average for stipulated cases and a 22 percent improvement for cases in which an NDC is filed in State Bar Court. The more ambitious target would represent improvements of, respectively, 31 and 37 percent for stipulated and NDC filings as compared to the current average.

### **COMPLEX DESIGNATION**

The survey of OCTC staff found substantial agreement with many of the complex factors identified by the BWG, as reflected in Appendix E. Each of these criteria materially affects the length of time it takes to move a complaint through the process. Although there are a number of factors that contribute to a case taking longer to process, the following four, which represent a combination of case types and criteria, were determined most appropriate for complex designation purposes:

- 5 or more complaints against a single attorney
- 5 or more victims
- Assumption of Law Practice case<sup>2</sup>
- Substantial amount of documentary evidence<sup>3</sup>

Once the criteria were identified, the BWG discussed the amount of time each of these factors added to case processing. After thorough discussion of the difficulties each of these criteria brings to a case, the BWG determined that, on average, the presence of one of these factors would result in the need for an additional 180 days: the exact amount of additional case processing time currently designated in statute for complex cases.

### **RESOURCE IMPLICATIONS OF ESTABLISHING A NEW BACKLOG GOAL**

As noted above, achieving the new backlog goals recommended by the BWG would represent a substantial reduction in the amount of time from case initiation to disposition. State Bar staff in the Office of Research and Institutional Accountability have evaluated the target backlog numbers and developed a methodology for estimating the resources that would be needed to meet the new targets.

The following section provides an overview of that method and the resource implications of the BWG backlog targets. Appendix F provides additional technical detail related to workload calculations. Table 2 on the following page summarizes the workload estimates and, as an additional point of comparison, applies the new backlog targets to the current statutory definition of backlog – 180 days – and estimates the staffing that would be needed to achieve the current, statutory backlog target.

---

<sup>2</sup> The Office of Chief Trial Counsel obtains an order from the Superior Court to assume jurisdiction over an attorney's law practice when the attorney is incapable of providing quality services including, among other reasons, because the attorney is operating a corrupt law practice.

<sup>3</sup> Cases may be designated complex in the Superior Courts using the Judicial Council's Civil Case Cover Sheet. Rule of Court 3.400 provides for a complex designation in cases that require, among other factors, "Management of a large number of witnesses or a substantial amount of documentary evidence."

Table 2: Summary of Resources Needed to Meet Three Different Backlog Targets

Additional FTE Needed to Achieve Statutory Backlog		Additional FTE Needed to Achieve Enhanced Backlog		Additional FTE Needed to Achieve Feasible Backlog	
Additional Attorneys	23.0	Additional Attorneys	19.8	Additional Attorneys	11.3
Additional Investigators	25.4	Additional Investigators	22.0	Additional Investigators	12.6
<b>Subtotal</b>	<b>48.4</b>	<b>Subtotal</b>	<b>41.8</b>	<b>Subtotal</b>	<b>23.9</b>
<b>Supervision &amp; Support Subtotal</b>	<b>32.8</b>	<b>Supervision &amp; Support Subtotal</b>	<b>28.3</b>	<b>Supervision &amp; Support Subtotal</b>	<b>16.2</b>
<b>Total Additional Staff</b>	<b>81.1</b>	<b>Total Additional Staff</b>	<b>70.1</b>	<b>Total Additional Staff</b>	<b>40.1</b>

### MODELING RESOURCES AND CASE PROCESSING TIMES

A key assumption underlying these estimates is that there is an *inverse* relationship between the amount of days required to process cases and the number of staff working on case processing. In other word, as the number of staff devoted to case processing *increases*, the number of days to case disposition should *decrease*.

While there are always exceptions to this assumption – cases where OCTC staff are entirely dependent on external agencies to produce records or provide other documentation necessary to bring a case to conclusion – this should not undermine the general assumption that, all other things being equal, increased staffing should produce faster case resolution times.

To begin estimating *how many staff* would be needed to reach specific targets, it is useful to draw on data showing *current* staffing levels and look at how long cases take from receipt to disposition currently. Once the relationship between the current number of staff and current case processing times is established, adjustments in the number of days required for case processing can be evaluated as *marginal differences* from the status-quo. The marginal differences in the number of days necessary to achieve the new backlog targets can then be applied to staffing levels.

