



The State Bar of California

OPEN SESSION AGENDA ITEM 4.5 FEBRUARY 2025 BOARD OF TRUSTEES

DATE: February 21, 2025

TO: Members, Board of Trustees
Sitting as the Regulation and Discipline Committee

FROM: Stacia Laguna, Special Deputy Trial Counsel Administrator

SUBJECT: Report on Random Audit of the Special Deputy Trial Counsel Files Closed Between May 1, 2023, and April 30, 2024, and Special Deputy Trial Counsel Administrator Response

EXECUTIVE SUMMARY

This informational item relates to the random audit of cases closed by Special Deputy Trial Counsel (SDTC) during the period May 1, 2023, through April 30, 2024, and the SDTC Administrator's response to the results of the random audit.

SDTC Policy Directive 2023-01 requires an annual audit of at least 30 randomly selected closed files handled by SDTCs. This policy directive requires a response by the SDTC Administrator.

RECOMMENDED ACTION

Informational it only.

DISCUSSION

Pursuant to the Policy Directive, the SDTC Administrator must prepare a written response to the audit in which the Administrator: (1) indicates agreement or disagreement, in whole or in part, with any recommendations regarding particular cases, including recommendations to reopen particular cases, and provides plans for implementing any agreed upon recommendations; (2) indicates agreement or disagreement, in whole or in part, with any proposed changes to Rule 2201 Program practices or policies and provides plans for implementing any agreed upon changes; and (3) indicates agreement or disagreement, in whole or in part, with any recommendations regarding training and provides plans for implementing any agreed upon training recommendations.

The auditors' primary recommendations from the audit of these 30 files, and the SDTC Administrator's responses, are as follows.

ALL CLOSING DISPOSITIONS DEEMED APPROPRIATE

The auditors found the closing dispositions to be appropriate in all 30 files reviewed. According to the auditors, the fact that no files require reopening "reflects positively on the continued professionalism and quality of work performed by the SDTCs." (Executive Summary, p. 2.) Accordingly, the auditors did not recommend reopening any files.

RECOMMENDATION REGARDING CONSIDERATION OF COMPLAINT HISTORY

The auditors recommend that a prompt be added to Odyssey where an SDTC can confirm they reviewed a respondent's complaint history before the matter can be closed. The auditors also recommended training on appropriate consideration of complaint history.

***Response and report on implementation:** This recommendation is partially implemented. In June 2024, after the close of the audit period, SDTCs received training via Zoom on consideration of complaint history. In addition, consistent with OCTC practice, SDTCs performing the Intake function have now begun using the "Complaint History" event in Odyssey to document their consideration of an attorney's complaint history. In addition, in February 2024, SDTCs were introduced to MAAD's Complaint History Tool that is also used in OCTC. To fully implement this recommendation, the Administrator plans to issue a policy directive formalizing the appropriate steps for considering complaint history and documenting those efforts in the file.*

RECOMMENDATION REGARDING USE OF SPECIFIC LANGUAGE IN CLOSING LETTERS

The auditors recommended against using the following language in closing letters: "Under the laws of California, the facts as you alleged them would not be grounds for disciplinary action." The auditors noted that the use of this language can be misleading when it is more accurate to say there is a lack of facts and/or evidence to establish a violation.

***Response and report on implementation:** The Administrator agrees, in part, and disagrees, in part, with this recommendation. The Administrator agrees that it is important to clearly communicate the basis for a closing decision. The language quoted above originates from Rules of Procedure of the State Bar, rule 2201, subdivision (c)(5), which provides that the Administrator or delegee shall close a matter if it is determined that "**factual** allegations of the inquiry or complaint do not articulate a violation, or that the **factual** allegations contained therein, if proven, would not result in discipline of the attorney [emphasis added]." Accordingly, the quoted language is used in closing letters where a complainant has made conclusory allegations unsupported by facts. Nevertheless, consistent with the auditors' recommendation, SDTCs will endeavor to refine this language to more closely track the language set forth in rule 2201, subdivision (c)(5).*

RECOMMENDATION REGARDING USE OF EMAIL AS PRIMARY METHOD OF COMMUNICATION

The auditors recommended that SDTCs use email for communications by default, as opposed to U.S. mail, for consistency and efficiency.

Response and report on implementation: The Administrator agrees, in part, with this recommendation. While email is the most efficient means of communication, there are certain circumstances in which email communication may invite serial exchanges with members of the public which can cause a strain on program resources. Accordingly, the Administrator plans to issue a policy directive directing SDTCs to use email as the default method of communication unless the SDTC determines, in the exercise of their discretion, that communication via U.S. mail would likely preserve program resources. As a practical matter, this recommendation has been implemented. Following receipt of the audit report, the SDTC Administrator advised SDTCs that email should be used as a primary means of communication unless there is an overriding consideration for program resources, and SDTCs have adjusted their practices accordingly.

RECOMMENDATION REGARDING CASE MANAGEMENT

The auditors suggested that the SDTC Administrator be provided with a monthly report showing the most recent activity on all assigned files to assure files are timely processed.

Response and report on implementation: The SDTC Administrator agrees that timely case processing is important. In practice, SDTCs regularly conference with the Administrator regarding case status. The Administrator also performs a weekly inventory review and requests status updates on specific cases from individual SDTCs as needed. The auditors' recommendation to require monthly case status reports may be implemented in the Administrator's discretion on a case-by-case basis.

TRAINING RECOMMENDATION: TRAINING REGARDING APPROPRIATE CONSIDERATION OF COMPLAINT HISTORY PRIOR TO DISPOSITION

The auditors recommended that SDTCs receive training regarding appropriate consideration of complaint history and providing guidance to SDTCs on documenting that information in the file.

Response and report on implementation: This recommendation has been implemented. As noted above, SDTCs received training via Zoom on consideration of complaint history in June 2024. In addition, as discussed above, the Administrator plans to implement a policy directive outlining procedures for appropriate consideration of complaint history and documenting those efforts in the case file.

CONCLUSION

The Administrator acknowledges the areas for program improvement identified by the auditors and is working to implement their recommendations.

PREVIOUS ACTION

None

FISCAL/PERSONNEL IMPACT

None

AMENDMENTS TO RULES

None

AMENDMENTS TO BOARD OF TRUSTEES POLICY MANUAL

None

ATTACHMENT LIST

- A. Executive Summary of the Random Case Audit Report