

SELF REGULATION OF THE LEGAL PROFESSION IN GEORGIA

by

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(Under the Direction of Susette M. Talarico)

ABSTRACT

Both professional literature and popular literature assert that the ethics and professionalism of attorneys has declined in recent decades and is close to, if not in, a state of crisis. It has been suggested that this decline is the result of a view of legal ethics which utilizes a disciplinary system that quixotically employs categorical rules to evaluate ethical decisions that cannot be evaluated categorically. However, despite the concern over attorney ethics and professionalism and the widespread perception of decline in the same, there has been relatively little empirical study of the subject. This work empirically examines efforts of self regulation by the legal profession and, more specifically, self regulatory efforts of the legal profession in Georgia. The nature and characteristics of offenders, offenses, sanctions and process in professional discipline are examined using aggregate data from the State Bar and data compiled from Georgia Supreme Court disciplinary opinions. No empirically verifiable decline in the ethics of the bar is found after controlling for growth of bar membership. However, at the same time, there is strong professional perception that the professionalism of the bar has declined and that there are significant professionalism problems among some practitioners. Efforts to address these problems through continuing legal education do not appear to have significant immediate impacts. Some evidence of a long term educational impact upon the problem of unethical conduct was found to exist.

INDEX WORDS: Law, Ethics, Professionalism, Self Regulation, Georgia, Bar Association, Attorney, Discipline

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DEDICATION

To Amy, my wife, whose love, patience and understanding in the face of a law practice, a dissertation and our four children has been truly amazing.

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Chapter 1

Introduction

In 1906, Roscoe Pound reminded his generation that “[d]issatisfaction with the administration of justice is as old as the law” (Pound 1906, 395). Pound believed that an important component of this dissatisfaction in the United States was the fact that the legal profession had deteriorated to the extent that counsel had forgotten “that they are officers of the court” and instead “deal with the rules of law and procedure exactly as the professional football coach with the rules of sport” (Pound 1906, 405-406). Pound further criticized the devolution of the American legal profession “into a trade, which has superseded the relation of attorney and client by that of employer and employee” (Pound 1906, 416). Thus, concern over the “professionalism” and ethics of lawyers is certainly not new.

Today, one of the most common themes in both popular and professional literature is the dissatisfaction of the public with legal services offered by the legal profession and the dissatisfaction of lawyers with their chosen profession. The public’s dissatisfaction stems, in part, from the perception that lawyers are unethical, unprofessional and overly litigious. Lawyers likewise cite a decrease in civility and professionalism among their peers and the low public esteem of the profession as a source of job dissatisfaction. Ethical and professional concerns have been, and continue to be, a significant source of both public and professional dissatisfaction with the legal profession.

The legal profession is self regulating. Simply put, the profession itself, as opposed to any third party authority, is expected to police its membership ethically and professionally to

protect the consumer and the integrity of the profession. The profession performs this policing by and through state professional associations or “bars.” These state bars require all professionals practicing within the jurisdiction to be members. The various state bars are, in turn, subject to the ultimate authority of the highest appellate court in the state.

The state bars perform this function within the framework of a set of categorical rules designed to outline the parameters of ethical and professional conduct. While these rules vary slightly across jurisdictions, they are, in all jurisdictions, primarily and fundamentally based upon the American Bar Association’s Model Rules of Professional Conduct. Lawyers are expected to govern their conduct according to these stated rules of conduct. Failures to comply with the rules are, again, addressed through self regulation by state bars -- typically through a disciplinary section or division of the bar’s governing authority.

Conduct can, of course, be unprofessional in the sense that it violates professional norms of conduct as to decorum, courtesy, civility and mutual respect, without necessarily being “unethical.” This type of conduct is typically addressed through “aspirational” statements or ideals. The aspirational statement propounded by the Georgia Supreme Court is reproduced in Appendix “C.” However, being aspirational in nature, conduct that is “unprofessional” in this sense is not subject to disciplinary sanction unless it also violates an ethical rule.

In addition, many jurisdictions, including Georgia, preemptively attempt to address unethical and unprofessional conduct through some type of continuing legal education with an ethics and professionalism component. This is unsurprising since if conduct is governed by rules that can be followed, an understanding of the rules is essential and should work to reduce occurrences of unethical and/or unprofessional conduct that is prohibited by an ethical rule. This

view, sometimes referred to as the “Dominant View,” is the most prevalent view of legal ethics and professionalism.

While the popular and professional literature has implicitly or explicitly questioned this prevailing view and the ability of the legal profession to adequately police itself, there has been little systematic and scholarly examination of the success and/or failure of the legal profession in actually governing the conduct of its membership vis-à-vis their clients. There has been even less scholarly and virtually no quantitative examination of efforts of the legal profession to ensure that its members act in an ethical and professional manner when dealing with each other, the courts, and the non-client public. Despite the lack of empirical and quantitative study, the American Bar Association confidently asserts that it is “the unprofessional and unethical conduct of a small, but highly visible, proportion of lawyers [that] taints the image of the entire legal community and fuels the perception that lawyer professionalism has declined precipitously in recent decades” (A National Action Plan on Lawyer Conduct and Professionalism 1999, 1). This claim raises at least four questions that can be examined empirically. First, who are the lawyers who taint the image of the legal community? Second, what is the nature of their “tainting” conduct? Third, is it in fact a misperception that legal ethics and lawyer professionalism have declined precipitously in recent decades? Fourth and finally, have recent efforts to promote professionalism had any discernable impact upon the nature and quality of legal services offered by attorneys?

While attempting to answer these questions on a national scale would be a task of epic proportions, it is feasible to study these issues in a single jurisdiction. Accordingly, this study will examine how well the prevailing view reflects and performs in Georgia. Specifically, it will consider the ways in which the legal profession in Georgia has attempted to “self regulate”

through the exercise of the disciplinary power of the State Bar of Georgia's Office of the General Counsel and the educational efforts of the Bar through its Commission on Continuing Lawyer Competence (CCLC).

In doing so, this study will first examine the attorneys being disciplined, their offenses, how they are sanctioned, and the process through which they are sanctioned. This study will then address the question of whether or not legal ethics and lawyer professionalism have declined precipitously in recent decades. In doing so, it will also examine the impact of the Bar's regulatory efforts, and specifically the imposition of "ethics and "professionalism continuing legal education requirements, upon the number of grievances filed against Georgia attorneys by the public and the number of disciplinary actions taken against Georgia attorneys by the State Bar. Next, it will explore, through a series of semi-formal interviews with a small but representative sample of legal professionals, how the profession rates itself in terms of ethics and professionalism. Finally, it will endeavor to draw some conclusions from the data generally and theoretically in regard to the prevailing view of legal ethics and specifically in regard to professional self regulation and discipline.

Chapter 2

Theory and Research Questions

William H. Simon (2000) proposes three models of legal ethics and ethical decision making by lawyers. The first two of these models or views of legal ethics are the Dominant View and the Public Interest View. The Dominant View is accepted on its face at least by the majority of lawyers and accordingly is also referred to herein as the “prevailing view.” This prevailing view is that lawyers in fulfilling their professional responsibility to zealously represent their clients may do whatever is arguably legal and assert any non-frivolous legal claim that they perceive will further their clients’ interests. At the other end of the spectrum is what Simon terms the Public Interest View. This view holds that professionally responsible lawyers approach the law from the perspective that they have a duty to recognize the purposes and intent of law and to approach the practice of law not as a zero sum game of adversarial interest but as a process to “promote informed resolution on the substantive merits” (Simon, 2000, 8).

Although the application of these models to a given factual scenario may result in very different ethical decisions, according to Simon they are alike in that they involve categorical decision making. In other words, they involve the application of doctrinal rules in which the consideration of a small number of key facts will dictate the outcome. The third view is the Contextual View and its “basic maxim is that the lawyer should take such actions as, considering the relevant circumstances of the particular case, seem likely to promote justice” (Simon, 2000, 8). This view is non-categorical because decision making is based upon the application of a

relatively broad range of ethical norms (as opposed to doctrinal “ethical rules”) to a wider range of facts and circumstances relevant to the ethical decision facing the practicing lawyer.

According to Simon, the Dominant View is implicit in modern legal ethical rules, standards and codes of professional conduct. If this is so, the professional disciplinary process should react accordingly by penalizing technical rule violation strictly. Likewise, under this view doctrinal knowledge should reduce the likelihood of running afoul of disciplinary authority, especially in regard to conduct that is not otherwise clearly criminal or fraudulent. This is so since form eclipses purposes and actions and categorical decision making is the benchmark. Even in actions not directly related to zealous client representation, lawyer conduct would be judged in a system which strictly enforces rules that purport to set the boundaries of minimum acceptable professional conduct.

The Dominant View presumes that unethical conduct unrelated to conduct that is clearly criminal or fraudulent in nature should respond to and be reduced by doctrinal education. Of course the fly in the ointment is that increased knowledge of doctrine can result in increased ability to circumvent the rules and, given the form over substance predisposition of the prevailing view, perhaps the incentive to do so. The Contextual View presumes that ethical decision making is too complex to be judged by categorical rules and that rules sufficient to guide such decision making are incapable of being written. Thus, technical education and knowledge of rules or standards of conduct would not reduce the level of unethical conduct.

Another criticism of the prevailing view from a disciplinary perspective is that it can require lawyers to make ethical judgments based upon a set of incurably nebulous rules. While lawyers are expected to govern their conduct by application of these categorical rules, most scholars agree that judicial decision making is contextual, not categorical. Thus, except when

conduct is clearly fraudulent and/or criminal in nature, lawyers may be asked to make complex ethical judgments based upon a decision calculus that is different than the one by which their subsequent decision will be judged. Empirically, the contextual nature of the disciplinary process would manifest in the willingness to adjudicate guilt on the basis of whether the questioned conduct, in light of attendant facts and circumstances, was likely to promote justice. If the court sanctions contextually, then arguably it is the Contextual View that substantively drives the system and the prevailing Dominant View is only nominally “dominant” in this regard. Table 2.1 sets out the three views and some of the more important implications of these views for legal discipline.

The State Bar of Georgia and under the prevailing view professional self regulatory bodies generally utilize two models in their regulatory efforts B i.e., an educational model and an enforcement model. The educational model, represented in Georgia by the State Bars ICLE program, presumes that at least some unprofessional and unethical conduct is the result of ignorance of professional norms and ethical rules. The remedy, then, is to educate practicing members of the profession. The enforcement model presumes that some unprofessional and unethical conduct exists despite adequate information and knowledge of professional norms and ethical rules. The enforcement model recognizes that there are attorneys who, for reasons other than ignorance of the proper mode of behavior, will violate professional norms and ethical rules. Thus, effective self regulation involves the enforcement of violations so that such future misconduct is deterred. Of course, the overlap between these models is recognized, most obviously, through the two-prong education plus enforcement approach taken in attempting to regulate the legal profession.

The specific research questions posed by this study are:

- a. What are the empirical characteristics and patterns, if any, of attorney discipline in Georgia?
- b. Are there any discernable trends in the self regulation of the legal profession in Georgia and, if so, have efforts of the State Bar of Georgia through the Office of the General Counsel and ICLE to improve ethics and professionalism had any discernable impact upon the same?
- c. How is the problem of unprofessional conduct by practitioners perceived in the legal community and do these perceptions correspond with the empirical findings?

By examining the disciplinary process and addressing the foregoing questions, this study can shed some light on the prevailing view and the competing views proposed by Simon. More specifically, support for these views can be examined as well as their implications for professional discipline, ethics and professionalism education, and the appropriateness and effectiveness of professional self regulation. Since the Public Interest View is not embodied in the current rule structure, it cannot be directly examined. However, to the extent that the Public Interest View also relies upon categorical rules, findings relative to the prevailing view should be generally applicable.

More broadly, the study of self regulation of the legal profession has important implications for both the study of professionalism and the rule of law. Lawyers are critically important actors in the legal system and are significant political actors both individually and institutionally through professional associations. Lawyers are the gatekeepers of the legal system and, to a large degree, control information and access to the courts. The health of the

legal profession and the ability to ensure that attorney misconduct is limited and punished through appropriate regulation is vital to the rule of law. Quite simply, there can be no meaningful rule of law if those who practice law and who interpret, guide and control access to legal recourse are as a profession pervasively corrupt.

Table 2.1

Dominant vs. Public Interest vs. Contextual Views of Legal Ethics

View	Premises	Implications for Legal Discipline
Dominant View	<ol style="list-style-type: none"> 1. Decision making is categorical; 2. Client's rights are paramount; 3. Legal norms are unique. 	<ol style="list-style-type: none"> 1. Institutionally appropriate disciplinary mechanism is professional self regulation; 2. Rules and standards should be strictly enforced irrespective of individual attorney characteristics and attendant circumstances; 3. Understanding rules should decrease unprofessional conduct.
Public Interest View	<ol style="list-style-type: none"> 1. Decision making is categorical; 2. Law should be applied in accordance with its underlying purpose; 3. Legal norms are unique. 	<ol style="list-style-type: none"> 1. Institutionally appropriate disciplinary mechanism is professional self regulation; 2. Rules and standards (not necessarily the same as those utilized under the Dominant View) should be strictly enforced irrespective of individual attorney characteristics and attendant circumstances; 3. Understanding rules should decrease unprofessional conduct.
Contextual View	<ol style="list-style-type: none"> 1. Decision making is contextual; 2. Promotion of justice/legal merit is goal; 3. Legal norms are not unique. 	<ol style="list-style-type: none"> 1. Institutionally, professional self regulation is neither necessary nor necessarily the most appropriate means of professional regulation; 2. Decisions should be evaluated contextually, not categorically; 3. Education regarding technical rules will not reduce unprofessional conduct.

