Attorney Discipline Nationwide: A Comparative Analysis of Process and Statistics

Debra Moss Curtis, Nova Southeastern University

Available at: http://works.bepress.com/debra_curtis/2/
The Journal of the Legal Profession

The University of Alabama School of Law

Articles

Modern American Supreme Court Judicial Methodology and Its Origins: A Critical Analysis of the Legal Thought of Roscoe Pound
Beau James Brock

Attorney Discipline Nationwide: A Comparative Analysis of Process and Statistics
Debra Mozzi Curtis

Attorney Advertising and the Decline of the Legal Profession
William G. Hyland Jr.

Entering Law Students' Conceptions of an Ethical Professional Identity and the Role of the Lawyer in Society
Verna E. Monroe
Neil W. Hamilton

Student Commentaries
Compilation

Volume 35
Spring 2011
ATTORNEY DISCIPLINE NATIONWIDE: A COMPARATIVE ANALYSIS OF PROCESS AND STATISTICS

Debra Moss Curtis

ABSTRACT

This purpose of this article is to examine the process and statistics of attorney discipline nationwide and draw conclusions about information about them available to the public who may be hiring attorneys.

Attorney discipline systems are promulgated individually by states as part of each state’s licensing and attorney regulation system. While the ABA has formulated model rules of professional conduct which most states have adopted, these rules serve as the conduct guidelines for attorney behavior. Each state ultimately decides what, within its licensing system, is a rule violation, to what procedure an attorney is entitled when accused of such, and if necessary, any penalties for violation of those rules under the stated procedures. Because many state supreme courts have used power to frequently delegate the enforcement process to State bar associations, organized lawyer associations have often had a voice in their own professional regulation. While states individually may publish discipline information, finding this information in one place to make comparisons among states and of lawyers licensed in multiple jurisdictions is difficult.

This article reviews, state by state, each state bar’s rules of discipline and their discipline system. Along with an overview of each of those systems, this article also presents statistics regarding those disciplines during a 10-year period. Last, this article offers analysis and conclusions as to the problems and status of these competing systems.

1. Debra Moss Curtis is a Professor of Law at the Shepard Broad Law Center, Nova Southeastern University, Ft. Lauderdale, FL. She would like to thank the following current and former NSU Law students for their assistance on this project: significant contributions from Genie Pollinici, Ossur Giraldo, Diana Callahan, Shannon Maribona, and Patrick Kennedy, and additional contributions from Brooke Gannon, Parij Ollanian and Alyson Smeargate.
I. INTRODUCTION

This purpose of this article is to examine the process and statistics of attorney discipline nationwide and draw conclusions about information about them available to the public who may be hiring attorneys. Attorney discipline systems are promulgated individually by states as part of each state's licensing and attorney regulation system.\footnote{2. \textit{Lorrie T. Brown, Jr., Ending Legitimate Advocacy: Reimagining Rule 11 Through Enhancement of the Ethical Duty to Report, 63 \textit{Ohio St. L.J.} 1555, 1586 (2001)}.} While the ABA has formulated model rules of professional conduct which most states have adopted, these rules serve as the conduct guidelines for attorney behavior.\footnote{3. \textit{Id. at 1586}.} Each state ultimately decides what, within its licensing system, is a rule violation, to what procedure an attorney is entitled when accused of such, and if necessary, any penalties for violation of those rules under the stated procedures. The power for states to impose discipline arises from the state supreme courts which have the ability to regulate their officers, which includes attorneys practicing before them.\footnote{4. \textit{Id. at 1581}} The Supreme Courts not only establish the rules that govern the practice of law, but also create and administer the process to enforce them.\footnote{5. \textit{Id. at 1582}.}

Because many state supreme courts have used power to frequently delegate the enforcement process to State bar associations, organized lawyer associations have often had a voice in their own professional regulation.\footnote{6. \textit{Id. at 1581}} While states individually may publish discipline information, finding this information in one place to make comparisons among states and of lawyers licensed in multiple jurisdictions is difficult.\footnote{7. \textit{Id. at 1582}} The ABA maintains a National Lawyer Regulatory Data Bank, which is the only national repository of information regarding public disciplinary sanction imposed against U.S. lawyers.\footnote{8. \textit{Id. at 1582}.} This data bank has existed for more than 40 years and is intended to provide the service to the attorney profession and the public of assisting in locating and examining records regarding public discipline.\footnote{9. \textit{Id. at 1581}} The Data Bank both allows for a name search and statistic check (for a small fee) and specialized statistical reports.\footnote{10. \textit{Id. at 1582}.} However, states participation in this service is voluntary, so there is no guarantee that all actions taken are represented by this service.\footnote{11. \textit{Id. at 1582}.} This service has been criti-
there is evidence linking them to actions, and that discipline systems work more infrequently against large firm lawyers.21

Generally, discipline systems consist of both formal, often public hearings with the threat of severe sanctions to address serious misconduct, as well as more informal confidential proceedings that may result in less severe remedies to address the less serious violations.22 In the past 20 years, there has been a growing trend to make more proceedings public.23 Such a public turn of events may raise additional concerns in the process, such as attorneys reputations being damaged, client information being necessarily revealed in the defense and delays in process due to case load.24 However, others have documents that those states with open records indicate many of these fears unfounded, and seek to hold attorneys to the same level of protection as other civil defendants.25

In part II of this article, I will review, state by state, each state bar’s rules of discipline and their discipline system. Along with an overview of each of those systems, this article will present statistics regarding those disciplines during a 10-year period. Additionally, the amount of information available to the public about each discipline system is greatly varied, and such availability will be evaluated. In Part III, I will offer analysis of the issues that these differing discipline systems create, and offer conclusions.

II. STATE-BY-STATE ATTORNEY DISCIPLINE SYSTEMS

Information on each state’s discipline system was gathered individually from each State Bar’s website. It has been noted that while more states are slowly joining the trend of making information public, there is great disparity regarding the availability of discipline information.26 Some sites contain disciplinary information, but other sites are confusing, not user-friendly and have information well hidden.27 Information about attorney discipline often is not as “readily available” as that of doctors or other professions regulated by states.28

ALABAMA

The Alabama State Bar’s grievance system was established by the Supreme Court of Alabama to enforce uniform standards of professional con-

21. Id. at 9, 10.
22. 107 HARV. L. REV. at 1601.
23. 107 HARV. L. REV. at 1601, 1602.
24. Id.
25. Id. at 1602.
27. Id.
28. Id.

duct for lawyers.29 The Alabama State Bar website has an easy to find brochure and complaint form on its main website for the public to access.30 Once a complaint is filed with the Alabama State Bar it is reviewed by Bar counsel to determine if there is sufficient merit to warrant a full investigation.31 At this point, the Bar forwards a copy of the complaint to the attorney and gives them a chance to respond.32 Once the lawyer’s response is received, the initial complaint and response will be reviewed again by Bar counsel to determine what further action, if any, should be taken, and written notification of the decision sent to the complainant.33 If there is determined insufficient evidence to merit a formal investigation, then the matter is closed.34 However, if there is sufficient information to establish that an ethics violation possibly occurred, a formal investigation will be opened.35 Some investigations will be sent to local Bar grievance committees, and others will be investigated by the Bar.36

The Alabama Rules of Professional Responsibility list the conduct that would warrant sanctioning of an attorney:

1) Violate or attempt to violate the Rules of Professional Conduct, knowingly or induce another to do so, or do so through the acts of another;
2) Commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;
3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
4) Engage in conduct that is prejudicial to the administration of justice;
5) State or imply an ability to influence improperly a government agency or official;
6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable Canons of Judicial Ethics or other law; or

30. Id.
31. Id.
32. Id.
33. Id.
34. Id.
36. Id.
7) Engage in any other conduct that adversely reflects on his fitness to practice law.37

If any of the above rules are broken the Alabama Supreme Court through the State Bar can impose the following sanctions:38

1) Probation: The lawyer will be monitored, may be required to report to a disciplinary authority, and his practice may be restricted during a specific period of time.

2) Private reprimand: A written reprimand, signed by the President of the Alabama State Bar is sent to the lawyer and placed in the lawyer’s permanent file.

3) Public reprimand: There are two types. In both, the lawyer must appear before a public meeting of the Board of Bar Commissioners, where the reprimand will be read to him by the President of the Alabama State Bar. However, one type of public reprimand will be published in both the local newspaper where the lawyer practices and The Alabama Lawyer (a publication that is distributed to all members of the Alabama State Bar). The other type of public reprimand is published only in The Alabama Lawyer. These reprimands are also placed in the lawyer’s permanent file.

4) Suspension: The lawyer is suspended from practicing law for a specific amount of time, ranging from 45 days to five years. Depending on the length of suspension, lawyers may be reinstated to practice law without a hearing. In some cases a lawyer may not resume the practice of law until reinstated after public notice and a hearing.

5) Disbarment: The lawyer is disbarred and disbarment is for a period of five years. The lawyer must petition the Bar for reinstatement in order to be allowed to resume the practice of law.39

The Alabama Supreme Court has discretion in deciding what sanction to impose and the Court generally looks to the attorney’s state of mind when the misconduct occurs.40 Generally, the Court disbars an attorney when he knowingly or intentionally breaks the rules and the misconduct

37. Id.
38. Id.
39. Id.
fairly constant, ranging from 8% to 13%.

ALASKA

All lawyers who are licensed to practice in Alaska are governed by ethical rules, known as the Rules of Professional Conduct, adopted by the Alaska Supreme Court.46 The Alaska Bar Association administers these rules through an established 12 member Disciplinary Board consisting of three citizens and nine lawyers.47 The Disciplinary Board appoints Bar Counsel who is assigned to independently investigate and prosecute allegations of lawyer misconduct.48 If a person believes that a lawyer has acted unethically, he or she may make a written complaint to the Alaska Bar Association for investigation.49 The Bar Counsel staff will review the complaint to determine whether the documents contain enough factual allegations, which if true, would constitute ethical misconduct.50 If the grievance indicates that misconduct may have occurred, a copy of the grievance will be sent to the lawyer for a response.51 After a full investigation, the Bar Counsel will either:

- dismiss the grievance if the evidence does not show unethical conduct;
- issue a written private admonition which is placed in the lawyer’s record at the Bar Association;
- file a petition for a formal hearing, or enter a stipulation for discipline, either of which will be taken to the Disciplinary Board and/or the Alaska Supreme Court.52

If the complaint is not accepted for investigation by Bar Counsel, the complainant may appeal that decision by writing a letter to the Bar Association with the reasons for disagreeing with the action.53 The Board’s Discipline Liaison will review the record in the complaint and decide on the appeal.54

46. Grievances, https://www.alaskabar.org/servlet/content/lawyers_must_act_ethically__examples_of_misconduct.html
47. Id.
48. Id.
49. Id.
50. Id.
51. Id.
52. Process of Investigation, https://www.alaskabar.org/servlet/content/how_a_complaint_is_investigated.html
53. Id.
54. Id.
55. Id.
56. Id.
218 The Journal of the Legal Profession [Vol. 35:2

m) failure to inform the Bar of his or her current mailing address and telephone number as provided in Rule 9(e).57

A finding of misconduct by the Court or Board will be grounds for:
1) disbarment by the Court; or
2) suspension by the Court for a period not to exceed five years; or
3) probation imposed by the Court; or
4) public censure by the Court; or
5) reprimand in person by the Board, pursuant to Rule 10(c)(3); or
6) written private admonition by Bar Counsel, pursuant to Rule 11(a)(12).58

When a finding of misconduct is made, in addition to any discipline listed above, the Court or the Board may impose the following requirements against the Respondent:

1) restitution to aggrieved persons or organizations;
2) reimbursement of the Lawyers’ Fund for Client Protection; or
3) payment of the costs, including attorney’s fees, of the proceedings or investigation or any part thereof. In imposing costs and fees, consideration shall be given to the following factors:
   a. the complexity of the disciplinary matter;
   b. the duration of the case;
   c. the reasonableness of the number of hours expended by Bar Counsel and the reasonableness of the costs incurred;
   d. the reasonableness of the number of Bar Counsel used;


2011] Attorney Discipline Nationwide 219

e. Bar Counsel’s efforts to minimize fees;
   f. the reasonableness of the defenses raised by the Respondent;
   g. vexatious or bad faith conduct by the Respondent;
   h. the relationship between the amount of work performed by Bar Counsel and the significance of the matters at stake;
   i. the financial ability of the Respondent to pay attorney’s fees; and
   j. the existence of other equitable factors deemed relevant.59

There is no automatic formula for determining how aggravating and mitigating circumstances affect an otherwise appropriate sanction against a disciplined attorney; rather, each case presents different circumstances which must be weighed against the nature and gravity of the lawyer’s misconduct.60 There is a three-step analysis in imposing attorney sanctions: first, the Supreme Court addresses the first three prongs of the American Bar Association (ABA) Standards for Imposing Sanctions, determining the duty violated, the lawyer’s mental state, and the extent of the actual or potential injury; second, the court looks to the ABA Standards to discern what sanction is recommended for the type of misconduct found; and third, after determining the recommended sanction, the court decides whether aggravating or mitigating factors should affect that sanction.61

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. With the exception of one year the percentage of formal charges compared with complaints filed has also been extremely low. However, overall, the percentage of actual disciplines imposed compared with number of charges filed has remained fairly constant, ranging from 3% to 9%.

59. Id.
The Supreme Court of Arizona, through the State Bar of Arizona and its Regulation Department, regulates lawyer conduct in the state.\(^2\) The Lawyer Regulation Department has developed the Attorney/Consumer Assistance Program (A/CAP) to help those who have a dispute with an attorney.\(^3\) A/CAP acts as a central intake office for all inquiries concerning the conduct of attorneys in Arizona.\(^4\)

If a complainant files charges against a lawyer, State Bar counsel will review it to determine whether an investigation is appropriate.\(^5\) If an investigation is appropriate, a copy of what the complainant submitted will be sent to the lawyer, who will be asked to submit a written response to the charges.\(^6\) If the complainant’s information does not meet the threshold for an investigation, they will be notified of that fact.\(^7\)

If, after investigation, the State Bar determines that there is clear and convincing evidence to show that the lawyer violated the Rules of Professional Conduct, formal disciplinary charges may be filed against the lawyer.\(^8\) Under those circumstances, a hearing may be held.\(^9\) If the Commission recommends censure, suspension or disbarment, the parties may ask the Supreme Court of Arizona to review the matter.\(^10\) In suspension and disbarment cases, the parties do not ask for review, the Court may choose to review the matter anyway.\(^11\) If the Court does not decide to review the matter within 60 days, it becomes final and the Supreme Court Clerk enters an order and judgment.\(^12\)

All censures, suspensions and disbarments happen by Supreme Court order.\(^13\) The State Bar has a Mediation program as part of the disciplinary process.\(^14\) If the alleged misconduct is relatively minor, and it appears that the parties could benefit from getting together and discussing their concerns with a trained mediator, the matter may be referred to one of the lawyer or non-lawyer mediators throughout the state.\(^15\)

Charges are handled in several ways:

1. Charges may be dismissed if the lawyer’s conduct does not violate the Rules of Professional Conduct contained within Rule 42 of the Rules of the Supreme Court of Arizona.

2. Charges may be referred to the Peer Review Program when the lawyer has not violated the Rules of Professional Conduct but has shown incivility or unprofessionalism toward clients or others.

3. Low-level violations or client relation problems may be resolved by the Attorney/Consumer Assistance Program.

4. If the charges against a lawyer are found to violate the Rules of Professional Conduct, the lawyer may be referred to a diversion program, required to pay restitution, issued an informal reprimand or censure, ordered to pay costs, placed on disability inactive status, suspended or disbarred.\(^16\)

The State Bar has established diversion programs that concentrate on helping the lawyer change his or her practices.\(^17\) Diversion is not an alternative to discipline in cases of serious misconduct or which factually present little hope that diversion will achieve program goals.\(^18\) Successful completion of diversion results in the underlying matter being dismissed.\(^19\)

The Arizona Supreme Court considers the following factors in determining appropriate sanctions: (1) the duty violated, (2) the lawyer’s men-
The Committee on Professional Conduct has the authority to discipline attorneys for violation of the Arkansas Rules of Professional Conduct adopted by the Supreme Court.81 If a complainant believes that an attorney has acted in a manner that violates the standards of professional conduct, they must fill out the grievance form and return it to the office of Professional Conduct.

The percentage of formal charges as compared with the active attorney population has only varied between less than 1% and 2%. The percentage of formal charges compared with complaints filed in earlier years was higher but in recent years has remained extremely low. However, the percentage of disciplines imposed to complaints received has varied, from a low of 5% in fairly recent years to the following year a high of 14%.

<table>
<thead>
<tr>
<th>Year</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actives</td>
<td>12157</td>
<td>13019</td>
<td>13040</td>
<td>13032</td>
<td>13052</td>
<td>13067</td>
<td>13080</td>
</tr>
<tr>
<td>Complaints Received</td>
<td>2507</td>
<td>2484</td>
<td>2524</td>
<td>2542</td>
<td>2566</td>
<td>2586</td>
<td>2547</td>
</tr>
<tr>
<td>Formal Charges Filed</td>
<td>110</td>
<td>110</td>
<td>111</td>
<td>112</td>
<td>111</td>
<td>111</td>
<td>109</td>
</tr>
<tr>
<td>Complaints Investigated</td>
<td>1156</td>
<td>1107</td>
<td>1142</td>
<td>1180</td>
<td>1164</td>
<td>1178</td>
<td>1187</td>
</tr>
<tr>
<td>Total Number of Disciplines Imposed</td>
<td>352</td>
<td>352</td>
<td>352</td>
<td>352</td>
<td>352</td>
<td>352</td>
<td>352</td>
</tr>
<tr>
<td>Percentage of Disciplines Imposed Compared to Complaints Filed</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
</tr>
</tbody>
</table>

ARKANSAS85

82. Includes matters handled by consumer assistance program.
83. In Arkansas and Georgia, the number of formal charges means the number of cases filed, not lawyers disciplined.
85. Id.
86. Id.
87. Id.
88. Id.
89. Id.
91. Id.
92. Procedures of the Ark. Supreme Court Regulating Prof'l Conduct of Attorneys at Law § 17; Id.
93. Id.
94. Id.
95. Id.
96. Id.
97. Id.
98. Id.
99. Id.
The most serious sanction of disbarment is only applied when there is a serious misconduct violation and the committee feels any lesser sanction would be inappropriate. 96 The committee will suspend an attorney’s practice for a period of no more than five years if his acts consist of serious misconduct but do not warrant disbarment. 97 The sanctions used by the committees for infractions of lesser misconduct are probation, issuing a letter of warning, issuing a letter of caution, and issuing a letter of reprimand. 98 To determine the appropriate sanction for lesser misconduct the committee looks to a set of factors:

1) The nature and degree of the misconduct for which the lawyer is being sanctioned;
2) The seriousness and circumstances surrounding the misconduct;
3) The loss or damage to clients;
4) The damage to the profession;
5) The assurance that those who seek legal services in the future will be protected from the type of misconduct found;
6) The profit to the lawyer;
7) The avoidance of repetition;
8) Whether the misconduct was deliberate, intentional or negligent;
9) The deterrent effect on others;
10) The maintenance of respect for the legal profession;
11) The conduct of the lawyer during the course of the Committee action;
12) The lawyer’s prior disciplinary record, to include warnings;

11) Matters offered by the lawyer in mitigation or extenuation except that a claim of disability or impairment resulting from the use of alcohol or drugs may not be considered unless the lawyer demonstrates that he or she is successfully pursuing in good faith a program of recovery. 99

Probation is used only in cases where there is little likelihood that the lawyer will harm the public during the period of rehabilitation and the conditions of probation can be adequately supervised. 100 A letter of warning is used in cases of “lesser misconduct” of a minor nature, when there is little or no injury to a client, the public, the legal system or the profession, and when there is little likelihood of repetition by the lawyer, should a warning be imposed. 101 A letter of caution is issued when sufficient factors are present that makes a lesser sanction inappropriate. 102 Finally, a letter of reprimand is issued when the factors that are present make a lesser sanction inappropriate; however, the attorney’s actions do not rise to the level of serious misconduct. 103

The percentage of formal charges as compared with the active attorney population has remained at about 2%. The percentage of formal charges compared with complaints filed has also been consistently quite high compared with other states. In addition, the percentage of actual disciplines imposed compared with number of charges filed is also consistently quite high compared with other states, many years remaining at about one in four complaints resulting in discipline.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints Received</td>
<td>454</td>
<td>454</td>
<td>454</td>
<td>454</td>
<td>454</td>
<td>454</td>
<td>454</td>
<td>454</td>
<td>454</td>
<td>454</td>
<td>454</td>
<td>454</td>
<td>454</td>
<td>454</td>
</tr>
<tr>
<td>Complaints Investigated</td>
<td>89</td>
<td>89</td>
<td>89</td>
<td>89</td>
<td>89</td>
<td>89</td>
<td>89</td>
<td>89</td>
<td>89</td>
<td>89</td>
<td>89</td>
<td>89</td>
<td>89</td>
<td>89</td>
</tr>
<tr>
<td>Percentage of Formal Charges Compared with Complaints</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
</tr>
<tr>
<td>Total Number of Disciplines Imposed</td>
<td>771</td>
<td>771</td>
<td>771</td>
<td>771</td>
<td>771</td>
<td>771</td>
<td>771</td>
<td>771</td>
<td>771</td>
<td>771</td>
<td>771</td>
<td>771</td>
<td>771</td>
<td>771</td>
</tr>
<tr>
<td>Percentage of Disciplines Imposed Compared to Complaints Filed</td>
<td>7%</td>
<td>7%</td>
<td>7%</td>
<td>7%</td>
<td>7%</td>
<td>7%</td>
<td>7%</td>
<td>7%</td>
<td>7%</td>
<td>7%</td>
<td>7%</td>
<td>7%</td>
<td>7%</td>
<td>7%</td>
</tr>
</tbody>
</table>

95. Id.
96. Id.
97. Id.
98. Procedures of the Ark. Supreme Court Regulating Prof’l Conduct of Attorneys at Law § 17;
99. Id.
100. Id.
101. Id.
102. Id.
103. Id.
CALIFORNIA

As an arm of the California Supreme Court, the State Bar investigates and prosecutes complaints against lawyers. The State Bar Court conducts hearings and makes decisions and formal recommendations on disciplinary matters. The court is divided into two departments — a Hearing Department and a Review Department, each headed by a presiding judge. California is the only state in the nation with independent professional judges dedicated to ruling on attorney discipline cases.

