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## A Public View of Attorney Discipline in Florida: Statistics, Commentary, and Analysis of Disciplinary Actions Against Licensed Attorneys in the State of Florida From 1988-2002

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# A PUBLIC VIEW OF ATTORNEY DISCIPLINE IN FLORIDA: STATISTICS, COMMENTARY, AND ANALYSIS OF DISCIPLINARY ACTIONS AGAINST LICENSED ATTORNEYS IN THE STATE OF FLORIDA FROM 1988-2002

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I.	INTRODUCTION, METHODS, AND PURPOSE.....	671
II.	THE FLORIDA SYSTEM .....	675
A.	<i>Admittance to the Florida Bar</i> .....	675
B.	<i>The Disciplinary System</i> .....	677
III.	OUR FINDINGS.....	688
A.	<i>General Findings</i> .....	688
B.	<i>Growth in Discipline Numbers Generally</i> .....	690
C.	<i>The Gender Gap</i> .....	691
D.	<i>Geography</i> .....	695
E.	<i>“Punishment” for the “Crime”</i> .....	703
1.	Trust Accounting—A Detailed Look.....	711
2.	Specific Thoughts About Criminal Behavior.....	715
IV.	CONCLUSION.....	717

This article is intended to serve as a commentary and analysis of a public-eye view of disciplinary actions taken against licensed attorneys in the State of Florida during the past fifteen years. The idea for this statistical review arose in 2002, prompted by discussions regarding self-regulation of various professions following the many corporate scandals then playing out in the headlines. Through these discussions, Professors Curtis and Kaufman

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developed the idea of looking at empirical data—from the Florida Bar to determine how the disciplinary system treated Florida lawyers.<sup>1</sup>

Each state that licenses attorneys is responsible for both the admittance standards and the discipline system for its licensed lawyers. In some states, the disciplining of lawyers is done behind closed doors, away from a public that cannot be trusted in the same way as they are trusted with judicial matters.<sup>2</sup> To be sure, much of the public seems to rely on the American Bar Association (“ABA”) as the voice of the legal profession—even though the ABA is a voluntary bar association and is not involved in the licensing of attorneys in any state.<sup>3</sup>

The number of active attorneys continues to be on the rise. One study has shown that Florida has approximately 3.1 active attorneys for every 1000 persons residing in the state.<sup>4</sup> This increase in the size of the profession raises questions as to whether the licensing system designed to handle a fewer number of licensees is working. This article will take a look at information regarding the admittance, licensing, and discipline of attorneys from the *public* perspective, not from the *attorneys’* perspective.

The topic of discipline clearly is of interest to lawyers nationwide, particularly to the tens of thousands of solo practitioners and small firm attorneys around the country. The *ABA Journal* has reported a perceived disciplining bias against solo and small firm practitioners.<sup>5</sup> According to the *ABA*

1. Professor Kaufman was the Director of the Law Library at NSU Law Center until August, 2003.

2. Frank J. Murray, *Practitioners Almost Bulletproof When it Comes to Client Complaints*, INSIGHT ON THE NEWS, Sept. 4, 2000, at [http://www.findarticles.com/cf\\_dls/ml571/33\\_16/65091764/p1/article.jhtml](http://www.findarticles.com/cf_dls/ml571/33_16/65091764/p1/article.jhtml) (last visited Mar. 27, 2004).

3. *See id.* The American Bar Association boasts more than 400,000 members and is “the largest voluntary professional association in the world.” A.B.A., ABOUT THE ABA, at <http://www.abanet.org/about/home.html> (last visited Mar. 27, 2004); *see also* AM. BAR ASS’N CTR. FOR PROF’L RESPONSIBILITY, SURVEY ON LAWYER DISCIPLINE SYSTEMS, at [http://www.abanet.org/cpr/discipline/sold/toc\\_2000.html](http://www.abanet.org/cpr/discipline/sold/toc_2000.html) (last visited Mar. 27, 2004). The American Bar Association Center for Professional Responsibility, Standing Committee on Professional Discipline has published for many years a “Survey on Lawyer Discipline Systems.” *See id.* This survey brings together pure statistics on lawyer discipline from states, but neither has a hand in shaping the disciplines, nor offers commentary on the states’ systems. *Id.*

4. Memorandum from Director of Academic Affairs and Licensing to the ABA Committee on Academic Affairs and Licensing, (September 3, 2003) (on file with author).

5. Mark Hansen, *Picking on the Little Guy*, 89 A.B.A. J. 30, 32 (Mar. 2003). This perception has been discussed at several organized bar meetings in the past year or so. *See id.*;

*Journal*, small-firm practitioners (the “little guys,” as the *ABA Journal* suggests) are disciplined at a disproportionately higher rate than lawyers in bigger firms, and the number of complaints against small-firm practitioners is higher as well.<sup>6</sup> However, at the recent 28th National Conference on Professional Responsibility, studies were presented from three state bars, which found no evidence of bias against solo and small firm practitioners in the discipline process.<sup>7</sup> A study by The State Bar of California concluded that the discipline process indeed had a higher *impact* on small-firm attorneys.<sup>8</sup> The impact, however, was a result of the factors that place small-firm attorneys at a greater risk for discipline, such as being overworked, and thus missing deadlines—rather than a result of an actual bias against these attorneys.<sup>9</sup>

### I. INTRODUCTION, METHODS, AND PURPOSE

For our study, we decided to review the licensing criteria and collected disciplinary reports, for a set number of years, as published by The Florida Bar, the licensing agency for attorneys practicing in Florida.<sup>10</sup> In other words, we placed ourselves in the shoes of a diligent consumer who may be

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*see also* Sharon Lerman, *No Bias Found Against Solos*, CAL. ST. B.J., Aug. 2001, available at <http://www.calbar.ca.gov/calbar/2cbj/01aug/page12-1.htm>. Sharon Lerman opined that the lack of support and managerial skills were more likely to be the root cause of discipline investigations, as well as, clients of small firms were more likely to file a complaint against a solo or small firm. *Id.*; *see also* STATE BAR OF CAL., INVESTIGATION AND PROSECUTION OF DISCIPLINARY COMPLAINT AGAINST ATTORNEYS IN SOLO PRACTICE, SMALL SIZE LAW FIRMS AND LARGE SIZE LAW FIRMS 5 (2001), available at [http://www.calbar.ca.gov/calbar/pdfs/reports/2001\\_SB143-Report.pdf](http://www.calbar.ca.gov/calbar/pdfs/reports/2001_SB143-Report.pdf) (last visited Mar. 27, 2004). The California Bar reported findings of a year-long study by Hilton Farnkopf & Hobson, LLC. *Id.*

6. Hansen, *supra* note 5, at 33.

7. *Id.* “Small firm practitioners” are defined by some states as those working in firms of ten or fewer lawyers.

8. Lerman, *supra* note 5.

9. Hansen, *supra* note 5, at 33. Other such risk factors included experiencing money worries and lacking documentation to defend themselves against complaints. *Id.* One of the difficulties in assessing this type of potential problem was the lack of routinely collected data on those who are disciplined and the specifics of their lawyer life. *Id.*

10. FLA. BAR ONLINE, FREQUENTLY ASKED QUESTIONS, at <http://www.flabar.org/tfb/flabarwe.nsf/f6301f4d554d40a385256a4f006e6566/47fc0a8f415a11d285256b2f006ccb83?OpenDocument> (last visited Mar. 27, 2004). Any lawyer practicing law in Florida must be a member of the Florida Bar. *Id.*

evaluating a profession, and availed ourselves of information accessible to a *consumer* of legal services.

On The Florida Bar website there is an enormous amount of information geared to consumers of legal services.<sup>11</sup> This information includes a searchable database of all lawyers, information on the complaint process, and rules about attorney conduct.<sup>12</sup> But one piece of information it does *not* provide is a full report of all disciplines in a single format available to the public.<sup>13</sup> We had both seen paragraphs listing the discipline of Florida attorneys published on The Florida Bar website and in *The Florida Bar News*. However, if we wanted a complete overview of the discipline picture, the data collection would be up to us.<sup>14</sup> We developed a plan to collect reports from the Florida Bar website and *The Florida Bar News*, enter the information obtained into a database, analyze the data, and report the findings. We began to compile data, anticipating results in a few months.

More than a year later, after steady work, we finally began our data analysis. We hired some wonderful research assistants to help with our data collection.<sup>15</sup> The research assistants began with The Florida Bar website. After exhausting that resource, they began to collect earlier data published in *The Florida Bar News*, while limiting their research to information accessible to a diligent consumer. The Florida Bar's method of reporting disciplinary actions has evolved through the years, with it recently becoming clearer, more concise, and more thorough. However, that also meant that the older

11. See generally FLA. BAR ONLINE, at <http://www.flabar.org> (last visited Mar. 27, 2004).

12. See *id.*

13. E.g., FLA. BAR ONLINE, THE FLORIDA BAR DISCIPLINARY STATISTICS, at <http://www.flabar.org/tfb/TFBLawReg.nsf/basic+view/F4AB3FF7CB9A5AFA85256B2F006C9F09?OpenDocument> (last visited Mar. 15, 2004) [hereinafter DISCIPLINARY STATISTICS]. The Florida Bar has published an overview of Disciplinary Statistics from 1996 to 2003. *Id.*

14. See, e.g., *Disciplinary Actions*, FLA. B. NEWS, Jan. 1, 2004, available at <http://www.flabar.org/DIVCOM/JN/JNNews01.nsf/Articles?OpenView&Start=6&Count=30&Expand=6#6> (last visited Mar. 27, 2004). *The Florida Bar News* is the industry newspaper of The Florida Bar. It is published twice monthly, on the first and the fifteenth of each month, and a subscription is part of the fee based membership benefits of the Florida Bar. The newspaper is readily available for review by the general public in most law libraries. The Florida Bar publishes paragraphs under the heading *Disciplinary Actions* in this newspaper, detailing actions taken by the Bar against members. See *id.* These paragraphs also appear for a time on the Florida Bar website. *Id.*

15. Our everlasting thanks to Ian Dolan (NSU '04) and Paul Hornick (NSU '04), who completed this phase of the task.

the copy of *The Florida Bar News*, the fewer—and more convoluted—were the reports.

Through diligent research of old issues of the newspapers,<sup>16</sup> and the use of a lot of copy-machine cards, the research assistants gathered page after page of information on disciplinary actions. The research assistants' attempts to obtain data from officials at The Florida Bar proved unfruitful. In fact, The Florida Bar did not release any specific information to us that contributed to our study.<sup>17</sup> We relied solely on what was published by The Florida Bar and what the "public" would be able to obtain. We readily admit that this inconsistency through the years may affect our statistics.<sup>18</sup> However, we felt it imperative to rely only on information available to the public if we were to remain true to the public access component of this project.

We initially set a period of twenty years for our data review. In the end, we decided only to enter data for fifteen years. The main drive behind this decision was the incomplete nature of the older disciplinary reports in *The Florida Bar News*. The further back the issue of the report, the more sporadic the decisions.<sup>19</sup> We decided that including reports compiled from in-

16. The newspapers were obtained through the Nova Southeastern University, Shepard Broad Law Center Library, ("NSU Library") as well as through interlibrary loan from the Broward County Law Library. Both libraries are open to the public.

17. FLA. BAR ONLINE, at <http://www.flabar.org> (last visited Mar. 27, 2004). The Bar Disciplinary Statistics, available at The Florida Bar website, are stated by fiscal year (July 1-June 30), rather than by calendar year. DISCIPLINARY STATISTICS, *supra* note 13. These statistics do not match our finds for two reasons. First, the study is calculated by calendar year rather than bar year, and second, the study calculated only from published paragraphs rather than directly from Bar files. *See id.*

18. *See* Gary Blankenship, *Grievance Group Gears Up for Year-long Examination*, FLA. BAR NEWS, Oct. 1, 2003 available at <http://www.flabar.org/DIVCOM/JN/JNNNews01.nsf/cb53c80c8fabd49d85256b5900678f6c/544d81763f45b83385256dac00526f7c?OpenDocument> (last visited Mar. 27, 2004). The authors know for certain that our numbers do not reflect the full number of disciplinary actions occurring in the state. In a recent issue of *The Florida Bar News*, it was reported that in 2002, 414 disciplinary actions were imposed. *Id.* In our look at what was published, only 217 reports of discipline were found.