Chapter 3

History and Examination of Legal Self Regulation

I. A Brief History of the Self Regulation of the Legal Profession in the United States.

For most of our nation's early history, law was practiced primarily by members of the American "aristocracy." Entry into the "lawyer class" was jealously guarded by local bars which effectively prevented outsiders from becoming members (Bledstein 1978, 185). Following a general trend of professionalization (See Bledstein 1978), the legal profession began gradually to open up to those outside of the local aristocracy in the 1830s and 1840s. Control of admission to the bar gravitated from localities to the states. The elitism of earlier decades eased when membership qualifications lowered to the point that several states would admit candidates to the bar upon the payment of a fee and a "good moral character. (Bledstein 1978, 186). However, while admission to the developing legal "profession" became more attainable for the lower and middle classes, legal scholars were calling for the "scientific codification of law as per the mechanistic and/or positivist legal theory of C. C. Langdell, William Blackstone, and Edward Coke. Indeed, by the latter 19th century, lawyers and judges were immersed in legalism, jargon, and the mechanistic application of legal principles" (Bledstein 1978, 98, Friedman 1973, 538-43).

The opening of the bar to new membership and the increasing technicality of the law were key components in the development of the modern legal profession. The tension between the easing admission standards and the increasing technicality and complexity of the practice of

law rendered inevitable the necessity for professional regulation. Thus, as the legal profession evolved, so did the need for regulation and the practice of self regulation.

Professional “self regulation” has been formally defined as the state of affairs in which a professional body controls recruitment and certification to the practice of the profession, creates ethical and/or professional codes, and enforces adherence to those codes through a professional review mechanism (Constantinides 1991, 1333). These professional bodies are concerned with "maintaining a level of competence, integrity and (perhaps above all) autonomy for their group through suspension or expulsion of substandard members." (Constantinides 1991, 1347).

Initially, the little regulation that did exist was at the local level and was administered by the local bench and bar. It was self regulation in the sense that the lawyers and judges were policing lawyers, but it bore very little resemblance to the formal self regulation that exists today. Modern legal self regulation can be viewed both as the product of and producer of systemic tension. The public is largely dependent upon lawyers when interacting with the justice system. This dependence creates an imbalance of power in the lawyer-client relationship and the potential for abuse. In order to prevent or minimize such abuse, regulation is required (Bledstein 1978, 98-99). Self regulation produces tension since self regulation and self interest overlap. By zealously controlling admission to the bar to protect the public from incompetent and/or unscrupulous practitioners, the bar effectively limits the number of practitioners, restricts market competition, and protects the livelihood of the licensed lawyer (Bledstein 1978, 96).

Contemporary legal self regulation is the result of the unification of local bars into state bars and the vesting of regulatory power in these bars as the arms of each state’s highest court. This unification process has proceeded to the point that there is a national scheme of legal regulation in which state bar associations, acting through and under the supervision of each

state's court of last resort, are responsible for professional discipline. The power of the courts, by and through unified state bar associations, to regulate the practice of law is explained as being "a power which is inherent in [the] court . . . [and] . . . indeed necessary, to the proper administration of justice" (In re Sparks 1936, 93; see also, Re Integration of Nebraska State Bar Association 1937¹). In addition to the "inherent" power of regulation, reservation of regulatory power to the courts has been defended pursuant to the separation of powers doctrine. Thus, judicial functions, including the regulation of practitioners, are said to be reserved to the courts by default since "[u]nder our form of government it is the right that each department of government has to execute the powers falling naturally within its orbit when not expressly placed or limited by the existence of a similar power in one of the other departments" (Petition of Florida State Bar Association (Fla.) 1949).

II. A Brief History of Self Regulation of the Legal Profession in Georgia

The Georgia Bar Association was established in 1883. As with most bar associations of the era, its membership consisted of only a small fraction of practicing lawyers as membership was not a precondition to the practice of law in Georgia. The influence of the bar was hampered by its voluntary nature and its inability to serve as a state-wide regulatory body. Georgia's entry into the modern era of legal self regulation (i.e., oversight by a unified state bar acting pursuant to the authority of the state's highest court) was relatively recent. Although the power to regulate the conduct of judges as part of the court's inherent powers and pursuant to the separation of powers doctrine was long and well-settled (Chapman v. Gray 1850; Lovett v. Sandersville Railroad Co. 1945), the present general scheme of regulating the conduct of lawyers via the Georgia State Bar and the Georgia Supreme Court was not settled until the 1960's.

¹ Inherent power is defined as power that is essential to the existence, dignity, and

Indeed, the driving force behind the movement towards unification in Georgia was the recognition that there was need for an effective disciplinary body. In 1963, legislation was introduced in and passed by the Georgia General Assembly creating a unified State Bar of Georgia (See, Rule 1-101 of the Rules of the State Bar of Georgia 1963, 70). The State Bar was made a legal entity² with the authority, subject to the supervision of the Georgia Supreme Court, to regulate the practice of law in Georgia (See, Rule 1-103; Wallace v. Wallace 1969). Not long after its creation, the authority of the State Bar to regulate attorney conduct was challenged in, and upheld by, the Georgia Supreme Court (Sams v. Olah 1969).

Professional discipline in Georgia is complaint driven and proceeds in a manner similar to the general adversarial processes that characterize the American legal system. Complaints or “grievances” against individual practitioners are made to the State Bar by members of the public, consumers of legal services, by judges and/or by other lawyers. These complaints are initially filtered through the Bars Consumer Assistance Program (CAP). The CAP program is a first-step dispute resolution process designed to screen reports and to mediate minor attorney/client problems, misunderstandings and disputes. If CAP is unable to resolve the issues or if there is an allegation of serious wrongdoing, the complaining party is given the opportunity to file a grievance and make a formal complaint to the Office of the General Counsel.

functions of the court from the very fact that it is a court.

² As a legal entity the Bar Amay sue and be sued; shall have perpetual existence; may contract; may purchase, receive, lease, acquire, own, hold, improve, use, and otherwise deal with real and personal property and any legal or equitable interest in property, wherever located; may sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property; may adopt and use an official seal; shall establish a principal office; and shall have such other powers, privileges and duties as may be reasonable and necessary for the proper fulfillment of its purposes.” Georgia State Bar Rule 1-102.

The power to investigate and discipline members of the State Bar of Georgia is vested in a State Disciplinary Board³ which consists of two panels -- the Investigative Panel and the Review Panel as specified in Rule 4-201. Grievances, other than those initiated directly by the Supreme Court or the Bar through the Investigative Panel of the Office of the General Counsel, are submitted and reviewed by Bar Counsel. If a grievance is not found to be “unjustified, frivolous, or patently unfounded, it is submitted to a member of the Investigative Panel for investigation pursuant to Georgia State Bar Rules 4-202 and 5. Grievances not dismissed at this stage are served upon the respondent lawyer who then files a written, verified response to the grievance with the investigating member (Rule 6). Failure to respond leads to suspension and may ultimately result in disbarment (Rule 4-204.3). The investigating member issues a report to the Investigative Panel and the Investigative Panel determines whether or not probable cause exists⁴ as to the alleged violation (Rule 8). If probable cause is determined to exist and the case is not otherwise disposed of⁵, the matter is forwarded for proceedings before the Georgia Supreme Court (Rule 11).

Complaints issued by the Investigative Panel are filed with the Clerk of the Georgia Supreme Court. That Court appoints a special master who is responsible for holding an

³ Interestingly, although one rationale for “self regulation” is the belief that only professionals can and should evaluate fellow professionals, both panels of the State Disciplinary Board include members of the public appointed by the Georgia Supreme Court. State Bar Rule 4-201, State Bar of Georgia Handbook 48 (1995-96) (See, Constantinides 1991, 1346).

⁴ At any time during the investigation, the subject of the investigation may admit to a violation and submit a petition for voluntary discipline and the Investigative Panel may, upon approval of the petition, impose confidential discipline. Rule 9.

⁵ The Investigative Panel also has the power to issue formal letters of admonition and Investigative Panel reprimands in lieu of the recommendation of other discipline. Rule 16. If a violation would amount to criminal conduct, the Investigative Panel will refer the matter to the appropriate district attorney for criminal prosecution and the Investigative Panel may defer any further action to await the disposition of the criminal charge. Rule 26.

evidentiary hearing of the complaint. The special master has broad quasi-judicial authority which includes the power to determine the sufficiency of the formal complaint; to generally supervise and control discovery and the proceedings; to conduct the negotiations between the State Bar of Georgia and the respondent lawyer; to sign subpoenas; and to make findings of fact and conclusions of law which are then submitted to the Review Panel (Rule 4-210). The special master's findings of fact and conclusions of law are, if either party files exceptions, subject to review by the Review Panel. The Review Panel may, but is not required to, hold a *de novo* hearing of the matter.

The report and recommendation of the special master or Review Panel are then filed with the Supreme Court of Georgia, which considers and is empowered to adopt the same or to make such other findings as it deems appropriate (Rule 4-106). The Supreme Court's review is upon the record below and pursuant to its standard procedural rules. Either the bar or the accused may file an exception to the report and recommendation of the special master or Review Panel and the Court may grant oral argument. Supreme Court opinions in disciplinary matters have in recent decades almost always been *per curiam*. A *per curiam* opinion is one in which the opinion is "by the court" and in which no particular justice is identified as the author of the court's decision. Indeed, while disciplinary matters comprised 23% of the Court's *per curiam* decisions in 1980-1981, 90% of the Court's *per curiam* opinions rendered from October 1998 through May 2000 involved disciplinary matters (Sentell, 2000, 22). This process has been in place in substantially the same form throughout the period of study (1980-2001).⁶

⁶ In 1995, the Georgia Supreme Court created The Commission on Evaluation of Disciplinary Enforcement. The Commission, chaired by Jim Elliott former President of the State Bar of Georgia (1989), made ten recommendations in regard to the streamlining, speeding up and opening of the disciplinary process to the public. However, these recommendations did not

III. Scholarly Examination of Legal Self Regulation.

There is, unfortunately, no extensive body of literature which systematically investigates legal self regulation. Many scholars have touched on the subject, primarily in the context of a more general study of legal ethics (Crystal 2000; Hazard and Rhode 1994; Stapleton 1997; Terrell 2000; Simon 1988; Maynard 2000; Jones 1999; Constantinides 1991). Legal sociologists and some political scientists have and are directing attention to issues of legal ethics and, more specifically, attorney misconduct (Arnold & Hagan 1992; Abel 1986, 1989). However, there is relatively little empirical investigation of legal self regulation and much of what does exist is dated or limited (Guttenberg 1994; Luban 1991; Marks & Cathcart 1974; Tisher, Bernabei & Green 1977; Dorf 1975; Martyn 1981; Steele & Nimmer 1976). Most political scientists continue to focus their empirical attention upon the behavior of judges.

The study of attorney behavior, important actors in the judicial system in their own right, has been much less closely examined with the majority of legal scholars focusing upon theoretical issues in legal ethics and routinely citing, without further empirical exploration, a few works as demonstrating the “current underenforcement of the professional standards” (Luban 1991, 152). The existing literature does suggest that legal self regulation focuses upon the enforcement of rules which involve conduct which would otherwise be criminal and that other ethical rules or professional standards of conduct are rarely enforced (Luban 1991). The existing literature also suggests that disciplinary systems are ineffective mechanisms for controlling the post-admission conduct of attorneys (Guttenberg 1994, 1027). Again, however, much of this literature does not utilize methodologies designed to explore the relationships between

result in any major changes to the existing disciplinary process (Telephone interview with Prof. James Elliott, July 6, 2004).

professional conduct and professional regulation (See, e.g., Guttenberg 1994; Sobelson 1993, 1996, 1999).

The American Bar Association, while arguably not a totally unbiased source, has periodically issued its own reports on the status of professionalism and professional disciplinary efforts in the United States. In early reports, the ABA found that there was virtually no lawyer discipline and/or effective system(s) of professional regulation (American Bar Association Special Committee on Evaluation of Disciplinary Enforcement, Problems and Recommendations in Disciplinary Enforcement 1970). This report (the “Clark Report”) was followed by a short spate of literature which was essentially in accord with its basic findings (Tisher, Bernabei, & Green 1977; Armstrong 1978; Dorf 1975; Marks & Cathcart 1974; Martyn 1981; Steele & Nimmer 1976). A 1986 ABA follow-up found state disciplinary systems still lacking and cited insufficient resources as the chief culprit (Commission on Professionalism, American Bar Association, Report to the House of Delegates 1986). Subsequent reports continue to document persistent problems, especially in regard to insufficient enforcement resources. However, the latter reports do call attention to significant gains in state disciplinary efforts and stress that, despite public perception, most lawyers are honest, skillful and competent professionals. (American Bar Association Commission on Evaluation of Disciplinary Enforcement, Report of the Commission on Evaluation of Disciplinary Enforcement of the ABA 1991, xxiii; National Action Plan on Lawyer Conduct and Professionalism of the ABA 1999, 1).