Any complaint received is entered into the system and a State Bar lawyer will read it to determine how the complaint will proceed. The complaint will then be assigned to a staff member to conduct an investigation. At the end of the investigation, the complainant is informed in writing if the complaint will proceed to prosecution in the State Bar Court or if it will be closed. If the State Bar determines that an attorney’s actions involve probable misconduct, formal charges are filed with the State Bar Court by the bar’s prosecutors (Office of Chief Trial Counsel). The independent State Bar Court hears the charges and has the power to recommend that the California Supreme Court suspend or disbar attorneys found to have committed acts of professional misconduct or convicted of serious crimes. For lesser offenses, public or private reprimands may be issued by the State Bar Court. The Court may also temporarily remove lawyers from the practice of law when they are deemed to pose a substantial threat of harm to clients or the public. Lawyers may seek review of State Bar Court decisions in the California Supreme Court.

Disciplinary action for violations of the Rules of Professional Conduct or the State Bar Act ranges from private reproof to disbarment. If a State Bar investigation indicates that an attorney’s conduct only bordered on a violation or was a minor breach, Bar prosecutors may choose an alternative to discipline, such as a Directional or Warning Letter to the attorney and close the case.

Alternatively, they could issue an Admonition informing the attorney that no further action will take place as long as he or she stays out of trouble for two years. Additionally there could be an Agreement in Lieu of Discipline that requires the attorney to fulfill specially tailored remedial conditions.

For attorneys who are disbarred, their actions generally fall into one of two categories — either they committed a very serious violation, or they have a history of misconduct. Most disbarment cases involve more than one violation. By contrast, reproof, either public or private, usually is reserved for first-time offenders whose misconduct falls on the low end of the scale.

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. With the exception of one year, the percentage of formal charges compared with complaints filed has also been consistently extremely low. By contrast, the percentage of actual disciplines imposed compared with number of charges filed has varied greatly, from a low of 5% to a high of 18%. As California has such a large number of attorney admitted, there thus have been years with large numbers of disciplines imposed in the state.

106. Id.
107. Id.
109. Id.
110. Id.
112. Id.
113. Id.
114. Id.
115. Id.
117. Id.
118. Id.
119. Id.
120. Id.
121. Id.
In 1999, the Legislature enacted a bill that required the State Bar to compile statistics relating the correlation of complaints received and disci-
plinary action taken with the size of a law firm.123 The Stat Bar found that while there was no institutional bias against solo or small firm attorneys, there was a disproportionate number of complaints filed against solo and small firm practitioners as compared to large firm attorneys.124

**COLORADO**

The Colorado Supreme Court has established standards of ethics for attorneys in the Court rules and the Colorado Rules of Professional Conduct.125 To administer the procedures, the Colorado Supreme Court has appointed an Office of Attorney Regulation Counsel; a nine-member At-

---

122. California includes matters handled by central intake.
123. Report by the State Bar of California, "Investigation and Prosecution of Disciplinary Com-
plaints Against Attorneys in Solo Practice, Small Law firms and Large Law Firms" (June 2003).
124. Id.
g) engage in conduct, in the representation of a client, that exhibits or is intended to appeal to or engender bias against a person on account of that person’s race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status, whether that conduct is directed to other counsel, court personnel, witnesses, parties, judges, judicial officers, or any persons involved in the legal process; or

h) engage in any conduct that directly, intentionally, and wrongfully harms others and that adversely reflects on a lawyer’s fitness to practice law. 133

In cases involving minor misconduct, an attorney may be admonished, counseled, or placed in a diversion program.134 In serious matters, attorneys face suspension of their license to practice law or disbarment.135 The Presiding Disciplinary Judge and the Colorado Supreme Court often reference the ABA Standards for Imposing Lawyer Sanctions in determining the appropriate sanctions in an attorney disciplinary matter, but these standards are not binding on the Judge or the Supreme Court.136

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. The percentage of formal charges compared with complaints filed in all but the most distant year has also been consistently extremely low. Similarly, with the exception of the earliest year reported, the percentage of actual disciplines imposed compared with number of charges filed has remained consistently low.


CONNECTICUT

The Statewide Grievance Committee is a body of twenty-one individuals, comprised of fourteen attorneys and seven non-attorneys, appointed by the judges of the Superior Court to review, investigate and adjudicate attorney ethics matters.137 The Statewide Bar Counsel reviews any complaint received and either forwards it directly to a grievance panel for an investigation or if it meets the criteria for dismissal of a complaint, refers it to two members of the Statewide Grievance Committee.138 If the complaint is referred to the Committee, they then will either dismiss it or forward it on to a grievance panel for an investigation.139 If the complaint is forwarded to a grievance panel, the Statewide Bar Counsel will notify the attorney of the complaint and advise the attorney that a response is required.140 The grievance panel will investigate the complaint and it may hold a hearing as part of its investigation.141 If the grievance panel determines that probable cause does not exist, it will dismiss the complaint without further unless the complaint alleges that the attorney committed a crime, in which case it may be reviewed by a reviewing committee.142 If the grievance panel determines that probable cause of misconduct does exist, the Statewide

Grievance Committee or a reviewing committee will conduct a hearing that is open to the public. 143

It is professional misconduct for a lawyer to:

(1) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(2) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(3) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(4) Engage in conduct that is prejudicial to the administration of justice;

(5) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law. 144

After the hearing, the Statewide Grievance Committee or a reviewing committee may decide to dismiss the complaint, to impose sanctions and conditions against the attorney, or to direct that the attorney be brought before the Superior Court for reprimand, suspension or disbarment in a proceeding known as a presentment. 145

The percentage of formal charges as compared with the active attorney population has remained at less than 1% or at 1%. The percentage of formal charges compared with complaints filed has varied greatly, from a low of about 8% up to a high in the most recent year reported of 38%. While the percentage of actual disciplines imposed compared with number of charges filed has remained more constant, it has ranged from a low of 12% to a high of 21%.

---

143. Id.
or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law. Misconduct is the grounds for one of the following sanctions: disbarment by the court; suspension by the court not in public reprimand; public admonition; public probation; conditional discipline. According to the Rules, mitigating circumstances that affect the nature or degree of discipline must be fully set forth by the Board to the Court.

The percentage of formal charges as compared with the active attorney population has varied from no less than 1% to 2%. The percentage of formal charges has been relatively consistent within each year, from 2% to 4%. A high in the first year reported of 12%. The percentage of formal charges has also fluctuated, from 5% to 15%.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Attorneys</td>
<td>2648</td>
<td>2654</td>
<td>2660</td>
<td>2662</td>
<td>2664</td>
<td>2666</td>
<td>2668</td>
<td>2670</td>
<td>2672</td>
<td>2674</td>
<td>2676</td>
<td>2678</td>
</tr>
<tr>
<td>Complaints Filed</td>
<td>351</td>
<td>357</td>
<td>368</td>
<td>338</td>
<td>323</td>
<td>342</td>
<td>335</td>
<td>341</td>
<td>345</td>
<td>349</td>
<td>353</td>
<td>357</td>
</tr>
<tr>
<td>Complaints Investigated</td>
<td>163</td>
<td>166</td>
<td>168</td>
<td>169</td>
<td>170</td>
<td>171</td>
<td>172</td>
<td>173</td>
<td>174</td>
<td>175</td>
<td>176</td>
<td>177</td>
</tr>
<tr>
<td>Number of Formal Charges</td>
<td>32</td>
<td>32</td>
<td>32</td>
<td>32</td>
<td>32</td>
<td>32</td>
<td>32</td>
<td>32</td>
<td>32</td>
<td>32</td>
<td>32</td>
<td>32</td>
</tr>
<tr>
<td>Percentage of Formal Charges Compared with Complaints</td>
<td>22%</td>
<td>23%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
<td>24%</td>
</tr>
<tr>
<td>Percentage of Disciplines Imposed Compared to Complaints Filed</td>
<td>32%</td>
<td>32%</td>
<td>32%</td>
<td>32%</td>
<td>32%</td>
<td>32%</td>
<td>32%</td>
<td>32%</td>
<td>32%</td>
<td>32%</td>
<td>32%</td>
<td>32%</td>
</tr>
</tbody>
</table>

**FLORIDA**

The Florida Bar was created by the Supreme Court of Florida "to enforce the ethical standards" of the state's lawyers, as with the state's official agency. No formal complaint will be filed by the Florida Bar in disciplinary proceedings against a member of the bar unless it has been determined that probable cause exists to believe that the respondent is guilty of misconduct justifying disciplinary action. The Supreme Court...

---

151. *Id.*
152. *Id.*

---

156. *Id.*
157. *Id.*
158. *Id.*
160. *Id.*
162. *Id.*
GEORGIA

The State Bar of Georgia has vested the power to investigate and discipline attorneys in a State Disciplinary Board and a Consumer Assistance Program. 164 The State Disciplinary Board consists of two panels: the Innot probable cause exists, and the Review Panel which recommends to the Georgia Supreme Court. 165 The Supreme Court of Georgia has the authority to impose a sanction upon a member of the Georgia Bar. 166

The Consumer Assistance Program (C.A.P.) was implemented to help people of the state with questions and problems regarding Georgia lawyers. 167 The C.A.P. is a “sort of clearinghouse” for citizens with problems regarding Georgia lawyers. 168 It believes that a grievance form should be sent out only when “serious unethical conduct” is involved. 169 For any other type of alleged misconduct, the C.A.P. believes that the most effective way to resolve it is to call the lawyer or suggest alternative ways to resolve the dispute. 170

The Office of General Counsel is the first place a grievance lands and an initial screening and review is conducted. 171 It is the General Counsel’s obli-

163. Excludes matters handled by the central assistance program in both Florida and Georgia.


165. Id.

166. Id.


168. Id.

169. Id.

170. Id.


gation to determine whether the grievance states facts and assertions sufficient to allege the violation of one or more of the Standards of Conduct. 172

Any violation of the Rules of Professional Conduct leads to one of the following sanctions: disbarment, suspension, public reprimand, and formal admonition. 173 Disbarment would be appropriate in cases “of serious misconduct.” 174 According to Comment 3 of Rule 8.4 (Misconduct), “although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category.” 175

A violation of that type will result in disbarment, including engaging in conduct involving moral turpitude; engaging in professional conduct involving dishonesty, fraud, deceit, or willful misrepresentation; making a false, fraudulent, deceptive, or misleading communication about the lawyer or his services among other serious offenses. By contrast, a public reprimand will be administered for less egregious behavior.

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. The percentage of formal charges compared with complaints filed has stayed relatively low, ranging from 2% to 9%. In addition, the percentage of actual disciplines imposed compared with number of charges filed has remained fairly constant, ranging from 6% to 11%.

163. 


165. Id.

166. Id.


168. Id.

169. Id.

170. Id.


172. Id.

173. Id.

174. Id.

175. Id.

176. In Georgia, the complaints received does not include inquiries received by the consumer assistance program. Systems www.abate.org/cpl/discipline/wild/home.html (last visited May 20, 2008).
The Journal of the Legal Profession

HAWAI'I

The Supreme Court of Hawaii has appointed the Disciplinary Board of the Hawaii Supreme Court to "consider and investigate any alleged ground for discipline or alleged incapacity of any attorney called to its attention." 177

The Office of Disciplinary Counsel investigates all matters involving alleged misconduct called to the counsel's attention and prosecutes all disciplinary proceedings before the hearing committees, the Board, and the courts. Upon the conclusion of an investigation, Counsel recommends either dismissal of the complaint, informal admonition of the attorney, or formal disciplinary proceedings for minor misconduct, 178 or for minor misconduct, 179 or the institution of formal disciplinary proceedings before a hearing committee or officer. 180 The hearing committees and officers have the power to conduct hearings in formal disciplinary proceedings and on petitions for reinstatement. 181 A formal disciplinary proceeding will be instituted when it is approved or ordered by a Reviewing Board Member or when the respondent demands one. 182

According to Rule 8 of the Rules of Professional Conduct, it is professional misconduct for a lawyer to: "violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another; commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; engage in conduct involving dishonesty, fraud, deceit or misrepresentation; fail to cooperate during the course of an ethics investigation or disciplinary proceeding; state or imply an ability to influence improperly a government agency or official; or knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct, private reprimand, public reprimand, public censure, suspension, or disbarment. 183

A private informal admonition signifies that misconduct has been found but is not of sufficient gravity to warrant a formal disciplinary proceeding. 184 It may be imposed by Counsel at the conclusion of an investigation based on the facts of the case upon the approval of the Board. A public reprimand signifies that misconduct has been found, and that while the matter does not warrant the filing of a report with the Supreme Court, the misconduct is too serious to be addressed by a private informal admonition. A public reprimand signifies that misconduct was found, that it does not warrant a report to the Supreme Court, but it was too serious for either a private informal admonition or a public reprimand.

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. The percentage of formal charges compared with complaints filed has also been consistently extremely low. The percentage of actual disciplines imposed compared with number of charges filed has remained slightly higher and fairly constant, ranging from 6% to 12%.

<table>
<thead>
<tr>
<th>Year</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Lawyers</td>
<td>535</td>
<td>520</td>
<td>521</td>
<td>511</td>
<td>544</td>
<td>543</td>
<td>585</td>
<td>586</td>
<td>573</td>
<td>590</td>
</tr>
<tr>
<td>Resolved</td>
<td>158</td>
<td>163</td>
<td>162</td>
<td>161</td>
<td>175</td>
<td>181</td>
<td>199</td>
<td>199</td>
<td>201</td>
<td>201</td>
</tr>
<tr>
<td>Complaints Investigated</td>
<td>158</td>
<td>50</td>
<td>41</td>
<td>62</td>
<td>89</td>
<td>102</td>
<td>149</td>
<td>183</td>
<td>205</td>
<td>240</td>
</tr>
<tr>
<td>Non-Formal Charges</td>
<td>11</td>
<td>13</td>
<td>8</td>
<td>8</td>
<td>11</td>
<td>11</td>
<td>9</td>
<td>12</td>
<td>9</td>
<td>14</td>
</tr>
<tr>
<td>Percentage of Formal Charges Compared with Complainants</td>
<td>25</td>
<td>18</td>
<td>15</td>
<td>18</td>
<td>18</td>
<td>18</td>
<td>18</td>
<td>18</td>
<td>35</td>
<td>15</td>
</tr>
<tr>
<td>Total Number of Disciplinary Actions Sought</td>
<td>48</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
<td>40</td>
</tr>
<tr>
<td>Percentage of Disciplinary Actions Imposed Compared to Complainants Rejected</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
<td>15</td>
</tr>
</tbody>
</table>

IDAHO

In Idaho, Bar Counsel is in charge of evaluating all information and grievances coming to his attention to determine the nature of the grievance. 185 Upon the conclusion of the investigation, Bar Counsel may dismiss the matter as unfounded or may take disciplinary action. 186 Either the grievant or the respondent may request review of the decision by a Hear-

178. Id.
179. Id.
180. "Misconduct shall not be regarded as minor if any of the following conditions exist: misconduct was publicly disciplined within the past three (3) years; the misconduct involved is of the same nature as misconduct for which the respondent was disciplined within the past five (5) years; the misconduct included dishonesty, misrepresentation, deceit, fraud; or the commission of a felony." Id.
181. Id.
183. Id.
186. Id.
187. Id.
188. Id.
189. Id.
190. Id.
191. Id.
192. Id.
193. Id.
194. Id.
195. Id.
196. Id.
197. Id.
198. Id.
199. Id.
200. Id.
201. Id.
202. Id.
203. Id.
204. Id.
205. Id.
206. Id.
207. Id.
208. Id.
209. Id.
210. Id.
211. Id.
212. Id.
213. Id.
214. Id.
215. Id.
216. Id.
217. Id.
218. Id.
219. Id.
220. Id.
221. Id.
222. Id.
223. Id.
224. Id.
225. Id.
226. Id.
227. Id.
228. Id.
229. Id.
230. Id.
231. Id.
232. Id.
233. Id.
234. Id.
235. Id.
236. Id.
237. Id.
238. Id.
239. Id.
240. Id.
ing Committee of Bar Counsel’s disposition.191 After review, the Hearing Committee can remand the matter, approve the Bar Counsel’s disposition, mitigate or deny the grievance, or recommend formal charges.192 If the Hearing Committee’s decision results in a sanction being imposed, either the grievance or the grievant’s decision.193

According to the Rules, a lawyer “should be professionally answerable only for offenses that indicate a lack of those characteristics relevant to disbarment, suspension, public censure, and probation.”194 The Professional Reprimand and Informal Admonition.195 Although there is “no set” guide generally it will be considered grounds for discipline if a lawyer is convicted of a “serious crime.”196 is sanctioned for an act or omission which violates the Idaho Rules of Professional Conduct, or if the lawyer fails to be disbursed or suspended by the Supreme Court for either of the following: a confession of a felony or misdemeanor involving moral turpitude; willful disobedience or violation of an order of the court and any violation of oath; and without authority appearing as attorney any person who is not an attorney or counselor; failure for ten days after written demand, and payment or tender of fees or expenses due to his client or after any money or property belonging to such attorney from faithfully discharging the duties devolving upon his duty to practice law.197

The percentage of formal charges as compared with the active attorney population has remained at less than 1% to 1%. With the exception of one year, the percentage of formal charges compared with complaints filed has been consistently low. However, the percentage of actual disciplines imposed compared with number of charges filed has fluctuated dramatically, from earlier years reported at less than 1%, up to 34% and most recently, 25%.