19. *Disciplinary Actions*, *supra* note 14. The authors considered the fact that there were simply fewer disciplines twenty years ago, giving the appearance of incomplete reporting, but our concern stemmed from the irregular intervals in which the discipline reports appeared. In recent years, discipline reports appeared in every issue of *The Florida Bar News*, although disparate in number. *See id.* In earlier years, we could find no such predictable appearance by the reports. Also, it appeared that discipline categories and their definitions changed a bit in early years. *Id.*

formation two decades old, and probably incomplete, would not give us anywhere near a reliable picture of the disciplinary actions taken by The Florida Bar. We believe that fifteen years worth of data gives a clear, accurate picture of the public's view of attorney discipline.

As we began our data-entry stage (converting printed paragraphs into data in an spreadsheet program) we thought we were near completion. We were wrong again. The painstaking task of entering the information proved to require a Herculean effort.<sup>20</sup> We decided on which categories of information to scrutinize—such as name, year admitted to the bar, and location—and the research assistants began to sort. They took over a room in the library at the NSU Law Center to house the materials and create the database framework. One student became the keeper of each year's files—as well as the precious duplicates, which were guarded for safekeeping—and monitored the comings and goings of the valuable original data. The students divided up the calendar years and began to enter it . . . and enter it . . . and enter it.<sup>21</sup>

We analyzed the data using a combination of tools and methods. The use of Microsoft Excel helped us to sort and count the numbers, percentages, and other hard facts. Ultimately, tallies were done by hand, page by page, counting total numbers by county, discipline, and gender. Comparisons were then made by hand, examining areas such as numbers of men versus women, different counties in which the attorneys practiced, and years of experience. Selected data and its commentary appear in Part III of this article.<sup>22</sup>

In doing this article, we do not intend to embarrass any member of The Florida Bar or the institution itself. Rather, in this time of professional crisis, when questions abound as to who oversees professionals and their ethics, we felt that it was important to take this look at a small part of our profession.

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20. This monumental task was accomplished thanks to the efforts of Paul Hornick (NSU '04), Marcia Lucas (NSU '04), Scott Havericak (NSU '04), and most particularly Ian Dolan (NSU '04), Katherine Miller (NSU '05), and Jennifer Erdelyi (NSU '05). Extra thanks to Jennifer Erdelyi and Ian Dolan who not only entered data but oversaw its completion and structured its format.

21. While the earlier years of original data generally had few entries, the information given was not as concise and well organized as later years; and thus, it was more difficult to convert into the database format we had developed in Microsoft Excel.

22. Although the students were indispensable with the collection and organization of data, they did not perform any of the analysis or commentary on the data for this article. See *infra* Part III.

Some important disclaimers are necessary. First, we have not seen the original documents associated with these attorney complaints, nor have we been involved with any of these cases. Second, to repeat, we did not obtain our data directly from The Florida Bar. As stated, we collected what was readily available to the public, through common methods—what was published by The Florida Bar. We know there were many disciplines, which for undeterminable reasons, did not appear on The Florida Bar website or in *The Florida Bar News*. Therefore, the study's numbers most likely do not match official Florida Bar information. Third, the authors are not trained statisticians. The authors are legal scholars, who have collected research and used it to evaluate the profession. Fourth, we are human. We recognize that, unfortunately, a portion of the public does not associate this trait with attorneys; nevertheless, the authors are subject to error. Although we have used computer programs and undertaken multiple reviews of our information, it is possible that a portion of otherwise available data was missed or even miscalculated in our current data. Nevertheless, all of these issues notwithstanding, we believe that the overreaching message that we present is on target.

Part II of this article provides an overview of the admittance system and the discipline system for attorneys who are members of The Florida Bar. Part III offers some of our data as well as our analysis of our findings. Part IV outlines some of our conclusory thoughts and plans for the discipline of attorneys.

## II. THE FLORIDA SYSTEM

### A. *Admittance to the Florida Bar*

The admission of attorneys to the practice of law in the State of Florida is accomplished through the judicial system of the state.<sup>23</sup> The Supreme Court of Florida, the highest court in the state, has an administrative arm, called The Florida Board of Bar Examiners, which handles bar admissions.<sup>24</sup>

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23. FLA. BAR ADMISS. R. 1-11.

24. FLA. BAR ADMISS. R. 1-12. The Florida Board of Bar Examiners consists of twelve members of The Florida Bar and three members of the general public who are not attorneys. FLA. BAR ADMISS. R. 1-21.



The Florida Bar is often considered to be an exclusive organization, which is difficult to join.<sup>25</sup> Admission is divided into two general categories.<sup>26</sup> One is the taking, and passing, of the Florida Bar Exam and a Multi-state Professional Responsibility Exam.<sup>27</sup> The second requirement, which is often improperly given less emphasis by potential applicants, requires applicants to pass a character and fitness screening before admission.<sup>28</sup>

The Supreme Court of Florida has held that the “good moral character” requirement emphasizes “honesty, fairness, and respect for the rights of others . . . .”<sup>29</sup> An applicant’s standard of conduct also “must have a rational connection to the applicant’s fitness to practice law.”<sup>30</sup>

Rule 3 of the *Rules of the Supreme Court Relating to Admission to the Bar*, focuses on the “background investigation” of applicants.<sup>31</sup> Rule 3-10 sets the standards of attorneys admitted to the Bar.<sup>32</sup> Some are academic, grasping fundamental principles and reasoning, while others focus on the practice of law.<sup>33</sup> More specifically, a potential Bar member should have both the ability to, and in likelihood will:

- (1) Comply with deadlines.
- (2) Communicate candidly and civilly with clients, attorneys, courts and others.

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25. See FLA. BAR ADMISS. R. 1-16. The fee for filing an application to The Florida Bar and sitting for the exam can be as high as \$2500. FLA. BD. OF BAR EXAM’RS, FREQUENTLY ASKED QUESTIONS, at <http://www.floridabarexam.org/public/main.nsf/faq.html?OpenPage> (last visited Mar. 27, 2004). All applicants to the Bar must sit for the actual Florida Bar examination. *Id.* No one may gain “reciprocity” through admittance from another state. *Id.* Florida does not accept partial exam scores from other states. *Id.*

26. *Id.*

27. FLA. BAR ADMISS. R. 4-20. Rule 4 sets forth the requirements of the examinations and standards for passing. *Id.*

28. FLA. BAR ADMISS. R. 1-14.2. The Bar requires applicants to possess “good moral character.” FLA. BAR ADMISS. R. 2-14.1. The purpose of the character and fitness screening is “to protect the public and safeguard the judicial system.” FLA. BAR ADMISS. R. 1-14. Rule 2-12 specifically states that all applicants seeking admission “shall produce satisfactory evidence of good moral character.” FLA. BAR ADMISS. R. 2-12.

29. Fla. Bd. of Bar Exam’rs re G.W.L., 364 So. 2d 454, 458 (Fla. 1978).

30. *Id.*

31. FLA. BAR ADMISS. R. 3.

32. FLA. BAR ADMISS. R. 3-10.

33. FLA. BAR ADMISS. R. 3-10.1.

- (3) Conduct financial dealings in a responsible, honest, and trustworthy manner.
- (4) Avoid acts that are illegal, dishonest, fraudulent, or deceitful.
- (5) Conduct oneself in accordance with the requirements . . . and the Rules of Professional Conduct.<sup>34</sup>

Ultimately, an applicant who has complied with the rules for admission, passed the requisite examinations, and met character and fitness standards will be recommended to The Florida Bar by the Board of Bar Examiners for admission.<sup>35</sup> The Supreme Court of Florida will enter an order of admission upon its satisfaction of this recommendation.<sup>36</sup> Once an attorney either participates in an induction ceremony<sup>37</sup> or is otherwise sworn in,<sup>38</sup> the applicant then becomes subject to the administration of The Florida Bar and the *Rules Regulating the Florida Bar*.<sup>39</sup>

### B. *The Disciplinary System*

Chapter three of the *Rules Regulating the Florida Bar* govern the disciplinary system of the Florida Bar.<sup>40</sup> Through these rules, “[t]he Supreme Court of Florida establishes the authority and responsibilities of The Florida Bar . . .” as well as the responsibilities of its member attorneys.<sup>41</sup> In Florida,

34. FLA. BAR ADMISS. R. 3-10.1(c)(1)-(5).

35. FLA. BAR ADMISS. R. 5-10.

36. FLA. BAR ADMISS. R. 5-11.

37. FLA. BAR ADMISS. R. 5-12.

38. FLA. BAR ADMISS. R. 5-13.

39. FLA. BAR ADMISS. R. 5-15.

40. R. REGULATING FLA. BAR 3. The Florida Bar is both a licensing organization as well as a professional membership organization. This duality of function is called an “integrated” bar. FLA. BAR ONLINE, HISTORY OF THE FLORIDA BAR, at <http://www.flabar.org/tfb/TFBOrgan.nsf/basic+view/9C81AD9FC9FC8A5852566B2F006CD27B?OpenDocument> (last visited Mar. 27, 2004). In other states, the licensing and professional membership functions for attorneys are held by separate organizations.

41. FLA. STDS. IMPOSING LAW SANCS. 1.1, at <http://www.flabar.org/TFB/TFBLawReg.nsf/0/691CC41E2886B8E7852566B2F006CD7AD?OpenDocument> (last visited Mar. 27, 2004). The Supreme Court of Florida has the power under the Florida Constitution to regulate the admission of members of the Bar with the right to practice law, and thus set the ethical standards for those members. FLA. CONST. art. V, § 15. The current *Rules of Professional Conduct* were adopted in the late 1980’s and are based on the *ABA Model Rules of Profes-*

the Supreme Court of Florida has the power to set the “standards of conduct for lawyers, [as well as] to determine what constitutes grounds for discipline” for attorneys practicing in Florida.<sup>42</sup> The Supreme Court of Florida is also ultimately responsible for disciplining Florida attorneys, including revoking licenses to practice law.<sup>43</sup> This system is not without critics. The executive director of the legal reform group HALT has been quoted as stating that non-lawyers are capable of having, and should have a role in the discipline process.<sup>44</sup>

According to The Florida Bar website, the purpose of holding bar proceedings to discipline attorneys “is to protect the public and the administration of justice . . .” from attorneys who do not (or may not) correctly perform their professional duties either to clients, or the entire legal system.<sup>45</sup>

It is important to note that the disciplining of lawyers in Florida, which creates a public record, is different from the concept of the civil wrong of malpractice in Florida.<sup>46</sup> When attorneys are sued in a civil lawsuit for malpractice, the litigation is filed in the civil court system of the judicial circuit having jurisdiction over the attorney’s actions.<sup>47</sup> A case proceeds according to the court and substantive rules and laws governing that cause of action. However, the case must be initiated within the statute of limitations as set forth by section 95.11 of the *Florida Statutes*.<sup>48</sup> The goal in a malpractice lawsuit is usually monetary compensation for the client.<sup>49</sup>

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*sional Conduct.* See Timothy P. Chinaris, *A Brief Overview of Lawyer Regulation in Florida*, at <http://www.flabar.org/tfb/TFBConsum.nsf/basic+view/90DAD2CF7A8F877B85256B2F006C61BD?> (last visited F Mar. 27, 2004).

42. R. REGULATING FLA. BAR 3-1.2.

43. *Id.*

44. Murray, *supra* note 2. As quoted, “[i]f a jury made up of nonlawyers is good enough to decide a murder case or a million-dollar lawsuit, it’s certainly capable of determining whether a lawyer has cheated a client.” *Id.* As will be discussed, non-lawyers do have some input into the discipline system in the State of Florida.

45. FLA. STANDARDS IMPOSING LAW SANCS. 1.1.

46. R. REGULATING FLA. BAR 3-7.1(b).

47. See FLA. BAR. ONLINE, CONSUMER PAMPHLET: COMPLAINT AGAINST A FLORIDA LAWYER, at <http://www.flabar.org/tfb/TFBConsum.nsf/48e76203493b82ad852567090070c9b9/c5b7d247a0c9c45a85256b2f006c6186?OpenDocument> (last visited Mar. 27, 2004) [hereinafter COMPLAINT AGAINST A FLORIDA LAWYER].

