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Lawyer Discipline in an Authoritarian Regime: Empirical Insights from Zhejiang Province, China

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Lawyer Discipline in an Authoritarian Regime: Empirical Insights from Zhejiang Province, China

JUDITH A. MCMORROW,* SIDA LIU,† & BENJAMIN VAN ROOIJ‡

ABSTRACT

On paper, the state-run lawyer disciplinary system in China serves multiple interests: client protection, maintaining the reputation of the legal profession, upholding the rule of law, and safeguarding the party-state authority. This Article assesses which of these interests dominates in the lawyer disciplinary process by analyzing 122 published lawyer discipline cases from Zhejiang Province from 2007–2015. These records of lawyer discipline evidence an authoritarian political logic of attorney discipline, with punishment most clearly serving to safeguard the Communist Party’s rule by keeping lawyers in bounds and tightly tied to their law firms. Subordinate to this are other state interests such as upholding the legal system and rule of law, as well as private interests of protecting firm income. Client protection is a secondary interest at best, with only a handful of cases having clear client-protection goals. The dominance of party-state interests reflects not only the socialist legacy, but also the persistence of an authoritarian legality in contemporary China.

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INTRODUCTION

Attorneys in Taizhou, a city in China's Zhejiang Province, showered Judge Wang Jianhong of the Taizhou Intermediate People's Court with appreciation for his assistance. Xu Yucong paid 15,000 yuan (ca. \$2,300) to Judge Wang. Mou Xuijn took the judge out to a meal and gave him 10,000 yuan (ca. \$1,540). Guo Rui treated Judge Wang to dinner and gave him 1,000 yuan (ca. \$154) in the hopes of getting the judge of his choice assigned to a case. Li Hongfei slipped him 1,000 yuan and two shopping cards worth a total of 1,500 yuan (ca. \$230) at the entrance to the court. Judge Wang was criminally convicted for this conduct, sentenced to six years in prison, fined, and ordered to disgorge the illegal gain.¹ What of the lawyers? Three would be suspended for three to nine months; one was criminally convicted, sentenced to two-and-a-half years in prison, and had

1. *Zhejiang Taizhou City People's Court Criminal Decisions: Case No. 215 of the Public Prosecution of Jiaojiang District* (June 16, 2008), http://blog.sina.com.cn/s/blog_c42ed61f0101ez2u.html [<https://perma.cc/CZJ7-9TQE>] (translation on file with authors).

his license revoked; another seven did not receive public discipline.²

When attorney Li Zhongliang charged his client one million yuan for a representation, he only turned over 300,000 yuan (i.e., thirty percent) to his law firm.³ He repeated this pattern again with even larger sums of money. Whatever repercussions from the firm, attorney Li would be suspended from practice for six months. Lawyers who disclosed a client's private matters, faked a client's signature, fabricated evidence, delivered a letter for a suspect when interviewing him at a detention center, had more than the authorized number of children—all found themselves subject to attorney discipline in Zhejiang Province.

These are striking examples of China's system of attorney regulation. They showcase a system of lawyer regulation that is legislated and enforced by Chinese state institutions and state-led bar associations. They highlight how Chinese lawyers are no longer simple servants of the state, but more akin to attorneys in the West serving multiple and often conflicting interests of advocating for their client, earning income for their firm and themselves, while working within the confines of the law. Chinese lawyers, however, are different from their American colleagues in that they practice in an authoritarian system.⁴ This produces a lawyer regulation system in China that is designed not only to protect clients, the legal system, and the reputation of the legal profession, but also to control lawyers so that they will not oppose or undermine the party-state authority. Thus, the Chinese government maintains tight control over the licensing and regulation of lawyers and has implemented a panoply of formal and informal techniques to monitor and restrain attorneys.⁵ This has allowed the

2. We tracked the consequences to the lawyers by examining the reported public discipline of attorneys in Zhejiang Province, see *Zhejiang Province Lawyer Integrated Management Platform*, <http://220.191.244.19/zjlawyermanager/view/supervisionComplaints/HonestPublic/execute/honestPublicList.do> [<https://perma.cc/QYB9-D2Q3>] (translation on file with authors) (including data current through June 2015) (last visited Mar. 11, 2017) [hereinafter *Zhejiang Province Database*]. For additional explanation of methodology, see *infra* note 10.

3. See Li Zhongliang (Hangzhou Mun. Bureau of Justice, June 15, 2015) (Case No. 2015100023), in *Zhejiang Province Database*, *supra* note 2.

4. See, e.g., Andrew J. Nathan, *Authoritarian Resilience*, 14 J. DEMOCRACY 6, 6–7, 13, 16 (2003); Fu Hualing & Richard Cullen, Weiquan (*Rights Protection*) *Lawyering in an Authoritarian State: Toward Critical Lawyering*, 59 CHINA J. 111 (2008); Sida Liu, *Lawyers, State Officials, and Significant Others: Symbiotic Exchange in the Chinese Legal Services Market*, 206 CHINA Q. 276 (2011) [hereinafter Liu, *Lawyers, State Officials, and Significant Others*]; Michael A. Witt & Gordon Redding, *China: Authoritarian Capitalism*, in THE OXFORD HANDBOOK OF ASIAN BUSINESS SYSTEMS 11–32 (Michael A. Witt & Gordon Redding eds., 2011); Randall Peerenboom, *Varieties of Rule of Law: An Introduction and Provisional Conclusion*, in ASIAN DISCOURSES OF RULE OF LAW 1 (Randall Peerenboom ed., 2004), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=445821 [<https://perma.cc/8Q8P-RTVG>]. Authoritarian political logic is a complex dynamic. See also Mary E. Gallagher, *AUTHORITARIAN LEGALITY: LAW, WORKERS AND THE STATE IN CONTEMPORARY CHINA* (submitted to Cambridge U. Press; Academia.edu) (on file with Sida Liu).

5. See, e.g., Benjamin van Rooij, *Weak Enforcement, Strong Deterrence: Dialogues with Chinese Lawyers About Tax Evasion and Compliance*, 41 LAW & SOC. INQUIRY 288 (2016) [hereinafter van Rooij, *Weak Enforcement, Strong Deterrence*]; Elizabeth M. Lynch, *China's Rule of Law Mirage: The Regression of the Legal Profession Since the Adoption of the 2007 Lawyers Law*, 42 GEO. WASH. INT'L L. REV. 535 (2010) [hereinafter Lynch, *Rule of Law Mirage*].

Chinese government to grow a legally trained cohort of professionals while trying to constrain, with mixed success, lawyer activism that might be seen as a threat to the Communist regime.

The governmental control over lawyers in China has received significant attention abroad, with a dominant focus on political control and repression of lawyers, particularly through detention, torture, and criminal prosecution.⁶ There has been far less scholarly attention to discipline as in the cases discussed above.⁷ As such, we know far less about the actual operation of China's lawyer regulation through disciplinary rules and systems administered by bar associations and justice bureaus. The disciplinary system, as we outline below, does at least on paper serve multiple interests: safeguarding the party-state authority, protecting the rule of law, upholding the reputation of the legal profession, and protecting clients, a goal that has mostly been ignored in existing studies of lawyer regulation in China.⁸ By studying the practice of the state-led disciplinary system, we develop a more fine-grained picture of how the party-state prioritizes different interests in the regulation of lawyers.⁹

To explore how the party-state prioritizes the interests of the state, clients, the legal system, as well as the legal profession, we examine the Provincial Bureau of Justice's disciplinary actions brought against attorneys in Zhejiang Province in China. Zhejiang Province puts short case summaries of lawyer disciplinary actions online and has publicly reported 122 disciplinary cases over a nine-year period from 2007 to 2015.¹⁰ These cases provide a fascinating snapshot of the

6. See, e.g., Sida Liu & Terence C. Halliday, *Political Liberalism and Political Embeddedness: Understanding Politics in the Work of Chinese Criminal Defense Lawyers*, 45 LAW & SOC'Y REV. 831 (2011) [hereinafter Liu & Halliday, *Political Liberalism*]; EVA PILS, CHINA'S HUMAN RIGHTS LAWYERS: ADVOCACY AND RESISTANCE (2015); SIDA LIU & TERENCE C. HALLIDAY, CRIMINAL DEFENSE IN CHINA: THE POLITICS OF LAWYERS AT WORK (2016) [hereinafter LIU & HALLIDAY, CRIMINAL DEFENSE IN CHINA].

7. Roderick O'Brien has helpfully ventured into the void by studying discipline by the Lawyers Associations. See Roderick O'Brien, *Discipline for China's Lawyers: Records from Shenzhen*, 44 H.K. L.J. 339 (2014) [hereinafter O'Brien, *Records from Shenzhen*]; Roderick O'Brien, *Discipline for China's Lawyers: Records from Beijing*, 43 H.K. L.J. 377 (2013).

8. See Richard W.S. Wu & Kay-Wah Chan, *Regulatory Regimes for Lawyers' Ethics in Japan and China: A Comparative Study*, 5 TSINGHUA CHINA L. REV. 49, 57 (2012) [hereinafter Wu & Chan, *Regulatory Regimes*] ("[T]he Chinese regulatory framework incorporates the virtue of 'competence'" although it is less comprehensive than Japan's framework and "needs to improve its regulatory framework in the 'competence' virtue").

9. Western observers understandably tend to focus on the political issues in China, which can create blind spots in our analysis. See, e.g., Randall Peerenboom, *Assessing Human Rights in China: Why the Double Standard?*, 38 CORNELL INT'L L.J. 72 (2005).

10. Methodology: From 2010 to June 15, 2015, several bilingual research assistants translated the posted disciplinary actions. We created a spreadsheet in which we placed the Chinese and English translations together to allow the bilingual co-authors to check for consistency in interpretation. We used data available as of June 15, 2015. It appears that the Zhejiang website has been expanded and reorganized since our translation. A copy of the data used in this analysis is on file with the authors. In this analysis we focus on the discipline of individual attorneys, rather than law firm discipline, to allow us to better compare the Zhejiang information with U.S. regulatory data on attorney discipline. We very much appreciate the constraints of comparison in this context. But, as they say, the best is the enemy of the good. The online summaries appear at the *Zhejiang Province Database*, *supra* note 2.

goals of the Zhejiang Provincial Bureau of Justice during this period.

Based on the data analysis presented below, we conclude that the ZPBOJ's formal attorney discipline system does not have a strong client-protection goal and puts some attention on protecting the rule of law and the reputation of lawyers. The dominant attention is on an interesting range of state interests, with a heavy focus on reinforcing the infrastructure of political and regulatory control over lawyers and the legal profession. The most common basis of discipline involved what were characterized as "fee" or "unauthorized practice of law" issues, almost all of which involved lawyers who charged or represented clients without permission of their law firm. Making this conduct a dominant focus of regulation promotes the state interest of placing the law firm as an important center of lawyer control. Some disciplinary actions that might be seen as protecting the legal system as a whole, such as sanctions on fabrication of evidence and suborning perjury, have been used to punish zeal in criminal defense representation, such as when lawyers challenge the legitimacy of a confession that was given under duress or torture.¹¹ State power has also been used to promote other social goals, as in the case of a lawyer who lost his license for three months for having more children than were authorized at the time. Only a handful of the 122 cases involved failure to perform the lawyer's duty as legal counsel, which in the United States, we would equate with neglect or classic wrongdoing, such as stealing from the client or undertaking a representation that involved a conflict of interest. Given that lawyer competence, manifested often through neglect, is the most common basis of client complaints in many countries, an interesting question is why institutional resources at the ZPBOJ, and possibly other justice bureaus in China, do not pursue this as a regulatory priority.¹²

Part I of the Article explores the development of the legal profession in China. Part II examines the regulatory objectives that can be discerned from both the Lawyers Law and the Rules of Professional Conduct adopted by the All China Lawyers Association (ACLA). With that foundation, in Part III we examine the disciplinary cases in the Zhejiang Province and analyze the emerging patterns. The Concluding Analysis provides additional analysis and discussion about the larger implications of these findings.