<table>
<thead>
<tr>
<th>Year</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Lawyers</td>
<td>3021</td>
<td>3008</td>
<td>3025</td>
<td>3106</td>
<td>3353</td>
<td>3437</td>
<td>3537</td>
<td>3552</td>
</tr>
<tr>
<td>Complaints Received</td>
<td>453</td>
<td>463</td>
<td>36</td>
<td>56</td>
<td>457</td>
<td>397</td>
<td>613</td>
<td>444</td>
</tr>
<tr>
<td>Complaints Investigated</td>
<td>516</td>
<td>566</td>
<td>135</td>
<td>58</td>
<td>171</td>
<td>215</td>
<td>266</td>
<td>260</td>
</tr>
<tr>
<td>Verbal Charges</td>
<td>18</td>
<td>13</td>
<td>8</td>
<td>11</td>
<td>11</td>
<td>14</td>
<td>9</td>
<td>9</td>
</tr>
<tr>
<td>Percentage of Verbal Charges Compared with Complaints</td>
<td>26</td>
<td>34</td>
<td>12</td>
<td>56</td>
<td>58</td>
<td>45</td>
<td>55</td>
<td>54</td>
</tr>
<tr>
<td>Total Number of Disciplinary Imposed</td>
<td>2</td>
<td>2</td>
<td>24</td>
<td>35</td>
<td>26</td>
<td>35</td>
<td>50</td>
<td>50</td>
</tr>
<tr>
<td>Percentage of Disciplinary Imposed Compared to Complaints Filed</td>
<td>&lt;15%</td>
<td>&lt;15%</td>
<td>5%</td>
<td>5%</td>
<td>8%</td>
<td>10%</td>
<td>25%</td>
<td>17%</td>
</tr>
</tbody>
</table>

IOWA

The Attorney Registration and Disciplinary Commission is charged with regulating and disciplining attorneys for ethical violations of the Illinois Rules of Professional Conduct.198 As an agency of the Illinois Supreme Court, it is responsible for determining whether a complaint should be formally brought to the Supreme Court, which then makes the ultimate decision if an attorney has engaged in misconduct.199 The ARDC is composed of seven members, four lawyers and three non-lawyers.200 If a complaint believes an attorney has acted in a manner that violates an issue under the Rules of Professional conduct, the complaint must file a grievance in writing with the ARDC.200 There is no special form to request an investigation; however, the complaint should include basic contact information, a description of what the lawyer did or did not do, as well as any supporting documents.201

The Illinois Rules of Professional Conduct lists the conduct that would warrant a violation:202

204. Id.
It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

(d) engage in conduct that is prejudicial to the administration of justice.

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law. Nor shall a lawyer give or lend anything of value to a judge, official, or employee of a tribunal, except those gifts or loans that a judge 65(C)(4) of the Illinois Code of Judicial Conduct. Permissible campaign contributions to a judge or candidate for judicial office may be made only by check, draft, or other instrument payable to or to the order of an entity that the lawyer reasonably believes to be a political committee supporting such judge or candidate. Provision of volunteer services by a lawyer to a political committee shall not be deemed to violate this paragraph.

(g) present, participate in presenting, or threaten to present criminal or professional disciplinary charges to obtain an advantage in a civil matter.

(h) enter into an agreement with a client or former client limiting or purporting to limit the right of the client or former client to file or pursue any complaint before the Illinois Attorney Registration and Disciplinary Commission.

(i) avoid in bad faith the repayment of an education loan guaranteed by the Illinois Student Assistance Commission or other governmental entity. The lawful discharge of an education loan in a bankruptcy proceeding shall not constitute bad faith under this paragraph, but the discharge shall not preclude a review of the lawyer's conduct to determine if it constitutes bad faith.

(j) violate a federal, state or local statute or ordinance that prohibits discrimination based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status by conduct that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including: the seriousness of the act; whether the lawyer knew that the act was prohibited by statute or ordinance; whether the act was part of a pattern of prohibited conduct; and whether the act was committed in connection with the lawyer's professional activities. No charge of professional misconduct may be brought pursuant to this paragraph until a court or administrative agency of competent jurisdiction has found that the lawyer has engaged in an unlawful discriminatory act, and the finding of the court or administrative agency has become final and enforceable and any right of judicial review has been exhausted.

(k) if the lawyer holds public office:

(1) use that office to obtain, or attempt to obtain, a special advantage in a legislative matter for a client under circumstances where the lawyer knows or reasonably should know that such action is not in the public interest;

(2) use that office to influence, or attempt to influence, a tribunal to act in favor of a client; or

(3) represent any client, including a municipal corporation or other public body, in the promotion or defeat of legislative or other proposals pending before the public body of which such lawyer is a member or by which such lawyer is employed.

Once a request for investigation is filed with the ARDC Office, the request is assigned to a Commission lawyer who reviews the request and determines whether there is a basis for the ARDC to investigate. If the Committee decides to do an investigation, a copy of the complaint is sent to the attorney and a response to the complaint is requested. Once the

207. Id.
attorney responds and all of the pertinent facts are obtained, the committee determines whether further action is warranted. If further action is warranted the investigation is sent to the Inquiry Board, comprised of two lawyers and one non-lawyer to determine formal changes should be filed, the Administrator files a Hearing Board.210 The hearing Board is comprised of two lawyers and one non-lawyer who hears the evidence, makes findings of fact, and recommends disciplinary action.211 If neither party objects to the recommendation of the Hearing Panel an agreement is submitted to the Supreme Court for final order.212

However, if either party files an exception to the Hearing Board report, the case is sent to a Review Board, consisting of nine lawyer members who also hear evidence and either approves, modifies, or rejects the report is then submitted to the Supreme Court for final order.213 The Supreme Court can then enter a disciplinary action of:

- disbarment
- suspension for a specified period
- suspension until further order of the court
- probation in conjunction with either type of suspension
- Censure
- Reprimand.215

The Hearing panel looks to the level of the alleged misconduct to determine the appropriate action. Illinois Rules of Professional Conduct indicate that, “Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice.”216

---

208. Id.
209. Id.
211. Id.
212. Id.
214. Id.
215. Id.
216. Id.
217. Id.
218. Id.
220. Id.
221. Id.
222. Id.
223. Id.
224. Id.
225. Id.
The Indiana Rules of Professional Conduct lists the conduct that would warrant a violation:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

(e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) Engage in conduct, in a professional capacity, manifesting, by words or conduct, bias or prejudice based upon race, gender, religion, national origin, disability, sexual orientation, age, socioeconomic status, or similar factors. Legitimate advocacy respecting the foregoing factors does not violate this subsection. A trial judge's finding that preceptory challenges were exercised on a discriminatory basis does not alone establish a violation of this rule.

Once a complaint is filed with the Disciplinary Commission, the Commission determines whether the complaint raises a substantial question of misconduct. If the Commission believes there is a substantial question of misconduct, an investigation with the entire Commission takes place. If the investigation then reveals probable misconduct for which the Commission believes the attorney should be disciplined, the Commission files a complaint with the Clerk of Supreme Court formally charging the attorney

(6) The misconduct constitutes the commission of a felony under applicable law.231

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. The percentage of formal extremely low. In addition, the percentage of actual disciplines imposed with number of charges filed has remained fairly constant, ranging from 6% to 11%.

<table>
<thead>
<tr>
<th>Year</th>
<th>Completed Complaints</th>
<th>New Formal Charges</th>
<th>Percentage of Formal Charges Compared with Complaints</th>
<th>Total Number of Disciplines Imposed</th>
<th>Percentage of Disciplines Imposed Compared to Complaints Filed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2020</td>
<td>1,355</td>
<td>9</td>
<td>35%</td>
<td>10</td>
<td>9%</td>
</tr>
<tr>
<td>2019</td>
<td>1,355</td>
<td>9</td>
<td>35%</td>
<td>10</td>
<td>9%</td>
</tr>
<tr>
<td>2018</td>
<td>1,355</td>
<td>9</td>
<td>35%</td>
<td>10</td>
<td>9%</td>
</tr>
<tr>
<td>2017</td>
<td>1,355</td>
<td>9</td>
<td>35%</td>
<td>10</td>
<td>9%</td>
</tr>
<tr>
<td>2016</td>
<td>1,355</td>
<td>9</td>
<td>35%</td>
<td>10</td>
<td>9%</td>
</tr>
<tr>
<td>2015</td>
<td>1,355</td>
<td>9</td>
<td>35%</td>
<td>10</td>
<td>9%</td>
</tr>
<tr>
<td>2014</td>
<td>1,355</td>
<td>9</td>
<td>35%</td>
<td>10</td>
<td>9%</td>
</tr>
<tr>
<td>2013</td>
<td>1,355</td>
<td>9</td>
<td>35%</td>
<td>10</td>
<td>9%</td>
</tr>
<tr>
<td>2012</td>
<td>1,355</td>
<td>9</td>
<td>35%</td>
<td>10</td>
<td>9%</td>
</tr>
<tr>
<td>2011</td>
<td>1,355</td>
<td>9</td>
<td>35%</td>
<td>10</td>
<td>9%</td>
</tr>
<tr>
<td>2010</td>
<td>1,355</td>
<td>9</td>
<td>35%</td>
<td>10</td>
<td>9%</td>
</tr>
</tbody>
</table>

**IOWA**

The Iowa Supreme Court is responsible for regulating the state bar by enforcing the rules of professional conduct and imposing sanctions.232 The court has designated two groups to assist with attorney discipline, the Attorney Disciplinary Board and the Grievance Commission.233

Any complaint against an attorney is first investigated by the Board.234 The Board can dismiss the complaint, admonish or reprimand the attorney, or, after an investigation, file and prosecute the complaint before the Commission.235

The Grievance Commission hears complaints that are prosecuted by the Board.236 All matters brought before the Commission are confidential,

---

231. Id.
233. Id.
234. Id.
235. Id.
236. Id.

2011] Attorney Discipline Nationwide 249

and the attorney has the right to respond to the complaint.237 The Commission holds a hearing to determine the allegations in the complaint, and then may either dismiss the complaint, issue a private admonition, or recommend to the Supreme Court that the attorney be reprimanded or the attorney’s license to practice law be suspended or revoked.238

The Iowa Rules of Professional Conduct characterize misconduct as the following:239

(a) violate or attempt to violate the Iowa Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects;
(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice;
(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Iowa Rules of Professional Conduct or other law;
(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
(g) engage in sexual harassment or other unlawful discrimination in the practice of law or knowingly permit staff or agents subject to the lawyer’s direction and control to do so.

The percentage of formal charges as compared with the active attorney population has remained at less than 1% to 1%. The percentage of formal charges compared with complaints filed has varied widely, from an earlier high of 15% down to 3% and in the most recent year reported, only 4%. However, the percentage of actual disciplines imposed compared with number of charges filed has remained fairly consistently high compared to other states, ranging from 15% to the most recent year’s 34%.

237. Id.
KANSAS

The Supreme Court of Kansas has established procedures for investigating complaints of attorney misconduct and reaching judgments on lawyer-administrator to investigate misconduct and recommend sanctions for the complaints are investigated by local bar associations or the Disciplinary Administrator's staff. Once the investigation is complete, a review committee consisting of three lawyers is assigned to study the complaint if it is found to be without merit. If the review committee finds probable cause to believe the lawyer has violated the disciplinary rules the matter lawyer. If discipline stronger than this informal admonition appears necessary, the committee may direct the Disciplinary Administrator to prepare a formal complaint.

The hearing panel consists of three lawyers, including at least two members of the Kansas Board for Discipline of Attorneys. The hearing the complaint. Alternatively, it may determine that a minor violation occurred as a result of a mistake rather than an intentional act and may impose informal admonition. If the hearing panel finds that a violation

241. Id.
242. Id.
243. Id.
244. Id.
245. Id.
247. Id.
248. Id.
249. Id.
250. Id.

occurred and more serious discipline is warranted, the panel submits to the Kansas Supreme Court a formal report setting forth its factual and legal findings and making recommendations for discipline of the lawyer. Recommended discipline could be public censure, probation with conditions, suspension of the lawyer's license for a specific time period, suspension for an indefinite period or disbarment.

Discipline cases submitted to the Supreme Court are processed in much the same way as any other appellate case with both sides entitled to present written and oral arguments. In addition, the Supreme Court reviews a transcript of the proceedings before the hearing panel. The Supreme Court need not follow the recommendations of the hearing panel or the Disciplinary Administrator. The Court may determine that no violation occurred or it may impose a different form of discipline from that recommended by the hearing panel.

The Kansas Rules of Professional Conduct characterize misconduct as the following:

(a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;
(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
(d) engage in conduct that is prejudicial to the administration of justice;
(e) state or imply an ability to influence improperly a government agency or official;
(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or
(g) engage in any other conduct that adversely reflects on the lawyer's fitness to practice law.

The percentage of formal charges as compared with the active attorney population has remained at less than 1% to 1.5%. The percentage of formal charges compared with complaints filed has remained recently fairly con-
stat, down from a high in 1999 of 16%, staying recently in the 5%-7% range. In contrast, the percentage of actual disciplines imposed compared with number of charges filed has remained slightly higher, ranging from 9% to 22%.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints Received</td>
<td>884</td>
<td>1,149</td>
<td>1,519</td>
<td>1,878</td>
<td>2,062</td>
<td>2,462</td>
<td>2,730</td>
<td>2,823</td>
<td>2,930</td>
<td>2,816</td>
<td>2,632</td>
<td>2,432</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Complaints Investigated</td>
<td>283</td>
<td>308</td>
<td>408</td>
<td>542</td>
<td>572</td>
<td>581</td>
<td>613</td>
<td>593</td>
<td>594</td>
<td>593</td>
<td>594</td>
<td>593</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Formal Charges</td>
<td>99</td>
<td>122</td>
<td>57</td>
<td>48</td>
<td>48</td>
<td>48</td>
<td>48</td>
<td>48</td>
<td>48</td>
<td>48</td>
<td>48</td>
<td>48</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage of Formal Charges Compared with Complaints</td>
<td>115</td>
<td>116</td>
<td>175</td>
<td>176</td>
<td>176</td>
<td>176</td>
<td>176</td>
<td>176</td>
<td>176</td>
<td>176</td>
<td>176</td>
<td>176</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Number of Disciplines Imposed</td>
<td>97</td>
<td>137</td>
<td>438</td>
<td>593</td>
<td>593</td>
<td>593</td>
<td>593</td>
<td>593</td>
<td>593</td>
<td>593</td>
<td>593</td>
<td>593</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**KENTUCKY**

The Kentucky Bar Association, acting as an agency of the Supreme Court, is responsible for investigating complaints against lawyers and for Commission 258. The Inquiry Commission is an independent body appointed by the Court to receive and process complaints which allege misconduct to the Inquiry Commission, investigates complaints, and prosecutes. All complaints are directed to the Consumer Assistance Program (CAP) or the Office of Bar Counsel (OBC) for a preliminary review, to determine whether it alleges an ethical violation. If the complaint is recommended for further review, then it will be assigned to a lawyer in the Office of Bar Counsel, who acts as an investigator.

Once the Bar Counsel lawyer concludes the investigation, it is presented to the Inquiry Commission for review, who further investigates the

---

259. Id.
260. Id.
261. Questions and Answers About Filing a Complaint Against a Lawyer, available at really mediate attorney and client disputes that involve communication issues between an attorney and client.
262. Id.

**LOUISIANA**

In Louisiana, the Attorney Disciplinary Board is ultimately responsible for attorney discipline, after an evaluation by the Office of Disciplinary

263. Id.
264. Id.
265. Id.
266. Id.
267. In Kentucky, some numbers are estimated and complaints received includes central intake.

253. Attorney Discipline Nationwide
Counsel as to whether there is sufficient evidence to support a finding of a rule violation.268 If there is inadequate evidence to support a clear finding necessary to institute discipline that is more serious than a private completion of a formal disciplinary proceeding.270 Upon the hearing committee for review by the Disciplinary Board.271 When a hearing committee finds unethical conduct warranting discipline, the hearing is forwarded to and considered by the Board, who then imposes the appropriate discipline.272

The possible sanctions possible for an attorney in Louisiana are private admonition, public reprimand, suspension, and disbarment.273 According to Louisiana Supreme Court, only the Louisiana Supreme Court can order suspension or disbarment.274

The percentage of formal charges compared with the active attorney population has remained at less than 1%. The percentage of formal low range from 2% to 7%. The percentage of actual disciplines imposed compared with number of charges filed has remained fairly consistent, ranging from 6% to 11%.

---

269. Id.
270. Id.
272. Id.
273. Id.; see also http://www.ladb.org/evaluation_std_disposition.asp.
274. Louisiana Attorney Disciplinary Board, available at http://www.ladb.org/ethical_behavior.asp. Examples of prohibited conduct which may be cause for discipline: a lawyer cannot or will not complete written accounting; a lawyer continuously fails to respond to all inquiries about your case, himself in the course of a case; a lawyer represents one party to a transaction while also the attorney for the other side; a lawyer misrepresents to you whether or not they have taken certain actions.


---

277. Id.
278. Id.
279. Id.
280. Id.
281. Id.
283. Id.
284. Id.
plaint should be dismissed or whether sufficient grounds exist for a public disciplinary hearing to occur. 285 If the panel finds probable cause to believe that misconduct subject to sanction has occurred, it will then direct Bar Counsel to file a formal public disciplinary petition, which is then heard by a different panel of the Grievance Commission. 286

Once the panel determines that sufficient grounds exist for a public hearing to occur, and that hearing does occur, the panel may issue a sanction. 287 The panel may dismiss the complaint, dismiss it with a warning, issue a public reprimand, or file an information. 288 The panel will dismiss the petition if it finds that no misconduct subject to sanction has occurred. 289 It will dismiss the petition with a warning when it finds that misconduct subject to sanction has occurred but that misconduct is minor or the profession, and that there is little likelihood of repetition by the attorney. 290 If the panel finds probable cause for suspension or disbarment, it will direct Bar Counsel to commence an attorney discipline action by filing an information. 291 In determining the appropriate sanction, Maine has established a set of factors for the panel to take into consideration. 292 Those factors include: (1) whether the attorney has violated a duty owed to a client, to the public, to the legal system, or to the profession; (2) whether the attorney acted intentionally, knowingly, or negligently; (3) the amount of actual or potential injury cause by the misconduct; and (4) the existence of any aggravating or mitigating factors. 293 A balancing of these factors will determine which sanction is appropriate.

The percentage of formal charges as compared with the active attorney population has remained at less than 1% to 1%. The percentage of formal charges compared with complaints filed has remained consistent, ranging with number of charges filed has varied more widely, ranging from a low of 5% up to 34% and the most recent year’s 31%.