48. FLA. STAT. § 95.11 (2002).

49. COMPLAINT AGAINST A FLORIDA LAWYER, *supra* note 47.

A bar disciplinary proceeding is different. As in other professions, such as the medical practice, attorneys are self-regulated, meaning that they have power to discipline their own members.<sup>50</sup> In contrast with other professions in Florida, attorneys are disciplined at a high rate. In the 1999-2000 fiscal year, the Bar disciplined the second highest percentage of its members among all Florida self-regulated professions.<sup>51</sup>

In Florida, the grievance process against an attorney begins with a complaint.<sup>52</sup> According to a public-access consumer pamphlet, *Complaint Against a Florida Lawyer*, a client who has a dispute with a lawyer should always write a non-threatening letter to the lawyer first.<sup>53</sup> That letter should thoroughly explain the problem and attempt to resolve it.<sup>54</sup> If the resulting action is unsatisfactory, the client should then contact the Attorney and Consumer Assistance Program ("ACAP"), which was launched by The Florida Bar in March 2001.<sup>55</sup> This program is designed to assist a client in resolving problems prior to a complaint being filed.<sup>56</sup> The following is a list of disputes that The Florida Bar has the authority to investigate:

A lawyer will not give you money he or she is holding on your behalf or will not give you a full written accounting; A lawyer continually fails to respond to inquiries about the case, to tell you about the court dates, or to appear in court; A lawyer lies or advises you or someone else to lie in the course of a case; A lawyer represents you as well as another person whose interests conflict with yours. A lawyer does not do what he or she has promised or does not do it in a timely way.<sup>57</sup>

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50. Jan Pudlow, *Disciplinary Details*, FLA. B. NEWS, Mar. 15, 2001, available at <http://www.flabar.org/DIVCOM/JN/JNNNews01.nsf/76d28aa8f2ee03e185256aa9005d8d9a/5cb1a95d473c0a5585256b0a007269c0?OpenDocument> (last visited Mar. 27, 2004).

51. *Id.* Only the Board of Dentistry disciplined a higher percentage of its licensees. *Id.*

52. COMPLAINT AGAINST A FLORIDA LAWYER, *supra* note 47.

53. *Id.*

54. *Id.*

55. Pudlow, *supra* note 50. The Attorney and Consumer Assistance Program ("ACAP") was created by the Florida Bar to investigate charges of unethical conduct against lawyers practicing in Florida. *Id.* ACAP does not handle fee disputes between clients and attorneys. *Id.*

56. COMPLAINT AGAINST A FLORIDA LAWYER, *supra* note 47.

57. FLA. BAR ONLINE, CONSUMER PAMPHLET: ATTORNEY CONSUMER ASSISTANCE PROGRAM, at <http://www.flabar.org/tfb/TFBConsum.nsf/basic+view/90DAD2CF7A8F877B8>

When a client contacts ACAP, the client first discusses the problem with ACAP's non-lawyer personnel, in order to explore the behavior of the subject attorney.<sup>58</sup> The information then is forwarded to ACAP attorneys, employed by The Florida Bar, who contacts the client for further discussion.<sup>59</sup> The role of the ACAP attorney is to help the client determine whether a complaint should be filed.<sup>60</sup> If the ACAP attorney determines that it is appropriate to do so, the ACAP attorney will assist the client in beginning the process of filing the complaint.<sup>61</sup>

A complaint filed against an attorney must always be in writing and signed under oath.<sup>62</sup> The proper complaint is a simple one-page document, although it allows the complainant to attach detailed information in order to properly document the nature of the problem at issue.<sup>63</sup> Complainants must be aware that the name, address, and telephone number of the person making the complaint, technically called an "inquiry" at this stage, not only becomes public record, but also is affirmatively disclosed to the attorney who is the subject of the complaint.<sup>64</sup>

Once a complaint is received by The Florida Bar, a file is created.<sup>65</sup> The case is assigned to a Florida Bar disciplinary staff attorney, in order to determine whether The Florida Bar has jurisdiction to investigate the inquiry.<sup>66</sup>

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5256B2F006C61BD? (last visited Mar. 27, 2004). [hereinafter ATTORNEY CONSUMER ASSISTANCE PROGRAM]. ACAP, The Florida Bar website, has extensive Consumer Services information. *Id.* Detailed guidance is available in print or the consumer can print it off the web site in PDF form. *Id.* Information is available in both English and Spanish. *Id.* A consumer of legal services merely has to go to The Florida Bar website, click on Consumer Services and the information and forms necessary to institute a complaint are highly accessible and available. *Id.*

58. ATTORNEY CONSUMER ASSISTANCE PROGRAM, *supra* note 57.

59. *Id.*

60. *Id.*

61. *Id.*

62. COMPLAINT AGAINST A FLORIDA LAWYER, *supra* note 47.

63. FLA. BAR ONLINE, CONSUMER PAMPHLETS: INQUIRY/COMPLAINT FORM, at [http://www.flabar.org/TFB/TFBResources.nsf/Attachments/AB230E7DCCC3B75385256B29004BD6DC/\\$FILE/acap-form-web04.pdf?OpenElement](http://www.flabar.org/TFB/TFBResources.nsf/Attachments/AB230E7DCCC3B75385256B29004BD6DC/$FILE/acap-form-web04.pdf?OpenElement) (last visited Mar. 27, 2004).

The Florida Bar website has a form which may be downloaded, or it may be sent from ACAP to a client. *Id.*

64. COMPLAINT AGAINST A FLORIDA LAWYER, *supra* note 47.

65. *Id.* This file is retained "in The Florida Bar's records for twelve months after the case is closed," even if the complaint is dismissed. *Id.*

66. *Id.*

Where The Florida Bar finds it does not have jurisdiction, no further action is taken by the Bar, and the file is closed.<sup>67</sup> If Bar counsel determines that the Bar does have jurisdiction, then the matter becomes technically known as a “complaint.”<sup>68</sup> In this case, the file is converted to a formal disciplinary file, and the Bar attorney begins the investigative process.<sup>69</sup>

Next, counsel for The Florida Bar writes to the lawyer, who is the subject of the complaint, and requests a response regarding the matter, which the accused lawyer is required to provide.<sup>70</sup> Generally, the accused attorney must respond within fifteen days, although extensions are granted liberally.<sup>71</sup> Subsequently, the complainants are allowed to respond and rebut the information contained in the lawyer’s response.<sup>72</sup>

Depending on the nature of the allegations, counsel for The Florida Bar may take other factual investigative steps before conducting a review to determine whether the case should be moved to the next stage of the proceeding—the grievance committee.<sup>73</sup> A grievance committee is comprised of volunteers.<sup>74</sup> The committee’s composition requires that at least one-third are not lawyers.<sup>75</sup> The committee serves within its judicial circuit to review “complaints with much the same purpose as a grand jury.”<sup>76</sup> Grievance committees may be informal, and are not bound by the rules of evidence or similar restrictions in its decision-making.<sup>77</sup> However, the committee only may hear complaints if a quorum, consisting of a minimum of three members

67. *Id.* The complaint is forever labeled “inquiries” at that point. COMPLAINT AGAINST A FLORIDA LAWYER, *supra* note 47.

68. *Id.*

69. *Id.* A matter regarding discipline which is not at any point conducted in the courts is confidential and may only be disclosed in accordance with rule 3-7.1 of the *Rules Regulating the Florida Bar*. R. REGULATING FLA. BAR 3-7.1. These rules ensure the confidentiality of information about cases that is provided the Bar in connection with disciplinary actions filed. *Id.*

70. COMPLAINT AGAINST A FLORIDA LAWYER, *supra* note 47.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

75. COMPLAINT AGAINST A FLORIDA LAWYER, *supra* note 47.

76. *Id.* Florida’s Courts are divided into twenty numbered Judicial Circuits, divided by geography. *Id.* Some counties comprise an entire judicial circuit, while other small counties may combine to be one judicial circuit. *Id.*

77. *Id.*

“2 of whom must be lawyers” exists.<sup>78</sup> A finding of probable cause must be made by majority vote of the group present.<sup>79</sup>

Upon a finding of probable cause by the grievance committee, counsel for The Florida Bar proceeds to file a formal complaint against the accused attorney with the Supreme Court of Florida.<sup>80</sup> If that complaint is contested by that attorney, the matter is sent to a circuit or county court judge for a trial on the complaint.<sup>81</sup> The judge in this matter is referred to as a “referee,” and hears evidence prior to making a finding of fact.<sup>82</sup> This finding serves as a recommendation to the Supreme Court of Florida, which has the final authority to decide on the discipline of any Florida attorney.<sup>83</sup> Alternatively, cases may be settled without such a trial.<sup>84</sup>

The types of discipline which may be imposed upon a lawyer are enumerated in rule 3-5 of the *Rules Regulating the Florida Bar*.<sup>85</sup> When the Supreme Court of Florida finds a member of The Florida Bar guilty of misconduct, the court may impose one of many levels of discipline.<sup>86</sup> First, the rules clearly distinguish situations which constitute “minor misconduct.”<sup>87</sup> Minor misconduct is defined by the rules as a function of what is *not* minor misconduct rather than an affirmative statement of what *is* minor misconduct.<sup>88</sup> Rule 3-5.1(b)(1) enumerates six conditions in which misconduct will not be regarded as minor: 1) “misappropriation of a client’s funds or property;” 2) behavior “likely to result in actual prejudice . . . to a client;” 3) improper behavior by an attorney who “has been publicly disciplined in the past 3 years;” 4) “misconduct . . . of the same nature [for which the subject attorney] has been disciplined in the past 5 years;” 5) “misconduct [which] in-

78. R. REGULATING FLA. BAR 3-7.4(g)(1).

79. R. REGULATING FLA. BAR 3-7.4(g)(3).

80. COMPLAINT AGAINST A FLORIDA LAWYER, *supra* note 47.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*; *see also* Fla. Bar v. Barley, 777 So. 2d 941 (Fla. 2000).

85. R. REGULATING FLA. BAR 3-5.1. In addition, Part B of the *Standard for Imposing Lawyer Sanctions*, describes the levels of discipline and reasons why each may be assessed. FLA. STDS. IMPOSING LAW. SANCS. 2.1–2.10.

86. R. REGULATING FLA. BAR 3-5.1(a). The Referee usually recommends a specific sanction according to discipline, but the Supreme Court of Florida ultimately decides this issue. R. REGULATING FLA. BAR 3-5.1.

87. R. REGULATING FLA. BAR 3-5.1(b).

88. *Id.*

cludes dishonesty, misrepresentation, deceit, or fraud” by the subject attorney; and 6) behavior constituting a felony.<sup>89</sup> Attorneys who are accused of minor misconduct may either admit to the behavior, or may have the Board of Governance reject a grievance committee report recommending minor misconduct.<sup>90</sup> In either event, appropriate steps to either conclude the matter or to take it to the next stage of the proceeding will take place.

If minor misconduct is found, the appropriate discipline is an “admonishment,” which declares that the conduct of the attorney was not proper, but does not limit that attorney’s right to practice law within the state.<sup>91</sup> A grievance committee can recommend admonishment for behavior that is other than minor if “unusual circumstances” are present in a case; otherwise, admonishments only are administered for minor misconduct.<sup>92</sup> An admonishment consists of a memorandum administering the admonishment, which is placed as part of the record of the proceeding, and a requirement that the offending attorney must appear before either the Board of Governors or a grievance committee to be verbally reprimanded about the misbehavior.<sup>93</sup>

Another option for disciplining an attorney is the issuance of a public reprimand, which also declares the conduct in question to be improper.<sup>94</sup> Like an admonishment, it does not put any limit on the attorney’s right to practice law in the state.<sup>95</sup> Public reprimands may be appropriate where injury or potential injury is caused, where the attorney’s behavior was negli-

89. *Id.*

90. R. REGULATING FLA. BAR 3-5.1(b)(4)-(5).

91. R. REGULATING FLA. BAR 3-5.1(a). In our reading of published disciplines, the word admonishment was not used. However, we occasionally (as reflected by data in Part III) saw a description of a “private reprimand” given to an attorney. As there is no such discipline described in the rules, matching the concepts of the rules to the published discipline, we determined that these were equal.

92. R. REGULATING FLA. BAR 3-5.1(b)(2). Admonishments are generally given when there is little or no injury, or where there is a technical violation of the rules. FLA. STDS. IMPOSING LAW. SANCS. 4.14, 4.24, 4.34, 4.44, 4.54, 5.14, 5.24, 6.14, 6.24, 6.34, 7.4.

93. R. REGULATING FLA. BAR 3-5.1(a).

94. *Id.* at 3-5.1(d).