Therefore, the first calculation that we made, shown in Table 3, is the marginal difference between current case processing times and three different backlog targets: the statutory definition of backlog, and the two scenarios developed by the BWG, an Enhanced Goal, and a Feasible Goal.<sup>4</sup>

<sup>4</sup> Note that the BWG established a total of four backlog goals: two each for the Enhanced and Feasible goals. Because the current, statutory backlog target is a *single* number, the two targets for each goal have been combined into a weighted, average target. Stipulated cases generally take longer, but they also represent a much smaller share of the total caseload (about 25% of cases that reach this stage of the process) while filings in State Bar Court are faster and occur more often (about 75% of cases that reach this stage of the process). Therefore, the single target for both the Enhanced and Feasible conditions reflects the added weight of the shorter time frame due to the larger number of cases that dispose as a filing in State Bar Court. See Appendix F, Table F1 for details on the calculation.

Table 3: Comparison of Current Case Processing Times with Three Backlog Targets

	Statutory Definition			Enhanced			Feasible		
Current Average Days from Receipt to Filing of Stipulation or NDC <sup>5</sup>	Reduction Target	Difference from Current (Days)	Difference (%)	Reduction Target	Difference from Current (Days)	Difference (%)	Reduction Target	Difference from Current (Days)	Difference (%)
<b>305</b>	<b>180</b>	<b>125</b>	<b>41%</b>	<b>197</b>	<b>108</b>	<b>35%</b>	<b>243</b>	<b>62</b>	<b>20%</b>

For this analysis, we assume that the marginal differences in resources needed to change case processing times are the same as the marginal differences in time. In other words, we assume that achieving a 10 percent *reduction* in the number of days will require a 10 percent *increase* in staff resources.

Building on the marginal differences in time shown in Table 3, we then calculate the number of additional attorney and investigator staff consistent with the marginal difference between current case processing and the three scenarios being evaluated: a statutory backlog number, the Enhanced Goal, and the Feasible Goal.<sup>6</sup>

Table 4: Backlog Target Margins Applied to Attorney & Investigator FTE

		Marginal Difference Needed to Meet Backlog Target		
		Statutory	Enhanced	Feasible*
Current Staffing Levels	FTE	41%	35%	20%
Attorneys	56	23	20	11
Investigators	62	25	22	12
<b>Total</b>	<b>118</b>	<b>48</b>	<b>42</b>	<b>24</b>

\* Sum of staff FTE may not equal total due to rounding.

It is important to note that not all staff work directly on case processing, so the need for staff who contribute indirectly to case processing should be estimated differently. This analysis builds estimates of supervisory and support (S&S) staff by tying them to the numbers of additional attorneys and investigators. Additional resources necessary for supervision and support of attorneys and investigators are modeled as an *indirect* function of workload and calculated as ratios of S&S staff to attorneys and investigators.

<sup>5</sup> For more detail on the selection of the current average case processing time rather than the maximum for a point of comparison, see Appendix F. Details on the calculation of a single, weighted average for both Enhanced and Feasible backlog targets is also discussed in the Appendix.

<sup>6</sup> To align staffing levels with time estimates the “current” staffing levels are drawn from December, 2015. This allows for the most direct comparison with the most current data on how long case processing required, data reported in the 2015 Attorney Discipline Report.



The number of S&S staff needed to accompany an increase in the number of attorneys and investigators is determined by calculating current ratios of S&S staff to attorneys and investigators. The full list of OCTC staff who contribute to case processing is provided in Appendix F, Table F2 by job classification. Table 5, below, shows the ratios of S&S staff to attorneys and investigators.

Table 5: Supervisory & Support Staff Ratios

<b>Classification</b>	<b>Number of Attorneys &amp; Investigators per FTE</b>
Assistant Chief Trial Counsel	29.5
Supervising Attorney	11.8
Administrative Supervisor	59.0
Sr. Administrative Assistant	118.0
Executive Secretary	59.0
Administrative Assistant II	14.8
Legal Secretary	8.4
Administrative Assistant I	6.2
Paralegals	7.9
General Clerks	23.6

Table 5 reflects, for example, that for every 29.5 staff in the attorney and investigator classification, there is one Assistant Chief Trial Counsel; for every 11.8 staff in the attorney and investigator classification, there is one Supervising Attorney. To apply these ratios, the additional attorneys and investigators that the model indicates are needed are divided by the ratio. For example, for each additional 30 attorneys and investigators, these ratios would suggest the addition of a single Assistant Chief Trial Counsel:  $(30 / 29.5 = 1)$ .