285. Id.
286. Id.
287. Id.
289. Id.
290. Id.
291. Id.
292. Id.
293. Id.

MARYLAND

Maryland has established the Attorney Grievance Commission, whose responsibility is to "assist in protecting the public by enforcing the professional standards that regulate the conduct of lawyers and by educating lawyers about their professional responsibilities." 294 The Commission appoints an attorney to serve as Bar Counsel. 295 This attorney serves as the Chief Executive Officer of the disciplinary system. 296 The Commission supervises the activities of Bar Counsel, whose activities include investigating possible misconduct, reviewing escrow account overdrafts, investigating unauthorized practice of law, and investigating petitions for reinstatement. 297 Bar Counsel is given ninety days to investigate complaints. 298 The cases that are not resolved in this time period are delivered to a three-member Peer Review Panel that will handle the complaint confidentially. 299 Upon completion of an investigation by Bar Counsel or the peer review, the Commission will either approve or disapprove the recommended disposition. 300 These recommendations include dismissal of the case, dismissal with a warning, reprimand with the consent of Bar Counsel and respondent or without the consent of Bar Counsel, a Conditional Diversion Agreement, or the immediate filing of a Petition for Disciplinary or Remedial Action. 301 The Commission is also authorized to direct Bar Counsel to file public charges against an attorney in the Court of Appeals regard-

295. Id.
296. Id.
297. Id.
299. Id.
301. Id.
less of the recommendation of Bar Counsel or a peer review panel. The Court of Appeals may order a remand for further proceedings, dismissal, inactive status, reprimand, suspension or disbarment.

The percentage of formal charges as compared with the active attorney population has remained at less than 1%. The percentage of formal charges compared with complaints filed, while not available every year, as has been released on the percentage of actual disciplines imposed compared with number of charges filed, which have remained fairly constant, ranging from 6% to 10%.

<table>
<thead>
<tr>
<th>Year</th>
<th>Active Lawyers</th>
<th>Complaints Filed</th>
<th>Investigated</th>
<th>Sanctioned</th>
<th>Resolved</th>
</tr>
</thead>
<tbody>
<tr>
<td>2002</td>
<td>2124</td>
<td>218</td>
<td>191</td>
<td>102</td>
<td>121</td>
</tr>
<tr>
<td>2001</td>
<td>2126</td>
<td>216</td>
<td>191</td>
<td>102</td>
<td>121</td>
</tr>
<tr>
<td>2000</td>
<td>2126</td>
<td>216</td>
<td>191</td>
<td>102</td>
<td>121</td>
</tr>
<tr>
<td>2009</td>
<td>2124</td>
<td>218</td>
<td>191</td>
<td>102</td>
<td>121</td>
</tr>
<tr>
<td>2008</td>
<td>2124</td>
<td>218</td>
<td>191</td>
<td>102</td>
<td>121</td>
</tr>
<tr>
<td>2007</td>
<td>2124</td>
<td>218</td>
<td>191</td>
<td>102</td>
<td>121</td>
</tr>
<tr>
<td>2006</td>
<td>2124</td>
<td>218</td>
<td>191</td>
<td>102</td>
<td>121</td>
</tr>
<tr>
<td>2005</td>
<td>2124</td>
<td>218</td>
<td>191</td>
<td>102</td>
<td>121</td>
</tr>
<tr>
<td>2004</td>
<td>2124</td>
<td>218</td>
<td>191</td>
<td>102</td>
<td>121</td>
</tr>
<tr>
<td>2003</td>
<td>2124</td>
<td>218</td>
<td>191</td>
<td>102</td>
<td>121</td>
</tr>
<tr>
<td>2002</td>
<td>2124</td>
<td>218</td>
<td>191</td>
<td>102</td>
<td>121</td>
</tr>
<tr>
<td>2001</td>
<td>2126</td>
<td>216</td>
<td>191</td>
<td>102</td>
<td>121</td>
</tr>
<tr>
<td>2000</td>
<td>2126</td>
<td>216</td>
<td>191</td>
<td>102</td>
<td>121</td>
</tr>
</tbody>
</table>

MASSACHUSETTS

In Massachusetts, the Board of Bar Overseers was established with the purpose of regulating lawyer discipline. Inquiries concerning the professional conduct of an attorney are initially handled by the Attorney and Consumer Assistance Program (ACAP), a part of the Office of Bar Counsel. After screening by ACAP, complaint forms are submitted to the Office of the Bar Counsel. The Board of Bar Court appropriate disciplinary action against those who have been found guilty of misconduct. The matter will be presented to a hearing committee when it appears that there was serious misconduct, where the Office of

MICHIGAN

In Michigan, the Attorney Grievance Commission (AGC) is the investigatory and prosecutorial arm of the Supreme Court for allegations of attorney misconduct. The Attorney Discipline Board is the "judicative arm of the Supreme Court for matters in which the AGC has initiated formal proceedings." Upon receipt of a request for investigation, the AGC intake attorneys evaluate the request to determine whether an investigation

302. Id.
311. Massachusetts statistics do not include central intake matters.
313. Id.
is warranted.214 If the intake attorney determines that an investigation is warranted, the file is then assigned to an attorney on the Grievance Administrator’s Investigative staff.215 Upon conclusion of the investigation, each matter is submitted to the Commissioners for their consideration and review.216

In Michigan, the possible sanctions are probation, admonition, reprimand, suspension and disbarment.217 Only in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer, will private discipline be imposed.

According to the rules, admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in determining whether a client with accurate information,218 in failing to provide a representation of a client may be materially affected by the lawyer’s own interests in dealing with client property and causes injury or potential injury to a client.219 Negligently causing or failing to provide information relating to the representation of a client in determining whether the representation of a client may be materially affected by the lawyer’s own interests,220 disbarment is generally appropriate when a lawyer negligently reveals information relating to the representation of a client not otherwise permitted to be disclosed,221 or when the lawyer is materially affected by the interests of another.222 Disbarment generally appropriates or potential injury to a client;223 ‘with the intent to benefit the lawyer knowingly reveals information relating to representation of a client not otherwise lawfully permitted to be disclosed,

315. Id.
316. Id.
In Minnesota, all complaints must be sent to the Office of Lawyers Professional Responsibility. The Office of Lawyers Professional Responsibility is the agency established by the Minnesota Supreme Court to handle complaints of unprofessional conduct. The Office investigates complaints against attorneys warranting professional discipline. After receiving a complaint, the Office will respond by stating whether the complaint will be investigated or dismissed. Most complaints are referred to a District Ethics Committee (DEC), who will then appoint an investigator. The investigator contacts the attorney and makes a recommendation to the Director, who is then responsible for the proper administration of the Office of Lawyers Professional Responsibility and the Rules. The Office of Lawyers Professional Discipline then decides whether or not a rule was violated warranting disciplinary action.

The possible sanctions in Minnesota include: admonition, probation, an order to pay costs, suspension, and disbarment. The most common sanction is an admonition which is issued when "the lawyer’s misconduct was isolated but relatively non-serious." Criminal conduct and misappropriation of funds are most likely to lead to disbarment.

The percentage of formal charges as compared with the active attorney population has remained at less than 1% and that proportion has remained at less than 1%. The percentage of formal charges compared with complaints of actual misconduct imposed compared with number of charges filed has remained much higher ranging widely from 2% up to a high of 19%, and remaining consistent in the teens for the past several years.

332. Id.
335. Id.
338. Id.

343. Id.
344. Id.
345. Id.
346. Id.
347. Id.; the Committee will dismiss the complaint upon its first review if it determines that there has been no unprofessional or unethical conduct.
348. Id.
tribunal will likely issue a private or public reprimand when it decides that it is deemed to "adequately afford the disciplinary sanctions required by the particular circumstances." According to Rule 6, whenever "any attorney, dishonesty, misrepresentation, deceit, or willful failure to account for money or property of a client," the court must issue immediate suspension. The court must then issue disbarment. The percentage of formal charges as compared with the active attorney population has remained at less than 1%. Percentage of formal charges compared with complaints filed has also been fairly consistent, with one percentage of actual disciplines imposed compared with number of charges filed has remained higher, ranging from 8% in this most recent year, to a high of 22%.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Number of Disciplined Attorneys</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
</tr>
<tr>
<td>Percentage of Disciplined Attorneys Compared to Total Number of Disciplined Attorneys</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Total Number of Disciplined Complaints</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
<td>105</td>
</tr>
<tr>
<td>Percentage of Disciplined Complaints Compared to Total Number of Disciplined Complaints</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
</tr>
</tbody>
</table>

**MISSOURI**

The Supreme Court of Missouri regulates attorney conduct in the state through the Office of the Chief Disciplinary Counsel (OCDC). The OCDC is responsible for investigating allegations of misconduct by attorneys, prosecuting the cases where an attorney's misconduct poses a threat to the public or to the integrity of the legal profession, and maintaining current records of disciplinary information for lawyers licensed to practice law in Missouri.

The Supreme Court of Missouri implements a system to help facilitate attorney client communication and resolve complaints without formal dis-
The Journal of the Legal Profession  [Vol. 35:2]

(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) manifest by words or conduct, in representing a client, bias or prejudice based upon race, sex, religion, national origin, disability, age, or sexual orientation. This Rule 4.8(g) does not preclude legitimate advocacy when race, sex, religion, national origin, or other similar factors, are issues. 364

If the OCDC or the Regional Disciplinary Committee determines that no probable cause exists to believe that the attorney has violated the Rules of Professional Conduct, the complaint will be dismissed. 365 However, if a determination is made that a violation of the Rules has occurred, disciplinary action can range from an admonition, issued by the OCDC or a Regional Disciplinary Committee, or discipline imposed by the Supreme Court. 366 Supreme Court Discipline can include a reprimand, to a suspension from the practice of law for a definite or indefinite period of time, (with or without probation) to disbarment. 367 Probation is an appropriate form of discipline when the attorney is unlikely to harm the public during the period of probation and can be adequately supervised, is able to perform legal services and is able to practice law without causing the courts

366. Id.
367. Id.
sel (ODC) and the Commission on Practice (COP). ODC performs central intake functions and processes, investigates and prosecutes complaints against lawyers that are within the jurisdiction of the Court. COP hears discipline if the rules have been violated. COP and ODC are under the direct supervision of the Montana Supreme Court.

When a complaint is received, it is reviewed by the Disciplinary Counsel to determine if a violation of the Rules of Professional Conduct is stated. ODC has the authority to investigate all matters involving possible misconduct, all matters involving possible disability, prosecution of disciplinary and disability proceedings, and overdraft notifications of escrow accounts.

If an investigation is initiated, the attorney will receive a copy of the complaint and is required to respond in writing to the allegations. If the investigation establishes that a violation has occurred, the attorney may be fined with the Court. The discipline ordered after the filing of formal charges can range from public censure to disbarment. COP may also recommend that the lawyer be required to make restitution of client’s funds that may have been misappropriated. COP may dismiss a complaint if the complaint, the attorney’s response, and the complaining party’s response do not indicate that a violation of the rules has occurred.

It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) Commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.

374. Id., 375. Id., 376. Id., 377. Id., 378. Id.

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

(e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable code of judicial conduct or other law.

Discipline may also be imposed for any of the following reasons:

(1) Acts or omissions by a lawyer, individually or in concert with any other person or persons, which violate the Rules of Professional Conduct or the disciplinary rules adopted from time to time by the Supreme Court.

(2) Any act committed by an attorney contrary to the highest standards of honesty, justice or morality, including but not limited to, those outlined in parts 3 and 4 of Chapter 61, Title 37, Montana Code Annotated, whether committed in such attorney’s capacity as an attorney or otherwise.

(3) Conduct which results in conviction of a criminal offense.

(4) Conduct which results in lawyer discipline in another jurisdiction.

(5) Violation of the terms of any discipline or disciplinary order.

(6) Failure to promptly and fully respond to an inquiry from Disciplinary Counsel, an investigator, or the Commission, or failure to justify such refusal or nonresponse.

(7) Willful contempt of court and failure to purge the contempt.

COP may conclude that further investigation and the holding of a hearing are not justified in certain cases. In cases where the complaint is
not dismissed and where it appears that a rules violation has occurred, the misconduct of the lawyer involved must be established either by clear and convincing evidence presented at a hearing conducted by COP, or by the admission of the lawyer involved.\textsuperscript{390} Only then can COP make its recommendations to the Supreme Court.\textsuperscript{390} The following factors are considered in determining discipline to be recommended or imposed: the duty violated; the lawyer’s mental state; the actual or potential injury caused by the lawyer’s misconduct; and the existence of aggravating or mitigating factors.\textsuperscript{390}

The percentage of formal charges as compared with the active attorney population has remained at less than 1% to 1%. The percentage of formal charges compared with complaints filed when available has ranged from a low of 3% up to the most recent figure of 11%. The percentage of actual discipline imposed compared with number of charges filed has varied more widely, ranging from a low of 6% to a high of 40%.

\textsuperscript{390} Id.

\textsuperscript{391} Nebraska Judicial Branch, http://www.supremecourt.ne.gov (follow "Professional Ethics" hyperlink, then "Professional Ethics for Lawyers" then follow "How to file a grievance" hyperlink).

\textsuperscript{392} Id.

\textsuperscript{393} Id.

\textsuperscript{394} Id.

\textsuperscript{395} Id.

\textsuperscript{396} Id.

\textsuperscript{397} Nebraska Judicial Branch, http://www.supremecourt.ne.gov (follow "Professional Ethics" hyperlink, then "Professional Ethics for Lawyers" then follow "How to file a grievance" hyperlink).

\textsuperscript{398} Id.

\textsuperscript{399} Neb. Ct. R. Prof. Cond. §3-908.4.
(a) Violate or attempt to violate the Rules of Professional Conduct knowingly assist or induce another to do so or do so through the acts of another;

(b) Commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice. Once a lawyer is employed in a professional capacity, the adverse discriminatory treatment of litigants, witnesses, lawyers, a person’s race, national origin, gender, religion, disability, age, sexual orientation or socio-economic status. This subsection does not proceed.

(e) State or implied an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) Willfully refuse, as determined by a court of competent jurisdiction, to timely pay a support order, as such order is defined by Nebraska law.

The following are additional grounds for discipline per the rules of the Nebraska Supreme Court. 400

(A) The license to practice law in this State is a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and as an officer of the Court. It is the duty of every recipient of the conditional privilege to practice law to conduct himself or herself at all times, both professionally and personally, in conformity with the standards imposed upon members as conditions for that privilege.

(B) Acts or omissions by a member, individually or in concert with any other person or persons, which violate the Nebraska Rules of Professional Conduct as adopted by the Court, the oath, or the provisions of these rules, shall be grounds for discipline whether the act or omission occurred in the course of an attorney-client relationship or otherwise.

The percentage of formal charges as compared with the active attorney population has remained at 1%. The percentage of formal charges compared with complaints filed has also been fairly constant, ranging from 7% to 12% and staying at 9% the past several years. The percentage of actual disciplines imposed compared with number of charges filed has remained slightly higher, ranging from 9% to 18%.

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Licensees</td>
<td>522</td>
<td>505</td>
<td>498</td>
<td>508</td>
<td>510</td>
<td>503</td>
<td>495</td>
<td>485</td>
<td>486</td>
<td>494</td>
<td>490</td>
</tr>
<tr>
<td>Complaints Received</td>
<td>144</td>
<td>144</td>
<td>151</td>
<td>150</td>
<td>151</td>
<td>149</td>
<td>151</td>
<td>149</td>
<td>150</td>
<td>151</td>
<td>150</td>
</tr>
<tr>
<td>Complaints Investigated</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Total Formal Charges</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
</tr>
<tr>
<td>Percentage of Formal Charges Compared with Complaints</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
</tr>
<tr>
<td>Total Number of Disciplines Imposed</td>
<td>49</td>
<td>49</td>
<td>49</td>
<td>49</td>
<td>49</td>
<td>49</td>
<td>49</td>
<td>49</td>
<td>49</td>
<td>49</td>
<td>49</td>
</tr>
<tr>
<td>Percentage of Disciplines Imposed Compared to Complaints</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
<td>35%</td>
</tr>
</tbody>
</table>

NEVADA

The Office of Bar Counsel has the authority to discipline attorneys for violation of the Nevada Rules of Professional Conduct as established by the Nevada Supreme Court. 401 There is no special language or form necessary to begin an investigation against an attorney. 402 If a complainant feels an attorney has acted in a manner that violates an issue under the Rules of Professional conduct the complainant should write a letter to the State Bar stating the facts of the grievance or submit an online form. 403 The Counsel will then review the complaint and determine whether or not the conduct raises an ethical issue. 404 If the Counsel determines that the complaint war

402. Id.
403. Id.
404. Id.
rants further investigation, the attorney involved is then instructed to give a written response within ten days of the complaint. 405 After evaluating the attorney’s response, the Bar Counsel then gives the complainant the opportunity to respond to the attorney’s explanation. 406 An impartial panel then determines whether the case should be sent to the Disciplinary Board. 407

Once a complaint is sent to the Disciplinary Board the Board decides if the attorney has engaged in misconduct. The Nevada Rules of Professional Conduct lists the conduct that would warrant sanctions:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) Commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

(c) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) Engage in conduct that is prejudicial to the administration of justice;

(e) State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

If any of the above rules are broken the Board could issue one of the following four forms of sanctions:

1) A private reprimand which is also kept on file at the State Bar;

2) A public reprimand which is published in the local newspapers and official State Bar publications;

3) Suspension of the lawyer’s license to practice law for up to five years; or

4) Disbarment 408

There are two Disciplinary Boards, one in the northern district and one in the southern district. 409 Each Board consists of at least thirty-five members of the bar of Nevada and at least twelve non-lawyers. 410 The Board has discretion as to which type of sanction to impose and uses the American Bar Association’s criteria to determine the appropriate sanction. 411 The ABA suggests an analysis of four factors to be considered: “the duty violated, the lawyer’s mental state, the potential or actual injury caused by the lawyer’s misconduct, and the existence of aggravating or mitigating factors.” 412 The percentage of formal charges, as compared with the active attorney population, has remained at 1%. The percentage of formal charges compared with complaints filed has also been consistently low when reported. Similarly, the percentage of actual disciplines imposed compared with number of charges filed has remained fairly constant, ranging from 3% to 9%.

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Disciplinary</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
<tr>
<td>Complaints Filed</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
<tr>
<td>Disciplinary</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
<tr>
<td>Complaints Filed</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
<tr>
<td>Disciplinary</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
<tr>
<td>Complaints Filed</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
<tr>
<td>Disciplinary</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
<tr>
<td>Complaints Filed</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
<tr>
<td>Disciplinary</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
<tr>
<td>Complaints Filed</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
<tr>
<td>Disciplinary</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
<tr>
<td>Complaints Filed</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
<tr>
<td>Disciplinary</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
<tr>
<td>Complaints Filed</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
<tr>
<td>Disciplinary</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
<tr>
<td>Complaints Filed</td>
<td>0148</td>
<td>0120</td>
<td>0160</td>
<td>0180</td>
<td>0230</td>
<td>0260</td>
<td>0280</td>
<td>0300</td>
</tr>
</tbody>
</table>

NEW HAMPshire

The New Hampshire Supreme Court’s Attorney Discipline System has the authority to discipline attorneys for ethical violations of the New Hampshire Rules of Professional Conduct. 414 The system is composed of the Attorney Discipline Office, a Complaint Screening Committee, Hearings Committee and Professional Conduct Committee. 415

406. Id.
407. Id.
409. Id.
410. Id.
412. Id.
413. In Nevada, the “complaints investigated” includes matters where files were not opened.
If a complainant believes an attorney has acted in a manner that violates the Rules of Professional Conduct the complainant must file a grievance with the Attorney Discipline Office. The grievance must include concise facts, that if true, would establish a violation of the Rules of Professional Conduct and be sworn before a Notary or Justice of the Peace. The signature of the person filing the complaint along with the language: "I hereby swear or affirm under the pains and penalties of perjury that the information contained in this grievance is true to the best of my knowledge" must be included on the grievance. Additionally, the conduct must have occurred within the past two years, and the person complaining must be directly affected by the conduct or be present when the conduct occurs.