95. *Id.*



gent and not knowing or intentional.<sup>96</sup> The judgment of a public reprimand is published in the Southern Reporter.<sup>97</sup>

For misconduct by attorneys considered more than merely “minor,” a host of more severe disciplines are available to the court. The most severe of these is disbarment which is authorized by Rule 3-5.1(f).<sup>98</sup> Attorneys who are disbarred lose their status as members of The Florida Bar and have their privilege to practice law in the state terminated for a period of time.<sup>99</sup> Attorneys who are permanently disbarred, or disbarred with leave, may apply for readmission.<sup>100</sup> An attorney who has been disbarred may reapply for admission to The Florida Bar only after a period of five years from the date of disbarment, or longer if so ordered.<sup>101</sup> The disbarred attorney must demonstrate total compliance with the rules required for bar admission, and have competent and substantial evidence of rehabilitation to again practice law.<sup>102</sup>

Florida Bar rules provide for a rebuttable presumption of disbarment when an attorney is found guilty of theft from trust accounts or from other funds received by a lawyer in a fiduciary relationship.<sup>103</sup> In addition, disbarment generally is recognized as an appropriate punishment when an attorney intentionally reveals information regarding a client’s matter, with the intent to benefit a third person; and the disclosure, which would not otherwise be permitted, causes potential or real injury to the client.<sup>104</sup> Disbarment also is appropriate when an attorney engages in actions that present a knowing conflict of interest with clients, such as representing clients with adverse interests, causing injury, or using information from a conflict, which causes injury.<sup>105</sup> In fact, if an attorney knowingly or intentionally deceives a client,

96. See FLA. STDS. IMPOSING LAW. SANCS. 4.13, 4.23, 4.43, 4.63, 5.13, 6.13, 6.23, 6.33, 7.3, 8.3; Fla. Bar v. Kelner, 670 So. 2d 62 (Fla. 1996); Fla. Bar v. Lumley, 517 So. 2d 13 (Fla. 1987).

97. R. REGULATING FLA. BAR 3-5.1(d).

98. R. REGULATING FLA. BAR 3-5.1(f).

99. *Id.*

100. *Id.*; see Fla. Bar *re* Hipsh, 586 So. 2d 311 (Fla. 1991); Fla. Bar v. Ryder, 540 So. 2d 121 (Fla. 1989).

101. R. REGULATING FLA. BAR 3-5.1(f)

102. *Id.* According to a recent article in the ABA Journal, it is common for jurisdictions to emphasize rehabilitation rather than simply punishment. Terry Carter, *Bounced from the Bar*, 89 A.B.A. J. 56, 59 (Oct. 2003).

103. R. REGULATING FLA. BAR 3-5.1(f).

104. FLA. STDS. IMPOSING LAW. SANCS. 4.21.

105. FLA. STDS. IMPOSING LAW. SANCS. 4.31.

disbarment may be appropriate, regardless of injury.<sup>106</sup> Failure to diligently practice law may present disbarment problems when a lawyer abandons his or her practice, “knowingly fails to perform services,” or has repeating periods of neglect with client matters; any of which can cause potential or actual serious injury to the client.<sup>107</sup> Furthermore, disbarment may even be appropriate when a lawyer’s lack of understanding of fundamental legal doctrines or procedures causes potential or real injury to a client.<sup>108</sup>

Other violations may be cause for disbarment. Standard 5.1 outlines specific “failure[s] to maintain personal integrity,” which include being convicted of a felony, engaging in a drug sale, fraud, or deceitful behavior.<sup>109</sup> Failure to maintain “public trust,” intentionally deceiving the court, abusing the legal process, improperly communicating with persons involved in the legal system, or intentionally violating the terms of a prior disciplinary order—all of which injure the client and potentially the public, the legal system, or the legal profession—are all appropriate reasons to consider disbarment.<sup>110</sup>

There are additional sanctions that temporarily may remove an attorney from the practice of law. The Florida Bar refers to these sanctions as “suspension” and “emergency suspension.”<sup>111</sup> Authorized in Rules 3-5.1(e) and 3-5.2, suspension forbids a lawyer from practicing law for a specified period of time.<sup>112</sup> Suspensions generally are divided into two categories—those of ninety days or less, which do not require proof of rehabilitation or passage of the bar examination); and suspensions of more than ninety days, which do require rehabilitation and may also require passage of all or part of the bar

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106. FLA. STDS. IMPOSING LAW. SANCS. 4.61.

107. FLA. STDS. IMPOSING LAW. SANCS. 4.41.

108. FLA. STDS. IMPOSING LAW. SANCS. 4.51.

109. FLA. STDS. IMPOSING LAW. SANCS. 5.11(a)-(f); *see also* Fla. Bar v. Mart, 550 So. 2d 464 (Fla. 1989).

110. FLA. STDS. IMPOSING LAW. SANCS. 6.21, 6.31, 7.1, 8.1.

111. FLA. STDS. IMPOSING LAW. SANCS. 2.3, 2.4.

112. R. REGULATING FLA. BAR 3-5.1(e), 3-5.2; *see* Fla. Comm. on Prof'l Ethics and Grievances, Formal Op. 90-3 (1990), *available at* <http://www.flabar.org/tfb/tfbetopin.nsf/SearchView/ETHICS,+OPINION+90-3?opendocument> (last visited Mar. 27, 2004); Fla. Comm. on Prof'l Ethics and Grievances, Formal Op. 62-26 (Reconsideration) (1986) (regarding treatment of attorneys who have been suspended), *available at* [http://www.flabar.org/tfb/tfbetopin.nsf/SearchView/ETHICS,+OPINION+6226+\(Reconsideration\)?opendocument](http://www.flabar.org/tfb/tfbetopin.nsf/SearchView/ETHICS,+OPINION+6226+(Reconsideration)?opendocument) (last visited Mar. 27, 2004).

exam.<sup>113</sup> Suspensions may not be ordered in excess of three years.<sup>114</sup> Suspensions are appropriate for the same reasons as disbarment, albeit, with a reduced penalty for less severe misconduct. The reasons for suspension may include: violations regarding improper dealing with client property that causes injury, revealing confidential information of a client, knowing of conflicts of interest without disclosing them to clients, knowingly fail to perform services for a client, knowingly lack the necessary competence causing injury, or knowingly deceive a client causing injury, or causing potential injury.<sup>115</sup>

In addition, suspension may be the appropriate sanction for an attorney who engages in criminal conduct that “seriously adversely reflects” on that attorney’s fitness as an attorney, but does not reach the level as delineated in Standard 5.11 regarding disbarment.<sup>116</sup> Failure to maintain public trust, making false statements, violating court orders or rules, or interfering or potentially interfering with a legal proceeding may be situations for suspension.<sup>117</sup> Violations of other duties, such as improper communication or other behavior, causing intentional injury or potential injury to the client, the public, or the legal system, are also appropriate scenarios under which suspension may be imposed.<sup>118</sup> Finally, if an attorney already has been publicly reprimanded for the same or similar conduct, and subsequently has another violation of a similar type, a suspension may be the appropriate order.<sup>119</sup>

An “emergency suspension” is the temporary suspension of an attorney from the practice of law pending the final outcome of a disciplinary action.<sup>120</sup> This disciplinary action may occur in circumstances when an attorney has been convicted of a “serious crime” or when an attorney’s conduct will cause, “or is likely to cause immediate and serious injury to a client or the public.”<sup>121</sup> The Florida Bar is required to file a formal complaint of disci-

113. FLA. STDS. IMPOSING LAW. SANCS. 2.3.

114. *Id.*

115. FLA. STDS. IMPOSING LAW. SANCS. 4.12, 4.22, 4.32, 4.42, 4.62.

116. FLA. STDS. IMPOSING LAW. SANCS. 5.12; *see Fla. Bar v. Finkelstein*, 522 So. 2d 372 (Fla. 1988).

117. FLA. STDS. IMPOSING LAW. SANCS. 6.12, 6.22.

118. FLA. STDS. IMPOSING LAW. SANCS. 6.32, 7.2.

119. FLA. STDS. IMPOSING LAW. SANCS. 8.2; *see Fla. Bar v. Shinnick*, 731 So. 2d 1265 (Fla. 1999).

120. FLA. STDS. IMPOSING LAW. SANCS. 2.4.

121. *Id.*

pline within sixty days of an order of emergency suspension.<sup>122</sup> Such a case then proceeds directly to trial, skipping the need for a probable cause hearing before a grievance committee.<sup>123</sup> Attorneys may move to have the emergency order dissolved.<sup>124</sup>

The rules address in detail another form of discipline, probation, which limits the right of an attorney to practice.<sup>125</sup> Attorneys may be placed on probation between six months and three years, or for an indefinite period of time according to a specific order.<sup>126</sup> The order declaring the discipline must state the conditions of that attorney's probation.<sup>127</sup> According to rule 3-5.1, these conditions "may include but are not limited to:" completing continuing education programs, being supervised by licensed attorneys on substance or finances, reporting to agencies, and being restricted on certain types of activities.<sup>128</sup>

In considering which of these sanctions should be applied to a lawyer who has been subjected to the disciplinary system, the *Florida Standards for Imposing Lawyer Sanctions* states that a court should consider the following factors: 1) the duty violated by the attorney; 2) the mental state of the attorney; 3) "the potential or actual injury caused by the lawyer's misconduct"; and 4) whether any mitigating or aggravating factors existed in the matter.<sup>129</sup> Aggravating factors may justify an increase in the discipline level imposed on an attorney.<sup>130</sup> Facts which may be considered aggravating include: prior disciplinary offenses, experience level, patterns of misconduct, or vulnerability of the victim of the offense.<sup>131</sup>

By contrast, mitigating factors may justify a reduction in the discipline imposed.<sup>132</sup> Such mitigating factors may include: absence of prior records or dishonest motive, personal problems or situations, good faith efforts to rec-

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122. R. REGULATING FLA. BAR 3-5.2(d).

123. *Id.*

124. R. REGULATING FLA. BAR 3-5.2(e)(1).

125. R. REGULATING FLA. BAR 3-5.1(c).

126. *Id.*

127. *Id.*

128. *Id.*

129. FLA. STDS. IMPOSING LAW. SANCS. 3.0.

130. FLA. STDS. IMPOSING LAW. SANCS. 9.21.

131. FLA. STDS. IMPOSING LAW. SANCS. 9.22(a), (c), (h), (i).

132. FLA. STDS. IMPOSING LAW. SANCS. 9.31.

tify consequences, impairments, and overall character.<sup>133</sup> Also, it is interesting to note that several factors, such as resigning prior to discipline being imposed, the complainant's recommendation as to sanction, or withdrawal of a complaint, will not be considered either aggravating or mitigating.<sup>134</sup> Additionally, a specific set of standards regarding sanctions in drug-related matters has been set out by The Florida Bar.<sup>135</sup>

### III. OUR FINDINGS

“What is abundantly clear is that The Florida Bar and the Florida Supreme Court take regulatory responsibility very seriously. . . . The Florida Bar's regulatory system is highly rated among other states, and we have again confirmed that it is highly effective in Florida.”—*Herman Russo-manno, Florida Bar President 2000-2001*.<sup>136</sup>

#### A. General Findings

Our findings lead us to a cross roads of expectations and results. Ultimately, the numbers of disciplinary actions that we collected were a lower number than we expected to find.<sup>137</sup> A relatively low number of disciplinary actions issued by The Florida Bar could ultimately be interpreted by a consumer in two ways. First, the Bar is doing a fabulous job of admitting attorneys with high character, and continually educating them because the numbers within the profession requiring discipline appear to be low. On the other hand, a consumer could conclude that there is something wrong with the discipline system itself, either the cases of misconduct are not being reported or they are not being processed through the system all the way to sanction.

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133. FLA. STDS. IMPOSING LAW. SANCS. 9.32(a)-(d), (g)-(h).

134. FLA. STDS. IMPOSING LAW. SANCS. 9.4(c)-(e).

135. FLA. STDS. IMPOSING LAW. SANCS. 10.0.

136. Pudlow, *supra* note 50.

137. A reminder that the number we collected through public access sources is lower than the actual number of disciplines rendered. Despite that, we still expected much higher numbers, particularly in light of scattered pieces of Bar information that indicated that “[i]n a typical year . . . the Bar receives between 8,000 and 9,000 complaints.” Blankenship, *supra* note 18.

2004]

## ATTORNEY DISCIPLINE IN FLORIDA

689

**Table 1: Florida Disciplines**

Year	'88	'89	'90	'91	'92	'93	'94	'95	'96	'97	'98	'99	'00	'01	'02
Total	149	136	151	147	196	188	187	177	202	202	273	217	250	281	217

For example, a consumer of legal services making a rough estimate could conclude that according to The Florida Bar website, Bar membership in August 2003, was 72,728 attorneys, including inactive, good standing, and retired members. Since only 217 disciplines were reported, only about .30% of all attorneys are being disciplined. Therefore, attorneys in Florida are, in whole, an honest and respectable group.

