The State Bar of California

It Will Need a Mandatory Licensing Fee Increase in 2024 to Support Its Operations

April 2023

REPORT 2022-031

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Grant Parks *State Auditor*

April 13, 2023
2022-031

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As required by Business and Professions Code section 6145 and Government Code section 8546.1, my office conducted an audit of the State Bar of California (State Bar). In general, we determined that the State Bar will need a mandatory licensing fee increase in 2024 to support its operations, and we identified some actions the State Bar should take to improve its process for administering external disciplinary cases.

In recent years, the State Bar has often spent more from its general fund than it has received in revenue. The State Bar deposits the majority of its mandatory licensing fee revenue into its general fund, and it then uses this fund to pay for its administrative offices and nine of its 11 public protection programs. The State Bar's personnel costs have recently increased and will continue to increase in the coming years. Although the State Bar will need a mandatory fee increase in 2024, it can minimize this increase and other future increases by raising other fees it charges for providing certain services to fully cover the associated costs and updating other out-of-date fees.

My office also found that the State Bar should take action to improve its disciplinary process when using contracted investigators. The State Bar has a team of independent contractors who are responsible for investigating and prosecuting complaints against attorneys for which State Bar staff have a conflict of interest that could raise concerns about its impartiality. Although the State Bar tracks centralized data related to such cases through its case management system, we found multiple errors and omissions in these data, impeding the State Bar's ability to effectively monitor the status of these external investigations. Similarly, although state law sets a goal for the State Bar to conclude such investigations within six months, we found that external investigators did not consistently conclude their investigations within this time frame. Finally, the State Bar has not formalized its process to ensure that its external investigators are free from conflicts of interest.

Respectfully submitted,

GRANT PARKS
California State Auditor

Selected Abbreviations Used in This Report

CFO	chief financial officer
GFOA	Government Finance Officers Association
MCLE	Minimum Continuing Legal Education

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Summary

State law charges the State Bar of California (State Bar) with protecting the public through the licensure and regulation of attorneys. To meet this responsibility, the State Bar oversees 16 programs that address aspects of its mission, such as attorney discipline, administration of the California bar exam, and promotion of diversity and inclusion in the legal system. The State Bar primarily supports most of its programs through general fund revenue, the vast majority of which is derived from mandatory annual licensing fees that attorneys must pay each year.

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The State Bar is currently in a difficult financial position. In recent years, it has often spent more from its general fund than it has received in revenue. As a result, its general fund reserve has fallen below the minimum amount established in its policy. The State Bar's deficit spending has largely been the result of its rising personnel costs, which will continue to increase as it implements planned cost-of-living and merit salary adjustments for its staff in the coming years. Further, none of the State Bar's administrative offices are fully meeting their performance measures, likely in part because some have high staff vacancy rates. To address its growing costs and rebuild its general fund reserve, the State Bar will need a mandatory licensing fee increase in 2024. However, it can minimize this increase and other future increases by raising other fees it charges for certain services to fully cover its associated costs and updating other out-of-date fees.

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The State Bar's Office of the Chief Trial Counsel is responsible for investigating and prosecuting complaints against attorneys. However, if a conflict of interest related to a complaint could raise concerns about the Office of the Chief Trial Counsel's impartiality, the chief trial counsel must refer that complaint to a special deputy trial counsel administrator (administrator)—an independent contractor who has all the powers and duties of the chief trial counsel. A team of about 20 special deputy trial counsels (external investigators), who are also independent contractors, support the administrator in investigating and prosecuting external disciplinary cases. Although the State Bar tracks centralized data related to such cases through its case management system, we found multiple errors and omissions in these data, impeding its ability to effectively monitor external investigations. We also found that external investigators did not consistently conclude their investigations within six months. Finally, the State Bar has not formalized its process to ensure that its external investigators are free from conflicts of interest.

Agency Comments

The State Bar agreed with all of our recommendations, but included what it referred to as additional contextual information in its response. The State Bar also indicated its willingness to work with the Legislature to implement all of our recommendations.

Introduction

Background

Every person who is admitted and licensed to practice law in California must be a licensee of the State Bar of California (State Bar), unless that individual is then holding office as a judge of a court of record. The State Bar is a public entity within the judicial branch of California's government. To meet its primary responsibility of protecting the public from attorney misconduct, the State Bar performs a variety of activities related to the licensure, regulation, and discipline of attorneys, as the text box describes. In addition, the State Bar offers resources to attorneys such as educational events and a hotline where staff members answer attorneys' questions regarding their professional responsibilities.

The State Bar's Core Mission and Selected Responsibilities

Core Mission

State law establishes that "protection of the public ... shall be the highest priority for the State Bar of California and the board of trustees in exercising their licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount."

Selected Responsibilities

- Licensure of attorneys in California.
- Enforcement of the Rules of Professional Conduct for attorneys.
- Discipline of attorneys who violate rules and laws.
- Administration of the California bar exam.

Source: State law and the State Bar's website.

The State Bar is governed by the 13-member Board of Trustees of the State Bar (board). Seven of these members are attorneys appointed by the Supreme Court of California (California Supreme Court) or the Legislature. The remaining six are members of the public who are not attorneys, four of whom are appointed by the Governor and two of whom are appointed by the Legislature. The board adopts a strategic plan with goals that reflect the State Bar's vision for achieving its mission.

The State Bar Uses Fee Revenue to Fund Its Operations

The State Bar operates 16 major programs. These programs address different aspects of its mission, such as investigating and prosecuting attorneys for rules violations, administering the California bar exam, and promoting diversity and inclusion in the legal system. The State Bar primarily supports most of its programs through general fund revenue, the vast majority of which comes from mandatory annual licensing fees that attorneys must pay each year. In addition, the State Bar collects two other types of fees that provide revenue to its general fund: fees that licensed attorneys can opt out of paying (voluntary fees), and fees it charges for specific services that it provides to attorneys and the public (service fees). The Legislature sets the mandatory licensing fee and voluntary fee amounts in an annual fee bill. We discuss the State Bar's fees later in this report. Table 1 shows the three types of fees the State Bar collects and their amounts for 2023.

Table 1
The State Bar Collects Three Types of Fees

FEE TYPE	2023 FEE AMOUNT FOR ACTIVE LICENSEES	2023 FEE AMOUNT FOR INACTIVE LICENSEES
MANDATORY FEES		
Annual License	$390	$92.40
Client Security Fund	40	10
Discipline	25	25
Lawyer Assistance	10	5
TOTALS	**$465**	**$132.40**
VOLUNTARY, OPT-OUT FEES		
Legal Services Assistance	$45	$45
Elimination of Bias *(fee amount included in annual licensing fee)*	2	2
Legislative Activities	5	5
TOTALS	**$52**	**$52**

SERVICE FEES	2023 FEE AMOUNT
Minimum Continuing Legal Education (MCLE) Provider Certification *Certifies that providers of legal education meet appropriate MCLE requirements.*	$90–$360
MCLE Compliance *Ensures that attorneys are meeting continuing education requirements.*	25–200
Mandatory Fee Arbitration *Resolves fee disputes between attorneys and clients.*	50–5,000*
Lawyer Referral Service *Certifies organizations to help the public find legal assistance by connecting members of the public with lawyers.*	1,000–10,000†
Certificates of Standing *Provides, among other information, a one-page document verifying an attorney's status and public discipline information.*	25
Law Corporations *Certifies professional corporations that wish to practice law.*	75–200
Limited Liability Partnerships *Certifies professional partnerships that limit partners' liability.*	75–2,500

Source: State law, State Bar board resolution, and State Bar fee assessments presented to the board finance committee in July 2022 and November 2022.

* These fees are paid by clients at the time they file a request for fee arbitration and represent 5 percent of the disputed amount with a minimum fee of $50 and a maximum fee of $5,000.

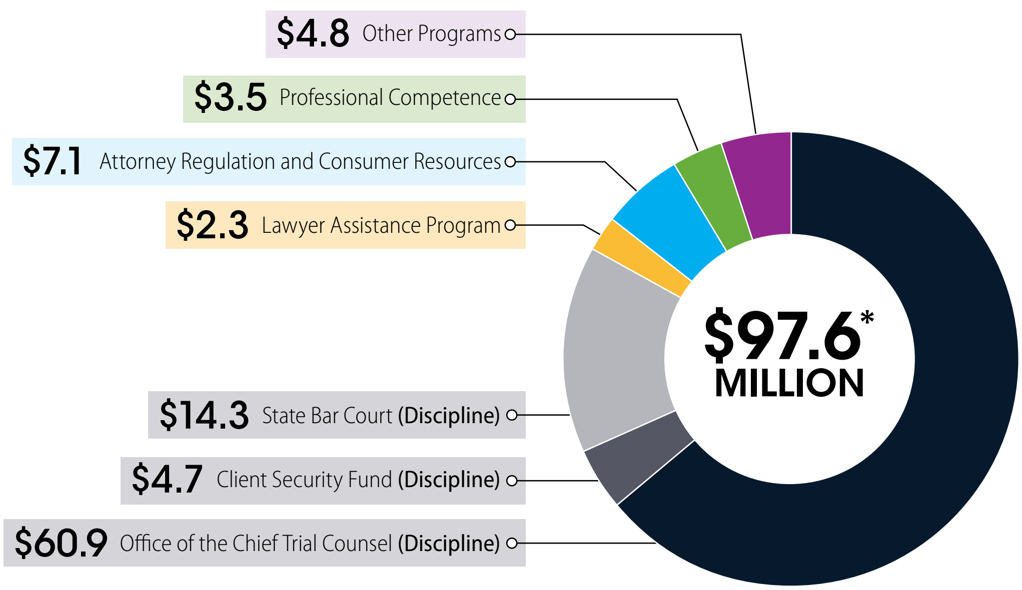
† The State Bar charges the $1,000–$10,000 presented in the table for initial certification of nonprofit applicants. To recertify applicants, the State Bar charges 1 percent of the applicant's gross revenue up to a maximum of $10,000.

In 2022 the State Bar received about $96 million in mandatory licensing fee revenue.[1] As Figure 1 shows, the State Bar spent most of this revenue—$60.9 million—operating the Office of the Chief Trial Counsel of the State Bar. The Office of the Chief Trial Counsel receives, reviews, and analyzes complaints against attorneys;

1 Throughout this report, we refer to 2022 revenues and expenditures. These 2022 amounts represent projected actuals from the State Bar's 2023 approved budget because the State Bar had not finalized its year-end accounting records, nor had it completed its 2022 financial audit, at the time of our audit.

investigates allegations of unethical and unprofessional conduct against attorneys; and prosecutes attorneys in formal disciplinary hearings for violations of the State Bar Act or the Rules of Professional Conduct. During this same period, the State Bar spent more than $14 million for the operation of the State Bar Court. Composed of independent professional judges, the State Bar Court adjudicates formal disciplinary matters filed by the Office of the Chief Trial Counsel that may result in the imposition of discipline or a recommendation of discipline to the California Supreme Court.

Figure 1
The State Bar Spends Most of Its Mandatory Licensing Fee Revenue on Attorney Discipline



Source: State Bar's 2022 financial projections from its 2023 approved budget.

* The State Bar projects that it spent more than the about $96 million it collected in mandatory licensing fees in 2022. As a result, in 2022 the State Bar expended some of it reserves to fund its programs.

In contrast to the mandatory licensing fees, the voluntary fees provide funding for specific State Bar functions that may not directly relate to regulating the legal profession or improving the quality of legal services. In total, the State Bar received $8.2 million in revenue from voluntary fees in 2022. One voluntary fee is responsible for the largest portion of this revenue. State law authorizes the State Bar to collect a $45 fee to support eligible organizations that provide legal services, without charge, for indigent persons. Of that $45 fee, the State Bar must earmark $5 for summer fellowships for law students to work with those legal aid organizations. In 2022 the State Bar received about $7.1 million of such revenue, which it allocates through its Legal Services Trust Fund Commission. Another voluntary fee, the State Bar's Elimination of Bias (EOB) fee, funds programs that address concerns of access and bias in the legal profession and the justice system. In 2022 the State Bar received more than $320,000 in revenue from this fee.

Finally, in 2022, the State Bar collected nearly $3 million in service fees it charged attorneys and the public for specific services. One such fee provides attorneys with Certificates of Standing, a document verifying an attorney's name, bar number, admission date, current status, any name or status changes, and any public discipline as of the date of the certificate. The State Bar collected over $300,000 from this fee in 2022. The State Bar also collects a suite of fees to certify Minimum Continuing Legal Education (MCLE) providers and to monitor attorneys' compliance with MCLE requirements, which include requirements related to the subject areas of legal ethics and competence. The State Bar collected over $554,000 in MCLE-related fees in 2022.

In addition to its 16 major programs, the State Bar also has 10 administrative offices that provide support to all State Bar activities. To address the full scope of this audit, Appendix A lists the amounts of mandatory fee revenue the State Bar received in 2022, the amounts it spent on each of its programs and offices, the performance metrics associated with each program and office, and the number of employees in each program or office.

The State Bar Uses External Investigators to Administer Disciplinary Cases When Its Staff Have Conflicts of Interest

According to the Rules of Procedure of the State Bar, the chief trial counsel is required to recuse the Office of the Chief Trial Counsel from investigating or prosecuting complaints against attorneys if a conflict of interest, or the appearance of a conflict of interest, could raise concerns about the office's impartiality. An example of such a conflict would be if the State Bar received a complaint about an attorney that the State Bar employs. To address conflicts of interest, the State Bar's Rules of Procedure include Rule 2201, which is a procedure for referring such complaints or inquiries to a special deputy trial counsel administrator (administrator). The State Bar's intake unit will generally identify and refer these complaints or inquiries to the administrator.

