

# State Bar of California

## It Can Do More to Manage Its Disciplinary System and Probation Processes Effectively and to Control Costs

REPORT NUMBER 2009-030, JULY 2009

### *State Bar of California's response as of July 2010*

The California Business and Professions Code requires the State Bar of California (State Bar) to contract with the Bureau of State Audits to audit the State Bar's operations every two years, but it does not specify topics that the audit should address. For this audit, we focused on and reviewed the State Bar's disciplinary system. To determine the efficiency and effectiveness of this system, we examined the State Bar's discipline costs, the method by which the State Bar accounts for its discipline expenses, the outcomes of cases, the length of time that the State Bar takes to process cases, and the recovery of discipline expenses. We also evaluated the State Bar's attorney probation system and its audit and review unit. Further, we reviewed the State Bar's progress in addressing recommendations from reviews of its operations and the circumstances surrounding an alleged embezzlement by a former State Bar employee. Finally, we reviewed the status of the State Bar's implementation of recommendations made in our 2007 audit titled *State Bar of California: With Strategic Planning Not Yet Completed, It Projects General Fund Deficits and Needs Continued Improvement in Program Administration*. This report summarizes our assessment of the State Bar's strategic planning efforts, projected General Fund deficit, legal services trust fund, and certain aspects of the attorney disciplinary system.

### **Finding #1: The State Bar does not account for discipline costs so that it can measure efficiency.**

The State Bar does not track the costs of the disciplinary system according to its various functions and therefore cannot be certain that it is using its resources as efficiently as possible, nor can it determine whether policy changes affect the costs of the disciplinary functions. The State Bar's total costs for its attorney disciplinary system have risen from \$40 million in 2004 to \$52 million in 2008, or 30 percent over five years. This upsurge in expenses has outpaced both inflation and the growth in the State Bar's active membership, and it does not match the changes in caseload size in most stages of the system for disciplining attorneys who violate professional standards. Although the State Bar accounts for the expenses for the intake and the State Bar Court functions separately, it combines expenses of other functions such as investigations, trials, and audit and review. Consequently, the State Bar could not readily differentiate the cost of its investigation and trial functions.

Additionally, we found that the State Bar's offices in San Francisco and Los Angeles do not track their disciplinary expenses in the same manner, which further contributes to the difficulty of identifying actual expenses by function. Therefore, not only is the State Bar unable to separately track and monitor what it spends on key aspects of its disciplinary system, such as investigations and trials, it cannot

### **Audit Highlights . . .**

*Our audit of the State Bar of California revealed the following:*

- » *The costs of its disciplinary system have escalated by \$12 million from 2004 to 2008, while the number of disciplinary inquiries opened has declined.*
- » *It cannot measure its efficiency or identify where to reduce costs because it does not track expenses by key disciplinary function.*
- » *Its offices in San Francisco and Los Angeles calculate discipline costs differently.*
- » *Because of the methodology it uses to calculate the average time it spends to close investigations, it reported a decrease of 11 days from 2004 to 2007 when the average investigation time has actually increased by 34 days.*
- » *Relatively simple changes to its billing procedures would probably yield additional revenue that could offset some of its increased discipline costs.*
- » *Its probation office's workload has increased from 791 cases in 2004 to 867 cases in 2008, yet the number of probation deputies was only recently increased by one.*
- » *It discovered an alleged embezzlement of nearly \$676,000 by a former employee and is taking measures to strengthen its internal controls.*
- » *It still needs to fully implement recommendations made in a consultant's report, in the periodic audits conducted by its internal audit and review unit, and in our prior audit.*

even make meaningful comparisons between the two offices because it has no consistent method of accounting for its operations. This fact inhibits the State Bar's ability to identify specific reasons for cost increases, and if warranted, to take appropriate actions to contain them.