However, given the scandals emerging from corporate America, and given the publicity in the past year for a “Dignity in Law” public campaign by The Florida Bar President,<sup>138</sup> this low percentage could also indicate, to a skeptical consumer, that the attorney self-regulation process is not working. Unlike other professionals in Florida who fall under the auspices of the Department of Business and Professional Regulation, the Supreme Court of Florida is the ultimate finder of discipline for attorneys.<sup>139</sup> As much as the public may see the court system and attorneys as one entity, although they

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138. *Bar to Launch 'Dignity in Law' Campaign*, FLA. B. NEWS, Apr. 15, 2002, available at <http://www.flabar.org/DIVCOM/JN/JNNews01.nsf/8c9f13012b9673698525699900624829> (last visited Mar. 27, 2004). This campaign, created by then President-elect of The Florida Bar, Todd Aronovitz, was approved by the Board of Governors in April 2002 for the purpose of communicating the positive work of attorneys throughout Florida. *Id.* It was the first program of its kind in the nation. *Id.*

139. R. REGULATING FLA. BAR 3-3.1. On the other hand, the DBPR of Florida licenses more than 359,000 professionals, including “architecture and interior design; asbestos consultants; athlete agents; auctioneers; barbers; building code administrators and inspectors; community association managers; the construction industry; cosmetology; electrical contractors; employee leasing; farm and child labor; funeral directors and embalmers; geologists; landscape architecture; pilot commissioners; pilots rate review; surveyors and mappers and veterinary medicine.” FLA. DEP’T OF BUS. & PROF’L REGULATION, ANNUAL REPORT 2002–2003, available at [http://www.myflorida.com/dbpr/os/ospubs/ar\\_0203.pdf](http://www.myflorida.com/dbpr/os/ospubs/ar_0203.pdf) (last visited Mar. 27, 2004).

are clearly not, the concept of “inside regulation” may seem abhorrent to many consumers.<sup>140</sup>

### B. *Growth in Discipline Numbers Generally*

While we clearly witnessed an increase in disciplines over our time period, this growth can be attributed to various possible reasons. First, the number of attorneys committing breaches of the rules of professional conduct could be growing. This is a simple, plausible explanation. As Bar Membership increases, the members in practice undertake more cases, which in turn, results in more ethical problems, rendering rule violations almost inevitable. However, the rate is clearly growing slower than the Bar membership rate, which is a good sign for the Bar itself and for consumers of legal services.<sup>141</sup>

Second, consumers of legal services could be getting more aggressive in pursuing remedies to unethical conduct. As we as a society become more selective in our consumer choices in general, we may also be more likely to report perceived unethical conduct by otherwise trusted professionals.<sup>142</sup> In the wake of corporate, church, and medical scandals, society has become less trusting of professionals, who in the past we otherwise put our complete faith, and more likely to bring a grievance.

Third, information is more readily available to the public about the grievance process. With the inception of the ACAP program to assist the public, and with widespread use of the Internet to gather information, par-

140. The system is not as cohesive as many in the public may believe. Not only are judges and attorneys held to different standards of conduct, but it is important to remember that public members also sit on the committees that hear probable cause in complaints. R. REGULATING FLA. BAR 3-3.4(c). The *Code of Judicial Conduct* operates independently from the *Rules Regulating the Florida Bar*. JUDICIAL QUALIFICATIONS COMM’N, SUP. CT. OF FLA., FILINGS, at <http://www.flcourts.org/pubinfo/jqc/index.html> (last visited Mar. 27, 2004).

141. See Table 1. The year 2002 appears to be an exception to the growing trend in disciplines, with the 2002 total reverting back to the 1999 figure according to our numbers. *Id.* One possible explanation for this is the September 11, 2001 tragedy, which may have changed the focus of both attorneys and consumers lives. Attorneys may have taken stock of their behavior and acted more ethically; while the attention of consumers may have been on other matters than lawyer discipline.

142. See Don Klausmeyer, *Web Sites that Work: Build Customer Loyalty and Satisfaction Online*, SMART PROS, Mar. 27, 2000, at <http://finance.pro2net.com/x24208.xml> (last visited Mar. 27, 2004).

ticularly from the Florida Bar website about grievances, the public,<sup>143</sup> although perhaps not more inclined to file grievances against attorneys, is more educated and has the accessibility to doing so.<sup>144</sup>

Fourth, the grievance committees, those part attorney/part non-attorney groups evaluating complaints for probable cause, may be doing a more thorough job of finding probable cause in more recent years where perhaps previously none was found. The increasing diversification of the Bar membership,<sup>145</sup> trickling down to participation on the grievance committees charged with finding probable cause, may be better able to follow through with disciplinary actions that in the past may have been overlooked.<sup>146</sup> When combined with increased non-lawyer (consumer) sensitivity to professional regulation, it may be possible that grievance committees are being more thorough.

### C. *The Gender Gap*

The most striking difference in the numbers of disciplines that we found was by gender. Although it is clear that the number of women members of the Bar is growing, the percentage of women being disciplined is very low compared to the number of male attorneys being disciplined, considering the percentage of women members in the Bar.<sup>147</sup>

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143. FLA. BAR ONLINE, CONSUMER PAMPHLET: COMPLAINT AGAINST A FLORIDA LAWYER, at <http://www.flabar.org/tfb/TBFConsum.nsf/48e760203493b82ad852567090070c9b9/c5b7d247a0c9c45/c5b7d247a0c9c45a85256b2f006c6186?OpenDocument> (last visited Mar. 27, 2004).

144. Internet usage continues to increase. According to one report, the amount of Americans online has increased from 84.6 million to 116.5 million from December 1998 to August 2000 alone. Group Samasco, *A Comparison of Increased Internet Usage Among Various Demographic Groups*, at <http://rhetcomp.gsu.edu/~gpullman/3140/samasco.doc> (last visited Mar. 27, 2004).

145. *Young Lawyers Work to Promote Diversity and Gender Sensitivity*, FLA. B. NEWS, Dec. 1, 2002, at 21.

146. In March 15, 2000, *The Florida Bar News* reported that the ABA was very concerned with increasing minority attorney members and was creating a scholarship bank to fund minority law school scholarships. Mark D. Killian, *ABA President: Increasing Diversity Is the Issue of Our Time*, FLA. B. NEWS, Mar. 15, 2000, at 12. In September 2, 2001, *The Florida Bar News* reported that 89% of the Bar population was white, 2% was black, and 8% Hispanic. Mark D. Killian, *Emphasizing a Diverse Bench*, FLA. B. NEWS, Sept. 1, 2001, at 4.

147. The Florida Bar has the highest percentage of women currently in its history, at 29.5% as of October 1, 2003. FLA. BAR ONLINE, FREQUENTLY ASKED QUESTIONS: HOW



**Table 2: Total Disciplines in Florida Bar by Gender/Percentage\***

Year	Total Disciplines	Disciplines by Gender**	Percentage of Discipline* M/W**
1988	149	140M/9W	94%M / 6%W
1989	136	128M/8W	94%M / 6%W
1990	151	146M/5W	97%M / 3%W
1991	147	138M/9W	94%M / 6%W
1992	196	182M/14W	93%M / 7%W
1993	188	168M/20W	89%M / 11%W
1994	187	167M/20W	89%M / 11%W
1995	177	158M/19W	89%M / 11%W
1996	202	185M/17W	92%M / 8%W
1997	202	179M/23W	89%M / 11%W
1998	273	241M/31W	88%M / 11%W
1999	217	197M/20W	91%M / 9%W
2000	250	221M/29W	88%M / 12%W
2001	281	242M/39W	86%M / 14%W
2002	217	188M/24W	87%M / 11%W

There are several possible reasons for the wide gender gap in disciplinary actions. First of all, the gender gap in the Bar is still wide. Although The Florida Bar is currently nearly thirty percent women, our data revealed

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MANY LAWYERS ARE LICENSED TO PRACTICE LAW IN FLORIDA?, at <http://www.flabar.org/tbf/flabarwe.nsf/f6301f4d554d40a385256a4f006e6566/47fcoa8f415a11d2852> (last visited Mar. 27, 2004).

\* Numbers may not always add up to total; some attorneys were not able to be identified by gender. Percentages may not always add up to total; some attorneys were not able to be identified by gender.

\*\* Percentages are rounded up or down using a standard .5 divider.

that the highest percentage of women disciplined was fourteen percent, in 2001.<sup>148</sup>

The most plausible explanation for the greater number of men being disciplined is the gender difference in the *history* of the Bar.<sup>149</sup> Although women are joining the Bar at a growing rate, the longer attorneys are in practice, the more likely they are to have some claim made against them.<sup>150</sup> Therefore, newly admitted attorneys are not being disciplined at the same rate as the more experienced attorneys. These more experienced attorneys are generally men, and, therefore, higher numbers of men are being disciplined.

There may be many reasons for new attorneys being disciplined at lower rates. New attorneys may not be responsible for clients directly.<sup>151</sup> Since the grievance process against attorneys generally commences with a complaint by a client directly, new attorneys who work for a partner, who is responsible for direct client contact, may not be brought into the Bar grievance process. In these instances, the attorney of record would be subject to discipline should there be a problem with the handling of the case.<sup>152</sup>

In addition, many larger firms have structured supervision programs for new attorneys beginning their careers.<sup>153</sup> Even if a new attorney is directly responsible for client contact, an attorney who may be formally and closely supervised by an experienced attorney will not likely make a mistake that would affect the client, and thus, would not generate a complaint against him.<sup>154</sup> Many small firms may not have the time or budget for such supervi-

148. *Id.*

149. The number of women in the Bar has grown dramatically. Jan Pudlow, *Women in The Florida Bar*, FLA. B. J., Apr. 2000, at 56. According to a 2000 issue of *The Florida Bar Journal*, there were 175 women lawyers that were Florida Bar members in 1966. *Id.* at 59. "By 1975, there were 684 out of 20,247" total Florida lawyers (3.3 percent); by 1980 the percentage of women lawyers in Florida was up to 7.3 percent. *Id.*

150. This thought is usually articulated in the context of malpractice lawsuits, and accounts for malpractice rates generally rising with years of experience in practice. JAY G. FOONBERG, *HOW TO START AND BUILD A LAW PRACTICE* 368 (Millennium 4th ed. 1999).

151. See Wyatt, Tarrant & Combs, LLP at <http://www.wyattfirm.com/training.html> (last visited Mar. 27, 2004) [hereinafter Wyatt]. The law firm of Wyatt, Tarrant & Combs, LLP, serving Kentucky, Tennessee, and Indiana with more than 200 lawyers offers details on their website regarding the role of associates and the pride senior partners take in their training. *Id.*

152. R. REGULATING FLA. BAR 4-1.5.

153. Wyatt, *supra* note 151.

154. Hansen, *supra* note 5, at 33.

sion programs, which may also be a reason why solo and small-firm attorneys are being disciplined at a higher rate.<sup>155</sup> Many attorneys begin their careers in larger firms and then split off into smaller firms, where they can take a larger role in the running of the business. However, by leaving their supervisors behind, attorneys are more vulnerable to mistakes that ultimately may result in discipline by The Florida Bar.<sup>156</sup>

Our thoughts about newer members (in this look, translating to female) bore out in our brief examination of attorneys by year admitted to the Bar. According to reliable figures for Bar admissions for attorneys disciplined in 2001 and 2002, show that the new members of the Bar are not the largest, nor even the second largest, experienced group getting disciplined.<sup>157</sup> In fact, in 2001, about sixty-six percent of all disciplines came from those practicing ten to thirty years; while in 2002, about seventy percent of all disciplines fell in that group.<sup>158</sup> So, even though women membership may be growing quickly within the Bar, it may be ten years or more before we see the percentages of women disciplined coming in line with the membership numbers.

**Table 3: Disciplines by Year Admitted to Bar<sup>159</sup>**

Year of Discipline	Member 0-10 years	Member 10-20 years	Member 20-30 years	Member 30-40 years	Member 40-50 years	Member 50+ years
2001	49	102	83	31	6	1
2002	42	85	67	20	1	2

155. *Id.*

156. *Id.* (echoing an explanation by Virginia L. Ferrara, New Mexico's chief disciplinary counsel).

157. *See* Table 3: Disciplines by Year Admitted to Bar.

