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Exploring Lawyer Misconduct: An Examination of the Self-Regulation Process

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ABSTRACT

Although white-collar professionals are often held in high esteem, sometimes persons in privileged positions engage in misconduct. Unfortunately, very little is known about the correlates associated with professional misconduct and even less is known about the sanctioning process among lawyers who are licensed by state bar associations and therefore subject to the bar rules regulating their professional conduct. We examine 213 complaints filed in one fiscal year with the Florida Bar, alleging attorney misconduct and evaluate the factors that influence whether the complaint continued through, or was discarded at, each stage of the self-regulated grievance process. Using selection models that examine both the staff's decision to send a case forward to the grievance committee as well as the grievance committee's recommendation about sanctioning the lawyer, results show that both legal and extra-legal variables are related to these two processes.

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Most research on deviant behaviors has been primarily concerned with the imposition of sanctions among street criminals. Sutherland's (1942) call to focus more (or at least as much) attention on the crimes committed by persons in occupations and/or of privileged status notwithstanding, theoretical and empirical research has not quite kept pace. Although there are important exceptions to this overall finding (see Wheeler, Weisburd, and Bode 1982; Weisburd and Waring 2001), most of the research among more white-collar or corporate occupations and crime has been narrowly focused. In fact, while there has been much research on professional malfeasance especially with respect to those in the medical profession, including the classic Harvard Medical Malpractice Study (1990; see also Kessler 2011), there has been virtually no empirical research on professional malfeasance and sanctioning among those in the legal profession (see Abel 2012; Carlin 1966; Arnold and Hagan 1992). This may be due, in part, to the fact that lawyer misconduct does not always come to the attention of the formal criminal justice system. Instead, state bar disciplinary systems are designed to sanction attorneys who violate the rules of professional conduct, deter other lawyers from engaging in similar misconduct, and protect the public. There has been very limited research about this process, and its outcomes, in large part because of the lack of available data. As well, most of the research on this topic has been very descriptive, consisting primarily of case studies, not empirical, and not methodologically rigorous. Accordingly, our study is designed as a preliminary investigation into the lawyer sanctioning process.

Using a sample of lawyer misconduct cases submitted to the Florida Bar Grievance Committee in the early 2000s, we examine how legal and extra-legal factors are related to two interrelated decisions regarding lawyer sanctioning: (1) the Florida Bar staff's decision to send a case forward to the

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grievance committee as well as (2) the grievance committee's recommendation about sanctioning the lawyer. In the next section, we provide some summary statements concerning the literature on professional (and especially lawyer) malfeasance, but spend considerably more time on the malfeasance and sanctioning process among professional lawyers, the group to which we focus on in the current study, and whose ethical misconduct has been characterized as "a paradigmatic instance of white-collar crime" (Abel 2012:188).

Punishing professionals: Narrowing the focus to lawyers

Many professions self-regulate, or at least, in theory, hope to self-regulate such that misconduct and other violations stay removed, at least in part, from the criminal justice system. These include academics (Steneck 1994), food companies (Sharma, Teret, and Brownell 2010), the auto (Atkinson and Garner 1987) and airline (Truxal 2013) industries, doctors and nurses (Derbyshire 1983), police officers (Klockars, Ivkovich, and Haberfeld 2007), corporations (Braithwaite 1982), as well as lawyers (D'Amato 1990–1991). Although there has been some research on self-regulation and punishment with several of these professional occupations, our focus in the current study rests on lawyers, for which the extant knowledge base is nascent with only a handful of prior studies—most of which consist of case studies (Abel 2008 2010; Carlin 1966; Handler 1967). On this score, Abel (2012:189) commented that his "case studies (involving 16 lawyers) would be premature without analyzing statistically significant variation among larger populations."