Chapter 4

Methodology

While aggregate data exist in Georgia in regard to the number of grievances filed, the number of disciplinary actions initiated, and the number of disciplinary actions prosecuted against attorneys for ethical violations, there has been little exploration of the patterns of attorney discipline or the characteristics of the attorneys who run afoul of the State Bar. Thus, the first portion of this analysis will be descriptive in nature and will examine the characteristics of the attorneys disciplined, the types of violations prosecuted by the State Bar Office of the General Counsel before the Georgia Supreme Court, the sanctions handed down by the Georgia Supreme Court, and any discernible patterns in the disciplinary process. The data for this analysis will be the reported decisions of the Georgia Supreme Court from 1980 through 2001.

This study will also examine the self regulation of the legal profession in Georgia and determine the impact over time, if any, of the specific interventions of the State Bar of Georgia through the Office of the General Counsel and ICLE to protect the public from the unprofessional and unethical conduct of Georgia's attorneys. There are, of course, several alternative methods of modeling impact analysis, each with its own strengths and weaknesses. However, given the continuing long term efforts of the State Bar to regulate the legal profession, a longitudinal approach and the use of time series and multiple interrupted time series analysis⁷ are appropriate.

⁷ Interrupted time series is a quasi-experimental design introduced in the field of impact assessment by Campbell and Stanley (1966, 37-43).

Time series analysis is chosen for two primary reasons. First, unlike experimental or some other quasi-experimental designs, time series analysis is conducted at the aggregate level and there is no need for the identification or construction of control groups. In experimental designs, this group constitutes the counterfactual and impact is measured through a comparison of control group measures on the outcome of interest with the experimental or treatment group measures on the outcome of interest. No control group is needed in time series analysis because the counterfactual is understood as the product of time. More specifically, the counterfactual in time series analysis is the projection of the outcome of interest into the time period following the intervention based upon observations of the outcome of interest before the intervention. Impact is, therefore, the difference between the counterfactual and the observed result of the program⁸ (Mohr 1995, p. 205). In this instance, the use of control groups is not feasible since all practicing Georgia attorneys are subject to the same ethical and/or professional rules and to the regulation and educational requirements of the State Bar.

The question of whether there has been an actual increase in unethical or, to some extent, unprofessional conduct is inherently well-suited to a longitudinal design. Indeed, as long as there are no identifiable historical threats to internal validity, time series analysis is a robust design and can reveal much more in regard to the legal professions efforts to self regulate than a cross-sectional design. Moreover, the chief threat to internal validity in a time series design is the danger that the observed impact was due to some cause or causes other than the program that affected the outcome of interest at or about the time of program implementation. Of course, any

⁸ Mathematically, given the regression equation $\underline{Y}_t = \alpha + \beta_1 X_{1t} + \beta_2 X_{2t} + \beta_3 X_{3t} + \beta_4 X_{4t} + \beta_5 X_{5t} + e_t$, the counterfactual can be expressed as the preintervention equation $\underline{Y}_t = \alpha + \beta_1 X_{1t} + e_t$ and the observed result following implementation of the intervention as the postintervention equation $\underline{Y}_t = \alpha + \beta_2 + (\beta_1 + \beta_3) X_{1t} + e_t$.

increase in unprofessional or unethical conduct, like most social science phenomena, could be influenced by a myriad of social, economic and political factors. However, as long as these factors were in operation over time, they can be controlled for in time series analysis through the trend variable. Since this investigation is of a self regulated profession, there are by definition no outside regulatory efforts that could be said to have significantly impacted the ethics and/or professionalism, or lack thereof, of Georgia attorneys. Likewise, there are no identifiable additional internal efforts occurring at the time of the specific interventions analyzed to threaten the validity of the model.

The period of analysis is 1980 through 2001⁹ Data for this study will be analyzed using descriptive statistics, time series analysis, and a multiple interrupted time series model. The locale of study will be limited to the State of Georgia for both practical and theoretical reasons. Practically, given the amount of data to be collected and the expense that such collection would entail, it would not be feasible to collect nation-wide data. Theoretically, there is no uniform national system of legal self regulation. While ethical rules typically do not vary substantially from state to state, each State Bar and the bench of each states courts have unique approaches to attorney discipline and professional regulation. While this fact has obvious implications for the generalization of results, it is the primary purpose of this dissertation to examine the theoretical

⁹ Extending the analysis back to 1980 should provide enough observations for analysis and going back further would be extremely difficult given unavailability of data and theoretically problematic given the history of the regulation and continuing education of Georgia attorneys. See, Historical Background and Literature Review, infra.

implications and the impact of the particular efforts of the legal profession in one state as a way of addressing a problem that exists (or is at least presumed to exist) at the national level.

As noted previously, the initial analysis involves the use of descriptive statistics with data on Georgia Supreme Court decisions in attorney disciplinary actions from 1980 through 2001. These will be coded (See Appendix “A”) to determine the type of attorney conduct and alleged ethical violation at issue; whether the case was contested; whether there was a repeat offender; the sanction handed down; the procedural antecedents of the case;¹⁰ whether there were issues of substance abuse or mental impairment; whether the court noted any other special or mitigating circumstances; the characteristics of attorneys subject to disciplinary action (gender, law school, type of practice (criminal, domestic, etc.), mode of practice (large firm, small firm, etc.), experience, and locality.

The purpose of this descriptive statistical profile is twofold. First, the nature of attorney discipline is largely unexamined. The Georgia State Bar maintains only aggregate data of attorney disciplinary actions. This investigator knows of no attempt to compile quantitative data which could shed light upon questions such as whether particular attorney characteristics are associated with prosecution for professional/ethical violations and what violations result in the more severe sanctions available to the Court. Violations resulting in the most severe sanctions are logically the violations of most concern to the profession. By identifying these violations, the second part of the analysis can be fine tuned to examine how well the State Bar appears to be addressing the most significant of violations as well as how well it appears to be addressing the overall regulation of the legal profession.

¹⁰ I.e., whether action was recommended by a special master or review panel. See, Historical Background and Literature Review, infra.

The second portion of the descriptive analysis will examine whether the perception of an increasingly unethical and unprofessional bar is, at least facially, valid from the empirical evidence. The method here is straightforward trend line analysis. The annual number of non-frivolous grievances filed and the number of attorneys publicly sanctioned will first be plotted absolutely. Next, the annual number of non-frivolous grievances and the annual number of attorneys publicly sanctioned will be plotted relative to the annual number of practicing attorneys. In this manner, it can be determined whether there has been a change in the rate of grievances and public sanctions.

After the descriptive analysis, a multiple interrupted time series analysis will be performed in order to investigate the impact of short and long term regulatory efforts.¹¹ There are two primary components in the regulation of the legal profession B education and deterrence. The educational component for licensed and practicing attorneys is required by the Commission on Continuing Lawyer Competence (CCLC). More specifically, the CCLC requires practicing attorneys to complete twelve hours of continuing legal education per year. The deterrence component is provided by and through the State Bar's Office of the General Counsel. These two components are, of course, intertwined. The "education" component is premised upon the presumption that, in at least some instances, attorneys who act unethically and/or unprofessionally do so out of ignorance or misunderstanding of the ethical/professional rules. The deterrence component presumes that attorneys will be guided in their conduct by knowledge of the consequences for violating those rules. In a manner analogous to criminal behavior, the attorney must know that the conduct is improper, assess the likelihood of the conduct being discovered by the State Bar, and assess the probable disciplinary sanction for such conduct.

In 1984 the State Bar made legal ethics a mandatory part of continuing legal education in Georgia in addition to continuing education on substantive legal topics (e.g., criminal law, torts, family law). In 1990 the State Bar altered the ethics requirement by reducing the hours of required ethics education and adding a professionalism¹² requirement. The multiple interrupted time series model will use these 1984 and 1990 educational efforts as intervention points and is represented by the equation: $Y_t = \alpha + \beta_1 X_{1t} + \beta_2 X_{2t} + \beta_3 X_{3t} + \beta_4 X_{4t} + \beta_5 X_{5t} + e_t$. The dependent variable Y_t represents various aspects of the outcome of interest. The dependent variables and the coding of each are set forth in Table 4.1. The first dependent variable (griev) is the number of attorney grievances filed with State Bar divided by the number of actively practicing attorneys. The second dependant variable (total) is the number of disciplined¹³ attorneys dived by the number of actively practicing attorneys. The third dependant variable (susdisp) is the number of attorneys disciplined by suspension or disbarment dived by the number of actively practicing attorneys. Since these dependent variables are coded in terms of the annual percentage of grievances filed, the annual number of prosecutions that result in some discipline, and the annual number of serious attorney sanctions, the effectiveness of the educational component of the State Bars effort to promote attorney professionalism and the ethical conduct of the practice of law would be supported if the coefficients in these equations were found to be significant and in the negative direction.

¹¹ ARIMA analysis is inappropriate given the number of preintervention observations. Kellough and Rosenbloom 1992, p. 254.

¹² While Aethics” instruction focuses on duties owed by attorneys to clients, Aprofessionalism” focuses on duties owed by attorneys to fellow attorneys and the courts.

¹³ Private discipline is reported only in the aggregate by the Bar. Public Discipline is reported by the Bar and is contained in the published opinions of the Georgia Supreme Court.

Data come from the State Bar of Georgia¹⁴ and from the published opinions of the Georgia Supreme Court. The pre-compiled data from the State Bar can simply be inserted in the multiple interrupted time series equation. The data from which the SUSDISBAR variable is constructed must be compiled from an original examination of reported court opinions. The relevant opinions are first identified for the study period via Westlaw search. The location of these cases is easily accomplished since attorney disciplinary cases are particularly styled by the Court.¹⁵ After relevant cases are identified they are to be coded as set forth in Appendix “A” to obtain the necessary data for both the initial descriptive analysis and for the time series analysis.

Since a time series design is utilized, the only concern of variable reliability and validity is in regard to the dependent variables. There are no significant concerns in regard to the validity or reliability of these measures. Clearly, no one dependent variable is sufficient in and of itself to reflect accurately any reduction in unprofessional/unethical conduct among attorneys. However, the dependent variables used in this study should, when taken together, provide an accurate picture of the overall state of the profession throughout the study period by reflecting the percentage of grievances filed that were considered by the State Bar to be non-frivolous, the percentage of cases for serious violations deemed to be meritorious and worthy of prosecution by the Bar, and the percentage of attorneys actually subject to severe sanction for ethical misconduct. Since all dependent variables are aggregate measures, there should be no significant issue of variable reliability.

¹⁴ The State Bar of Georgia publishes an annual report which includes aggregate data of grievances.

¹⁵ Cases involving attorney discipline in the Georgia Supreme Court are typically styled *In re (or Matter of) the name of attorney disciplined*.”

The independent variables are set forth in Table 4.2 and consist of a counter for year (X_1), two treatment dichotomous dummy variables (X_2 & X_4), and two dummy variable counters of time (X_3 & X_5). The counter for year, X_1 , is coded 1 for the first year through 22 for the last year of the period of study.¹⁶ The variable X_2 is a dichotomous dummy variable coded 0 for all observations before the ethics education intervention point and 1 for all observations thereafter.

This intervention point is set at 1985 to account for time lag. The variable X_3 is a dummy variable counter for time designed to model the slope of the regression line subsequent to the first intervention point and is coded 0 for observations before the intervention point and 1 through 17 for observations after the first intervention point. Thus, the coefficient b_1 will estimate the slope of the regression line prior to the 1992 intervention point, the coefficient b_2 will estimate the post-intervention change in intercept, and the coefficient b_3 will estimate and account for any changes in the slope of the regression line after the 1985 intervention point.

The second intervention point¹⁷ is represented by X_4 and is set at 1991 (again a year delay is used to account for implementation lag). Observations prior to 1991 are coded 0 and observations from 1991 forward are coded 1. Once again, it is necessary to test for any differences of slope after this second intervention point through the use of a post-intervention counter for time. This variable is labeled X_5 and is scored 0 for observations prior to the second intervention point and 1 through 11 for the following years. The intercept and slope coefficients

¹⁶ Coding the counter for years in this manner instead of setting the intervention point at 0 and coding pre-intervention observations negatively is appropriate since this is a MITS model with more than one intervention point to be modeled. See e.g., Lewis-Beck 1986, pp. 218-219.

¹⁷ Of course, it is possible that the second intervention had no impact, in which case, the variables testing for such impact will fail to reach statistical significance and can be dropped from the model. Lewis-Beck 1986, pp. 223.

for the second intervention point (b_4 and b_5) are evaluated in the same manner as the coefficients for the first intervention point.

By examining the intercept and slope shifts reflected by the coefficients on the appropriate variables, the impact of the State Bar's effort to alter the behavior of attorneys through its continuing education program can be evaluated. The results of such analysis should tell us if, after each intervention point, the Bars continuing education efforts have had any observable impact on attorney conduct, if such impact is present, whether the impact was immediate but short lived (significant intercept shift only), whether the impact was felt solely in the form of a decrease in such conduct over time (significant slope shift only), or whether the impact was both immediate and felt in the long term (significant intercept and slope shifts).