Although the board's Regulation and Discipline Committee oversees the Rule 2201 program, the administrator is an independent contractor who has all the powers and duties of the chief trial counsel. A team of about 20 special deputy trial counsels (external investigators)—who are also independent contractors—support the administrator. The administrator and external investigators perform the duties of their positions without the support or resources of the Office of the Chief Trial Counsel, other than coordinated training. Before 2016 the Rule 2201 program operated with volunteers, meaning that the external investigators were not paid for their work and were entitled only to reimbursement for costs upon request. In addition, the State Bar's assistant general counsel confirmed that before 2016 there was no administrator role. In July 2016, the State Bar amended Rule 2201 to create an administrator structure, and to authorize compensation for services rendered at an hourly rate of $100 for external investigators.

According to the State Bar, the independent nature of the administrator's and external investigators' positions requires recruitment of highly qualified individuals who are experienced litigators and who are knowledgeable about attorney ethics and the attorney disciplinary system. In September 2021, the State Bar determined that the hourly contract rate for the administrator and external investigators was significantly below market rate for similar work. To ensure that its compensation was more commensurate with the market rate and to improve recruitment and retention of qualified practitioners, the State Bar increased the external investigators' hourly rate to $250. In May 2022, to increase the efficiency of the Rule 2201 program's case processing, the State Bar's board approved a contract for a full-time administrator/external investigator. The administrator confirmed that she began her duties in June 2022. The current administrator's contract states she can bill up to 120 hours per month for external investigator duties at a $114 hourly rate, and she can bill up to 45 hours per month for administrator duties at a $125 hourly rate. Further, according to the terms of her contract, she is expected to spend 25 percent of her time as administrator and 75 percent of her time as an external investigator each month. In 2022 the State Bar allocated about $456,000 to the Rule 2201 program but subsequently exceeded this budget by $431,000.

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The State Bar Will Need an Increase in Its Mandatory Licensing Fees in 2024

Key Points

- In recent years, the State Bar has often spent more from its general fund than it has received in revenue, requiring it to rely on its general fund reserve. As a result, that reserve is now below the minimum amount the State Bar has established in its policies.

- Some of the State Bar's administrative offices have high staff vacancy rates and—likely, in part, as a consequence—have failed to meet a number of metrics intended to measure the effectiveness of their performance. The State Bar's personnel costs have also risen recently and will continue to do so in coming years, both because of salary increases and because of the need to fill vacancies.

- The State Bar will need a mandatory licensing fee increase in 2024 to address its growing costs and rebuild its general fund reserve. However, the State Bar could minimize this increase and other future increases by increasing fees to fully cover the costs of providing certain services.

- The State Bar is not proactively planning for its financial future through long-term financial forecasting. This process would enable it to better identify and address future sources of financial stress.

The State Bar Has Operated Its General Fund at a Deficit

The State Bar deposits the majority of its mandatory licensing fee revenue into its general fund. It then uses the general fund to pay for office operations and most of its public protection programs. In fact, nine of the 11 State Bar programs funded by mandatory licensing fees receive their funding from the general fund; the only exceptions are the Client Security Program and the Lawyer Assistance Program, which receive funding from the Client Security Fund and Lawyer Assistance Program Fund, respectively. The financial health of the general fund is therefore critical to the State Bar's ability to fulfill its public protection mission.

However, in recent years, spending from the State Bar's general fund has often exceeded its revenues, creating a spending deficit (deficit). The general fund's primary source of funding is the annual mandatory licensing fees that both active and inactive licensees of the State Bar pay. Although the Legislature authorized a mandatory licensing fee increase beginning in 2020, the State Bar's general fund reserve fell from $19 million at the end of 2020 to just $12.4 million by the end of 2022. Further, the State Bar projected in its 2023 approved budget that its revenue would fall short of its expenditures by $1.5 million in 2022 and by $4.3 million in 2023.[2] These deficits jeopardize the State Bar's ability to continue fully funding the performance of its key responsibilities.

A likely cause of the State Bar's deficits is rising personnel costs throughout the organization. The State Bar paid $79.5 million in personnel costs from its general fund in 2019. In 2022 these costs had increased to $84.8 million. The State Bar expects its personnel costs to continue to increase, as we describe in the next section.

To address its recent deficits, the State Bar has relied on its general fund reserve. The Government Finance Officers Association (GFOA) recommends that organizations maintain at least a two-month reserve in their general funds to protect them from unexpected changes in financial condition.[3] To comply with GFOA best practices and to address a 2015 recommendation we made to the Legislature regarding its general fund reserve, the State Bar established a reserve policy in 2016 that states that it should maintain a minimum reserve equal to two months, or 17 percent, of its annual operating expenditures.[4] In alignment with that policy, the State Bar had a general fund reserve of $23 million in 2018. However, as Figure 2 shows, its reserve fell to $12.4 million by the end of 2022. Based on its 2022 expenditures, its general fund reserve should have been more than $16 million at that time. Further, the State Bar projects that its reserves will fall to just $8.1 million at the end of 2023. *If the State Bar continues to operate its general fund at a deficit, it risks depleting its reserve and not being able to pay for its programs and administrative offices.*

We expected that to avoid operating at a deficit, the State Bar would have requested that the Legislature increase the maximum mandatory licensing fees as necessary. However, when it introduced its recent legislative priorities to legislative staff, the State Bar did not provide clear explanations of the need for its proposed increases. When we asked the State Bar about its recent proposed increases, the executive director explained that because its effective collaboration and partnership with the Legislature is critical to the State Bar's ability to carry out its mission, the State Bar did not publicly seek fee increases in all instances where it believed it needed more funding. She stated that State Bar staff have preliminary conversations with legislative staff and key legislators annually, and these conversations have addressed the State Bar's need for mandatory licensing fee increases and a stable and consistent funding mechanism for the State Bar. However, she explained that the State Bar has received feedback from legislative staff and key legislators indicating that they will not consider increases to the maximum mandatory licensing fee or that these requests are unwelcome. Given this feedback, the executive director believes it is not in the best interests of the State Bar to destabilize these relationships by continuing to request fee increases.

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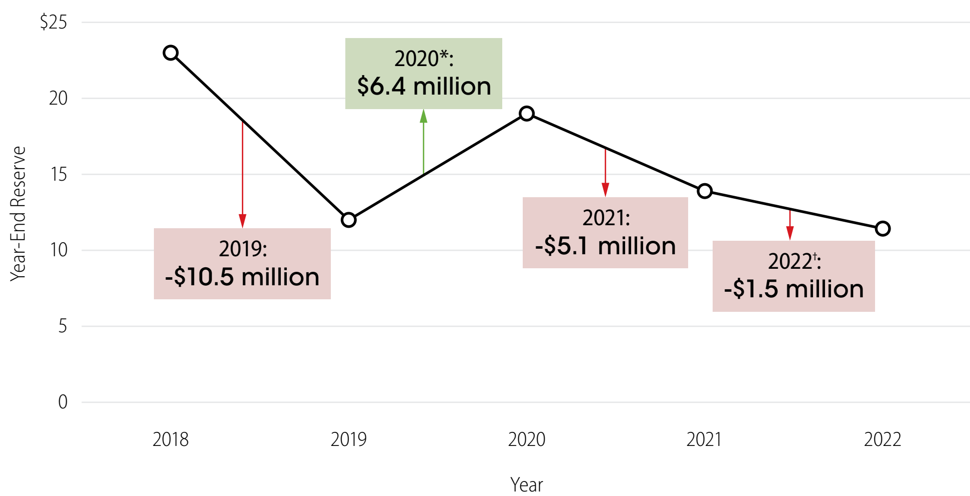
2 Throughout this report, we refer to 2022 revenues and expenditures. These 2022 amounts represent projected actuals from the State Bar's 2023 approved budget because the State Bar had not finalized its year-end accounting records, nor had it completed its 2022 financial audit, at the time of our audit.

3 The GFOA, whose mission is to advance excellence in public finance, represents public finance officials throughout the United States and Canada through its membership of more than 20,000 federal, state, provincial, and local finance officials.

4 *State Bar of California: It Has Not Consistently Protected the Public Through Its Attorney Discipline Process and Lacks Accountability*, Report 2015-030, June 2015.

Figure 2
In Recent Years, the State Bar's General Fund Reserve Has Decreased



Source: State Bar financial statements and 2023 budget.

Note: The State Bar defines its general fund reserve as the difference between its current assets and its current liabilities.

* The Legislature enacted a license fee increase for 2020 and the State Bar subsequently collected about $17 million more in licensing fee revenue compared to 2019. As a result, its general fund reserve increased by $6.4 million in 2020.

† The State Bar operates on a January to December fiscal year. Audited financial information for fiscal year 2022 was not available at the time of our audit, therefore, fiscal year 2022 information is based on the State Bar's fiscal year 2022 projections in its 2023 budget.

The State Bar's most significant recent proposal for additional fee revenue was a 2022 request for an annual increase to the mandatory licensing fees based on the rate of inflation. The State Bar's proposal stated that the increase would allow it to hire new staff, meet performance metrics, and fund negotiated merit increases and cost-of-living adjustments for its employees. We expected this proposal would also clearly identify the amount of funding required, the specific programs that needed additional funding, and the explicit reasons why the funding was necessary. However, the State Bar did not justify why an annual adjustment to the mandatory licensing fee based on the rate of inflation was the best way for it to fund its costs or how it would allocate the funding for each individual purpose. It also did not identify the specific amount of funding necessary for it to address its spending deficits and pay for its programs going forward. The absence of these details in the State Bar's 2022 proposal is in contrast to an earlier proposal. Specifically, the State Bar's proposed mandatory licensing fee increase for 2020 identified a specific fee increase as well as the amount of funding needed for specific purposes and programs.

The Legislature did not enact the State Bar's requested fee increase in 2022. It instead directed our office to evaluate the State Bar's operations to determine the fee levels that should be charged to cover its annual costs.

The State Bar's Administrative and Personnel Costs Are Increasing

As we previously indicate, the State Bar uses mandatory licensing fee revenue not only to fund most of its public protection programs but also to pay for a significant portion of its administrative costs. In fact, the State Bar paid for nearly 80 percent of its administrative costs using mandatory licensing fee revenue in 2022. In recent years, those costs have risen: overall, the State Bar's administrative spending increased by about $6.5 million or 17 percent from 2020 through 2022, and it is likely to keep rising.

One factor that will likely affect the State Bar's spending is its need to improve the performance of its administrative offices. Organizations often use performance metrics to measure outcomes related to the specific tasks they perform. In 2018 the State Bar engaged with a consultant to develop performance metrics related to the State Bar's various programs and offices. We detail the State Bar's current metrics with performance targets for each program and administrative office in Appendix A. Although the State Bar has other metrics without targets, we only included those metrics with performance targets to identify which programs had measurable success. As Figure 3 shows, just three of the State Bar's programs have met all of their performance metrics, while none of its administrative offices have done so.

Figure 3
Only Three State Bar Programs Met All of Their Performance Metrics Targets

Programs	
Office of the Chief Trial Counsel	4/4
Client Security Fund	1/2
State Bar Court	3/5
Attorney Regulation and Consumer Resources* *(Includes Member Billing office metrics.)*	3/7
Lawyer Assistance Program	4/5
Professional Competence *(Includes Mandatory Fee Arbitration program metrics.)*	3/5
Probation	1/1
Strategic Communications	1/2
Center on Access to Justice *(Within the Office of Access and Inclusion.)*	3/4
Judicial Evaluation	1/1
TOTAL	**24/36**

Administrative Offices	
General Counsel	0/2
Finance	0/4
Human Resources	0/2
General Services *(Includes building improvement metrics.)*	3/4
Information Technology	1/4
Recruitment and Retention	0/4
Governance	2/4
TOTAL	**6/24**

Met all performance metric targets during the year

Did not meet all of its performance metric targets during the year

Source: The 2021 State Bar Metrics Report.

* Although Member Billing is an administrative office, its metrics are tracked and reported by the Attorney Regulation and Consumer Resources program.

Although State Bar spending has increased for most administrative offices and decreased for others, none of these offices met all performance metrics in 2021. For example, the State Bar spent over $2 million more, or a 20 percent increase, on its Office of Information Technology in 2022 than in 2021. However, this office met only one of its metrics. The office's unmet metrics included the completion of 90 percent of planned major information technology projects on schedule and on budget. Similarly, the State Bar increased its spending on the Office of Recruitment and Retention by $150,000 or 14 percent between 2020 and 2022 and this office met none of its metrics. Conversely, the Office of Finance spent $500,000 less in 2022 than in 2021, a 16 percent decrease. That office did not meet any of its four performance metrics in 2021, including having 90 percent of its internal clients report a high level of overall satisfaction with its services.

Because the State Bar's administrative offices have not fully met their performance metrics, it may need to consider filling vacant positions to make these offices more effective, which could result in increased spending. Overall, the State Bar's administrative offices had a staff vacancy rate of nearly 21 percent in 2022; by contrast, the programs had an overall vacancy rate of just 8 percent. For example, in 2022 the Office of the Chief Trial Counsel—the State Bar's largest program area—had a vacancy rate of just under 7 percent across its 289 budgeted positions. In 2021 the Office of the Chief Trial Counsel met all of its performance metrics that had targets. In contrast, the General Counsel's Office had a vacancy rate of nearly 38 percent across its 24 positions in 2022 and failed to meet any of its performance metrics. The State Bar cited the General Counsel's Office vacancies and recruitment challenges as a reason for it not generally meeting performance metrics in a report on the 2021 metrics outcomes.

To the extent the State Bar attempts to achieve some of its performance metrics by filling vacant positions, the State Bar will likely need additional funding for its administrative offices. The State Bar's 2023 budget assumes a 15 percent staff vacancy rate across the organization. The executive director indicated that, because some offices have vacancy rates lower than 15 percent, other offices may need to have vacancy rates higher than 15 percent for the State Bar to maintain a 15 percent vacancy rate across the organization. If funding is available and vacancies are not too low in other offices, the State Bar's budget assumes it may be able to fill some positions in those offices that have higher vacancies. The executive director indicated that performance metrics can inform the State Bar's budget process and that the State Bar increased the Office of the Chief Trial Counsel's budget to help it meet that office's metrics.