By virtue of self-regulation, state bar associations serve as mechanisms of both surveillance and sanction against deviance from the rules of professional conduct. State bar associations almost universally maintain a system designed to self-regulate and discipline attorneys who are members of the bar and who have committed infractions or other sanctionable conduct.[1] Although complaints that give rise to disciplinary actions can be submitted by clients, legal professionals, and other third parties, individuals must actively identify the manner and process for filing such a complaint, which is typically discussed and explained on respective State Bar websites. Although the sanctioning process in each state bar is typically touted as an open and public process, the transparency, or lack thereof in disciplinary proceedings, has been the subject of much discussion over the past four decades (Levin 2007). Most bar associations release data about the number of complaints and sanctions against their own members in a given year in their own published annual reports but information about the process of resolving those cases remains largely unknown and inaccessible.

Some bar associations provide minimal data that allow for some insight into the nature and extent of complaints filed and sanctions imposed. According to the latest national data publicly available from the American Bar Association,[2] 116,384 complaints were filed against 1,340,602 attorneys with active licenses in the United States in 2011. Of those complaints, 4,174 attorneys (3.6% of those who had complaints filed against them) were publically sanctioned.[3] These sanctions included involuntary disbarment, consented disbarment, suspension (interim or otherwise), reprimand/censure, and probation. Thus, a very small fraction of attorneys (less than a third of 1%) are actually disciplined in a given year.

Further detail from state bar associations provides limited insight into the characteristics of attorneys who are likely to face disciplinary proceedings. For example, the Illinois State Bar (2004) found that solo practitioners were disproportionately sanctioned compared to their

[1]It is also the case that the motivation for professional organizations to self-regulate is not simply to avoid criminal justice jurisdiction. State bar associations likely aspire to have their members have high moral standards and to act in an ethical manner.

[2]The ABA Survey on Lawyer Discipline Systems (S.O.L.D.) (American Bar Association 2013).

[3]Several states in the United States also give private sanctions, but they are not included in this figure. It is also possible that more than one complaint is filed against the same attorney, which would increase the percent if the data were available.

representation within the overall attorney population.[4] Similar results were found in California and Oregon (Levin 2004). However, other state reports find no greater likelihood of sanctions against solo practitioners, although the impact of those sanctions could be greater (e.g., Curtis and Kaufman 2003–2004). Some propose that higher rates are the result of the common practice areas of solo practitioners (i.e., criminal defense, domestic issues, and personal injury) and therefore most of the clients are individuals emotionally embroiled with their cases (Cowgill 2008). These clients often have lesser financial means and fewer resources than the large firm client counterparts. In many cases, such resource-deprived clients are more apt to resort to a bar complaint than wealthier and more connected clients, who may have greater access to other avenues for redress of grievances with their attorneys (mediation, lawsuits, negotiations, reputation within the business community, etc.). In addition, solo practitioners tend to lack the same level of administrative support (secretaries, assistants, paralegals) that are available to their non-solo practitioner counterparts (Annual Report of the Attorney Registration and Disciplinary Commission 2003; Levin 2004).

In addition to the type of legal practice (solo or other), descriptive analyses identify two additional personal and professional characteristics that might be disproportionately represented in disciplinary proceedings—gender and experience. Curtis and Kaufman (2003–2004) found that male attorneys and attorneys with more experience were overrepresented in disciplinary sanctions that took place in Florida from 1988–2002. Their analysis of newspaper articles and other public documents showed that the longer the attorney was practicing, the more likely they were to be disciplined. In 2001, more than 66% of the attorneys who received disciplinary action were practicing law for at least ten years and in 2002 it was closer to 70% (Curtis and Kaufman 2003–2004). Although they do not calculate these numbers as a percent of all attorneys with more than 10 years of experience, the authors opined that the results could be a reflection of having more opportunities to be disciplined. Similarly, the number of female attorneys in disciplinary proceedings (6–14%) underrepresents the number that would be predicted by the number of female attorneys admitted to the Florida Bar (29% in 2003).