Time series analysis is a quasi-experimental model and all assumptions of OLS regression analysis must be satisfied in order to make a strong case for causality. In addition, the design must be internally valid in order for one to place any confidence in its results. In time series analysis the main threats to internal validity are that the assumptions of no omitted relevant variables and no autocorrelation of error terms will be violated. In the context of time series analysis the danger of committing specification error by omitting a relevant variable arises when the model omits an independent variable that impacted causally upon the intervention and/or the dependent variable (Lewis-Beck 1986, p. 223). This threat to internal validity is one of history (Mohr 1995, pp. 203-204) and if it is ignored and a relevant variable is excluded from the model, any relationship shown by the model may be spurious.

In this instance, no relevant variables other than the identified independent variables are apparent. Unprofessional/unethical conduct on the part of attorneys is regulated only by the

State Bar.¹⁸ In addition to post-admission regulation, the State Bar can attempt to limit unethical and/or unprofessional conduct by screening those persons who are allowed to sit for the Bar. In this regard, candidates for admission have been screened for fitness since 1977 by the State Bar's Board to Determine Fitness of Applicants (Allen & Braun, www.gabaradmissions.org). If the Bar is successful in preventing those most likely to offend from entering the profession in the first instance, there would likely be an impact upon the overall number of ethical and professional violations. However, any impact from the bar admission process is controlled for in the model since there were no major changes in the State Bar's regulatory efforts or the State Bar's screening process occurring at or around the modeled intervention points. Thus, any such impact should not affect the intercept or slope variables in the model. Other than procedural reform, disciplinary enforcement can also be affected by changes in resource levels. However, there is no indication of significant alteration of the resources available to the State Bar at or around the modeled intervention points and any other changes over time are controlled for by the nature of the model. Finally, there is no reason to suspect any type of monthly or quarterly cycle in the data which could distort the coefficients of the model.

Autocorrelation is often a serious problem in time series analysis since it can inflate significance levels and, if present, it will invalidate significance tests (Lewis-Beck 1986, p. 230). While autocorrelation can be detected in data analysis, there is no way of certainly predicting its presence at the design stage. If autocorrelation is present (Durbin-Watson statistic significantly greater than 2 in either direction), then more advanced statistical procedures must be used before making any judgments about the impact of the intervention.

¹⁸ Of course, conduct that violates professional and ethical rules may also violate criminal law. However, no more severe or different sanction is handed down by the criminal law to offenders simply because of their status as attorneys.

It is recognized that a limited amount of external validity could be expected utilizing this methodology. Generalization is difficult in virtually all studies of judicial processes due to the unique social, economic and legal factors that affect different jurisdictions. Single jurisdiction studies, therefore, have at best only a limited potential for generalization to other time periods or jurisdictions. In this instance, for example, although ethical rules are substantively very similar across jurisdictions, generalization problems exist in regard to findings related to process due to the differences in disciplinary procedure. Indeed, these very differences are one factor that renders infeasible a nation-wide study of legal self regulation. Generalization across jurisdictions will be weak, then, with regard to aspects of the analysis involving rules and procedure particular to the jurisdiction and the particular intervention efforts of the Georgia State Bar. Generalization will be stronger in regard to issues not particular to any single jurisdiction. For example, there is no reason to suspect that Georgia lawyers, as a group, are atypical. Thus, generalization should be more robust when involving general trends and findings in regard to attorney characteristics.

The final portion of this study consists of the reporting and analysis of interviews with practicing attorneys and judges. The purpose of these interviews is to ascertain and assess the perceptions of legal professionals as to the state of the profession and the effectiveness of self regulatory efforts to promote ethical and professional conduct. By conducting these interviews, it is possible to compare and contrast the perceptions of practicing professionals and the empirical findings of this study. Moreover, since interviews are of individuals from across the spectrum of the professional community, differences among and between perceptions can be evaluated and also compared to the empirical findings.

The semi-formal interview of legal professionals is used as the vehicle for obtaining these perceptions in lieu of questionnaires or surveys. Although the interview format restricts sample size (N' 14), an open ended interview loosely structured around a series of focusing questions allows for clarification and interaction between interviewer and interviewee and is methodologically superior to written questionnaire or survey approaches. For those accustomed to legal process, the difference is akin to that between taking an oral deposition in discovery versus propounding written interrogatories. The questions used to structure the interviews can be found in Appendix "B."

The selection of the interviewees was purposefully non-random. Recognizing that the sample size would be limited, those interviewed were selected based upon the nature of their practice (or, if judges, the hierarchal position of their court), their legal experience, and geographical location. In order to obtain as representative a sample as possible given the necessarily limited sample size, lawyers were sought from a variety of practices. These practice areas ranged from the extremely specialized finance and security law practice of a lawyer from one of Atlanta's largest law firms to the small town general practitioner. Criminal practice is represented by the interviews of prosecutors. Prosecutors were chosen in lieu of criminal defense attorneys since one of the goals is to interview lawyers with exposure to as many other lawyers as possible. Given the structure of the criminal justice system and the limited pool of prosecutors, attorneys who limit their practice to criminal defense work will have professional exposure to fewer attorneys than their prosecutorial counterparts. Those interviewed had a wide range of experience; however, the sample was weighed towards those with more experience since it is the more experienced lawyer who has the frame of reference to be able to comment

upon perceived changes and trends over time. Finally, lawyers were sought from both within the metro Atlanta area and without the metro Atlanta area (the rest of or the “other” Georgia).

The selection process for the judges/justices interviewed was similar. Judges were interviewed from both the federal and state court systems. Federal court was limited to the trial level since the federal bench has limited involvement in general discipline (although it can and does discipline its own bar) and trial judges have the most extensive contact with practicing attorneys. State court judicial actors were interviewed at all levels, from the small claims/magistrate level through the state and superior court level to the level of Justice of the Georgia Supreme Court. The only hierarchical rank omitted was that of judge of the Georgia Court of Appeals. Unlike Supreme Court justices and Superior Court judges, Court of Appeals judges have no direct involvement in the disciplinary practice and, because of appellate jurisdiction, have less immediate contact with practicing attorneys. There was a fairly wide range of judicial experience among those interviewed. Again, as with the attorneys interviewed, a selection preference is given to those with significant judicial experience.

The only other qualification for selection was that the interviewee had not been subject (as far as is knowable from the public record) to discipline him/herself. Assuming those with past difficulties in this regard would respond candidly, it would make little sense in the context of this work to discuss the health of the profession with those the profession had sanctioned for ethical or professional violations. However, the experiences of those who have been the subject of legal discipline and the success or failure of rehabilitation of those disciplined and suspended from the practice of law is a fertile area for further study.

Table 4.1

DEPENDANT VARIABLES & CODING

DEPENDENT VARIABLES	CODING
Griev	Annual percent of grievances filed against attorneys (number of grievances / active bar membership).
Total	Annual percent of prosecutions that result in discipline (number of discipline sanctions / active bar membership).
Susdisp	Annual percent of prosecutions that result in the sanction of suspension or disbarment (number of suspensions and disbarments / active bar membership).

Table 4.2

INDEPENDENT VARIABLES & CODING

INDEPENDENT VARIABLES	CODING
X ₁ (counter for year)	1 for 1980 through 22 for 2001.
X ₂ (treatment dummy variable)	0 - observations prior to intervention; 1 - observations after intervention.
X ₃ (dummy counter for years)	0 - observations prior to intervention; 1 through 17 corresponding to each observation subsequent to the intervention.
X ₄ (second treatment dummy variable)	0 - observations prior to intervention; 1 - observations after second intervention point.
X ₅ (dummy counter for years)	0 - observations prior to intervention; 1 through 11 corresponding to each observation subsequent to the second intervention point.

Chapter 5

Professional Discipline in Georgia (1980 – 2001):

Offenders, Offenses, Sanctions and Process

A. Bar Membership

Like the rest of the nation, Georgia experienced tremendous growth in the legal profession over the last decades of the twentieth century. Total membership increased more than two and one-half times from 1980 through 2001. As with total membership, there has been significant growth in active membership (See Table 5.1) which has more than doubled since 1980. Using census data and estimates, this represents the approximate growth of from one active attorney per 475 persons in 1980 to one active attorney per 329 persons in 2001. Figure 5.1 uses the available data to demonstrate the growth of membership in terms of total membership, active membership, metro Atlanta area membership, and female membership. Growth has been steady in all categories, although it has been slower and appears to be flattening out in the metro areas. This slowing of growth in the metro area may be due to urban sprawl and the growth of areas outside of the five county area defined by the bar as the “metro” area and/or because the metro market is becoming saturated.

B. General Profile of Disciplinary Actions

There are two types of sanctions that result from bar disciplinary proceedings – sanctions that result from private proceedings and sanctions that result from public proceedings. Private disciplinary proceedings are not reported and can only be analyzed in the aggregate. Serious offenses are prosecuted through public proceeding. The sanctions resulting from public

disciplinary proceedings are set forth in Table 5.2. As can be seen, almost no attorneys (one-half of one percent) who face public discipline and have been filtered through the disciplinary system are found innocent of violating any standard or disciplinary rule by the Georgia Supreme Court. In addition, few attorneys are sanctioned with a public reprimand, the least severe of the available penalties. The low number of public reprimand sanctions is reconciled with the numerous offenses that can only be sanctioned by public reprimand by the fact that very few attorneys are charged with violating only offenses that can only result in public reprimand. Indeed, only 2 of the 178 cases that involved offenses that could only be sanctioned by public reprimand did not also involve allegations of violation of at least one other offense for which suspension and/or disbarment was a possible sanction.

The majority of lawyers who face the Court are sanctioned by disbarment. Indeed, disbarment is by far the single most prevalent sanction resulting from public disciplinary proceedings and is the result in 58% of the reported cases. The second most frequent sanction, the six month suspension, occurred in only 6% of the reported cases. Overall, of the cases which resulted in a sanction, suspension of some duration was the punishment in 38% of the reported cases.

Disbarment is the professional equivalent of the “death penalty” and would seem to be the most severe sanction. An attorney who has been disbarred may not resume the practice of law without formally seeking and being approved for reinstatement to the bar. However, in recent years there has been a trend to impose a “disbarment plus” sanction. This sanction is disbarment with the additional court order that the attorney satisfy additional and specific conditions before he or she can be reinstated. Conditions for reinstatement were imposed in 26% of cases in which disbarment was the sanction from 1980 through 1990 and in 74% of the

cases in which the sanction was disbarment from 1991 through 2001. The conditions for reinstatement typically are associated with conditions of impairment (correlation significant at the .01 level) which are addressed through treatment programs. The condition for reinstatement variable is also significantly (.01 level) correlated with both the mitigating circumstance found and aggravating circumstance found variables. Interestingly, the mitigating circumstance found variable was in the positive direction while the aggravating circumstance variable was in the negative direction. This suggests that the condition for reinstatement variable, while facially resulting in a more severe sanction, may not be intended by the court to be punitive.

Public reprimand is the least severe sanction. On its face, a public reprimand would appear harsh. The reprimand procedure involves the chastisement of an attorney by the Superior Court judge in his or her own judicial circuit in open court. In the last seven years in these data there were only three public reprimands. The use of the public reprimand as a sanction has clearly declined. The reason for this decline is not apparent in these data; however, from the interviews conducted as part of this study it appears to be the perception of the court that the sanction is too lenient for most offenses that come before it for public discipline. Moreover, there are perceived problems with its implementation. One of those interviewed anecdotally related instances in which a Superior Court judge might wait until 4:55 p.m. in the afternoon to “publicly” chastise an attorney in a virtually deserted courtroom.

Between the extremes of disbarment and public reprimand there is the sanction of determinate suspension from the practice of law. Like criminal sentences, the severity of a determinate suspension is measured by length. Determinate suspensions ranged from one to sixty months. In addition to determinate sanctions, the Supreme Court in 5.7% of the cases (the second largest category of suspension after the six month suspension) imposed an indeterminate

or indefinite suspension. In terms of severity, an indefinite suspension is deemed the most punitive type of sanction short of disbarment since it is potentially of permanent duration. As is the case with conditions of reinstatement, indefinite suspensions are often tied to and conditioned upon treatment or education and, again like conditions of reinstatement, the indefinite suspension sanction is highly (.01) correlated in the positive direction with attorney impairment.

Private discipline and the sanctions from such discipline are reported in the aggregate in the Bar data. This discipline is confidential and makes up a significant portion of the disciplinary activity of the Bar. The forms of private discipline reported in aggregate data are private reprimands, review panel reprimands, investigative panel reprimands, formal letters of reprimand, and informal letters of reprimand. These forms of discipline combined for the study period are set forth in Figure 5.2. Of the individual forms of sanction, some have been discontinued (there were no informal letters of reprimand after 1988 and no private reprimands after 1985) while the others have remained fairly constant or declined. (See Figure 5.3). Private discipline as a whole, although it fluctuates, has declined.