In addition to filling its vacant administrative positions, the State Bar's personnel costs will also likely continue to increase in the coming years because of cost-of-living and merit salary adjustments for its staff. In December 2022, the State Bar reached new agreements with its employee bargaining units that include salary increases to account for rising living costs. The agreements, which became effective in January 2023, include a 5 percent general salary increase for all State Bar staff as well as a 2.5 percent salary increase for all staff in 2024 and 2025. Attorneys received additional increases in 2023 beyond the 5 percent general salary increase: 5 percent for senior and supervising attorneys and 2.5 percent for other attorneys. The State Bar estimates that the 2023 salary increases will lead to a $4.2 million increase in personnel costs and that the 2024 increases will lead to about an additional $2 million increase in personnel costs. The State Bar has not yet projected the impact that salary increases will have in 2025.

In line with other state agencies, the State Bar also provides its staff with 5 percent annual merit salary adjustments. Merit salary adjustments are distinct from the general salary increases in that they are salary increases granted to employees for satisfactory job performance. All State Bar employees who earn a *Meets Requirements* or better overall performance rating receive a 5 percent increase to their salary on their employment anniversary date each year up to the maximum salary for their position. Over time, these adjustments lead to higher personnel costs overall, particularly as the State Bar fills its vacant positions.

Because the State Bar expects its costs to continue increasing in 2023 and beyond, in January 2023 its board approved securing an increase in the mandatory licensing fee as a legislative priority. We agree that given the State Bar's operational deficits and rising personnel costs, a mandatory licensing fee increase is necessary. However, as we discuss below, the State Bar can take steps now to minimize the amount of future fee increases.

By Taking Action Now, the State Bar Can Minimize Future Mandatory Licensing Fee Increases

By making certain operational changes, the State Bar could reduce the amount of the 2024 mandatory licensing fee increase that is needed. As Figure 4 shows, we calculated the State Bar's likely 2024 general fund revenue requirements by taking its 2024 projected expenses and adding the amount it will need to save to begin rebuilding its general fund reserve. The State Bar's 2024 projected general fund expenses include a $4.6 million increase in personnel costs that incorporates the cost-of-living and merit adjustments we describe in the previous section. We also identified the estimated amounts of general fund revenue from sources other than mandatory licensing fees, such as investment income and lease revenue. We then determined that *the State Bar could increase its revenue by raising certain service fees to align with its costs and updating other out-of-date fees.* If the State Bar takes the steps we recommend, it could limit the annual revenue its general fund will need from the mandatory licensing fees to about $91.1 million. It could generate this $91.1 million if the Legislature increases the maximum mandatory licensing fee so that the State Bar can add $24 to the current $390 for a total of $414 for active licensees and $6 to the current $97.40 for a total of $103.40 for inactive licensees. As we describe previously, the State Bar also collects mandatory fees for the Client Security Fund and Lawyer Assistance Program. These programs are not funded by the general fund and we did not identify a need to adjust the fees for either program. The Client Security Fund had a one-time fee increase in 2020 to pay for pending claims, and since receiving the increase, the State Bar has reduced the number of outstanding claims. The Lawyer Assistance Program fee was partially suspended by the Legislature for one year in 2020, with the fee set at only $1 for active licensees and a $0 fee for inactive licensees, after that fund had built up a significant reserve of nearly $3.7 million. The State Bar has reduced that reserve in the subsequent years and its projected reserve at the end of 2023 is only $1 million. Because the State Bar has not requested fee increases for these programs and we did not identify operational concerns, we are not recommending any changes to these fees.

Figure 4
The State Bar Needs Additional Mandatory Licensing Fee Revenues to Fulfill Its Existing Responsibilities

2024 General Fund Fee Requirements

State Bar's 2024 projected general fund expenditures	$97.8 million
State Auditor's proposed changes to increase required revenue *Rebuild general fund reserve*	$1.6 million*
General fund revenue required in 2024	$99.4 million

Nonmandatory licensing fee revenue sources

To determine the amount of mandatory licensing fee revenue, we subtract the other revenue sources below.

State Auditor recommends increasing service fees for programs operating with structural deficits.†	$1.9 million
State Auditor recommends updating out-of-date limited liability partnerships and law corporation service fees	$1.0 million
State Bar's forecasted general fund revenue in 2024 from other sources:	
Other fees	$4.3 million
Other revenue	$0.3 million
Investment income.	$0.4 million
Lease revenue.	$0.4 million
Total nonmandatory general fund fee revenue	$8.3 million

General fund revenue required from mandatory licensing fees

State Auditor's recommendation to the Legislature:
*Increase the maximum annual license fee for active licensees from $390 to **$414** and the maximum annual license fee for inactive licensees from $97.40 to **$103.40** to generate a total of **$85.2 million** in mandatory licensing fee revenue. Maintain the discipline fee at $25 to generate a total of **$5.9 million** in mandatory licensing fee revenue.‡*

Annual license fee for active licensees revenue	$81.3 million
Annual license fee for inactive licensees revenue.	$3.9 million
Annual discipline fee for active licensees revenue	$4.9 million
Annual discipline fee for inactive licensees revenue	$1.0 million
Total general fund mandatory licensing fee revenues in 2024	$91.1 million

Source: State law and analysis of State Bar budgets and fee analyses.

* We based this number on the annual amount necessary for the State Bar to rebuild its general fund reserve by $8.1 million over a five-year period. The State Bar's reserve policy states that it should strive to return reserves to the minimum reserve level of 17 percent within five years.

† As we acknowledge in our report, the State Bar may determine that it does not want to raise the fees for some of these programs because it may result in the public using these services less. If so, the Legislature would need to increase the maximum mandatory licensing fee the State Bar can charge further than we suggest to enable the State Bar to generate this needed revenue.

‡ We based this calculation on the State Bar's methodology for projecting the amount of licensing fee revenue its general fund will receive from a set level of mandatory licensing fees. The State Bar does not deposit the $2 EOB opt-out fee in its general fund, so the amount of general fund revenue it collects from active and inactive licensees is $2 lower than the amount set by the State Bar for the annual license fee. As of March 2023, the State Bar had 195,093 active licensees and 74,082 inactive licensees. The State Bar allows active attorneys whose salary is less than a certain threshold to pay a 25 percent reduced annual license fee and allows attorneys admitted to the bar after June 1 to pay half of the annual license fee. It also does not charge any fee to inactive licensees who are age 70 or older. To incorporate these variables, we relied on the same methodology that the State Bar used to calculate its projected 2022 annual general fund revenue from licensees.

The two mandatory licensing fees that fund the general fund are the annual licensing fee and the discipline fee. We recommend changing the annual licensing fee instead of the discipline fee because that is the fee which the Legislature has adjusted in recent years and the State Bar has not requested changes to the discipline fee. The ratio of fee increases is based on the current ratio in state law where the active annual licensing fee is four times the inactive annual licensing fee. Our calculation also incorporates our recommendation that the State Bar charge the maximum amount allowed under state law to inactive licensees.

For a number of years, the State Bar has not collected sufficient service fees to cover its costs as Table 2 shows. For example, the State Bar charges attorneys a $25 fee to issue Certificates of Standing that certify the attorney is a licensee of the State Bar. The State Bar also charges fees of $90 or $360 to providers of legal education, depending on the type of provider, to approve them to teach MCLE to licensed attorneys. The State Bar intends for both of these programs to be self-sufficient—meaning that the fees it charges fully cover the costs of providing the services. However, because the fees are not sufficient to cover the costs, the State Bar has used mandatory licensing fee revenue to subsidize these services.

Table 2
The State Bar Has Not Updated a Number of Its Service Fees

OFFICE	PROGRAM	IS THE STATE BAR COLLECTING SUFFICIENT FEES TO PAY FOR THE PROGRAM?	SIZE OF ANNUAL STRUCTURAL DEFICIT
Attorney Regulation and Consumer Resources	MCLE Compliance *The State Bar audits attorneys' continuing education and charges late fees.*	No	$525,000
	Certificates of Standing *Upon a licensee's request, the State Bar issues certificates to verify the attorney's name, bar number, admission date, and current status.*	No	105,000
Professional Competence	Lawyer Referral Service *The State Bar certifies lawyer referral services that help the public find legal assistance.*	No	257,000
	Mandatory Fee Arbitration *The State Bar resolves fee disputes between attorneys and clients by helping them to communicate disagreements to independent arbitrators.*	No	231,000
	MCLE Provider Certification *The State Bar approves providers of legal education so that their services can satisfy ongoing MCLE requirements.*	No	775,000
TOTAL			**$1,893,000**

Source: State Bar staff reports and auditor analysis of accounting records.

As Table 2 shows, the State Bar concluded in a 2022 analysis that its programs that were not self-sufficient had a nearly $2 million combined annual deficit and that they were consequently relying on mandatory licensing fee revenue. For example, the MCLE provider certification program had a structural deficit of nearly $800,000. Similarly, the Certificates of Standing program had a structural deficit of a little more than $100,000. We obtained and analyzed the State Bar's underlying accounting records and confirmed that the service fee revenue dedicated to these programs was inadequate to fully support program spending. If the State Bar increases its service fees to eliminate these structural deficits, it could use its mandatory licensing fee revenue to pay for other costs or to rebuild its general fund reserve.

The State Bar is considering whether some programs serve a public protection function that supersedes the need for them to be self-sufficient, meaning that it may decide not to raise all of these fees. In particular, according to the chief financial officer (CFO), the State Bar believes that increasing fees for its Mandatory Fee Arbitration program and Lawyer Referral Service program (both service fees) could result in the public using these programs less. The Mandatory Fee Arbitration program provides public protection services to clients who may be victims of attorneys by providing a low-cost method for resolving issues with attorney fees, and the Lawyer Referral Service program helps the public find legal assistance. Although the fees for the Lawyer Referral Service are paid by the organizations receiving referrals instead of by the public who use the services, the CFO indicated that the fee increases could put referral service organizations out of business. These two programs operate at a combined deficit of nearly $500,000. We believe that the State Bar should analyze the impact that raising the service fees for these programs would have on public participation in the programs. It should raise the fees to avoid operating the programs at deficits unless its analysis determines that increases would reduce public participation.

In its 2022 analysis, *the State Bar also determined that it could generate additional general fund revenue of more than $1 million by increasing fees for its Limited Liability Partnerships (LLPs) and Law Corporations programs that have not had fee updates in years.* Similar to the process through which the State Bar licenses attorneys by charging mandatory licensing fees, it charges fees to certify LLPs to allow partners to limit their liability for the actions of their partners and employees and to certify law corporations to practice law. The State Bar's analysis found that the fees for the two programs had not changed in a decade or more. Further, the LLPs program's fees are currently regressive, meaning that firms with 1,000 attorneys pay the same amount as firms with 100 attorneys, a structure that the State Bar has identified as being unfair to smaller firms.

State law requires the State Bar to use fee revenue from the LLPs and Law Corporations programs for regulatory and disciplinary purposes. Specifically, the State Bar can use the revenue it collects from these fees to make improvements to those two programs. For example, it intends to use the increased Law Corporations program fees to streamline the registration process for law corporations. However, the State Bar can also use these fees to pay for its core regulatory and disciplinary programs, such as the Office of the Chief Trial Counsel, instead of using mandatory licensing fee revenue.

State Bar staff recommended changes to the LLPs program's fees that would generate from $500,000 to more than $700,000 annually and changes to the Law Corporations program's fees that would generate more than $300,000 annually in addition to the current fee revenues generated by the programs. The State Bar is in the process of soliciting feedback from impacted parties on the appropriate fee level for LLPs. The State Bar intends to present all of its recommended fee increases to its board in May 2023. If it is able to raise these fees, it could make improvements to these programs and to other disciplinary or regulatory programs without needing to spend mandatory licensing fee revenue to do so.

The State Bar has also not charged the full allowable annual license fee to inactive licensees. State law allows the State Bar to set its annual license fee for inactive licensees to a maximum of $97.40. However, the board authorized an annual license fee of $92.40 for inactive licensees in 2023. Consequently, the State Bar will collect about $190,000 less in general fund revenue than if it had charged the full amount. This decision was not financially prudent given the State Bar's financial situation. By not charging the full annual license fee authorized for inactive licensees, the State Bar has minimized its ability to address its rising costs. The State Bar acknowledged that a plain reading of the statute setting the maximum annual inactive license fee supports its ability to charge inactive licensees up to $97.40 in 2023. In response to our questions about the lower fee amount, it referred to its belief that the legislative intent when the Legislature most recently revised the annual licensing fee was to limit the inactive licensing fee to $92.40 in 2023. Nevertheless, given the State Bar's financial situation, it should charge the maximum annual license fee authorized under state law.

In addition, *the State Bar could realize further cost-savings if it sells the real estate it owns.* State law allows the State Bar to purchase, lease, and sell real property. The State Bar owns two buildings—one in San Francisco and the other in Los Angeles. Based on recent estimates, the State Bar occupies about 60 percent of its San Francisco space and about 80 percent of its Los Angeles space. It leases out the remaining space in both buildings. The State Bar is in the process of trying to sell its San Francisco building. If it is able to do so, it could realize significant savings, particularly given that the ownership costs for the building have increased in recent years. In 2021 the State Bar spent nearly $5.7 million on both capital improvements and building operations for its San Francisco building, and estimates its 2022 costs were nearly $5.6 million. The State Bar projects that it could save an average of more than $4 million annually in building operating expenses alone if it sells the building.

Selling the San Francisco building would, therefore, have an immediate impact on the State Bar's costs. Moreover, if it is able to sell the building, the State Bar plans to fully repay a 2021 loan for building improvements and information technology projects, which would eliminate $2.4 million in ongoing annual expenses in 2023 and 2024, $1.6 million annually from 2025 through 2031, and $1 million annually from 2032 through 2036. The total savings—along with the $4 million annually in building operating expenses— would be partially offset by the loss of rental income, currently $1.8 million annually. In addition, the State Bar would need to lease office space for its San Francisco operations.[5] The State Bar is concerned that it will not be able to sell the building because of a declining real estate market in San Francisco. If it is unable to sell the building, it will need to continue to pay for the building's ongoing operational and capital improvement costs.