More recently, several scholars considered the lawyer deviance and discipline topic in a special issue of *Legal Ethics*. Although these articles were very informative, spanning topics such as how the ethical environment may play a role in an individual's likelihood of committing a violation (Boon and Whyte 2012), how New Zealand handles ethical violations by their attorneys (Buckingham 2012), and a case-study that illustrates problems with the lawyer disciplinary system in Australia (Haller 2012), none of them contained empirical analyses of the lawyer disciplinary system. In fact, only a handful of empirical studies have examined issues related to lawyer misconduct.

Arnold and Hagan (1992) were among the first to test empirically whether solo practitioners are more likely to face disciplinary proceedings. They hypothesized that solo status would interact with inexperience and economic difficulty to simultaneously increase the likelihood of lawyer misconduct and decrease the capacity to avoid detection and prosecution. Their analysis of data from an eight-year sample of 639 lawyers who had misconduct complaints filed with the Law Society[5] of a Canadian province supported their hypotheses that inexperience (i.e., lack of time in practice), being a solo practitioner, and macro-level changes in the economy (economic recession) increased the likelihood that a complaint would be forwarded for prosecution. Serious offenses and those that involved client financial harm or trust account violations also increased the risk of prosecution. As might be expected, complaints against attorneys with prior complaints and/or prosecutions also raised the risk. The effect of solo practitioner status was more appropriately understood through significant two-way interactions with economic recession (greater risk during recession) and the

[4]Nineteen percent of the practicing lawyers in Illinois in 2001 were solo practitioners. Sixty-seven percent of all attorneys sanctioned in Illinois between 1998 and 2002 were solo practitioners (2003 Annual Report of the Attorney Registration and Disciplinary Commission (Illinois)).

[5]In Canada, the Law Society is akin to state bar associations in the United States.

level of experience (greater risk with five to nine years' experience compared to less than five or more than nine years of experience).

Hatamyar and Simmons (2004) analyzed 3,500 nationwide cases (all of which were available to the public) and reported that female attorneys were being disciplined at a statistically significant lower rate than their male counterparts. The authors concluded that females were less likely to be self-employed, which may explain a percentage of the disparity between the treatments of the sexes, because, as noted earlier, solo practitioners constitute a relatively large portion of the total number of attorneys who are ultimately disciplined. Finally, their results showed that although 23.6% of the attorney population was female, the number of disbarred (the most serious noncriminal sanction) attorneys was 40% lower than expected given the proportion of females in the attorney population.

Levin, Zozulla, and Siegelman (2013) expanded the scope of research on disciplinary proceedings by examining predictors of the severity of sanction. Using data from the Bar Admissions applicants for all lawyers who had been admitted to the Connecticut Bar between 1989 and 1992, they investigated how various lawyer characteristics could distinguish lawyers who were never disciplined, received less severe discipline (e.g., reprimand, probation) or received serious discipline (e.g., disbarred, suspended). On average, disciplined lawyers had been practicing about ten years and most were solo practitioners. Consistent with Hatamyar and Simmons (2004), female lawyers were underrepresented among those disciplined. Multinomial regression analyses confirmed that being female reduced the likelihood of either less severe or more severe discipline. Unfortunately, solo practitioner status was not included as a predictor. As well, a measure for years of experience was not significant, perhaps because of limited variability due to sample section criteria (all were admitted to the bar within a four year span).

One troubling gap in the literature is the lack of attention to the complainant. Whether the initial allegations regarding misconduct (the complaint) emanated from a lay citizen or from another legal professional may be relevant because other legal professionals are more versed in the ethical rules and regulations placed upon attorneys than the average citizen. As such, the staff or the committee considering the complaint may place more weight on a complaint made by another legal professional. Legal professionals are trained to submit evidence to support a complaint, traditionally understand whether the committee will have jurisdiction over the complaint, and generally understand what is and is not a violation of their discipline's professional code. As such, complaints submitted by legal professionals (i.e., judges and other attorneys) may be more robust and complete than those submitted by lay counterparts. On the other hand, bar members may use the grievance process as an alternative or supplemental mechanism for legal disputes. For example, an attorney or party who has lost a legal battle or otherwise is aggrieved with a legal opponent may view a bar complaint as a means of retribution or appropriate next step in resolving an inter-bar member dispute. Of course, when a legal professional files a frivolous complaint or claim, they place themselves at risk of being sanctioned.