The New Hampshire Rules of Professional Conduct lists the conduct that would warrant a violation:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) state or imply an ability to influence improperly a government agency or official;

(e) state or imply an ability to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Once a complaint is filed, the Attorney Discipline Office evaluates, processes, and prepares a report for the Screening Committee. The report is then submitted to the members of the screening committee which consists of five lawyers and four non-lawyers. The Screening Committee will then take one of the following actions:

- Table the matter and direct General Counsel to obtain further information;
- Dismiss the complaint with a finding of no professional misconduct, or dismiss for any other basis with or without warning;
- Offer diversion to the respondent-attorney as an alternative to discipline for minor misconduct;
- Determine that a hearing is necessary and refer the matter to the Disciplinary counsel to prepare for a hearing before the panel of the Hearings Committee.

If a complaint is sent to the Hearings Committee, a Hearings panel is selected. Of the thirty-four members of the Hearings Committee three to five get selected to serve on a hearing panel. The hearing panel must write a written report, make findings of fact and conclusions, and recommend that the Professional Conduct Committee either:

- Issue a disciplinary sanction, or make findings of misconduct and recommend sanctions, or,
- Dismiss the complaint with findings of no professional misconduct, with or without a warning.

At that point the twelve member Professional Conduct Committee will consider the Hearing Panel reports and memoranda and determine if there is clear and convincing evidence of a violation of the rules and take one of the following actions:

- Dismiss complaints, with or without a warning, administer a reprimand, public censure or a suspension not to exceed six months;

417. Id.
418. Id.
419. Id.
423. Order from the Supreme Court of New Hampshire, supra note 422.
424. Id.
425. Id.
• Attach appropriate conditions to any discipline it imposes;
• Offer diversion to respondent-attorneys if appropriate;
• Direct disciplinary counsel to file a petition in the New Hampshire Supreme Court on all matters in which the Committee decides that the appropriate sanction should be disbarment or suspension of more than six months;
• Where appropriate, assess to a disciplined respondent-attorney expenses incurred by the Attorney Discipline System in the investigation and enforcement of discipline.\(^{527}\)

The Hearing panel looks to the level of the alleged misconduct to determine the appropriate action.\(^{528}\) The New Hampshire Rules and Procedures of the Attorney Discipline System define minor misconduct as:

*Minor Misconduct: Conduct, which if proved, violates the rules of professional conduct but would not warrant discipline greater than a reprimand. Minor misconduct (1) does not involve the misappropriation of client funds or property; (2) does not, nor is likely to, result in actual loss to a client or other person of money, legal rights or valuable property rights; (3) is not committed within five (5) years of a diversion, reprimand, censure, suspension or disbarment of the attorney for prior misconduct of the same nature; (4) does not involve fraud, dishonesty, deceit or misrepresentation; (5) does not constitute the commission of a serious crime as defined in Rule 37(9)(b); and (6) is not a part of a pattern of similar misconduct.\(^{529}\)

Rule 37(9)(b) defines a serious crime as:

(b) The term "serious crime" shall include any felony and any lesser crime a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit a "serious crime."

\(^{428}\) Order from the Supreme Court of New Hampshire, supra note 422.
\(^{429}\) New Hampshire Rules and Procedures of the Attorney Discipline System 37A.

Additionally, New Hampshire has another method for resolving disputes between attorneys and clients.\(^{430}\) The New Hampshire Dispute Resolution Committee offers assistance when a dispute between an attorney and client does not rise to the level of an ethical violation.\(^{431}\) Examples of these types of disputes include: where an attorney is not returning phone calls, not keeping the client informed, making excuses for the length of the case, or when an attorney will not relinquish a client’s file upon being dismissed.\(^{525}\)

The percentage of formal charges, as compared with the active attorney population, has ranged from less than 1% to 3%. The percentage of formal charges compared with complaints filed has remained higher than other states, ranging from a low of 8% up to a high of 60%. In addition, the percentage of actual disciplines imposed compared with number of charges filed has varied as well, ranging from 7% to 40%.

<table>
<thead>
<tr>
<th>Year</th>
<th>Active Lawyers</th>
<th>Complaints Received</th>
<th>Complaints Investigated</th>
<th>Cases Terminated</th>
<th>Cases Dismissed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>3903</td>
<td>357</td>
<td>140</td>
<td>138</td>
<td>68</td>
</tr>
<tr>
<td>1999</td>
<td>3814</td>
<td>357</td>
<td>140</td>
<td>138</td>
<td>68</td>
</tr>
<tr>
<td>2000</td>
<td>3605</td>
<td>357</td>
<td>140</td>
<td>138</td>
<td>68</td>
</tr>
<tr>
<td>2001</td>
<td>3440</td>
<td>357</td>
<td>140</td>
<td>138</td>
<td>68</td>
</tr>
<tr>
<td>2002</td>
<td>3540</td>
<td>357</td>
<td>140</td>
<td>138</td>
<td>68</td>
</tr>
<tr>
<td>2003</td>
<td>3640</td>
<td>357</td>
<td>140</td>
<td>138</td>
<td>68</td>
</tr>
<tr>
<td>2004</td>
<td>3740</td>
<td>357</td>
<td>140</td>
<td>138</td>
<td>68</td>
</tr>
<tr>
<td>2005</td>
<td>3840</td>
<td>357</td>
<td>140</td>
<td>138</td>
<td>68</td>
</tr>
<tr>
<td>2006</td>
<td>3940</td>
<td>357</td>
<td>140</td>
<td>138</td>
<td>68</td>
</tr>
<tr>
<td>2007</td>
<td>4040</td>
<td>357</td>
<td>140</td>
<td>138</td>
<td>68</td>
</tr>
<tr>
<td>2008</td>
<td>4140</td>
<td>357</td>
<td>140</td>
<td>138</td>
<td>68</td>
</tr>
</tbody>
</table>

**NEW JERSEY**

The Supreme Court of New Jersey established the Office of Attorney Ethics to manage all the district ethics and fee arbitration committees throughout the state. Currently, there are seventeen district ethics committees, which handle the ethical complaints about attorneys located in their respective district.\(^{534}\) The Office of Attorney Ethics has the jurisdiction to investigate and prosecute ethical matters in violation of the New Jersey Rules of Professional Conduct.\(^{535}\)

\(^{431}\) Id.
\(^{432}\) Id.
\(^{434}\) Id.
\(^{435}\) Id.
If a complainant believes an attorney has acted in a manner that violates an issue under the Rules of Professional Conduct a written grievance must be filed with the secretary of the district ethics committee for the grievance district in which the lawyer has his or her main law office. An Attorney Grievance Form must include sufficient detail about the facts of the grievance. This includes all relevant names, addresses, and copies of any important documents.

If a complainant has a dispute with an attorney regarding fees, the complainant has the option to go through the arbitration system instead of the traditional grievance system. The New Jersey Court Rules require that in order for a fee dispute to be considered by the ethics committee it must first go through fee arbitration.

New Jersey has adopted the ABA Model Rules of Professional Conduct which lists the conduct that would warrant a violation under Rule 8.4:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of the Code of Judicial Conduct or other law;

(g) engage, in a professional capacity, in conduct involving discrimination (except employment discrimination unless resulting in a final agency or judicial determination) because of race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap where the conduct is intended or likely to cause harm.

Once a complaint is filed, the secretary of the ethics committee reviews the form and determines if the facts alleged about the conduct of the lawyer, if proven, would be unethical. If the facts alleged would be unethical, the secretary docket the case and assigns the matter to a lawyer member for investigation to determine the validity of the claim. A written report of investigation is then submitted to the Chair of the committee who then determines if there is a reasonable prospect of proving unethical conduct by clear and convincing evidence. If this standard has been met, the hearing process then begins.

The hearing panel consists of three members, two lawyers and one non-lawyer. After a hearing on the grievance takes place, the panel takes one of the following actions:

- Dismiss the complaint, if it finds that the lawyer has not committed misconduct, or
- Determines that the lawyer has been guilty of unethical conduct for which discipline i.e.,

1. Admonition;
2. Reprimand;
3. Censure;
4. Suspension; or
5. Disbarment is required.

The circumstances and severity of the offense determines the form of discipline an attorney receives.

436. Id.
437. Id.
438. Id.
443. Id.
444. Id.
445. Id.
446. Id.
Rule 1:20(3)(2) Determination of Unethical Conduct defines Minor Unethical Conduct as:

(A) Defined. Minor unethical conduct is conduct, which, if proved, would not warrant a sanction greater than a public admonition. Unethical conduct shall not be considered minor if any of the following considerations apply:

(i) the unethical conduct involves the knowing misappropriation of funds;

(ii) the unethical conduct resulted in or is likely to result in substantial prejudice to a client or other person and restitution has not been made;

(iii) the respondent has been disciplined in the previous five years;

(iv) the unethical conduct involves dishonesty, fraud, or deceit;

(v) or the unethical conduct constitutes a crime as defined by the New Jersey Code of Criminal Justice. Classification of unethical conduct as minor unethical conduct shall be in the sole discretion of the Director.

If a complaint is dismissed by the committee the complainant has the right to appeal the decision.440 A Disciplinary Review Board will review the recommendation from the committee and the hearing panel and determine the appropriate action.441 Only the Supreme Court has the authority to disbar an attorney.442

The percentage of formal charges, as compared with the active attorney population, has remained at less than 1%. The percentage of formal charges compared with complaints filed has not consistently been reported. But when this comparison has been reported, it has varied dramatically between 3% and 14%. The percentage of actual disciplines imposed compared with number of charges filed has been more consistently reported and for years remained fairly constantly low, but in recent years has made a jump, from averaging around 4% up to the most recent year’s 24%.

NEW MEXICO

The Supreme Court of New Mexico has adopted the Rules of Professional Conduct, which establish high standards of ethics and professional competence for lawyers who practice in New Mexico, and has established an agency known as the Disciplinary Board to enforce them.455 The Office of Disciplinary Counsel is the investigative body for the Disciplinary Board.456 Through this Board, the Office of Disciplinary Counsel looks into complaints about attorneys licensed to practice law in New Mexico to determine whether the attorneys have violated the Rules of Professional Conduct.454

After a complaint is received, it is investigated by the ODC.455 A copy of the complaint is sent to the attorney and a response is requested.456 If the investigation of a complaint reveals insufficient evidence to prove misconduct, the complaint will be dismissed.457 In cases where there is evidence of more serious ethical violations or when the attorney fails to respond to the complaint, formal disciplinary charges are filed.458 When charges are filed, a hearing committee is appointed.459 The hearing committee is usually comprised of two attorneys and one non-attorney.460 After


441. Id.

442. Id.

443. Id.

444. Id.

445. Id.


447. Id.

448. Id.

449. Id.

the hearing, the hearing committee makes findings of fact, conclusions of law, and a recommendation regarding what discipline, if any, it appropriates. After the hearing committee makes its recommendation, a panel of disciplinary board members is appointed to review the record of the proceeding and to accept or reject the hearing committee’s findings and recasts its ruling on the hearing committee’s recommendation, the matter is forwarded to the Supreme Court of New Mexico. The Supreme Court has ultimate authority over the discipline imposed and may accept, reject, or modify the Disciplinary Board’s recommendation.

It is professional misconduct for a lawyer to:

A. violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so or do so through the acts of another;

B. commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

C. engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

D. engage in conduct that is prejudicial to the administration of justice;

E. state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

F. knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

The Disciplinary Board may impose five different types of sanctions against an attorney:

1. The Chief Disciplinary Counsel may issue a non-public informal admonition informing the lawyer that the Disciplinary Board has determined that his conduct was improper and warning him to

<table>
<thead>
<tr>
<th>2011</th>
<th>2010</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>651</td>
<td>608</td>
<td>720</td>
</tr>
<tr>
<td>567</td>
<td>624</td>
<td>660</td>
</tr>
<tr>
<td>561</td>
<td>607</td>
<td>667</td>
</tr>
<tr>
<td>577</td>
<td>597</td>
<td>627</td>
</tr>
<tr>
<td>577</td>
<td>602</td>
<td>633</td>
</tr>
<tr>
<td>577</td>
<td>633</td>
<td>684</td>
</tr>
</tbody>
</table>

NEW YORK

In New York, authority over the conduct of attorneys rests with the appellate division of the New York Supreme Court and the discipline and grievance committees appointed by that court. The committees are made

Letters of caution are not sanctions and they do not denote a finding of any violation of the Rules of Professional Conduct. See infra note 467.


New York statistics consist of New York’s 1st judicial department, 2nd judicial department (2nd, 3rd, 10th and 11th Districts), 3rd judicial departments, and 4th judicial department (5th, 7th and 8th)
up of both attorneys and non-attorneys, working with a court-appointed, state financed, full-time professional staff. Each committee investigates the complaints received by it or, in some cases, refers the complaint to a county bar association for resolution. The New York court structure is divided into four departments. Each department has the authority to regulate professional responsibility, divided by regional committees. Complaints must be made to the grievance committee that regulates the county in which the attorney's office is located.

A complaint may be filed by submitting a signed, written statement giving a concise statement of the facts and circumstances of the alleged misconduct. The complainant must file this complaint with the grievance committee that presides over the geographical area the attorney's office is located in. A complaint cannot be made anonymously, it must be signed and provide an address and telephone number at which the complainant can be reached.

Every complaint is initially reviewed by an attorney on the Committee staff. If it is determined that the complaint involves a matter falling outside the Committee's authority, the staff will notify the complainant that the complaint is being rejected. However, if the initial screening reveals that the complaint is within the Committee's authority and may involve an ethical violation, the legal staff will carry out an initial investigation of the case. If the investigation reveals that the lawyer did not violate a specific rule in the Rules, or if it appears that the complaint cannot be proven, the Committee may decide that the complaint should be dismissed. Before a complaint is dismissed, however, the staff recommendation, as well as the entire file, will be reviewed by the chief counsel and again independently by at least one committee member. If the review affirms the dismissal, the complainant will be notified in writing that the complaint is to be dismissed. In some cases that do not involve serious ethical violations and are unlikely to result in a disciplinary sanction against a lawyer, the committee may decide to send the complaint to mediation. The relevant provision provides that "[i]f the staff attorney after second screening recommends that it is likely that there has been a violation of a Disciplinary Rule, that recommendation is reviewed by the Chief Counsel or the First Deputy Chief Counsel and if the recommendation is accepted, the case is assigned to one of the staff attorneys to conduct further investigation which may require issuing subpoenas for documents and records as well as interviewing witnesses including at times the complainant as well as the attorney whose conduct is being investigated.

There are two forms of sanctions imposed by the Appellate Division, a private reprimand and a public reprimand. A letter of admonition is a private reprimand that is sent out to attorneys who have behaved unethically and deserve discipline, but the violation is not serious enough to warrant a formal public discipline. The letter is sent out to first time offenders for minor offenses.

In a case involving an allegation of serious unethical conduct that can be proven, or a case against a lawyer having a history of other repeated provable offenses, it may be determined that formal charges should be brought against the lawyer. Formal charges are initially prepared by the legal staff, and require the approval of at least two policy committee members. If formal charges are brought against a lawyer, the court will appoint a referee to conduct the hearing. Staff attorneys prosecute the case against the offending lawyer before a referee. After the hearing, which is similar to a formal trial, the referee issues a report and recommendation as to whether the charges have been proven and recommends an appropriate sanction. The entire proceeding is then reviewed by a hearing panel.

480. New York Supreme Court Appellate Division First Department, supra note 473.
481. Id.
482. New York Supreme Court Appellate Division First Department, Departmental Disciplinary Committee, supra note 473.
483. Id.
484. Id.
485. Id.
486. Id.
487. New York Supreme Court Appellate Division First Department, Departmental Disciplinary Committee, supra note 473.
488. Id.
489. Id.
assigned by the chairman of the committee.490 If the hearing panel finds that the charges have been proven, then its report, determination as to sanction, and all of the information regarding the case is sent to the court.491 The court, after its review, may confirm, reject, or modify the referee’s findings and/or the hearing panel’s recommendation.492 Only the court has the authority to impose public discipline on the lawyer, including censure, suspension, or disbarment.493

The court decides which sanction to impose based on the severity of the infraction, taking into account mitigating circumstances.494 It is impossible to determine what specific activity will bring about a certain sanction.495 Even intentionally breaking the rules can lead to only a censure if sufficient mitigating factors are present.496 However, when an accused attorney acts intentionally, does not correct his actions, and disregards the disciplinary procedures the court may disbar him.497

The percentage of formal charges, as compared with the active attorney population, has remained at less than 1%. The percentage of formal charges compared with complaints filed has also been consistently low. In addition, the percentage of actual disciplines imposed compared with number of charges filed has remained very constant, ranging from 6% to 11%.498

<table>
<thead>
<tr>
<th>Year</th>
<th>Active Lawyers</th>
<th>Complainants Received</th>
<th>Complaints Investigated</th>
<th>Sanctions</th>
<th>Total Number of Disciplines Imposed</th>
<th>Percentage of Disciplines Imposed Compared to Complaints Filed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2011</td>
<td>69,000</td>
<td>1,230</td>
<td>1,170</td>
<td>300</td>
<td>800</td>
<td>12%</td>
</tr>
<tr>
<td>2010</td>
<td>68,000</td>
<td>1,200</td>
<td>1,150</td>
<td>280</td>
<td>820</td>
<td>11%</td>
</tr>
<tr>
<td>2009</td>
<td>67,000</td>
<td>1,170</td>
<td>1,130</td>
<td>260</td>
<td>780</td>
<td>11%</td>
</tr>
</tbody>
</table>

NORTH CAROLINA

In North Carolina, a grievance may be filed "by any person against a member of the North Carolina State Bar."499 The complaint may be written or oral, verified or unverified, so long as it is instituted within six years from the start of the offense.500 To determine if a complaint is founded, North Carolina has two separate and distinct ways to discipline their attorneys. First, North Carolina monitors its attorneys by using The Council of the North Carolina State Bar, who has control of the discipline, disbarment, and restoration of attorneys.501 The Council appoints members of the Grievance Committee (the commission) and appoints a member of the North Carolina Bar to act as Bar Counsel.502 The second way to discipline attorneys in North Carolina is through the inherent authority of the courts to take disciplinary action.503

Either the Bar Council or the Grievance Committee directs the Bar Counsel to investigate the allegations of the complaint.504 The Grievance Committee is given the task of determining whether or not probable cause

exists which would denote misconduct justifying disciplinary action. A hearing is conducted where an existence of probable cause must be found by a majority of the members present in order to warrant disciplinary action. The Grievance Committee is also responsible for recommending actions against attorneys for misconduct. The possible sanctions include it is determined by the Grievance Committee that the conduct of the respondent is an unintentional, minor, or technical violation of the Rules of Professional Conduct, the committee may issue a letter of warning. If probable cause is found, but it is determined that a hearing is not warranted, the committee may issue an admonition or a reprimand. Whether an admonition or a reprimand is recommended depends upon the seriousness of the violation of the Rules of Professional Conduct. If probable cause has been determined that a defendant has caused significant harm to a client, but the conduct does not require suspension of his license, the committee will issue a proposed sentence to the defendant. The percentage of formal charges as compared with the active attorney population has remained at less than 1%. The percentage of formal charges compared with complaints filed has also been consistently low. With the exception of one year, the percentage of imposed disciplines compared with number of charges filed has remained fairly higher, ranging from 9% to 20%.