Over the study period, 42,371 grievances against attorneys were filed with the State Bar. There were 1,811 cases in which some discipline was imposed over the same period. As can be seen in Figure 5.4, while the number of grievances has generally trended upwards over time, the annual number of those sanctioned remains basically constant. Only a minute portion of the total bar is subject to professional discipline on an annual basis (.0017% to .0048% in the study period). These percentages never approach the percentage of grievances to total membership (.07% to .15%). However, Figure 5.5 shows the trend lines of the annual percentage of discipline (disciplined/membership) cases versus the annual percentage of grievances to total membership (grievances/membership). While growth in the annual number of grievances far

outpaces the growth in the annual number of discipline cases, there has been no dramatic increase in the number of grievances filed per bar member. To the extent that the annual percentage of grievances filed is a good measure of the professionalism of the bar, the data do not suggest that the professionalism of the bar as a whole declined over the study period after adjustment for growth in membership.

C. Offenders

1. Repeat Offenders

One of the research questions that this study seeks to answer is what type of attorney is being sanctioned by the professional discipline system. In this regard, it is possible that the problems of unethical and unprofessional conduct are caused by a relatively few “bad” attorneys who manage to stay in practice despite the best efforts of the professional discipline system. Not weeded out, these attorneys offend and re-offend. In examining this possibility, 664 attorney discipline decisions by the Georgia Supreme Court from 1980 through 2001 were coded for the accused attorney’s repeat offender status (See, Appendix “A”). Of the attorneys disciplined, there were 73 direct repeat offenders (offenders who were defendants before the court for separate violations more than one time during the study period). These repeat offenders were defendants in 79 (11.9%) of the 664 cases coded. Cases were also coded in regard to whether or not the Court cited the defendant’s prior record as an aggravating circumstance. Prior record was cited as an aggravating circumstance in 88 cases. Correlation between the repeat offender and prior record variables was, as one would expect, significant at the .01 level (2-tailed). Sixty-seven (67) attorneys were defendants in two cases and only 6 were defendants in three cases. No attorney was a defendant in more than three cases of public discipline. Of the 73 repeat offenders, 47 ultimately received the sanction of disbarment. From these data, it is apparent that

repeat offenders are not common at the public discipline level and rarely are allowed even “three-strikes” before receiving the professional equivalent of a death sentence.

2. Race and Gender

The legal profession has made significant strides in becoming more diverse. Minority race and female membership in the legal profession has grown tremendously in recent decades. From their being virtually no minority attorneys, today approximately 20% of lawyers in the United States are members of a racial minority (Bar None: Report to the President of the United States on the Status of People of Color and Pro Bono Services in the Legal Profession 2000). Likewise, the percentage of female attorneys (approximately 24% in 1998) is projected to reach 40% by 2010 (American Bar Association, Facts About Women and the Law 1998). Of course, with membership opportunity there is risk of professional discipline and sanction.

Identification of the gender of sanctioned attorneys is typically clear from the published disciplinary opinions. The data were insufficient to allow the identification of race of sanctioned attorneys. Race is not reported directly in judicial opinions. Indeed, since the proceedings are upon an appellate record, the justices typically do not know the race of the defendant in disciplinary proceedings. Surrogate measures (i.e., membership in minority bar associations) did not result in the identification of race in sufficient numbers for meaningful analysis.

As can be seen in Figure 5.6, the defendants in the vast majority of discipline cases (90.3%) are male. There are currently 35,361 Georgia Bar members. Unfortunately, the Georgia Bar only maintains partial data regarding the gender of its members and has no record of the race of members. The percentage of women sitting for the bar exam has grown from 3.7% in 1965 to 44% in 2003 (Figure 5.7). The annual percentage of female attorneys disciplined in Georgia is shown in Figure 5.8. In 1985, the national percentage of female lawyers was 13

percent. The number of female Georgia Bar members was 27% in 1993 and 36% in 1999.

Figure 5.8 (using the 1985 national percentage as a surrogate measure in Georgia) juxtaposes the growth of female membership against the number of women disciplined in the data. As can be seen, while the numbers of female bar members being disciplined have grown, the growth is not in proportion to the increased participation of women in the profession.

Female offenders, as might be expected given general trends in criminal justice, were far less likely than male offenders to be sanctioned as the result of misdemeanor or felony criminal offenses. The very few offenders (N-6) who were sanctioned for violations of client confidences were male. All offenders sanctioned for a misdemeanor offense were male and 97.3% of those sanctioned for a felony offense were male. Distributions for offenses falling within the other major categories of offense (general unprofessional conduct and client finances) were more uniform. In this regard, 50% of female offenders versus 43.7% of male offenders were charged with violating standards involving client finances and 86.7% of female offenders versus 62.8% of male offenders were charged with violating standards involving general unprofessional conduct.

3. Age and experience

One of the questions of theoretical significance addressed by this study is whether attorneys are sanctioned as the result of ignorance of professional and ethical rules of conduct. If ignorance of, as opposed to disregard for, professional and ethical standards of conduct is related to attorney sanctions, one would expect that those being disciplined would be the least experienced of attorneys. Conversely, if sanctioned conduct is primarily related to factors unrelated to knowledge of the rules of conduct, one would expect to see great variation in both the age and experience of sanctioned attorneys.

Age and experience are measured as of the time of the alleged violation for each attorney and were obtained by comparing the date of the violation with the date of the attorney's admission to the bar as reported in Martindale-Hubbell Law Directory. Descriptive statistics for these variables are set forth in Table 5.3. There is considerable variation in both variables and the distributions, as shown in Figures 5.9 and 5.10, are moderately skewed to highly skewed as would be expected in age and experience variables. The typical sanctioned attorney is in his early middle age (45 years old median and 47 years old mean) and has significant legal experience (16 years median and 18 years mean). Thus, the attorneys being sanctioned are not generally neophytes. If one assumes that knowledge of the proper rules of conduct is gained through education and experience over time, there is little support found here for the proposition that unprofessional and unethical conduct is primarily the result of ignorance of professional and ethical rules of conduct.

Another aspect of the age/experience variable is whether it plays a role in the decision-making process of the court. In other words, is the court more sympathetic to the young and inexperienced attorney when handing out sanctions? Overall, the court found at least one type of mitigating circumstance in 19% of the cases and at least one type of aggravating circumstance in 25% of the cases. The court specifically cited lack of experience as a mitigating factor in only 1.5% of cases and significant legal experience as an aggravating factor in 9.5% of cases. As can be seen in Table 5.4, there is a significant correlation in the expected direction between attorney inexperience as a mitigating factor and severity of sanction. However, although in the expected direction, there is no significant correlation between experience when cited as an aggravating factor and severity of sanction. Thus, it appears that inexperience is significant to the court in at

least partial mitigation of offenses but significant legal experience is not generally held against those who commit violations later in their careers.

4. Attorney impairment

Impairment, whether from medical condition, mental condition, or substance abuse, is commonly thought to be at least a contributing factor in ethical and/or professional violations. As shown in Figure 5.11, impairment, from any source, is noted in significant numbers of cases. Illegal substance abuse is noted in 3% and alcohol abuse is noted in 2.6% of the cases. Medical impairment is noted in 2% and mental impairment is noted in 8% of the cases. Table 5.5 sets forth the bivariate correlation between severity of sanction and the various impairment variables when they are cited by the court as mitigating factors. While all the impairment variables, cited by the court as mitigating factors, are in the expected direction, only the mental impairment variable was significant at the .05 level.

5. Legal Education

If one accepts the premise that ABA accreditation is an indicator of the quality of the legal education provided by a law school, then whether an attorney graduated from an ABA accredited law school may be a measure of an attorney's knowledge of professional and ethical rules of conduct. Knowledge of the rules is, of course, key. If unprofessional and unethical behavior is unrelated to ignorance of the rules, then one would not expect there to be any relationship between the quality of law school attended and the likelihood of being sanctioned by the disciplinary system. There are three historically unaccredited law schools in Georgia – Atlanta Law School, Woodrow Wilson College of Law, and John Marshall Law School. Graduates of one of these three law schools were defendants in 28% of the 309 cases in which

the law school of the defendant could be identified. As is graphically shown in Figure 5.12, graduates of non-accredited law schools were defendants in 30% of the cases.

There is no breakdown of bar membership by law school. However, the number of lawyers graduating and passing the bar from accredited and from non-accredited law schools is available from the Office of Bar Examiners from 1996 through 2001 and should be a reasonably good surrogate measure. During this period, 8,053 candidates passed the Georgia Bar exam. 7,644 (95%) were graduates of ABA approved law schools 409 (5%) were graduates of bar, but not ABA, approved law schools. Thus, assuming, as is reasonable, that most of these graduates went on to practice law in Georgia and that the bar pass rate is a good surrogate measure for bar membership, there is a significant discrepancy between membership (5%) and discipline (30%) of lawyers graduating from non-ABA approved law schools. As might be expected, the non-ABA graduate variable was also significantly correlated with both the sole practice and Metro Atlanta area variables. Thus, even if the surrogate measure is good, this discrepancy in the rates of discipline does not establish any direct causal relationship between non-ABA law school graduate status and the likelihood of disciplinary problems.

6. Metro Atlanta

Many Georgians have long held the belief that there are two Georgia's – Atlanta and the rest of Georgia. This "Atlanta" is not limited to the corporate limits of the City of Atlanta, but comprises the multi-county metropolitan area surrounding Atlanta and Fulton County. In the last year of the study period, the Georgia Bar reported a membership of 15,790 (approximately 62% of active membership) in this metropolitan area, with 11,274 (44%) practicing in Atlanta. The average percent annual active membership in the metropolitan area for the study period years for which data are available from the State Bar is 63%. The average percent annual active

membership in Atlanta for these same years is 45%. Geographic location was obtained for the attorneys sanctioned in 654 Georgia Supreme Court cases. As is graphically represented in Figures 5.13 and 5.14 respectively, 33% of the cases involved attorneys with a City of Atlanta address and 58% involved attorneys from the metropolitan area. Although the data are incomplete, it does not appear that Atlanta and metropolitan area lawyers are being disciplined in numbers significantly disproportionate to their membership in the active bar.

7. Martindale-Hubbell Rating

The Martindale-Hubbell rating system is the only national rating system of individual lawyers on the basis of legal ability and ethics. These ratings have appeared in the Martindale-Hubbell Law directory for over 100 years and approximately 43% of U.S. lawyers are rated. Ratings are generated from confidential questionnaires sent to lawyers and judges in the “rated” lawyer’s community. Ability is rated “A” (very high to preeminent), “B” (high to very high) and “C” (fair to high). The ethical component of the rating is the general recommendation rating of “V” (very high) and a lawyer cannot be given an ability rating without first achieving the “V” general recommendation rating. Thus, the Martindale-Hubbell rating purports to be a measure of both legal ability and of professionalism/ethics. Approximately 3% of rated attorneys have CV ratings, 21% have BV ratings, and 20% have AV ratings (Lawyer Ratings, www2.martindale.com/company/ratings.html).

Three hundred and thirteen (313) of the disciplined lawyers were found in the Martindale-Hubbell Law Directory. Inclusion in the Martindale-Hubbell Law Directory is not mandatory. The absence of listing in the directory in the context of this study of almost one-half of the disciplined attorneys is interesting since lawyers who do not merit a “V” ethical rating are ineligible for an ability rating. It is possible that experienced lawyers who have not achieved a rating would choose not be listed in the Directory. If Martindale-Hubbell rating is a good

indicator of ability and ethics, then it should not be surprising that significant numbers of those disciplined chose not to be listed. The distribution of ratings among those disciplined and listed in the Directory is shown in Figure 5.15. The typical lawyer sanctioned had not achieved any rating (65%). Thirteen percent (13%) of those sanctioned had a CV rating, 18% had a BV rating, and 4.5% had an AV rating. Compared to the rated universe, significantly more of those with CV ratings (18% versus 3%) and significantly fewer of those with AV ratings (4.5% versus 21%) were involved in Georgia Supreme Court disciplinary proceedings.

8. Sole and Small Firm Practice

Seventy-three percent of those offenders for whom practice data were available (N = 323) were sole practitioners. Apart from sole practitioners, the great majority of law firm members practiced with small law firms. In fact, ninety-one percent of those lawyers who were members of a law firm were members of small law firms (defined as having from 1 to 10 lawyers). Larger firms with membership from 10 to 25 lawyers accounted for six percent of law firm members disciplined; firms with membership of over 25 lawyers accounted for only 2.4% of those disciplined. Interestingly, the majority of the sole practitioners (54%) were from the metro area and firm membership was not significantly correlated with metro area practice. Thus, contrary to what some might expect, solo and small firm practice is not synonymous with small town practice in the data.

D. Offenses

Another goal of this study is to determine the types of offenses that result in attorneys receiving serious (public) sanction. As shown in Table 5.6, the general categories of offense are general unprofessional conduct (Attycon1 -- a catch-all variable that describes cases in which none of the other general category variables apply); client confidences (Attycon2 -- a variable

capturing violations of professional rules/ethical standards governing a lawyer's duty to keep client confidences inviolate); client finances (Attycon3 – a variable capturing violations of professional rules/ethical standards governing a lawyer's duty to protect and preserve client funds); misdemeanor offense (Attycon4 – a variable that reflects a lawyer being sanctioned for conduct which constitutes a misdemeanor criminal offense); and felony criminal offense (Attycon5 – a variable that reflects a lawyer being sanctioned for conduct which constitutes a felony criminal offense). Since attorneys were commonly sanctioned for more than one type of unprofessional/unethical conduct in a single case, the categories are not mutually exclusive.

