



ADAMS, DUERK & KAMENSTEIN

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MEMORANDUM

TO: The State Bar of California Board of Trustees

FROM: Adams, Duerk & Kamenstein LLP

SUBJECT: Investigation Report re Former State Bar Deputy Executive Director Robert Hawley's Practices with the Rule 2201 Program from 2010 to 2015

DATE: March 15, 2024

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Executive Summary

Rule 2201 of the State Bar of California (the “State Bar”) Rules of Procedure sets forth the grounds for recusal when California attorney discipline cases pose potential conflicts of interest, and it establishes the procedure through which the State Bar can properly address such conflict cases. Complaints that pose conflicts are referred to outside conflicts counsel—known as Outside Examiners (“OEX”) or Special Deputy Trial Counsels (“SDTC”)¹—through the Rule 2201 program. Over the past 30 years, Rule 2201 has undergone several major revisions, and the current operations of the Rule 2201 program differ significantly from those before 2016.

The iteration of Rule 2201 that was in effect from 2010 to 2015 had two main subsections: Rule 2201(a) and Rule 2201(i).² Rule 2201(a) addressed the majority of conflict cases, in which complaints were made against a State Bar employee, a member of the State Bar’s Board, or anyone with a personal, financial, or professional relationship with the State Bar. For these complaints, the Office of Chief Trial Counsel (“OCTC”) would conduct a preliminary review, and the Chief Trial Counsel (“CTC”) had the option of appointing an SDTC to conduct an investigation in order to avoid an actual conflict or the appearance of impropriety. In contrast, Rule 2201(i) applied only to the subset of complaints made directly against the CTC and the complaints that could generate reasonable doubt about the CTC’s impartiality. Once such a conflict was identified, the proper procedure was for the complaint to be routed out of OCTC and to the Regulation and Discipline (“RAD”) Committee.³ Under Rule 2201, the RAD Committee was obligated to appoint an SDTC to conduct a preliminary review and, if necessary and appropriate, an investigation.

In his capacity as the then-Deputy Executive Director of the State Bar, Robert (“Bob”) Hawley played a role in administering Rule 2201(i) cases for several years before retiring from the State Bar in 2015.

On February 4, 2023, Halpern May Ybarra Gelberg LLP produced a report for the State Bar from their investigation into whether the State Bar’s handling of past disciplinary complaints against Thomas Girardi was affected by Girardi’s connections to or influence at the State Bar (the “Halpern May report”). The Halpern May report also noted other related concerns, including those about the extent of Hawley’s involvement in the Rule 2201 cases he administered.

¹ For the purposes of this report, OEX and SDTC are synonymous and will be used interchangeably.

² This version of Rule 2201 is attached as **Attachment A**.

³ The RAD Committee has also been previously named the Regulation, Admissions, and Discipline Oversight Committee. It is composed of members of the State Bar’s Board.

Specifically, the Halpern May report explained that Hawley “ghostwrote a memorandum for [an] SDTC. . . which the SDTC presented as [their] own.”⁴ For consistency, Hawley’s authoring of Rule 2201 reports on behalf of SDTCs will also be referred to as “ghostwriting” in this report.

The Halpern May report further explained that Hawley provided “confusing and inconsistent information” in his interview after he had been presented with documents reflecting that he drafted a Rule 2201 report.⁵ In this interview,

Hawley admitted to writing the materials, and said he wrote reports for *all* SDTC cases he was involved with, not just the Girardi case. When asked whether he told anyone about his ghostwriting of SDTC memoranda, Hawley said that the Board knew about it, but we have not found any evidence to support that. Because our investigation was focused on Girardi-related cases, we did not vet Hawley’s statement that he routinely wrote SDTC reports in all cases.⁶

(Emphasis in original.)

The Board of Trustees of the State Bar (the “Board”) directed the State Bar’s General Counsel to retain an external investigator to conduct an investigation into Hawley’s practices with the Rule 2201 program. In May 2023, Adams, Duerk & Kamenstein LLP (“ADK”) was selected and retained to conduct the investigation. Thereafter, ADK was provided with the full scope of the investigation, which is as follows:

Bob Hawley’s authoring [of] 2201 reports during the 2010 to 2015 time period, including any knowledge by State Bar leadership and the appropriate review of the alleged conversation at a National Conference of Bar Examiners event in which the topic of Hawley’s ghostwriting may have been raised[.]

Accordingly, ADK investigators reviewed the evidence Halpern May had gathered regarding Hawley’s ghostwriting and searched for evidence of possible ghostwriting among all Rule 2201 reports authored from 2010 to 2015 (the “relevant period”).

In the course of this investigation, ADK interviewed nineteen witnesses—including eleven SDTCs from the relevant period—and exchanged written communications with four

⁴ Halpern May Ybarra Gelberg LLP, *Report of Investigation* (Feb. 4, 2023), pg. 73.

⁵ *Id.*, pg. 76.

⁶ *Id.*, pg. 77.

additional witnesses, including Hawley. Investigators also reviewed approximately 4,000 emails and documents pulled from Hawley's email archives and over seventy Rule 2201 case files from the relevant period. This review allowed investigators to isolate eleven Rule 2201 reports from cases Hawley administered in the relevant period.

Of these eleven Rule 2201 reports, investigators find that seven were, more likely than not, ghostwritten by Hawley. Of the remaining four reports, Hawley appeared to have no involvement in three and limited involvement in editing the fourth. Investigators note that no evidence of ghostwriting was found in the Rule 2201(a) cases administered by OCTC attorneys, which constituted the majority of cases handled through the Rule 2201 program.

Throughout this investigation, concerns about the operations and limitations of the Rule 2201 program as it existed before 2016 were raised on numerous occasions in both documentary evidence and witness interviews. The most frequently communicated concerns related to the fact that nearly all SDTCs in the relevant period worked on Rule 2201 cases pro bono. This factor influenced Hawley's decision to ghostwrite Rule 2201 reports, which Hawley himself confirmed. In examining the Hawley-administered cases from the relevant period, the Rule 2201 reports without ghostwriting were the exceptions to the rule—either the SDTC's firm was being compensated, or the SDTC was uniquely qualified and willing to devote significant time to their work for the State Bar without pay.

Moreover, in his written response to ADK investigators' questions, Hawley noted the difficulty in recruiting SDTCs for pro bono work, and he repeatedly added the following,

I recall that as Rule 2201 administrator, I believed it was appropriate for me to write a preliminary draft of a Rule 2201 investigation report for the SDTC's review, edits, and finalization. This was for the realistic purposes . . . of timeliness, accuracy, and clarity. . . . I recall that when I served as Rule 2201 administrator, I believed "the level and kind of involvement" appropriate for the Rule 2201 administrator to be based upon the realistic situation of each SDTC in relation to each investigation.

(Emphasis in original.)

Hawley also repeated that the "ultimate decision of an SDTC's investigation was made by that SDTC."

Investigators interviewed several State Bar employees and members of the RAD Committee's leadership from the relevant period to examine who in the State Bar's leadership had knowledge of Hawley's ghostwriting. Investigators find that there is insufficient evidence to substantiate a finding that anyone in the State Bar's leadership knew of Hawley's ghostwriting before the Halpern May investigation began in 2021, apart from former General Counsel Vanessa Holton, who reported learning the information from an SDTC at a National Conference of Bar Examiners event in 2016, shortly after Hawley's retirement from the State Bar.

As to whether Hawley violated the letter of the iteration of Rule 2201 that existed in the relevant period, investigators note that Rule 2201(f) allowed a "CTC or designee" to provide investigative and/or legal assistance to an SDTC upon request. Rule 2201(f) also did not explicitly define or specify the limits of the investigative and/or legal assistance that was allowed to be provided. (Investigators note that the language of Rule 2201(f) was removed through the revisions Rule 2201 underwent in 2016.) Nonetheless, even when assuming that assistance under Rule 2201(f) could reasonably have been provided by a current State Bar employee such as Hawley, it remains clear that the degree to which Hawley "assisted" SDTCs on certain Rule 2201 cases undercut the independence that appointing an SDTC, a non-State Bar employee, was intended to create. Accordingly, investigators find that Hawley's authoring of Rule 2201 reports, if it did not violate the letter of Rule 2201, violated its spirit and undermined its purpose.

Finally, investigators note the fundamental changes that were made to Rule 2201 in the months following Hawley's retirement from the State Bar. These changes—which included compensating SDTCs for their work and creating a distinct SDTC Administrator position—significantly decreased the likelihood that the conduct described in this report would occur today, or that anyone would perceive the necessity for it, as Hawley ostensibly did.

I. Background

Rule 2201 of the State Bar of California (the “State Bar”) Rules of Procedure sets forth the grounds for recusal when California attorney discipline cases pose potential conflicts of interest, and it establishes the procedure through which the State Bar can properly address such conflict cases. Complaints that pose conflicts are referred to outside conflicts counsel—known as Outside Examiners (“OEX”) or Special Deputy Trial Counsels (“SDTC”)⁷—through the Rule 2201 program. Over the past 30 years, Rule 2201 has undergone several major revisions, and the current operations of the Rule 2201 program differ significantly from those before 2016.

In his capacity as the then-Deputy Executive Director of the State Bar, Robert (“Bob”) Hawley played a role in administering part of the Rule 2201 program for several years before retiring from the State Bar in 2015.