504. Id.
506. Id.
508. Id. Admonition being defined as a "written form of discipline imposed in cases in which an attorney has committed a minor violation of the Rules of Professional Conduct.
509. Id. Reprimand being defined as "a written form of discipline more serious than an admonition issued in cases in which the offender has violated one or more provisions of the Rules of Professional Conduct, or a member of the public, but the misconduct does not require a censure."
510. Id. Censure being defined as "a written form of discipline more serious than a reprimand issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require suspension of the attorney's license."

511. Id.

---

NORTH DAKOTA

Under the North Dakota constitution, the court has the authority to develop and administer the disciplinary system. The court has implemented a disciplinary board to oversee the conduct of the state's attorneys. Upon the filing of a petition, the chair of the board will appoint a hearing panel to conduct hearings and submit findings and recommendations.

In addition, North Dakota has Inquiry Committees, responsible for investigating all information about a lawyer who has allegedly committed misconduct that, if true, would constitute grounds for disciplinary action, as well as reviewing investigative reports and recommendations, and acting on each complaint. The board or district inquiry committees may consider on their own motions alleged grounds for disciplinary action or evaluate received complaints. If the complaint does not allege facts that are considered grounds for disciplinary action, then the district inquiry committee must dismiss the complaint. There is no appeal from a summary dismissal. If the complaint is not dismissed for failing to allege sufficient facts, then it must be promptly investigated by a committee or the counsel.
Mishandling can lead to disbarment, suspension, immediate interim suspension, or reprimand, all imposed by the court, or probation, restitution, or admonition by the district inquiry committee. Rule 1.2 lists specific grounds for attorney discipline: violating or attempting to violate the North Dakota Rules of Professional Conduct; committing a criminal act that reflects adversely on the attorney’s honesty or integrity, stating or implying an ability to improperly influence a government agency or official; engaging in conduct that involves dishonesty, fraud, deceit, or misrepresentation and willfully failing to appear before the board when required to do so. The board will discipline an attorney for the reasons listed above, unless he acted with “good faith and reasonable reliance” on a written opinion or advisory letter of the ethics committee of the association and the conduct is the subject of the opinion or advisory letter.

The percentage of formal charges compared with the attorney population and complaints filed is not available. However, the percentage of actual disciplines imposed compared with number of charges filed has remained fairly consistently high, ranging from 12% to 23%.

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Lawyers</td>
<td>181</td>
<td>175</td>
<td>160</td>
<td>150</td>
<td>140</td>
<td>130</td>
<td>120</td>
<td>110</td>
<td>100</td>
<td>90</td>
<td>80</td>
<td>70</td>
<td>60</td>
<td>50</td>
</tr>
<tr>
<td>New</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>182</td>
<td>176</td>
<td>161</td>
<td>151</td>
<td>141</td>
<td>131</td>
<td>121</td>
<td>111</td>
<td>101</td>
<td>91</td>
<td>81</td>
<td>71</td>
<td>61</td>
<td>51</td>
</tr>
<tr>
<td>Disciplined</td>
<td>35</td>
<td>34</td>
<td>33</td>
<td>32</td>
<td>31</td>
<td>30</td>
<td>29</td>
<td>28</td>
<td>27</td>
<td>26</td>
<td>25</td>
<td>24</td>
<td>23</td>
<td>22</td>
</tr>
<tr>
<td>Total Number of Disciplines</td>
<td>35</td>
<td>34</td>
<td>33</td>
<td>32</td>
<td>31</td>
<td>30</td>
<td>29</td>
<td>28</td>
<td>27</td>
<td>26</td>
<td>25</td>
<td>24</td>
<td>23</td>
<td>22</td>
</tr>
<tr>
<td>Percentage of All Complaints</td>
<td>19.8%</td>
<td>19.8%</td>
<td>19.8%</td>
<td>19.8%</td>
<td>19.8%</td>
<td>19.8%</td>
<td>19.8%</td>
<td>19.8%</td>
<td>19.8%</td>
<td>19.8%</td>
<td>19.8%</td>
<td>19.8%</td>
<td>19.8%</td>
<td>19.8%</td>
</tr>
<tr>
<td>Percentage of Disciplines Compared to Total Complaints</td>
<td>21.8%</td>
<td>21.8%</td>
<td>21.8%</td>
<td>21.8%</td>
<td>21.8%</td>
<td>21.8%</td>
<td>21.8%</td>
<td>21.8%</td>
<td>21.8%</td>
<td>21.8%</td>
<td>21.8%</td>
<td>21.8%</td>
<td>21.8%</td>
<td>21.8%</td>
</tr>
</tbody>
</table>

OHIO

The Supreme Court of Ohio has the constitutional responsibility to oversee the practice of law. Three Offices have been implemented to assist the Supreme Court of Ohio in their disciplinary actions: the Office of Disciplinary Counsel, the Board of Commissioners on Grievance and Discipline, and the Clients' Security Fund. Grievances are brought to either the Disciplinary Counsel or a Certified Grievance Committee established by the Board of Commissioners.

The Office of Disciplinary Counsel investigates allegations and initiates complaints concerning ethical misconduct and mental illness of judges and attorneys. Certified Grievance Committees designate bar counsel who must be certified by the disciplinary counsel to supervise the receipt, investigation, and prosecution of grievances.

Once a grievance has been brought to either the Disciplinary Counsel or a Certified Grievance Committee, the next step is to determine whether or not there is probable cause to continue further investigation. If the grievance was brought to the Disciplinary Counsel and no substantial evidence of misconduct was apparent, then the grievance will be dismissed.

If it is determined by either office that there is substantial credible evidence of misconduct, a complaint is drafted and it proceeds to the Probable Cause Panel of the Board of Commissioners on Grievance and Discipline. If no probable cause is found, the complaint will be dismissed.

If probable cause is found, the complaint becomes public and proceeds to the Board of Commissioners on Grievances and Discipline. An answer is filed, a disciplinary hearing will be conducted, and a recommendation will be made to the Board as to whether a violation has occurred and the appropriate sanction. A "master commissioner" is appointed to make a recommendation to the Board of Commissioners on Grievances and Discipline. If the full Board agrees with the panel or the master commissioner, it will make a recommendation to the Supreme Court for an appropriate sanction. The Supreme Court will then render a decision.

520. North Dakota Supreme Court Rules, supra note 513.
521. Id.
522. Id.
When the Supreme Court of Ohio is ready to render a decision, they can choose from disbarment, suspension for an indefinite period, suspension for six months to two years, probation for a period of time upon conditions of the Supreme Court, or public reprimand.\(^{537}\) If the respondent is disbarred or if he voluntarily suspends his license, he will not be allowed to be readmitted to practice law in Ohio.\(^{538}\) The Ohio Rules list several factors that should be taken into consideration when issuing a sanction. The aggravating factors listed are prior disciplinary offenses; dishonest or selfish motive; a pattern of misconduct; multiple offenses; lack of cooperation in the disciplinary process; submission of false evidence, false statements, or other deceptive practices during the disciplinary process; refusal to acknowledge wrongful nature of conduct; vulnerability of and resulting harm to victims of the misconduct; and failure to make restitution.\(^{539}\) Also listed are mitigating factors such as the absence of a dishonest or selfish motive; timely good faith effort to make restitution or to rectify consequences of misconduct; full and free disclosure to disciplinary board; character or reputation; and imposition of other penalties or sanctions.\(^{540}\)

The percentage of formal charges, as compared with the active attorney population, has remained at less than 1%. The percentage of formal charges compared with complaints filed has also been consistently low. In addition, the percentage of actual disciplines imposed compared with the number of charges filed has remained consistently low, ranging from 2% to 5%.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Attorneys</td>
<td>5075</td>
<td>5075</td>
<td>5075</td>
<td>5075</td>
<td>5075</td>
<td>5075</td>
<td>5075</td>
<td>5075</td>
<td>5075</td>
<td>5075</td>
<td>5075</td>
<td>5075</td>
<td>5075</td>
<td>5075</td>
<td>5075</td>
</tr>
<tr>
<td>Complaints Received</td>
<td>4942</td>
<td>4942</td>
<td>4942</td>
<td>4942</td>
<td>4942</td>
<td>4942</td>
<td>4942</td>
<td>4942</td>
<td>4942</td>
<td>4942</td>
<td>4942</td>
<td>4942</td>
<td>4942</td>
<td>4942</td>
<td>4942</td>
</tr>
<tr>
<td>Complaints Investigated</td>
<td>779</td>
<td>779</td>
<td>779</td>
<td>779</td>
<td>779</td>
<td>779</td>
<td>779</td>
<td>779</td>
<td>779</td>
<td>779</td>
<td>779</td>
<td>779</td>
<td>779</td>
<td>779</td>
<td>779</td>
</tr>
<tr>
<td>Non-Formal Charges</td>
<td>103</td>
<td>103</td>
<td>103</td>
<td>103</td>
<td>103</td>
<td>103</td>
<td>103</td>
<td>103</td>
<td>103</td>
<td>103</td>
<td>103</td>
<td>103</td>
<td>103</td>
<td>103</td>
<td>103</td>
</tr>
<tr>
<td>Percentage of Formal Charges Compared with Complaints</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
<td>6%</td>
</tr>
<tr>
<td>Total Number of Disciplines Imposed</td>
<td>214</td>
<td>214</td>
<td>214</td>
<td>214</td>
<td>214</td>
<td>214</td>
<td>214</td>
<td>214</td>
<td>214</td>
<td>214</td>
<td>214</td>
<td>214</td>
<td>214</td>
<td>214</td>
<td>214</td>
</tr>
<tr>
<td>Percentage of Disciplines Imposed Compared to Complaints Received</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
<td>5%</td>
</tr>
</tbody>
</table>

537. The Supreme Court of Ohio & The Ohio Judicial System, supra note 524.
538. Id.
539. The Supreme Court of Ohio & The Ohio Judicial System, supra note 524.
540. Id.

In Oklahoma, the Oklahoma Bar Association investigates allegations of unethical conduct against lawyers practicing in the state.\(^{541}\) The Oklahoma Supreme Court gives the Oklahoma Bar Association the authority to investigate complaints against lawyers.\(^{542}\) Once a complaint is filed, the Office of the General Counsel will review the information and may decide to open an investigation, ask the complainant to provide more information, or notify the complainant that the office can take no action.\(^{543}\) If the grievance alleges no facts which, if proven true, would constitute a violation of the Oklahoma Rules of Professional Conduct, the letter is treated as an informal grievance.\(^{544}\) If, however, the grievance letter is found to contain allegations which would constitute a violation of the Rules, the grievance is designated as a formal grievance.\(^{545}\) The Office of the General Counsel will then report to the Professional Responsibility Commission the results of investigations made by or at the direction of the General Counsel.\(^{546}\) The Professional Responsibility Commission determines whether the matter is dismissed, that a letter or admonishment be written to the respondent attorney, in lieu of formal charges, can offer the respondent a private reprimand, or can vote the filing of formal charges with the Supreme Court.\(^{547}\) After the Professional Responsibility Tribunal has filed its report with the Clerk, the matter is decided by the Oklahoma Supreme Court.\(^{548}\) After its consideration, the Supreme Court can: 1) dismiss the proceedings; 2) impose discipline; or 3) take such action as deemed appropriate.\(^{549}\)

In the event that the Supreme Court does decide to discipline an attorney, the forms of discipline available to the Court are as follows: 1) Suspend or defer the imposition of discipline subject to the fulfillment of specified conditions; 2) issue a private reprimand to the attorney; 3) issue a public censure; 4) suspend an attorney from the practice of law for a definite term or until further order of the Court; or 5) disbar the attorney.\(^{550}\)

According to Oklahoma statutes, "the commission by any lawyer of any act contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act would reasonably be
found to bring discredit upon the legal profession, shall be grounds for disciplinary action, whether or not the act is a felony or misdemeanor, or a crime at all. 551

The percentage of formal charges, as compared with the active attorney population, has remained at less than 1%. The percentage of formal charges compared with complaints filed has also been consistently low. Until the most recent years reported, the percentage of actual disciplines imposed compared with the number of charges filed has remained fairly low, ranging from 2% to 5%, but in the most recent years reported, experienced a jump as high as the most recently reported 19%.

<table>
<thead>
<tr>
<th>Active Lawyers</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliances Resolved</td>
<td>1,014</td>
<td>1,013</td>
<td>1,012</td>
<td>1,011</td>
<td>1,010</td>
<td>1,009</td>
<td>1,008</td>
<td>1,007</td>
</tr>
<tr>
<td>Complaints Investigated</td>
<td>404</td>
<td>393</td>
<td>382</td>
<td>371</td>
<td>360</td>
<td>349</td>
<td>338</td>
<td>327</td>
</tr>
<tr>
<td>Non-Preliminary Charges</td>
<td>15</td>
<td>16</td>
<td>17</td>
<td>18</td>
<td>19</td>
<td>20</td>
<td>21</td>
<td>22</td>
</tr>
<tr>
<td>Percentage of Preliminary Charges Compared to Compliances</td>
<td>15%</td>
<td>16%</td>
<td>17%</td>
<td>18%</td>
<td>19%</td>
<td>20%</td>
<td>21%</td>
<td>22%</td>
</tr>
<tr>
<td>Total Number of Disciplinary Imposed</td>
<td>63</td>
<td>55</td>
<td>55</td>
<td>56</td>
<td>56</td>
<td>56</td>
<td>56</td>
<td>56</td>
</tr>
<tr>
<td>Percentage of Disciplinary Imposed Compared to Complaints Resolved</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
<td>4%</td>
</tr>
</tbody>
</table>

OREGON

The initial screening of all inquiries and complaints regarding lawyer conduct in Oregon is conducted by the Client Assistance Office to determine if there is a sufficient basis to warrant further investigation by the Disciplinary Counsel. If Disciplinary Counsel’s Office finds sufficient evidence, the complaint will be submitted to the State Professional Responsibility Board.

553. If you have a Problem With Lawyer, OK. STATE BAR, http://www.osbar.org/cas (last visited Feb. 1, 2011).
554. Id.
557. Id.
558. Id.
560. Id.
Pennsylvania

All investigations are initiated and conducted by Disciplinary Counsel. Upon the conclusion of an investigation, Disciplinary Counsel may dismiss the complaint as frivolous, as falling outside the jurisdiction of the Board, or recommend dismissal of the complaint, a conditional or unconditional admonition, a conditional or unconditional private reprimand by the Board, or the prosecution of formal charges before a hearing committee or special master. Unless the complaint is dismissed because it was frivolous or outside the jurisdiction of the Board, the recommended disposition will be reviewed by a member of a hearing committee in the appropriate disciplinary district who may approve or modify. Disciplinary Counsel may appeal the recommended disposition directed by a hearing committee member to a reviewing panel.

The Supreme Court of Pennsylvania appoints The Disciplinary Board of the Supreme Court of Pennsylvania, who appoint a hearing committee from the appropriate district to hear a matter. Hearing committees have the power and duty to conduct investigatory hearings and hearings into formal

Rhode Island

The Supreme Court of Rhode Island appoints twelve members to the Disciplinary Board (hereinafter, “the Board”), the goal of which is to process disciplinary complaints filed against Rhode Island attorneys. The Board oversees the Office of Disciplinary Counsel, which reviews and investigates all allegations of attorney misconduct. When appropriate,
the Board authorizes the filing of formal charges against an attorney, and then conducts hearings and makes recommendations to the court for the imposition of discipline. The Board Chair must also appoint and designate one or more screening panels, which shall consist of two attorney members and one non-attorney member. The Screening Panel reviews the recommendation for disposition submitted by The Supreme Court Disciplinary Counsel, which is the investigative arm of the Board.

The Screening Panel may issue one of the following: dismissal of the complaint; dismissal of the complaint with an admonition; recommend the issuance of a letter of reprimand; or delay disposition for a period not to exceed 36 months on condition that a respondent attorney undergo physical and/or psychiatric examination. After review of the Screening Panel’s recommendation, the Board can vote to dismiss the complaint, dismiss the complaint with admonition, or accept the recommendation of the Screening Panel to issue a letter of reprimand or to authorize a petition for formal disciplinary action. Disciplinary Counsel institutes formal disciplinary proceedings in either of the following cases: 1) pursuant to a referral by the Supreme Court following the conviction of the Respondent of a crime; or 2) pursuant to a determination to institute formal proceedings made under the Supreme Court Rules.

The percentage of formal charges, as compared with the active attorney population, has remained less than 1%. The percentage of formal charges compared with complaints filed has remained consistently low. However, the percentage of disciplines imposed compared to complaints received has varied at a higher rate, from 5% up to 17%.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Complaints Received</td>
<td>417</td>
<td>607</td>
<td>621</td>
<td>655</td>
<td>685</td>
<td>668</td>
<td>693</td>
<td>710</td>
<td>750</td>
<td>800</td>
<td>830</td>
<td>850</td>
<td>880</td>
</tr>
<tr>
<td>Complaints Investigated</td>
<td>270</td>
<td>330</td>
<td>370</td>
<td>370</td>
<td>380</td>
<td>390</td>
<td>390</td>
<td>390</td>
<td>390</td>
<td>390</td>
<td>390</td>
<td>390</td>
<td>390</td>
</tr>
<tr>
<td>Non-Formal Charges</td>
<td>120</td>
<td>160</td>
<td>180</td>
<td>200</td>
<td>220</td>
<td>240</td>
<td>260</td>
<td>280</td>
<td>300</td>
<td>320</td>
<td>340</td>
<td>360</td>
<td>380</td>
</tr>
<tr>
<td>Percentage of Formal Charges Compared with Complaints</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Total Number of Disciplines Imposed</td>
<td>71</td>
<td>93</td>
<td>93</td>
<td>83</td>
<td>73</td>
<td>69</td>
<td>69</td>
<td>69</td>
<td>69</td>
<td>69</td>
<td>69</td>
<td>69</td>
<td>69</td>
</tr>
<tr>
<td>Percentage of Disciplines Imposed Compared to Complaints Received</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
<td>17%</td>
</tr>
</tbody>
</table>

573. Id.
576. Id.

In South Carolina, the task of regulating lawyers falls to the Office of Disciplinary Counsel, and the Commission on Lawyer Conduct. The Office of Disciplinary Counsel is primarily tasked with screening and investigating the complaints made against lawyers. The Office is also responsible for prosecuting those lawyers who have either committed ethical misconduct, or are suffering from a physical or mental condition which adversely affects their ability to serve the public. Disciplinary Counsel is responsible for reviewing, investigating, and prosecuting attorney matters and is aided in its efforts by Attorneys to Assist Disciplinary Counsel, appointed by the Court, who serve from all areas of the State of South Carolina.

When a complaint is filed, the Office of Disciplinary Counsel conducts a preliminary investigation. If the investigation reveals evidence of misconduct, the Commission on Lawyer Conduct will authorize the Office of Disciplinary Counsel to conduct a full investigation. The Commission will then conclude the matter with a dismissal or letter of caution, discipline by the consent of the lawyer, or a public hearing. If a public hearing is required, it will be held by members of the Commission who will file a report and recommendation with the South Carolina Supreme Court. The Supreme Court makes the final determination in contested matters and can dismiss the grievance or impose sanction.