The general professional conduct variable is useful only to the extent that its size (65% of study) indicates that a significant proportion of offenses cannot be solely placed in more specific categories. The two variables that capture violations of the most technical rules (where one would expect that education could potentially have the most impact in preventing violations) are client confidences and client finances. The results for these two variables could not be more different. The client confidence category had the fewest number of cases (.9%) while the client finance category was, with the exception of the general unprofessional conduct category, the largest (56%). Few attorneys were disciplined for violating misdemeanor criminal laws (3.2%); however, a significant number were sanctioned for felony offenses (19%).

Table 5.7 sets forth the particular offense variables and the maximum penalty for each offense. The most prevalent of the alleged violations for which an attorney can be disbarred are violations of Standard 4 (40%), Standard 44 (37.1%), Standard 65 (34.4%), Standard 66 (25.4%), Standard 63 (25.1%), Standard 45 (22.7%), and Standard 61 (18.6%). Standard 4 is a catch-all category and Standard 45 is a similar, although somewhat more specific, category that encompasses general unprofessional and incompetent conduct. Violations of Standards 4 and 45

are not particularly useful given their generality. Of the remaining five violations, Standard 44 involves allegations of willful client abandonment. Standard 66 involves allegations of conviction of a criminal misdemeanor or felony offense. The three remaining violations (Standards 61, 63, and 65) all involve the commingling or other mishandling of client funds.

The most prevalent of those alleged violations punishable by public reprimand were violations of Standard 65 (34.4%), Standard 68 (30.1%), Standard 22 (20%), and Standard 23 (16.5%). Standard 65, again, involves safeguarding client funds. Standard 68 is the failure to respond to State Bar disciplinary authorities. Standards 22 and 23 involve proper withdrawal from client representation (Standard 22) and the duty to return unearned legal fees upon withdrawal (Standard 23). In a pattern similar to that found in violations punishable by disbarment, three of the four most prevalent violations punishable by public reprimand involve client finances. The fourth, Standard 68, is procedural in nature.

E. Process

1. Court Unanimity

The final section of the descriptive portion of this study examines the process variables in the public attorney disciplinary system. These process variables are akin to those commonly examined in judicial process studies and deal with the manner in which the Supreme Court adjudicates attorney discipline cases. One of the unique aspects of the attorney disciplinary process is that the opinions in the vast majority of cases are *per curiam*. Indeed, in the twenty-one year study period, 99.5% of the cases were decided *per curiam*.

The theme of court unity in attorney discipline cases is further demonstrated by the relative lack of dissent among the justices. Once again, in the twenty-one year period of this study, there was an overall unanimity in the court with one or more justices dissenting in only

6% of the cases. However, as shown graphically in Figure 5.16, dissents are becoming more frequent, possibly due to the increased diversity in the composition of the court. The frequency of dissents by the individual justices is shown in Table 5.8. Of the eight justices within the study period who authored dissenting opinions, two are women. As of 2001, despite having eighteen collective years on the bench, these two justices collectively wrote 52.5% of the dissenting opinions. The remaining six justices, with a collective fifty-four years on the bench, account for the remaining 47.5% of the dissenting opinions. Dissent can also be measured by how often a justice joins (as opposed to authors) a dissent. The two women justices collectively account for 28.6% of the dissents as the first concurring dissenter and 30% of the dissents as the second concurring dissenter. Neither, however, was the single most frequent joiner of dissents. See, Figures 5.17 and 5.18. As seen in Table 5.9, dissenting opinions occur most often when a justice or justices feel that the penalty imposed by the court is inappropriate. More specifically, in 74% of the cases the dissent called for a more severe sanction than the sanction imposed by the court.

2. Adversarial Nature of Process

The American legal system is adversarial in nature. In criminal or quasi-criminal matters in particular, this assumes that a case is prosecuted, a vigorous defense is mounted, and the case is adjudicated by a neutral fact finder. Truth, or a reasonable facsimile thereof, is presumed to emerge as the result of the clash of skilled argument and presentation of the evidence. In the majority of attorney discipline cases only two out of these three elements are present – i.e., prosecution and neutral fact finder. See, Table 5.10. Indeed, in this regard, the attorney discipline process appears to operate upon a more inquisitorial than adversarial basis with the Supreme Court ruling in an appellate mode based upon a record that often does not include the

offender's presentation of his or her own "side of the story" through written response to the charges or through participation in a special master hearing.

Even when the offender's case is made, it is often not made in an adversarial mode from a "guilt or innocence" standpoint. More specifically, in 43.4% of the cases (Figure 5.19), the accused attorney is before the court upon a voluntary petition for discipline. In a voluntary petition, the guilt or innocence of the attorney is almost never at issue. Instead, the attorney concedes wrongdoing and asks the court to impose a specific sanction. Voluntary petitions are routine and there is no reason to suspect that the fact that discipline is sought by voluntary petition would decrease the severity of sanction. Indeed, the term "voluntary" petition is somewhat of a misnomer in that attorneys are not "voluntarily" reporting wrongdoing, instead they are volunteering to be disciplined after their conduct has been discovered and investigated by the State Bar. There were, unsurprisingly, no significant correlations between the filing of voluntary petition and any of the sanction variables.

3. Appellate Nature of Process

As noted heretofore, the Georgia Supreme Court plays an appellate role in the attorney disciplinary process. The Court renders its decision based upon the administrative record, including the record of any prior evidentiary hearings held below. This record can be minimal or extensive depending upon whether the accused attorney has answered and mounted a defense in the proceedings. There is a high degree of concurrence between the State Bar and the Court as to sanction with the State Bar only "losing" (measured by the State Bar making an objection to the sanction handed down by the court) in only 5.2% of the cases (Figure 5.20). Although the Investigative Panel is mentioned relatively infrequently in court opinions (12.1%), when it is

noted that the Investigative Panel made a recommendation, that recommendation is accepted by the court at a 92.5% rate (Figure 5.21).

As discussed more thoroughly in Chapter 3, there are several routes that a case can take to the court. In almost sixty percent of the cases (57.8%), the case comes to the court only after the appointment of and a hearing of the evidence by a Special Master. When a Special Master is appointed and makes findings of fact and recommendations as to the appropriate discipline, the court in the great majority of cases (81.2%) will accept those findings and recommendations (Figure 5.22). Cases can also be reviewed by the Review Panel whether or not they are initially heard by a Special Master. The Review Panel hears cases at about the same rate (56.5%) as they are heard by a Special Master. When the Review Panel hears a case that has previously been heard by a Special Master, there is also a high degree of consensus with the Review Panel concurring with the findings of the Special Master in 79.2% of the cases (Figure 5.23). Predictably, the court also accepts the findings of the Review Panel in the great majority (88%) of cases (Figure 5.24).

Table 5.1

Georgia Bar Membership (1980 – 2001)

Year	Total Membership	Active Membership
1980	13150	11504
1981	13509	11769
1982	14313	12532
1983	15185	13221
1984	15900	13662
1985	16872	14514
1986	18226	15088
1987	19406	16124
1988	20196	16772
1989	20963	17235
1990	21950	17958
1991	22856	18449
1992	23811	19317
1993	24775	20192
1994	25757	20752
1995	26732	21301
1996	27703	21841
1997	28704	22630
1998	29785	23290
1999	30805	24199
2000	31744	24879
2001	32719	25525

Figure 5.1

Georgia Bar Membership

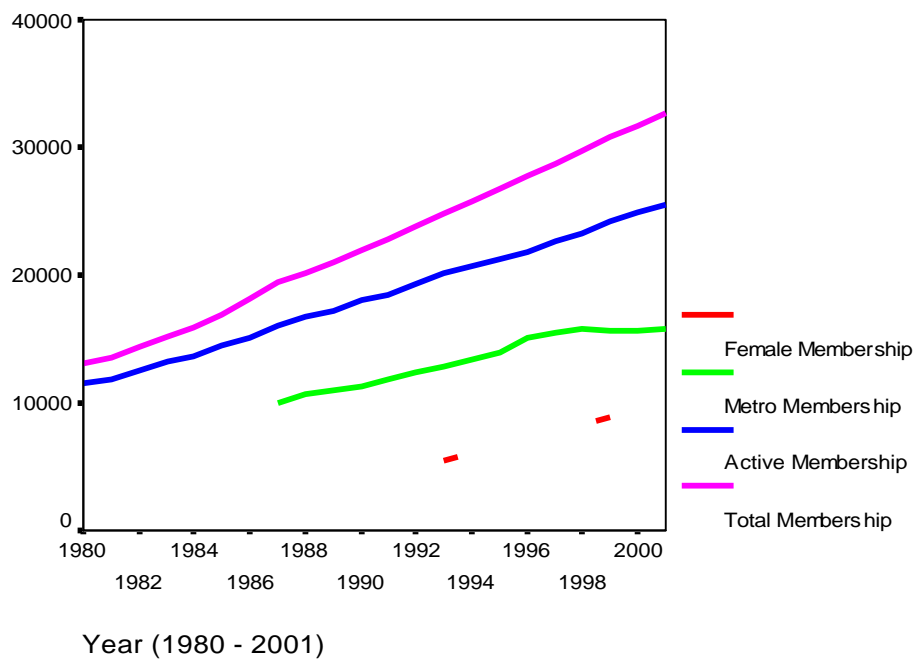


Table 5.2

Sanctions Resulting from Public Disciplinary Proceedings

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Innocent	3	.5	.5	.5
	Public Reprimand	19	2.9	3.1	3.5
	30 Days	7	1.1	1.1	4.7
	45 Days	3	.5	.5	5.2
	60 Days	3	.5	.5	5.6
	90 Days	9	1.4	1.4	7.1
	120 Days	1	.2	.2	7.2
	5 Months	1	.2	.2	7.4
	6 Months	40	6.0	6.4	13.8
	8 Months	1	.2	.2	14.0
	9 Months	1	.2	.2	14.2
	9 Months and Public Reprimand	2	.3	.3	14.5
	12 Months	36	5.4	5.8	20.3
	18 Months	15	2.3	2.4	22.7
	24 Months	30	4.5	4.8	27.5
	30 Months	2	.3	.3	27.9
	36 Months	27	4.1	4.3	32.2
	60 Months	1	.2	.2	32.4
	Indefinite	38	5.7	6.1	38.5
	Disbarred	382	57.5	61.5	100.0
	Total	621	93.5	100.0	
Missing	System	43	6.5		
Total		664	100.0		