Because the State Bar does not track costs separately for each of its key functions within the disciplinary system, it cannot measure the cost impact of policy changes. In 2005 the California Supreme Court criticized the State Bar for failing to bring all possible charges against an attorney who was ultimately disbarred and for failing to follow its internal guidelines that delineate the appropriate actions that the State Bar must take against attorneys who have repeatedly violated professional or legal standards. The former chief trial counsel provided guidance to staff to ensure consistency in applying sanction standards and to take cases to trial if they warrant more severe discipline than the respondent is willing to accept in a stipulation. Before this policy shift, according to the former chief trial counsel, the State Bar settled before trial about 90 percent of cases in which the accused attorney participated. However, he recently estimated that this percentage has decreased to about 75 percent.

The recent trend in the number of cases going to trial is consistent with these policy changes. The former chief trial counsel said that he does not track the average costs of a case that proceeds to trial, and explained that the decisions to prosecute are based on the merits of the cases and not the costs. Although decisions may not be based primarily on financial considerations, we believe the State Bar would benefit from at least understanding roughly how much it spends on trials—especially since the number of trials has nearly doubled in the past few years. Specifically, the number of trials commenced in the State Bar Court each year has increased from 65 in 2004 to 127 in 2008.

We recommended that the State Bar account separately for the expenses associated with the various functions of the disciplinary system, including its personnel costs. This can be accomplished through a study of staff time and resources devoted to a specific function. We also recommended that the State Bar ensure that all its offices track expenses consistently.

***State Bar's Action: Corrective action taken.***

In its 60-day response, the State Bar stated that beginning with its 2010 budget it will adjust its methodology to track the component costs of its disciplinary system separately and consistently. In its one-year response, the State Bar indicated that it retained a consulting firm to assist in the study of staff time and resources. Based on subsequent inquiry, the State Bar provided us with documentation summarizing the results of its efforts to track staff time for a five-week period in March 2010. The State Bar gathered data across the budgeted component functions of the discipline systems, i.e., Intake, Investigation, Trials, Audit and Review, and Management. According to the State Bar, the data gathered supports the budget allocation methodology the Office of Finance adopted in response to our recommendation to track and report costs, particularly including personnel costs, by discipline system function. The hours allocated to each function by the time study correlates closely to the budget dollars allocated to the same functions.

**Finding #2: The State Bar was unaware that its investigation case processing time has increased.**

Our analysis demonstrated that the length of time to process cases proceeding beyond intake is generally increasing. Specifically, in 2004 the State Bar staff took more than 360 days to process 378 of 3,853 cases received in the investigation and trial unit, or 10 percent. In 2007 the proportion of cases taking longer than 360 days had increased to 13 percent. Additionally, from 2004 to 2005, although the number of cases taking more than 360 days to resolve in the State Bar Court decreased from 172 to 131, or 5 percent, the number of cases already pending for more than 360 days increased from 160 to 209 cases, or 31 percent.

When we asked the State Bar why it is taking longer to process cases beyond the intake stage, the former chief trial counsel noted that according to the State Bar's analysis of investigation processing time, the trend has decreased over the past five years except for a slight increase in 2008. After

discussing with the State Bar its methodology for calculating its average investigation processing time, we determined that it is not calculating this average in a way that fully represents yearly trends. According to the program/court systems analyst (systems analyst), the State Bar combines average processing time to compute a single average for all cases closed since 1999 as opposed to calculating a separate average based on cases closed for a particular year. However, this is not a meaningful measure of current yearly investigative case processing times because the number of cases from which the State Bar generates the averages continues to grow and includes data from years that do not apply to the relevant reporting year.

Using the State Bar's method to calculate the average processing times for closed investigations resulted in average processing times that ranged from a high of 197 days in 2004 to a low of 186 in 2007. In contrast, when we used what we believe to be a more representative method that only considers the time investigations remained open during a given year, whether eventually closed or forwarded to the next stage, average processing times were generally longer. Using this method, the average processing times for the State Bar's investigations ranged from a low of 168 days in 2004 to a high of 205 days in 2006 before declining to 202 days in 2007.

We recommended that the State Bar adjust its methodology going forward for calculating case processing times for investigations so that the calculations include time spent to process closed and forwarded cases for the relevant year only. For example, for its 2009 annual discipline report, the State Bar should report the average processing time for only cases it closed or forwarded to the State Bar Court in 2009.