The State Bar's 2023 budget assumes that it will sell its San Francisco building by June 2023. Accordingly, it does not budget for any building related expenses or lease revenue after the first six months of 2023. If it does not sell the building in the first

5 The State Bar would likely also receive significant funds from the sale of the building and be able to put them toward paying its lease costs and rebuilding its general fund. However, we do not estimate the potential sale price here given the uncertainty of the real estate market.

half of 2023, the State Bar plans to submit a midyear budget adjustment to its board. That midyear budget adjustment would add back in the expenses and lease revenues related to owning the building for the second half of the year. This could further impact the State Bar's financial situation in 2024 if the building does sell by the end of 2023 which is one reason why we recommend that the State Bar inform the Legislature of any significant financial changes after we publish our audit.

The State Bar might also reduce its costs by selling its Los Angeles building. However, the State Bar has yet to take critical steps to determine whether it is cost-effective to do so. Specifically, the State Bar explained that it has not obtained a recent estimate of the Los Angeles building's value nor assessed the costs and benefits of continuing to own the building. According to the chief administrative officer, the State Bar has not taken such steps because the San Francisco building analysis has been a higher priority in recent years because of the significant amount of capital investment the San Francisco building requires and the challenges of leasing 40 percent of the building to tenants; both of these have created a more pressing financial concern. The Los Angeles building, by comparison, is smaller, requires fewer capital improvements, and has only one tenant. However, according to the chief administrative officer, the State Bar plans to assess its options for its Los Angeles building beginning in 2023.

The State Bar Is Not Proactively Planning for Its Financial Future

As we discuss throughout the previous sections, the State Bar is in a difficult financial position. Its personnel costs have increased in recent years and will continue to do so. Its general fund reserve has fallen below its established minimum. Some of its administrative offices have high staff vacancy rates, and none are fully meeting their performance metrics. It has not collected sufficient fees to cover the costs for some of the services it provides. Finally, changes in the San Francisco real estate market may hinder its ability to sell its building there, requiring it to continue to pay the high costs of operating and maintaining the building.

To address these financial difficulties, *the State Bar will need to take a proactive approach to planning for its financial future. One method that could help the State Bar do so is long-term forecasting.* GFOA best practices indicate that organizations should use this tool to identify future revenue or expenditure trends that may have an immediate or long-term impact on government policies or strategic goals. According to the GFOA, an effective forecast allows for improved decision making in maintaining fiscal discipline. Further, the GFOA recommends that all governments maintain a long-term financial plan that projects revenue, expenses, financial position, and external factors for all key government operations and funds at least five years into the future.

In the past, the State Bar produced five-year forecasts for its general fund—a practice that we recommended in our April 2019 audit report that it continue to annually perform to enable it to effectively determine its budget.[6] However, the State Bar no

6 *State Bar of California: It Should Balance Fee Increases With Other Actions to Raise Revenue and Decrease Costs*, Report 2018-030, April 2019.

longer produces these forecasts and could not provide us with a compelling reason for having ceased to do so. The State Bar most recently produced a five-year general fund forecast in 2021. In that same year, our office assessed that the State Bar had fully implemented our 2019 recommendation that it continue to annually prepare five-year budget projections. When we asked in the course of this audit why it did not produce a forecast in 2022, the CFO indicated that she does not believe that a five-year forecast is reasonable when so many uncertainties exist that can affect the forecast's accuracy. However, she acknowledged that a three-year forecast might be reasonable and that the State Bar may need to create a new forecast in the future to assess funding needs for its new strategic plan.

We believe that the State Bar should begin to annually create forecasts again: uncertainties should not prevent it from attempting to assess its upcoming needs. Rather, uncertainties are one reason why forecasts are such a valuable tool. Forecasts allow organizations to better anticipate the likely financial situations they could find themselves in and plan accordingly. As the GFOA notes, a forecast can help governments diagnose potential risks and causes of fiscal distress and allow them to take preemptive action to mitigate forecasted financial distress. We believe that the State Bar could use forecasting to address its current financial situation and provide the public and the Legislature with clear information about its financial outlook. For example, incorporating the potential sale of its San Francisco building into its forecasts could allow the State Bar to identify the effect that the sale might have on its general fund reserve level and mandatory licensing fee needs. A three-year forecast would reasonably allow the State Bar to identify any future causes of fiscal distress while still providing it sufficient time to either seek additional funding or adjust its spending.

Recommendations

Legislature

The Legislature should set the maximum annual licensing fee that the State Bar may charge for 2024 to $414 for actively licensed attorneys and $103.40 for inactive licensees. However, before the Legislature finalizes the maximum annual licensing fee amounts for 2024, it should request that the State Bar provide it with the following information:

- An itemized listing of the mandatory licensing fee revenue that the State Bar will need to fund its operations in 2024 program by program. This breakdown should identify any changes in the State Bar's financial situation following the release of this audit, such as the sale of its San Francisco building or the State Bar choosing not to increase some of its service fees to fully recoup its costs as we recommend below. The State Bar will need to identify the effect that any changes to its financial situation will have on the mandatory licensing fee amounts we have identified as necessary.

- A list of any programs funded by licensing fees that need additional funding beyond the program-by-program breakdown to operate effectively and to meet related performance metrics. The list should specify the State Bar's understanding of the amount of funding needed per program.

The Legislature should require the State Bar to provide the above information each year when submitting its annual budget to the Legislature, as required by state law, or it should otherwise specify the format and level of detail needed through statutory change.

For 2024 the Legislature should maintain the Lawyer Assistance fee at $10 for active licensees and $5 for inactive licensees, the Client Security Fund fee at $40 for active licensees and $10 for inactive licensees, and the discipline fee at $25 for all licensees.

State Bar

By October 2023, the State Bar should identify any service fees that do not fully cover the costs of providing the services. The State Bar should increase the fees it has identified to the amount necessary to recoup its costs unless it determines that doing so would limit the public's access to the services. It should also identify any service fees that have not been updated in five years or more and assess whether they should be updated. The State Bar should then determine the effect that the increased service fees will have on the amount of mandatory licensing fee revenue that it needs.

To ensure that it appropriately plans for its upcoming funding needs and takes all steps possible to maintain an adequate reserve level, the State Bar should reinstitute its practice of producing and posting on its public website forecasts for its general fund starting with its 2024 budget. These forecasts should encompass at least the following three years.

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The State Bar Should Improve Its Process for Administering External Disciplinary Cases

Key Points

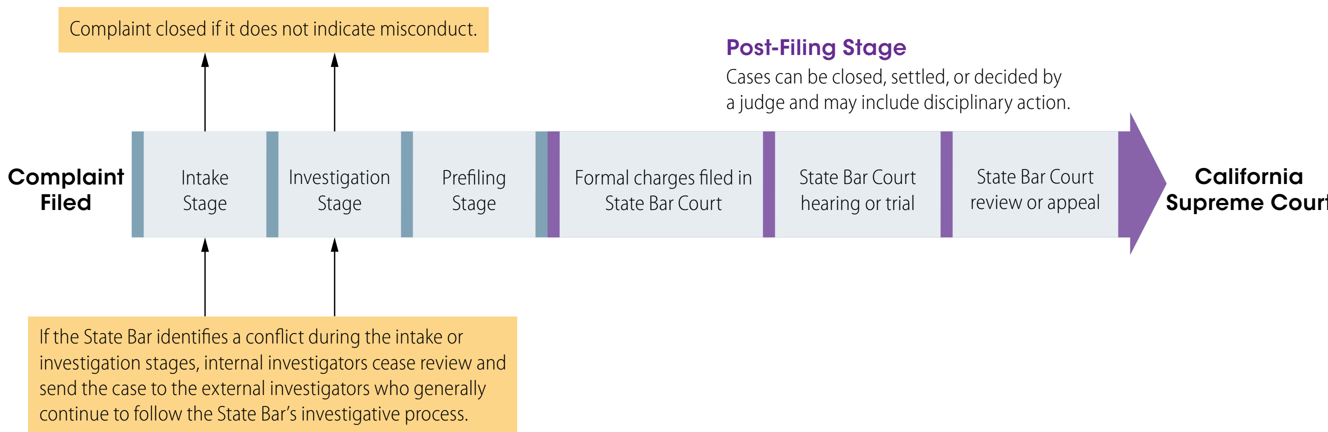
- The State Bar uses its case management system to track data related to the discipline cases that its external investigators handle. However, these data contain multiple errors and omissions.
- The State Bar has not ensured that the Rule 2201 program consistently concluded its external disciplinary cases within the time frame it has established for doing so.
- The State Bar has not provided access to its case management system to all of its external investigators, leaving it less able to identify the origins of delays in case processing.
- The State Bar established the Rule 2201 program so that it could assign external investigators to disciplinary cases when its own staff have conflicts of interest. However, the State Bar itself has not formalized a permanent process to ensure that its current and future administrators are identifying external investigators' potential conflicts of interest.
- The State Bar considered rates for comparable legal services before recently raising its contracted hourly rate for its external investigators.

Data Errors Limit the State Bar's Ability to Track the Timeliness of External Disciplinary Cases

According to state law, the State Bar's goal is to conclude its disciplinary cases within six months of receiving a complaint alleging attorney misconduct.[7] The State Bar can conclude a case by dismissing the complaint, admonishing the attorney, or filing formal charges against the attorney with the State Bar Court. As the Introduction describes, when the State Bar identifies a conflict of interest related to an inquiry or complaint, the Office of the Chief Trial Counsel refers that complaint or inquiry to the Rule 2201 program. The administrator and external investigators subsequently conduct the investigation and all other proceedings as necessary. According to the administrator, external investigators follow the Office of the Chief Trial Counsel's policies and procedures related to processing cases to the extent possible; therefore, they must adhere to the same time frame as the Office of the Chief Trial Counsel's staff for reaching a conclusion on cases they process. Figure 5 shows the State Bar's process for reviewing discipline cases.

7 State law also states that if the State Bar designates a disciplinary case as complicated, the time frame for completing that case increases to 12 months. However, the administrator confirmed that the only goal for the Rule 2201 program is to complete cases within six months.

Figure 5
The State Bar Uses Similar Processes for Reviewing Internal and External Disciplinary Cases



The Four Stages of the External Disciplinary Case Review Process

1. **Intake:** The administrator or external investigator conducts a preliminary legal review to determine whether the alleged misconduct constitutes an actionable violation of professional misconduct.
2. **Investigation:** The administrator or external investigator conducts an investigation to determine whether there is clear and convincing evidence to support the allegation of professional misconduct.
3. **Prefiling:** The administrator or external investigator makes preparations for a complaint to be filed in the State Bar Court.
4. **Postfiling:** The State Bar Court conducts evidentiary hearings and then renders a decision with findings and recommendations of discipline or no discipline. The State Bar Court's review department hears appeals from these decisions. Review department decisions can be appealed to the California Supreme Court.

Source: The State Bar's website and *Investigative Procedures Manual*.

Although the State Bar tracks centralized data related to its discipline cases through Odyssey, its case management system, we were unable to entirely rely on these data to determine whether the Rule 2201 program has been meeting the six-month goal for concluding discipline cases. To determine if the Rule 2201 program was concluding external discipline cases within this time frame, we requested a listing of all external discipline cases and we identified those it closed during fiscal years 2019–20 through 2021–22. However, when we attempted to verify these data—which included a total of 429 cases—we identified numerous omissions or errors. For example, the State Bar informed us that it initially omitted two cases from the data we received and that it could not determine what caused the omissions. Therefore, there is a possibility that other data was omitted. In addition, the data erroneously showed that an external investigator closed two cases after her resignation. However, upon review of the data, the State Bar confirmed the completion dates in Odyssey were incorrect and, in fact, the external investigator closed both cases before her resignation. Further, when we compared the available hard-copy files for a judgmental selection of 10 cases to the data in Odyssey, we identified seven discrepancies in 42 data fields. For example, Odyssey data show that it closed one of the cases seven months after the last activity contained in that case's complaint file, which occurred when the external investigator sent a closing letter to the complainant. The administrator indicated that she identified no further substantive activity on the case after the closing letter was sent and that the State Bar should likely have considered the case closed at that time. In addition, we were not able to fully review the data associated with these 10 cases because the State Bar was unable to provide us complete copies of the case files for three of them. Therefore, the true error count may have been even higher than the seven errors we identified.

These data accuracy and completeness issues highlight limitations in the State Bar's case management system for the purpose of evaluating the timeliness of its external investigations. Moreover, the fact that we identified numerous data entry errors through our limited review brings into question the accuracy of the dataset as a whole. Because of these concerns, we used our selection of 10 cases to gain insight into the timeliness of the Rule 2201 programs' handling of external discipline cases, as we discuss in the next section. However, we also present global data in Odyssey because it is the only readily available source of data on the overall timeliness of cases processed by external investigators.

The Rule 2201 Program Has Not Consistently Closed External Disciplinary Cases Within a Six-Month Time Frame

Our review of the 10 cases we judgmentally selected from the pool of cases with the longest length of time between the case being opened and it being closed, as well as the Odyssey data, found that external investigators did not consistently administer cases in a timely manner, as Figure 6 shows. The State Bar's procedure, which also applies to the administrator and external investigators, requires that it complete a preliminary review of a case at the intake stage within 60 days of receiving a complaint. However, we found that the preliminary reviews for four cases handled by external investigators lasted significantly longer than 60 days. We found similar results when reviewing the Odyssey data, which show that the external investigators took more than 60 days to complete preliminary reviews of 162, or nearly 40 percent, of the total cases in the three fiscal years under our review.