It is professional misconduct for a lawyer to:

a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

c) commit a criminal act involving moral turpitude;
The Journal of the Legal Profession  [Vol. 35:2

d) engage in conduct involving dishonesty, fraud, deceit or misrepresentations;

e) engage in conduct that is prejudicial to the administration of justice;

f) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

g) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.587

The discipline imposed can range from a confidential letter of caution to total disbarment.588 In rare cases, a portion of fees paid may be ordered returned to the client, or other types of financial restitution ordered.589

Additionally, a legislator recently proposed to eliminate the state supreme court’s power to regulate attorney admission to the bar and discipline benefits of the court.590 Similar legislation has been pursued in Arizona, Wisconsin, and unsuccessfully in Missouri, Montana and Wisconsin.591

The percentage of formal charges, as compared with the active attorney population, has varied from less than 1% to 3%. With the exception of complaints filed by the state, the percentage of formal charges compared with complaints has remained consistently low. However, the percentage of disciplines imposed compared to complaints received has varied, with jumps from a low of 7% to a high of 26%.592


589. Id.


591. Id.


SOUTH DAKOTA

The South Dakota Bar Association is responsible to the South Dakota Supreme Court for the admission and discipline process.593 Discipline is administered through the Disciplinary Board of the State Bar, the Attorney General of the State of South Dakota, and the South Dakota Supreme Court.594

Upon the receipt of a written complaint, it will be reviewed by the Board.595 If it appears that sufficient grounds exist, the next step is investigation.596 In simple matters, the investigation is conducted by a member of the Disciplinary Board through correspondence with the client and the lawyer.597 In more complicated matters, where there may be witnesses involved, accounting problems, or disputed facts, the Disciplinary Board uses an investigator.598 Disciplinary hearings may be held before the seven member Disciplinary Board.599 If the board determines the lawyer has done no wrong, the complaint is dismissed.600 The board may issue a private reprimand in less serious cases of wrongdoing.601 More serious violations are reported to the Supreme Court, which may in turn, refer the matter to a circuit court judge to act as a referee, try the matter, and recommend discipline to the Supreme Court.602


595. Id.

596. Id.

597. Id.

598. Id.

599. Id.

600. Id.

601. Id.

602. Id.
It is professional misconduct for a lawyer to:

a) violate or attempt to violate the rules of professional conduct, knowingly assist or induce another to do so, or do so through the acts of another;

b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

d) engage in conduct that is prejudicial to the administration of justice;

e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law. 603

Discipline may take one of several forms, depending on the circumstances and severity of the offense. 604 It may range from a private reprimand by the board, public censure, suspension from practice for a specified time, placement on probation, to disbarment by the Supreme Court. 605

The percentage of formal charges as compared with the active attorney population has varied from less than 1% to 4%. The percentage of formal charges compared with complaints filed has varied widely, from a low of 1% up to a high of 33%. However, the percentage of disciplines imposed compared to complaints received has remained at a higher rate, from 17% up to 52% in varying years.

605. Id.
committee report is reviewed by the entire Board. When the discipline is less severe than disbarment or suspension, it is imposed following the deliberations of the Board, and the matter ends unless the attorney so disciplined requests rehearing. Disbarment or suspension can be ordered only by the Supreme Court. All hearing requests go to the Supreme Court for review and final action.

It is professional misconduct for a lawyer to:

a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects;

c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

d) engage in conduct that is prejudicial to the administration of justice;

e) attempt to, or state or imply an ability to influence a tribunal or a governmental agency or official on grounds unrelated to the merits of, or the procedures governing, the matter under consideration;

f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

g) knowingly fail to comply with a final court order entered in a proceeding in which the lawyer is a party, unless the lawyer is unable to comply with the order or is seeking in good faith to determine the validity, scope, meaning, or application of the law upon which the order is based.

Discipline of lawyers may take one of several forms, depending on the particular circumstances and the severity of the offense: private admonition, private reprimand, public censure, suspension from practice for a specified time, or disbarment.

The percentage of formal charges, as compared with the active attorney population, has remained at or less than 1%. The percentage of formal charges compared with complaints filed has remained fairly constant, from 9% to 10%. However, the percentage of disciplines imposed compared to complaints received has varied at a higher rate, from 11% up to 30%.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Complain filed</td>
<td>1,271</td>
<td>1,255</td>
<td>1,107</td>
<td>1,166</td>
<td>1,200</td>
<td>1,235</td>
<td>1,224</td>
<td>1,155</td>
<td>1,204</td>
<td>1,255</td>
<td>1,200</td>
<td>1,184</td>
<td>1,218</td>
</tr>
<tr>
<td>Dismissed</td>
<td>266</td>
<td>263</td>
<td>257</td>
<td>244</td>
<td>256</td>
<td>258</td>
<td>262</td>
<td>254</td>
<td>260</td>
<td>263</td>
<td>266</td>
<td>265</td>
<td>264</td>
</tr>
<tr>
<td>Terminated</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Disciplinary action taken</td>
<td>98%</td>
<td>98%</td>
<td>98%</td>
<td>98%</td>
<td>98%</td>
<td>98%</td>
<td>98%</td>
<td>98%</td>
<td>98%</td>
<td>98%</td>
<td>98%</td>
<td>98%</td>
<td>98%</td>
</tr>
<tr>
<td>Type of action</td>
<td>71%</td>
<td>71%</td>
<td>71%</td>
<td>71%</td>
<td>71%</td>
<td>71%</td>
<td>71%</td>
<td>71%</td>
<td>71%</td>
<td>71%</td>
<td>71%</td>
<td>71%</td>
<td>71%</td>
</tr>
<tr>
<td>Final action taken</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
</tr>
<tr>
<td>Percentage of formal charges compared to complaints filed</td>
<td>68</td>
<td>55</td>
<td>55</td>
<td>55</td>
<td>55</td>
<td>55</td>
<td>55</td>
<td>55</td>
<td>55</td>
<td>55</td>
<td>55</td>
<td>55</td>
<td>55</td>
</tr>
</tbody>
</table>

**TEXAS**

Subject to the inherent power of the Supreme Court of Texas, the responsibility for administering and supervising lawyer discipline and disability is delegated to the Board of Directors of the State Bar of Texas. The Board of Directors uses a Commission and Grievance Panel in its work, and public members comprise 50% of the twelve member Commission for Lawyer Discipline and 33% of grievance panels.

After a grievance is received by the State Bar of Texas, it is reviewed by the Chief Disciplinary Counsel's Office (CDC) to determine whether the attorney has committed a violation. One of two possibilities could occur. First, the CDC determines that the grievance does not allege a violation.

619. Id.
618. Id.
617. Id.
616. Id.
615. Id.

619. TN Rules of Prof'l. Rule 8.6 http://www.txc.state.tn.us/aprism/tn/rules/TNRulesofProf/06r008x11.5.htm#6 (last visited Feb. 2, 2011).
lation of the disciplinary rules and the matter is classified as an "inquiry" and dismissed.644 At this point, the complainant can appeal the dismissal to the Board of Disciplinary Appeals (BODA).645 If the Board of Disciplinary Appeals denies the appeal, the complainant can resubmit the grievance if there is new information or additional information not included when the grievance was first filed.646 If the Board of Disciplinary Appeals dismisses the grievance again, the decision is final and the complainant has no more appeals.647

Alternatively, if the CDC determines that the grievance does allege a violation of the disciplinary rules, it is classified as a "complaint."648 The lawyer is informed of the complaint and asked to respond within thirty days.649 The CDC investigates the matter. If the case does not go directly to trial court, it will be presented to a Summary Disposition Panel to determine if the grievance should be dismissed.650 If it is dismissed, the complainant is notified in writing.651 The complainant cannot appeal the dismissal to the Board of Disciplinary Appeals (BODA).645 If the Board of Disciplinary Appeals denies the appeal, the complainant can resubmit the grievance if there is new information or additional information not included when the grievance was first filed.646 If it goes to trial court, a jury may be requested by either side. The trial court will enter judgment after the close of evidence or after the return of the jury’s verdict.652

In Texas, the rule demonstrates that a lawyer shall not:

1) violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship;

2) commit a serious crime or commit any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

3) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

624. The State Bar of Tex., supra note 624.
625. Id.
626. Id.
627. Id.
628. Id.
629. The State Bar of Tex., supra note 624.
630. Id.
631. Id.
632. Id.
633. Id.
634. The State Bar of Tex., supra note 624.
charges compared with complaints filed has stayed fairly constant, from
3% to 9%. In addition, the percentage of disciplines imposed compared to
complaints received has also stayed fairly consistent, from 6% up to only
12%.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliments Received</td>
<td>3,884</td>
<td>3,870</td>
<td>3,080</td>
<td>2,721</td>
<td>7,118</td>
<td>8,614</td>
<td>7,613</td>
<td>7,494</td>
<td>6,828</td>
<td>7,198</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Compliments Investigated</td>
<td>3,503</td>
<td>3,522</td>
<td>3,057</td>
<td>2,741</td>
<td>7,118</td>
<td>8,614</td>
<td>7,613</td>
<td>7,494</td>
<td>6,828</td>
<td>7,198</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Formal Charges</td>
<td>481</td>
<td>471</td>
<td>493</td>
<td>236</td>
<td>236</td>
<td>500</td>
<td>649</td>
<td>682</td>
<td>587</td>
<td>706</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Percentage of State Charges Compared with Compliments</td>
<td>78</td>
<td>78</td>
<td>79</td>
<td>58</td>
<td>65</td>
<td>66</td>
<td>92</td>
<td>92</td>
<td>83</td>
<td>95</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Number of Disciplines Imposed</td>
<td>95</td>
<td>106</td>
<td>101</td>
<td>82</td>
<td>93</td>
<td>130</td>
<td>135</td>
<td>35</td>
<td>60</td>
<td>59</td>
<td>67</td>
<td></td>
</tr>
<tr>
<td>Percentage of Discipline Imposed Compared to Complaints Received</td>
<td>75</td>
<td>90</td>
<td>89</td>
<td>57</td>
<td>58</td>
<td>54</td>
<td>51</td>
<td>17</td>
<td>12</td>
<td>11</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**UTAH**

The Utah Supreme Court governs the licensing and discipline of lawyers in Utah. The process of investigating alleged misconduct, the administration of disciplinary hearings and the possibility of disciplinary and Disability. The rules are administered jointly by the Bar’s Office of Lawyer Discipline Professional Conduct (OPC) and by the Court’s Ethics and Discipline Committee and the Committee’s screening panels. The Committee and its screening panels are appointed by the Court and are made up of community representatives and lawyers. After receipt of a notarized and verified informal complaint, the OPC conducts a preliminary investigation which usually includes seeking additional facts from the complainant. The OPC sends the attorney a notice of informal complaint (NOIC). The attorney must respond in writing

637. Excludes cases handled by consumer assistance program.
639. Utahbar.org, supra note 638.
640. Id.
641. Id.
643. Utahbar.org, supra note 642.

and sign the response. The OPC sends a copy of the attorney’s response to the complainant and, where necessary, conducts additional investigations. If warranted, the case is referred to the Screening Panel of the Ethics and Discipline Committee. The Screening Panel reviews informal complaints referred by OPC, including all facts developed by the informal complaint, the attorney’s answer, investigation and hearing, and the OPC’s recommendation. The Screening Panel will then choose one of two options: First, the Screening Panel may dismiss the case (either outright, or with a caution or upon condition) or recommend that the Chair issue private admonition or public reprimand. Second, the Screening Panel directs the OPC to file the complaint in district court. The Chair of the Ethics and Discipline Committee signs the complaint. The court may then impose discipline (except Resignation with Discipline Pending) or dismiss the case.

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.
The range of sanctions for lawyers found engaging in professional misconduct includes diversion, private or public reprimand, probation, suspension from the practice of law, resignation in lieu of disbarment, or disbarment.\(^{653}\)

The percentage of formal charges, as compared with the active attorney population, has remained at or less than 1%. The percentage of formal charges compared with complaints filed has remained fairly low, under 6%. However, the percentage of disciplines imposed compared to complaints received has stayed slightly higher, from 7% up to 11%.

<table>
<thead>
<tr>
<th>Year</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Lawyers</td>
<td>520</td>
<td>504</td>
<td>513</td>
<td>504</td>
<td>513</td>
<td>524</td>
<td>524</td>
<td>524</td>
<td>524</td>
</tr>
<tr>
<td>Complaints Received</td>
<td>118</td>
<td>118</td>
<td>118</td>
<td>118</td>
<td>118</td>
<td>118</td>
<td>118</td>
<td>118</td>
<td>118</td>
</tr>
<tr>
<td>Compl. Investigated</td>
<td>82</td>
<td>82</td>
<td>82</td>
<td>82</td>
<td>82</td>
<td>82</td>
<td>82</td>
<td>82</td>
<td>82</td>
</tr>
<tr>
<td>Mem. Formal Charges</td>
<td>21</td>
<td>21</td>
<td>21</td>
<td>21</td>
<td>21</td>
<td>21</td>
<td>21</td>
<td>21</td>
<td>21</td>
</tr>
<tr>
<td>Percentage of Total Complaints - Disciplinary Result</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
</tr>
<tr>
<td>Percentage of Disciplinary Result Compared to Complaints Received</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
<td>21%</td>
</tr>
</tbody>
</table>

**Vermont**

The Vermont Supreme Court has the authority to oversee the professional conduct of all lawyers practicing within the state.\(^{654}\) The Vermont Professional Responsibility Board is appointed by the Supreme Court and employs a Disciplinary Counsel and a Bar Counsel.\(^{655}\) The Vermont Professional Responsibility Board administers the overall program while the Disciplinary Counsel screens all complaints of attorney misconduct.\(^{656}\) The Bar Counsel provides assistance to complainants, oversees assistance panels, and publishes decisions.\(^{657}\)

If a complainant believes an attorney has acted in a manner that violates an issue under the Rules of Professional Conduct the complainant must send a letter to the Office of Disciplinary Counsel.\(^{659}\) No special


\(^{654}\) Includes matters handled by counsel intake.


\(^{656}\) Vermontjudiciary.org, supra note 656.

\(^{657}\) Id.


format or language is necessary but should include enough as to reasonably inform the reader of the alleged misconduct.\(^{660}\) The Vermont Rules of Professional Conduct lists the conduct that would warrant a violation:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) engage in a "serious crime", defined as illegal conduct involving any felony or involving any lesser crime a necessary element of which involves interference with the administration of justice, false swearing, intentional misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt at a conspiracy or solicitation of another to commit a "serious crime";

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(g) discriminate against any individual because of his own race, color, religion, ancestry, national origin, sex, sexual orientation, place of birth or age, or against a qualified handicapped individual, in hiring, promoting or otherwise determining the conditions of employment of that individual.\(^{661}\)

Once the Office of Disciplinary Counsel receives the complaint they conduct a limited investigation to determine the nature of the inquiry and whether or not the issue can be resolved through non-disciplinary resolution.\(^{662}\) Counsel can attempt to resolve the complaint or dismiss it.\(^{663}\) The
Board has the authority to establish assistance panels which provide prompt resolution, other than disciplinary manners. 664  

However, if the conduct appears to amount to misconduct under the Professional Rules, a further investigation is conducted. 665 The Disciplinary Counsel reports the results of the investigation to a Hearing Panel consisting of two members of the bar and one member of the public. 666 The Hearing Panel then determines if there is probable cause to believe that a violation of the Professional Rules has occurred. 667 Where they find that misconduct has occurred they instruct the Disciplinary Counsel to bring formal charges. 668 A formal hearing may then occur, when the Disciplinary Counsel must prove by clear and convincing evidence the alleged violation occurred. 669 Discipline of attorneys may take one of the following forms:

1. Admonition by Disciplinary Counsel before formal charges; or
2. Admonition by a hearing panel imposed after former charges are filed; or
3. Public Reprimand by publication in the Law Reporter or newspaper; or
4. Probation, which may be imposed only in conjunction with another sanction; or
5. Reimbursement of fees or monies collected by the lawyer, when ordered in conjunction with another sanction; or
6. Suspension, for a period not exceeding three years; or
7. Disbarment, in which case the lawyer is not eligible for readmission for at least five years. 670

The Hearing Panel looks at the particular circumstances and severity of the offense to determine the appropriate disciplinary action. 671 The Vermont Rules of Professional Conduct are based on the ABA Model Rules of Professional Conduct, which suggest an analysis of four factors to be considered: the duty violated, the lawyer’s mental state, the potential or actual injury caused by the lawyer’s misconduct, and the existence of aggravating or mitigating factors. 672

The percentage of formal charges, as compared with the active attorney population, has ranged from less than 1% to 3%. The percentage of formal charges compared with complaints filed has varied dramatically from a high in earlier years reported of 29% to the near low of the most current year reported, 5%. However, the percentage of disciplines imposed compared to complaints received has varied at less a difference, from 5% up to 12%.

<table>
<thead>
<tr>
<th>Year</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases Accepted</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>Cases Filed</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>Cases Dismissed</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>Cases Settled</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>Cases Pending</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>Cases Completed</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
</tr>
<tr>
<td>Cases Closed</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
<td>200</td>
</tr>
</tbody>
</table>

**VIRGINIA**

The Virginia State Bar has the authority to discipline attorneys for ethical violations of the Virginia Rules of Professional Conduct. 673 Within the Virginia State Bar, the Office of Bar Counsel reviews all complaints. 674

If a complainant believes an attorney has acted in a manner that violates an issue under the Rules of Professional conduct the complainant must file an inquiry in writing to the Intake Office of the Virginia State Bar. 675 An online inquiry may also be submitted through the Intake Office of the Virginia State Bar. 676 No special language or form is necessary; however, the letter or form must contain the complainant’s and lawyers’

---

664. Id.
665. Id.
666. Id.
667. Vermontjudiciary.org, supra note 658.
668. Id.
669. Id.
670. Id.
671. Complaint Brochure, supra note 659.
676. Id.
full name, address, and phone number as well as a brief description of the facts explaining the situation and the complainant’s signature. 677

The Virginia Rules of Professional Conduct lists the conduct that would warrant a violation:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness to practice law;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer’s fitness to practice law;

(d) state or imply an ability to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official; or

(e) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law. 678

Once an inquiry is sent to the Intake Office of the Virginia State Bar a four stage process begins. 679 Stage one is known as the Preliminary Investigation Stage in which the complaint gets assigned to a Virginia State Bar Attorney for investigation. 680 The attorney sends the complaint to the lawyer who is the subject of the complaint, and the preliminary investigation begins. 681 This phase typically takes about 60 days and the attorney will then notify the complainant that the complaint has either been dismissed or referred for a more detailed investigation. 682

Stage two is further investigation. 683 During this stage the complaint will be sent to a district committee made up of lawyers and non-lawyers and assigned an investigator. 684 The investigator will prepare a report for

677. Id.
678. Virginia Rule of Professional Conduct, Rule 8.4.
680. Id.
681. Id.
682. Id.
683. Id.
684. Id.
tion depends on all circumstances although willfulness, seriousness, and whether there have been previous violations are relevant factors.

The percentage of formal charges compared with active attorneys or complainants imposed compared to complaints received has remained fairly constant, from 4% to 10%.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Lawyers</td>
<td>318</td>
<td>318</td>
<td>318</td>
<td>318</td>
<td>318</td>
<td>318</td>
<td>318</td>
<td>318</td>
<td>318</td>
<td>318</td>
<td>318</td>
<td>318</td>
<td>318</td>
<td>318</td>
<td>318</td>
<td>318</td>
<td>318</td>
</tr>
<tr>
<td>Complaints Filed</td>
<td>477</td>
<td>477</td>
<td>477</td>
<td>477</td>
<td>477</td>
<td>477</td>
<td>477</td>
<td>477</td>
<td>477</td>
<td>477</td>
<td>477</td>
<td>477</td>
<td>477</td>
<td>477</td>
<td>477</td>
<td>477</td>
<td>477</td>
</tr>
<tr>
<td>Percentage of Formal Charges Compared with Complaints</td>
<td>3/7</td>
<td>3/7</td>
<td>3/7</td>
<td>3/7</td>
<td>3/7</td>
<td>3/7</td>
<td>3/7</td>
<td>3/7</td>
<td>3/7</td>
<td>3/7</td>
<td>3/7</td>
<td>3/7</td>
<td>3/7</td>
<td>3/7</td>
<td>3/7</td>
<td>3/7</td>
<td>3/7</td>
</tr>
<tr>
<td>Total Number of Disciplines Imposed</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
<td>85</td>
</tr>
</tbody>
</table>

**WASHINGTON**

The Washington State Bar Association Disciplinary Board has the authority to discipline attorneys based on the Rules for Lawyer Discipline. If a complaint believes an attorney has acted in a manner that violates an issue under the Rules of Professional conduct the complainant must file a grievance with the Office of Disciplinary Counsel. No special language or form is necessary; however, the Counsel prefers that their grievance form is used and the complaint must be in writing and signed. An online grievance may also be submitted through the Washington State Bar Association website.702 There is no fee or time limit on filing a grievance.