The detailed calculations of additional staff needed to achieve the different backlog targets are shown in Appendix F, Table F3; Table F4 then calculates the implications of those estimates on the *total* workforce in OCTC by adding the incremental staffing need to base staffing levels.

## CONCLUSION

A more complete and refined model will address other expenses that are not accounted for in these simplified estimates. Underlying administrative infrastructure (human resources, finance, information technology) is often over-looked when estimating staffing needs. Similarly, physical space and the facilities implications of adding staff have not been addressed here and will need to be developed in a subsequent iteration of this model.

Moreover, implementing changes in one part of the State Bar discipline system will necessarily have an impact on other parts. Speeding up case processing under any one of the scenarios explored here would have an immediate impact on the State Bar Court. The

associated costs of which have not yet been modeled. During the implementation phase of this work, State Bar leaders will need to ensure that any changes made to OCTC operations serve the ultimate purpose of the State Bar: protecting the public through the effective regulation of attorneys.

**Appendix A**  
**THE STATE BAR OF CALIFORNIA**  
OFFICE OF TRIAL COUNSEL  
Los Angeles/San Francisco  
INTER-OFFICE COMMUNICATION

DATE: August 30, 1988

TO: Office of Trial Counsel Staff

FROM: Francis P. Bassios, Deputy Chief Trial Counsel

SUBJECT: Policy Directive - 1988-6  
IDENTIFICATION/DESIGNATION OF COMPLEX CASE BY OFFICE OF  
TRIAL COUNSEL LEGAL ADVISORS

SB 1498 amends Business and Professions Code §6094.5 to read as follows (effective January 1, 1989):

§6094.5(a) - It shall be the goal and policy of the disciplinary agency to dismiss a complaint, admonish the attorney, or forward a completed investigation to the Office of Trial Counsel within 6 months after receipt of a written complaint. As to complaints designated as complicated matters by the Chief Trial Counsel, it shall be the goal and policy of the disciplinary agency to dismiss, terminate by admonition, or forward those complaints to the Office of Trial Counsel within 12 months. . . ."

A "complicated matter" is an open investigation in the Office of Investigation wherein it has been determined that procuring evidentiary material and obtaining legal conclusions upon which to prosecute will require that the investigation be open more than 6 months.

The identification and designation of a matter as complex shall be done solely by designated Legal Advisors in the Intake/Legal Advice Unit in the Los Angeles Office of Trial Counsel and designated attorneys in the San Francisco office.

Some of the criteria to be considered in making the designation are:

1. MulticPLICITY of matters;
2. Excessive documentation not easily obtainable and/or excessive evaluation, summarization and review of documentation;

## Appendix A

August 30, 1988  
Policy Directive - 1988-6  
Page two

3. Individual complaints of little substance which need to be consolidated to prosecute;
4. Related investigation by other agencies if the complaint does not fall within abatement policies; and,
5. Extremely unusual and complicated legal areas.

When complaints are first reviewed by the Legal Advisors they may not fall within the complex designation. They may become complex during the investigation, at which time the investigator should obtain such a designation from the appropriate Legal Advisor. The above criteria may be met and the investigation may still not fall within the complex designation since each case must be reviewed on its own merits. The ultimate decision will be based on the allegation and how long it will reasonably take to obtain the evidence needed to prosecute the matter.

FPB/rm

## Appendix A



# THE STATE BAR OF CALIFORNIA

INTER-OFFICE  
COMMUNICATION

DATE: December 12, 1995

PRIVILEGED AND CONFIDENTIAL

TO: All Enforcement Staff

FROM: Judy Johnson, Chief Trial Counsel

SUBJECT: Designation of Investigation Cases as Complex

The current definition of "complex" is contained in the former Office of Investigations Policy Manual (currently being revised). Given the reorganization in 1995, we have discussed the following revisions to the internal criteria so that we may achieve more consistency in the limited application of the designation in our treatment of backlog cases.

As a practice note, all designations of "complex" require the approval of either the Assistant Chief Trial Counsel in Los Angeles or the Screening Deputy Trial Counsel in San Francisco in response to a written request for the designation. For computer purposes, the numbers assigned to each reason for "complex" will not change.