We also found that *external investigators did not always complete their investigations within the six-month goal.* Specifically, they did not conclude seven of the 10 cases we selected within that time frame. Although this was not surprising because we based our selection of 10 cases on those that took the longest to complete, we also found concerns about the timeliness of investigations when reviewing the global data. Specifically, the Odyssey data showed that external investigators did not close 130 cases, or 30 percent, of the total external disciplinary cases from our audit period within six months.

When the Rule 2201 program and its external investigators do not close cases in a timely manner, they risk failing to adequately protect the public. For example, one of the 10 cases we reviewed remained open for multiple years. When the State Bar initially received this case, the Office of the Chief Trial Counsel closed it within six months without taking any action. However, the complainant requested a second review, and two years after it received the initial complaint, the State Bar's Audit and Review Unit determined that the State Bar needed to reopen the case for further investigation.[8]

8 In 2016 the State Bar's Audit and Review Unit moved to the Office of the General Counsel and the unit's name changed to the Complaint Review Unit, which handles requests for a second review from complainants who have had their matters closed by the Office of the Chief Trial Counsel without disciplinary charges filed.

Figure 6
The Rule 2201 Program Has At Times Exceeded the Time Frames Established for Completing Stages of Its External Disciplinary Process

Intake

The administrator shall complete the preliminary review within 60 days after the written inquiry or complaint is first received.

429
cases from Odyssey reviewed during three fiscal years

The preliminary review was **not** complete within 60 days in 162 cases or
38%

Preliminary Review Completed

61–90 days	91–120 days	121+ days
65	18	79

10
cases reviewed from above 429 cases

The preliminary review was **not** complete within 60 days in 4 cases or
40%*

Preliminary Review Completed

61–90 days	91–120 days	121+ days
0	0	4

Investigation

State law has established the goal of dismissing a complaint, admonishing an attorney, or filing formal charges within six months after the State Bar receives that complaint.

429
cases from Odyssey reviewed during three fiscal years

Cases were **not** closed within six months in 130 cases or
30%

Case Review Completed

6–12 months	1–3 years	3+ years
43	68	19

10
cases reviewed from above 429 cases

Cases were **not** closed within six months in 7 cases or
70%

Case Review Completed

6–12 months	1–3 years	3+ years
1	4	2

Source: Analysis of cases the State Bar closed during fiscal years 2019–20 through 2021–22, state law, and the State Bar's Rules of Procedure.

* For one of the 10 cases we reviewed, the administrator asserted that the case was closed because it was duplicative of another case. However, she could not provide documentation supporting the intake completion date. In the absence of this documentation, we relied on the intake completion date in Odyssey, which shows the case remained in intake for about two and a half years before it was closed.

About four months into the investigation, the Office of the Chief Trial Counsel referred the case to the Rule 2201 program. The external investigator assigned to it reached a conclusion and drafted disciplinary charges for the case two years after the State Bar reopened it. Six years after the State Bar initially received the case, the State Bar Court finally ordered that the respondent to the complaint be suspended from practicing law. The administrator did not know whether the respondent attorney continued to practice law until that time; however, because the State Bar and the external investigators did not review this case in a timely manner, the attorney remained eligible to practice law for a total of six years after the State Bar received the initial complaint. When it allows delays of this magnitude, the State Bar cannot adequately protect the public from attorney misconduct.

The State Bar has provided a number of different reasons why its external review process can be lengthy. In particular, it previously cited its limited pool of part-time external investigators although it recently contracted with three new individuals to serve in this position. In addition, the administrator explained that a standard step in all investigations is to request a written response from the respondent attorney and that some attorneys request an extension or multiple extensions to submit their responses. The administrator also noted that more complex cases may require more time. For example, when a case requires bank statements, the bank can take up to 30 days to provide them. Further, the investigation of some cases may be deferred pending resolution of related criminal or civil cases. Even so, the State Bar could not readily identify that these reasons were, in fact, the underlying causes of the delays we identified.

The State Bar Does Not Have the Ability to Adequately Monitor the Timeliness of External Disciplinary Cases

The State Bar lacks the ability to monitor the timeliness of certain external disciplinary cases, leaving it less able to identify when and why delays in case processing occur. The administrator explained that she runs reports from Odyssey to determine the length of time a specific external investigator has been assigned to a case and to show the dates when the case status changed from the intake stage to the investigation stage. However, the majority of external investigators do not yet use Odyssey, lessening the administrator's ability to use the system to monitor the timeliness of the cases. As of March 2023, eight out of about 20 external investigators were actively using Odyssey.

The Office of the Chief Trial Counsel implemented the Odyssey system in 2019 for administering discipline cases. According to staff within the State Bar's Office of Research and Institutional Accountability, employees within the Office of the Chief Trial Counsel who administer discipline cases create a record in Odyssey for each of their cases. These employees then must enter every major event throughout the investigation process into the electronic record. However, according to the administrator, before her tenure began in 2022, her predecessor was the only one in the Rule 2201 program to have access to Odyssey.

The staff in the Office of Research and Institutional Accountability stated that the State Bar is currently providing Odyssey access and training on a rolling basis to its existing external investigators who handle the highest volume of cases. Although the State Bar does not have a projected completion date for this rollout, the administrator explained that the State Bar is implementing Odyssey access and training gradually because it requires significant time and resources. Further, she believes that having all external investigators change their way of file handling overnight would be highly disruptive to case processing. The State Bar's Office of Information Technology confirmed that all newly contracted external investigators are given access to Odyssey as soon as they start. However, until all other external investigators also begin using Odyssey, the administrator will lack the ability to readily and fully identify investigations that are exceeding the Rule 2201 program's six-month time frame and the ability to determine the causes of those delays.

Further, *until the State Bar provides Odyssey access to all of the Rule 2201 program contractors, it also risks misplacing or losing critical documentation for cases.* External investigators without Odyssey access currently receive an electronic copy of the documents from the administrator and will either work from these electronic case files or they will print the documents and create a hard copy case file. At the conclusion of each case, the external investigators send the administrator a digital copy of the cases' closing documents, which the administrator then directs the Rule 2201 program's legal secretary to upload to Odyssey. If an external investigator created a hard copy case file, the remainder of the case information stays in the hard-copy file, which the Office of the Chief Trial Counsel explained it transfers to the State Bar's storage facilities in Los Angeles or San Francisco. The State Bar's records retention policy requires it to retain discipline case files indefinitely. According to the State Bar's chief trial counsel, although it began retaining case files electronically effective January 2021 by scanning the hard-copy files into Odyssey, the State Bar still maintains hard-copy files of Rule 2201 program cases. When external investigators return the hard-copy files to the Office of the Chief Trial Counsel following the case closure, it archives and retains the files. However, of the 10 case files we requested, the State Bar was unable to provide us with two files and only very limited documentation related to a third. As a result, we relied on Odyssey data to determine the timeliness of these cases.

Without retaining case file evidence, whether electronically or in hard-copy files, the State Bar is unable to review the support for data, such as key case processing dates, entered into Odyssey. Further, given that the files can contain sensitive information, such as bank statements, we find it concerning that the State Bar could not locate a complete record for nearly one-third of the files we requested.

The State Bar Needs to Formalize a Process for Identifying External Investigators' Conflicts of Interests

As the Introduction explains, the Rules of Procedure of the State Bar require its chief trial counsel to recuse the Office of the Chief Trial Counsel from inquiries or complaints against attorneys if a conflict of interest, or the appearance of a conflict of interest, could raise concerns about its impartiality. To make this determination, the State Bar requires its employees to complete an annual questionnaire in which they disclose the personal, financial, and professional relationships they have with licensed California attorneys. The State Bar then adds these attorneys to a conflicts-of-interest list and flags the attorneys in Odyssey.

However, the State Bar has not formalized a process to ensure that external investigators are free from conflicts of interest when administering disciplinary cases. According to the administrator, the State Bar does not have a written policy or procedure that she or her external investigators adhere to regarding conflicts of interest. The administrator explained that she does not know why the State Bar does not have such policies or procedures for contractors to follow. Although the external investigators complete a similar annual questionnaire as State Bar employees, the administrator does not track external investigators' conflicts of interest in a list similar to the list for State Bar employees. Therefore, *the Rule 2201 program runs the risk that it will not appropriately identify and address any conflicts of interest that external investigators may have.*

In the absence of a formal policy from the State Bar, the administrator has adopted an informal process for identifying conflicts of interest. Specifically, she explained that when she assigns an inquiry or complaint to an external investigator, she generally discloses relevant names, such as the respondent and key witnesses, and she asks the external investigator to confirm in writing whether he or she has a conflict of interest. If an external investigator discloses such a conflict of interest, the administrator will flag it in Odyssey and will not assign the case to that external investigator. The administrator stated that after she assigns an external investigator to a case, she provides that individual with the name of any other external investigators who have conflicts of interest with the subject of the complaint or individuals related to the investigation. She explained that the assigned external investigator will know going forward to not discuss the case with any external investigators who have these conflicts of interest.

If followed, the process described by the administrator seems reasonable to us. In response to our concern, the administrator developed her own policy directive, which outlines the process described above, and distributed it to the external investigators in March 2023. However, the State Bar has not established a formal process for ensuring that the Rule 2201 program's current and future administrators will consistently ensure that they do not assign external investigators to cases in which conflicts of interest exist. Given that the administrator and external investigators are independent contractors with limited-term contracts, we believe the State Bar is best equipped to provide formal guidance to the Rule 2201 program. When we asked the State Bar's executive director about this issue, she agreed that the State Bar needs to finalize a conflict-of-interest verification process for the Rule 2201 program.

The State Bar Appears to Be Administering Its External Disciplinary Cases Cost-Effectively

As we previously discuss, the State Bar's external investigators are contractors, not employees. According to the State Bar's 2021 annual report on the use of outside counsel, it paid more than $488,000 to external investigators in 2021, up from the $282,000 it paid in 2020, an increase of more than 70 percent. The report cites two reasons for this change: an increase in the hourly rates it pays and the continued professionalization of the Rule 2201 program. More specifically, the report explains that the increase in costs in 2021 is attributable to the State Bar's effort to decrease the backlog of aged cases and prepare more cases for trial.

To determine whether the State Bar's process for handling external disciplinary cases is cost-effective, we considered its options for administering disciplinary cases when its staff cannot do so. We concluded that engaging contractors to administer these cases was a reasonable option for the State Bar. We then considered if the

State Bar determined whether it was obtaining the external investigators' services at a reasonable price. Although, as an example, state law does not require the State Bar to competitively bid legal services contracts, we reviewed the State Bar's most recent hourly rate increase from $100 to $250 for its external investigators, which its board approved in September 2021.

To justify the rate increase to its board, the State Bar compared its new proposed hourly rate of $250 to the rates for comparable legal services. Specifically, it looked at the State Bar Court's appointed respondent's counsel, private ethics counsel, private discipline defense counsel, and private insurance rate malpractice defense counsel. We agree that these are reasonable comparisons because the services are similar to those the external investigators provide. The State Bar found that its proposed hourly rate of $250 was below the hourly rates for the other legal services, which it identified as ranging from $300 to $500. It also reviewed a 2020 report on legal trends by a company that provides law practice management software. This report included an average hourly rate for lawyers in California of nearly $340. Because the State Bar considered comparative rates, some of which we verified, before increasing the hourly rate for external investigators, we believe it took sufficient steps to ensure that it was paying a reasonable rate for these services.

We also asked the State Bar if it had any perspective regarding the cost-effectiveness of its administration of external disciplinary cases. The assistant general counsel explained that external investigators are independent from the State Bar and bill their work at an hourly rate. In contrast, the Office of the Chief Trial Counsel has dedicated staff—including investigators, paralegals, and administrators—who have roles in the investigation process of a disciplinary case. Because of external investigators' independence, they do not have administrative staff and must complete all of the investigative and administrative work necessary on a case themselves. Therefore, when an external investigator bills for work on a case, there are no differences in the costs associated with the different tasks that they complete. Given this setup, the assistant general counsel stated that it naturally costs the State Bar more to complete an external investigation case than one completed internally. She also acknowledged that although it is not entirely feasible for the State Bar to determine whether there could be any cost savings in conducting external investigations because of their independence and set hourly rate, it could conduct in-depth audits of the external investigators' billing statements to ensure that their billed amounts are reasonable. Although the State Bar currently does not conduct in-depth audits, we believe doing so could be a good practice.

Finally, given that the State Bar only very recently began to track external investigators' expenses, it is premature to determine the overall cost-effectiveness of the Rule 2201 program. Specifically, after its board approved the most recent hourly rate increase, the State Bar's Finance Department created an invoice template for all external investigators to use, and it now requires them to submit separate invoices for each case. This now allows the State Bar to track external investigators' expenses by case number. Although the assistant general counsel acknowledged that the State Bar currently does not have enough data to conduct a fiscal analysis, it intends to perform a fiscal analysis no later than September 2023 as the board's Regulation and Discipline Committee recommended during its board meeting. Further, she explained that one fiscal analysis could determine how much money and time the State Bar spends on external disciplinary cases from the time cases first open to when they close. This type of "from open to close" cost analysis could be useful for identifying any outliers. Until the State Bar completes this work, it will be unable to set acceptable performance metrics that ensure the cost-effectiveness of the Rule 2201 program.

Recommendations

State Bar

To ensure that it can correctly calculate the timeliness of its administration of external disciplinary cases, the State Bar should immediately review the accuracy of the data in its Odyssey system for these cases and should correct any errors. Unless required, it should not report data from the system to the public and the Legislature until it verifies the data's accuracy.

To ensure the impartiality of the processing of external disciplinary cases, the State Bar should, by October 2023, formalize the administrator's process for identifying her own and any external investigators' conflicts of interest related to these cases.

To ensure the cost-effectiveness of its external investigation process, the State Bar should, by October 2023, conduct in-depth audits for a selection of the external investigators' billing statements to ensure that their billed amounts are reasonable. In addition, by September 2023, it should complete its fiscal analysis to determine how much money and time is spent on external disciplinary cases from the time cases first open to when they close.