The Washington Rules of Professional Conduct define misconduct as:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law;

(g) commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, where the act of discrimination is committed in connection with the lawyer’s professional activities. In addition, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this Rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, or marital status. This Rule shall not limit the ability of a lawyer to accept, decline, or withdraw from the representation of a client in accordance with Rule 1.16;

(h) in representing a client, engage in conduct that is prejudicial to the administration of justice toward judges, other parties and/or their counsel, witnesses and/or their counsel; jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed,
religion, color, national origin, disability, sexual orientation, or marital status. This Rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments;

(i) commit any act involving moral turpitude, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law, whether the same be committed in the course of his or her conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding;

(j) willfully disobey or violate a court order directing him or her to do or cease doing an act which he or she ought in good faith to do or forbear;

(k) violate his or her oath as an attorney;

(l) violate a duty or sanction imposed by or under the Rules for Enforcement of Lawyer Conduct in connection with a disciplinary matter; including, but not limited to, the duties catalogued at ELC 1.5;

(m) violate the Code of Judicial Conduct; or

(n) engage in conduct demonstrating unfitness to practice law.704

Once a grievance is filed, the intake unit conducts an initial screening and either dismisses the grievance or recommends further investigation.705 If further investigation is needed, the Disciplinary Counsel conducts a confidential investigation and will either dismiss the grievance or refer it to a Review Committee of the Disciplinary Board.706 The Disciplinary Board is a fourteen member board with ten lawyers and four non-lawyers.707 If a grievance is sent to the Review Committee, they decide whether to dismiss the matter, order further investigation, or order a pub-

706. Id.
temporarily suspend a license pending the resolution of a grievance usually
where they feel the lawyer is a serious threat to the public.713 Additionally,
for offenses the Counsel finds to be minor they may impose a rehabilita-
tive program or send the attorney an advisory letter to warn them of their
conduct.714 The Supreme Court has final appellate review over all griev-
ances and oversees the entire Disciplinary system.715

The ELC Rule 6.2 defines less serious misconduct as: "Less serious
misconduct is conduct not warranting a sanction restricting the respondent
lawyer’s license to practice law." Conduct is not ordinarily considered
less serious misconduct if any of the following considerations apply:

(A) the misconduct involves the misappropriation of funds;

(B) the misconduct results in or is likely to result in substantial
prejudice to a client or other person, absent adequate provisions
for restitution;

(C) the respondent has been sanctioned in the last three years;

(D) the misconduct is of the same nature as misconduct for which
the respondent has been sanctioned or admonished in the last five
years;

(E) the misconduct involves dishonesty, deceit, fraud, or misrep-
resentation;

(F) the misconduct constitutes a “serious crime” as defined in rule
7.1(a); or

(G) the misconduct is part of a pattern of similar misconduct.716

The percentage of formal charges as compared with the active attorney
population has remained at less than or at 1%. The percentage of formal
charges compared with complaints filed has remained consistently low. In
addition, the percentage of disciplines imposed compared to complaints
received also remained consistently low, ranging from 4% to 9%.

Info/operations/odc/default.htm.
714. Id.
716. RULES FOR ENFORCEMENT OF LAWYER CONDUCT R. 6.2, available at
0006.02.

WEST VIRGINIA

The Lawyer Disciplinary Board, with the assistance of the Office of
Disciplinary Counsel, has the authority to discipline attorneys for ethical
violations of the West Virginia Rules of Professional Conduct.717

If a complainant believes an attorney has acted in a manner that vio-
lates an issue under the Rules of Professional conduct, the complainant
must file a complaint with the Office of Disciplinary Counsel by submit-
ting an affidavit setting forth the facts of the alleged complaint.718 There
is no special form or language necessary to file a complaint however; the
complaint must be sworn before a notary.719 The West Virginia State Bar
website provides a form online but does not require it to be used.720 All
complaints must be brought within two years unless the alleged miscon-
duct was recently discovered.721

The West Virginia Rules of Professional Conduct lists the conduct that
would warrant discipline:

(a) violate or attempt to violate the Rules of Professional Conduct,

717. West Virginia State Bar, Information about the W. Virginia Lawyer Disciplinary Board,
718. West Virginia State Bar, Information about the W. Virginia Lawyer Disciplinary Board, How
719. West Virginia State Bar, Information about the W. Virginia Lawyer Disciplinary Board,
720. Id.
721. West Virginia State Bar, Information about the W. Virginia Lawyer Disciplinary Board, Time
knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official;

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(g) have sexual relations with a client whom the lawyer personally represents during the legal representation unless a consensual sexual relationship existed between them at the commencement of the lawyer/client relationship. For purposes of this rule, "sexual relations" means sexual intercourse or any touching of the sexual or other intimate parts of a client or causing such client to touch the sexual or other intimate parts of the lawyer for the purpose of arousing or gratifying the sexual desire of either party or as a means of abuse.

Once a complaint is sent to the Disciplinary Board, it is sent to the Office of Disciplinary Counsel to determine if there is a violation of the Rules of Professional Conduct.724 The Disciplinary Board consists of two-thirds lawyers and one-third non-lawyers.725

If the complaint does not demonstrate a violation it will not be investigated.724 If the Office of Disciplinary Counsel believes there is a violation, then the investigation process begins.724 During this process the lawyer will be asked to respond and the Counsel will determine if any additional information or witnesses are needed to determine the misconduct.726 Once the investigation is complete, the Chief of Lawyer Disciplinary Counsel may dismiss the complaint or send the complaint to the Investigative Panel.727 The Investigative Panel then reviews the matter and either dismisses the complaint, finds a violation and determines no further action is necessary, issues a written admonishment to the attorney, requires additional investigation, refers to mediation, or issues formal charges against the lawyer and directs a formal hearing to be held.728 If formal charges and a hearing are issued a hearing panel Subcommittee consisting of three lawyer members of the board and one non-lawyer preside over a public hearing.729 The Subcommittee then determines whether the attorney should be disciplined or the complaint should be dismissed.730

The decision is then submitted to the Supreme Court of Appeals of West Virginia who determines what form of discipline to impose on the attorney.731 The discipline form is determined by the severity of the offense and can take any one of the following forms: probation, restitution, limitation on the nature or extent of practice, admonishment, supervised practice, community service, public reprimand, suspension for a specified time, disability suspension, or disbarment.732

The Rules of Lawyer Disciplinary Procedure Rule 3.16 outlines the factors to be considered in imposing sanctions:

1. whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;

2. whether the lawyer acted intentionally, knowingly, or negligently;

3. the amount of the actual or potential injury caused by the lawyer’s misconduct; and (4) the existence of any aggravating or mitigating factors.733

724. id.
The Supreme Court has also stated that "[i]n deciding on the appropriate disciplinary action for ethical violations, this Court must consider not only what steps would appropriately punish the respondent attorney, but also whether the discipline imposed is adequate to serve as an effective deterrent to other members of the Bar and at the same time restore public confidence in the ethical standards of the legal profession." 734 The percentage of formal charges, as compared with the active attorney population has remained, at less than 1%. The percentage of formal charges compared with complaints filed has remained consistently low when reported. Additionally, the percentage of disciplines imposed compared to complaints received has remained consistently low.

<table>
<thead>
<tr>
<th>Year</th>
<th>1998</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Lawyers</td>
<td>34,080</td>
<td>34,100</td>
<td>33,680</td>
<td>33,900</td>
<td>34,200</td>
<td>34,500</td>
<td>34,800</td>
<td>35,100</td>
<td>35,400</td>
<td>35,700</td>
<td>36,000</td>
</tr>
<tr>
<td>Complaints Received</td>
<td>1,345</td>
<td>1,365</td>
<td>1,350</td>
<td>1,330</td>
<td>1,310</td>
<td>1,290</td>
<td>1,270</td>
<td>1,250</td>
<td>1,230</td>
<td>1,210</td>
<td>1,190</td>
</tr>
<tr>
<td>Complaints Investigated</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
<td>25%</td>
</tr>
<tr>
<td>Non-Formal Charges</td>
<td>55%</td>
<td>55%</td>
<td>55%</td>
<td>55%</td>
<td>55%</td>
<td>55%</td>
<td>55%</td>
<td>55%</td>
<td>55%</td>
<td>55%</td>
<td>55%</td>
</tr>
<tr>
<td>Percentage of Formal Charges Compared with Complaints</td>
<td>8%</td>
<td>8%</td>
<td>8%</td>
<td>8%</td>
<td>8%</td>
<td>8%</td>
<td>8%</td>
<td>8%</td>
<td>8%</td>
<td>8%</td>
<td>8%</td>
</tr>
<tr>
<td>Total Number of Disciplinary Imposed</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
<td>35</td>
</tr>
<tr>
<td>Percentage of Disciplinary Imposed Compared to Complaints Received</td>
<td>2.6%</td>
<td>2.7%</td>
<td>2.6%</td>
<td>2.6%</td>
<td>2.6%</td>
<td>2.6%</td>
<td>2.6%</td>
<td>2.6%</td>
<td>2.6%</td>
<td>2.6%</td>
<td>2.6%</td>
</tr>
</tbody>
</table>

WISCONSIN

The Office of Lawyer Regulation, under the supervision of the Wisconsin Supreme Court, has the authority to discipline attorneys for violations of the Wisconsin Rules of Professional Conduct. 735 The Office of Lawyer Regulation has the responsibility to investigate claims against attorneys and must find clear and convincing evidence against an attorney to sanction the attorney. 736 The purpose of the Office of Lawyer Regulation is to supervise the practice of law and protect the public from misconduct. 737

A complainant may file a complaint with the Office of Lawyer Regulation by mailing a written letter, using their online grievance form, or directly calling the Office of Lawyer Regulation. 738 The Wisconsin Rules of Professional Conduct lists the conduct that would warrant discipline:

736. Id.
tion, the attorney is sent a letter requesting their response to the allegations.742 Once the response from the attorney is received the Office then determines whether (a) an uncontested violation exists, (b) the grievance should be dismissed for lack of evidence, (c) further staff investigation is needed, or (d) the matter should be assigned for further investigation by a district investigative committee.743

There are sixteen district investigative committees composed of lawyers and non-lawyers who conduct further investigation regarding the complaint and prepare a full written report summarizing the facts and potential violations.744 After the investigation and report are complete the director of the committee determines either 1) to dismiss the matter due to a lack of sufficient evidence, 2) to divert the matter to an alternative discipline program, 3) to seek the respondent’s consent to a private or public reprimand, or 4) to present the matter to the Preliminary Review Committee for a determination of cause to proceed.745

The Preliminary Review Committee is a fourteen-person committee composed of nine lawyers and five non-lawyers.746 The Preliminary Review Committee determines whether the Director should file a complaint against an attorney with the Supreme Court.747 If a complaint is filed with the Supreme Court, the Court then appoints a referee to the case who holds a scheduling conference to define the issues and determine the extent of discovery.748 The referee then presides over a public hearing and within thirty days after the hearing submits a report to the Supreme Court recommending dismissal of the complaint or discipline.749 Pursuant to the Lawyer Regulation System Rules the following forms of discipline can occur:750

(1m) Any of the following may be imposed on an attorney as discipline for misconduct pursuant to the procedure set forth in SCR chapter 22:

(a) Revocation of license to practice law.

742. Id.
743. Id.
745. Id.
747. Id.
749. Id.
WYOMING

The Wyoming Supreme Court appoints a Board of Professional Responsibility, consisting of seven members, five of whom are members of the Wyoming State Bar and two are non-attorneys.751 The BPR has the power to determine the appropriate private discipline to be imposed or to recommend an appropriate public discipline to the Court.752

When a complaint is received, it is reviewed by Bar Counsel to determine if a violation of the Rules of Professional Conduct is stated.753 The complainant will receive a letter from Bar Counsel informing them that (1) the complaint does not appear to involve conduct that is within the disciplinary jurisdiction of the Bar; (2) more information is needed; or (3) an investigation has been initiated.754 If an investigation is initiated, the attorney will receive a copy of the complaint letter and the attorney is required to respond in writing to the allegations.755 Normally, the complainant will receive a copy of the attorney’s response and will be requested to reply to it.756 If the lawyer is found to have violated an ethical rule, the Board of Professional Responsibility will discipline the attorney or recommend discipline to the Wyoming Supreme Court.757

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(g) knowingly employ or continue to employ or contract with any person in the practice of law who has been disbared or is under suspension from the practice of law by any jurisdiction, or is on disability inactive status by any jurisdiction. The prohibition of this rule extends to the employment of or contracting for the services of such disbared or suspended person in any position or capacity (including but not limited to as an employee, independent contractor, paralegal, secretary, investigator or consultant) which is directly or indirectly related to the practice of law as defined by Rule 11(a) of the Rules of the Supreme Court of Wyoming Providing for the Organization and Government of the Bar Association and Attorneys at Law of the State of Wyoming, whether or not compensation is paid.758

If a lawyer is found to have violated an ethical rule, one of the following levels of discipline may be imposed:

751. This number may not include all lawyers publicly disciplined.
753. Id.
755. Id.
756. Id.
757. Id.
758. Id.
The Journal of the Legal Profession  

[Vol. 35:2

The lawyer could receive a private reprimand, which means the lawyer is told he or she has broken a rule, and a notation is made on the lawyer’s record; or

The lawyer could receive a public censure which means that the violation of a rule by the lawyer is made public; or

The lawyer’s license to practice law could be suspended for up to five years, during which time the lawyer cannot practice law; or

The lawyer’s license could be revoked, which means the lawyer is disbarred from the practice of law. After five years, the lawyer could seek reinstatement.760

The percentage of formal charges, as compared with the active attorney population, has ranged from less than 1% to 2%. The percentage of formal charges compared with complaints filed has varied dramatically, from an earlier reported and recently reported 2% up to 22%. Similarly, the percentage of disciplines imposed compared to complaints received has varied, from 3% up to 36%.

II. LESSONS LEARNED AND CONCLUSIONS

While each state may have its own rules governing professional behavior of attorneys, it is clear that the discipline systems of the various states

<table>
<thead>
<tr>
<th>State</th>
<th>HALT Overall Attorney Discipline Grade 2006</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>D+</td>
</tr>
<tr>
<td>Alaska</td>
<td>D+</td>
</tr>
<tr>
<td>Arizona</td>
<td>B-</td>
</tr>
<tr>
<td>Arkansas</td>
<td>D+</td>
</tr>
<tr>
<td>California</td>
<td>D+</td>
</tr>
<tr>
<td>Colorado</td>
<td>B-</td>
</tr>
<tr>
<td>Connecticut</td>
<td>B-</td>
</tr>
<tr>
<td>Delaware</td>
<td>D+</td>
</tr>
<tr>
<td>Florida</td>
<td>C+</td>
</tr>
<tr>
<td>Georgia</td>
<td>C+</td>
</tr>
<tr>
<td>Hawaii</td>
<td>D+</td>
</tr>
<tr>
<td>Idaho</td>
<td>D+</td>
</tr>
<tr>
<td>Illinois</td>
<td>C-</td>
</tr>
<tr>
<td>Indiana</td>
<td>C-</td>
</tr>
<tr>
<td>Iowa</td>
<td>D+</td>
</tr>
<tr>
<td>Kansas</td>
<td>C-</td>
</tr>
<tr>
<td>Kentucky</td>
<td>C+</td>
</tr>
<tr>
<td>Louisiana</td>
<td>C-</td>
</tr>
<tr>
<td>Maine</td>
<td>C+</td>
</tr>
<tr>
<td>Maryland</td>
<td>C-</td>
</tr>
<tr>
<td>Massachusetts</td>
<td>C</td>
</tr>
</tbody>
</table>

are all seeking consistent, ethical actions by its professionals. In addition, procedurally, all states have some type of system that provides a process by which both attorney or client can be heard fairly, although the individ-

761. Some of these numbers are estimated.
Michigan | C  
Minnesota | C-  
Mississippi | C+  
Missouri | C-  
Montana | D+  
Nebraska | C-  
Nevada | C-  
New Hampshire | C  
New Jersey | C+  
New Mexico | C+  
New York | D+  
North Carolina | D  
North Dakota | C  
Ohio | D+  
Oklahoma | D+  
Oregon | C  
Pennsylvania | C+  
Rhode Island | C  
South Carolina | D+  
South Dakota | C-  
Tennessee | C+  
Texas | D+  
Utah | F  
Vermont | C+  
Virginia | C-  
Washington | C  
West Virginia | C  
Wisconsin | C  
Wyoming | C  

HALT published reports in both 2006 and 2002. However, many systems have made changes more recently than this last report. The 1992 report of the Commission on Evaluation of Disciplinary Enforcement documents the history and reasons supporting a fully open disciplinary system, the success of which were evidenced by experience in states which had them. As evidenced by statistics available in some states in more recent years than in past, states are working on aspects of openness. For example, HALT cited Pennsylvania’s disciplinary body, which HALT rated as worst in the nation four years ago, as now fifth in 2006, and as a

---

770. Id. (follow states of Massachusetts and California hyperlinks).
772. Id. at 732.
773. Leigh Jones, Uniform Bar Exam Drawing Closer to Reality, www.law.com/jsp/law/LawArticleFriendly.jsp?id=12024344721 (October 12, 2009). The reality of a uniform bar exam is so near that SALT (Society for American Law Teaching) has recently issued a position paper outlining some strengths and weaknesses of such a plan (see SALT Public Advocacy Letter, January 20, 2010).
775. Id. at 101.
The Journal of the Legal Profession  [Vol. 35:2

multiple jurisdictions. 777 Multi-jurisdictional practice impacts many lawyers in a wide variety of tasks. 778 Because disciplinary systems are tied to licensure, there is a question as to whether attorneys are properly researching and considering ethics rules in all jurisdictions in which a case may implicate. 779

Many believe that the regulation of lawyers by states has not kept up with the new complexity of law practice, particularly as applied to lawyers working in a branch office of a multi-jurisdictional law firm. 780 The end result is that one law firm is potentially subject to different regulation in each state where it has branches. 781 The main criticism of this situation is its inefficiency. 782 Some authors have contended that the solution would be to allow firms to choose the rules under which it operates when it has branches in multiple jurisdictions. 783 Others have suggested that the entire system be reformed to eliminate all restrictions to interstate practice by a licensed attorney in any state, with disciplinary authority over all these lawyers, and those decisions being given full credit Nationwide. 784

D. The Parallel System Problem

In addition, movements toward a uniform set of rules of ethics to apply to lawyers only when practicing in federal court systems have been criticized as unnecessarily complicating attorney regulation. 785 While the court systems may vary from state to state, from the local courtroom to the federal courtroom, it seems unnecessarily complicated to impose different sets of rules of conduct and procedures for discipline depending on which court an attorney is practicing.

E. Conclusions

It is clear that attorney discipline systems, while not perfect, are not going to undergo a national comprehensive overhaul. States have clearly begun to realize that it is important that consumers of legal services know

777. Id.
779. Colter, supra note 778, at 663.
781. Id.
782. Id.
783. Id. at 1165.