11. LIU & HALLIDAY, CRIMINAL DEFENSE IN CHINA, *supra* note 6, at 57–60.

12. The All China Lawyers Association (ACLA) has publicly stated that in recent years there have been concerns about lawyers "not respecting professional ethics, a lack of concern for integrity, and not following the law to perform duties, or not fully performing duties in practice and conduct harmful to clients' or parties' rights and interests has sometimes occurred." *ACLA Explanation of Reforms to the Lawyers Code of Conduct*, CHINA LAW TRANSLATE (June 22, 2014), <http://chinalawtranslate.com/acla-explanation-of-reforms-to-the-lawyers-code-of-conduct/?lang=en> [https://perma.cc/C8S7-Q4FP] (unofficial translation) [hereinafter *ACLA Explanation of Code Reforms*]. We appreciate that historically lawyer discipline systems around the world have also not prioritized client protection, although there is evidence that is changing. See *infra* note 76 and accompanying text.

I. THE DEVELOPMENT OF THE LEGAL PROFESSION IN CHINA

A. THE LEGAL PROFESSION—FROM STATE TO PRIVATE

The legal profession in contemporary China was rebuilt on the ruins of the Cultural Revolution (1966–1976). The profession was formally revived in 1980 with the promulgation of the Interim Regulation on Lawyers, which defined lawyers as “legal workers of the state” rather than fiduciaries of the client or officers of the court.¹³ Until the late 1980s, all Chinese lawyers were state employees working in legal advisory divisions (*falü guwenchu*) or state-owned law firms, often with similar administrative ranks as other state bureaucrats. Criminal defense and ordinary civil litigation constituted the majority of their work.¹⁴

From 1988 to 2001, Chinese lawyers experienced a rapid process of privatization. After experimenting for a few years with a transitional organizational form, “cooperative law firms” (*hezuo suo*), China began to permit partnership law firms in the early 1990s. These partnership firms were legitimized by the 1997 Lawyers Law of the People’s Republic of China (Lawyers Law).¹⁵ After a state-led “unhooking and restructuring” (*tuogou gaizhi*) campaign in 2000–2001, the majority of Chinese law firms were restructured from state-owned firms into partnerships.¹⁶ The total number of lawyers in China also increased from 31,410 in 1988 to 117,260 by 2000.¹⁷ After China’s accession to the World Trade Organization in 2001, corporate legal services serving both foreign and Chinese enterprises expanded rapidly. By the mid-2010s, a number of Chinese corporate law firms had grown into mega-firms with thousands of lawyers and extensive international networks.¹⁸ The majority of Chinese lawyers, however, still work in smaller law firms with an “eat what you kill” system of commission-fee-based compensation.¹⁹

13. Interim Regulations of the People’s Republic of China on Lawyers (promulgated by Standing Comm. Nat’l People’s Cong., Aug. 26, 1980, effective Jan. 1, 1982) art. 1, <http://en.pkulaw.cn/display.aspx?cgid=785&lib=law> [https://perma.cc/C5GD-HRU5].

14. Liu, *Lawyers, State Officials, and Significant Others*, *supra* note 4, at 282.

15. Law on Lawyers (promulgated by the Standing Comm. Nat’l People’s Cong., Oct. 28, 2007, effective June 1, 2008), http://www.npc.gov.cn/englishnpc/Law/2009-02/20/content_1471604.htm [https://perma.cc/38J7-4C59] (unofficial translation) [hereinafter *Lawyers Law*].

16. Ethan Michelson, *Lawyers, Political Embeddedness, and Institutional Continuity in China’s Transition from Socialism*, 113 AM. J. SOC. 352, 353, 370–73 (2007) [hereinafter Michelson, *Political Embeddedness*].

17. Sida Liu, *The Changing Roles of Lawyers in China: State Bureaucrats, Market Brokers, and Political Activists*, in THE NEW LEGAL REALISM: STUDYING LAW GLOBALLY 180 (Heinz Klug & Sally Engle Merry eds., 2016).

18. Sida Liu & Hongqi Wu, *The Ecology of Organizational Growth: Chinese Law Firms in the Age of Globalization*, 122 AM. J. SOC. 798, 799 (2016) [hereinafter Liu & Wu, *Ecology of Organizational Growth*].

19. Michelson, *Political Embeddedness*, *supra* note 16, at 374. “Eat what you kill” is a colloquial phrase that indicates a lawyer is paid based on the revenue the lawyer brings into the firm, minus some percent retained by the firm to cover the lawyer’s overhead.

By March 2016, there were approximately 297,000 lawyers in more than 24,000 law firms across China.²⁰ Like the legal profession in the United States and many other countries, the geographic distribution of Chinese lawyers is highly unequal and the majority of them are concentrated in major cities on the east coast and other provincial capitals.²¹ While Beijing, Shanghai, and Guangdong Province have the highest numbers of lawyers, Zhejiang Province, the site of our study, also has a large and rapidly growing lawyer population. The total number of Zhejiang lawyers increased from 9,289 in 2010 to 14,144 in 2014, and they handled 1.05 million cases in 2014, with total billings of 16.08 billion yuan (ca. \$2.46 billion).²²

B. THE WEB OF REGULATION AND THE ROLE OF FORMAL REGULATORY SYSTEMS

Lawyers in China are subject to regulation by the Ministry of Justice (MOJ), supplemented by the All China Lawyers Association (ACLA), the state-led national bar association. This dual-regulatory structure, with authority to regulate given to both the Bureau of Justice (BOJ) and Lawyers Association at the provincial, municipal, and county levels, can result in regulatory complexities.²³ There is a BOJ at every administrative level of the government (i.e., the provincial, municipal, and district/county levels) and the Lawyers Association, though formally a professional association, is a “minor player” compared to the Ministry of Justice.²⁴ The BOJ maintains control over licensing and disciplinary sanctions, but it delegates to the Lawyers Association the obligation to collect membership fees and assess fitness through annual review.²⁵ The Lawyers Associations also have the ability to engage in attorney discipline.²⁶

The government, through the BOJ, puts particular attention on the Lawyers Law and supplemental regulation.²⁷ The Lawyers Law, promulgated by the

20. See ALL CHINA LAWYERS ASSOCIATION, <http://www.acla.org.cn/hybgzdt/24911.jhtml> [https://perma.cc/7FXU-G2ER] (last visited Apr. 18, 2017) [hereinafter ACLA WEBSITE] (official website).

21. See Sida Liu, Lily Liang, & Ethan Michelson, *Migration and Social Structure: The Spatial Mobility of Chinese Lawyers*, 36 LAW & POL'Y 165, 171–75 (2014).

22. Shi Yuxiang, 浙江四年律师人数增 52.3% 103 人因违规违纪被处分 [The Number of Lawyers in Zhejiang Province Increased by 52.3% in Four Years; 103 Are Penalized for Violations], ZHEJIANG ONLINE (June 13, 2015, 3:51 PM), <http://zjnews.zjol.com.cn/system/2015/06/13/020696474.shtml> [https://perma.cc/6BWR-6HH7] [hereinafter Yuxiang, *Lawyers in Zhejiang Province*].

23. See LIU & HALLIDAY, CRIMINAL DEFENSE IN CHINA, *supra* note 6, at 68–71.

24. O'Brien, *Records from Shenzhen*, *supra* note 7, at 339.

25. Lawyers Law (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 28, 2007, effective June 1, 2008) art. 4, 6, 9, 46, 47–52, http://www.npc.gov.cn/englishnpc/Law/2009-02/20/content_1471604.htm [https://perma.cc/38J7-4C59] (unofficial translation).

26. See *supra* note 7.

27. See, e.g., Measures for Punishing Outraging Lawyers and Law Firms for their Illegal Acts (promulgated by the Ministry of Justice, Apr. 7, 2010, effective June 1, 2010) (Law Info China); Administrative Measures for the Practice of Law by Lawyers (promulgated by the Ministry of Justice, July 18, 2008, effective Nov. 1, 2016)

National People's Congress, expressly gives authority to the BOJ of the province, autonomous region, or municipality to impose discipline ranging from warnings to suspensions of practice for up to one year and confiscation of illegal proceeds, for a number of listed activities.²⁸ The MOJ, the ACLA, and the BOJs can promulgate additional regulations on lawyer discipline, but only within the scope of the Lawyers Law. It is presumably under these provisions in the Lawyers Law that the Zhejiang Provincial Bureau of Justice disciplines lawyers.²⁹

The ACLA has adopted a separate Lawyers Practice Code of Conduct (Code of Conduct), a document drafted on the basis of the Lawyers Law for the purpose of "standardizing lawyers' practice and safeguarding lawyers' practice rights and interests."³⁰ Lawyers are required to be members of the provincial and municipal Lawyers Associations, which are local branches of the ACLA.³¹ Under the Lawyers Law, the Lawyers Associations are charged with assuring lawyers practice in accordance with the law and with protecting lawyers' lawful rights and interests.³² The Lawyers Associations are also charged with inspection of the professional ethics and practice disciplines of lawyers.³³

II. REGULATORY OBJECTIVES

Our analysis of both the Lawyers Law and ACLA Code of Conduct indicates that, at least on paper, there are four broad goals in regulating lawyers in China: protecting client interests; building up and protecting the professional reputation of lawyers; upholding the rule of law and the respect for China's nascent legal institutions; and assuring that lawyers act as socialist legal workers in serving the interests of the party-state and in not undermining the authority of the party.³⁴

(Law Info China); Measures for the Administration of Lawyers' Service Charges (promulgated by the Nat'l Dev. & Reform Comm'n, Ministry of Justice, Apr. 13, 2006, effective Dec. 1, 2006) (Westlaw China); Certain Provisions of the Ministry of Justice on Anti-Unfair Competition Among Lawyers (promulgated by the Ministry of Justice, Feb. 20, 1995, effective Feb. 20, 1995) (Westlaw China).

28. Lawyers Law, art. 47–50.

29. Article 48 of the Lawyers Law contains stated bases of discipline. Lawyers Law, art. 48. The bases largely track the provisions of the Lawyers Law, but include one additional strong client protection provision: "(5) . . . failing to appear in court on schedule to participate in litigation or arbitration without justifiable reasons[.]"

30. Lawyers Practice Code of Conduct (promulgated by the All China Lawyers Ass'n, Nov. 9, 2011, effective Nov. 9, 2011) art. 1 (Westlaw China) [hereinafter ACLA Code of Conduct]. The Code of Conduct was adopted in 2004 and amended in 2009 and 2011. Additional amendments are currently pending.

31. Lawyers Law, art. 45.

32. *Id.* art. 46(1).

33. *Id.* art. 46(4).

34. This summary does not include any detailed analysis of the regulations that supplement the Lawyers Law and Code of Conduct.