On February 4, 2023, Halpern May Ybarra Gelberg LLP produced a report for the State Bar from their investigation into whether the State Bar’s handling of past disciplinary complaints against Thomas Girardi was affected by Girardi’s connections to or influence at the State Bar (the “Halpern May report”). The Halpern May report also noted other related concerns, including those about the extent of Hawley’s involvement in the Rule 2201 cases he administered.

Specifically, the Halpern May report explained that Hawley “ghostwrote a memorandum for [an] SDTC. . . which the SDTC presented as [their] own.”⁸ In this report, for consistency, Hawley’s authoring of Rule 2201 reports on behalf of SDTCs will also be referred to as “ghostwriting.”

The Halpern May report further explained that Hawley provided “confusing and inconsistent information” in his interview after he had been presented with documents reflecting that he drafted a Rule 2201 report.⁹ In this interview,

Hawley admitted to writing the materials, and said he wrote reports for *all* SDTC cases he was involved with, not just the Girardi case. When asked whether he told anyone about his ghostwriting of SDTC memoranda, Hawley said that the Board knew about it, but we have not found any evidence to support that. Because our

⁷ For the purposes of this report, OEX and SDTC are synonymous and will be used interchangeably.

⁸ Halpern May Ybarra Gelberg LLP, *Report of Investigation* (Feb. 4, 2023), pg. 73.

⁹ *Id.*, pg. 76.

investigation was focused on Girardi-related cases, we did not vet Hawley's statement that he routinely wrote SDTC reports in all cases.¹⁰

(Emphasis in original.)

The Board of Trustees of the State Bar (the "Board") directed the State Bar's General Counsel to retain an external investigator to conduct an investigation into Hawley's practices with the Rule 2201 program. In May 2023, Adams, Duerk & Kamenstein LLP ("ADK") was selected and retained to conduct the investigation. Thereafter, ADK was provided with the full scope of the investigation, which is as follows:

Bob Hawley's authoring [of] 2201 reports during the 2010 to 2015 time period, including any knowledge by State Bar leadership and the appropriate review of the alleged conversation at a National Conference of Bar Examiners event in which the topic of Hawley's ghostwriting may have been raised[.]

Accordingly, ADK investigators reviewed the evidence Halpern May had gathered regarding Hawley's ghostwriting and searched for evidence of possible ghostwriting among all Rule 2201 reports authored from 2010 to 2015 (the "relevant period").¹¹

II. Investigative Activities

A. Scope of the Investigation

Investigators reached the conclusions in this report after an extensive and thorough investigation of all matters they determined were relevant. The findings in this report are based on a preponderance of the evidence standard, meaning investigators assessed whether it was more likely than not that certain events occurred as alleged after considering all available evidence.

This report is a summary and does not include all facts obtained or considered by investigators. The State Bar imposed no constraints on the investigation and provided its full cooperation. Investigators were permitted to interview any witness they identified as having potentially relevant information. No representative of the State Bar revised or edited this report.

¹⁰ *Id.*, pg. 77.

¹¹ In the scope of this investigation, investigators included cases that were formally opened before 2010, and formally closed after 2015, in the instances where evidence suggested that a Rule 2201 report was at least in part drafted during the relevant period.

B. Witnesses

Investigators interviewed the following individuals:

No.	Name	Date of Interview	Title at the State Bar from 2010 to 2015
1.	DCTC A	August 10, 2023	Senior Trial Counsel from 2007 to 2011; Acting Assistant Chief Trial Counsel from 2011 to 2012; Deputy Chief Trial Counsel from 2012 to 2016
2.	Leah Wilson	August 17, 2023	Chief Operating Officer from 2015 to 2017
3.	Vanessa Holton	September 5, 2023	General Counsel from 2015 to 2022
4.	SDTC B	September 12, 2023	SDTC
5.	SDTC C	September 12, 2023	SDTC
6.	SDTC D	October 19, 2023	SDTC
7.	SDTC E	October 20, 2023	SDTC
8.	Assistant to Hawley	November 2, 2023	Senior Administrative Specialist to the Executive Director from 2005 to 2017
9.	SDTC F	December 1, 2023	SDTC
10.	SDTC G	December 7, 2023	SDTC
11.	SDTC H	December 7, 2023	SDTC
12.	SDTC I	January 10, 2024	SDTC
13.	SDTC J	January 18, 2024	SDTC

No.	Name	Date of Interview	Title at the State Bar from 2010 to 2015
14.	SDTC K	January 18, 2024	SDTC
15.	Karen Goodman	January 31, 2024	RAD Chair from 2011-2013
16.	Dennis Mangers	February 1, 2024	RAD Chair from 2014-2015 and RAD Vice Chair from 2012-2014
17.	Joseph Chairez	February 8, 2024	RAD Chair from 2010-2011
18.	SDTC L	February 13, 2024	SDTC
19.	Elizabeth Parker	February 20, 2024	Executive Director from 2015-2017

SDTC A—referred to in the Halpern May report as OUTSIDE ATTORNEY B—is the attorney who was assigned to a Rule 2201 matter involving Girardi (Case 14-28979)¹² and for whom Hawley ghostwrote a Rule 2201 report. SDTC A declined to be interviewed by ADK investigators or otherwise participate in this investigation. This declination did not impact the findings in this report, as ADK investigators had access to ample documentary evidence provided by Halpern May, and by SDTC A via Halpern May, that established a clear record of the relevant facts surrounding SDTC A's involvement in each of their Rule 2201 cases. Further, ADK investigators reviewed the recorded interview of SDTC A conducted by Halpern May, in which the topic of Hawley's ghostwriting was discussed at length.

Investigators also note that one former SDTC mentioned in the factual findings section of this report—SDTC M—could not be interviewed because they are deceased.

Additionally, investigators communicated with the following members of RAD leadership in writing. Investigators determined that conducting interviews of these individuals was not necessary because each of the RAD Chairs below signed attestations confirming that during their tenure on RAD, they had no knowledge or suspicion of Hawley's authoring Rule 2201 reports.

¹²The case numbers of the confidential disciplinary cases in this report will not be disclosed unless already subject to a waiver of confidentiality pursuant to Business and Professions Code, Section 6086.1(b).

No.	Name	Date of Contact	Title at the State Bar from 2010 to 2015
20.	William Hebert	February 12, 2024	RAD Chair from 2009-2010
21.	Heather Rosing	February 12, 2024	RAD Chair from 2013-2014
22.	Miriam Krinsky	February 12, 2024	RAD Chair from 2015-2016 and RAD Vice Chair from 2014-2015

Finally, in response to investigators' request to interview Hawley, Hawley's wife replied that Hawley would be unable to participate in an interview for medical reasons and requested that interview questions be submitted in writing. Accordingly, on March 1, 2024, investigators sent Hawley a comprehensive list of interview questions with attachments for reference. On March 8, 2024, Hawley's wife sent investigators Hawley's six-page written response and an attestation Hawley signed to declare the truthfulness of his answers. On March 14, 2024, Hawley's wife also sent a one-page written response to a few follow-up questions investigators had posed.

C. Evidence Reviewed

Investigators reviewed materials provided by various entities, including the following:

The State Bar

1. Approximately 4,000 emails and pieces of documentary evidence identified by search terms run through Hawley's email archives, which contained over 150,000 documents;
2. Disciplinary case files from over seventy Rule 2201 cases—produced in physical and electronic form, with the physical files filling approximately ten bankers boxes;
3. A compilation of RAD Committee meeting agendas from 2010-2015 that noted the Rule 2201 program and/or a presentation by Hawley on particular Rule 2201 cases;

4. Over eighty emails and pieces of documentary evidence identified by search terms and pulled from Holton's email archive, including correspondence between Holton and SDTC A, segments of disciplinary investigation case files, and forty-page data extraction reports tracking Rule 2201 cases and closures from 2000-2020;
5. Over eighty emails identified via search terms run through Wilson's email archives;
6. Rules of Procedure of the State Bar, effective January 1, 2010;
7. A table tracking the composition and leadership of the RAD Committee from 2010-2015;
8. A working list of appointed SDTCs in the 2010-2015 timeframe;
9. An "OEX Cases Assigned 01-01-10 to 12-31-15" spreadsheet generated by OCTC for this investigation to identify Rule 2201 cases and closures that occurred in the relevant period;
10. Assorted internal memoranda and Board meeting minutes regarding proposed amendments to Rule 2201;
 - a. An attorney-client and work product privileged 2014 memorandum from the Office of General Counsel to RAD leadership regarding Rule 2201 procedure;
11. Ten unredacted pages of the Halpern May report;
 - a. The complete list of witnesses in the Halpern May investigation;
 - b. A transcript of Hawley's interview, conducted as part of the Halpern May investigation;
12. The unredacted report of the audit of Girardi disciplinary complaints completed by Alyse Lazar; and
13. OCTC status reports to RAD and additional documentation underlying various RAD Committee meeting agenda items.