Cases designated as "complex" under the statutory backlog definition are limited to investigation cases in which the rule of limitations does not apply and in which any one of the following applies:

1. Multiplicity of matters (not applicable to § 6007(c) cases);
2. Excessive Voluminous documentation not easily obtainable or excessive evaluation, summarization and review of voluminous documentation required; or
3. ~~Complaints of little substance which need to be consolidated to prosecute.~~<sup>1</sup>

<sup>1</sup> Completed investigations should not be held or otherwise delayed but instead, should be forwarded upon completion for assignment to a Deputy Trial Counsel for coordination/prosecution. INV HLD should not be used for completed investigations.

## Appendix A

All Enforcement Staff  
Page 2

4. Related investigations by other agencies if the ~~complaint does not fall within abatement policies.~~<sup>2</sup>
5. ~~Extremely unusual and complicated areas of the law~~  
~~facts involved.~~

cc: Roberta M. Yang  
Francis P. Bassios  
Mable Wilkinson  
Mark Shannon  
Trev Davis

---

<sup>2</sup> If a Bar investigation is unable to be completed due to a related investigation by another agency, discussion should take place with the Assistant Chief Trial Counsel as to the correct computer status that should be used in this instance.

# Policy Directive



## Policy Directive 2006-04

### Identification and Designation Of Complex Cases

#### Introduction

It is the policy of the Office of Chief Trial Counsel to pursue and resolve allegations of criminals acts, professional misconduct or violations of the State Bar Act or California Rules of Professional Conduct committed by California State Bar members in a timely and efficient manner.

Policy Directive 1988-6 previously issued on this subject is vacated and replaced by this policy directive. This policy directive also supercedes any other policy directives, protocols and guidelines previously issued on this subject.

#### Relevant Rules and Policies

Business and Professions Code section 6094.5, subdivision (a) states, in relevant part, "It shall be the goal and policy of the disciplinary agency to dismiss a complaint, admonish the attorney, or forward a completed investigation to the Office of Trial Counsel within six months after receipt of a written complaint. As to complaints designated as complicated matters by the Chief Trial Counsel, it shall be the goal and policy of the disciplinary agency to dismiss, terminate by admonition, or forward those complaints to the Office of Trial Counsel within 12 months."

#### Summary of Current Practice

At the Intake level, a matter is considered complicated and designated as "complex" if a respondent has five or more pending disciplinary matters in the hearing or investigation stage.

## Appendix A

In the investigation stage, a matter is designated as complex upon a determination that the investigation of the matter may not be completed within six months after receipt of the written complaint due to the time required to procure evidentiary material and formulate legal conclusions.

An Investigator may seek to designate a matter as complex during the investigation stage of the case by obtaining the written approval of his or her Deputy Trial Counsel (DTC) and Assistant Chief Trial Counsel (ACTC).

### **Statement of New Policy**

An Investigator may designate a matter as complex upon the written approval of his or her DTC and ACTC. However, designating a matter as complex is generally disfavored and will only be approved under limited circumstances.

Criteria weighing in favor of designating a matter as complex include:

1. There are at least five open matters against the respondent;
2. The resolution of the case requires the recovery of voluminous documentation not easily obtainable and/or the extensive evaluation, summarization and review of voluminous documentation;
3. Another agency is currently undertaking a related investigation of the respondent, and the matter does not fall within the Office of the Chief Trial Counsel's abatement policies;
4. The respondent made misrepresentations about or concealed material evidence;
5. During the course of the investigation, it is established that the respondent engaged in new and/or different misconduct that is related to the current misconduct;
6. The respondent unreasonably delays complying with subpoenas;
7. It is unusually difficult for the investigator to locate or communicate with material witnesses;
8. The matter involves extremely unusual and/or complicated legal issues.



## Appendix A

Notwithstanding the existence of such criteria, the DTC or ACTC may deny a request to designate a matter as complex if only one criterion exists or if the criteria that exist are not sufficiently significant to merit a complex designation.

In the absence of extraordinary circumstances, requests for complex designation received 120 days or more after receipt of the written complaint will generally be denied. In order to avoid late requests, Investigative DTCs and Investigators will strive to complete the following steps within sixty (60) days of receiving the matter from the Intake Unit:

- (1) Within one week of receiving the investigation file from Intake, the Investigative DTC will develop an Investigation Plan (IP) for the investigator. The IP will identify relevant witnesses and documents, any actual or potential violations of the State Bar Act and Rules of Professional Conduct and key issues and concerns raised by the information known at that time. The Investigator and Investigative DTC will promptly resolve any issues and/or concerns regarding the IP that may exist.
- (2) Within 30 days of receiving the IP, the Investigator will: (i) locate and interview known witnesses; (ii) request copies of and/or subpoena necessary evidence, such as bank records, court files, insurance files, etc.; and (iii) request and obtain respondent's written response to the allegations.