Current focus

These previous studies notwithstanding, the knowledge base on lawyer misconduct and the lawyer sanctioning process is thin and very limited based on the lack of data as well as the methodological rigor applied to assessing the lawyer sanctioning process. Herein, we use data on a sample of lawyers referred to the Florida Bar in order to investigate two important and interrelated decision points in the disciplinary process: (1) Bar Regulatory Staff's decision about the lawyer complaint (sent to grievance committee, case closure, other, etc.) and (2) the disciplinary outcome (sanction vs. no sanction) for the sample of cases that proceeded to the grievance committee.

We hypothesize that key personal and professional characteristics predict the risk and nature of disciplinary sanction. First, as prior research has noted the importance of respondent's gender and has found that the percentage of male attorneys being disciplined is substantially higher than it is for female attorneys (Arnold and Hagan 1992; Curtis and Kaufman 2003–2004; Levin et al. 2013), we

anticipate that males will be over-represented in the lawyer discipline and sanctioning process. Second, as previous research has identified that the respondent's professional position (solo, partner, associate, employee) is related to lawyer discipline and sanctioning (Curtis and Kaufman 2003–2004; Levin et al. 2013), with solo practitioners at higher risk (Arnold and Hagan 1992), we hypothesize that solo practitioners will be at greater risk for sanction. Third, years of experience should predict disciplinary outcome but it is unclear whether it will correlate positively or negatively. For example, lawyers who do not have much experience may be less apt to know how the system works, to know many other colleagues who may assist them, and have positions in relatively large, higher-powered firms that have a ready stock of more and more experienced lawyers whom may be familiar with the disciplinary process. As a result, then, solo practitioners may be more likely to violate the rules and/or be processed and punished (see Arnold and Hagan 1992). On the other hand, lawyers who have been practicing longer are more likely to have accumulated more case and client experiences that combine to increase the probability that they are likely to be at increased risk for being disciplined (see also Curtis and Kaufman 2003–2004).[6] Finally, we suspect that the type of complainant will also affect discipline risk, but it is unclear whether legal professionals' complaints will carry more weight than those of citizens.

This study advances the literature in several ways. First, we simultaneously examine several predictors of discipline—gender, professional status, and years of experience, that have been shown to predict disciplinary action but have not been tested simultaneously. Second, we add an additional predictor, type of complainant, that is theoretically important but that has not been examined in prior research. Finally, we use a selection framework analytic design, which takes into consideration the reality that the grievance committee only sees cases that are forwarded to them for adjudication (from the staff).

Data and variables

A stratified random sample was drawn from cases resolved during the 2001–2002 fiscal year in the State of Florida. Approximately 10% (n = 213) of total cases were sampled. Given Curtis and Kaufman's (2003–2004) findings that Florida's geographic variation in caseload was not necessarily explained solely by population size,[7] we first stratified by lawyer regulation branch office (approximately 40 cases from each of five branch offices) and then case outcome (approximately 20 cases forwarded to the grievance committee and 20 cases with some other case disposition). Paper case files were provided by the Disciplinary Office and manually coded by research assistants.

Dependent variables

In the current study, we consider two different (but related) outcome variables. The first, *staff action*, is a three-category variable indicating what the Bar's regulatory staff decided based on the complaint. Across the 213 cases in our database, the majority (n = 119) were sent to the grievance committee, followed by case closure (and no further action) (n = 79), nine cases were dealt with by the staff themselves, and six case files did not contain information on staff action. The second outcome variable, *grievance committee action*, denotes the grievance committee's recommendation regarding the cases that were forwarded to them. Based on 117 cases with complete data (information on two cases sent to the grievance committee was not denoted in the case file), 70 received some sort of sanction, 35 received minimum action, and 12 were closed by the grievance committee. For purposes of the current analyses, we recoded each of these two variables: *staff action* was dichotomized as 0

[6]It has historically been the case that in Florida, the more experienced attorneys are disproportionately men. This is borne out in our data as well, where males have, on average, four years of experience compared to three years for women ($t = 2.931$, $p < .05$).
[7]Curtis and Kaufmann used Florida census data from the year 2000 and examined cases between 1988 and 2002.