***State Bar's Action: Corrective action taken.***

In its one-year response, the State Bar provided a copy of its 2009 Annual Discipline Report demonstrating that it had begun including this information. The State Bar stated that it will include this information in each subsequent annual discipline report.

**Finding #3: The State Bar could better inform the Legislature by including all relevant information when it reports its backlog.**

In its annual discipline report, the State Bar reports a case as part of its backlog when its staff has not resolved the case within six months of its receipt or when the State Bar designates the case as complex and has not resolved it within 12 months of receiving the complaint. However, the State Bar does not include seven other types of cases when it reports its backlog. Specifically, the State Bar only reported 1,178 of the 3,020 total cases, or 39 percent, that were not resolved within six months from 2005 through 2008.

Additionally, the number of complex cases over 12 months old has increased from 2005 through 2008 from 74 to 95, or 28 percent. Because the State Bar designates cases as complex and does not include them in the backlog until they are over 12 months old, separately identifying them from noncomplex cases would allow stakeholders to better understand reasons for fluctuations. Further, the State Bar does not count inquiries in the intake unit that do not move on to the investigations unit—even though these issues could remain in intake for more than six months. Because the annual discipline report notes that the investigation and trial unit strives to complete investigations within six months after receipt of the complaint (or 12 months if they are designated as complex), the State Bar is not providing complete and clear information regarding its backlog when it does not identify or explain its reason for not including inquiries.

Over the past five years, the State Bar has also changed the types of cases that it includes in its annual discipline report, which makes year-to-year comparisons difficult. Additionally, beginning in 2008, the State Bar excluded cases in its backlog that were being handled by special deputy trial counsels, who are outside examiners. Although the State Bar noted this change in its 2008 discipline report, it did not explain the reason for the revision. Finally, the State Bar reports its backlog by case and not by member,

which further decreases the number of cases that could be included in the backlog count. In some circumstances, multiple attorneys can be named on the same complaint, but the State Bar only includes one in its backlog calculation, even if separate cases are opened that would otherwise be included. The interim chief trial counsel believes that it is appropriate to report backlog by case and not by member because the complaint, whether it alleges misconduct by one or more attorneys, is generated from a single complaint made by one complaining witness and, for the most part, the issues and evidence are the same. However, the backlog table in the State Bar's annual discipline report does not indicate that the backlog is reported by case rather than by member.

We recommended that the State Bar include additional information regarding backlog in its annual discipline report to the Legislature. Specifically, the State Bar should identify the number of complex cases over 12 months old in its backlog. Additionally, we recommended that it identify in its annual discipline report the types of cases that it does not include in its calculation of backlog and explain why it chooses to exclude these cases. Specifically, the State Bar should identify that it presents its backlog by case rather than by member, and that it does not include intake, nonattorney, abated, and outside examiner cases. Finally, we recommended that the State Bar identify the composition of each year's backlog to allow for year-to-year comparisons, as the law requires.

***State Bar's Action: Corrective action taken.***

In its one-year response, the State Bar provided a copy of its 2009 Annual Discipline Report demonstrating that it had begun including this information. The State Bar stated that it will include this information in each subsequent annual discipline report. Additionally, the State Bar stated that reporting the backlog composition is a work-in-progress and it continues to refine its methods for presenting the data to provide more clarity.

**Finding #4: The State Bar has not updated the formula it uses to bill disciplined attorneys and it does not consistently include due dates on bills.**

For those costs it is allowed to recover from disciplined attorneys, the State Bar uses a formula—a fixed amount primarily based on how far the case proceeds through the disciplinary system before resolution—to bill attorneys who are publicly disciplined. Although discipline costs have increased 30 percent during the last five years, the State Bar has not updated this formula since it became effective beginning in 2003.