158. *Id.*

159. Nine attorneys' admittance dates were unable to be ascertained.

Other explanations for the low number of women being disciplined, other than Bar membership, may be consumer oriented. Young women attorneys can find themselves being treated differently than men by their clients.<sup>160</sup> It is possible that clients are treating women differently in many ways, including the discipline process.<sup>161</sup> It is also possible that grievance committees are treating women differently than male attorneys in finding probable cause in cases involving women.<sup>162</sup> Some believe that women are more socialized to communicate, which may result in better client communications than those of male attorneys.<sup>163</sup> While there are no factual situations documenting this type of behavior in The Florida Bar disciplinary process, the overall treatment of women in the law leads to this possibility.<sup>164</sup>

#### D. Geography

Another factor that we examined in total Bar disciplines was the county where the disciplined attorney practiced. The results were generally unsurprising: the higher the population; the higher or greater Bar disciplines. But within this data, there were exceptions.

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160. Galina Davidoff, *Warm Body or a Key Player: Getting People to Care that You Were There*, DQ LIBRARY: DECISIONQUEST ARTICLES: at <http://www.decisionquest.com/site/dqlib74.htm> (last visited Mar. 27, 2004).

161. The summary of a study on women in the legal profession found many differences in the perception of women as a gender category, rather than as an individual, in the areas of client satisfaction and development. Cynthia Fuchs Epstein et. al., *Glass Ceilings and Open Doors: Women's Advancement in the Legal Profession*, 64 FORDHAM L. REV. 291, 302-05 (1995). In addition, some believe that projecting a powerful personal communication style does not come naturally to most women. Maret McCoy, *Career Survival Skills for Women*, at [http://i.b52.net/i/u/565138/i/Career\\_Survival\\_Skills\\_for\\_Women.doc](http://i.b52.net/i/u/565138/i/Career_Survival_Skills_for_Women.doc) (last visited Mar. 27, 2004).

162. Cf. Epstein et al., *supra* note 161.

163. Amy Singer, *Women Attorneys at a Disadvantage in Combative Courtrooms? Think Again*, at <http://www.trialconsultants.com/Library/WomenAttorneysDisadvantage.html> (last visited Mar. 27, 2004).

164. *Id.* "[T]he norms of the legal workplace reflect a male culture." *Beyond the Billable Hour*, LAWYERS LIFE COACH.COM, at <http://www.lawyerslifecoach.com/newsletters/issue27.html> (last visited Mar. 27, 2004).

**Table 4: Disciplines Sorted by County and Year**

Year	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Alachua	3	1	3	2	3	1	6	2	3	3	4	2	3	5	4
Bay	3	0	2	1	0	3	1	0	2	1	2	0	0	1	1
Bradford	0	1	1	0	0	0	0	0	1	0	0	1	0	0	0
Brevard	0	0	5	3	3	2	2	2	2	5	3	9	6	3	5
Broward	22	23	14	26	17	23	24	25	36	25	28	27	27	40	24
Charlotte	0	0	0	0	0	1	0	0	0	1	0	3	1	1	3
Citrus	0	0	2	1	1	0	0	0	0	0	3	2	0	2	1
Clay	0	1	1	1	2	4	3	0	1	1	1	0	0	3	2
Collier	2	1	0	0	3	1	1	0	1	2	2	3	1	4	5
Columbia	0	1	2	0	2	0	1	0	0	0	1	0	0	1	0
De Soto	0	0	0	0	0	0	1	1	0	0	0	0	0	0	0
Duval	9	8	3	5	8	7	6	10	6	5	11	6	6	5	4
Escambia	4	3	3	1	1	0	0	0	5	0	7	3	5	2	2
Flagler	0	0	0	0	0	0	2	0	1	0	0	0	0	0	1
Franklin	0	0	0	1	0	0	0	0	0	0	0	0	0	0	0
Gadsden	0	0	1	0	0	0	0	0	0	1	2	0	0	0	0
Hamilton	0	0	0	0	0	0	0	0	0	1	0	0	0	0	0
Hendry	0	0	0	0	0	0	0	0	0	1	0	0	0	2	0
Hernando	0	1	0	0	0	0	0	1	0	1	2	0	1	0	0

2004]

## ATTORNEY DISCIPLINE IN FLORIDA

697

Year	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Highlands	1	0	0	0	0	0	0	0	0	2	0	0	2	0	1
Hillsborough	21	13	10	8	13	18	18	21	17	12	19	8	13	21	8
Indian River	1	0	0	0	1	0	0	0	0	1	0	0	0	0	0
Jackson	0	0	0	0	0	0	0	1							
Jefferson	0	0	0	0	0	1	0	0	0	0	0	0	0	0	0
Lake	0	3	0	1	1	0	1	1	3	1	3	0	1	0	0
Lee	4	3	4	6	2	0	2	1	1	4	2	3	0	3	3
Leon	1	3	3	0	1	2	5	3	2	2	6	9	6	5	7
Levy	0	0	0	1	1	0	0	1	0	0	0	0	0	0	0
Liberty	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0
Manatee	1	1	1	0	1	1	1	0	0	0	1	1	3	1	1
Marion	3	3	5	1	1	0	6	5	1	0	1	3	3	3	1
Martin	0	2	0	1	1	2	1	2	2	1	4	1	4	2	4
Miami-Dade	24	29	35	27	43	49	33	32	45	48	54	49	64	72	52
Monroe	3	1	0	1	1	2	0	1	0	2	2	0	1	0	2
Okaloosa	0	0	1	3	1	1	0	1	0	2	3	0	2	5	1
Orange	8	3	7	7	11	5	6	6	16	14	18	15	13	10	11
Osceola	0	0	0	0	0	0	2	3	1	0	0	0	1	1	2
Out of State	7	6	16	13	19	11	13	12	17	13	22	26	30	29	22
Palm Beach	1	1	0	0	4	0	1	1	0	2	3	0	1	1	1

Year	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Pasco	3	2	4	2	0	4	3	0	5	2	4	5	1	2	2
Pinellas	9	9	10	12	22	26	18	13	10	15	27	11	22	21	9
Polk	6	11	8	8	10	14	13	16	14	13	15	13	19	17	23
Putnam	1	0	0	1	0	0	0	1	1	1	0	0	0	0	0
St. Lucie	3	1	2	5	4	3	3	2	0	2	3	3	2	4	6
St. Johns	4	0	1	0	2	0	0	0	1	2	1	0	1	3	0
Sara Rosa	0	0	0	0	2	1	0	1	0	0	1	0	0	1	0
Sarasota	2	0	1	4	3	1	4	3	1	4	5	3	1	1	3
Seminole	0	0	0	1	1	0	1	0	0	1	2	0	0	1	0
Sumter	0	3	0	1	3	2	3	2	1	0	5	2	4	2	3
Suwannee	0	0	0	0	0	0	0	0	0	0	0	0	0	1	1
Taylor	0	0	0	1	0	0	0	0	1	0	0	0	0	0	0
Union	2	2	3	0	0	1	0	1	3	3	2	2	0	0	0
Volusia	1	0	3	2	7	2	4	2	2	3	3	7	5	4	2
Wakulla	0	0	0	0	1	0	0	0	0	0	0	0	1	0	0
Walton	0	0	0	0	0	0	0	0	0	0	1	0	0	1	0
TOTAL	149	136	151	147	196	188	187	177	202	202	273	217	250	281	217

Some counties experienced little change over the years.<sup>165</sup> On the other hand, other counties whip-lashed from no attorney discipline to a fairly large number based on attorney population and history.<sup>166</sup> There are several plausible explanations for these results.

The first data we noticed was the greater number of attorneys disciplined in Miami-Dade County.<sup>167</sup> However, the population of Miami-Dade County is greater than anywhere else in the state.<sup>168</sup> More people translate to more potential clients, and, thus, may mean more cases and more opportunities for something to go wrong. The percentage of disciplines brought against attorneys with business addresses in Miami-Dade County has not changed dramatically, despite the otherwise growing absolute numbers.<sup>169</sup> Despite such an enormous population in the county, the county has not had a dramatic population growth; therefore, it is not surprising that the percentage of total disciplines in Miami-Dade County has not dramatically grown.<sup>170</sup>

In other counties where population growth has been larger, discipline rates have grown slightly, in appropriate comparison to the larger population.<sup>171</sup> In addition, it is important to note that, like many other professional

165. See Table 6.

166. *Id.*

167. *Id.*

168. U.S. DEP'T OF COMMERCE—U.S. CENSUS BUREAU, CENSUS 2000 DATA FOR THE STATE OF FLA. POPULATION FOR THE 15 LARGEST COUNTIES AND INCORPORATED PLACES: 1990 AND 2000, available at [http://www.census.gov/Press-Release/www/2001/tables/redist\\_fl.html](http://www.census.gov/Press-Release/www/2001/tables/redist_fl.html) (last visited Mar. 27, 2004) [hereinafter FLA. CENSUS 2000]. The 2000 Census as reported by the University of Florida Bureau of Economic Research listed the Florida population (in thousands, rounded to hundreds) at 15,982.4, and the population of Miami-Dade county at 2,253.4. *Id.* The next largest county was Broward, at 1,623.0 and then Palm Beach County at 1,131.2. *Id.* Although the overall population numbers were smaller in the 1990 Census, Miami-Dade County still ranked the most populous, followed by Broward and then Palm Beach Counties as well. *Id.*

169. *Id.*

170. FLA. CENSUS 2000, *supra* note 168. Although the population of Florida as reported from the 1990 to 2000 Census increased from 12,938.0 (in thousands, rounded to hundreds) to 15,982.4, Miami-Dade County population only increased from 1,937.1 to 2,253.4, a growth of approximately sixteen percent. *Id.* Compare this to the growth in smaller counties such as Orange county, which grew from 677.5 to 896.3, a growth of approximately thirty-two percent. *Id.*

171. See Table 4: Disciplines sorted by county and year; FLA. CENSUS 2000, *supra* note 168.



industries, attorneys' decisions to work in metropolitan areas are likely to follow population growth, not precede it.<sup>172</sup>

**Table 5: Out-of-State Disciplines<sup>173</sup>**

Year	Total Disciplines	Disciplines Attributed to Attorneys from Out-of-State	Percentage Disciplines for Out-of-State Attorneys
1988	149	7	5%
1989	136	6	4%
1990	151	16	11%
1991	147	13	9%
1992	196	19	10%
1993	188	11	6%
1994	187	13	7%
1995	177	12	7%
1996	202	17	8%
1997	202	13	6%
1998	273	22	8%
1999	217	26	12%
2000	250	30	12%
2001	281	29	10%
2002	217	22	10%

172. Phillip L. Clay, *Choosing Urban Futures: The Transformation of American Cities*, 1 STAN. L. & POL'Y REV. 28, 39 (1989).

173. This table is based on attorneys, published by The Florida Bar, who have an out of state address. It does not take into account where the cases that caused the discipline were handled.

One geographic group that has seen a sharp rise in discipline is the attorneys with out-of-state addresses.<sup>174</sup> From a low in 1989 of only four percent to a high of twelve percent in 2001, the number of attorneys being disciplined from out-of-state is a strong force.<sup>175</sup>

There may be several reasons for such a large percentage of out-of-state attorneys disciplined in Florida. First, as we become a more mobile society, the numbers of attorneys claiming out-of-state addresses may have grown—attorneys become licensed and then move, or may hold licenses in multiple states by design. As the number of out-of-state attorneys grows, so does the number of cases, resulting in more potential violations by this group. Second, the grievance committees may be more active in following up on problems involving Florida-licensed attorneys with out-of-state addresses. Third, The Florida Bar rules allow for reciprocal discipline, when an attorney is disciplined in another state.<sup>176</sup> For example, if an attorney is disbarred for an offense in another state in which he or she may be licensed, the Florida Bar may reciprocally revoke his/her right to practice in Florida.<sup>177</sup> Such disbarment in Florida would be the result of harm to a client outside of the state, and the process through another state's discipline system to reach such a result, yet would be counted in our statistics as a disbarment. However, these cases cannot be explained by trends within Florida.<sup>178</sup>

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174. See Table 5: Out-of-State Disciplines.

175. *Id.* More than one in ten attorneys in the years 1999 and 2000 claimed an out-of-state address.

176. FLA. STDS. FOR IMPOSING LAW. SANCS. 2.9, available at <http://www.flabar.org> (last visited Mar. 27, 2004).

177. *Id.*

178. See Table 6.

**Table 6: South Florida (tri-county) Disciplines<sup>179</sup>**

<b>Year</b>	<b>Total Disciplines</b>	<b>Palm Beach, Broward and Miami-Dade County Disciplines</b>	<b>Percentage of Disciplines in the Tri-County Area</b>
1988	149	52	35%
1989	136	63	46%
1990	151	57	38%
1991	147	61	42%
1992	196	70	36%
1993	188	86	46%
1994	187	70	37%
1995	177	73	41%
1996	202	95	47%
1997	202	86	43%
1998	273	97	36%
1999	217	89	41%
2000	250	110	44%
2001	281	129	46%
2002	217	99	46%

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179. This table is based on those attorneys licensed by The Florida Bar, that list a Broward, Miami-Dade, or Palm Beach County address. It does not take into account where the cases that caused the discipline were handled.