During the investigation, the Investigator will also report on his or her progress to the Investigative DTC on a regular basis. The Investigative DTC and Investigator may modify the IP as circumstances warrant.

## Appendix B

### Backlog Working Group Roster

Name	Title	Unit	Location
Sheila Campbell	Investigator II	OCTC Enforcement	LA
Amanda Gormley	Investigator II	OCTC – Enforcement	SF
Manuel Jimenez	Senior Attorney	OCTC – Enforcement	SF
Erin Joyce	Senior Attorney	OCTC – Enforcement	LA
Lucy Mazon	Senior Administrative Assistant	Central Administration	LA
Esther Rogers	Senior Attorney	OCTC Enforcement	SF
Ross Viselman	Senior Attorney	OCTC – Intake	LA
Craig vonFreymann	Investigator Supervisor	OCTC – Enforcement	LA

## Appendix C

Intake Time Standards	Intake Narrative	Investigation Time Standards	Investigation Narrative	Complex Factors	Other Information
		<b>180 days</b>	180 to complete investigation. Must have plan explaining why 180 day not met and what will be done to move case forward. Goal is to have 80% of cases completed in 180 day timeline and 90% of cases in 365 days. Over 365 need justification and are placed in constant monitoring.	Coordination with law enforcement agencies; need to seek immunity for crucial witness; non-cooperating witness; pending criminal or civil action	
		<b>90 days</b>	Any cases lasting in investigation longer than 90 days need to be explain to Board chair and an update must be given at least ever six months.		
<b>365 days</b>	Have one year to conduct an informal screening to decide if they should send it on to disciplinary board for formal investigation. Even though they have 1 year, they usually accomplish this in 60 days.	<b>180 days</b>	This is an informal and unenforceable rule to finish in 180 days.		Once probable cause finding has occurred they have 30 days to file case in supreme court.
<b>none</b>		<b>7 months</b>	Petition must be filed within 7 months of the complaint being received.	multiple complaints; voluminous, technical or unavailable records; unavailable witnesses; and other similar issues that require additional time and effort to investigate.	
<b>90 days</b>		<b>6 month- 1 year if complex</b>			Formal complaint to hearing in 6 months. Hearing board reports due within 120 days of hearing.
<b>45 days</b>		<b>1 year</b>	This is from when the formal complaint is open. They try not to have any cases still in investigation after 18months and are 99% effective meeting this standard.		
<b>60 days</b>		<b>120 days</b>	It is 120 days from the assignment to investigations and the goal is to meet this 90% of the time with the other 10% to be completed in 180 days.	Trust account and noncooperation matters are allowed 250 days after assignment to investigations to complete.	They don't use a complex designation, but the different timelines for certain cases is the same result.
		<b>8 months - 1 year if complex</b>		Deputy staff member decides if a case is complex.	

## Appendix D

Table D1: Detailed Time Estimates for Complaint Processing: Intake through Closing/Filing

Beginning Action	Ending Action	Individual Time (days)	Cumulative Time (days)	Notes
<u><i>Intake Phase – Action Taken on Complaint</i></u>				
Receipt	Reading	20	20	None
Reading	Forward to Enforcement	0	20	In 2014, 291/month on average were immediately forwarded In 2015, 298/month on average were immediately forwarded
	<b>or</b>			
Reading	Forward of “worker” complaint to Enforcement	40	60	80-100/month on average are “workers” – i.e., they require additional investigation
				The following time computations assume that the case was forwarded directly from Intake to Enf without any investigation. If the case was a worker in intake, 40 additional days need to be added to the following totals.
Enf. INV LRW	Enf INV OPN	2	22	
<u><i>Enforcement Phase</i></u>				
Prepare IP		5	27	None
Approval of IP		3	30	None
Send out TR		14	44	None
TR response		30	74	None
Further investigation		30	104	If a closer, the INV needs to prepare closing memo and obtain LRW approval, which adds an additional approximate 5 days.
Draft SOC		5	109	None
LRW approval		5	114	None