Additionally, undermining any attempt to track the billing and payment of attorneys' disciplinary expenses is the fact that the State Bar does not consistently include due dates for when payments must be made when billing disciplined attorneys. Our review of 28 bills sent to attorneys in 2006 and 2007 found that attorneys promptly paid their discipline bills at a much greater rate if the due date was explicitly stated on the bill. For the 15 bills with specific due dates, 14 attorneys, or 93 percent, paid their bills in full by the due date. For the 13 bills we reviewed with no specific due date, only one attorney paid by the end of the next fiscal year. By not including specific due dates on its bills to disciplined attorneys, the State Bar is much less likely to recover costs as promptly as it could.

Further, according to the assistant supervisor of membership billing, the State Bar cannot reasonably predict the amount of recovery costs it expects to receive from disciplined attorneys in a given year because in many cases the bills do not include any set due date for when payments must be made. Consequently, the State Bar cannot adequately evaluate its discipline cost recovery collection efforts or fully budget for such collections. According to a summary report of amounts billed and received, in 2007 and 2008, the State Bar collected an average of 63 percent of the amount it billed. Although these percentages provide some context about collections, they are somewhat misleading and not necessarily a useful measure of the effectiveness of the State Bar's efforts. This is because the State Bar does not match the percent collected with the corresponding amount billed. In fact, payments often are

received years after they are billed. Using detailed payment information provided by the State Bar, we determined that of the \$1.1 million billed for recovery costs in 2008, only \$229,000 was collected in that year, or about 21 percent.

We recommended that the State Bar update annually its formula for billing discipline costs and include due dates on all bills so that it maximizes the amounts it may recover to defray the expense of disciplining attorneys. Additionally, to report accurately its collection amounts and to analyze the effectiveness of its collection efforts, we recommended that the State Bar track how much it anticipates receiving against how much it actually receives in payments for discipline costs each year.

***State Bar's Action: Corrective action taken.***

In its one-year response, the State Bar indicated that its consultant reviewed the State Bar's discipline cost formula and methodology for updating the cost formula. In subsequent documentation provided in December 2010, the State Bar provided a copy of its consultant's report recommending that the State Bar increase the discipline cost formula and adjust it annually based on the U.S. Department of Labor, Bureau of Labor Statistics, Employment Cost Index. The State Bar stated that these recommendations will be presented to the State Bar's Board of Governors for consideration in January 2011.

Additionally, the State Bar adjusted its billing system to include due dates on all notices to disciplined members and reported to us that it has adjusted its cost recovery database application to track how much it anticipates receiving against how much it actually receives in payments each year.

**Finding #5: The State Bar does not track how much it spends on cost recovery efforts.**

Before April 2007 the State Bar's efforts to recover costs associated with disciplined attorneys typically included billing the disciplined attorneys through annual membership bills and contracting with a collection attorney. Effective April 1, 2007, the State Bar received California Supreme Court approval of a rule to enforce as a money judgment, disciplinary orders directing payments of costs. A money judgment is an order entered by a court that requires the payment of money. The State Bar contracted with a collection attorney to pursue collections from disciplined attorneys owing the largest unpaid amounts to the Client Security Fund. The State Bar agreed to pay the collection attorney 25 percent of the net funds recovered. Also, if no recovery was obtained, the State Bar agreed to pay the expenses the collection attorney incurred. According to its discipline payments summary report, the collection attorney collected \$11,600 for the State Bar in 2007, but he was paid \$19,400 in recovery fees and expenses. For 2006 through 2008, the collection attorney collected \$156,600, and the State Bar received \$63,900, or 41 percent, of the total amount recovered.

According to the State Bar's acting general counsel, the legal work required to prepare a money judgment is labor intensive, and in an effort to avoid having the collection agency conduct this legal work, the State Bar is currently using its own in-house staff. However, when we asked about the cost of the efforts of its in-house staff, the general counsel told us that the State Bar does not specifically track all of these costs. After our request, the State Bar identified some estimates of in-house costs to prepare the money judgments, and the general counsel acknowledged that paying the higher 25 percent of recovered costs might be more cost beneficial than having the State Bar staff conduct this work.