(case not sent to grievance committee) or 1 (case sent to grievance committee), while *grievance committee recommendation* was dichotomized as 0 (closed/minimum action) or 1 (sanctions).[8]

Independent variables

From previous studies, and from the more general area of research on professional and lawyer malfeasance, we test four key variables. Although there are certain to be many others, such as client background and/or other demographic characteristics, we have to rely on the data made available in the Florida Bar case files.[9]

Respondent's gender

Gender is coded as men (1 = 84.04%) and women (2 = 15.96%). Importantly, women are the minority in the U.S. attorney population (27.6% in 2000) (Carson 2004).

Respondent's professional position

The majority of cases disciplined were from solo practitioners (54%). Thus, we include a dichotomous variable indicating solo practitioners (= 1; non-solo = 0).[10]

Respondent's years of experience

The average number of years that the respondent was a member of the Florida Bar was 3.871 (*SD* = 1.840), with a range of one to nine years.

Complainant

In the case files, this variable was originally coded as either no or yes, the latter of which had three options: yes-lawyer, yes-judge, yes-Florida Bar. We recoded the original measure into a dichotomous variable indicating non-legal professional (90.2%) or legal professional (9.80%). In the disciplinary files, nine cases were missing information.

Evidence submitted with complaint

We also control for whether the complaint contained or included any evidence (witness statement(s), court transcript(s), financial documents, official documents, correspondence, other) beyond the conclusory allegations contained in the complaint itself. When and if a complaint is substantiated with actual evidence supporting the allegations, it is likely to be given more weight by both the staff and the grievance committee in comparison to a complaint that rests on accusations alone. Moreover, a complaint that included attached evidence is likely to indicate that the complainant spent more time in crafting and submitting the complaint, which, again, may be suggestive and useful in determining the likelihood of the strength of the underlying complaint. This variable was scored dichotomously as 0 (no evidence submitted, 35.68%) or 1 (some evidence submitted, 64.32%).

[8]The grievance committee makes a recommendation to the Florida Supreme Court to sanction. The Court ultimately decides on the sanction and does not always agree with the committee's recommendation. The grievance committee does, however, make decisions. For example, they can decide that there is no probable cause or that the case would be a good one for diversion but ultimately the suggestion of a sanction is only a recommendation.

[9]This is an important issue and noted limitation of our work, as well as the other empirical studies that have examined lawyer misconduct. The problem across all these studies concerns the lack of data contained in Bar disciplinary records when they are available and open to public and researcher request. In the Discussion section, we highlight this issue and also identify additional variables that we believe are important to include in subsequent Bar-related data collections.

[10]Levin et al. (2013:9) report that "women are more likely to work in solo practice than men and should thus be more susceptible to grievances and disciplines." In the case files, females were only slightly but not significantly more likely to work as a solo practitioner (60% vs. 53.13%).