A. PROTECTING CLIENT INTERESTS

Client protection interests are woven into the Lawyers Law, supplemental regulations, and the ACLA Code of Conduct. Both the Lawyers Law and Code of Conduct try to set a floor of competence by requiring that all lawyers pass a uniform national judicial exam, engage in practice training in a law firm for a full year, and be persons of good character and conduct.³⁵ The Lawyers Law also contains a general provision that “[a] lawyer acting as an agent in litigation or non-litigation legal affairs shall, within the limits of entrustment, protect the lawful rights and interests of the entrusting party.”³⁶ This provision can be characterized as a fundamental obligation of competence and arguably imposes a duty of zeal.³⁷ Its language, however, is rather broad and it does not make clear exactly what the lawyer is to do to protect the party’s interests. The Code of Conduct further details the obligations of competence and zeal by requiring lawyers to “be honest, faithful, diligent and duteous, and safeguard the legitimate rights and interests of the parties involved”³⁸

The Lawyers Law also protects clients by generally requiring confidentiality and prohibiting conflicts of interest. Article 38 provides: “A lawyer shall keep confidential the secrets of the State and commercial secrets that he comes to know during his legal practice and shall not divulge the private affairs of the parties concerned.” It continues on to require:

[a] lawyer [to] keep confidential the things and information that he comes to know during his legal practice which his client or another person does not want other people to know, with the exception of the facts and information about a crime which his client or another person prepares to commit or is committing to endanger State or public security or seriously endanger another person’s personal safety or safety of property.³⁹

35. Lawyers Law, art. 5; *see also* ACLA Code of Conduct, art. 6.

36. Lawyers Law, art. 30.

37. Professors Richard W.S. Wu and Kay-Wah Chan engaged in a comparative analysis of Japan and China, concluding that the Chinese regime is less comprehensive than Japan in the area of competence and that “China needs to improve its regulatory framework in the ‘competence’ virtue.” *See* Wu & Chan, *Regulatory Regimes*, *supra* note 8, at 57.

38. ACLA Code of Conduct, art. 6.

39. Lawyers Law, art. 38. The ACLA Code of Conduct contains a similar provision at article 8. Pending proposed revisions to the Code of Conduct include a provision to strengthen the duty of confidentiality. *See ACLA Explanation of Code Reforms*, *supra* note 12 (proposed revision that “lawyers shall protect clients’ or parties’ confidential or private information acquired in practice, and must not reveal or disseminate clients’ or parties’ commercial secrets, private personal information or other circumstances or information they do not wish disclosed, either during the case or after it is concluded, without having gotten authorization or consent of the client or party”).

Endangering state or public security is a potentially very broad exception to the duty of confidentiality.⁴⁰ Further, the attorney-client privilege is not recognized in China, leaving the lawyer unprotected by either rules of evidence or ethics rules if a court orders a lawyer to testify.⁴¹

The Lawyers Law also presents a basic rule against conflicts: “A lawyer shall not act as agent for both parties involved in one and the same case,”⁴² and a lawyer is prohibited from “accepting money, things of value or other benefits offered by the other party and infringing the rights and interests of the client through ill-intentioned collusion with the other party or a third party.”⁴³ Together these provisions prohibit two egregious forms of a conflict of interest, but frame them as specific rules and not as part of a larger principle that lawyers should avoid conflicts of interest. The rules focus on direct adversity and not conflicts where representing one client may have a significant risk of negatively affecting the representation of another.⁴⁴ Nor do the rules address conflicts arising out of former representation or conflicts that are imputed to the firm, with the exception of direct conflicts.⁴⁵ This thinly developed conflict regulation has allowed law firms in China to merge and grow quickly through collaborations with less concern about the effects of conflict rules.⁴⁶

The ACLA Code of Conduct provides guidance on a number of issues that serve to identify client rights and interests in a representation.⁴⁷ Articles 34–42 of the ACLA Code of Conduct focus on the client-agent relationship. They set out provisions that promote communication between the lawyer and client, establish obligations to follow through on the representation agreement, and impose duties to maintain records. Lawyers and the law firm are “entitled to select plans for accomplishing” the client’s purpose “in accordance with laws, principles of

40. While the Lawyers Law does not define these terms, “trade secrets” is defined in other law. XU Xi, *A Comparative Study of Lawyers’ Ethics in the US and PRC: Attorney-Client Privilege and Duty of Confidentiality*, 1 *TSINGHUA CHINA L. REV.* 46, 53 (2009).

41. *See id.* at 56 (“[A] PRC lawyer, being a PRC citizen, is legally obligated to cooperate with PRC courts, procuratorates, and public security organs to provide truthful testimony about his client, regardless of whether the relevant facts and information were originally obtained from the client and requested to be kept confidential.”).

42. Lawyers Law, art. 39.

43. *Id.* art. 40(3).

44. *See* ACLA Code of Conduct, art. 50–51; *cf.* MODEL RULES OF PROF’L CONDUCT R. 1.7 (2016) [hereinafter MODEL RULES].

45. *Cf.* MODEL RULES R. 1.9, 1.10.

46. *See* Liu & Wu, *Ecology of Organizational Growth*, *supra* note 18, at 821; *cf.* Douglas R. Richmond & Matthew K. Corbin, *Professional Responsibility and Liability Aspects of Vereins, the Swiss Army Knife of Global Law Firm Combinations*, 88 *ST. JOHN’S L. REV.* 917, 931–37 (2014).

47. Draft revisions to the ACLA Code of Conduct provide more detailed guidance on conflicts. *See Lawyers Practice Code of Conduct (Draft Revisions)*, CHINA LAW TRANSLATE, art. 54 (prevents conflict between lawyer and client), art. 55 (more precise explanation of simultaneous conflicts) (June 18, 2014), <http://chinalawtranslate.com/lawyers-practice-code-of-conduct-draft-revisions/?lang=en> [https://perma.cc/W693-VKGJ].

fairness and justice and eth[ic]al standards for law practice.”⁴⁸ This reinforces a system in which lawyer-client authority rests more with the lawyer than with the client, bringing the decision-making under the control of the law firm, which in turn is subject to strong control by the local BOJ. This is different from the rules in the United States, which promote a more client-centered vision.⁴⁹ A lawyer’s ability to determine how to pursue a legal matter creates a danger that the lawyer will proceed in a manner that is against the client’s wishes, even when the course the lawyer chooses falls within the overall goals of the representation. One can think for instance of a divorce case where the wife’s lawyer pursues a strongly confrontational strategy to safeguard her share of the marital assets, even though she wants to maintain a good relationship with her ex-husband. The goal of the representation may have been to safeguard her assets, yet doing so by sacrificing her relationship with her ex-husband goes against her wishes.

In sum, Chinese lawyer regulation does stipulate rules on client protection, yet these rules are generally less detailed and robust than those in the United States. Clients in China are less protected when communicating with their lawyers, when their lawyers are involved in conflicts of interest, or when their lawyers or law firms dominate how goals are realized even against clients’ own wishes.

B. UPHOLDING THE PROFESSIONAL REPUTATION OF THE LEGAL PROFESSION AND THE RULE OF LAW

The Lawyers Law and the ACLA Code of Conduct contain many rules that may serve to protect the legal profession as well as the legal system. In part, this is done by making sure that lawyers honor the profession and the legal system. The Lawyers Law states that one may not receive a lawyers’ practice license if he has “no . . . or . . . limited capacity for civil conduct,” has a criminal record (except for the crime of negligence), has been discharged from public employment, or has had his lawyers’ practice certificate revoked.⁵⁰

Another example of a rule that protects the legal profession is the prohibition against unfair competition: “Law firms and lawyers shall not solicit business by slandering other law firms or lawyers or paying middleman’s fees”⁵¹ This provision appears to be designed to protect the legal profession itself more so than clients. If the rule were intended to protect clients, a more general rule against solicitation would have been appropriate. The existing rule singles out paying middleman’s fees and slander, which hurt other lawyers and the legal profession more than they do clients. We can also wonder why the existence of

48. ACLA Code of Conduct, art. 36.

49. See MODEL RULES R. 1.2.

50. Lawyers Law (promulgated by the Standing Comm. Nat’l People’s Cong., Oct. 28, 2007, effective June 1, 2008) art. 7, http://www.npc.gov.cn/englishnpc/Law/2009-02/20/content_1471604.htm [<https://perma.cc/38J7-4C59>] (unofficial translation).

51. *Id.* art. 26.

middlemen would be bad for clients, especially because the geographic distribution of lawyers in China is highly unequal and many poorer clients may only be able to contact a lawyer through some other legal service provider who does not have full lawyer qualifications. A true client protection rule would focus on solicitation of vulnerable clients through exploitation, coercion, or duress, as the *Model Rules* and ethics case law do in the United States.⁵²

The Lawyers Law also has several provisions that clearly seek to uphold the rule of law. It prohibits meeting with judges, prosecutors, or arbitrators privately outside of the regulations, providing bribes to judges, intentionally providing false evidence or coercing or persuading others into providing false evidence, and disrupting or interfering with the normal conduct of litigation or arbitration.⁵³

The Code of Conduct also includes a variety of exhortations to protect “the reputation of the lawyer industry”⁵⁴ and to prohibit actions “violating social ethics and seriously damaging lawyers’ professional images.”⁵⁵ In some ways, the current Code of Conduct harkens back to the earlier ABA *Model Code of Professional Responsibility*, which reads at Canon 9, “[a] lawyer should avoid even the appearance of impropriety.”⁵⁶ This provision was not included in the 1983 ABA *Model Rules of Professional Conduct* or subsequent revisions, primarily because it was seen as too imprecise and as protecting public image over content.⁵⁷ Socio-legal scholars have been highly critical of the U.S. legal profession’s tendency to structure self-regulation for the protection of the profession itself, rather than for the benefit of clients or society more broadly.⁵⁸ In the context of Chinese regulation of lawyers, this critique may be too strong and out of context. The ACLA Code of Conduct’s emphasis on reputation may flow from many factors, including the general emphasis on collective interests in China, the weak prestige of the legal profession in public opinion, and the pressure the profession is under from the party-state.

In sum, we see that in China several rules seek to protect and uphold both the reputation of the legal profession as well as the broader rule of law. While these are conceptually separate goals, it is very hard to fully separate them. Rules aimed at upholding the reputation of the legal profession, by virtue of doing so, also help develop the rule of law in China, which rests in part on such reputation. And rules protecting the rule of law, such as the rules about lawyers meeting

52. See MODEL RULES R. 7.3; *Ohralik v. Ohio State Bar Ass’n*, 436 U.S. 447, 464–65 (1978) (concern that in-person solicitation makes client more vulnerable to influence).

53. See Lawyers Law, art. 40.

54. ACLA Code of Conduct (promulgated by the All China Lawyers Ass’n, Nov. 9, 2011, effective Nov. 9, 2011) art. 7 (Westlaw China).

55. *Id.* art. 14(5).

56. ABA MODEL CODE OF PROF’L RESPONSIBILITY Canon 9 (1980).

57. See CHARLES W. WOLFRAM, MODERN LEGAL ETHICS 321–22 (1986).

58. See generally RICHARD L. ABEL, AMERICAN LAWYERS (1989).

judges, by their very nature also protect lawyers from behavior that will hurt their overall profession.

C. PROTECTING THE PARTY-STATE

The protection of the party-state is a very strong goal of lawyer regulation in China. As an overarching principle, article 3 of the Lawyers Law provides that “lawyers shall be subject to the supervision of the state, the public and the parties concerned.”⁵⁹ This clearly shows an approach to the legal profession that does not value independence from the state. The Chinese Communist Party actively seeks “to maximize its influence over lawyers by all available means, both direct and indirect.”⁶⁰ This web of rules, regulations, and practice is an example of authoritarian political logic in which the commitment to the rule of law is used to improve governance, with legal provisions simultaneously used to assure the dominance of the party-state.⁶¹

Some of the articles that seemingly serve client, professional, or rule of law interests may also serve the party-state by giving significant discretion to state decision-makers. Consider that the law does not clearly define what constitutes “good character and conduct”⁶² or people with “limited capacity for civil acts,”⁶³ and thus allows the party-state considerable leeway when it seeks to prevent people from entering the legal profession.

