

The California State Auditor released the following report today:

## State Bar of California

### *It Has Not Consistently Protected the Public Through Its Attorney Discipline Process and Lacks Accountability*

#### BACKGROUND

To protect the public and regulate the practice of law, the State Bar of California (State Bar) admits new members, investigates and resolves complaints against members, disciplines attorneys who fail to meet their professional responsibilities, and performs various administrative and support duties. To pay for most of its operations, the State Bar collects an annual membership fee from each of its members—the State Bar admits and licenses all of California's 226,000 attorneys, who must belong to the State Bar by law. Its discipline system includes the State Bar's Office of the Chief Trial Counsel, which receives complaints, investigates attorneys, and prepares cases for prosecution, and the State Bar Court, which adjudicates disciplinary and regulatory matters involving attorneys in the State.

#### KEY FINDINGS

During our audit of the State Bar's discipline system and its finances, we noted the following:

- To reduce its 2010 excessive complaint backlog of over 5,000 cases to just over 1,700 cases in 2011, the State Bar frequently settled cases and may have been too lenient and allowed some attorneys whom it otherwise might have disciplined more severely—or even disbarred—to continue practicing law.
  - ✓ The years the State Bar focused its efforts on decreasing its backlog, the State Bar settled over 1,500 cases—more than in any of the other four years in our audit period.
  - ✓ The level of discipline the State Bar recommended as part of some of these settlements was inadequate—of the 27 cases the California Supreme Court returned to it for further examination, the State Bar increased the level of discipline it recommended in 21 cases, including five disbarments.
- The information the State Bar submits to the Legislature in its *Annual Discipline Report* is problematic—the State Bar continues to report fewer cases than the law permits despite the similar concern we raised in our 2009 audit.
- The State Bar's efforts to align its staffing with its mission have fallen short. It shifted staffing resources, employed contractors, and authorized a significant amount of overtime to reduce its backlog in 2011, but discontinued those operational changes shortly thereafter and its backlog has again begun to increase—by 25 percent since 2011.
- Despite spending \$76.6 million to purchase a building in Los Angeles, the State Bar did not perform a cost-benefit analysis before receiving board approval for the purchase. Further, in a report to the Legislature just four months prior to purchasing the building, the State Bar underestimated the total cost by more than \$50 million.
- Over the last six years, the amount the State Bar collected from annual membership fees exceeded its operational costs. In fact, the excess funds would be sufficient to cover between four and nine months of the State Bar's operations—which is between two and seven months more than general best practices dictate.

#### KEY RECOMMENDATIONS

We made several recommendations to both the State Bar and the Legislature, including the following:

- The State Bar should adhere to its quality control processes to ensure that the discipline it imposes on attorneys is consistent and should take steps to prevent its management or staff from circumventing those processes.
- To justify future expenditures over a certain dollar level, the State Bar should implement a policy that requires accurate cost-benefit analyses that compare relevant cost estimates prior to obtaining board approval of the expenses.
- The State Bar and the Legislature should work together to determine what cases the State Bar should report as a backlog in its annual report to the Legislature, and should also work to set an appropriate annual membership fee.
- The Legislature should limit how much the State Bar can accumulate in its fund balances, and establish an alternative approval process for the State Bar's membership fees so that the State Bar can better align its revenues with its operating costs.