Analysis plan

We are primarily interested in how the key independent variables influence both the staff's decision to send a case forward to the grievance committee as well as the grievance committee's recommendation about sanctioning the lawyer. In this case, the grievance committee only sees cases that are forwarded to them for adjudication (from the staff). This implies a selection process and necessitates a particular modeling strategy, that is, the Heckman selection model (Heckman 1976, 1979), or a censored bivariate probit model. For this model, two equations are specified. The first is the selection equation, in which the staff's decision to send a case to the grievance committee is predicted by respondent's gender, solo practitioner, years of experience, complaint substantiated, and complainant. The second equation is the outcome equation predicting whether the grievance committee handed down a sanction to the lawyer, contingent on cases being selected and sent to the grievance committee. For this outcome equation, all of the variables except for complainant are included. Specifically, we use this variable as a type of identifying variable (for the selection equation) because we believe that it will strongly influence the staff's decision to send a case forward to the grievance committee but not influence the final outcome (the grievance committee's recommendation to sanction). By the time any complaint gets to the grievance committee, it is has already been determined that the complaint deals with a professional responsibility issue and that the grievance committee has jurisdiction over it. In fact, this is realized in our data, as the majority of cases (85%) that involved a legal professional were sent by the staff to the grievance committee ($\chi^2 = 6.397$, $p < .05$), while legal professionals were equally likely to be sanctioned (47.37%) or not sanctioned (52.63%) ($\chi^2 = 1.513$, $p > .05$).

A key feature of this modeling strategy is that it estimates two different models, (a) a restricted model that assumes that there is no correlation between the two equations (selection and outcome) and (b) a free model that allows for the correlated errors across the two equations (rho, which is denoted by the Greek letter ρ) to vary. If the difference between these two log-likelihoods is not statistically significant, then this would imply that the errors are uncorrelated (ρ is not statistically significant) and thus the two separate models (one for selection and one for outcome) can be estimated separately (i.e., the two processes can be considered independently and not jointly). For comparison purposes, we present the analyses using both approaches.

Results

Table 1 presents the results of a logistic regression predicting the staff's decision to send a case forward to the grievance committee. As can be seen, four of the five variables are significant. Variables that increase the likelihood of a case being sent forward include being a solo practitioner, having the complaint substantiated, and complainant being a legal professional. On the other hand, having more years of experience was associated with a lower likelihood of having the case sent to the grievance committee. These results reflect a mixture of both legal and non-legal (such as solo practitioner, years of experience) variables influencing the staff's decision as to whether or not to send a case forward to the grievance committee.

Table 1. Logistic regression predicting staff decision to send case to grievance committee.

Variable	*OR*	*SE*
Respondent's Gender	.650	.355
Solo Practitioner	3.670	1.313*
Years of Experience	.799	.082*
Complaint Substantiated	3.195	1.189*
Legal Professional Complainant	5.776	4.708*

*$p < .05$; constant estimated but not shown.

Table 2. Logistic regression predicting grievance committee recommendation to sanction.

Variable	*OR*	*SE*
Respondent's Gender	.702	.477
Solo Practitioner	3.592	1.587*
Years Experience	.936	.118
Complaint Substantiated	1.480	.752

*$p < .05$; constant estimated but not shown.

Turning to the grievance committee's recommendation to sanction a lawyer, estimates shown in Table 2 indicate that only one (non-legal) variable, being a solo practitioner, influences the likelihood of a recommended sanction and as in the staff decision results reported earlier, being a solo practitioner increases the odds of the grievance committee recommending a sanction.[11]

Finally, Table 3 reports the results of the censored bivariate probit model. With respect to the staff decision outcome, the same four variables are predictive of the staff decision and they exhibit the same substantive effect: being a solo practitioner, having the complaint substantiated, and complainant being a legal professional were all found to increase the likelihood that the staff would submit the case to the grievance committee, while having more years of experience was associated with a lower likelihood of having the case move forward.[12] Turning to the grievance committee's recommendation, again only one variable is significant, being a solo practitioner, and again it heightens the risk the grievance committee recommending a sanction.

In total, these censored bivariate probit results reveal a substantively similar pattern of findings regarding the relationship between the independent variables and two outcome variables as did the two separate logistic regressions. As well, the difference between the two log-likelihoods (restricted model: −151.0037; free model: −150.9463) is not statistically significant (nor is the ρ parameter) suggesting that the results for the two separate models is appropriate.

Table 3. Heckman selection model results (probit model with sample selection).