Halpern May

14. Approximately ten hours of video recordings of interviews of the following witnesses, conducted as part of the Halpern May investigation: Hawley, DCTC A, SDTC A,¹³ SDTC D, SDTC Jerome Falk, and a former SDTC Administrator;¹⁴
15. Documentary evidence compiled in preparation for Halpern May's interviews of Hawley and SDTC A, including Rule 2201 appointment letters, email correspondence between Hawley and SDTC A, drafts of Rule 2201 reports, disciplinary investigation case files, and memoranda from Hawley to the RAD Committee; and
16. Documentary evidence provided by SDTC A following their interview with Halpern May, including email correspondence between SDTC A and Hawley, email correspondence between SDTC A and Holton, notes from a conversation between SDTC A and Hawley, and a Rule 2201 report.

Witnesses

17. On Hawley's behalf, Hawley's wife provided a six-page written response to a comprehensive list of questions posed by investigations and returned an attestation to the truthfulness of his responses;
 - a. On Hawley's behalf, Hawley's wife also provided a one-page written response to three follow-up questions;
18. Three former RAD Chairs—William Hebert, Heather Rosing, and Miriam Krinsky—returned signed attestations confirming that, during their tenure on RAD, they had no knowledge or suspicion of Hawley ghostwriting or otherwise authoring Rule 2201 reports;¹⁵
19. SDTC D, who became the SDTC Administrator in 2016, provided six documents relating to his role as SDTC Administrator;

¹³ In the Halpern May report, SDTC A was referred to as OUTSIDE ATTORNEY B.

¹⁴ In the Halpern May report, Falk was referred to as OUTSIDE ATTORNEY C. The names of the appointed SDTCs in this report will not be disclosed unless previously disclosed by the State Bar.

¹⁵ William Gailey, who served as Vice Chair of RAD from 2009 to 2011, did not respond to investigators' multiple attempts to contact him. However, investigators communicated with both the RAD Chairs who held the role from 2009 to 2011, confirmed they had no knowledge of Hawley's drafting Rule 2201 reports, and found no evidence that Gailey was aware of Hawley's drafting Rule 2201 reports.

20. SDTC H provided the training binder they received when they first became an SDTC in or around 2008;

21. SDTC G provided SDTC training materials that were updated over the past several years; and

22. Wilson provided an email confirming her attendance at a National Conference of Bar Examiners event in 2016.

One SDTC—SDTC L—failed to produce any documents in response to a written request from investigators.¹⁶

III. Allegations

ADK was directed to investigate the following:

Bob Hawley's authoring [of] 2201 reports during the 2010 to 2015 time period, including any knowledge by State Bar leadership and the appropriate review of the alleged conversation at a National Conference of Bar Examiners event in which the topic of Hawley's ghostwriting may have been raised[.]

IV. Overview of the 2010-2015 Iteration of the Rule 2201 Program

There have been many fundamental changes to the Rule 2201 program since Hawley's retirement in 2015—several of which are detailed in Section X, "Post-2015 Rule 2201 Changes." However, because the relevant period for this investigation is 2010 to 2015, it is necessary to understand the operations of the Rule 2201 program as they existed then.

The version of Rule 2201 that was effective from 2010 to 2015 had two main subsections: Rule 2201(a) and Rule 2201(i).¹⁷

Rule 2201(a) applied to complaints made against a State Bar employee, a member of the State Bar's Board, or anyone with a personal, financial, or professional relationship with the State Bar. In Rule 2201(a) cases, OCTC would conduct a preliminary review, and the CTC had

¹⁶ On February 20, 2024, SDTC L was sent a written request to produce all draft and final versions of a Rule 2201 report, as well as all communications with Hawley concerning SDTC L's service as an SDTC and/or the Rule 2201 program. SDTC L maintains the same professional email address now as when they served as an SDTC. On February 29, 2024, a member of SDTC L's office responded that no requested communications had yet been identified. Investigators followed up on this request multiple times, and have received no responsive documents or communications from SDTC L.

¹⁷ The version of Rule 2201 that was effective from 2010 to 2015 is attached as **Attachment A**.

the option of appointing an SDTC to conduct an investigation in order to avoid an actual conflict or the appearance of impropriety.¹⁸ For the majority of the relevant period, the primary person within OCTC who administered the Rule 2201(a) program and found SDTCs to conduct investigations was a then-Deputy Chief Trial Counsel who will be referred to as DCTC A. Investigators note that no evidence of ghostwriting was found in Rule 2201(a) cases, which constituted the majority of cases handled through the Rule 2201 program in the relevant period.

Rule 2201(i) applied only to the subset of complaints made directly against the CTC and complaints that could generate reasonable doubt about the CTC's impartiality. These were the cases Hawley administered. Once such a conflict was identified, the proper procedure was for the complaint to be routed out of OCTC and to the Regulation and Discipline ("RAD") Committee.¹⁹ Under Rule 2201, the RAD Committee was obligated to appoint an SDTC to conduct a preliminary review and, if necessary and appropriate, an investigation.²⁰

For Rule 2201(i) cases, Hawley served as the main interface between the SDTCs and RAD. He also recruited SDTCs to conduct preliminary reviews and investigations, recommended SDTCs for appointment on specific cases, and, in closed session, provided oral reports to RAD on specific Rule 2201(i) cases, as will be explained further below. Hawley also facilitated the transfer of the physical case file, with the complaint and other relevant case materials, to the SDTC.

In a January 2011 email to RAD leadership, Hawley described his role in the Rule 2201 process as ensuring "maximum coordination" and ensuring that "communications, documents, and materials are received, responded to, and processed appropriately."

Therefore, DCTC A and Hawley's roles on paper were analogous, as DCTC A administered Rule 2201(a) within OCTC, and Hawley administered Rule 2201(i) outside OCTC. In their interview with investigators, DCTC A explained that once a case was identified as a Rule 2201(i) case, they would route it to Hawley and have no further involvement.

¹⁸ Not every Rule 2201(a) complaint resulted in an SDTC investigation SDTC because, through the preliminary review process, OCTC would close complaints if they determined that the factual allegations were not sufficiently specific, not from a credible source, or, if proven, would not result in discipline of the member.

¹⁹ The RAD Committee has also been previously named the Regulation, Admissions, and Discipline Oversight Committee. It is composed of members of the State Bar's Board.

²⁰ In a Rule 2201(i) preliminary review, an SDTC was tasked with determining whether the factual allegations of the complaint were sufficiently specific, from a credible source, and whether, if true, the factual allegations may result in discipline of the member. If each of those criteria were met, the SDTC was then tasked with conducting an investigation into the complaint. This report refers to the reports written at the end of an SDTC's preliminary review or investigation as a "Rule 2201 report."

DCTC A also told investigators that they recruited SDTCs from a short list of names of attorneys willing to serve as SDTCs that they had been provided, and they were not aware whether their and Hawley's lists of possible SDTCs had any overlap. Investigators did not interview any SDTC who reported having worked on some cases administered by Hawley and others by SDTC A, and investigators did not note any such SDTC in the evidence reviewed.

To gain a fulsome understanding of the operations of the Rule 2201 program in the relevant period, investigators compared the standard processes for Rule 2201(a) and Rule 2201(i) cases and noted two important differences.

The first and most notable difference between Rule 2201(a) and (i) cases was that investigators found no evidence of ghostwriting or substantial involvement from DCTC A in any of the Rule 2201(a) investigations they administered.

For the Rule 2201(a) cases they administered, DCTC A told investigators that once the SDTC had the files they needed to investigate a complaint, DCTC A would have no involvement in the investigation or communication with the SDTC other than occasionally checking in on the investigation's status. DCTC A said that they may have answered a general procedural question from an SDTC, such as where to find a subpoena form, but that was exceedingly rare. DCTC A credibly asserted that they did not discuss the facts of Rule 2201 cases with the SDTCs they recruited. Each of the SDTCs interviewed who had recalled working with DCTC A corroborated this point.

The second notable difference between the types of Rule 2201 cases was the different work product that was produced in order to close a complaint. This difference was identified in the case files from the relevant period and confirmed in multiple witness interviews. The Rule 2201(a) cases generally included one-to-three-page closing letters from the SDTC to the complainant and respondent(s). These letters explained the SDTC's reasoning behind their closing the complaint in varying levels of detail. Occasionally, there would also be a brief memo that the SDTC would write for internal State Bar staff to review in case of an audit. Individual Rule 2201(a) case closures were not brought before RAD for approval.

In contrast, Rule 2201(i) cases would have much shorter closing letters that only mentioned the reason for the complaint's closure at a very high level, and Hawley was often the stated author of these letters. Rule 2201(i) cases would also generally result in longer written reports that were often six or more pages and addressed to the RAD Committee. These Rule

2201 reports would then be submitted by Hawley to RAD, and Hawley would present the report to RAD for approval in a closed session of the committee.²¹

V. Rule 2201 Reports—Investigative Process

In the next section, this report will detail the various pieces of evidence of Hawley's ghostwriting, and lack thereof, in the eleven Rule 2201 reports from the cases Hawley administered in the relevant period. However, this report will first explain the investigative process that allowed investigators to identify these eleven particular Rule 2201 reports and conduct our analysis.

Given that the majority of the relevant period for this investigation was over a decade ago, one challenge investigators faced was the passage of time and the consequent lack of clarity in witnesses' recollections. Furthermore, the relevant period occurred when the Rule 2201 program was primarily handled on paper and through physical case files, as opposed to an electronic case management system.