The South Florida area, taken as a whole, has quite a large percentage of the disciplines ordered each year.<sup>180</sup> In fact, ranging from a low of approximately a third to nearly half of all disciplines, the tri-county South Florida area seems fraught with unethical behavior.<sup>181</sup> But is that fair and true?

Not necessarily. First of all, the Palm Beach, Broward and Dade County areas have an enormous population compared to most counties in Florida.<sup>182</sup> Because of this, the sheer number of cases being handled in these counties is tremendous,<sup>183</sup> and more cases lend to more problems. Second, the population of these counties is both very sophisticated and very ripe for potential unethical behavior. These counties boast metropolitan, well-educated and high income groups, leading to more watchful consumers.<sup>184</sup> In contrast, the tri-county area also contains a great number of new immigrants, who lack full English skills and otherwise are unfamiliar with the legal system and its protections, rendering the tri-county area a breeding ground for unscrupulous attorneys taking advantage of otherwise unknowledgeable clients.<sup>185</sup>

In either event, consumers of legal services should not fear working with an attorney in South Florida due to these figures, but may be concerned based on the published accounts. It may be possible that due to the sophistication of the client base, consumers readily accept these behaviors, however, they may not.

#### E. *"Punishment" for the "Crime"*

We then took a closer look at the total grievances handed out each year, and the specific disciplines assessed to each attorney under the process, as demonstrated in Table 7 & 8.

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180. See Table 6.

181. *Id.*

182. FLA. CENSUS 2000, *supra* note 168.

183. See UNIV. OF FLA., BUREAU OF ECON. & BUS. RESEARCH., FLORIDA STATISTICAL ABSTRACT § 22 (2001) (tabulating by county the criminal justice system statistics in Florida).

184. See *id.* § 4.00 (tabulating Florida's educational statistics).

185. *Id.* at tbl. 1.91 (tabulating number of immigrants "admitted by country of birth and intended residence in specified metropolitan areas of Florida").

**Table 7: Florida Disciplines by Category Percentages**<sup>186</sup>

Year	Total	Disbar	Suspend	Resigned	Reprimand	Public Repr-	Probation	Unkown
1988	149	17%	46%	9%	0%	25%	1%	<1%
1989	136	15%	50%	13%	1%	20%	0%	<1%
1990	151	15%	36%	16%	3%	28%	3%	0%
1991	147	13%	42%	18%	0%	26%	<1%	0%
1992	196	16%	38%	16%	0%	28%	1%	<1%
1993	188	10%	54%	17%	<1%	16%	1%	2%
1994	187	12%	48%	15%	<1%	22%	<1%	1%
1995	177	10%	54%	9%	8%	14%	5%	<1%
1996	202	15%	54%	9%	17%	5%	1%	0%
1997	202	12%	47%	15%	12%	10%	3%	<1%
1998	273	14%	55%	13%	8%	5%	4%	0%
1999	217	10%	53%	18%	13%	2%	4%	0%
2000	250	15%	52%	10%	14%	5%	4%	0%
2001	281	10%	53%	11%	18%	3%	4%	<1%
2002	217	14%	47%	13%	24%	0%	2%	0%

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186. Percentages rounded up or down using a standard .5 rounding scheme. Thus, percentage totals may add up to more than 100%.

2004]

*ATTORNEY DISCIPLINE IN FLORIDA*

705

**Table 8: Disciplines, Behavior and Year**<sup>187</sup>

1988	Professional Misconduct	Violated Rules Regulating FL Bar	Trust Account Violations	Any Criminal Act or Conviction
Disbarment	6	8	1	11
Suspension	25	10	5	29
Resigned	2	3	3	2
Probation	1	1	0	0
Reprimand/ Public Reprimand	20	9	6	2

1989	Professional Misconduct t	Violated Rules Regulating FL Bar	Trust Account Violations	Any Criminal Act or Conviction
Disbarment	4	3	2	12
Suspension	15	12	9	31
Resigned	6	0	5	6
Probation	n/a	n/a	n/a	n/a
Reprimand/ Public Reprimand	14	6	1	5

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187. In each of these tables, numbers may not add up to totals for a particular year as some specific behaviors or disciplines were undecipherable from our data.

1990	Professional Misconduct	Violated Rules Regulating FL Bar	Trust Account Violations	Any Criminal Act or Conviction
Disbarment	3	1	9	9
Suspension	24	4	7	19
Resigned	6	5	9	4
Probation	3	0	0	2
Reprimand/ Public Reprimand	30	4	4	6

1991	Professional Misconduct	Violated Rules Regulating FL Bar	Trust Account Violations	Any Criminal Act or Conviction
Disbarment	5	2	2	10
Suspension	20	15	15	12
Resigned	15	1	6	5
Probation	1	n/a	n/a	n/a
Reprimand/ Public Reprimand	17	13	6	2

1992	Professional Misconduct	Violated Rules Regulating FL Bar	Trust Account Violations	Any Criminal Act or Conviction
Disbarment	11	6	5	9
Suspension	24	16	14	21
Resigned	14	4	2	12
Probation	n/a	1	1	n/a
Reprimand/ Public Reprimand	27	21	4	3

2004]

*ATTORNEY DISCIPLINE IN FLORIDA*

707

1993	Professional Misconduct	Violated Rules Regulating FL Bar	Trust Account Violations	Any Criminal Act or Conviction
Disbarment	4	5	5	4
Suspension	36	21	14	30
Resigned	16	7	4	5
Probation	1	1	n/a	n/a
Reprimand/ Public Reprimand	18	14	0	0

1994	Professional Misconduct	Violated Rules Regulating FL Bar	Trust Account Violations	Any Criminal Act or Conviction
Disbarment	5	5	4	8
Suspension	20	33	14	20
Resigned	12	2	3	9
Probation	n/a	n/a	n/a	1
Reprimand/ Public Reprimand	12	28	2	n/a

1995	Professional Misconduct	Violated Rules Regulating FL Bar	Trust Account Violations	Any Criminal Act or Conviction
Disbarment	4	6	1	6
Suspension	40	22	16	17
Resigned	12	2	1	1
Probation	3	1	2	3
Reprimand/ Public Reprimand	19	14	4	1



1996	Professional Misconduct	Violated Rules Regulating FL Bar	Trust Account Violations	Any Criminal Act or Conviction
Disbarment	9	9	8	5
Suspension	40	30	19	18
Resigned	8	1	7	2
Probation	1	0	1	0
Reprimand/ Public Reprimand	25	16	1	1

1997	Professional Misconduct	Violated Rules Regulating FL Bar	Trust Account Violations	Any Criminal Act or Conviction
Disbarment	12	6	2	4
Suspension	39	19	13	24
Resigned	6	8	12	5
Probation	4	1	1	0
Reprimand/ Public Reprimand	35	7	3	0

1998	Professional Misconduct	Violated Rules Regulating FL Bar	Trust Account Violations	Any Criminal Act or Conviction
Disbarment	8	15	8	7
Suspension	68	21	29	31
Resigned	5	4	16	11
Probation	8	1	1	1
Reprimand/ Public Reprimand	25	7	3	2

2004]

*ATTORNEY DISCIPLINE IN FLORIDA*

709

<b>1999</b>	<b>Professional Misconduct</b>	<b>Violated Rules Regulating FL Bar</b>	<b>Trust Account Violations</b>	<b>Any Criminal Act or Conviction</b>
<b>Disbarment</b>	8	8	1	5
<b>Suspension</b>	50	25	15	24
<b>Resigned</b>	7	4	12	16
<b>Probation</b>	7	1	0	0
<b>Reprimand/ Public Reprimand</b>	27	1	4	1

<b>2000</b>	<b>Professional Misconduct</b>	<b>Violated Rules Regulating FL Bar</b>	<b>Trust Account Violations</b>	<b>Any Criminal Act or Conviction</b>
<b>Disbarment</b>	7	14	4	11
<b>Suspension</b>	42	39	5	42
<b>Resigned</b>	5	1	3	14
<b>Probation</b>	7	1	0	3
<b>Reprimand/ Public Reprimand</b>	30	5	2	0

<b>2001</b>	<b>Professional Misconduct</b>	<b>Violated Rules Regulating FL Bar</b>	<b>Trust Account Violations</b>	<b>Any Criminal Act or Conviction</b>
<b>Disbarment</b>	5	13	6	3
<b>Suspension</b>	53	51	11	26
<b>Resigned</b>	2	7	6	16
<b>Probation</b>	8	0	1	1
<b>Reprimand/ Public Reprimand</b>	53	2	4	4

2002	Professional Misconduct	Violated Rules Regulating FL Bar	Trust Account Violations	Any Criminal Act or Conviction
Disbarment	9	8	7	3
Suspension	39	15	23	24
Resigned	8	2	9	8
Probation	3	0	0	1
Reprimand/ Public Reprimand	50	0	2	0

This data reveals several consistencies and inconsistencies in Bar discipline. First, suspensions, the most widely used category of discipline in each year in total, are generally near the top for each category of misconduct that we analyzed. This across-the-board use of suspensions may be reassuring to consumers. It implies that the offense as a whole is considered, rather than one specific discipline triggering act, and that the appropriate discipline shall be applied from the appropriate rule regulating the Florida Bar. In addition, as a whole, more disbarments and fewer reprimands or probation sanctions were given for more severe types of misbehaviors; while fewer disbarments, and a greater number of lesser sanctions were given for less severe types of infractions of inappropriate behavior.<sup>188</sup> Quite simply, overall, the “punishments” seem to fit the “crimes.”<sup>189</sup>

It should be noted that the dispensing of some sanctions has not been consistent. As a consumer might rightly expect, disbarments have been handed out more often for criminal acts or convictions.<sup>190</sup> However, in some years, professional misconduct or rule violations were the largest cause of this severe punishment, while criminal acts or convictions received much less severe sanctions.<sup>191</sup> As the specific behavior of the attorney may not be detailed, this apparent disparity between the behavior and the sanction might give rise to some concern by consumers who expect that any criminal activity should result in the loss of a professional license. In addition, some years

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188. See Table 8: Disciplines, Behavior and Year.

189. It is important to note, of course, that not all behaviors detailed in Table 9 are actually “crimes” under any definition of that word. See BLACK’S LAW DICTIONARY 370 (6th ed. 1990) (defining a “crime” as a positive or a negative act in desecration of the law).

190. See *id.*

191. *Id.*

reported (e.g. 1989, 1994, 1996) very few sanctions (e.g. probation) for attorney misbehavior.<sup>192</sup> Were the activities of the attorneys truly not conducive to that sanction that year? What about those activities that precluded the issuance of that sanction? Or were there other forces in those years pushing for more license-curtailling sanctions? Without the specific files on the misdeeds of attorneys, consumers cannot know and we cannot surmise. But the inconsistent use of sanctions in different calendar years certainly raises some questions in the minds of those reading the reported disciplines.

### 1. Trust Accounting—A Detailed Look

Trust Account violations get a lot of press in the Bar media.<sup>193</sup> From the data above, the following synthesis can be made of trust accounting behaviors and corresponding discipline for our fifteen-year period. Table 9 shows the number of total disciplines that were handed out for trust accounting violations each year, and the percentage of total disciplines that trust accounting represents. Table 10 breaks the percentages down by the type of discipline that attorneys received in each year.

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192. See Table 6.

193. Barbara Lewis & Dan Otto, *Pesky Procedures*, L.A. DAILY J., June 21, 2001, available at <http://www.centurionconsultinglaw.com/arp23LAWOCT.html> (last visited Mar. 27, 2004).