The Lawyers Law also requires that a lawyer practice in a law firm. The firm itself is subject to regulation and must have a law firm practice certificate.⁶⁴ Through a series of policy statements and pressure, about ninety percent of all law firms in China have a Communist Party cell, further assuring political oversight.⁶⁵ This allows an additional level of control via the law firm, although less than thirty percent of Chinese lawyers are members of the Communist Party.⁶⁶ To ensure that lawyers actually practice in their firms and to enable better

59. Lawyers Law (promulgated by the Standing Comm. Nat’l People’s Cong., Oct. 28, 2007, effective June 1, 2008) art. 3, http://www.npc.gov.cn/englishnpc/Law/2009-02/20/content_1471604.htm [<https://perma.cc/38J7-4C59>] (unofficial translation). This provision is subject to slightly different translations. Human Rights Watch translates this provision as “[i]n practicing law, a lawyer must accept the supervision of the state, public and client.” Law on Lawyers of the People’s Republic of China, art. 3 (adopted at the 19th Sess. of the Standing Comm. of the Eighth Nat’l People’s Cong., May 15, 1996, rev’d Oct. 28, 2007, effective June 1, 2008, Human Rights Watch trans.), <https://www.hrw.org/reports/2008/china0408/16.htm> [<https://perma.cc/YL3D-TUZ7>].

60. Gerry Groot & Roderick O’Brien, *The Chinese Communist Party’s United Front Work with the Legal Profession*, 42 H.K. L.J. 939, 940 (2012).

61. See Gallagher, *supra* note 4, at ch. II.

62. Lawyers Law, art. 5.

63. *Id.* art. 7.

64. *Id.* art. 14–27.

65. Elizabeth M. Lynch, *I Pledge Allegiance to the CCP*, CHINA L. & POL’Y (Mar. 22, 2012), <http://chinalawandpolicy.com/tag/party-cells/> [<https://perma.cc/KFA9-V2WR>].

66. Ethan Michelson & Sida Liu, *What Do Chinese Lawyers Want? Political Values and Legal Practice*, in CHINA’S EMERGING MIDDLE CLASS: BEYOND ECONOMIC TRANSFORMATION 310, 313 (Cheng Li ed., 2010).

party-state control, the Lawyers Law further provides that fees must be collected by the law firms and that “law firms and lawyers shall pay tax in accordance with the law.”⁶⁷ Later provisions reiterate that a lawyer shall not privately accept authorization, collect fees, or accept money, things of value, or other benefits offered by a client.⁶⁸

To reinforce the party-state control over the legal profession, since 2002 the national judicial examination—the unified qualification exam for lawyers, judges, and procurators—has tested political values and promoted “a state-sanctioned vision of professional identity.”⁶⁹ In 2012, the Ministry of Justice, reiterating similar provisions from the 1980 Interim Regulation on Lawyers, implemented a new requirement that all lawyers take an oath of allegiance to the Communist Party when obtaining their practice certificates:

I volunteer to become a practicing lawyer of the People’s Republic of China and promise to faithfully perform the sacred duties of a socialist-with-Chinese-characteristics legal worker; to be faithful to the motherland and the people; to uphold the leadership of the Chinese Communist Party and the socialist system; to safeguard the dignity of the constitution and the law; to practice on behalf of the people; to be diligent, professional[ly] honest, and corruption-free; to protect the legitimate rights and interests of clients, the correct implementation of the law, and social fairness and justice; and diligently strive for the cause of socialism with Chinese characteristics!⁷⁰

These provisions make clear that a very strong interest of lawyer regulation is to assure that lawyers do not undermine the interests of the party-state. Lawyer conduct is to be limited.⁷¹

Lawyers who are members of minor parties are subject to controls through the United Front Work Department. See Groot & O’Brien, *supra* note 60.

67. Lawyers Law, art. 25.

68. *Id.* art. 40.

69. Rachel E. Stern, *Political Reliability and the Chinese Bar Exam* 3 (2015), http://watson.brown.edu/files/watson/imce/RStern_Political%20Reliability_BROWN.pdf [<https://perma.cc/3V8S-E8DX>]. As Stern notes, this can lead to “preference falsification” where test-takers learn to give the politically approved answer even if their private preferences differ. *Id.* at 4.

70. Lynch, *supra* note 65. Anecdotally, it is not clear whether lawyers are currently being required to take this oath as a condition to receiving their practice certificate. See XIANFA pmbL (2004) (China), http://www.npc.gov.cn/englishnpc/Constitution/2007-11/15/content_1372962.htm [<https://perma.cc/7ZP2-EDM6>].

71. A recent example is the ACLA announcement on June 30, 2014 that the license of Zhejiang human rights lawyer Wang Cheng had been canceled. Police detained Cheng after he attempted to gather signatures to encourage the government to join the United Nations International Covenant on Civil and Political Rights. Xin Yu & Wen Yuqing, *Chinese Rights Lawyer Vows to Keep Up Pressure On Party*, RADIO FREE ASIA (Feb. 18, 2014), <http://www.rfa.org/english/news/china/lawyer-02182014110708.html> [<https://perma.cc/4EJ2-H9QW>]. Cheng stated publicly that the Zhejiang Department of Justice had not investigated and had not informed him of the cancellation of his license and that he intended to pursue legal measures to hold them responsible. SIWEILUOZI’S BLOG (July 1, 2014), <http://www.siweiluozi.net/2014/07/acla-issues-formal-notice-distancing.html> [<https://perma.cc/3MD2-H3U6>].

Overall, these regulatory goals overlap with goals that we see in lawyer regulation in other legal systems. Geoffrey Hazard and Angelo Dondi have identified the common professional virtues as “competence; independence; loyalty to client; maintaining the confidentiality of client secrets; responsibility to the courts and to colleagues; and honorable conduct in professional and personal matters.”⁷² All of these are touched upon in the regulation of lawyers in China, although independence clearly does not mean independence from the state. The question is what aspects of the lawyer’s conduct get the attention of regulators.

III. ADMINISTRATIVE DISCIPLINARY ACTIONS AGAINST LAWYERS IN ZHEJIANG PROVINCE

With these broad regulatory goals in mind (protecting client interests, upholding the reputation of lawyers, upholding the rule of law, and protecting the party-state), we can now turn to the disciplinary cases issued at the provincial level in Zhejiang Province. We do so in order to find out which of the goals reflected in the rules regulating lawyers are more likely to be pursued and reported in disciplinary proceedings. The cases reflect the BOJ’s administrative discretion as to which cases to bring to discipline and potentially which to put into a public database.⁷³

For a base of comparison, the most common client complaint in the United States is neglect, a finding confirmed in multiple studies over decades.⁷⁴ This pattern has also been seen in Canada, the United Kingdom, Scotland, Australia, and Denmark.⁷⁵ In some U.S. jurisdictions, competence, neglect, mishandling of client funds, and improper fees are also the most common bases of discipline.⁷⁶ The ACLA has also identified similar competence and neglect issues among Chinese lawyers as a serious concern.⁷⁷

But as the legal profession has developed in recent years, some new situations and problems have emerged in lawyers’ practice such as lawyers not respecting

72. GEOFFREY C. HAZARD, JR. & ANGELO DONDI, *LEGAL ETHICS: A COMPARATIVE STUDY* 109 (2004).

73. As we embark on this analysis, it is important to note that a different body, such as a court, may potentially discipline a lawyer in the context of litigation. For example, in the United States courts can use their inherent power to regulate the conduct of attorneys who appear before them. In this context, the U.S. courts tend to have a narrower regulatory goal of assuring that the lawyer’s misconduct does not taint the underlying proceeding. Judith A. McMorrow, Jackie A. Gardina & Salvatore Ricciardone, *Judicial Attitudes Toward Confronting Attorney Misconduct: A View From the Reported Decisions*, 32 *HOFSTRA L. REV.* 1425 (2004).

74. *See, e.g.*, RICHARD L. ABEL, *LAWYERS IN THE DOCK: LEARNING FROM ATTORNEY DISCIPLINARY PROCEEDINGS* 57 (2008) [hereinafter ABEL, *LAWYERS IN THE DOCK*]; Judith A. McMorrow, *In Defense of the Business of Law*, 40 *FORDHAM URBAN L.J.* 459, 462 (2012).

75. *See* ABEL, *LAWYERS IN THE DOCK*, *supra* note 74.

76. *See, e.g.*, MASS. OFF. OF THE B. COUNS. OF THE SUPREME JUD. CT., *ANNUAL REPORT TO THE SUPREME JUDICIAL COURT FISCAL YEAR 2014*, at 16, <http://www.mass.gov/obcbbbo/fy2014.pdf> [<https://perma.cc/7H4B-SGGR>].

77. *See* *ACLA Explanation of Code Reforms*, *supra* note 12.

professional ethics, a lack of concern for integrity, and not following the law to perform duties, or not fully performing duties in practice and conduct harmful to clients' or parties' rights and interests has sometimes occurred. Some lawyers do not follow confidentiality obligations, casually releasing, disclosing and disseminating client and party secrets and private information which they have acquired as a result of the representation, and certain lawyers have even come to challenge the bottom line of the law, maliciously using litigation rights, encouraging and aiding the incitement of public opinion, instigating pressure on the case-handling organs.⁷⁸

Given this concern, we were particularly interested to see if the disciplinary matters brought by the Zhejiang Province would reflect these issues.

A. OVERVIEW OF ZHEJIANG PROVINCE

Zhejiang Province is located along the coast south of Shanghai. With fifty-four million people, Zhejiang has a larger population than Spain or any single U.S. state. Zhejiang grew its private economy rapidly in the post-Mao era and is the home of over one-third of China's 500 largest privately owned enterprises.⁷⁹ As of 2014, this economically vibrant province had 1,158 registered law firms and 14,144 lawyers.⁸⁰ About 35.5% of the lawyers are Communist Party members, although it is unclear whether membership is driven by political affinity or a desire to obtain the economic benefits that may flow from party membership.⁸¹ In compliance with the national initiative to improve party presence in law firms, 254 firms have set up their own party cells, another 413 have set up party cells with other law firms, and 124 without party cells have a designated party liaison.⁸² In addition to party control, ZPBOJ and local BOJs, and local bar associations, also exercise administrative control over law firms and lawyers. This information suggests that Zhejiang has in place an infrastructure to inspect and supervise the law firms and lawyers in the province.⁸³

78. *Id.*

79. Qi Zhang, *Communist Revolution as the Origin of the Capitalism in The Red China: The Political Economy of the Private Economy in Zhejiang Province* 2–3 (Aug. 5, 2010), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1654167 [<https://perma.cc/2KGZ-WJ65>].

80. Yuxiang, *Lawyers in Zhejiang Province*, *supra* note 22.

81. *Lawyers' Work in Zhejiang Province Realizes Healthy Development*, CHINA FINDLAW (Jan. 18, 2011), <http://china.findlaw.cn/info/lvshi/lstd/145029.html> [<https://perma.cc/FXT3-4533>] [hereinafter *Healthy Development in Zhejiang*]; see also Hongbin Li, Pak Wai Liu, Junsen Zhang & Ning Ma, *Economic Returns to Communist Party Membership: Evidence from Urban Chinese Twins* (IZA Discussion Paper No. 2118, 2006), <http://ssrn.com/abstract=901248> [<http://ssrn.com/abstract=901248>].

82. *Healthy Development in Zhejiang*, *supra* note 81; see also William P. Alford, *Of Lawyers Lost and Found: Searching for Legal Professionalism in the People's Republic of China*, in *RAISING THE BAR* 287, 294 (W. Alford ed., 2007) (where regulations "require that law firms form Communist Party cells and senior lawyers . . . provide junior colleagues with ideological, as well practical, training").