To ensure that the whole universe of Rule 2201 reports would be investigated for possible ghostwriting, investigators first sought to compile a list of all the people who may have served as an SDTC in the relevant period. Cognizant of the possibility of receiving erroneous or incomplete data from a single source, investigators relied on multiple sources to assemble this list, including an "OEX Cases Assigned 01-01-10 to 12-31-15" spreadsheet generated by OCTC for this investigation to identify Rule 2201 cases and closures that occurred in the relevant period, forty-page data extraction reports tracking Rule 2201 cases and closures from 2000-2020, all the physical and electronic Rule 2201 case files produced by the State Bar, and Hawley's email archives. The result was a list of approximately thirty potential SDTCs.

To help create this investigation's witness list, investigators searched Hawley's email archives and each Rule 2201 case file for evidence that each potential SDTC on the list had, in fact, served as an SDTC during the relevant period and that they also produced some written work product with the possibility of being ghostwritten.

²¹ RAD's involvement in the 2201 program is summarized in an attorney-client and work product-privileged September 2014 memorandum written by the State Bar's Office of General Counsel to the then-Chair and Vice Chair of RAD. This memo clarifies that when a Rule 2201 report is presented before RAD, RAD has the authority to question the SDTC on any of their findings, but the discretion to close the complaint lies with the SDTC alone. However, if RAD had concerns about the closure of a particular complaint, they could appoint a second SDTC to examine the first SDTC's findings.

Investigators went on to interview or watch the interview recordings of each living SDTC who had produced a Rule 2201 report in the relevant period.

Investigators also analyzed the more than seventy physical and scanned case files produced by the State Bar for indicia of potential ghostwriting. While investigators did not expect to find, and did not find, any communications in a Rule 2201 case file that blatantly exposed Hawley's ghostwriting, comparing the case files provided some useful information. By comparing the case files, investigators noted that a case file without ghostwriting indicia would often contain multiple emails and other work-product from an SDTC, whereas a case file with ghostwriting indicia may only have an SDTC's name show up twice: in their appointment letter and the Rule 2201 report.

Finally, to address how the universe of case files was narrowed from over seventy down to eleven, investigators note the following:

1. Thirty-eight cases appear to have been administered only by DCTC A/OCTC attorneys;
2. Seventeen cases were primarily or solely investigated outside of 2010-2015 and were therefore outside the scope of this investigation;
3. Five cases appear to have been closed by OCTC's preliminary review process and/or show no indication of an SDTC having been appointed;
4. Two cases were administered by Hawley, but no written final report was produced;²² and
5. Eleven cases were administered by Hawley and produced a written final report.

VI. Evidence of Ghostwriting

Investigators sent written questions to Hawley that asked about each of the examples of ghostwriting detailed below. Hawley's written responses to these questions frequently reiterated that he believed it was "appropriate" for him to "write a preliminary draft of Rule 2201 investigation reports for the SDTC's review, edits, and finalization" and that this practice was for

²² For the first of these cases (Case No. 12), documentary evidence reflects that SDTC M was appointed to conduct a second look review of a previous 2201 case, but SDTC M produced no written Rule 2201 report. For the second of these cases (Case No. 13), investigators found one half-drafted Rule 2201 report in Hawley's email archives that was addressed to RAD and dismissed the complaint, but no final version of the report was found, and no SDTC appears to have been appointed.

the “realistic purposes” of “timeliness, accuracy, and clarity” (emphasis in original). Hawley also repeated that the “ultimate decision of an SDTC’s investigation was made by that SDTC.”

A. Clearest Examples of Ghostwriting

Of the eleven Rule 2201 reports mentioned above, investigators found that five of these reports were clear, unambiguous examples of Hawley’s ghostwriting. SDTC A was appointed to handle two of these five cases; SDTC B was appointed to another two; and SDTC C was appointed to one case. Investigators also note that the four cases between SDTC A and SDTC C share additional commonalities: Hawley presented these cases for approval before the RAD Committee without the SDTC present, and Hawley authored and signed the closing letters sent to the complainants and/or respondents in each case.

1. Case No. 1²³—SDTC A

SDTC A is SDTC highlighted in the Halpern May report as having ghostwriting performed for them; however, this particular case was not mentioned in the Halpern May report as it is unrelated to Girardi. Regardless, this case is one of the clearest examples of ghostwriting due to the following pieces of evidence.

First, on March 25, 2015, Hawley emailed SDTC A an entirely prepared draft report for this matter. The report itself was six pages, and the multiple attachments Hawley included brought the total length of the report up to eighty-two pages. In his email to SDTC A, Hawley wrote, “Attached is a draft report As this was one of the more involved works, I tackled it first. Take a look at this. It comes from you so be sure it reflects your views.”

Second, less than five hours later, SDTC A responded to Hawley, writing, “Bob: This all looks great to me. Please let me know what the next steps are when you have a moment.” No evidence reviewed reflected that SDTC A made any substantive changes to this Rule 2201 report. Rather, when Hawley asked SDTC A to only write in the date, print out the report on his firm’s stationary, initial, and send the report back to him, the documentary evidence reflects that SDTC A did so. Moreover, when returning the Rule 2201 report on his stationary, SDTC A wrote to Hawley, “We added the exhibits we could identify. Please . . . confirm that the other exhibits are what you intended.”

²³ The case numbers of the confidential disciplinary cases in this report will not be disclosed unless already subject to a waiver of confidentiality pursuant to Business and Professions Code, Section 6086.1(b).

Third, in this Rule 2201 case's scanned case file, SDTC A's name appears in connection only with their appointment letters and final report, not with any other work product.

Fourth, without evidence indicating that SDTC A requested this of Hawley, Hawley wrote to SDTC A that he would "advise the Chair of the RAD Committee that you think these can be submitted without your appearance. We will see how that goes." Ultimately, Hawley presented this report to RAD during its May 2015 meeting, and it was approved. On June 4, 2015, Hawley notified SDTC A that RAD accepted the report and that "[t]his matter is closed and I will communicate that to the parties."

Additionally, investigators note that in the closing letter Hawley sent to the complainant in this case, Hawley falsely stated, "Your complaint was forwarded to the SDTC assigned. *That individual reported to the RAD Committee at its May 2015 meeting.* Ultimately, the recommendation of the SDTC was that the matter be closed without further action" (emphasis added).

2. Case No. 2 (Case 14-28979)—SDTC A

The evidence establishing ghostwriting for this case closely follows the timeline and facts in the preceding case, as both Rule 2201 reports at issue were clearly drafted by Hawley, sent to SDTC A, and returned to Hawley for his subsequent presentation before RAD in May 2015, with no substantive changes made. This Rule 2201 case was also the case that was the main focus of the Halpern May report's comments on ghostwriting. ADK investigators agree with the factual findings the Halpern May report made with respect to this Rule 2201 case and further highlight a few key pieces of evidence.

First, on April 8, 2015, Hawley emailed SDTC A another completed draft report, noting, "Here is another draft Rule 2201 Report. . . . It comes from you so be sure it reflects your views." The report was six pages on its own and thirty-nine pages including attachments.

Second, SDTC A's only change to the draft Rule 2201 report was to note one missing preposition. SDTC A also made a facetious remark to Hawley, writing, "I hope you're impressed by the way I crank these letters out and by my knowledge of State Bar procedures."

Third, the metadata on the April 20, 2015, 6:52 p.m. version of the draft Rule 2201 reports notes "hawleyr" as the document's original author and latest author. The extracted text from this version of the report also tracked at least seven revisions made by Hawley.

Fourth, nine minutes later, at 7:01 p.m., Hawley emailed SDTC A the draft Rule 2201 report again for SDTC A to print on their firm's stationary and return, which SDTC A did.

Similarly to the previous case, Hawley presented the report at RAD's May 2015 meeting. Again, it was approved, and Hawley later informed SDTC A of this development. Unlike the previous case, a few pieces of documentary evidence reflect that SDTC A may have performed some work on the case, as they appeared to have at least edited some version of the letters sent to the relevant parties in this investigation. Nevertheless, Hawley's drafting of the Rule 2201 report here remains clear-cut.

3. Case No. 3—SDTC B

On August 21, 2013, Hawley sent SDTC B an email that included in relevant part,

I have prepared here a proposed draft report from you. Please review and edit as you think appropriate. Let me know if there is any further assistance I can provide. This report is consistent with the messages you left for me. Once this report meets with your approval, please print it on your letterhead, sign it and return it to me. Your assignment will then be concluded.

This draft of the Rule 2201 report was four pages, and the metadata from a version of the report that was also dated August 21, 2013, listed Hawley as the document's original and last author. Five days later, SDTC B returned the Rule 2201 report to Hawley. Investigators ran a comparison between Hawley's and SDTC B's versions of the report and noted no substantive changes between them. Documentary evidence also indicates that Hawley presented this report before RAD during their November 2013 meeting.

The above evidence was corroborated by SDTC B's interview with ADK investigators. When shown the version of the Rule 2201 report SDTC B returned to Hawley, SDTC B confirmed that he did not write the report. Moreover, SDTC B commented that in his discussions with Hawley, SDTC B agreed to review the file, and Hawley stated at the outset, "I'll take care of the report. You don't have to write that."