Variables	Coeff	SE
—Grievance Committee Recommendation		
Respondent's Gender	−.286	.417
Solo Practitioner	.779	.394*
Years Experience	.001	.100
Complaint Substantiated	.260	.409
—Staff Decision to Send Forward		
Respondent's Gender	−.213	.345
Solo Practitioner	.756	.215*
Years Experience	−.155	.064*
Complaint Substantiated	.700	.227*
Legal Professional Complainant	1.001	.427*

*$p < .05$; constant estimated but not shown; selection equation is for staff decision to send forward, outcome equation is for grievance committee recommendation to sanction.

[11]We did not include the legal professional complainant variable in this model because in the Heckman selection model that follows one variable has to be used in the selection (staff decision) model but not in the outcome (grievance committee recommendation) model. This approach, then, preserves that the same analytic set-up and results are provided across the two modeling approaches. As discussed earlier, there is no significant association between the grievance committee's recommendation to sanction the lawyer and whether the complaint was substantiated. Moreover, even when the logistic regression model predicting the grievance committee's recommendation to sanction is estimated with legal professional complainant in the model, it fails to have a significant effect nor does its inclusion alter any of the other coefficient estimates.

[12]Note that in the first two separate logistic regression equations, we present Odds Ratios, where values greater than 1 indicate an increased risk of experiencing the outcome while values less than 1 indicate a lessened risk of experiencing the outcome. In the Heckman selection model results shown in Table 3, we report traditional probit coefficients, in which a positive sign indicates a positive relationship between that variable and the outcome while a negative sign indicates an inverse relationship between that variable and the outcome.

Discussion

A great deal of research has focused on understanding why persons commit crime with much less research being undertaken on the reasons why some offenders are sanctioned but others are not. Our research was concerned with the reasons why a professional organization would sanction some professionals but not others. Accordingly, the purpose of this study was to examine the factors associated with how lawyers are disciplined within the Florida Bar, which is designed to sanction attorneys who violate the rules of professional conduct, deter other lawyers from engaging in similar misconduct, and protect the public. Our analysis of a random sample of Florida Bar discipline complaints revealed that a mixture of variables influenced the Bar disciplinary staff's decision about sending a case forward to the grievance committee but that only one variable, solo practitioner, was related to whether a sanction was ultimately recommended. Specifically, being a solo practitioner had the most consistent effects for both of the decisions examined here, findings that replicate those obtained by Arnold and Hagan (1992) in their thirty-year sample of Canadian lawyers.[13]

At the same time, just because solo practitioners are disproportionally disciplined it does not necessarily follow that they are disproportionally less ethical (Levin 2004). As Levin (2004) suggests, solo practitioners may be disproportionately sanctioned for several reasons. First, solo practitioners tend to have clients with limited means and have fewer options to handle disputes than corporate clients may have. Thus, these clients turn to the lawyer disciplinary system because it is free to utilize and relatively easy to make a complaint. Second, once a case enters the disciplinary system, solo practitioners may have fewer resources to defend the complaint than a larger law firm would have (Levin 2004). Finally, there may be a general institutional bias among disciplinary systems against solo practitioners (Levin 2014).

More generally, as has been found in the few other existing studies on lawyer misconduct processing, discipline is the exception and not the rule (see Carlin 1966; Handler 1967:146), especially given the large number of lawyers practicing in the state, the large array of cases they handle, and their many clients. Instead, informal punishment and in particular diversion, is often encouraged and utilized when certain criteria are met (The Florida Bar 2012). These diversion programs may be beneficial when the disciplinary committee feels the practitioner did not intentionally violate the ethical rules or when they would benefit from workshops or rehabilitation programs more than a sanction (The Florida Bar 2012).