83. Development of ethical infrastructure within U.S. law firms has been a strong theme over the last twenty years, at least among U.S. legal academics. See, e.g., Ted Schneyer, *Professional Discipline for Law Firms*, 77

B. THE DATA

In accordance with the Lawyers Law, Zhejiang Province has a formal regulatory structure to discipline attorneys, which is administered through the ZPBOJ and local BOJs at the municipal level. Using the 122 publicly available disciplinary cases from January 2007 to June 15, 2015, we probe several questions.⁸⁴ We begin with the type of misconduct that was the basis of discipline in each of the proceedings.

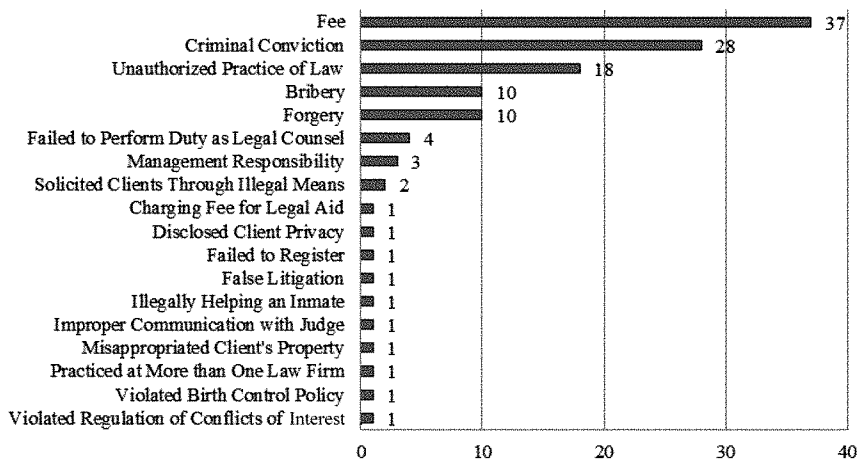


FIGURE I: Type of Misconduct

As Figure I indicates, almost eighty-five percent of the disciplinary matters fell into five categories: fees, criminal convictions, unauthorized practice of law, forgery, and bribery.⁸⁵ These categories will be discussed in detail below.

As noted above, with the exception of a criminal conviction, which requires revocation of the lawyer's license, the penalties fell on a spectrum that is familiar to observers of U.S. attorney regulation: warnings, fines, and suspensions of 3–12

CORNELL L. REV. 1, 10 (1991); Susan Saab Fortney, *Systematically Thinking About Law Firm Ethics: Conference on the Ethical Infrastructure and Culture of Law Firms*, 42 HOFSTRA L. REV. 1, 5 (2013); Debra Moss Curtis, *Attorney Discipline Nationwide: A Comparative Analysis of Process and Statistics*, 35 J. LEGAL PROF. 209, 211 (2011). Both Australia and the UK have moved to management-based regulation at the firm level. The China experience reminds us that building an infrastructure of control at the firm level puts all of the ambiguity on what we mean by "ethical."

84. See *supra* notes 2, 10.

85. The database provides little demographic information beyond gender. Although women accounted for over twenty-eight percent of Zhejiang lawyers in 2013, only seven of the 122 disciplined lawyers in our database were female. See ACLA WEBSITE, *supra* note 20. The violations by female attorneys broke down into one criminal conviction (illegal pooling of savings deposits); three cases involving fees (charging clients without permission); one case including an additional charge of charging a contingency fee for marriage or succession cases; and one instance of forgery (intentionally providing falsified evidence).

months. With a system of annual renewal of licenses, the disciplinary apparatus does not need to go through a disciplinary proceeding to get rid of troublesome lawyers. Requiring that lawyers have both good character and fitness,⁸⁶ and requiring exclusion for lawyers having no or limited capacity for “civil conduct,”⁸⁷ provides significant flexibility to decline annual renewals of practice certificates. This provides a powerful tool when authorities want to curtail lawyers they deem subversive or who challenge state or powerful interests. The large discretion in deciding whether to renew lawyers’ practice certificates thus allows for much state-oriented regulation outside of the actual disciplinary system. And this in turn may explain why revocation of licenses is not used as a sanction for disciplinary matters other than criminal convictions.

As Figure II below shows, suspensions in the 3–6 month range were the most common penalty. Of the four cases involving failure “to perform duty as legal counsel” (i.e., three percent of the disciplinary cases), which we interpret as a form of neglect, three of those matters involved warnings or warnings with a fine; only one resulted in a suspension for five months. Outside of criminal conduct, what emerges is broadly speaking a disciplinary system that is quite lenient and that does not impose strong punishment in most cases.

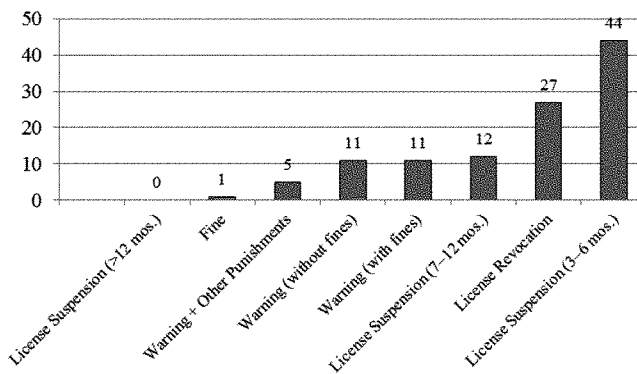


FIGURE II: Discipline and Punishment Imposed

The number of disciplinary cases is sufficiently small that it is difficult to draw an inference about trends in bringing disciplinary actions. The disciplinary cases in our database involved fairly small numbers, ranging between 9–22 cases per year from 2008 to 2014. After the close of our translation, it appears that the

86. Lawyers Law (promulgated by the Standing Comm. Nat’l People’s Cong., Oct. 28, 2007, effective June 1, 2008) art. 5(4), http://www.npc.gov.cn/englishnpc/Law/2009-02/20/content_1471604.htm [<https://perma.cc/38J7-4C59>] (unofficial translation).

87. *Id.* art 7(1).

ZPBOJ has increased its public posting of discipline.⁸⁸ This may coincide with the ACLA's 2014 pronouncement that there is an urgent need to resolve "the problems that the public and society have vigorously expressed regarding lawyers," including a need to strengthen "the establishment of lawyers' professional ethics."⁸⁹ It may also reflect the heightened political control over the legal profession by the party-state in response to the rising lawyer activism in recent years.⁹⁰

There also appears to be a trend toward local municipalities disciplining (or at least having their disciplinary actions posted). For the first four-and-a-half years, all the disciplinary cases were issued by the ZPBOJ, which is located in Hangzhou—the capital of Zhejiang Province and its largest city. Starting in July 2011, more cases were issued by the municipal BOJs outside of the provincial capital, such as those in Jinhua, Taizhou, Wenzhou, Ningbo, Shaoxing, and Zhoushan.⁹¹ In 2014, over sixty percent of the cases (fourteen out of twenty-two) were issued at the local municipal level.

It is difficult to discern, beyond speculation, why there has been a move toward more local imposition of lawyer discipline. One possibility is the increasingly heavy workload for the ZPBOJ as the number of lawyers in Zhejiang rises over time—delegating more work to the local BOJs would free the ZPBOJ from many routine regulatory tasks. Without access to the ZPBOJ's internal rules, however, it is impossible for us to investigate the specific regulatory jurisdictions between the ZPBOJ and the local BOJs. Another possibility is the concern for maintaining social stability at the local level. While concepts of subsidiarity usually applaud the movement of power to the level closest to the people, in China this is a more complex policy.⁹² Local officials, who are evaluated based heavily on their ability to maintain social control and promote economic development, have a strong incentive to control attorneys who may challenge their authority. The central party, however, recognizes that abuse of local authority (e.g., corruption) is also a threat to social stability. Putting dominant authority on local officials to regulate attorneys has an element of the fox guarding the chicken coop.

88. As a reminder, our database includes cases posted on the Zhejiang website as of June 15, 2015. *See supra* notes 2, 10.

89. *ACLA Explanation of Code Reforms, supra* note 12.

90. *See PILS, supra* note 6; LIU & HALLIDAY, *CRIMINAL DEFENSE IN CHINA, supra* note 6.

91. *Zhejiang Province Database, supra* note 2. Hangzhou is the capital and largest city in Zhejiang Province, with a registered population of 8.84 million. *Hangzhou (Zhejiang) City Information*, CHINA KNOWLEDGE ONLINE, <http://www.chinaknowledge.com/CityInfo/City.aspx?Region=Coastal&City=Hangzhou> [<https://perma.cc/Z5KC-UPQN>] (last visited Mar. 13, 2017). Other cities issuing disciplinary reports are Jinhua (4.69 million), Ningbo (5.57 million), Shaoxing (4.34 million), Taizhou (5.5 million), and Zhoushan (965,800).

92. For an interesting analysis of the complexity of subsidiarity in the context of the European Union, see Paul Craig, *Subsidiarity: A Political and Legal Analysis*, 50 J. OF COMMON MKT. STUD. 72 (2012).

C. DISCIPLINING DIFFERENT INTERESTS

Publicly revealing lawyer disciplinary matters sends a signal to both lawyers and the general public about the regulatory priorities of the ZPBOJ. This data indicates that the ZPBOJ is concerned heavily with keeping lawyers tightly bound to their law firms, followed by excluding lawyers who have been criminally convicted (although questions remain about the possibility of criminal convictions as a way to control lawyers who have become too independent) and discouraging bribery. Other concerns are more episodic.

1. LAW FIRM FEE VIOLATIONS—CLIENT PROTECTION OR STATE INTEREST?

Fee violations overwhelmingly represent the most common basis of discipline in Zhejiang—thirty-seven cases, 30.3% of the disciplinary cases in our database. Another eighteen cases were categorized as “unauthorized practice,” but fourteen of the eighteen cases involved the similar conduct described in fee violations, typically “representing a client without permission” of the firm. This brings the total law firm fee violation cases to fifty-one cases, over forty percent of all the disciplinary matters reported in Zhejiang Province. Obviously, this activity is a common and persistent concern of the regulators.

The law firm fee violations fell into the following patterns:

- Charging clients without the permission of the law firm: twenty-one cases
- Representing and charging clients without the permission of the law firm: ten cases
- Representing without permission and another offense, such as also setting up own office, falsifying documents, charging contingency fees for marriage or succession cases, or failing to turn over money: five cases

The unauthorized practice of law violations fell into the following pattern:

- Representing clients without the permission of the law firm: ten cases
- Representing clients without the permission of the law firm and an additional offense, such as working in two firms simultaneously, sealing an official letter, or not having a written contract: four cases

In the United States, fee issues would typically be characterized as client protection issues because most attorney discipline over fees involves a question of either excessive fees or failure to perform the promised services.⁹³ The concern in the Zhejiang fee violation cases, however, is *not* the fact of charging an excessive fee, but doing so outside of the oversight of the law firm. This could occur in any number of ways. The lawyer might never report the client to the firm and take all of the fees directly. The lawyer might retain the client through the

93. See generally WOLFRAM, *supra* note 57, § 9.3.

firm, but only report part of the income while taking the remainder under the table. From a study on such fee evasion practices in Yunnan, we know that lawyers go through considerable trouble to ensure that these practices go undetected.⁹⁴ Key here is that they develop sufficient trust from their clients. Without trust, clients can always turn to the firm or the authorities to report the lawyer, as clients will be able to compare what they paid with the amount on the actual receipt they received from the firm. As such, lawyers can only engage in such fee offenses if they know their clients well and have a longer working relationship.⁹⁵ They convince clients to pay in this manner by giving a discount paid directly from the firm commission and taxes the lawyer avoids paying. When lawyers report part of the income to the firm, they can benefit from having a formal legal representation contract, and thus represent their clients in court as their attorney. Lawyers who do not report their clients at all have to be more creative when doing trial work. In civil cases, lawyers can act as so-called civil representatives, where they do not act as part of the legal profession but just as informed citizens.⁹⁶ Lawyers in the Yunnan study have even been able to represent their clients in criminal cases. Some do so through close social connections with the court, the procuratorate, and the police, while others resort to fabricating the legal representation agreements by “borrowing” the official firm stamps.⁹⁷

Attorney Li Zhonglian, mentioned in the opening paragraph of the Introduction, is the most egregious fee offender in the Zhejiang database. He twice was caught for not sharing fees: charging the client RMB 1 million (ca. \$154,000) but “only hand[ing] over” RMB 300,000 (\$46,000) in 2011; and charging RMB 5.2 million (ca. \$800,000) but only giving RMB 700,000 (\$108,000) to his law firm. He eventually handed over the remaining amount to his law firm in 2015 and suffered a six-month license suspension.⁹⁸

The fee violation cases also reflect a wide range of discipline, ranging from warnings to suspended licenses for three to ten months. The harshest sanction among the fee cases went to attorney Zhu Wenbing, who not only charged clients without permission of his law firm, but also set up his own office without registering. He was suspended for ten months, and “unlawful income” of RMB

94. See van Rooij, *Weak Enforcement, Strong Deterrence*, *supra* note 5, at 289.

95. *Id.* at 296–97.