## Appendix D

Beginning Action	Ending Action	Individual Time (days)	Cumulative Time (days)	Notes
<u>Pre-Filing Phase</u>				
Prepare Charging memo		4	118	
Receive approval of Charging Memo		2	120	
Send out 10 day letter		1	121	
Wait 10 days		10	131	If no response to 10 day letter, prepare draft NDC, obtain SSTC and ACTC approval and file NDC, which adds 3 days, for a total of approximately 134 days to get a case from Intake to filing of NDC if the respondent doesn't request an ENE. If the case was a worker, then total time would be 174 days, because 40 days is added at intake.
ENE set within 2 weeks		14	145	
		1	146	No settlement at the ENE, file NDC; 186 days if the case was a worker
Prepare Stipulation		4	151	
Obtain Stipulation approval from SSTC and ACTC		2	153	
File Stipulation		1	154	194 days if case is a "worker"

Acronyms Used in the Time Estimates	
ACTC	Assistant Chief Trial Counsel
ENE	Early Neutral Evaluation
ENF	Enforcement
INV	Investigation
IP	Investigation Plan
LRW	Legal Review Status
NDC	Notice of Disciplinary Charges
LRW	Legal Review
SSTC	Supervising Senior Trial Counsel
SOC	Statement of Case
TR	Letter to Respondent

## Appendix D

Table D2: Original List of Complex Factors Developed by Backlog Working Group

<b>Complex Case Type or Factor</b>
Multi-Layer Marketing Scheme
Respondent in Multiple States
Multiple CW's
6180
6190
6126
Vexatious Litigants
ADA Complaints
Late Retention of Counsel
Non-English speaking CW
Multiple Matters
Multiple Allegations
Voluminous Documentation
Unusual and complicated facts involved
Respondent made misrepresentations or concealed evidence
Respondent unreasonably delays complying with subpoenas
Unusually difficult to locate or communicate with material witness
Significant pre-trial discovery
Other complaints demonstrating a pattern of misconduct or scheme to defraud
Related disciplinary proceedings against more than a State Bar member
Novel or difficult legal issues that will be time consuming to resolve

## Appendix E

### Complex Factors Survey Results Summary

Intake and Enforcement Total	Expressing opinions				Don't Know
Factor	Yes	%Yes	No	%No	
Multi-Layer Marketing Scheme	90	97%	2	3%	86
Respondent in Multiple States and Multiple CW's	118	97%	3	3%	57
6180/6190/6126 - Assumption of Law Practice	91	87%	11	13%	76
Respondents Files Numerous Meritless Motions	75	84%	17	16%	86
ADA Complaints	51	81%	12	19%	115
Late Retention of Counsel	50	63%	29	37%	98
Non-English speaking CW	79	67%	34	33%	65
Multiple Matters	110	90%	10	10%	57
Multiple Allegations	83	77%	28	23%	66
Voluminous Documentation	117	98%	5	2%	55
Unusual and complicated facts involved	117	96%	6	4%	54
Respondent made misrepresentations or concealed evidence during the investigation	86	81%	16	19%	74
Respondent unreasonably delays complying with subpoenas	81	80%	17	20%	80
Unusually difficult to locate or communicate with material witness	93	88%	11	13%	74
Significant pre-trial discovery	84	84%	14	16%	80
Other complaints demonstrating a pattern of misconduct or scheme to defraud	106	96%	4	4%	68
Related disciplinary proceedings against more than one State Bar member	99	94%	5	6%	73
Novel or difficult legal issues that will be time consuming to resolve	113	98%	4	2%	61

## Appendix F

### Methods and Parameters for Estimating Resource Needs

The resources required to process cases within a given time frame can be calculated by looking at *current* case processing times and the resources currently devoted to case processing.

Table F1, attached at the end of this appendix, shows a number of different decision points that were incorporated into the estimations of the relationship between resources and case-processing times. Table F2 also highlights a number of assumptions that need to be made about the parameters used for estimating additional resources required to reduce the length of case processing time before cases fall into backlog.