The State Bar's discipline payments summary shows that for 2006 through 2008, it collected \$3 million in discipline costs and Client Security Fund recoveries from its in-house billing efforts, but it does not track its costs associated with making these recoveries. We acknowledge that because of statutory restrictions on the amount of discipline costs that can be recovered, the State Bar is limited to recovering substantially less than its costs. However, conducting a cost-benefit analysis of its collections efforts would allow the State Bar to evaluate and determine whether more cost-effective alternatives exist that could potentially increase the net amount that it recovers.

In an effort to provide the State Bar with some alternative best practices regarding cost recovery efforts, we asked two state agencies about methods they use for collecting money owed to them. A representative told us about the Franchise Tax Board's (Tax Board) Interagency Intercept Collections Program (intercept program) that offsets a debtor's state tax refund by the amount owed to a state entity. According to the intercept program participation booklet for 2009, the cost for the program is approximately 25 cents per account.

We recommended that the State Bar complete a cost-benefit analysis to determine whether the benefits associated with using collection agencies outweigh the costs. If it determines that the collection agencies are, in fact, cost-effective, the State Bar should redirect in-house staff to other disciplinary activities. Finally, the State Bar should also research the various collection options available to it, such as the Tax Board's intercept program.

***State Bar's Action: Partial corrective action taken.***

In its one-year response, the State Bar stated that its consultant hired to review the measures and categories of data and assist in the completion of the cost-benefit analysis is nearing completion. The State Bar stated that it expects that its preliminary analysis will be confirmed and is prepared to direct collection of all delinquent discipline cost accounts to an outside collection agency. The State Bar also reported that it is seeking a new vendor to replace the current collection agency, which has elected not to renew its contract.

In November 2010 the State Bar stated that it will explore legislative support for introducing legislation next year authorizing the State Bar to participate in the Franchise Tax Board's Intra-agency Intercept program, which it stated was previously rejected by the Legislature.

**Finding #6: The State Bar's office of probation has not determined appropriate workload levels for staff to monitor probationers effectively.**

Over the past five years, the probation office's caseload has increased nearly 10 percent, making it more difficult for its staff to manage disciplined attorneys effectively. The probation office believes that it is understaffed, but it is unsure whether its recent request for an additional probation deputy position will fulfill its needs.

In a memo to the deputy executive director requesting an additional probation deputy position, the former chief trial counsel noted that with existing caseloads, it has become increasingly difficult, if not impossible, for probation deputies to oversee probation in a timely, effective manner. The memo further notes that an additional probation deputy will reduce the current caseload and increase the probation office's ability to effectively fulfill its function. However, the additional probation deputy will only decrease the overall caseload to around 175 cases per deputy. According to the supervisor of the probation office, because of increases in alternative discipline cases and other changes to the probation office's responsibilities, she is still in the process of monitoring staff workloads and determining the appropriate caseload. Until the State Bar determines that its probation deputies have reasonable workloads, it cannot be sure that they are devoting the amount of attention necessary to effectively monitor probationers.

We recommended that the State Bar continue its efforts to determine the appropriate caseload level for its staff to effectively monitor probationers and adjust staffing as appropriate.

*State Bar's Action: Partial corrective action taken.*

In its 60-day response, the State Bar stated that it recently hired an additional probation deputy and will continue to monitor caseload levels to evaluate appropriate staffing levels for effective monitoring of probationers. Additionally, in November 2009, the State Bar informed us that it is in the process of retaining a measurement consultant to evaluate the office of probation's appropriate workload.

In its one-year response, the State Bar indicated that it continues to monitor work and caseloads in the Probation Unit. Specifically, the State Bar stated that it included the Probation Unit in the time and resource study discussed previously and that data from that study has been included in an ongoing evaluation of the allocation of time and resources in the Probation Unit. The State Bar reported that currently it appears that staffing at the probation deputy level is adequate, considering budget limitations. The State Bar stated that it will continue to monitor and evaluate staffing needs in this area.

In November 2010 the State Bar stated that after review of data on staffing and available resources, its consultants found that the current allocation is adequate considering budget limitations. The State Bar stated that with the filling of a vacant position it has five probation deputies and the caseload for each deputy has been reduced to 174 cases. The State Bar stated that it is continuing to monitor performance and evaluate the effectiveness of this new caseload and will make any additional adjustments as appropriate and permitted by the budget.