96. *Id.* at 298.

97. *Id.* at 297–98.

98. *Supra* note 3. The case of Li Zhonglian also hints at another issue in this database: periods of delay between the wrongdoing and the final punishment. The fee violations occurred in 2011 and 2012, but the sanction was not issued until 2015. Perhaps there had been a delay in the discovery of the wrongdoing, but of the fee cases that were the basis of discipline, most involved at least a two-year gap between the offense and the disciplinary sanction. Professor Stephen Gillers’ recent detailed analysis of the New York attorney disciplinary system flagged a common and “unconscionably long” delay in New York between the transgression and the sanction, or the filing of charges and the sanction. Stephen Gillers, *Lowering the Bar: How Lawyer Discipline in New York Fails to Protect the Public*, 17 N.Y.U. J. LEGIS. & PUB. POL’Y 485, 496 (2014).

3000 (\$150) was confiscated. Given the relatively small amount of money involved, just a fraction of the millions retained by attorney Li above, it is noteworthy that the harshest sanction was reserved for the lawyer who ventured to become independent. Reinforcing this point, individual law firms, which resemble solo practices in the United States, were only permitted in China after the 2007 Lawyers Law revision, and a lawyer must have at least five years of practice experience to set up such a law firm.⁹⁹

It is difficult to discern a basis for the length of suspensions. A handful of cases list the amount of money either confiscated or the amount the attorney was fined, including¹⁰⁰:

- Lawyer Li Zhonglian—4.5 million yuan (\$624,000) not turned over, six-month suspension;
- Lawyer Guo Xingzhou—2500 (\$365) confiscated, three-month suspension;
- Lawyer Wu Wei—2500 (\$365) confiscated, nine-month suspension;
- Lawyer Ji Qiu—2000 (\$290) confiscated, three-month suspension;
- Lawyer Zhou Guanhong—10,000 (\$1450) fined, six-month suspension;
- Lawyer Wang Guangya—50,000 (\$7300) confiscated, 3000 fined and a warning;
- Lawyer Ye Shiwu—50,000 (\$7300) fined, three-month suspension;
- Lawyer Li Mingjun—2000 (\$290) fine and a warning.

Scholars of the Chinese legal profession suggest that the wide range of state sanctions may reflect the level of political embeddedness of the lawyers involved or the symbiotic exchange between lawyers and state officials.¹⁰¹ We do not have direct evidence to show that such practice also exists in lawyer discipline, but given the prevalence of Chinese lawyers' political ties at the local level, it is plausible that disciplinary sanctions are also influenced by the personal relations between lawyers and BOJ officials.

To what extent does the prevalence of discipline for fee violations reflect an interest in client protection? None of the fee violation cases mention overcharging or excessive fees. We also do not see indications in these cases that the fee violations coincided with incompetence, conflicts of interest, or other ways in

99. Lawyers Law (promulgated by the Standing Comm. Nat'l People's Cong., Oct. 28, 2007, effective June 1, 2008) art. 16, http://www.npc.gov.cn/englishnpc/Law/2009-02/20/content_1471604.htm [<https://perma.cc/38J7-4C59>] (unofficial translation).

100. *Supra* note 10. We have provided approximate (rounded) currency value in U.S. dollars to give readers a flavor of the amount. Exchange rates will vary.

101. *See, e.g.,* Michelson, *Political Embeddedness*, *supra* note 16 (examining the role of politics in the legal practice of Chinese criminal defense lawyers); Liu & Halliday, *Political Liberalism*, *supra* note 6 (analyzing the concept of political embeddedness as it applies to Chinese lawyers); Liu, *Lawyers, State Officials, and Significant Others*, *supra* note 4 (analyzing the process of symbiotic exchange between lawyers and state officials in China).

which the lawyers' services negatively affected their clients. This is striking, as it is very likely that in many of these cases the clients reported the fee violations to the firm or the authorities, as it is nearly impossible for firms or authorities to unearth fee violations without a client's help.¹⁰² If client interests had been remotely at stake here, we would have at least in some cases learned about how the lawyer's conduct had hurt the client's interests. Yet we found no such indications.

Instead of clients' interests, fee discipline serves the interests of the law firm and of the BOJ. By taking money under the table, most¹⁰³ lawyers fail to pay the commission due to their firm, which can rise to up to fifty percent, at least in Yunnan province where we have more detail about these practices.¹⁰⁴ Given this financial arrangement, law firms have considerable interest in maintaining fee compliance. Firm managers, especially of the most successful firms, can assert influence in their local lawyers' associations, which play a role in the regulation of lawyers and work closely with the BOJ. The firm interest in compliance with fee regulation coincides perfectly with the party-state's interest in controlling lawyers. Lawyers who go rogue and charge outside the firm structure are less embedded in a law firm structure, and thus less susceptible to monitoring. With the BOJ's political interest in keeping lawyers tightly aligned with firms, and the firm's financial interest, both have an interest in lawyers being disciplined for fee violations. Add loss of local tax revenue to this, and we have a good explanation of why fee cases are so prevalent, even though they do not seem to serve any direct client interest. Indeed, a client may even benefit from having the lawyer charge outside the law firm if the lawyer shares the savings with the client, but that is not sufficient to overcome the firm and state interest in keeping the lawyer bound tightly to the law firm.

2. CRIMINAL CONVICTIONS

The second most common basis of discipline was a criminal conviction, with twenty-eight cases in which a lawyer's license was revoked on that basis, as required by article 49 of the Lawyers Law. The underlying criminal offenses broke down as follows:

102. van Rooij, *Weak Enforcement, Strong Deterrence*, *supra* note 5, at 294.

103. Some lawyers work on the basis of a salaried contract and should actually not receive any money from clients. Others work on a commission basis, paying up to fifty percent. However, some lawyers work on a so-called *chengbao* contract through which they must pay a fixed fee to the firm and are allowed to keep all client fees themselves.

104. See van Rooij, *Weak Enforcement, Strong Deterrence*, *supra* note 5, at 293.

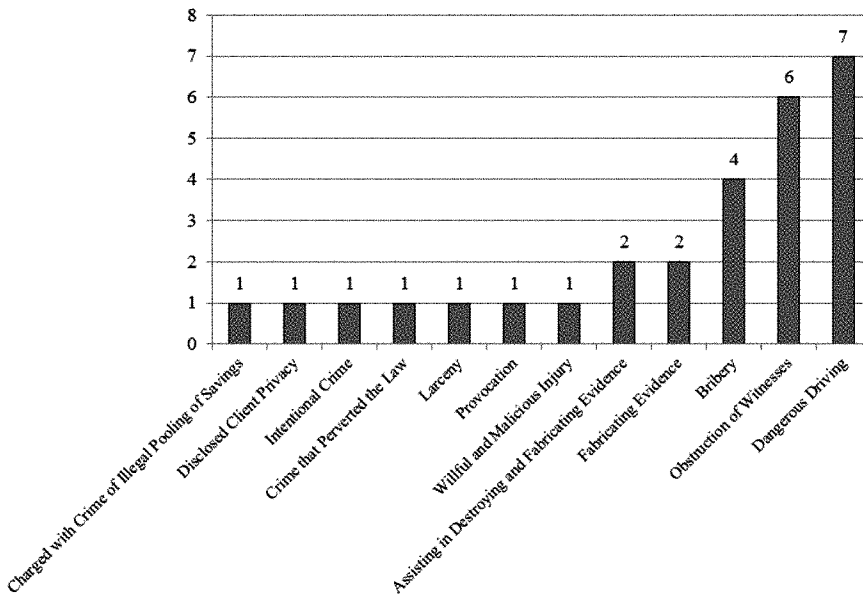


FIGURE III: Types of Criminal Convictions

Regulatory Goal of a Permanent Exclusion. Having a permanent exclusion from being a lawyer for anyone convicted of a crime (except for the crime of negligence) can be seen as promoting a regulatory goal of respect for law and upholding the reputation of the legal profession. This puts tremendous power into the hands of prosecutors. In the United States we would call it “collateral consequences,” such as non-U.S. citizens facing deportation for conviction of certain crimes.¹⁰⁵ Certainly a great many countries have almost automatic discipline for convictions of a crime, including the United States. Allowing for the possibility of reinstatement reflects a belief in the possibility of rehabilitation—or at least an indication that there is social value to this goal. With a quickly growing Chinese legal profession, this permanent bar may reflect a desire for clear and sharp lines that will send a signal to lawyers to promote a respect for law.

Criminal Convictions for Dangerous Driving. The most common criminal conviction was for “dangerous driving” (*weixian jiashi zui*), a crime similar to DUI in the United States, which was added to the PRC Criminal Law in 2011.¹⁰⁶ With the rapid growth of automobiles in China, car accidents and drunk driving

105. See Gabriel J. Chin, *Making Padilla Practical: Defense Counsel and Collateral Consequences at Guilty Plea*, 54 How. L.J. 675, 675–76 (2011).

106. PRC Criminal Law (promulgated by the Nat’l People’s Cong. Mar. 14, 1997, effective Oct. 1, 1997), art. 133, *translated in* Criminal Law of the People’s Republic of China (AsianLII).

have been flagged as a significant social issue.¹⁰⁷ A Bloomberg Philanthropies road safety report indicates that China had 220,000 road deaths in 2010–2012, the highest of the ten countries examined.¹⁰⁸ According to a 2012 study in two major cities, about twenty percent of traffic deaths involved drunk drivers.¹⁰⁹ China amended its Road Traffic Safety Law in 2011 to impose stronger punishment for drunk driving violations.¹¹⁰ Authorities launched a nationwide enforcement campaign. In Beijing alone, authorities assigned 7,000 officers at 1,400 checkpoints to catch drunk drivers.¹¹¹ Given the prevalence of drunk drivers and the increased crackdowns, it is no surprise that lawyers, who are likely to drive a car as well as engage in alcohol consumption as part of their business and social activities,¹¹² have been caught for this violation.

