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The State Bar of California's Attorney Discipline Process *Weak Policies Limit Its Ability to Protect the Public From Attorney Misconduct*

Background

The Legislature established the State Bar of California in 1927 as an arm of the California Supreme Court that oversees the legal profession. Its mission is to protect the public by licensing and regulating attorneys and to enhance the administration of justice. The State Bar administers a disciplinary system that investigates allegations and prosecutes complaints against attorneys who violate rules and laws. With 250,000 licensed attorneys in the State, it is vitally important that clients can trust the State Bar to fully address their complaints of attorney misconduct. Nevertheless, our audit found that the State Bar failed to effectively deter or prevent attorneys from repeatedly violating professional standards.

Key Findings

- It closed many cases of potential misconduct through confidential processes that are not available to the public.
 - » It dismissed as much as 10 percent of all investigations through nonpublic measures, such as issuing private warning letters to attorneys.
- It closed multiple complaints related to trust accounts in which attorneys hold clients' funds.
 - » It did not consistently follow its own formal guidance for reviewing certain types of complaints related to those trust accounts, and its weak safeguards hampered its ability to detect repeated violations.
 - » It closed some complaints because clients withdrew those complaints, even when it had evidence of misconduct.
- It failed to consistently address conflicts of interest between its staff and the attorneys it investigates.
 - » In more than one-third of the cases we reviewed, the State Bar did not document how it addressed potential conflicts before it closed complaint cases.
 - » It allowed staff members to review and close complaints against attorneys even though it knew that someone in its organization had a conflict of interest with the attorney.

Key Recommendations

- The State Bar needs to make significant improvements to the safeguards that help ensure that its staff thoroughly investigate complaints of attorney misconduct.
 - » It should revise its policies to define specific criteria for which cases are and are not eligible to be closed using nonpublic measures.

- » It should implement a method of monitoring its investigators' compliance with its new policy regarding cases in which a complainant withdraws the complaint.
- » It should begin using its general categorization of complaint types in its case assessment process so that it can identify potential patterns of misconduct.
- » It should create a formal process for determining whether its staff is able to objectively assess cases and document this assessment in its case files when conflicts exist.

One Case We Reviewed

An attorney was the subject of 28 complaints over a five-year period, one of which was initiated after a bank notified the State Bar that the attorney failed to maintain funds that were received for a client in a client trust account. Over this period, 10 of the 28 complaints involving the attorney alleged client trust account violations. At the time the State Bar reviewed the violation reported by the bank, the attorney had two other disciplinary matters open, one of which alleged a client trust account violation. Although State Bar intake staff noted the open investigations in their review of the violation reported by the bank, they did not forward the complaint to be investigated by the staff who were investigating the other open complaints. Instead, the State Bar closed the complaint as *de minimis*.



Case Example