**Table 9: Trust Account Violations by Discipline Given**

	<b>Total Disciplines that Year</b>	<b>Total Trust Account Violations of those Disciplined</b>	<b>Percentage of Disciplines for Trust Accounting</b>
<b>1988</b>	149	15	10%
<b>1989</b>	136	17	12.5%
<b>1990</b>	151	29	19.2%
<b>1991</b>	147	29	19.7%
<b>1992</b>	196	26	13.3%
<b>1993</b>	188	23	12.2%
<b>1994</b>	187	23	12.3%
<b>1995</b>	177	24	13.6%
<b>1996</b>	202	36	17.8%
<b>1997</b>	202	31	15.4%
<b>1998</b>	273	57	20.9%
<b>1999</b>	217	32	14.8%
<b>2000</b>	250	14	5.6%
<b>2001</b>	281	28	10.0%
<b>2002</b>	217	41	18.9%

2004]

## ATTORNEY DISCIPLINE IN FLORIDA

713

**Table 10: Trust Accounting Disciplines by Percentage of Penalty Given<sup>194</sup>**

	Total	Disbarment	Suspension	Resigned	Probation	Reprimand/ Public Reprimand
<b>1988</b>	15	7%	33%	20%	0%	40%
<b>1989</b>	17	12%	53%	29%	0%	6%
<b>1990</b>	29	31%	24%	31%	0%	14%
<b>1991</b>	29	7%	52%	21%	0%	21%
<b>1992</b>	26	19%	54%	8%	4%	15%
<b>1993</b>	23	22%	61%	17%	0%	0%
<b>1994</b>	23	17%	61%	13%	0%	9%
<b>1995</b>	24	4%	67%	4%	8%	17%
<b>1996</b>	36	22%	53%	20%	3%	3%
<b>1997</b>	31	7%	42%	39%	3%	10%
<b>1998</b>	57	14%	51%	28%	2%	5%
<b>1999</b>	32	3%	47%	38%	0%	13%
<b>2000</b>	14	29%	36%	21%	0%	14%
<b>2001</b>	28	21%	39%	21%	4%	14%
<b>2002</b>	41	17%	56%	22%	0%	5%

There are many resources to assist Florida attorneys with trust accounting, including The Florida Bar, the rules, the "Practicing with Professionalism," and Law Office Management Advisory Service ("LOMAS").<sup>195</sup> This branch of The Florida Bar provides forms, resources, and in-person consultations to assist with the running of a trust account.<sup>196</sup>

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194. Percentages rounded up or down by +/- .5 standard.

195. FLA. BAR ONLINE, MEMBER SERVICES: LAW OFFICE MANAGEMENT ASSISTANCE SERVICE, at <http://www.centurionconsultinglaw.com/arp23LAWOCT.html> (last visited Mar. 27, 2004).

196. *Id.*

The act of trust accounting by attorneys is at its heart, a fiscal responsibility.<sup>197</sup> That makes the information from 1998 particularly troubling to consumers—more than one-fifth of reported disciplines for attorneys exhibited some breach in this responsibility. However, a mere two years later, less than six percent of disciplines for that year were for the same category of misdeed. But the improvement did not last, as two years after that low, the percentage of disciplines of trust violations rose again, almost matching its highest point.

A consumer is left with many questions. Why the improvement in behavior by attorneys concerning trusts? Was there a backlash following the 1998 high? Was the position taken by The Florida Bar more relaxed following the year 2000? The ultimate question, raised at the beginning of this analysis, takes root here as well: Is it good to have a high percentage of disciplines for trust accounting because it demonstrates that this egregious problem is being addressed by The Florida Bar? Or is it bad that there are so many to begin with? Does a “low” percentage of disciplines in trust accounting mean good fiscal sense by attorneys, or are a number of attorneys just getting away with it?

Finally, for those being caught by The Florida Bar, are the sanctions appropriate? The most widely used sanction for trust accounting problems are sanctions. Sanctions, which will temporarily halt the attorney from the practice of law, seems an appropriate remedy for such infractions because it gives the Bar and the attorney time to work through any trust accounting inconsistencies, and to ensure that all financial responsibilities are in order before the fiscal practices continue. But is the punishment enough for failure to follow the rules, which are clearly at the heart of an attorney’s responsibility?<sup>198</sup> Obviously, the number of violations for trust accounting is higher than any consumer would like to see. On the other hand, reprimands of all types have declined, which also seems appropriate for the grave nature of trust accounting responsibilities.

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197. See R. REGULATING FLA. BAR 5-1.1.

198. This concept is taken directly from, and with thanks to, Professor James Repetti of Boston College Law School, whom, in a class titled “Taxation I” given in the 1991-92 academic year, ended the full year, six-credit course by reminding the class, “When you work as an attorney, you will handle lots of other people’s money. It is not yours. Don’t take it.” Professor James Repetti, Address at Taxation I, Boston College Law School (1991-1992).

## 2. Specific Thoughts About Criminal Behavior

For purposes of our study, we classified all criminal allegations or convictions of any type in the same category, as long as the information published about the attorney was considered a conviction or allegation of criminal activity. This classification precluded Florida Bar rule violations or other inappropriate behavior. Not all actions by attorneys were prosecuted; however, they were all the basis for the discipline.

**Table 11: Criminal Allegations/Violations as Disciplines Given**

	<b>Total Disciplines that Year</b>	<b>Total Criminal Acts, Convictions, or Violations of those Disciplined</b>	<b>Percentage of Disciplines in Each Year Given for Criminal Activity</b>
<b>1988</b>	149	44	29.5%
<b>1989</b>	136	54	39.7%
<b>1990</b>	151	40	26.5%
<b>1991</b>	147	29	19.7%
<b>1992</b>	196	45	23.0%
<b>1993</b>	188	39	20.8%
<b>1994</b>	187	38	20.3%
<b>1995</b>	177	28	15.8%
<b>1996</b>	202	26	12.9%
<b>1997</b>	202	33	16.3%
<b>1998</b>	273	52	19.1%
<b>1999</b>	217	46	21.2%
<b>2000</b>	250	70	28.0%
<b>2001</b>	281	50	17.8%
<b>2002</b>	217	36	16.6%



**Table 12: Criminal Behavior Disciplines by Penalty Given**

	Total	Disbarment	Suspension	Resigned	Probation	Reprimand Public Reprimand
<b>1988</b>	44	25%	66%	5%	0%	5%
<b>1989</b>	54	22%	57%	11%	0%	9%
<b>1990</b>	40	23%	48%	10%	5%	15%
<b>1991</b>	29	35%	41%	17%	0%	7%
<b>1992</b>	45	20%	47%	27%	0%	7%
<b>1993</b>	39	10%	77%	13%	0%	0%
<b>1994</b>	38	21%	53%	24%	3%	0%
<b>1995</b>	28	21%	61%	4%	11%	4%
<b>1996</b>	26	19%	69%	8%	0%	4%
<b>1997</b>	33	12%	73%	15%	0%	0%
<b>1998</b>	52	14%	60%	21%	2%	4%
<b>1999</b>	46	11%	52%	35%	0%	2%
<b>2000</b>	70	16%	60%	20%	4%	0%
<b>2001</b>	50	6%	52%	32%	2%	8%
<b>2002</b>	36	8%	67%	22%	3%	

Similar questions arise upon examination of the percentage of annual disciplines attributable to criminal behavior. Ranging from a high in 1989 of nearly forty percent of the disciplines being attributable to some type of criminal behavior, to a low of about thirteen percent in 1996. It is clear that criminal activity of varying degrees is responsible for discipline actions in Florida. One question that arose as we reviewed these numbers is, considering the stringent character and fitness background check that the Bar performs, why are the number of instances of criminal misconduct so high

among Florida licensed attorneys?<sup>199</sup> Does the fault lie with the screening process of admitting attorneys to be licensed? Or does the problem come later, in the legal profession, that is, from the attorney being exposed to temptations, environments, or incentives that otherwise cause later criminal behavior? Are the stress levels in the profession so high as to drive attorneys to varying types of misconduct?

Second, we questioned the connection between sanction and behavior. We combined all criminal misconduct into one category, (including misdemeanors and any criminal activity unrelated to an attorney's practice of law). Some of the sanctions given over the years have changed. However, we do not know whether the specific underlying behaviors have actually changed. It seems clear that in the earlier years of our study, disbarment was a more common sanction in this category of behavior, and resignation less common; but the two seem to have switched places in terms of frequency. Florida's discipline system has forced more attorneys, who have engaged in criminal misbehavior, to take the proactive step of resigning, rather than waiting to see the outcome of a disbarment proceeding. Other sanctions given in any year for this type of misbehavior have remained consistently proportional—they remain consistent as to their relativity of frequency to other sanctions (i.e., more suspensions, and fewer probations). However, the actual numbers in any given year stay generally in proportion to the total number of disciplines in each year. In our view, this consistency bodes well for The Florida Bar system of discipline.

#### IV. CONCLUSION

The public's view of The Florida Bar is likely an overall positive one. Looking at the overall numbers of disciplines, the percentages of disciplines, and the process which The Florida Bar has for self-regulation is an encouraging experience for anyone concerned about putting trust into professionals. The public should be further encouraged by the strides that the Bar has made in recent years in assisting clients in reporting problems with attorneys, through programs like the ACAP. Other educational directives, such as increasing the number of hours of ethical training attorneys must take in their

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199. See FLA. BAR ADMISS. R. 5-10.

Continuing Legal Education Credits are also good indicators of the Bar's drive to succeed in self-regulation.<sup>200</sup>

On the other side, there are some questions about the regulation of attorneys. Notwithstanding the most comprehensive character and fitness screenings in the country, there are still quite a few attorneys disciplined each year for involvement in criminal and other misbehaviors that consumers may believe could be "screened out" in the process of admission to The Florida Bar.<sup>201</sup> Many attorneys live high-pressure lifestyles, which can result in these missteps. But those utilizing the legal services of an attorney may be wondering whether The Florida Bar should be taking more preventative measures to prevent potentially unfit attorneys from entering this profession fraught with potential for misstep.

In addition, a review of our data causes us to urge for more practical education in trust accounting policies and specifically, detailed education regarding the *Rules Regulating the Florida Bar*.<sup>202</sup> The Bar needs to undertake these education programs, perhaps in conjunction with legal education institutions.

In addition, while the regulatory process itself seems to be working, is there another way to handle complaints and cases that would be more efficient, while preserving the rights of all parties involved? Should more non-lawyers be involved in probable cause hearings? Should more non-lawyers be involved in the post probable cause hearing stages of discipline? In addition, we wonder what affect the discipline process has on ultimate sanctions if it rests in the hands of the Supreme Court of Florida. Considering the Court already has an over logged docket, combined with the given potential

200. FLA. BAR ONLINE, CENTER FOR PROFESSIONALISM: CLE GUIDELINES, at <http://www.flabar.org/tfb/TFBProfess.nsf/840090c16eedaf0085256b61000928dc/72e302f839a78f9d85256b2f006ccdc1?OpenDocument> (last visited Mar. 27, 2004). In 1997 the Florida Bar instituted the five credit ethics requirement. *Id.*

201. FLA. BAR ADMISS. R. 2-21.

202. Currently, all newly licensed members of The Florida Bar under Rule 6-12.1 (with some exceptions by employment) are required to complete a continuing legal education course entitled "Practicing with Professionalism" (formerly known as Bridge-the-Gap) within twelve months of being admitted. R. REGULATING FLA. BAR. 6-12.3. Purportedly, many of these issues are being covered in this two day seminar, but it is the belief of many licensed attorneys that this program does not go deep enough. This requirement has special rules for out-of-state Florida Bar members under Florida Bar Rules. R. REGULATING FLA. BAR 6-12.4.

for plea bargaining and the large number of probable cause findings throughout the state, the result is unclear.

The Florida Bar is very open with the public about basic information regarding its members. A searchable directory is available online, and the public may contact the "Membership Records" line to inquire about a specific attorney.<sup>203</sup> But the information available to the public regarding the self-regulation process is not as forthcoming. The main source of publication of the discipline records is a members-purposed newspaper, and a members-focused website. While both resources are available to the public—and in fact, parts of the website are specifically designed for the public—no report is compiled to make this information readily available. In an October 1, 2003 article on the review of the grievance process, The Florida Bar reported 197 more disciplinary sanctions than any source available to the public, which is a serious problem regarding access to information.<sup>204</sup> The public's evaluation of a profession and the profession's self-evaluation can build trust and respect between the public and that profession. All attorneys could benefit from a boost in this relationship.<sup>205</sup>

While there may not be answers to these questions right now, it is important to note that in our societal time of corporate trouble, the public is paying attention to the ethical and professional actions of the professionals who serve them. It is clear from our study that lawyers in Florida are being watched. The question now becomes: Who does the Bar want watching them?

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203. FLA. BAR ONLINE, ORGANIZATION: ATTORNEY SEARCH, at <http://www.flabar.org/Membership.nsf/MESearch?OpenForm> (last visited Mar. 27, 2004). The Membership Records Department for The Florida Bar may be reached at (850) 561-5832. *Id.*

204. See Blankenship, *supra* note 18.

205. See Scott Baranick, *Respect No Joke for this Lawyer*, ST. PETERSBURG TIMES, July 4, 2002, at 1A.