

## Everything You Need to Know About the State Bar Court and Then Some

### Forum Column

By Barbara W. Ravitz

When the California Supreme Court first appointed me to its Applicant Evaluation and Nomination Committee, which solicits and evaluates all applications for judicial appointment to the State Bar Court of California, I was honored, intrigued and – frankly – clueless about the workings of the court. My knowledge of the disciplinary system was pretty much limited to perusing the published lists of attorneys who had been disciplined that month. Now that I've served on the committee for more than five years, I know much more about the court but am frequently struck by how little most lawyers know about it. I've come to care a lot about the State Bar Court. You should too. Here are a few reasons why:

(1) The State Bar Court is unique.

California is the only state in the nation with a separate, independent and professional court system dedicated to hearing and deciding attorney discipline cases. The State Bar Court, established in 1989, operates as an administrative arm of the California Supreme Court, which retains its inherent power to discipline attorneys. The State Bar Court also handles regulatory matters such as reinstatement petitions and moral character appeals. What follows is a short overview of how the court works in the disciplinary area.

The court has eight judges – five in its trial-level Hearing Department, and three (including the presiding judge) in its appellate-level Review Department. The judges are based in Los Angeles or San Francisco. The court is aided by a staff of 36 employees, some of whom are attorneys.

Most complaints of attorney misconduct never reach the court. They are settled or otherwise resolved after inquiry or investigation by the State Bar. But if its prosecution arm – the Office of Chief Trial Counsel – determines the case should proceed, it files charges against the attorney in the State Bar Court.

After the pleadings are filed and discovery is completed, a formal trial is held before a State Bar Court hearing judge, who renders a written decision detailing all material findings of fact and conclusions law and, if culpability is found, imposing or recommending the appropriate level of discipline. Either the respondent or the bar can appeal the judge's decision to the court's Review Department, which independently reviews the record. About 10 percent of contested cases are appealed. The Review Department currently designates about half of its opinions for publication, and only published opinions are binding on the Hearing Department and are citable as precedent in the State Bar Court.

The State Bar Court has the final say on imposing lower levels of discipline such as admonitions and reprovings. For more serious types of discipline (probation, suspension and disbarment), the court recommends a disposition to the California Supreme Court. Either party may file a petition for review of the State Bar Court's decision in the Supreme Court. That court may deny review if, after independently examining the case, it agrees with the State Bar Court's decision and recommended level of discipline, as it does in the vast majority of cases. Because full Supreme Court review is discretionary, the court has issued very few opinions in this area in recent years.

(2) The court addresses substance abuse and mental health issues.

The State Bar Court also plays an important role in another unique institution – the Alternative Discipline Program. The ADP, established in 2002, is the first comprehensive program in the United States to address the substance abuse and mental health problems of attorneys facing discipline. It is a voluntary program, aiming both to protect the public and to rehabilitate the attorney. The ADP closely coordinates with the bar's Lawyer Assistance Program (LAP), which provides counseling and other support, on a confidential basis, to lawyers with such problems.

At any time in a State Bar Court proceeding, at the request of the respondent or the Office of Chief Trial Counsel, or on the court's own motion, a respondent may be referred to a State Bar Court judge acting as an ADP judge to determine the respondent's eligibility for participation in the program. During the evaluation stage of the program, the judge will determine whether there is a connection between the respondent's misconduct and his or her substance abuse or mental health problem.

If the respondent accepts all the conditions of participation imposed by LAP, the respondent and the bar enter into a stipulation of the facts and legal conclusions. The parties then brief the levels of discipline, after which the judge prepares a decision setting forth two levels of discipline. A respondent who successfully completes the ADP receives the lower level of discipline; one who does not finish the program receives the higher level. Early experience is demonstrating the ADP's success.

(3) You're paying for the disciplinary system.

About 80 percent of your State Bar dues is spent on the disciplinary system. In 2005, that amounted to \$42,480,000, with 74 percent (\$31,372,000) going to the Office of Chief Trial Counsel and 18 percent (\$7,713,000) going to the State Bar Court.

(4) You may have judicial ambitions.

So you want to be a judge? Consider the State Bar Court. Responsibility for making judicial appointments to the court is divided among the California Supreme Court, the governor, the speaker of the Assembly and the Senate Rules Committee. Whatever the appointing authority, the application is the same for all positions. It is similar to that used to evaluate applicants for Superior Court judicial appointments, requiring an extensive personal and professional history, references, and a writing sample. Hearing Department judges currently earn \$137,619 per year, set by statute at about 90 percent of the salary of a Superior Court judge.

Applications are welcome from lawyers with all types of practice experience. But if you lack the relevant background (e.g., in the disciplinary system, legal ethics, or professional negligence), be sure to educate yourself. It's amazing how many applicants don't have a clear notion of what a State Bar Court judge does. One candidate even asked where the court was located. Resources are plentiful: Start with the State Bar Court's informative Web site, [www.statebarcourt.ca.gov](http://www.statebarcourt.ca.gov), and familiarize yourself with the governing statutes, rules and case reports. You might also attend a trial in the Hearing Department. Most are open to the public.

(5) It could be you.

The State Bar Court disposed of almost 1,400 matters last year, many dealing with common disciplinary problems, such as failures to communicate with clients, trust account violations, and business transactions with clients and other conflicts of interest. Although most of California's 150,000-plus attorneys will never appear before the State Bar Court or represent a client there, the possibility always exists that one's contact with the court will be more than theoretical.

**Barbara W. Ravitz** is a partner with the civil appellate firm of Greines, Martin, Stein & Richland.

\*\*\*\*\*