**Finding #7: The office of probation is not fully meeting its strategic goals to help attorneys successfully complete probation and to protect the public.**

The probation office has not fully met its mission of assisting attorneys to successfully complete probation and of protecting the public because it did not always promptly communicate attorneys' probation terms and did not refer probation violations to the Office of the Chief Trial Counsel consistently or promptly. Specifically, for eight of the 18 initial probation letters that we reviewed from cases closed in 2008, the probation office sent the initial letters communicating the terms of probation to disciplined attorneys between eight and 72 days after it received the related court orders. Although the probationer is ultimately responsible for meeting the terms of probation, the State Bar's probation deputy manual requires its probation deputies to send a letter to the affected attorney within seven days of receiving the court order.

The probation office has also not promptly referred attorneys who have violated their probationary terms to the Office of the Chief Trial Counsel, and in some cases, referred the same type of violation inconsistently. Related to eight of the 20 probation case files we reviewed that the State Bar closed in 2008, probation office deputies had prepared 11 referrals of probation violations to the Office of the Chief Trial Counsel. For five of the 11 referrals, probation deputies took well over a month after the violation occurred to refer the violation. In fact, the timing of these five referrals ranged from 96 days to 555 days after the violation occurred, with probation deputies taking more than 500 days for two of the referrals.

Because attorneys are still often able to practice law during their probationary period, unnecessary delays in making referrals for violations may allow an errant attorney to continue to practice law and represent clients. Further, when the probation office does not make referrals promptly, it is not meeting its goal of protecting the public. Finally, when staff are not consistent or prompt in referring violations, it may create a perception of favoritism or leniency, and could undermine the efforts of the Office of the Chief Trial Counsel to enforce disciplinary standards.

We recommended that the State Bar ensure that it effectively communicate with and monitor attorneys on probation by ensuring that staff comply with procedures for promptly sending initial letters reminding disciplined attorneys of the terms of their probation. We also recommended that to make certain that it does not create a perception of favoritism or leniency, the State Bar increase compliance

with its goal to improve timeliness and consistency of probation violation referrals to the Office of the Chief Trial Counsel. If the State Bar believes instances occur when probation staff appropriately deviate from the 30-day goal, it should establish parameters specifying time frames and conditions acceptable for a delay in the referral of probation violations and clearly document that such conditions were met.

***State Bar's Action: Corrective action taken.***

In its 60-day response, the State Bar stated that it will review its procedures for notifying disciplined attorneys of the terms of their probation and will take steps to ensure greater compliance and prompt notice to probationers. In November 2010 the State Bar stated that the probation office worked with the State Bar Court to assure receipt of copies of disciplinary orders within two weeks after filing.

In its one-year response, the State Bar stated in order to increase compliance with its goal to improve timeliness and consistency of probation violation referrals to the Office of the Chief Trial Counsel, the probation staff is implementing a tiered system for violation referrals. According to the State Bar's new policy, this system maintains the standard 30-day goal but also establishes 60-day and 90-day deviations. The tiered system of referral also establishes conditions for deviation from the 30-day goal and the documentation in each case that such conditions were met.

**Finding #8: The State Bar has not fully addressed concerns identified in a review of its cost recovery process.**

Although the State Bar contracted with a consultant in September 2007 to review interdepartmental processes surrounding its cost recovery processes, including its planned cost recovery system, the State Bar did not fully address recommendations for improving internal control weaknesses that the consultant identified. In response to some of the concerns raised in the consultant's review, the State Bar indicated that it would achieve corrective action through various functions and processes associated with the new cost recovery system it was developing. Although it anticipated that the new cost recovery system would resolve the deficiencies, the State Bar did not obtain the new system immediately and is still in the process of fully implementing it.

We recommended that the State Bar fully implement recommendations from audits and reviews of the State Bar and its functions. Further, we recommended that the State Bar ensure that its new cost recovery system and related processes address the issues identified in the consultant's 2007 report on its cost recovery process.