Figure 5.2

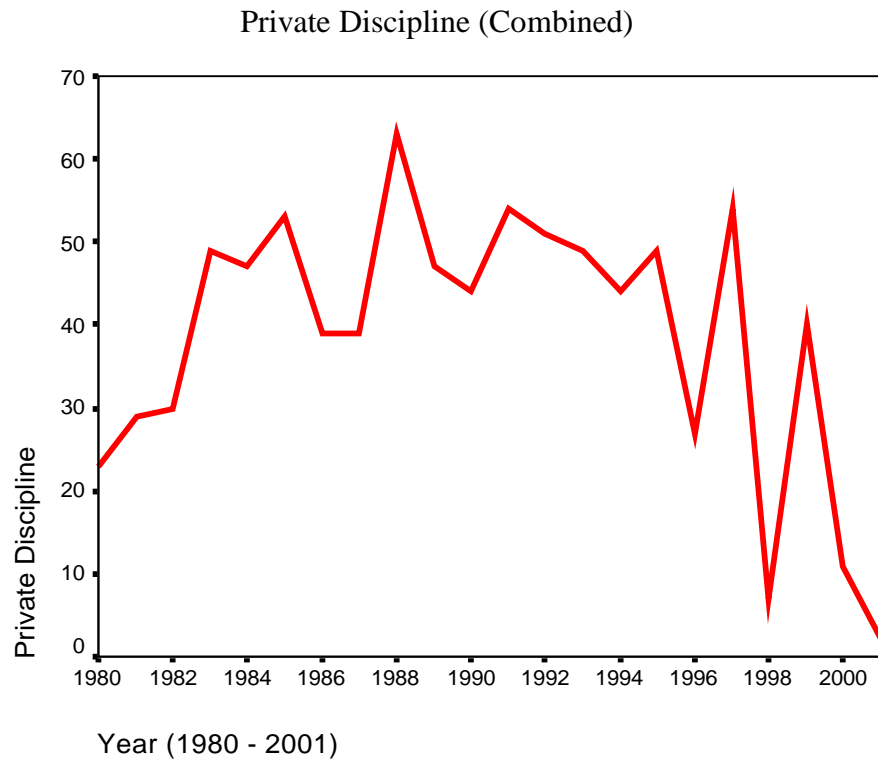


Figure 5.3

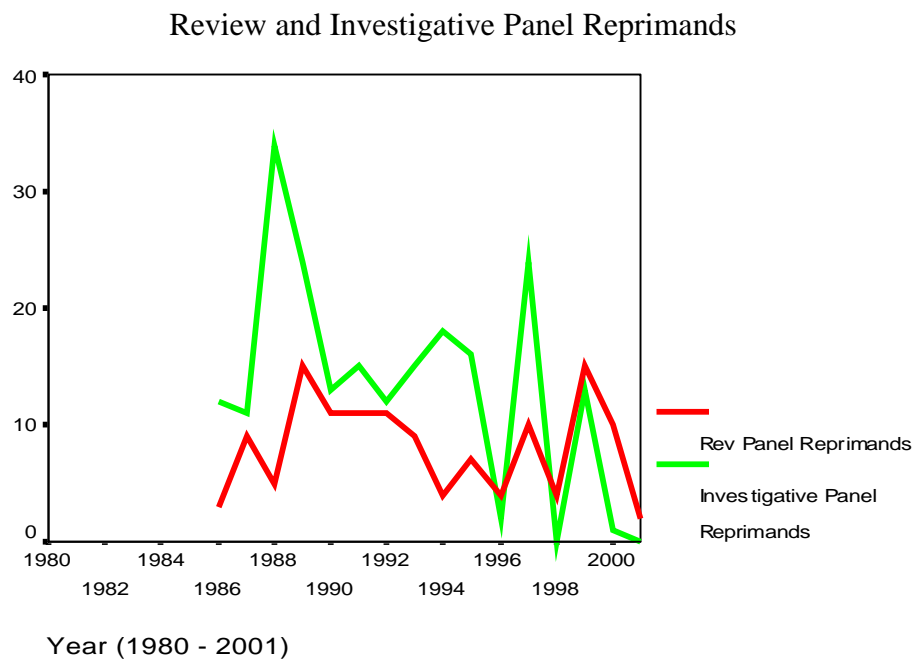


Figure 5.4

Number of Grievances Compared to Number Disciplined

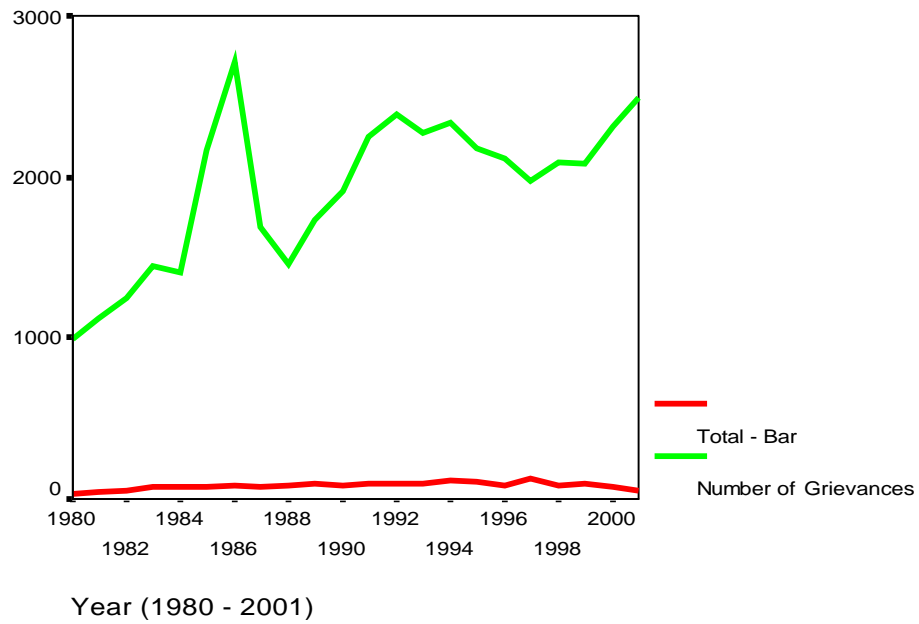


Figure 5.5

Annual Percentage of Grievances to Total Membership Compared To Annual Percentage of Discipline Cases

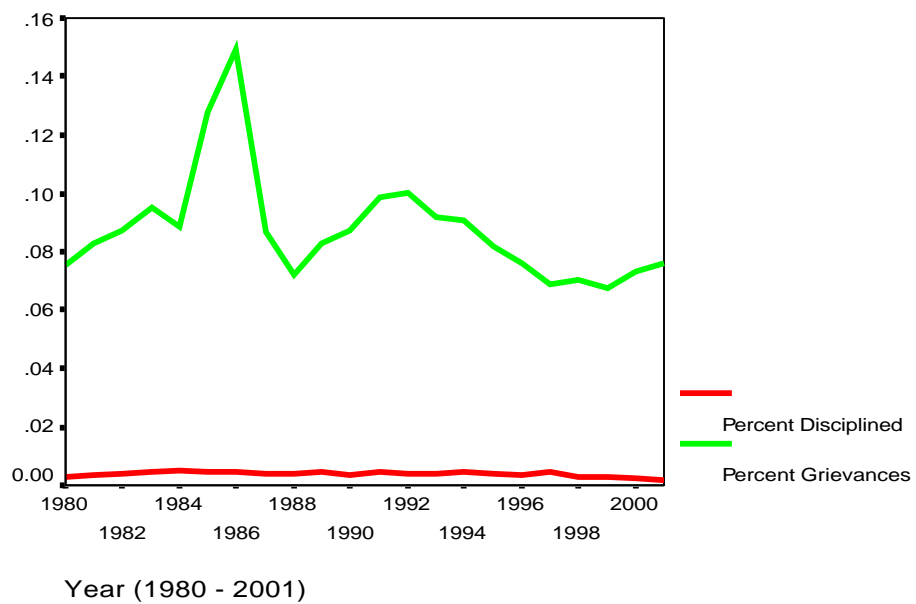


Figure 5.6

Gender of Sanctioned Attorneys

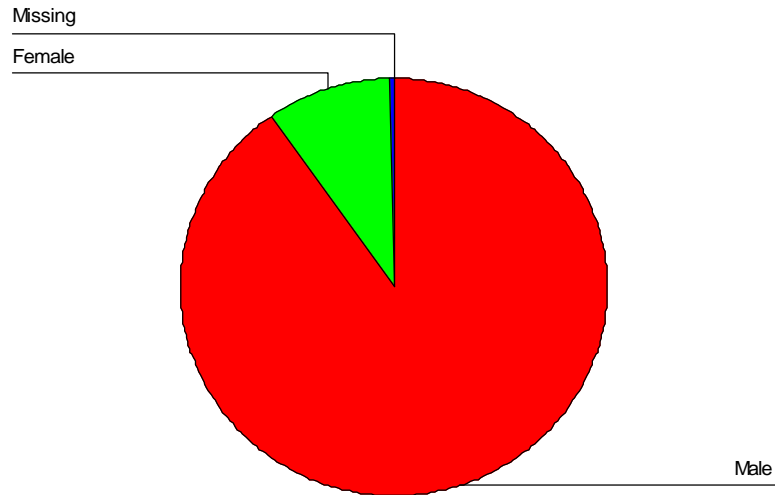


Figure 5.7

Women Entering the Profession

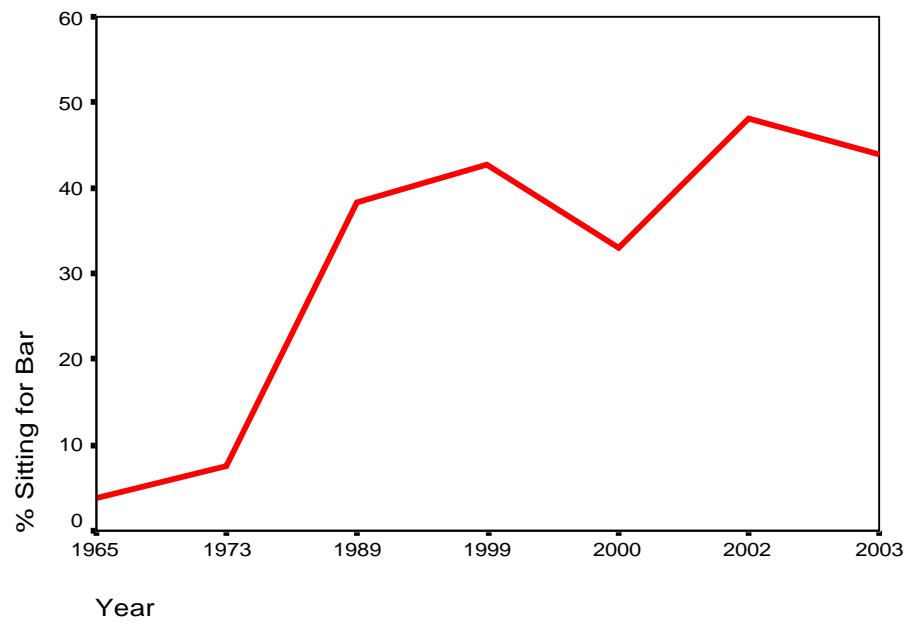
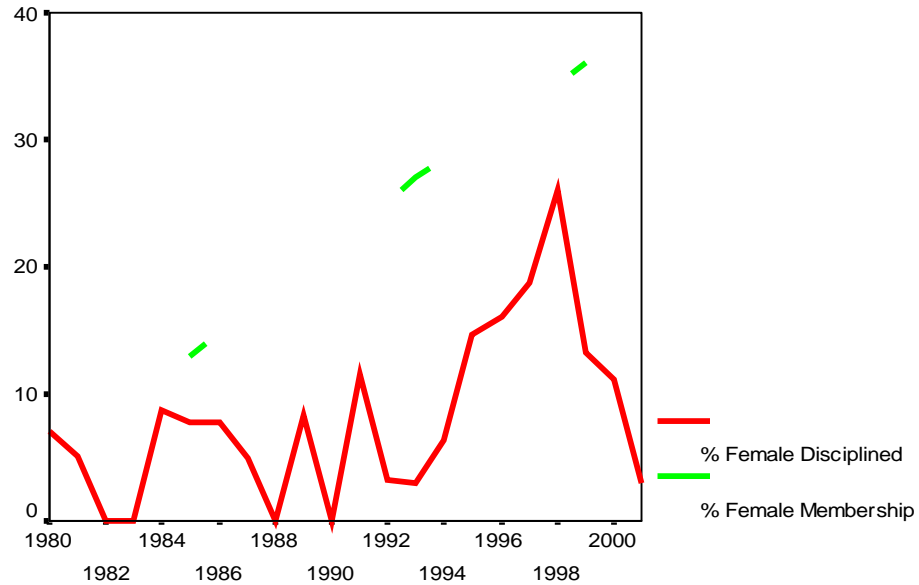


Figure 5.8

Women Membership versus Women Disciplined



Year (1980 - 2001)

% Female is percentage of women disciplined

% Female Membership is percentage of women attorneys

Table 5.3

Sanctioned Attorney Age and Experience

		Years experience	Age at time
N	Valid	356	311
	Missing	308	353
Mean		17.85	46.81
Median		16.00	45.00
Mode		10	43
Std. Deviation		9.805	9.979
Skewness		1.071	.940
Std. Error of Skewness		.129	.138
Kurtosis		1.733	1.363
Std. Error of Kurtosis		.258	.276

Figure 5.9

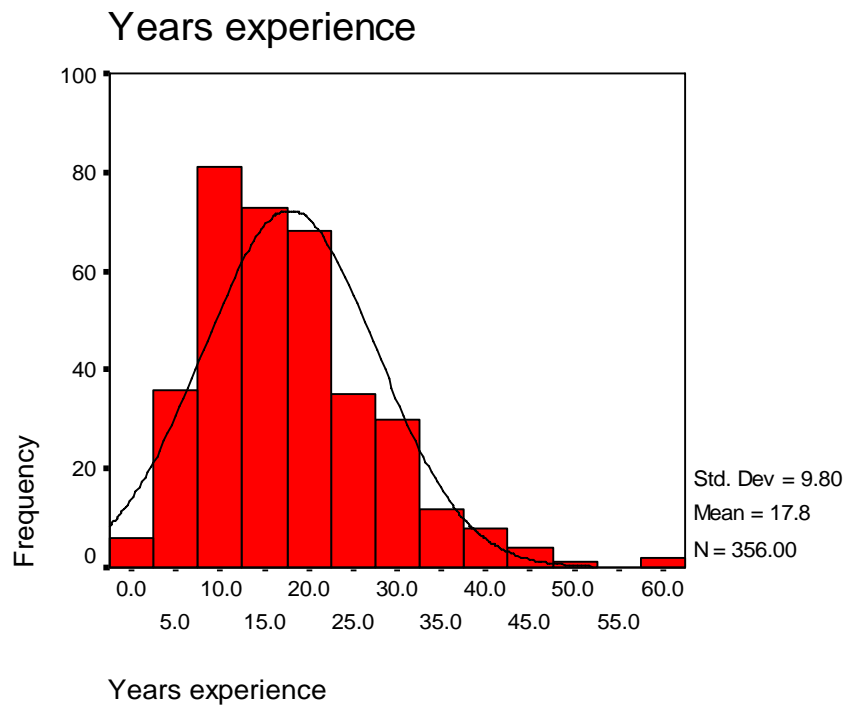


Figure 5.10

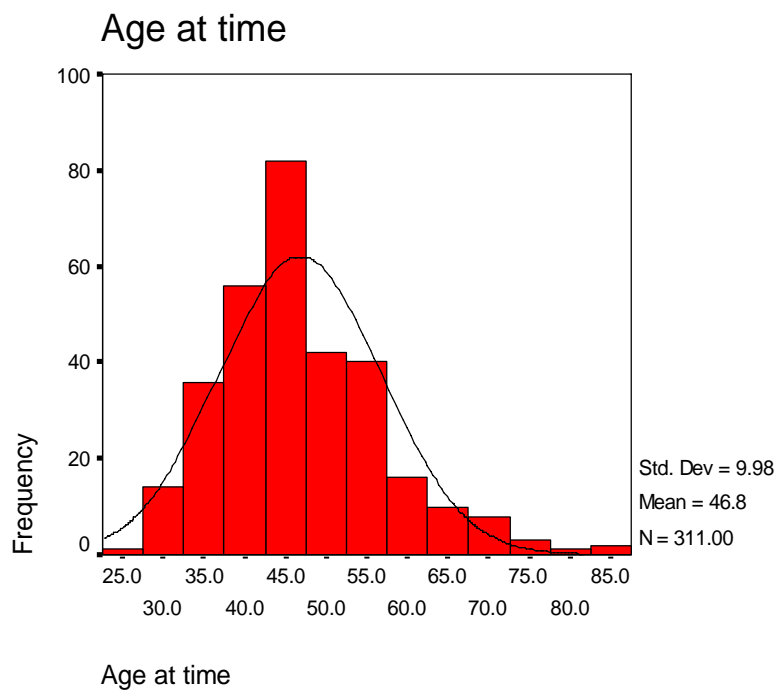


Table 5.4

Bivariate Correlations of Attorney Experience and Severity of Sanction

		Mitigating (Inexperience)	Mitigating (Any)	Aggravating (Any)	Aggravating (Experience)
Attorney Sanction	Pearson Correlation	-.092(*)	-.253(**)	.093(*)	.078
	Sig. (2-tailed)	.021	.000	.021	.053
	N	618	618	620	618

*Correlation is significant at the 0.05 level (2-tailed).