4. Case No. 4—SDTC B

In this case, SDTC B appears to have at least conducted a review of the materials sent to them, as a July 17, 2012 email from SDTC B to Hawley noted that SDTC B had reviewed the materials Hawley provided and wanted to discuss some questions with Hawley. However, with

respect to this case's Rule 2201 report, investigators found a draft version of the written report in Hawley's email archives, with the metadata on the July 24, 2012 document noting Hawley as the document's original and last author. Again, documentary evidence reflects that Hawley presented this report before RAD during their November 2012 meeting.

When SDTC B was shown the Rule 2201 report for this matter in their interview, they said they were certain that Hawley wrote the report and that they had not.²⁴

5. Case No. 5—SDTC C

On November 20, 2012, Hawley emailed SDTC C the following,

I am following up on this assignment. The last time we communicated, I delivered to you a draft report for you to consider, and you suggested coming to [location] to interview key staff to finalize your review of the matter. We then lost the momentum. I attach here an updated draft report and timeline[.]

SDTC C responded, agreeing to re-review the relevant materials.

A version of this draft Rule 2201 report, dated January 8, 2013, was found in Hawley's email archives. The metadata for this document noted that Hawley was the original and last author, and the extracted text noted that Hawley made at least twenty-six revisions.

When shown the Rule 2201 report in their interview with investigators, SDTC C confirmed that they had not written it. SDTC C added that they had been reluctant to agree to conduct an investigation for free, but Hawley personally drove to their office and "offered to do a lot of the leg work for me. He offered to draft reports and present them for my review." This remark from SDTC was partially corroborated by an August 10, 2010 letter from Hawley to SDTC C, in which Hawley said he would develop and forward a compilation of relevant evidence and offered to assist SDTC C in developing a Rule 2201 report.

SDTC C said that they had no independent recollection of conducting this investigation or reviewing the final Rule 2201 report.

²⁴ Given that SDTC B was also a RAD Chair before the relevant period, investigators asked SDTC B whether they had any prior involvement with the Rule 2201 program in their capacity as RAD Chair. SDTC B said that they did not recall any. They further remarked that they thought of their serving as an SDTC as a "perfunctory thing to help out Bob."

B. Examples of Probable Ghostwriting

Of the eleven Rule 2201 reports from Hawley-administered cases in the relevant period, investigators found that two of these reports were likely examples of Hawley's ghostwriting; however, the evidence of ghostwriting is not as clear for these cases as it is for the cases in the preceding section.

6. Case No. 6—SDTC M

A draft of the Rule 2201 report from this case was found in Hawley's email archives. The metadata for this version of the report, dated April 12, 2011, noted Hawley as the original and last author of the report, and the extracted text stated that Hawley made at least twenty-eight revisions to the document. Further, documentary evidence reflects that Hawley presented this report before RAD during their May 2011 meeting, and Hawley authored and signed the closing letters that were sent to the complainant and respondents in this investigation.

Additionally, the version of the Rule 2201 report in this case file was marked "CONFIDENTIAL DRAFT" at the top—in a way that matches the other ghostwritten reports. From the marks on this document, it appears that SDTC M only scratched out the word "DRAFT" in pen and signed their name on the first page of the report. Finally, in the case file, there is also a handwritten note from SDTC M which thanked Hawley for his "good work."

However, investigators note that SDTC M still appeared to have been involved in the investigation's process, as this matter required several witness interviews. The Rule 2201 report noted that SDTC M interviewed six witnesses and that SDTC M "directed" Hawley to interview multiple additional witnesses and report back to the SDTC. Additional documentary evidence confirms that Hawley conducted a witness interview in this case on SDTC M's behalf.

Investigators were unable to interview SDTC M because they were deceased. Based on the factors listed above, investigators find that Hawley, at a minimum, substantially edited this Rule 2201 report, and he more likely than not drafted the report.

7. Case No. 7—SDTC L

In this case, investigators were only able to find a PDF version of the Rule 2201 report in question and, accordingly, were unable to analyze the relevant metadata. Nonetheless, investigators note that Hawley presented this report to RAD in March 2013 and that nothing in the case file evidences work that SDTC L performed beyond the Rule 2201 report itself.

This particularly detailed Rule 2201 report is nine pages, with two addenda and multiple attachments, bringing the total length of the report to ninety-eight pages.

Investigators also compared the structure and language used in this Rule 2201 report to those in other reports with clear evidence of ghostwriting from Hawley. This report has some of the hallmarks of other ghostwritten reports, though its formatting is slightly different. For instance, the wording and order of the report's headings closely align with those of the other ghostwritten reports, and a good portion of the language in the "Governing Authority" and "Conclusion" sections matches verbatim with other ghostwritten reports.

Furthermore, in SDTC L's interview, ADK investigators found SDTC L to be less than credible. SDTC L claimed to have "zero recollection" of ever serving as an SDTC or writing this Rule 2201 report, while they simultaneously insisted that the signed Rule 2201 report was their own work product. Investigators also found some of SDTC L's behavior in the interview suspicious, as right after an investigator mentioned that ADK was looking into Hawley's "authorship of reports," SDTC L exclaimed that they had "never heard of ghostwriting" before; investigators had not used the term ghostwriting up to that point in the interview.

Finally, as noted in footnote sixteen in the "Evidence Reviewed" section above, SDTC L was the only SDTC who failed to produce any documents in response to a written request from investigators.

On February 20, 2024, SDTC L was sent a written request to produce all draft and final versions of this Rule 2201 report, as well as all communications with Hawley concerning SDTC L's service as an SDTC and/or the Rule 2201 program. Investigators did not regard these requests as particularly burdensome or time-consuming because SDTC L maintains the same professional email address now as they did during the relevant period. On February 29, 2024, a member of SDTC L's office responded that no requested communications had yet been identified. Investigators followed up on this request multiple times, but SDTC L did not produce any responsive documents or communications.

Given each of the factors explained above, investigators find that it is more likely than not that this case's Rule 2201 report was ghostwritten.

C. Example of Limited Involvement from Hawley

8. Case No. 8 (Case 14-30049, 14-30061, and 14-30269)²⁵—SDTC A²⁶

This case fell into its own category because its related evidence reflects that SDTC A handled the initial draft of this Rule 2201 report but then submitted it to Hawley for his review and revisions. As such, this report did not belong with the clearly or probably ghostwritten reports above or the reports below, where Hawley was found to have not been involved in the drafting or editing process to any extent.

On August 25, 2015, SDTC A emailed Hawley, “I took a stab at preparing a 2201 report based on the ones you’ve sent in the past. . . . Please let me know if you have any comments or questions.” In a subsequent exchange of emails, Hawley said that the report looked “ready to finalize” and that he would “take it from here.” One version of this Rule 2201 report found in Hawley’s email archive reflects that Hawley made at least two revisions to this report in October 2015, which was around the time he retired from the State Bar.

SDTC A went on to present this report before RAD in May 2016—a marked shift from the prior norm of Hawley presenting this and other SDTC’s reports before RAD.

Therefore, investigators find that this Rule 2201 report was not ghostwritten, but Hawley appeared to have some limited involvement in its editing.

D. Examples Without Ghostwriting

Of the eleven Rule 2201 reports from Hawley-administered cases in the relevant period, three were clearly not a product of Hawley’s ghostwriting. Jerome Falk²⁷ wrote one of these reports, and SDTC E wrote the other two.

9. Case No. 9 (Case 08-0-12613)—SDTC Falk²⁸

ADK previously investigated this Rule 2201 case as part of its separate investigation for the State Bar’s Board that resulted in the publicly available report dated July 10, 2023.²⁹

²⁵ As was the case here, multiple case numbers can be combined into the same case file and Rule 2201 report if a single complaint or investigation involves multiple respondents.

²⁶ This Rule 2201 matter was mentioned in footnote 23 on page 76 of the Halpern May report.

²⁷ In the Halpern May report, Falk was referred to as OUTSIDE ATTORNEY C. The names of the appointed SDTCs in this report will not be disclosed unless previously disclosed by the State Bar.

²⁸ This Rule 2201 matter was mentioned on page 68 of the Halpern May report.

²⁹ This report can be found at <https://www.calbar.ca.gov/Portals/0/documents/reports/ADK-Reports-Redacted.pdf>.

As part of that investigation, ADK investigators reviewed numerous pieces of documentary evidence establishing the unique circumstances surrounding Falk's tenure as an SDTC in 2010. In particular, Falk had the assistance of other members of his firm, Howard Rice Nemerovski Canady Falk & Rabkin, who billed the State Bar for their time on the investigation. Additionally, when Falk and his team came across a procedural question, they were directed to Alyse Lazar as an outside consultant with knowledge of State Bar procedures, whom they contacted.

These circumstances, which were unique for the time, appear to have helped Falk conduct this investigation on a truly independent basis. Falk confirmed in his interview with Halpern May investigators that he and his team wrote the Rule 2201 report that ended up in the case file. No evidence reviewed contradicts Falk's account. Moreover, the distinct style, language, and formatting of his report as compared to the ghostwritten reports further support the findings that this report was not written by Hawley. Rather, the documentary evidence reflects that Hawley appeared to serve only a few basic, administrative functions, such as helping prepare Falk's SDTC appointment letter.³⁰

Accordingly, investigators find that this Rule 2201 report was not ghostwritten.