***State Bar's Action: Corrective action taken.***

In its 60-day response, the State Bar indicated that it had completed this recommendation. According to the response to the audit report, the State Bar stated that it had implemented changes in its manual and automated processes and controls to address issues raised in the 2007 report on its cost recovery process. These processes and controls apply to the new cost recovery system. Because it did not inform us of these changes until after it had received a draft copy of our report, we were not able to verify whether these changes fully address our concerns. As part of our next statutorily required audit, we plan to review the cost recovery system to determine whether the new system corrects the identified issues.

The State Bar retained a consultant that reports directly to the Board's Audit Committee, to perform an internal audit function. The State Bar's internal auditors began a review of all internal audit functions to assess risks associated with its organization-wide internal control functions, provide training to staff, and recommend improvements to strengthen internal controls. The consultant completed internal audits of the State Bar's payroll, accounts payable, procurement, and budget control functions in July 2010. According to the State Bar it will implement all recommendations contained in the audit reports before the end of 2010.

**Finding #9: The State Bar's audit and review unit does not ensure its recommendations are implemented.**

In keeping with one of its goals to enhance the quality of the Office of the Chief Trial Counsel's investigations and prosecutions the State Bar's audit and review unit has identified some recurring deficiencies and recommended providing training during its periodic audits of case files. However, it could do more to ensure that staff receive appropriate training in areas that need improvement. According to State Bar policy, twice each year staff in its audit and review unit review at least 250 recently closed disciplinary cases and complete a checklist to determine whether staff followed specific requirements and whether the files include appropriate documentation. After each audit, the audit and review unit prepares a summary report of the deficiencies found and submits it to the Office of the Chief Trial Counsel for consideration. The summary also identifies training opportunities. According to the audit and review manager, she makes such recommendations in areas where errors could be avoided by training staff to properly follow policies and procedures.

We reviewed five audit summaries covering September 2005 through February 2008 and noted several recurring deficiencies and related recommendations for training. When we asked the State Bar for documentation that it had followed up on these and other recommendations from its audits, the audit and review manager told us no documentation of the implementation of recommendations exist. She further stated that the managers within the units generally address concerns through a combination of discussing specific issues with the State Bar staff, discussing general issues at their unit meetings, informally reminding unit staff, or raising the issues with supervisors. However, the number of recurring deficiencies present in the summaries suggests the need for a more formal process of ensuring corrective action. Without a formal process to ensure that its recommendations from the audit summaries are implemented, the audit and review unit is not maximizing the value it can add to improve the quality of investigations and prosecutions.

We recommended that the State Bar's audit and review unit establish a formal process to follow up on and ensure implementation of recommendations from its twice yearly audits.

***State Bar's Action: Corrective action taken.***

In its one-year response, the State Bar provided a copy of its Office of the Chief Trial Counsel's policy directive issued in January 2010 creating a formal process for the Audit and Review Unit to follow up on and ensure implementation of recommendations from its twice-yearly audits. The formal process includes the preparation of a memorandum summarizing the overall findings of the audit. The memorandum is then shared with and discussed by the Office of the Chief Trial Counsel's management team and used as the basis for an all-staff meeting and training.

**Finding #10: The State Bar has partially implemented three and fully implemented seven of our 2007 audit recommendations.**

Our April 2007 report titled *State Bar of California: With Strategic Planning Not Yet Completed, It Projects General Fund Deficits and Needs Continued Improvement in Program Administration* (2007 030), included 10 recommendations to the State Bar. The State Bar has fully implemented seven of the recommendations related to improvement of its strategic plans and tracking and monitoring grant recipients under its legal services trust fund program. However, it has only partially implemented the three other recommendations related to improving the State Bar's disciplinary system, which is also the subject of the current report.