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Other Area We Reviewed

To address the audit objectives, we also reviewed the State Bar's cost allocation plan.

Administrative Cost Allocation

State law requires us to review the State Bar's cost allocation plan as a part of this audit. The GFOA describes a cost allocation plan as a systematic and rational methodology to calculate the amount of shared costs, including administrative expenses, allocated among the programs that those shared costs support. In 2019 the State Bar adopted its current cost allocation plan, which includes two elements: a policy document that describes the allocation methodology for each of the State Bar's administrative areas and a spreadsheet the State Bar uses to calculate the allocation amounts based on its annual budget. We found that the plan uses a reasonable methodology for allocating costs. Table 3 lists the administrative areas of the State Bar's cost allocation plan, summarizes the functions of those areas, and provides the allocation basis and projected amounts of total annual expenditures and total amounts recovered.

The State Bar engaged two different consultants to develop its current cost allocation plan. In 1999 the State Bar engaged an accounting firm to recommend a cost allocation methodology, and that accounting firm conducted a second review in 2001. The State Bar did not engage an independent consultant to review and assess its cost allocation methodology again until 2015. The State Bar finance manager was not aware of, nor could he produce any records of, reviews conducted from 2002 through 2015.

Although GFOA recommends that organizations use their cost allocation plans for a maximum of three years, we believe that the State Bar's current policy to review its cost allocation plan every five years is reasonable. The State Bar finance manager noted that conducting reviews every three years—rather than every five years—would increase costs if the State Bar had to hire an outside consultant. Additionally, we found the State Bar's current cost allocation plan was generally consistent with its 2001 plan, suggesting that the State Bar may not experience frequent changes that affect its cost allocations. Moreover, the State Bar's current policy states that it will update its cost allocation plan as necessary. For these reasons, we believe it is reasonable that the State Bar reviews the cost allocation plan every five years and makes changes as necessary. We are, therefore, not making any recommendations regarding cost allocation at this time.

We also attempted to assess the reasonableness of the State Bar's administrative costs by looking for comparable entities. We did not identify a comparable agency or bar association—for example, large states such as Massachusetts, New York, and Florida do not have a single bar association that oversees licensing and discipline—and according to the State Bar's finance manager, there is not an industry standard for administrative cost amounts. He also indicated that he was not aware of any comparable entities, including cities, counties, or other state agencies because the State Bar's functions are more self-contained. The State Bar's administrative costs as a percentage of its overall costs from 2019 through 2022 ranged from about 26 percent

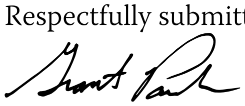
Table 3
Cost Allocation by Administrative Area

ADMINISTRATIVE AREA	BASIS FOR ALLOCATION	PROJECTED TOTAL COST 2022	TOTAL AMOUNT RECOVERED FROM PROGRAM AREAS 2022
Executive Director *Ensures that the State Bar fulfills its mission and achieves its goals; supports board by implementing its policies; and sets the direction for staff.*	Program or office direct costs as a percentage of total State Bar costs.	$3,590,244	$2,784,739
Board *Governs the State Bar and guides policymaking decisions.*	Program or office direct costs as a percentage of total State Bar costs.	22,865	24,410
Appointments *Manages and supports appointees to the Judicial Nominees Evaluation Commission.*	Number of members in a given committee or commission relative to previous year.	–	97
Licensee Billing *Processes attorney fees and responds to billing inquiries.*	Program or office revenue as a percentage of total State Bar member fees.	728,476	722,700
General Services *Provides facilities, administrative, and procurement services that support the work of all State Bar offices.*	Percentage of square footage occupied by the program or office relative to number of staff members.	8,567,348	7,749,823
General Counsel *Legally advises and represents the State Bar, its board, executive staff, and all State Bar subentities and programmatic clients.*	Percentage of full-time equivalent (FTEs) in the program or office relative to State Bar's overall FTEs.	4,587,547	4,019,577
Human Resources *Maintains labor relations and administers personnel policy, nondiscrimination policy, and benefits.*	Percentage of FTEs in the program or office relative to State Bar's overall FTEs.	2,005,844	1,555,665
Information Technology *Provides the software and hardware systems that support the State Bar, including developing and improving its internal and public-facing applications, and maintains its network infrastructure.*	Percentage of FTEs in the program or office relative to State Bar's overall FTEs.	13,783,447	10,685,951
Finance *Conducts financial reporting and analysis, develops and oversees the budget, and implements financial controls.*	Program or office direct costs as a percentage of total State Bar costs.	2,490,744	1,738,750
Other—Nondepartmental *Holds all State Bar revenue for eventual disbursement; State Bar pays OPEB indirect costs from the Non-Departmental Fund.*	Program or office direct costs as a percentage of total State Bar costs.	3,649,000	3,014,990
Building Improvement/ Property Related *One-off improvements to State Bar properties.*	Allocated on a case-by-case basis, taking into account the programs that benefit from the project.	1,736,600	1,179,489
TOTALS		**$41,162,115**	**$33,476,191**

Source: 2021 State Bar cost allocation policy, 2022 State Bar budget, and 2022 financial documents to 32 percent.[9] We did not identify any concerns with the State Bar's providing additional funding for its administrative offices in terms of the reasonableness of its overall administrative expenses.

We conducted this performance audit in accordance with generally accepted government auditing standards and under the authority vested in the California State Auditor by Government Code sections 8543 et seq. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



GRANT PARKS
California State Auditor

Date: April 13, 2023

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9 We calculated the cost percentage for the years 2019 through 2022 using the State Bar's total administrative costs for a given year, dividing it by the annual total expenditures, excluding grant expenditures. We excluded grant expenditures from the calculation because the State Bar excludes grant expenditures when allocating its administrative costs.

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Appendix A

State Bar Programs and Administrative Offices

The Legislature directed our office to evaluate each program and office of the State Bar that receives support from the annual mandatory licensing fees and other fees required of active and inactive licensees. Table A presents a list of all of the State Bar's programs and offices that receive support from such fees. We did not review the programs and offices that receive support from fees that licensees of the State Bar are not required to pay, such as voluntary fees and service fees.

The Legislature also directed our office to assess the programs' and offices' budgeted and actual expenditures of fee revenue, their staffing levels, and their other resources, as well as to evaluate the State Bar's related performance measures, which the State Bar refers to as *metrics*. Table A provides information on the current budgets, expenditures, staffing, and performance metrics for each program and office that receives support from required fees. We used the State Bar's projections of 2022 expenditures from its 2023 budget because the State Bar had not finalized its year-end accounting records through December 2022 or its 2022 financial audit during our audit period. These 2022 projections therefore do not reflect the State Bar's final 2022 expenditures. The table also presents a three-year trend in expenditures of mandatory licensing fees for each program. The totals for the programs include both the direct costs for operating the programs and the indirect costs allocated to each program to pay for the administrative offices. Accordingly, the costs for administrative offices are included both under the administrative offices and within the programs as indirect costs. In the table, we included performance metrics only if the State Bar established targets for them and addressed them in its most recent report on performance metrics. The State Bar tracks some performance metrics at monthly, quarterly, semiannual, or annual frequencies, while others are one-time in nature. We considered a performance metric met if it met its targets for the entire year as reported in its most recent performance metrics report.

Table A
State Bar Programs and Administrative Offices

PROGRAM/OFFICE	PERFORMANCE METRICS IN AREA *Text is green if a program/office successfully met a target for the entire year. Text is red if a program/office did not meet a target for the entire year.*	TOTAL 2022 BUDGET FOR PROGRAM	2022 BUDGET FROM MANDATORY FEES
PROGRAMS			
Office of the Chief Trial Counsel *Investigates complaints of attorney misconduct and takes disciplinary action as necessary.*	• Maintain an annual caseload clearance rate of at least 100%. • Maintain current level of Complaint Review Unit reopens for reasons other than new evidence. • Maintain current level of Walker Petition reopens. • Decrease the number of random audit reopens for substantive reasons.	$61,498,806	$61,438,806
Client Security Fund *Receives applications from individuals who suffer monetary losses because of dishonest conduct by attorneys. It authorizes and provides recovery to eligible applicants from funds the State Bar collects for this purpose.*	• Resolve at least 1,350 cases in 2021. • Decrease time to payout after final discipline by 5%.	9,898,771	8,020,090
State Bar Court *Adjudicates formal disciplinary matters resulting in the final imposition of discipline. In certain instances involving suspension or disbarments, it recommends discipline to the California Supreme Court.*	• Hearing Department: 90% of cases to be processed within case type timeline. • Hearing Department: 100% of cases to be processed within 150% of case type timeline. • Review Department: 90% of cases to be processed within case type timeline. • Review Department: 100% of cases to be processed within 150% of case type timeline. • Effectuations: 100% of cases to be processed within timeline.	14,267,214	14,263,214
Attorney Regulation and Consumer Resources* *Maintains the roll of attorneys the State Bar has admitted to practice law as well as the records of all State Bar licensees.*	• Less than 38% of Resource Center calls transferred out. • Less than 25% of calls abandoned. • Average call wait time of less than seven minutes. • Process 75% of MCLE applications within 30 days of receipt. • Continue implementation of LLP online renewal with a goal of 90% of LLPs completing online by the fourth quarter of 2021. • Fulfill 95% of requests for certificates of standing within five business days of receipt. • For the first and second quarters of 2021, send three email blasts and conduct eight MCLE provider trainings per quarter on the new MCLE provider management system.	6,780,633	5,945,133

	TOTAL EXPENDITURES FOR PROGRAM (2022 PROJECTIONS)	TOTAL EXPENDITURES FROM MANDATORY FEES (2022 PROJECTIONS)	BUDGETED STAFFING	ACTUAL STAFFING	VACANCY RATE	2020 EXPENDITURES OF MANDATORY FEES	2021 EXPENDITURES OF MANDATORY FEES	2022 EXPENDITURES OF MANDATORY FEES (PROJECTIONS)	CHANGE FROM 2020–2022
	$61,020,668	$60,928,463	289.00	269.00	7%	$61,004,577	$59,097,544	$60,928,463	Even
	4,737,559	4,642,811	8.54	6.54	23	13,764,724	6,382,095	4,642,811	Trending Down
	14,326,653	14,323,278	42.00	41.00	2	13,687,748	13,740,849	14,323,278	Trending Up
	7,970,449	7,083,775	33.00	29.00	12	4,119,883	5,078,555	7,083,775	Trending Up

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PROGRAM/OFFICE	PERFORMANCE METRICS IN AREA *Text is green if a program/office successfully met a target for the entire year. Text is red if a program/office did not meet a target for the entire year.*	TOTAL 2022 BUDGET FOR PROGRAM	2022 BUDGET FROM MANDATORY FEES
Professional Competence *Promulgates professional standards, assists licensees' compliance with standards, and develops programs to enhance competence.*	• 80% of callers report a high level of overall satisfaction with the Ethics Hotline experience. • Voluntary e-learning courses: 85% of participants report these courses met their expectations. • Mandatory e-learning courses: 70% of participants report these courses met their expectations. • 80% of all annual Lawyer Referral Service recertification applications processed within 60 days of receipt of a completed submission. • 90% of requests for arbitration of attorney-client fee disputes are served on the responding attorney within 10 business days of receipt of a completed submission.	$4,101,926	$4,041,726
Lawyer Assistance Program *Identifies and rehabilitates attorneys who are impaired because of mental illness or abuse of drugs or alcohol.*	• Increase intakes by 10%. • Respond to 100% of requests for presentations within two business days. • Complete 10 law school presentations and 20 bar association or law firm presentations in 2021. • 80% of survey participants report that the Lawyer Assistance Program addressed their goals. • 80% of survey participants report they are satisfied with their Lawyer Assistance Program experience.	2,601,650	2,095,180
Probation *Monitors disciplined attorneys who have been ordered to comply with probation.*	80% of courtesy reminder letters are provided to respondents within three weeks of case initiation.	1,870,712	1,870,712
Strategic Communications *Conveys information to the public and legal community about the State Bar's public protection role and methods of protecting the public from attorney misconduct.*	• 90% of stakeholders report a high level of overall satisfaction with quality of internal communications. • Expand communications engagement with Spanish-speaking audiences through a campaign involving paid social media placements and radio public service announcements.	1,438,899	1,363,899
Center on Access to Justice within the Office of Access and Inclusion *Develops policies and initiatives in collaboration with other institutions working to expand access to justice for low-income Californians.*	• Closely monitor Interest on Lawyer's Trust Accounts rates, including continued strategy around Leadership Bank Program, to stabilize funding. • Issue report on law school retention by the third quarter of 2021. • Provide commissioners with meeting materials five to seven days in advance at least 80% of the time. • Issue 80% of monitoring visit and fiscal visit findings within 60 days.	741,512	741,512
Judicial Evaluation *Evaluates all candidates under consideration for a judicial appointment to assist the Governor in the judicial selection process.*	100% of Judicial Nominees Evaluation candidates evaluated within 90 days.	775,667	775,667
Mandatory Fee Arbitration *Resolves fee disputes between attorneys and clients.*	Metrics for this area are listed above in the row for the Office of Professional Competence.	62,644	31,144
TOTALS		**$104,038,434**	**$100,587,083**