10. Case No. 10 & Case No. 11—SDTC E

Unlike Falk, SDTC E was not uniquely situated with extra support to aid in his Rule 2201 cases; however, SDTC E's professional background made them particularly well-suited for the work, and they exhibited a unique willingness to devote significant time to their investigations without being paid.

There are multiple factors that lead to the conclusion that SDTC E's two Rule 2201 reports were not ghostwritten. (1) The communications between SDTC E and Hawley strongly indicate that SDTC E was devoting time to drafting the Rule 2201 report, and Hawley was only waiting to receive it. (2) There was no version draft of SDTC E's Rule 2201 report found in Hawley's email archives. (3) Similar to Falk's report, SDTC E's report employed distinct language and formatting as compared to the ghostwritten reports. (4) SDTC E presented their Rule 2201 report for Case No. 11 before RAD for approval. (5) In their interview with investigators, SDTC E emphatically confirmed that they had drafted both of their Rule 2201

³⁰ Falk's investigation is the only Rule 2201 matter of the 11 discussed here that was not categorized as a Rule 2201(i) matter. Hawley helped with the administrative aspects of the matter alongside other members of OCTC.

reports and demonstrated that they were prepared to answer questions about their reports and investigative process.

Accordingly, investigators find that the Rule 2201 reports from Case No. 10 and Case No. 11 were not ghostwritten.

VII. Knowledge of Ghostwriting at the State Bar

In addition to identifying evidence of ghostwriting, another element of this investigation's scope was for ADK to investigate "any knowledge by State Bar leadership [of Hawley's ghostwriting] and the appropriate review of the alleged conversation at a National Conference of Bar Examiners event in which the topic of Hawley's ghostwriting may have been raised[.]"

A. Knowledge by State Bar Leadership

No documentary evidence reviewed indicated that any member of the State Bar's leadership had knowledge of Hawley's authoring or editing of Rule 2201 reports before the Halpern May investigation began in 2021.

The documentary evidence reflects that throughout the 2010 to 2015 period, Hawley would often mention that he was providing SDTCs with various forms of assistance. These mentions were captured in SDTC appointment letters, communications with RAD leadership, and Rule 2201 reports. However, the terms used to describe his assistance were vague and ambiguous. On numerous occasions, Hawley would write that he provided "staff assistance" or "staff support" to SDTCs, without clarifying what those terms meant.

Investigators found that the extent of Hawley's "staff assistance" became explicit only in his direct communication with SDTCs, as detailed in the sections above. By contrast, when Hawley was communicating with other members of the State Bar's leadership and staff—including RAD leadership with whom he worked most closely on the Rule 2201 program—Hawley concealed the extent of his involvement through ambiguous language and/or deliberate misrepresentations.

For example, in a January 2011 letter from Hawley to Joseph Chairez (the then-Chair of RAD), and William Gailey (the then-Vice Chair of RAD), Hawley explained the Rule 2201 process and noted,

In rule 2201 matters such as this, I have historically provided staff support to the RAD Chair as part of the State Bar's Secretariat function supporting the Boards [sic] processes. . . . Consistent with our protocol under Rule 2201, everyone has been advised to use me as the point of contact on all communications pertaining to this matter to assure maximum coordination. *My role is ministerial only.* I am involved to assure [sic] that communications, documents, and materials are received, responded to, and processed appropriately.

(Emphasis added.)

This January 2011 letter is emblematic of the reviewed communications between Hawley and each member of RAD leadership in the relevant period. Overall, RAD Chairs and Vice Chairs appeared to have been aware that Hawley was involved in administering the Rule 2201 program to some extent, but not aware that he was writing and editing some of the reports signed by the appointed SDTCs.

Each of the former RAD Chairs that ADK investigators interviewed reported having very little, if any, recollection of the Rule 2201 program during their tenure in RAD leadership. Dennis Mangers, former RAD Vice Chair from 2012 to 2014 and Chair from 2014 to 2015, reported that he largely deferred to Hawley due to Hawley's many years of experience at the State Bar. Mangers told investigators, "I would have assumed that Hawley was following the rules to the letter and that these cases were prosecuted by independent counsel. . . . It never would have occurred to me that Hawley would have done what's been alleged."

Further, in the instances where a member of RAD leadership raised questions about the Rule 2201 program, Hawley did not respond by clarifying the extent to which he was involved. In a March 2015 email exchange between Hawley and then-RAD Vice Chair Miriam Krinsky, Krinsky questioned whether RAD should appoint SDTC A because SDTC A appeared to lack relevant experience.³¹ Hawley's response mentioned the challenges associated with recruiting SDTCs who were willing to work pro bono, and he added, "the State Bar contacts with Alyse Lazar, a long ago OCTC staffer who has had no connection with the State Bar for decades, to provide technical assistance on issues to SDTCs[.]"

While Lazar had been offered to SDTCs as a resource in previous Rule 2201 cases, this comment to Krinsky is at best misleading when understood in the context of Hawley's emails to

³¹ Parts of this email exchange were mentioned on page 76 of the Halpern May report.

SDTC A the week prior. Then, Hawley wrote to SDTC A, "I can and will assist with authorities and guidance."

Finally, investigators note that Hawley's apparent concealment of his ghostwriting continued after his retirement from the State Bar. In response to questions about the Rule 2201 process raised by a former Assistant General Counsel in May 2016, Hawley wrote, "The procedure I followed is as follows: The SDTC prepared a confidential written report on the matter, with their conclusions and reasoning. That was placed on the closed RAD agenda for acceptance."

B. National Conference of Bar Examiners

ADK investigators were directed to investigate "the alleged conversation at a National Conference of Bar Examiners [(“NCBE”)] event in which the topic of Hawley's ghostwriting may have been raised" because of a report about the NCBE event made by former General Counsel Vanessa Holton, who began overseeing the Rule 2201 program shortly after Hawley's retirement in 2015.

In her interview with investigators, Holton explained that she recalled first becoming aware of Hawley's ghostwriting when she attended an NCBE conference in April 2016. This conference was held in Washington, D.C., and interview and documentary evidence reflect that multiple State Bar employees and SDTCs were in attendance. Holton reported that at this conference, she attended a dinner with about 20 people in a small Chinese restaurant. She said she sat at one end of a long table, next to an SDTC, who she recalled was SDTC A.³² Holton told investigators that she thanked SDTC A for their work, and SDTC A "replied that it was not that much work because Hawley would draft the closing memos for the SDTC to review and the SDTC would just sign it." Holton said she could not recall whether she and SDTC A discussed the number of complaints in which this occurred.

According to Holton, Executive Director Leah Wilson, the then-Chief Operating Officer of the State Bar, was also in attendance at the NCBE conference and this dinner. Holton said Wilson was sitting one or two seats away from her, but there were many conversations being had, and Holton said she did not think anyone else would have overheard her conversation with SDTC A.

³² SDTC A was not interviewed because they declined to participate in this investigation.

In Wilson's interview with investigators, she confirmed attending the NCBE event, but she said did not recall specifics about the event and did not hear anything about Hawley's ghostwriting. Wilson also told investigators that she recalled there being various concerns around the operations of the Rule 2201 program in early 2016 and that she helped Holton reform some aspects of the program around this time, especially the change to help compensate SDTCs for their work. However, Wilson said she had no specific recollection of Holton ever raising the subject of Hawley's ghostwriting to her. Holton also did not state that she ever reported Hawley's ghostwriting specifically to Wilson.

When asked what she did with the information about Hawley's ghostwriting following her conversation at the NCBE event, Holton said she later told the information to Elizabeth Parker, the then-Executive Director of the State Bar, who did not attend the NCBE event. According to Holton, Parker said she did not want to take any action in response because this information would reflect poorly on the State Bar, Hawley had already retired, and Rule 2201 was already in the process of being reformed.

When investigators interviewed Parker, she said she had no recollection of Holton or anyone else informing her about Hawley's ghostwriting when she was at the State Bar.

Holton also told investigators that she conveyed information about her conversation at the NCBE event to "other Bar leadership on several occasions," but Holton did not name anyone other than Parker to whom she reported this information before the Halpern May investigation in 2021.³³ Apart from the statements made in Holton's interview, investigators found no evidence that Holton reported Hawley's ghostwriting to anyone at the State Bar before 2021.

VIII. Factual Findings

Of the eleven Rule 2201 reports produced in Hawley-administered cases in the relevant period, investigators find that seven reports were, more likely than not, ghostwritten. Of the remaining four reports, Hawley appeared to have no involvement in three and limited involvement in editing the fourth.

Throughout the evidence-gathering process, practical concerns about the operations of the Rule 2201 program, as it existed from 2010 to 2015, were raised on numerous occasions in both documentary evidence and witness interviews. The most frequently communicated concerns

³³ An email from Holton in December 2021 indicates that Holton "alerted" Halpern May investigators to the issue of Hawley's ghostwriting.

related to the fact that nearly all SDTCs in the relevant period worked on Rule 2201 cases pro bono. This factor played a role in Hawley's ghostwriting, as Hawley himself confirmed.

Moreover, in examining the Hawley-administered cases from the relevant period, the Rule 2201 reports without ghostwriting were the exceptions to the rule—either the SDTC's firm was being compensated, or the SDTC was uniquely qualified and willing to devote significant time to their work for the State Bar without pay.