Some of the more important of these decisions and assumptions are highlighted in the narrative below:

- *Compare the new backlog targets to the current average not the maximum case processing time*
  - If the ultimate backlog goal is for zero cases to fall into backlog, then the point of comparison for current case processing should be the maximum number of days required to dispose a case – 388 days – and not the average – 305 days;
  - Using 388 days, however, would exaggerate the resource need by focusing on outliers rather than focusing on the broad trends of case processing;
  - Recognizing that there will always be outlier cases that exceed established time frames for reasons entirely outside of the control of OCTC, and; recognizing that beginning from 388 days as the “as-is” estimate of case processing will unnecessarily and unrealistically inflate the estimates of the resources needed to achieve new backlog goals; the staffing estimates are derived by comparisons of target backlog goals with the *average* case processing times for 2015.
- *Estimate a single, weighted-average backlog goal for Feasible & Enhanced goals*
  - Rather than settle on a single backlog goal as current statute does, the BWG established four goals: stipulated filings and NDC filings for both enhanced and feasible scenarios;
  - Current case processing times for stipulations compared with filings of NDC, however, are not readily available;
  - For purposes of comparing current case processing times with backlog goals, it is useful to collapse the backlog goals into a single, weighted average time;
  - If the Legislature agrees to a bifurcated target – one for stipulated cases and another for NDC filings – this decision should be revisited.



## Appendix F

Additional assumptions that are built into the estimates of *current* resource utilization and then used to extrapolate estimates of resource *need* under the different scenarios include the following:

- *Use staffing levels, allocations, and functions from 2015 to estimate caseloads*
  - OCTC staff have been reorganized periodically into different groupings, and the functions that they perform across groupings has also changed over time;
  - Modifying the staffing estimates to reflect the most recent organizational structure of OCTC, however, would create a mismatch between data on case processing – readily available and recently published in the Annual Attorney Discipline Report for 2015 – and the staff who were assigned to that work.
- *Estimate the workload of attorneys and investigators as a function of cases disposed*
  - Case disposition provides the most useful workload estimate for staff because it points to work accomplished;
  - Unlike case backlog, case disposition provides an estimate of how much is accomplished by a given number of staff.
- *Estimate the workload of supervisory and support staff as an indirect function of cases disposed*
  - Supervisory and support staff should be determined *indirectly* by looking at how many staff are needed to process cases – primarily attorneys and investigators – and then estimating the number of staff needed to supervise and support the attorneys and investigators;
  - Supervisory and support staff need can be estimated by calculating ratios of these staff to attorneys and investigators.

## Appendix F

Table F1: Calculation of Weighted Average Backlog Targets and Comparisons w/ Current Case Processing Times

	Statutory Definition				Enhanced				Feasible			
	Backlog Target	Difference (Days)	Difference (%)		Backlog Targets	Weighted Average*	Difference (Days)	Difference (%)	Backlog Targets	Weighted Average*	Difference (Days)	Difference (%)
<b>Current Case Processing</b>												
<b>Average Days</b>	<b>305</b>	<b>180</b>	<b>125</b>	<b>41%</b>	<b>Stipulation 209</b>		<b>Compared to Average Days</b>		<b>Stipulation 259</b>		<b>Compared to Average Days</b>	
						<b>197</b>	<b>108</b>	<b>35%</b>		<b>243</b>	<b>62</b>	<b>20%</b>
					<b>Filing NDC 193</b>				<b>Filing NDC 238</b>			

*\* Weighted Average days for backlog target is calculated using the proportion of filings that result in a stipulation and the proportion that result in the filing of an NDC. Approximately 25% of filings that are closed following the pre-filing stage dispose with a stipulation; approximately 75% are filed in State Bar Court. Thus, for the Enhanced Weighted Average:  $197 = (209 * .25) + (193 * .75)$ . For the Feasible Weighted Average:  $243 = (259 * .25) + (238 * .75)$*

## Appendix F

Table F2: OCTC Direct Case Processing Staff; Supervision and Support Staff and; Ratios of Attorneys & Investigators to Supervisory & Support Staff

<b>Direct Case Processing - Enforcement &amp; Intake Filled FTE, December 2015</b>	
Attorneys (Senior & Deputy)	56
Investigators & Complaint Analyst II	62
<b>Total Attorneys &amp; Investigators</b>	<b>118</b>
<b>Selected Supervisory &amp; Support Filled FTE, December 2015</b>	
ACTC	4
Supervising Senior Attorney	10
Administrative Supervisor	2
Sr. Administrative Assistant	1
Executive Secretary	2
Administrative Assistant II	8
Legal Secretary	14
Administrative Assistant I	19
Paralegals	15
General Clerks	5
<b>Supervisory &amp; Support (S&amp;S) Staff Ratios</b>	
ACTC	29.5
Supervising Attorney	11.8
Administrative Supervisor	59.0
Sr. Administrative Assistant	118.0
Executive Secretary	59.0
Administrative Assistant II	14.8
Legal Secretary	8.4
Administrative Assistant I	6.2
Paralegals	7.9
General Clerks	23.6