TOTAL EXPENDITURES FOR PROGRAM (2022 PROJECTIONS)	TOTAL EXPENDITURES FROM MANDATORY FEES (2022 PROJECTIONS)	BUDGETED STAFFING	ACTUAL STAFFING	VACANCY RATE	2020 EXPENDITURES OF MANDATORY FEES	2021 EXPENDITURES OF MANDATORY FEES	2022 EXPENDITURES OF MANDATORY FEES (PROJECTIONS)	CHANGE FROM 2020–2022
$3,633,132	$3,541,733	14.30	11.30	21%	$2,710,641	$3,218,176	$3,541,733	Trending Up
2,257,231	2,256,406	9.63	7.63	21	2,286,870	2,141,698	2,256,406	Even
1,800,330	1,800,330	8.53	7.53	12	1,969,446	1,763,644	1,800,330	Trending Down
1,539,202	1,489,823	6.00	5.00	17	890,645	900,226	1,489,823	Trending Up
614,527	614,527	2.00	1.40	30	762,498	1,021,744	614,527	Trending Down
842,249	842,249	3.10	3.10	0	394,356	250,305	842,249	Trending Up
161,933	43,928	–	–	–	(7,455)	(4,997)	43,928	Trending Up
$98,903,933	**$97,567,323**	**416**	**382**	**8%**	**$101,583,933**	**$93,589,839**	**$97,567,323**	**Trending Down**

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PROGRAM/OFFICE	PERFORMANCE METRICS IN AREA *Text is green if a program/office successfully met a target for the entire year.* *Text is red if a program/office did not meet a target for the entire year.*	TOTAL 2022 BUDGET FOR PROGRAM	2022 BUDGET FROM MANDATORY FEES
ADMINISTRATIVE OFFICES			
General Counsel *Provides legal advice and representation to the State Bar and the board.*	• Complete and resolve an average of 60 Complaint Review Unit cases per month. • 90% of clients report a high level of overall satisfaction with services provided by Office of General Counsel staff.	$4,864,838	$4,019,577
Finance *Manages the State Bar's financial reporting and budget development.*	• Provide fiscal year-to-date budget-actual analysis on a monthly basis to enable efficient financial management by client division or office and the executive director within 30 days of the end of the month. • Pay 90% of vendor invoices within 30 days of receipt. • Complete monthly adjusting journal entries and close the books timely and accurately within 20 business days of the end of the month. • 90% of internal clients report a high level of overall satisfaction with services provided by Finance staff.	2,421,813	1,738,750
Member Billing *Ensures that fee payments from licensees are properly processed.*	Metrics for this area are listed above in the row for Attorney Regulation and Consumer Resources.	799,800	722,700
Human Resources *Provides human resources services to the State Bar.*	• Conduct 80% of performance evaluations by anniversary date or, for executives, the due date. • 90% of internal customers report a high level of overall satisfaction with services provided by Human Resources staff.	1,882,800	1,555,665
General Services—Los Angeles *Manages the State Bar's office space in Los Angeles.*	• Process 90% of procurement requisitions with 100% accuracy within three days. • Process 85% of all facilities requests (not requiring parts or equipment ordering) within three or fewer business days. • 90% of internal customers report a high level of overall satisfaction with services provided by General Services staff.	4,201,450	3,557,716

General Services—San Francisco
Manages the State Bar's office space in San Francisco.
	• Advance capital improvement projects per capital improvement plan by the fourth quarter of 2021 including the following:
	  • Complete HVAC/chiller project.
	  • Execute contract for generator project and prepare site for 2022 installation.
	  • Execute contract for elevator modernization project for 2022–2024 phased upgrade.
		4,772,170	4,192,107

Information Technology *Provides software and hardware systems to support operations and programs.*	• 90% of stakeholders report a high level of overall satisfaction with new technology deployments. • Process 85% of all information technology service requests (not requiring parts or equipment ordering or software development) within five business days or less. • Complete 90% of planned major information technology projects on schedule and on budget. • 90% of internal customers report a high level of overall satisfaction with services provided by information technology staff.	12,933,058	10,685,951

	TOTAL EXPENDITURES FOR PROGRAM (2022 PROJECTIONS)	TOTAL EXPENDITURES FROM MANDATORY FEES (2022 PROJECTIONS)	BUDGETED STAFFING	ACTUAL STAFFING	VACANCY RATE	2020 EXPENDITURES OF MANDATORY FEES	2021 EXPENDITURES OF MANDATORY FEES	2022 EXPENDITURES OF MANDATORY FEES (PROJECTIONS)	CHANGE FROM 2020–2022
	$4,587,547	$4,019,577	24.00	15.00	38%	$4,079,046	$3,791,172	$4,019,577	Even
	2,490,744	1,738,750	14.00	12.00	14	2,131,844	2,037,905	1,738,750	Trending Down
	728,476	722,700	4.00	4.00	0	480,487	863,524	722,700	Trending Up
	2,005,844	1,555,665	10.66	9.66	9	2,006,699	1,431,268	1,555,665	Trending Down
	4,158,403	3,557,716	9.00	9.00	0	3,249,175	3,657,489	3,557,716	Trending Up
	4,408,945	4,192,107	10.68	9.68	9	4,274,694	4,403,555	4,192,107	Trending Down
	13,783,447	10,685,951	45.66	35.66	22	11,061,567	9,699,377	10,685,951	Trending Down

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PROGRAM/OFFICE	PERFORMANCE METRICS IN AREA *Text is green if a program/office successfully met a target for the entire year. Text is red if a program/office did not meet a target for the entire year.*	TOTAL 2022 BUDGET FOR PROGRAM	2022 BUDGET FROM MANDATORY FEES
Governance *Ensures that the State Bar achieves the goals and objectives outlined in the State Bar's Strategic Plan. The executive director establishes operating policies, and is responsible for the leadership and management of the State Bar according to the strategic direction set by the board.*	• 90% of Board of Trustees report a high level of overall satisfaction with quality of operational support provided. • Standardize public comment process (timelines, submission form and template, and style guides) by the fourth quarter of 2021. • 90% of all Office of Research and Institutional Accountability projects meet project milestones. • Publish second annual diversity report card in online interactive dashboard by the second quarter of 2021.	$3,912,710	$2,809,246
Recruitment and Retention *Recruits, hires, and onboards new State Bar staff.*	• Reduce average time to hire to 60 days or fewer. • Stay interviews are conducted for 100% of new hires within 90 days of hire. • 90% of participants report a high level of overall satisfaction with the Training and Development Program. • 90% of internal customers report a high level of overall satisfaction with services provided by Recruitment and Retention staff.	1,326,400	1,095,942
OPEB *OPEB is other post-employment benefits and provides post-retirement health care benefits for eligible State Bar employees.*	The State Bar has no metrics related to this area.	3,649,000	3,014,990
Building Improvement/ Property Related *Debt-related capital improvements on the State Bar's San Francisco building.*	Metrics for this area are listed above in the row for General Services.	1,736,600	1,179,489
TOTALS		**$42,500,639**	**$34,572,133**

Source: State Bar budgets, financial statements, and performance metrics report, and State Auditor analysis of State Bar accounting records, cost allocation plans, and personnel rosters.

Notes: We used the State Bar's projections of 2022 expenditures from its 2023 budget because the State Bar had not finalized its year-end accounting records through December 2022 or its 2022 financial audit during our audit period. These 2022 projections therefore do not reflect the State Bar's final 2022 expenditures. There were two other administrative areas, communications and nondepartmental, that the State Bar spent nearly $750,000 total on in 2020. However, it did not spend on these areas in 2021 or 2022; therefore, we did not include them in the table. The State Bar also did not spend on OPEB or Recruitment and Retention in 2020.

The totals for the programs include both the direct costs for operating the programs and the indirect costs allocated to each program to pay for the administrative offices. Accordingly, the costs for administrative offices are included both under the administrative offices and within the programs as indirect costs.

As we discuss in the report, the State Bar allocates its costs based on its annual budget. This means that the actual amounts its administrative offices receive in indirect cost allocation are the same as the amount budgeted for the programs. We calculated the budget and actual expenditures from mandatory fees for the administrative offices by totaling the amounts that each administrative office received in funding from mandatory fee-funded programs, excluding allocation from other programs not funded by mandatory fees.

* Although Member Billing is an administrative office, its metrics are tracked and reported by the Attorney Regulation and Consumer Resources program.

TOTAL EXPENDITURES FOR PROGRAM (2022 PROJECTIONS)	TOTAL EXPENDITURES FROM MANDATORY FEES (2022 PROJECTIONS)	BUDGETED STAFFING	ACTUAL STAFFING	VACANCY RATE	2020 EXPENDITURES OF MANDATORY FEES	2021 EXPENDITURES OF MANDATORY FEES	2022 EXPENDITURES OF MANDATORY FEES (PROJECTIONS)	CHANGE FROM 2020–2022
$3,613,109	$2,809,246	17.90	11.40	36%	$2,513,180	$2,046,220	$2,809,246	Trending Up
1,201,755	1,095,942	5.00	5.00	0	0	1,014,299	1,095,942	Trending Up
3,649,000	3,014,990	–	–	–	0	3,023,806	3,014,990	Even
1,736,600	1,179,489	–	–	–	426,640	0	1,179,489	Trending Up
$42,363,870	**$34,572,133**	**141**	**111**	**21%**	**$30,223,332**	**$31,968,615**	**$34,572,133**	**Trending Up**

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Appendix B

Scope and Methodology

We conducted this audit pursuant to the audit requirements contained in Business and Professions Code section 6145. Specifically, state law required our office to conduct a performance audit of the State Bar that included an evaluation of each of its programs or offices receiving support from mandatory licensing fees and, for each of those programs or offices, an assessment of the State Bar's fee revenue, staff, and resources currently budgeted and subsequently expended to perform its existing tasks and responsibilities. The audit was also required to include, among other things, an assessment of any real property sold by the State Bar and its performance metrics for each program or division receiving support from mandatory licensing fees. The audit was also required to include an evaluation of the efficacy, including the cost-effectiveness and timeliness, of its administration of discipline cases that require an external investigator. Table B lists the objectives required by statute and the methods we used to address them.

Table B
Audit Objectives and the Methods Used to Address Them

	AUDIT OBJECTIVE	METHOD
1	Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed the laws and regulations pertinent to audit objectives.
2	Evaluate each program or office of the State Bar receiving support from the annual State Bar licensing fees and other fees required of active and inactive licensees.	
	a. For each program or office, assess how much fee revenue, staff, and resources are currently budgeted and subsequently expended to perform existing tasks and responsibilities.	• Reviewed the State Bar's budgets for 2019 through 2023, its audited financial statements for 2019 through 2021, and its unaudited projections for 2022 to identify the projected and actual amounts of its expenditures. • Interviewed the State Bar's executive director and CFO for perspective on its reserve level.
	b. For each program or office, assess whether the State Bar has appropriate program performance metrics in place and how these metrics are used for budgeting purposes.	• Obtained and reviewed files relevant to the State Bar's performance metrics, including its annual performance metrics report, its five-year strategic plan, and guidance from the GFOA and the federal Office of Personnel Management. • Evaluated the State Bar's five-year strategic plan and performance metrics by comparing them to best practices and program purpose. We also determined whether the State Bar had met each metric. • Interviewed the executive director to determine how performance metrics have affected each program's budget.
	c. For each program or office, assess the usage of any real property sold by the State Bar.	• Reviewed the State Bar's financial statements and budgets to identify current and projected costs and revenue associated with its ownership of its San Francisco and Los Angeles buildings. The State Bar did not sell any real estate during our audit period. • Identified and documented the possible financial impacts of the State Bar's proposal to sell its San Francisco building and obtain new space.

continued on next page . . .

	AUDIT OBJECTIVE	METHOD
	d. For each program or office, review the State Bar's cost allocation plan used to allocate administrative costs.	• Reviewed the State Bar's cost allocation plan and other relevant documentation, including cost allocation worksheets from 2019 through 2022. We also assessed internal State Bar and consultant reviews of the cost allocation plan. • Interviewed State Bar officials to gain an understanding of the State Bar's development and review of its cost allocation plan. • Attempted to assess the reasonableness of the State Bar's administrative costs by reviewing its audited financial statements and budgets and comparing its administrative costs to the levels identified in best practices, but we were unable to find a comparable practice.
	e. For each program or office, review any proposals for additional funding or resources requested by the State Bar to determine whether these proposals are necessary to meet the State Bar's public protection function as well as the accuracy of identified associated funding needs, after reviewing how existing resources are used.	• Obtained the State Bar's 2022 and 2023 legislative priorities and reviewed them in light of the legal criteria for the State Bar's public protection mission. • Compared each of the State Bar's 2023 legislative priorities as of late February 2023 against the State Bar's public protection mission as defined in state law and analyzed whether they would affect the mandatory licensing fees. We found that the 2023 priorities did not contain sufficient detail to evaluate their potential costs or impact on the mandatory licensing fees. As a result, we did not assess the accuracy of the proposed funding needs. The State Bar intends to continue developing its 2023 legislative priorities in conversation with legislative staff. • Interviewed State Bar staff to gain perspective on the necessity of the funding needs in the 2022 and 2023 proposals.

	f. For each program or office, calculate how much fee revenue would be needed from each State Bar active and inactive licensee to fully offset State Bar costs to perform existing tasks and responsibilities and to support additional proposed expenditures determined to be necessary to meet the State Bar's public protection function. This calculation shall take into account any proposed business process reengineering, reallocations, or efficiencies identified by the California State Auditor.	• Through fieldwork conducted on Objectives 2a–2e and 3, identified areas for potential cost savings or additional revenue.
		• Using that information, calculated the additional licensing fee revenue necessary for the State Bar to meet its existing responsibilities. We performed this calculation at a global level for the general fund because the State Bar pays for most of its programs using its general fund and because the annual licensing fee goes to the general fund. We performed the calculation for 2024 as follows:
		  • Identified the total additional revenue needed for the State Bar's general fund.
		  • Identified the number of active and inactive licensees.
		  • Using the same ratio as currently in state law, calculated the amount of fee increase required for active and inactive licensees necessary to generate the additional revenue.
		• Obtained perspective from the State Bar's CFO, chief administrative officer, and executive director on these findings.