In his written response to investigators, Hawley stated the following,

I recall that as Rule 2201 administrator, I believed it was appropriate for me to write a preliminary draft of a Rule 2201 investigation report for the SDTC's review, edits, and finalization. This was for the realistic purposes . . . of timeliness, accuracy, and clarity. . . . SDTC were often busy with their own practice and thus found it difficult to progress with Rule 2201 investigations.

. . . I recall that when I served as Rule 2201 administrator, I believed "the level and kind of involvement" appropriate for the Rule 2201 administrator to be based upon the realistic situation of each SDTC in relation to each investigation. I believed it was important for the Rule 2201 administrator to actively support SDTC in processing their investigations in light of their other commitments and in light of the State Bar of California's timeframe. I believed it was important for the Rule 2201 administrator to support SDTC in reporting their findings in a clear, accurate, and timely manner.

Investigators also find that there is insufficient evidence to substantiate that anyone in the State Bar's leadership knew of Hawley's ghostwriting before the Halpern May investigation began in 2021, apart from Holton, who reported learning the information from an SDTC at an NCBE event in April 2016, shortly after Hawley's retirement from the State Bar.

IX. Legal Analysis and Findings Under Rule 2201

A. Legal Framework of Rule 2201 from 2010 to 2015

Rule 2201³⁴ establishes procedures for the avoidance of conflicts of interest in the investigation of complaints brought against a State Bar employee, a member of the State Bar's

³⁴ All references to Rule 2201 are to the version of the rule that was effective during the relevant period, 2010-2015, unless expressly stated otherwise.

Board, or anyone with a personal, financial, or professional relationship with the State Bar. The primary mechanism for avoiding such conflicts is the appointment of attorneys to serve as SDTCs.³⁵ An SDTC “shall have all of the powers and duties of the Chief Trial Counsel and shall act entirely in his or her place or stead with regard to such an inquiry or complaint and any resulting investigation.” Rule 2201(b).

As previously noted, the majority of Rule 2201 cases from the relevant period fell under Rule 2201(a), which vested the CTC or designee with the discretion to appoint SDTCs.³⁶ Investigators found no evidence of ghostwriting in Rule 2201(a) cases, and they are not otherwise germane to this investigation.

Rule 2201(i) addressed a subset of Rule 2201 cases where the complaint was specifically made against the CTC, or the complaint could otherwise generate reasonable doubt about the CTC's impartiality. Hawley administered these Rule 2201(i) cases during the relevant period.

Rule 2201(i) stated as follows:

The Chief Trial Counsel shall recuse himself or herself with respect to an inquiry received by the Office of the Chief Trial Counsel if:

- (1) The inquiry involves the Chief Trial Counsel;
- (2) The Chief Trial Counsel believes, for any reason, that his or her recusal would further the interests of justice;
- (3) The Chief Trial Counsel believes there is a substantial doubt as to his or her capacity to be impartial; or
- (4) A person aware of the facts might reasonably entertain a doubt that the Chief Trial Counsel would be able to be impartial.

Under Rule 2201(i), in the event of the CTC's recusal, the inquiry was to be referred to the Chair of the RAD Committee, who was to appoint an SDTC to conduct a preliminary review of the complaint—meaning the SDTC would determine whether the factual allegations of the inquiry were sufficiently specific, from a credible source, and, if proven, may result in discipline

³⁵ As noted elsewhere, the work associated with the SDTC position during the relevant period, with rare exception, was performed as an unpaid, voluntary service. *See* Rule 2201(d).

³⁶ OCTC also had the power to conduct a preliminary review of these complaints. OCTC could close the complaint before assigning it to an SDTC if OCTC determined that the factual allegations were not sufficiently specific, not from a credible source, or, if proven, would not result in discipline of the member.

of the member. If a complaint met each of the criteria in the preliminary review process, Rule 2201 directed the SDTC to conduct an investigation and such other proceedings as necessary or appropriate.

Pursuant to Rule 2201(f),³⁷ SDTCs were able to request certain reimbursements and, significantly, various forms of support:

Special Deputy Trial Counsel may request that the Chief Trial Counsel or designee authorize the payment of reasonable expenses and for investigative, administrative and legal support. The Chief Trial Counsel or designee shall have discretion to determine the amount of financial, investigative, administrative and legal assistance to be provided.

B. Legal Findings

As an initial matter, investigators presume that Rule 2201(f), which provides that a "CTC or designee" may provide investigative and/or legal assistance to an SDTC upon request, is equally applicable to the RAD Chair or designee³⁸ in the context of Rule 2201(i) cases. To conclude otherwise would require that the entirety of Rule 2201(f) was inapplicable to Rule 2201(i) cases, a conclusion for which there is no obvious rationale.³⁹

As noted above, Rule 2201(f) permits the discretionary provision of investigative support and legal assistance upon an SDTC's request. Here, however, investigators found no instance in which an SDTC asked Hawley to draft a report for them. In contrast, what documentary and witness evidence generally reflected was that Hawley would offer to draft the Rule 2201 report at the outset of some Rule 2201 cases, and in others, Hawley appeared to draft the report on his own initiative and submit it to the SDTC only for their review and approval.

Notwithstanding the foregoing, Rule 2201(f) provides that upon an SDTC's request for assistance, the "[CTC] or designee shall have discretion to determine the amount of financial,

³⁷ This language from this subsection was removed from Rule 2201 when the rule was amended in 2016.

³⁸ Although there is no explicit reference to a RAD "designee," as there is throughout Rule 2201 with respect to "CTC or designee," the most logical interpretation of Rule 2201 is that when RAD is substituted for CTC, is that it is substituted in all respects, including its delegation authority. The rule has historically been so interpreted. *See, eg.,* fn 36, *infra*.

³⁹ This interpretation is also consistent with advice provided in a September 2014 memorandum to the RAD Chair and Vice Chair from a former Chief Assistant General Counsel, "The Special Examiner appointed under Rule 2201(i) is governed by the provisions in Rule 2201(b)-(f), except that references to the Chief Trial Counsel will be construed as to the RAD Chair, where appropriate."

investigative, administrative and legal assistance to be provided.” Nowhere in the text of Rule 2201 is this “discretion” or “amount” circumscribed, and nowhere is “financial, investigative, administrative and legal assistance” limited or defined. Accordingly, the textual ambiguity present in Rule 2201(f) precludes investigators from finding that Hawley’s substantive assistance to SDTCs in the performance of their duties constituted a direct violation of the letter of Rule 2201. Hawley’s authoring of Rule 2201 reports is, at best, a wringing of the ambiguity that existed in the rule to address the practical limitations of running the Rule 2201 program.

However, the more consonant interpretation of Rule 2201(f) is the one DCTC A expressed to investigators, which is that the assistance contemplated under Rule 2201(f) should be provided in a manner that does not negate the SDTC’s independence, as Rule 2201 obviously intended as its central purpose. The provision of such assistance could have been accomplished while maintaining the SDTC’s independence if assistance was provided by another independent professional. Indeed, Hawley himself seemed to recognize this when he wrote in an email to the then-RAD Chair and Vice Chair, on March 2, 2015, concerning the potential need to provide an SDTC with assistance on an investigation. Hawley wrote, “Because [SDTCs] are often not versed in regulatory law, the State Bar contracts with Alyse Lazar, a long ago OCTC staffer *who has had no connection with the State Bar for decades*, to provide technical assistance on issues to SDTC’s [sic]” (emphasis added).

Even assuming that assistance under Rule 2201(f) could reasonably have been provided by a current State Bar employee, such as Hawley, the sheer degree to which Hawley “assisted” SDTCs on certain investigations, as detailed in Section IV above, negated the independence that appointing an SDTC, who was a non-State Bar employee, was intended to create.⁴⁰

Accordingly, investigators find that a preponderance of the evidence establishes that Hawley’s drafting of Rule 2201 reports, if it did not violate the letter of Rule 2201 because of its textual ambiguity, violated its spirit and undermined its purpose.

X. Post-2015 Rule 2201 Changes

Since 2015, the State Bar has implemented a series of significant reforms to Rule 2201. These reforms, which largely rewrote and fundamentally changed how the Rule 2201 program was administered, began with major amendments in 2016. With respect to these amendments, both Hawley and DCTC A reported to investigators the difficulty in finding lawyers willing to

⁴⁰ This representation was made to both external complainants and RAD leadership, alike.

serve as SDTCs on a pro bono basis for Rule 2201 cases. DCTC A described having to practically “beg” attorneys to volunteer. In an email to RAD leadership in 2015, Hawley wrote, “It is quite difficult to find anyone to take these assignments, as the rule requires that service be pro bono.” And, again, in his written response to investigators’ interview questions, Hawley stated, “I recall that as Rule 2201 administrator I found it challenging to recruit qualified practicing attorneys who had the time or inclination to take on pro bono work. This made it difficult to timely process the backlog of open attorney disciplinary cases and to present findings to RAD.” Other witnesses shared Hawley’s perspective and concern on the timely processing of cases, reporting that open cases often languished in the program.