## Appendix F

Table F3: *Additional* Resources Needed to Achieve Different Backlog Targets

Additional FTE Needed to Achieve Statutory Backlog Definition		Additional FTE Needed to Achieve Enhanced Backlog Definition		Additional FTE Needed to Achieve Feasible Backlog Definition	
Additional Attorneys	23.0	Additional Attorneys	19.8	Additional Attorneys	11.3
Additional Investigators	25.4	Additional Investigators	22.0	Additional Investigators	12.6
<b>Subtotal</b>	<b>48.4</b>	<b>Subtotal</b>	<b>41.8</b>	<b>Subtotal</b>	<b>23.9</b>
<b>Support &amp; Supervision</b>		<b>Support &amp; Supervision</b>		<b>Support &amp; Supervision</b>	
ACTC	1.6	ACTC	1.4	ACTC	0.8
Supervising Attorney	4.1	Supervising Attorney	3.5	Supervising Attorney	2.0
Administrative Supervisor	0.8	Administrative Supervisor	0.7	Administrative Supervisor	0.4
Sr. Administrative Assistant	0.4	Sr. Administrative Assistant	0.4	Sr. Administrative Assistant	0.2
Executive Secretary	0.8	Executive Secretary	0.7	Executive Secretary	0.4
Administrative Assistant II	3.3	Administrative Assistant II	2.8	Administrative Assistant II	1.6
Legal Secretary	5.7	Legal Secretary	5.0	Legal Secretary	2.8
Administrative Assistant I	7.8	Administrative Assistant I	6.7	Administrative Assistant I	3.8
Paralegals	6.1	Paralegals	5.3	Paralegals	3.0
General Clerks	2.0	General Clerks	1.8	General Clerks	1.0
<b>S&amp;S Subtotal</b>	<b>32.8</b>	<b>S&amp;S Subtotal</b>	<b>28.3</b>	<b>S&amp;S Subtotal</b>	<b>16.2</b>
<b>Total Additional Staff</b>	<b>81.1</b>	<b>Total Additional Staff</b>	<b>70.1</b>	<b>Total Additional Staff</b>	<b>40.1</b>

## Appendix F

Table F4: *Total Resources Needed to Achieve Different Backlog Targets*

TOTAL FTE Needed to Achieve Statutory Backlog Definition		TOTAL FTE Needed to Achieve Enhanced Backlog Goal		TOTAL FTE Needed to Achieve Feasible Backlog Goal	
Total Attorneys	79.0	Total Attorneys	75.8	Total Attorneys	67.3
Total Investigators	87.4	Total Investigators	84.0	Total Investigators	74.6
<b>Subtotal</b>	<b>166.4</b>	<b>Subtotal</b>	<b>159.8</b>	<b>Subtotal</b>	<b>141.9</b>
<b>Supervision &amp; Support</b>		<b>Supervision &amp; Support</b>		<b>Supervision &amp; Support</b>	
ACTC	5.6	ACTC	5.4	ACTC	4.8
Supervising Attorney	14.1	Supervising Attorney	13.5	Supervising Attorney	12.0
Administrative Supervisor	2.8	Administrative Supervisor	2.7	Administrative Supervisor	2.4
Sr. Administrative Assistant	1.4	Sr. Administrative Assistant	1.4	Sr. Administrative Assistant	1.2
Executive Secretary	2.8	Executive Secretary	2.7	Executive Secretary	2.4
Administrative Assistant II	11.3	Administrative Assistant II	10.8	Administrative Assistant II	9.6
Legal Secretary	19.7	Legal Secretary	19.0	Legal Secretary	16.8
Administrative Assistant I	26.8	Administrative Assistant I	25.7	Administrative Assistant I	22.8
Paralegals	21.1	Paralegals	20.3	Paralegals	18.0
General Clerks	7.0	General Clerks	6.8	General Clerks	6.0
<b>S&amp;S Subtotal</b>	<b>112.8</b>	<b>S&amp;S Subtotal</b>	<b>108.3</b>	<b>S&amp;S Subtotal</b>	<b>96.2</b>
<b>Total Staff</b>	<b>279.1</b>	<b>Total Staff</b>	<b>268.1</b>	<b>Total Staff</b>	<b>238.1</b>