The question for us is what regulatory interest is served here. These lawyers have been criminally convicted, and that status alone results in permanent loss of their practice certificates. But there may be other interests as well. A province may wish to send strong signals against drunk driving in general. Or in an effort to change legal culture, the province may want to protect the reputation of the legal profession and the legal system as a whole. Of course, here it means that discipline may be imposed for conduct not related to the practice of law. This concept is well understood among U.S. lawyers, though not necessarily applauded. U.S. lawyers who fail to file tax returns, drive drunk, or chronically fail to pay for parking tickets may find themselves before the bar's disciplinary apparatus.¹¹³

Criminal Convictions for Obstructing Witnesses and Fabricating Evidence. There were six disbarments for criminal convictions for obstructing witnesses and another four for fabricating and/or destroying evidence. Along with these criminal convictions, there were five cases in which lawyers received a civil disciplinary sanction for forgery, with the precise misconduct being some form of fabricating evidence. As with bribery below, there appears to be prosecutorial discretion on whether to proceed with criminal sanctions or to allow the disciplinary process to address the issue.

107. See Laney Zhang, *China: Harsher Punishments for Driving after Drinking*, GLOBAL LEGAL MONITOR (Law Library of Cong.) (May 10, 2011), <http://www.loc.gov/law/foreign-news/article/china-harsher-punishments-for-driving-after-drinking> [perma.cc/74JN-8V4W].

108. BLOOMBERG PHILANTHROPIES, LEADING THE WORLDWIDE MOVEMENT TO IMPROVE ROAD SAFETY (2010–2012), http://www.mikebloomberg.com/content/uploads/sites/10/2015/06/Bloomberg_Philanthropies_Leading_the_Worldwide_Movement_to_Improve_Road_Safety.pdf [http://perma.cc/HE96-Y56U].

109. Ying Li et al., *The Drink Driving Situation in China*, 13 TRAFFIC INJ. PREVENTION 101, 106 (2012).

110. Zhang, *supra* note 107.

111. T.P., *Intoxication in China: Two New Crackdowns. One Is Working*, ECONOMIST (May 20, 2011), http://www.economist.com/blogs/banyan/2011/05/intoxication_china [http://perma.cc/TM9Q-3VDS].

112. See Mary Szto, *Contract in My Soup: Chinese Contract Formation and Ritual Eating and Drunkenness*, 25 PACE INT'L L. REV. 1, 2 (2013).

113. See generally WOLFRAM, *supra* note 57, § 3.3.4, at 97–98 (discussing discipline for lawyers in nonlawyer role).

Two cases offer examples of the conduct that led the lawyers into trouble. He Huiqiang was representing Chen Haidong in a divorce. According to a news report, He Huiqiang proposed a complex process of mixing debts and bringing a false lawsuit to create false creditors, resulting in the appearance of large joint debts in the marriage. The wife complained, the divorce was suspended, and He Huiqiang, Chen Haidong and his father were found to have committed the crime of conspiring to forge evidence.¹¹⁴ Here, the criminal prosecution as well as the disciplinary sanctions served to protect the public interest of upholding the rule of law and the reputation of the legal profession. One could also find a form of client protection here, as disbarring lawyers who so brazenly flaunt the law protects future clients from the same fate as Chen Haidong, the client in this unfortunate affair.

Feng Weimin was representing Chen Duqing for alleged rape. According to the written opinion, Feng Weimin asked the victim's family to withdraw their testimony and "dictated to the testimony's points and gave them a written, redesigned testimony, which caused the victim to contradict the prosecutor's evidence."¹¹⁵ Feng Weimin was criminally convicted of falsifying evidence by forging evidence, was sentenced to eight months in prison, and had his license revoked. This might have been a case of a false accusation, which the defense attorney uncovered. Or it might have been a private payment or some other coercion to encourage the victim to change the original testimony. If the former, we might see this conduct as zealously representing the client to uncover the truth. If the latter, we might see this as improper, undermining the functioning of the legal system and thus the regulatory goal of protecting the rule of law as well as the reputation of the legal profession.

Criminal charges for fabricating evidence have a complicated dynamic in China. Article 42 of the PRC Criminal Procedure Law and article 306 of the PRC Criminal Law establish the crime of lawyer's perjury:

Defense lawyers . . . shall not help criminal suspects or defendants conceal, destroy, or fabricate evidence, or collude with a criminal suspect or defendant to make confessions consistent, and must not intimidate or induce witnesses to give false testimony or take any other acts to interfere with the proceedings of judicial organs.¹¹⁶

Often labeled "Big Stick 306" among Chinese lawyers, this crime presents what is sometimes referred to as a "Sword of Damocles" hanging over Chinese legal

114. See 杭州一律师以妨害作证罪被判刑 [Hangzhou-a lawyer was sentenced for interfering with evidence], NEWS ON THE PEOPLE'S COURT (2010) (China), http://news.xinhuanet.com/legal/2010-06/04/c_12181257.htm [<http://perma.cc/N3HY-9EK8>].

115. Zhejiang Province Office of Justice, Written Decision of Administrative Punishment, Zhejiang Penalty Summary #3 (2007) (translated opinion on file with authors).

116. PRC Criminal Procedure Law [P.R.C. Laws] (promulgated by The National People's Congress Mar. 14, 2012, effective Jan. 1, 2013) art. 42; PRC Criminal Law [P.R.C. Laws], art. 306.

practitioners when they consider whether to investigate in criminal cases.¹¹⁷ If they fail to investigate, they are not fulfilling their duty. If their investigation yields evidence that contradicts the prosecution's evidence, which might have happened in attorney Feng Weimin's case, they may find themselves accused of violating article 306. This ethical dilemma has led to the detention, arrest, or criminal conviction of hundreds of Chinese lawyers since article 306 was written into the Criminal Law in 1997, including the nationally renowned Li Zhuang case in 2009–2011.¹¹⁸ In some cases, local police and procurators even deliberately use this crime as revenge against defense attorneys who dare to challenge the evidence in their dossier.¹¹⁹ Although the number of criminal convictions in the Zhejiang data seems small, many article 306 detentions or charges would not result in disciplinary sanctions if withdrawn by the prosecution or resolved as not guilty verdicts.

In sum, we can thus conclude that there can be mixed regulatory goals for criminal convictions. In cases where there is actual obstruction of witnesses or fabrication of evidence, lawyer discipline serves to uphold the reputation of the profession and the rule of law, and to protect future clients from illegal practices. However, there are also cases where article 306 prosecutions are used without a proper basis against activist criminal defenders as a means to protect the interests of the party-state and quell lawyers from doing a proper job in defending their clients and providing due process.

3. BRIBERY

Bribery was also an issue among the Zhejiang lawyers in our sample. Ten lawyers received disciplinary sanctions for offering bribes. Nine of the ten case summaries expressly stated that the lawyers had bribed a judge. Four of the lawyers had their licenses permanently revoked because of a criminal conviction for bribery.

The Chinese party-state has waged multiple battles with corruption.¹²⁰ Since Xi Jinping came to power in 2012, he has continued and expanded these efforts through a massive anti-corruption campaign, targeting both higher-level officials (“tigers”) and lowly bureaucrats (“flies”), and using severe punishment and measures to decrease opportunities, such as restricting banquets.¹²¹ As a matter of

117. See LIU & HALLIDAY, CRIMINAL DEFENSE IN CHINA, *supra* note 6.

118. See generally Sida Liu, Lily Liang & Terence C. Halliday, *The Trial of Li Zhuang: Chinese Lawyers' Collective Action against Populism*, 1 *ASIAN J.L. & SOC'Y* 79 (2014).

119. LIU & HALLIDAY, CRIMINAL DEFENSE IN CHINA, *supra* note 6.

120. See generally Benjamin van Rooij, *China's War on Graft: Politico-Legal Campaigns Against Corruption in China and Their Similarities to the Legal Reactions to Crisis in the U.S.*, 14 *PAC. RIM L. & POL'Y J.* 289 (2005).

121. Fu Hualing, *Wielding the Sword: President Xi's New Anti-Corruption Campaign*, at 136 (Nov. 29, 2016), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2492407 [<https://perma.cc/N52Q-8SXC>].

law¹²² and also enforcement practice, the priority has been to crack down hardest on officials taking bribes, with lesser punishment for those offering bribes.

The opening paragraph of this Article provides an example of a criminal conviction of a judge that swept up eleven attorneys in its wake. Four of the five attorneys were dealt with through the lawyer disciplinary process and one attorney was criminally convicted, jailed, and stripped of his license. There is no evidence of public discipline for the other six lawyers involved. Set out below in Figure IV is an overview of the wrongdoing and disciplinary sanctions from the court's opinion in the criminal conviction of Judge Wang Jianhong.¹²³ There is some lack of clarity in the court's description, but this chart sets out our best interpretation of the actors and the court's findings:

FIGURE IV:
Attorney Misconduct Described in Court Opinion Upholding the Criminal
Conviction of Judge Wang Jianhong

Name	Description of Bribe	Discipline
Guo Rui	For purposes of giving his case to a judge of his own choosing, treated Wang to dinner and gave him 1000 yuan.	License suspended for nine months.
Mou Xiujun	Allegation of the prosecutor was that out of appreciation for Wang's help on a case and hope for continued support treated Wang to a meal and gave him 10,000 yuan. The court opinion rejects this allegation, finding that Wang Jianhong did not accept bribes of 10,000 yuan.	License suspended for three months for bribery.
Li Hongfei	During the Spring Festival from 2006 to 2007, out of appreciation for Wang's assistance, at the entrance of Taizhou City Intermediate People's Court, gave Wang 1000 yuan and two shopping cards worth 1500 yuan. Opinion also notes that Li Hongfei and Wang were good friends but rejects a claim that these were just gifts from a friend.	License suspended for nine months.

122. PRC Criminal Law (promulgated by the Nat'l People's Cong. Mar. 14, 1997), *translated in* 2010 P.R.C. Laws 383, 385, 386, 389, 390. PRC Criminal Code articles 383, 385, and 386 show that the maximum penalty for accepting bribes is the death penalty, whereas according to articles 389 and 390, the maximum penalty for offering bribes is life imprisonment. For each of the categories of seriousness, the acceptance of bribes sanction is higher than that for offering bribes.

123. *See generally* Zhejiang Taizhou City People's Court Criminal Decisions (2008), Case No. 215 of the Public Prosecution of Jiojiang District (translation on file with authors).

Name	Description of Bribe	Discipline
Chen Linhui	Over three occasions, gave 1000 yuan, a DVD, and a 1000 yuan gift card.	Licensed suspended for nine months; fined 10,000 yuan.
Xu Yucong	From 2004–2006, on four separate occasions paid a total of 14,000 yuan for assistance on a case.	Charged with crime of bribery, sentenced to two-and-a-half years in jail, license revoked.
Maochu Ming	Gave 15,000 yuan in appreciation for help on a case.	No evidence of discipline by ZPBOJ.
Mou Nengjie (legal counsel for corp)	Twice went to Wang's home and gave him a total of 15,000 yuan.	No evidence of discipline by ZPBOJ.
Mei Qiliang	Loaned 2000 yuan, in appreciation for help; another lawyer told the judge not to repay it.	No evidence of discipline by ZPBOJ.
Zheng Xinli	Gave twelve restaurant gift cards totaling 12,000 yuan through a third party (Wang Jinshu).	No evidence of discipline by ZPBOJ.
Zhu Caijuan	Gave ten restaurant gift cards through a third party (Yao Wang).	No evidence of discipline by ZPBOJ.
Wang Xiaofang	Gave four restaurant gift cards totaling 16,000 yuan and a packet with 4000 yuan through a third party (Wang Jinshu).	No evidence of discipline by ZPBOJ.

The lawyers for whom there is no evidence of public discipline provided money and gifts ranging from 2000 to 16,000 yuan, mostly on the higher end.

The bribery discipline cases send contradictory signals. On the one hand we see that even within the strong anti-corruption campaign, the disciplinary punishment for those caught bribing is not overly severe. Many are allowed to continue to practice, some even without any disciplinary response. We see a large variation in punishment, where there is no clear link between the seriousness of the bribery and the discipline meted out. Minor bribes result in nine-month suspensions, while major bribes receive light or no discipline at all.