In order to address these issues and to “improve the integrity of the consideration of Rule 2201 inquiries and complaints,” State Bar employees, including Holton and Wilson, worked to fundamentally amend Rule 2201 in and around May 2016. These amendments (1) expanded the mandatory recusal criteria for the CTC in order to “enhance public confidence” and “minimize questions about the State Bar’s impartiality”; (2) created a distinct paid SDTC Administrator position⁴¹ devoted to conducting the preliminary review of all 2201 cases and assigning them to SDTCs, if appropriate; (3) authorized compensation for SDTCs, in order to address “the difficulties inherent in a volunteer model”; and (4) empowered the RAD Chair to designate the State Bar’s Office of General Counsel to monitor all referrals to the SDTC Administrator to maintain impartiality and confidentiality. Once these changes went into effect, the SDTC Administrator began making at least twice annual reports to RAD on the number, nature, and disposition of inquiries, complaints, and investigations for which an SDTC has been appointed. Previously, Rule 2201 had required the CTC to make these reports only upon RAD’s request.

According to multiple witnesses, the creation of the SDTC Administrator position “professionalized” the program’s implementation, and the transition to compensating SDTCs reduced the difficulty in finding attorneys willing to serve and contributed to more timely case dispositions, thereby reducing the Rule 2201 case backlog. These changes, along with more stringent recusal criteria and oversight rules, significantly decreased the likelihood that the conduct described herein would occur today, or that anyone would perceive the necessity for it, as Hawley ostensibly did.⁴²

⁴¹ Under the 2016 amendments, this was a paid, part-time position. In 2022, the position was made paid and full-time.

⁴² Among the fundamental 2016 amendments to Rule 2201 was the removal of the language that had been in subsection 2201(f).

XI. Conclusion

For the reasons set forth above, investigators find:

1. Of the eleven Rule 2201 reports produced in Hawley-administered cases in the relevant period, investigators find that seven reports were, more likely than not, ghostwritten. Of the remaining four reports, Hawley appeared to have no involvement in three and limited involvement in editing the fourth.
2. Investigators find that there is insufficient evidence to substantiate a finding that anyone in the State Bar's leadership knew of Hawley's ghostwriting before the Halpern May investigation began in 2021, apart from Holton, who learned the information from an SDTC at an NCBE event in 2016.
3. Although the textual ambiguity in Rule 2201(f) precludes investigators from finding that Hawley's substantive assistance to SDTCs in the performance of their duties constituted a direct violation of the letter of Rule 2201, investigators find that a preponderance of the evidence establishes that Hawley's drafting of Rule 2201 reports violated its spirit and undermined its purpose. Again, investigators note that the language of Rule 2201(f) was removed through the revisions Rule 2201 underwent in 2016.

Attachment A

CHAPTER 1. CHIEF TRIAL COUNSEL

STATE BAR NOTE

Formerly TRP Division III General Provisions, Chapter 2, State Bar Examiners and Investigations.

RULE 2101. AUTHORITY OF THE OFFICE OF THE CHIEF TRIAL COUNSEL

The Board of Governors of the State Bar delegates to the Office of the Chief Trial Counsel exclusive jurisdiction to review inquiries and complaints, conduct investigations and determine whether to file notices of disciplinary charges in the State Bar Court, except as provided in Title III, rules 2201 and 2502, and Title II, rules 150-157.

Eff. January 1, 1996.

Source: New (but see TRP 210, 211).

CHAPTER 2. SPECIAL DEPUTY TRIAL COUNSEL

RULE 2201. APPOINTMENT AND AUTHORITY

- (a) The Chief Trial Counsel or designee may appoint one or more Special Deputy Trial Counsel when the Office of the Chief Trial Counsel receives an inquiry or complaint regarding the following:
 - (1) A member employed by the State Bar of California;
 - (2) An attorney member of the Board of Governors;
 - (3) An attorney member of the governing board of any other entity of the State Bar; or
 - (4) A member who has a current or recent personal, financial, or professional relationship to the State Bar, its employees, or a member of the Board of Governors, or in other appropriate circumstances to avoid the appearance of any impropriety.
- (b) A Special Deputy Trial Counsel shall have all of the powers and duties of the Chief Trial Counsel and shall act entirely in his or her place or stead with regard to such an inquiry or complaint and any resulting investigation. A Special Deputy Trial Counsel may be removed by the Chief Trial Counsel only for good cause or any other condition that substantially impairs the performance of such Special Deputy Trial Counsel's duties.
- (c) A Special Deputy Trial Counsel must be an active member of the State Bar, but may not be an employee of the State Bar, a member of the Board of Governors, or a Judge Pro Tempore of the State Bar Court.
- (d) A Special Deputy Trial Counsel shall not receive compensation for services unless the Chief Trial Counsel has contracted in advance with that Special Deputy Trial Counsel to receive compensation.

- (e) A Special Deputy Trial Counsel shall comply with the written or other established policies of the State Bar of California and the Office of the Chief Trial Counsel, except to the extent that compliance would be inconsistent with the purposes of this rule.
- (f) A Special Deputy Trial Counsel may request that the Chief Trial Counsel or designee authorize the payment of reasonable expenses and for investigative, administrative and legal support. The Chief Trial Counsel or designee shall have discretion to determine the amount of financial, investigative, administrative and legal assistance to be provided.
- (g) The Chief Trial Counsel or designee shall conduct a preliminary review of an inquiry regarding a member described in paragraph (a) to determine whether to appoint a Special Deputy Trial Counsel to investigate the matter.
 - (1) If the Chief Trial Counsel or designee determines that the factual allegations of the inquiry are not sufficiently specific, that the inquiry is not from a credible source or that the factual allegations contained therein, if proven, would not result in discipline of the member, the Chief Trial Counsel or designee shall close the matter.
 - (2) If the Chief Trial Counsel or designee determines that the factual allegations of the inquiry are sufficiently specific, that the inquiry is from a credible source and that the factual allegations contained therein, if proven, may result in discipline of the member, the Chief Trial Counsel or designee shall appoint a Special Deputy Trial Counsel to conduct an investigation and such other proceedings as necessary or appropriate with respect to the inquiry.
 - (3) If the Chief Trial Counsel or designee is unable to determine whether the factual allegations of the inquiry are sufficiently specific and from a credible source, or that the factual allegations of the inquiry, if proven, may result in discipline of the member, the Chief Trial Counsel or designee shall appoint a Special Deputy Trial Counsel to make those determinations and, as warranted, to conduct an investigation and such other proceedings as necessary or appropriate.
- (h) The preliminary review required by paragraph (g) shall be completed within sixty (60) days after the written inquiry is first received; provided, however, that such time limit is not jurisdictional.
- (i) The Chief Trial Counsel shall recuse himself or herself with respect to an inquiry received by the Office of the Chief Trial Counsel if:
 - (1) The inquiry involves the Chief Trial Counsel;
 - (2) The Chief Trial Counsel believes, for any reason, that his or her recusal would further the interests of justice;
 - (3) The Chief Trial Counsel believes there is a substantial doubt as to his or her capacity to be impartial; or
 - (4) A person aware of the facts might reasonably entertain a doubt that the Chief Trial Counsel would be able to be impartial.

In the event of the Chief Trial Counsel's recusal, the inquiry shall be referred to the Chair of the Board's Committee on Regulation, Admissions and Discipline Oversight, who shall appoint a Special Deputy Trial Counsel to determine whether the factual allegations of the inquiry are sufficiently specific, from a credible source and whether, if the factual allegations contained therein, if proven, may result in discipline of the member. If the Special Deputy Trial Counsel determines that the factual allegations of the inquiry are sufficiently specific and from a credible source and that the allegations, if proven, may result in discipline of the member, the Special Deputy Trial Counsel shall conduct an investigation and such other proceedings as necessary or appropriate.

- (j) Upon the request of the Board Committee on Regulation, Admissions and Discipline Oversight, the Chief Trial Counsel shall submit a report to the Committee in closed session regarding the number, nature and disposition of inquiries, complaints or investigations involving the members described in paragraph (a), other than the Chief Trial Counsel.

Eff. January 1, 1996. Revised September 1, 2006.
Source: TRP 106, 212.

CHAPTER 3. CONFIDENTIALITY

STATE BAR NOTE

Formerly TRP Division III General Provisions, Chapter 3 Confidentiality of State Bar Court Records and Proceedings. With respect to proceedings pending in the State Bar Court, TRP 220 Confidentiality of Investigations and Formal Proceedings, TRP 221 Confidentiality of Information, TRP 225 Public Hearings, TRP 226 Information Available to Member, TRP 228 State Bar Court Access to Disciplinary Records During Consideration of Client Security Fund Application, TRP 229 Responses to Inquiries are superseded by Title II. With respect to State Bar Court files and records in proceedings pending in the State Bar Court, TRP 223 Records, is superseded by Title II. TRP 222 Advising Complainant is superseded by Title III rule 2403 Complainant.

RULE 2301. RECORDS

Except as otherwise provided by law or by these rules, the files and records of the Office of the Chief Trial Counsel are confidential.

Eff. January 1, 1996.
Source: TRP 223 (substantially revised).

RULE 2302. DISCLOSURE OF INFORMATION

- (a) Except as otherwise provided by law or these rules, information concerning inquiries, complaints or investigations is confidential.
- (b) A member whose conduct is the subject of an inquiry, complaint or investigation may waive confidentiality.