Although our analysis of the Florida Bar disciplinary system provides some useful knowledge to the thin line of prior work on lawyer misconduct processing, several limitations should be acknowledged. First, and as is true of the small set of studies on this topic, we had to rely on the archived records from the Florida Bar, which were unfortunately incomplete in some respects but mainly limited by the variables that were collected. Unfortunately, state bar systems do not routinely collect the data that researchers may be interested in and thus we were unable to examine a range of other characteristics that may be related to lawyer processing and punishment. Although collecting additional data would create more work for the state bar associations, the transparency about how decisions are made is a vital component in procedures being viewed as fair (Tyler 1990). The public trust in the state bar associations would likely improve if the process of lawyer sanctioning was clear and transparent. In addition, more complete data collection would permit researchers to better predict what combination of factors are most at risk for lawyer misconduct. This knowledge could then be used to provide targeted resources where they are needed most. Going forward, some useful candidate variables would include individual characteristics such as substance abuse history, mental health problems, and average caseload. As well, it would be useful to gather data on potential mitigating and aggravating factors that were present in the case that brought the lawyer into the disciplinary process in the first place.

[13]Solo practitioners tend to have less power and resources that help them defend themselves and are also more often than not "at the bottom of the status ladder" and may face more pressure to violate the rules (Carlin 1966:168; see also Handler 1967:116).

Second, our data were limited to the State of Florida and because of resource limitations in the State Bar did not contain a larger sample of cases which would permit investigation of interaction effects. Replication and extension of our research with larger samples and in other jurisdictions is prudent. Detailed information about the type of complaint would enable future researchers to understand whether there are particular problem areas that are more likely to lead to a complaint. In the same vein, it would also be useful to collect information, when appropriate, about the underlying legal issue that brought the lawyer and the complainant together so as to determine if there are particular legal issues (e.g., divorce) that would benefit from additional attorney training. Related, it is possible that the state bar associations could endeavor to teach clients what is reasonable and appropriate to expect from an attorney. Because so many complaints are dismissed or unfounded, focusing on client education could bring some efficiency to the system.

Third, having available data on the general type of law that the attorney was practicing may offer insights as to which, if any, specialties (within the law) face greater odds of disciplinary proceedings. For example, is a generalist attorney who does not focus on a specific area of the law more at risk for mistakes than someone who is highly specialized? If so, the state bar could undertake efforts to provide resources and prevention measures to support attorneys practicing in these areas.

Finally, much like the pioneering research on courtroom workgroups generated landmark insight into how attorneys work in concert in the formal criminal justice system (Eisenstein and Jacob 1977), a rich qualitative analysis of how the state bar and grievance committee makes actual decisions would be a very useful project that would provide insight into their collective decision making and further the field's understanding of what kinds of factors may be more or less relevant across the various decision-making stages of the lawyer misconduct punishment process.

Recognizing that the extant literature does not do a good job of separating the likelihood of engaging in misconduct from the likelihood that misconduct will be alleged, prosecuted, and sanctioned, there have been a number of proposals put forth with respect to preventing lawyer deviance and misconduct, such as requiring disciplined lawyers to compensate their clients, as is done in Britain, and requiring periodic financial audits and regular financial reporting by attorneys (see Abel 2012). As well, our results point to the importance of paying close attention to solo practitioners. Because of their location within the lawyer hierarchy, some efforts aimed at them may help to lower the likelihood of their misconduct (and subsequent processing). For example, State Bars could be encouraged to create a solo and small practice section of the bar, or publicize and encourage practitioners to join, if one is already in place. These sections give solo practitioners ethical training specific to their circumstances and provide a support network from which to consult and learn. As Levin (2004) notes, these can be incredibly beneficial when a solo practitioner is handling an issue for the first time. In addition, most state bars provide ethics guidance to members through a hotline. An option may be to include information about a Bar's ethical assistance hotline with yearly dues statements to inform or remind solo practitioners of this important resource, one which law firms or corporate attorneys may not be concerned about because they often have legal ethics counsel on staff. There are certain to be several other policy and practice options available that may help limit lawyer misconduct and unethical practices in the first place, such as ethics training in law school and/or continuing ethics education courses over the course of an attorney's career that may help buttress against potentially unethical and illegal behavior. These and other topics also would be worthy of additional research.

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