

The Bar's Unasked Question About Race and Atty Discipline - Law360 Pulse

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Often recognized but rarely discussed directly, racial disparities in disciplinary actions — a hot-button issue largely unexamined by state bars — and how to address them are one key to improving the profession's stubbornly low representation of Black lawyers, advocates say.

A new federal suit from a Georgia lawyer seeking a raft of data from the state bar, including the racial makeup of disbarred lawyers, puts a light on the issue and the pronounced lack of inquiry on the intersection of race and lawyer regulation nationally.

"There are lots of places where there can be disparate impacts on minority lawyers, starting with who gets a grievance, and it could happen in how those grievances are perceived and handled after they come in," said Leslie Levin, a University of Connecticut School of Law professor who studies lawyer regulation.

"Unfortunately, the state bars just don't have the data to even test these questions," Levin said. "I don't know if parts of the legal community give it any thought."

Last month, an Atlanta attorney fighting a possible two-year suspension sued the [State Bar of Georgia](#), saying that she and other Black lawyers are [treated harshly](#) by bar counsel for misconduct allegations for which white attorneys get a pass. Through outside counsel, Georgia bar officials denied the allegations, saying race plays "no role" in disciplinary actions.

Whatever the outcome of that case, legal academics and others say there is some hard evidence, particularly from a rare study conducted by the California bar, of a complex but discernable problem.

In affinity group lunches and at bar events, lawyers also share stories of Black lawyers buffeted by complaints from clients or opposing counsel; over-representation of lawyers of color within the small minority of lawyers facing ethics charges; and minor practice management or accounting infractions being too quickly interpreted as incompetence or worse.

"Anecdotally, and as a Black lawyer and in the communities I come from, I certainly heard about this issue well before I started working at the bar," said Leah Wilson, who first joined the [State Bar of California](#) administration as chief operating officer in 2015.

With Wilson in the executive director chair in 2019, the bar commissioned a study of more than 116,300 attorneys admitted in California between 1990 and 2009. The study, run by University of California, Irvine professor George Farkas, drew from data long gathered by the bar in the admission process, included an analysis of disciplinary outcomes imposed through 2018.

The result was eye-opening: Black male attorneys were nearly four times more likely to be disbarred or resign while charges were pending than white male attorneys. Black men were more than three times more likely to be put on probation. Smaller disparities were also seen for Hispanic men and for Black and Hispanic women compared with white women.

The difference came partly from discrepancies in the number of complaints filed against different groups. Between 1990 and 2009, 46% of Black lawyers had at least one complaint filed against them. For white lawyers, it was 32%.

In another striking statistic, only 1% of female Asian attorneys had received 10 or more complaints, while 4% of white male lawyers had that volume. For Black male lawyers, it was 12%.

The report said it was not clear why Black male lawyers received more complaints than other attorneys. Other variables including previous discipline history, investigation volume and whether a lawyer was unrepresented also played a role in the racial differences.

"The disproportionate rate at which Black attorneys are put on probation and disbarred is associated with their having more complaints filed against them," the report said. "This, in turn, makes it more likely that an attorney will be investigated and disciplined. To compound the disproportionate impact, Black attorneys in particular are less likely to be represented by counsel when they are under investigation by the State Bar."

Experts say the depth of the data available in the nation's largest state bar points at a broader national issue. But hard data on racial breakdowns and bar actions is scant.

In a 2022 study, researchers noted that the vast majority of state bars do not maintain data on race and ethnicity in their disciplinary systems.

But in the small number of bars outside California that track demographics or have done limited inquiries — Illinois, New Mexico and Texas — the study said disproportionate numbers of their Black and Hispanic lawyers get sanctioned.

Andrea Curcio, a Georgia State University College of Law professor and co-author of the study, said some of the limited research on the issue linked racial disparities to "seemingly neutral reasons." That includes the fact that a relatively high percentage of Black lawyers run solo practices, and solo lawyers generally are more often sanctioned.

"The bottom line is that states should study this and, if they find problems, begin to study why the problems exist and how to remedy them," she told Law360 Pulse.

"The story may be as much about [ignoring] a potential problem as it is about discussing the problem," she said.

At the California bar, the 2019 study and a follow-up report in 2020 have informed a series of initiatives and procedure changes.

Based on the correlation between a high volume of complaints and later sanctions, the bar in 2020 archived nearly 400,000 discipline cases of all types that were more than 5 years old and closed without public discipline, thus removing them from the view of intake staff who assess the merits of fresh complaints.

That move is particularly notable in light of the Tom Girardi debacle at the California bar. The group has acknowledged that investigators' focus on "low-hanging fruit" cases — typically solo practitioners and small-practice lawyers — and failures to draw on Girardi's extensive complaint history contributed to a huge oversight failure and further client rip-offs.

Last year, the bar also began distributing a flyer to all respondent lawyers about the importance of having counsel. Based in part on the racial disparity data, Wilson said the organization has also bolstered initiatives meant to head off "reportable action bank" cases — essentially, cases triggered by automatic notifications of a lawyer bouncing a check on a client trust account.

"It's hard to imagine in this day and age a bar not collecting basic demographic data," she said.

"Unfortunately, any conversation about that is often viewed in the lens of 'progressives' or being political and too left ... so even asking for this data is a huge political challenge."

Christopher Robertson of Boston University School of Law, who worked for a consultant for the California bar and made a series of recommendations based on the Farkas report, said the profession shouldn't be deterred by a lack of hard evidence.

"Some of these ideas, they're not rocket science," he said. "What we know is there are fundamental, systemic problems in attorney discipline, and California was just in the right position to put a spotlight on them."

Citing the overdraft issue identified in the 2019 report, he noted that when lawyers with a big account balance make a bookkeeping mistake, the next check still clears, and the bar is none the wiser.

"Prosecuting bounced checks doesn't necessarily target the most unprofessional lawyers. You could be just punishing lawyers with low balances," he said. "And by the way, those are also the lawyers representing clients with low bank accounts, the same people that lack access to the justice system."

--Editing by Brian Baresch and Jill Coffey.

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