3	Evaluate how the State Bar administers discipline cases that require an outside investigator or prosecutor and how that process can be improved, including the cost-effectiveness and timeliness of such investigations and prosecutions.	• Reviewed documents relevant to the structural relationship between the State Bar and the administrator's office. • Reviewed the State Bar's decision to increase the external investigators' hourly rate and interviewed State Bar staff to identify its plans to measure the cost-effectiveness of the Rule 2201 program. • Reviewed case management records to document the number of annual Rule 2201 program cases and their current status. • Reviewed Odyssey data and a judgmental selection of 10 cases handled by external investigators to determine how long completing each stage of each case took.

	AUDIT OBJECTIVE	METHOD
4	Review and assess any other issues that are significant to the audit.	• Reviewed our office's three most recent audits to identify the recommendations we made to the State Bar and the Legislature, including those our office assessed as fully implemented, and we determined which recommendations were related to the scope of this audit. • Reviewed the State Bar's responses to our office's recommendations and the supporting documentation it provided to determine whether it should take any additional action in those areas. We did not identify any recommendations to the State Bar relevant to our scope that required repeating, except for the recommendation that the State Bar reinstitute long-term financial forecasting for its general fund. • Reviewed our past recommendations to the Legislature where it did not take action to determine if those recommendations should be redirected to the State Bar. We did not identify any recommendations to the Legislature relevant to our scope that should be redirected to the State Bar. • Interviewed State Bar staff to confirm implementation status of prior recommendations. We found that the State Bar no longer prepared the long-term financial forecasts we recommended it perform in audit 2018-030. We describe this concern in the report.

Source: Audit workpapers.

Assessment of Data Reliability

The U.S. Government Accountability Office, whose standards we are statutorily obligated to follow, requires us to assess the sufficiency and appropriateness of computer-processed information we use to support our findings, conclusions, or recommendations. In performing this audit, we relied on electronic data from the State Bar's Odyssey system. We performed dataset verification procedures and electronic testing of key data elements and identified various problems with the dataset verification. Therefore, to determine the timeliness of external investigations, we relied on a selection of 10 case files. We performed accuracy testing of the 10 case files selected for review by tracing key data elements to supporting documentation. We were unable to complete accuracy testing for three of the 10 case files because the State Bar was unable to provide us with complete files. We encountered various problems in our accuracy testing of the remaining seven files. We describe in the report the problems we identified, beginning on page 24. We did not perform completeness testing of these data because the source documents required for this testing are stored in multiple locations throughout the State, making such testing cost-prohibitive. Consequently, we found that the Odyssey system data were not sufficiently reliable for the purposes of determining the number of annual external disciplinary cases, the status of completion for each case, and the time frame to close each case. Nonetheless, we present numbers from Odyssey in the report because it is the only source of global case-processing data. Although we recognize that the data limitations we describe in this report may affect the precision of the numbers we present, there is sufficient evidence in total to support our audit findings, conclusions, and recommendations.

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The State Bar of California

BOARD OF TRUSTEES

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March 27, 2023

Grant Parks, California State Auditor*
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

RE: State Bar of California Response to Audit Report No. 2022-031

Dear Mr. Parks:

We appreciate the State Auditor's careful review of the State Bar's financial position and 2201 (conflicts) Program and are pleased to agree with each of the recommendations outlined in the report. The recognition of the need for a licensing fee increase to sustain State Bar operations reinforces a message that the Board of Trustees and State Bar leadership have relayed in recent months. As reflected in the audit report, the pending sale of the State Bar's headquarters at 180 Howard Street injects an element of uncertainty in the fee assessment analysis; the recommendation that the State Bar provide updated data to the Legislature later this year, when the question of the building sale has been resolved, is sensible and appreciated.

Formal responses to each recommendation follow. Where relevant, contextual information is added to the "support" position associated with each recommendation below. We look forward to working with the Legislature to implement all of the recommendations outlined in this audit report.

State Bar Responses to Audit Recommendations

1. *Recommendation*: The Legislature should set the maximum annual mandatory licensing fee that the State Bar may charge for 2024 to $414 for actively licensed attorneys and $103.40 for inactive licensees. However, before the Legislature finalizes the maximum annual licensing fee amounts for 2024, it should request the State Bar to provide it with the following information:

    4a. An itemized listing of the mandatory licensing fee revenue that the State Bar will need to fund its operations in 2024 program-by-program. This breakdown should identify any

* California State Auditor's comments begin on page 57.

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changes in the State Bar's financial situation following the release of this audit, such as the sale of its San Francisco building or the State Bar choosing not to increase some of its service fees to fully recoup its costs as we recommend below. The State Bar will need to identify the affect that any changes to its financial situation will have on the mandatory licensing fee amounts we have identified as necessary.

4b. A list of any programs funded by mandatory licensing fees that need additional funding beyond the program-by-program breakdown to operate effectively and to meet related performance metrics. The list should specify the State Bar's understanding of the amount of funding needed per program.

4c. The Legislature should require the State Bar to provide the above information each year when submitting its annual budget for legislative review and approval or should otherwise specify the format and level of detail needed through statutory change.

4d. For 2024 the Legislature should maintain the Lawyer Assistance fee at $10 for active licensees and $5 for inactive licensees; the Client Security Fund fee at $40 for active licensees and $10 for inactive licensees; and the discipline fee at $25 for all licensees.

Response: The State Bar agrees with the recommendation, including the recommendations outlining information the State Bar should provide to the Legislature to support finalization of the 2024 licensing fee.

The State Bar does wish to clarify that the recommended increases of $24 (active) and $6 (inactive) assume a continuation of the 15 percent personnel vacancy rate currently reflected in the organization's 2023 and projected 2024 budgets as austerity measures.
1 Given the report's observations about the relationship between staffing levels and the ability to meet performance metrics, this may be unwise. A more modest vacancy rate of 5 percent, aligned with that assumed by many government agencies, might be a more appropriate target. The additional amount needed to achieve this staffing level totals $35 (active) and $9 (inactive).

2 We must also point out that the recommended increases will not fully fund the State Bar
3 reserve in a single year, nor do they account for the possibility that the State Bar is unable to both sell 180 Howard Street and use loan proceeds to address future lease costs.

Additional clarification is also needed on the revenue side of the equation. The Auditor assumes that the State Bar will increase all discretionary General Fund fees to the extent
4 required to achieve full cost recovery. While this recommendation is sensible, the State Bar is unlikely to increase Lawyer Referral Service and Mandatory Fee Arbitration fees to the extent contemplated by the report, in the near term. In addition to the reasons for not doing

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so outlined in the report, both programs are undergoing much needed operational review and improvement; significant fee increases would be premature at this time.

Lastly, and also related to revenue, the report highlights the State Bar's voluntary decision to charge an inactive fee $5 less than that technically authorized by statute and assumes a reversal of this decision effective 2024. As outlined in the report, we believe that the Legislature intended to effectuate that $5 reduction; we hope to confirm this assumption with the Legislature prior to the State Bar's implementation of this particular report assumption.

The State Bar looks forward to revisiting these issues as part of the recommended legislative update to occur in the fall.

2. *Recommendation*: To ensure that it appropriately plans for its upcoming funding needs and takes all steps possible to maintain an adequate reserve level, the State Bar should reinstitute its practice of producing and posting on its public website forecasts for its general fund starting with its 2024 budget. These forecasts should encompass at least the following three years.

   Response: The State Bar agrees with the recommendation.

3. *Recommendation*: By October 2023, the State Bar should identify any service fees that do not fully cover the costs of providing the services. The State Bar should increase the fees it has identified to the level necessary to recoup its costs unless it determines doing so would limit the public's access to services or the Supreme Court does not provide any required approval for the increase. It should also identify any service fees that have not been updated in five years or more and assess whether they should be updated. The State Bar should then determine the effect that the increased service fees will have on the amount of mandatory licensing fee revenue that it needs. 5

   Response: *The State Bar agrees with the recommendation.*

4. *Recommendation*: To ensure that it can correctly calculate the timeliness of its administration of external disciplinary cases, the State Bar should immediately review the accuracy of the data in its case management system for these cases and should correct any errors. Unless required, it should not report data from the system to the public and the Legislature until it verifies the data's accuracy.

   Response: *The State Bar agrees with the recommendation.*

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There is no dispute as to the need for accurate data. What is unclear however, is the magnitude of the effort to review the accuracy of all data in the case management system related to conflicts matters. The State Bar will determine the scope prior to the conclusion of the second quarter of 2023; depending on the results, a phased approach to data review may be initiated. At a minimum, all publicly reported data, including that reflected in the newly developed 2201 program quarterly dashboards, will be reviewed for accuracy prior to publication.

5. *Recommendation*: To ensure the impartiality of the processing of external disciplinary cases, the State Bar should, by October 2023, formalize the administrator's process for identifying her own and any external investigators' conflicts of interest related to these cases.

Response: *The State Bar agrees with the recommendation.*

6 As the audit report acknowledges, conflicts checks do routinely occur in the 2201 program pursuant to a process that has recently been codified as a policy directive authored by the program administrator and disseminated to all 2201 counsel. The documentation of this historical practice is just one indication of the significant progress that has been made in the administration of the State Bar's conflicts program since 2016, when it transitioned from being volunteer- to compensation-based; however, more remains to be done. In hiring the first full-time conflicts administrator last year, the State Bar took an important step in accelerating improved functioning of the 2201 program. The administrator has been engaged in a careful review of the Office of Chief Trial Counsel's new and expanded conflicts policies and procedures to determine how best to modify and apply to the 2201 setting. That process will be completed within the second quarter of 2023. Pursuant to the auditor's recommendations, the final set of policies/procedures, which will stipulate that conflicts checks must occur at time of case assignment, before the filing of charges, and/or before case closure, will be formally issued by the State Bar.

Additionally, the State Bar has revised various conflict of interest provisions in 2201 counsel contracts; new contracts were sent to counsel on March 8, 2023. The revisions include modifications to the Conflict of Interest (COI) disclosure questionnaire that heighten disclosure requirements, new provisions making 2201 counsel subject to the State Bar's Incompatible Activities Policy, and new provisions adding requirements that counsel comply with all applicable federal, state, and local laws and regulations pertaining to conflicts of interest. Specifically, the COI disclosure questionnaire now requires 2201 counsel to identify any California attorney with whom they have, or recently had, a relationship involving

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financial transactions of $500 or more, investments of $2,000 or more, gifts totaling $50 or more, loans totaling $500 or more, and the provision of legal services or other representation. The State Bar continues to evaluate these disclosure requirements. Additional updates are anticipated in the near term.

6. *Recommendation*: To ensure the cost-effectiveness of its external investigation process, the State Bar should, by October 2023, conduct in-depth audits for a selection of the external investigators' billing statements to ensure their billed amounts are reasonable. In addition, by September 2023, it should complete its fiscal analysis to determine how much money and time is spent on external disciplinary cases from the time cases first open to when they close.

   *Response: The State Bar agrees with the reco*mmendation.

In closing, we would like to thank the audit team that conducted the review. We appreciate the thoughtful analysis and conclusions drawn and look forward to advancing all of the report's recommendations in the coming months to further advance the State Bar's primary mission of public protection.

Sincerely,

Ruben Duran
Chair, Board of Trustees

Leah T. Wilson
Executive Director, The State Bar of California

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE STATE BAR OF CALIFORNIA

To provide clarity and perspective, we are commenting on the response to our audit from the State Bar. The numbers below correspond to the numbers we have placed in the margin of its response.

As we describe on page 13, the State Bar's 2023 budget projections assume a 15 percent vacancy rate across the organization. Before submitting its response letter, the State Bar had not shared its belief that a 5 percent vacancy rate may be a more appropriate target around which to plan its mandatory licensing fees than the 15 percent it assumes in its budget. As a result, our report does not discuss the reasonableness of a 15 percent assumed vacancy rate. Nonetheless, during our review we compared the 15 percent assumed vacancy rate to the state government's vacancy rate overall, and to a selection of other state agencies, and found that the vacancy rate was generally comparable. Further, rather than continuing to assume a standard vacancy rate across the organization, we recommend on page 21 that the State Bar identify, by program, the additional funding each program needs to operate effectively and to meet its performance metrics. Thus, we stand by our recommendation. 1

As we note in Figure 4 on page 15, we estimated that the State Bar needs to increase its general fund reserve by $1.6 million annually over a five-year period to achieve its minimum reserve level of 17 percent. The pace at which we projected the State Bar to rebuild its reserve aligns with the State Bar's own reserve policy, which states that it should strive to restore reserves to the minimum level within five years. For clarity, we added language to Figure 4 to indicate our analysis was based on the State Bar's own reserve policy. 2

We acknowledge the uncertainty around the State Bar's sale of its San Francisco building on pages 18 and 19. We used the State Bar's most recent financial information from its 2023 budget as the basis of our projections. As we describe on page 18, the State Bar's 2023 budget assumes that it will sell the building in the first half of 2023, and therefore does not budget for any building-related expenses or lease revenue after the first half of 2023. Accordingly, our projections in Figure 4 do not include those expenses or revenue for 2024. Our recommendation on page 20 that the State Bar update the Legislature on any changes to its financial situation takes this uncertainty into consideration. 3

We acknowledge on page 17 that the State Bar may decide not to raise fees for these programs if it determines that increases would reduce public participation. Our recommendation on page 21 that the State Bar identify and increase service fees incorporates the possibility that the State Bar may decide not to raise certain fees. We look forward to reviewing the State Bar's decisions regarding its service fees as part of our regular audit follow-up process. 4

5 As is our standard practice, we communicated with the State Bar while it was reviewing the draft report to discuss any concerns it may have. During these conversations, we informed the State Bar that we would make minor edits to this recommendation that are not reflected in the State Bar's response letter. Please refer to page 21 for the text of our recommendation.

6 As we describe on page 29 of the report, in response to our concern, the administrator developed her own policy directive and distributed it to the external investigators in March 2023. However, as we further explain on page 29, the State Bar has not established a formal process for ensuring the Rule 2201 program's current and future administrators will consistently ensure that they do not assign external investigators to cases in which conflicts of interest may exist. Therefore, we stand by our recommendation on page 31 that the State Bar should formalize the administrator's process.