Disciplining lawyers for paying bribes obviously serves the interest of the rule of law, especially in cases where the bribed official was a judge. Discipline in these cases may also help to uphold the image of the legal profession by discouraging such practices. On the other hand, when there are too many cases, disciplinary action may actually signal a deep defect in the profession. There can also be an implicit client protection goal by weeding out, or at least punishing, lawyers who lead their clients into bribery practices.

The inconsistent punishment here also shows the breadth of discretion by disciplinary authorities. As with discretion in most legal systems, it is difficult to

ascertain what factors the authorities consider beyond the seriousness of the bribery at hand. Whether such interests serve the party-state or may be of a more personal and maybe even collusive or corrupt nature is not clear from the data we have here.

4. FAMILY PLANNING VIOLATIONS

Within our sample, there was one case in which discipline involved a very particular state interest: population control. In 2008, lawyer Rongbu Wu's license was suspended for three months for exceeding the stipulated limit of the birth-control policy. The specific act was "had a boy after already having a girl." The regulatory authorities here disciplined a lawyer for violating China's strict population control policy as it still applied in 2008.¹²⁴ In this case regulatory authorities may have sought to uphold the rule of law or the reputation of lawyers by punishing a lawyer for breaking the law. It seems just as likely, however, that in meting out this disciplinary sanction the regulatory authorities were using whatever regulatory vehicle available to aid the party-state in implementing its population policy.

5. VIOLATIONS IMPLICATING CLIENT INTERESTS

In the violations discussed so far, client protection only featured at best as an implicit and secondary objective, where punishing a lawyer for breaking the law might also protect future clients of such lawyers from being led into criminal activities. In our sample though, there were a handful of cases that more clearly concerned client protection.

Four cases (three percent of the disciplinary cases) involved failure "to perform duty as legal counsel," which we interpret as a form of neglect. The case summaries are silent as to the specific failures, but they do set out the sanctions. One lawyer received a warning. Two other lawyers were warned and fined RMB 5000 yuan (\$770) and 8000 yuan (\$1230), respectively. One lawyer, disciplined for "failure to perform his duty as legal counsel without justification," was suspended for five months. Given the frequent suspension for receiving fees without permission of the law firm, it is striking how neglect received more lenient treatment. We of course do not know the details of the particular cases and whether the clients were harmed.

Another seven cases involved other forms of misconduct that we cluster as client protection. One lawyer was suspended for three-and-a-half months for disclosing client privacy. A second lawyer was suspended for three months for misappropriating client property. A third lawyer received a warning for violating

124. See generally Wang Feng, Baochang Gu & Yong Cai, *The End of China's One-Child Policy*, 47 *STUD. FAM. PLANNING* 83–86 (2016).

the conflicts of interest regulation. A fourth lawyer received a warning and fine of RMB 1100 yuan for taking money/things of value from the client while providing legal aid work. Another three lawyers were involved in some form of faking the signature of the client on a letter of authorization, resulting in one warning and two suspensions for six months.

Clustering these matters together, it appears that up to eleven of the 122 cases involve some aspect of client protection. As noted above, the neglect sanctions are light; misappropriating client property receives a three-month suspension; a lawyer who engages in a conflict is warned. Both the numbers and the penalties suggest that although client protection is part of the Lawyers Law and the Code of Conduct, it is not a disciplinary priority, either in terms of disciplinary cases brought or in terms of the seriousness of the sanctions.

CONCLUDING ANALYSIS

China's authoritarian regime delicately balances the "leaders' desire to capitalize on the advantages of a competent legal system while simultaneously maintaining political control."¹²⁵ A competent legal system requires competent actors, so it is important to have competence as a regulatory goal in the lawyer discipline system. The Zhejiang data indicates, however, that the goal of political control runs so deep within China that it dominates even the regional lawyer disciplinary system, the place where we might expect other goals to also be reflected.

We are not surprised to find political control in this data. The China experience reminds us that being a lawyer does not inherently carry certain obligations. Instead, lawyers are given roles within the particular legal regime. Lawyers in the United States often see themselves as agents of change.¹²⁶ China does not embrace that model. Other commentators have argued that the application of the Lawyers Law over the last five years has had the intent to "eradicate cause lawyering."¹²⁷ While the persecution of human rights lawyers in China has been well documented by both overseas scholars and the international media,¹²⁸ the dominance of fee discipline in the Zhejiang data reveals a more nuanced method of control: tightly tying lawyers to firms that can serve as institutions to control wayward lawyers. This and other forms of administrative control on lawyers deserve more attention in future research on the Chinese legal profession.

125. Stern, *supra* note 69, at 3.

126. See, e.g., James Moliterno, *The Lawyer as Catalyst of Social Change*, 77 *FORDHAM L. REV.* 1559, 1560 (2009).

127. Elizabeth M. Lynch, *The Anatomy of a Crackdown: China's Assault on its Human Rights Lawyers*, *CHINA L. & POL'Y* (Oct. 18, 2015), <http://chinalawandpolicy.com/tag/lawyers-law> [<https://perma.cc/DF2Q-VPJQ>].

128. Fu & Cullen, *supra* note 4; PILS, *supra* note 6; LIU & HALLIDAY, *CRIMINAL DEFENSE IN CHINA*, *supra* note 6.

What is less obvious is the current absence of evidence, based on our limited data, of a governmental goal of regulating lawyers to improve competence and prevent professional failures, especially given the ACLA's public statement that this conduct is a source of concern. Even bribery concerns, the topic of an ongoing government campaign, runs second to the goal of keeping lawyers tightly tied to firms and justice bureaus. There is nothing in the political control of lawyers that would prevent a regulatory goal of improving the quality of the legal profession as a whole, yet the dominance of a political logic to lawyer discipline has made professional competence and other ethical issues only secondarily important in lawyer discipline.

The most benign explanation is that we do not know whether complaints about attorneys make their way to the relevant disciplinary body. Perhaps such issues are harder to assess, or perhaps the disciplinary apparatus has a pro-lawyer bent when addressing client issues.¹²⁹

The subordination of a client-protection goal in lawyer discipline may be attributable to the emerging understanding of the role of clients within the Chinese legal system. Benjamin Liebman's study of legal aid in China noted a similar lack of attention to the needs of clients in the development of legal aid and the legal profession.¹³⁰ Where local governments have taken steps to protect clients in legal aid practice, the regulations "suggest a paternalistic attitude toward clients" where "Chinese clients are almost always portrayed as passive recipients of lawyer and/or government services."¹³¹ Similar to the findings in our study, he found that client interests were secondary to both the state's development of institutions and lawyers' financial interests.¹³² Failing to focus more on clients creates risk for Chinese clients because lawyers depend on a complicated web of relationships to maneuver in the legal system and Chinese lawyers "are as willing as their counterparts elsewhere to sacrifice client interests as they strive to maintain such relationships."¹³³

As a practical matter, clients in China do not have other viable legal outlets to hold lawyers accountable for failure to perform their legal duties competently. In the process of research for this Article, we found no records of lawyers in China being sued by their clients for malpractice, suggesting that tort lawsuits are not

129. The question of leniency by disciplinary systems and courts has been raised by U.S. commentators. Gillers, *supra* note 98, at 490 (finds that the New York disciplinary system "fails the professed purpose of protecting the public and the administration of justice"); cf. Benjamin H. Barton, *Do Judges Systematically Favor the Interests of the Legal Profession?*, 59 ALA. L. REV. 453 (2008).

130. Benjamin L. Liebman, *Lawyers, Legal Aid, and Legitimacy in China*, in RAISING THE BAR: THE EMERGING LEGAL PROFESSION IN EAST ASIA 344 (William P. Alford ed., 2007).

131. *Id.* at 345.

132. *Id.* ("Client interests appear secondary in a system in which the state is focusing on developing institutions and on raising the number of lawyers, and in which lawyers themselves appear caught up in exploring new opportunities, primarily financial.")

133. *Id.*

currently a strong method of regulation. Given the limited alternatives, the disciplinary system made and enforced by the justice bureaus arguably becomes an even more important potential mechanism of client protection.¹³⁴

The lack of attention to client interests reflects regulatory triage. Many observers see China as a comparatively robust economy with a particularly fragile political system. It is evident from our data analysis that the regulatory apparatus puts competence and client protection far below the political goals of shoring up the infrastructure of control. This tracks the other forms of political control of lawyers, such as arrests and detentions that have occurred over the last few years.¹³⁵ The tight political control of the legal profession is a sensitive indicator of both the strength and the potential fragility of the Chinese party-state.

On a more optimistic note, perhaps other systems in China can be used to implement the goal of improving the competence of the legal profession. We can identify two possibilities. First, just as the American Bar Association and state bars engage in exhortation and social pressure to be better, stronger, faster, perhaps the ACLA can play that same role in China even with its limited autonomy from the party-state. A second possibility is to focus more sharply on law firms as the situs for improving competence. Indeed, the Chinese experience of building a strong system of law firm regulation is consistent with many American scholars' recommendations that we move to firm-based regulation.¹³⁶ Perhaps law firm discipline can be a source of private and indirect regulation to improve competence. Given that the majority of Chinese law firms provide only minimal administrative support for their lawyers, there are practical challenges to imposing this obligation on law firms. The efficacy of their indirect regulation beyond political control is another question that needs further research.

The dominance of party-state interests over client protection reflects not only the socialist legacy, but also the persistence of an authoritarian legality in contemporary China. While arrests, detentions, show trials, and criminal convictions are a well-known method of control,¹³⁷ this Zhejiang data demonstrates the power of the disciplinary system and law firms to serve as a strong

134. We are conscious of the danger of exporting the American understanding of law to China. See, e.g., JEDIDIAH J. KRONCKE, *THE FUTILITY OF LAW AND DEVELOPMENT: CHINA AND THE DANGERS OF EXPORTING AMERICAN LAW* (2016).

135. See Lynch, *Rule of Law Mirage*, *supra* note 5; LIU & HALLIDAY, *CRIMINAL DEFENSE IN CHINA*, *supra* note 6.

136. See *supra* note 83.

137. See generally Editorial, *Show Trials in China*, N.Y. TIMES (Aug. 6, 2016), http://www.nytimes.com/2016/08/07/opinion/sunday/show-trials-in-china.html?smprod=nytcare-iphone&smid=nytcare-iphone-share&_r=0 [<https://perma.cc/5CG2-4WAN>].

situs of control. The endurance of this authoritarian legality in China is also a warning to democratic legal systems to identify and stay faithful to regulatory goals that promote an independent and competent legal profession.¹³⁸

138. The American Bar Association recently adopted regulatory objectives for the legal profession:

- A. Protection of the public
- B. Advancement of the administration of justice and the rule of law
- C. Meaningful access to justice and information about the law, legal issues, and the civil and criminal justice systems
- D. Transparency regarding the nature and scope of legal services to be provided, the credentials of those who provide them, and the availability of regulatory protections
- E. Delivery of affordable and accessible legal services
- F. Efficient, competent, and ethical delivery of legal services
- G. Protection of privileged and confidential information
- H. Independence of professional judgment
- I. Accessible civil remedies for negligence and breach of other duties owed, and disciplinary sanctions for misconduct
- J. Diversity and inclusion among legal services providers and freedom from discrimination for those receiving legal services and in the justice system.

AM. BAR ASS'N, ABA MODEL REGULATORY OBJECTIVES FOR THE PROVISION OF LEGAL SERVICES (2016), http://www.americanbar.org/content/dam/aba/images/office_president/final_regulatory_objectives_resolution_november_2015.pdf [<https://perma.cc/Q64K-RC3K>].