In 2007 we recommended that, after the Supreme Court's approval, the State Bar should complete its cost recovery database and input all available information on the Client Security Fund and on disciplinary debtors, implement its proposed policy for pursuing debtors, and complete its assessment of the costs and benefits of reporting judgments to credit reporting agencies. Although the State Bar has implemented its pursuit policy and obtained a new database that will capture amounts owed and

payments received from individual debtors, it has not yet entered all of the Client Security Fund and disciplinary debtors' information. In May 2009 the State Bar's acting general counsel stated that he expects the new database to be fully online within 60 days.

Additionally, the State Bar has only partially implemented our 2007 recommendation related to its reduction of backlogged cases. Although the State Bar reported in its annual report that it has decreased its disciplinary case backlog from 327 cases in 2007 to 311 cases in 2008, it has still not reached its most recent goal of having no more than 250 backlogged cases. Finally, the State Bar has not fully implemented the recommendations from our 2007 audit related to its compliance with two State Bar policies established to improve its processing of disciplinary cases.

We recommended that the State Bar continue acting on recommendations from our 2007 report related to continuing its efforts to enter all of the Client Security Fund and disciplinary debtor information into its database, taking steps to reduce its inventory of backlogged cases, and improving its processing of disciplinary cases by more consistently using checklists and performing random audits.

***State Bar's Action: Partial corrective action taken.***

In its 60-day response, the State Bar stated that it has completed the uploading of Client Security Fund and disciplinary debtor information required for tracking its cost recovery efforts from its existing database into its new database and application.

In its six-month response, the State Bar stated that it continues to develop evolving strategies for backlog management in an effort to keep the backlog as low as possible. In its one-year response, the State Bar indicated there was a substantial increase in new client complaints arising out of the recession, mortgage crises and resultant misconduct by attorneys offering loan modification services, coupled with the absence of additional staff resources, that has made backlog management more challenging. As a result, the State Bar has not been able to reduce its backlog. However, the State Bar indicates that despite challenging workloads, it continues to take steps to manage case inventory. Specifically, the State Bar states that on a monthly basis, it tracks existing backlog of matters in investigation as well as cases expected to roll into backlog within the next 30, 60, and 90 days. Staff target these cases to ensure the lowest possible statutory backlog at all times consistent with office priorities, resources and public protection.

In its one-year response, the State Bar stated that it continues to conduct its monthly random audit of open investigations and ensure that checklists are being used consistently and effectively so that all significant case processing tasks are completed, as appropriate. In late December 2009, the Office of the Chief Trial Counsel issued a new policy directive implementing new case file checklists for trials and investigations. Additionally, the State Bar reported that it is still in the process of automating its intake checklist and that staff will continue to use the manual checklist until the automated one is available. The State Bar stated that implementation of the automated checklist is expected by the end of 2010.

**Finding #11: The State Bar cannot implement the information technology portion of its strategic plan without additional resources.**

Although the State Bar implemented the four recommendations from our 2007 audit related to updating its strategic plan, it has only secured funding for a portion of its planned technology initiatives. In our 2007 audit, we recommended that the State Bar should either take the steps necessary to ensure that its information technology systems can capture the required performance measurement data to support the projects needed to accomplish strategic planning objectives or devise alternative means of capturing this data. During our current review we found that departments within the State Bar currently use Microsoft Excel spreadsheets or other methods to capture this information. The manager of planning and administration indicated that the State Bar plans to implement a new information technology system that will capture this strategic planning data and allow centralized

access to the departments' performance indicators. In reviewing the State Bar's Information Technology Strategic Plan (IT plan), which outlines the State Bar's strategic goals and objectives for information technology, we noted that its IT plan included an implementation plan that identified steps the State Bar determined were necessary to attain its vision for information technology. Although the planning efforts related to its information technology needs are detailed, the State Bar has yet to secure funding for all of its plans.

We recommended that the State Bar follow its IT plan to ensure that it can justify requests to fund the remaining information technology upgrades.

***State Bar's Action: Corrective action taken.***

In its one-year response, the State Bar stated that it is fully utilizing its internal information technology resources for project, program and information technology infrastructure support. Additionally, in November 2010, the State Bar provided copies of its status in implementing various portions of its IT plan and continues to implement portions of the plan as resources become available.