**Correlation is significant at the 0.01 level (2-tailed).

Figure 5.11

Impairment

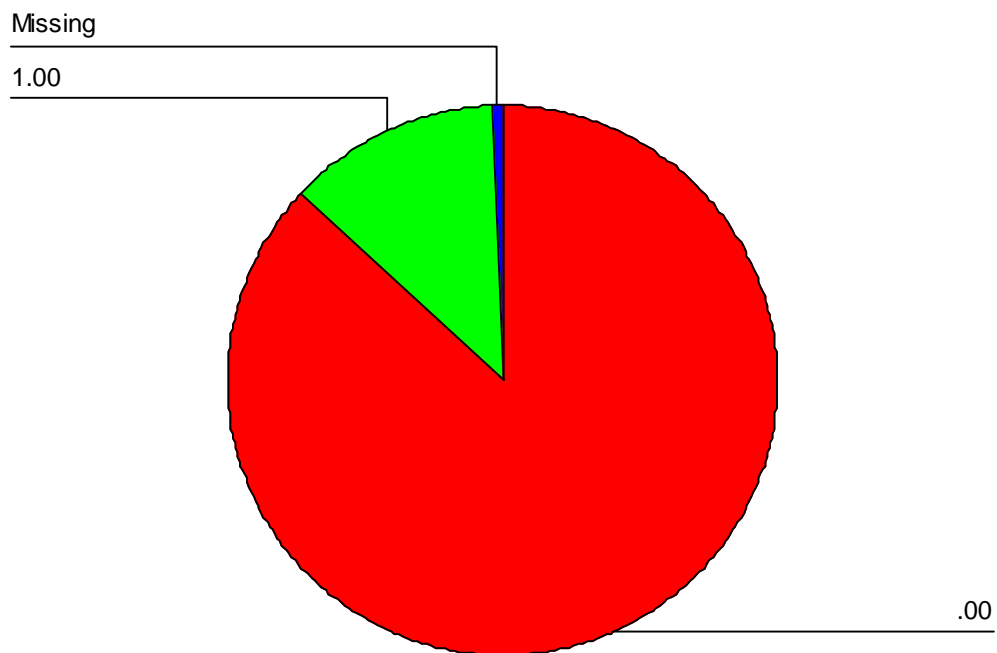


Table 5.5

Bivariate Correlations of Impairment Variables and Severity of Sanction

		Substance Abuse	Alcohol Abuse	Mental Impairment	Medical Impairment
Attorney Sanction	Pearson Correlation	-.024	-.071	-.102(*)	-.051
	Sig. (2-tailed)	.556	.076	.011	.208
	N	618	618	618	618

*Correlation is significant at the 0.05 level (2-tailed).

Figure 5.12

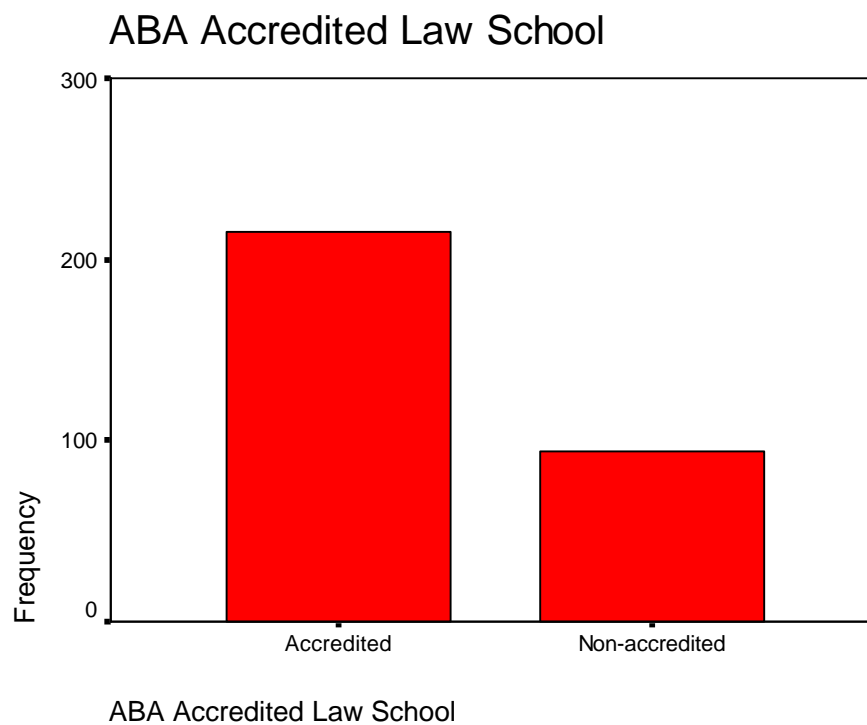


Figure 5.13

Atlanta

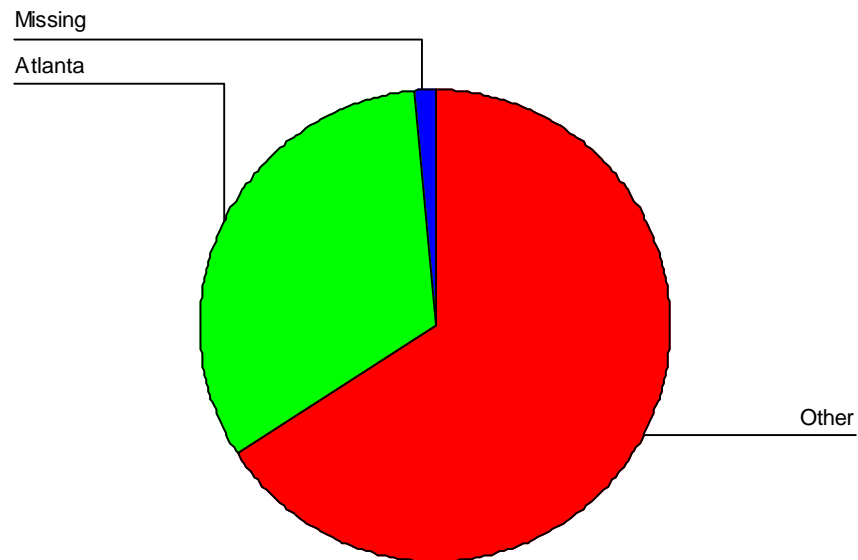


Figure 5.14

Metro Atlanta Area

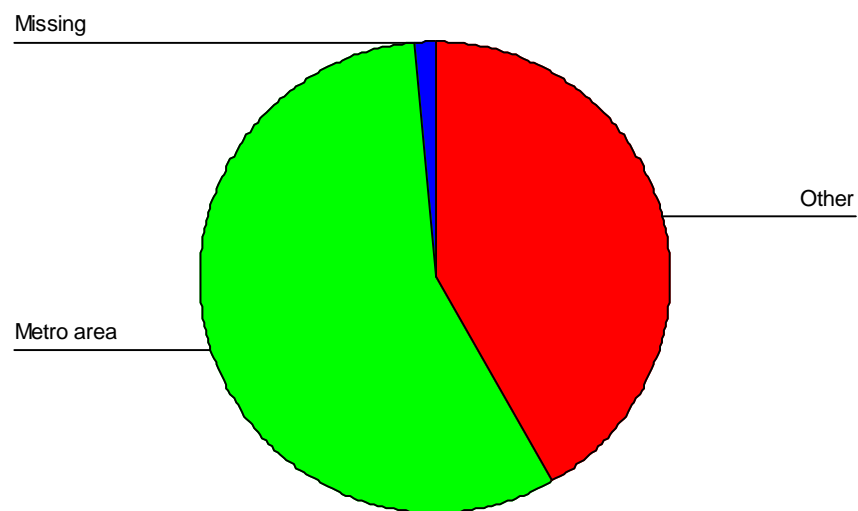


Figure 5.15

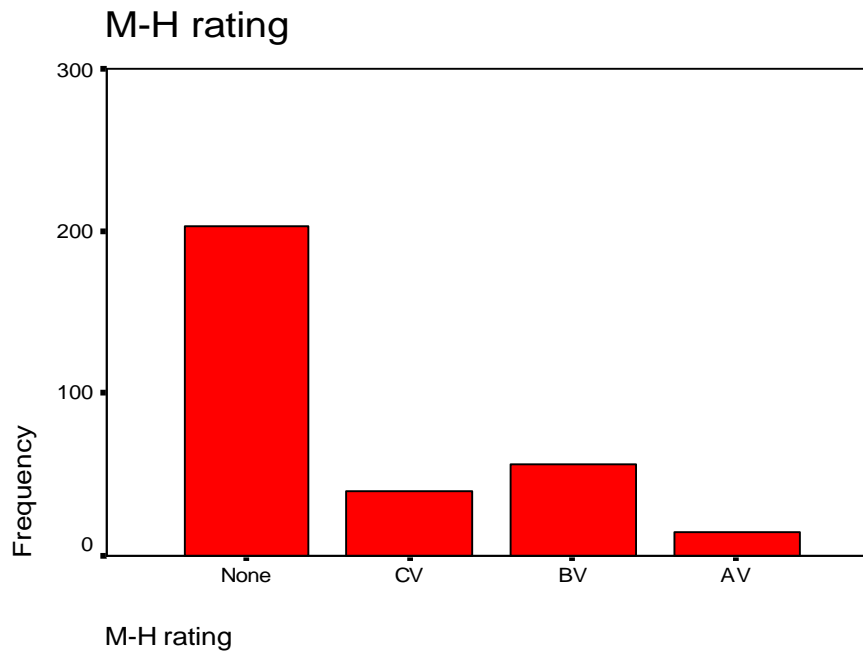


Table 5.6

General Categories of Offenses

General Conduct Variables	Description of Conduct	Frequency (%) N' 664
Attycon1	General Unprofessional Conduct	393 (65.2%)
Attycon2	Client Confidences	6 (.9%)
Attycon3	Client Finances	267 (44.4%)
Attycon4	Misdemeanor Criminal Offense	19 (3.2%)
Attycon5	Felony Criminal Offense	112 (18.6%)

Table 5.7

Offenses in Cases of Public Discipline

Conduct Variables	Summary of Standard	Frequency (%) N' 664
Standard 3*	Professional conduct involving moral turpitude.	32 (5.1%)
Standard 4*	Professional conduct involving dishonesty, fraud, deceit, or willful misrepresentation.	252 (40%)
Standard 5*	Making false, fraudulent, deceptive, or misleading communication about the lawyer or the lawyer's services.	6 (1%)
Standard 8**	Using a professional notice or designation that includes a statement or claim that is false, fraudulent, deceptive or misleading.	1 (.2%)
Standard 12*	Soliciting professional employment as a private practitioner for himself, his partner or associate through direct personal contact with a non-lawyer who has not sought his advice regarding employment of a lawyer.	3 (.5%)
Standard 13*	Compensating or giving anything of value to a person or organization to recommend or secure employment.	3 (.5%)
Standard 16*	Accepting employment when the person who seeks services does so as a result of conduct by any person or organization prohibited under Standards 12, 13, 14 or 15.	1 (.2%)
Standard 18**	False or misleading communication as to legal expertise.	1 (.2%)
Standard 21**	Failure to withdraw from representation when services are terminated by client.	39 (6.2%)
Standard 22**	Withdrawal from representation without client permission or in a manner that prejudices rights of client.	126 (20%)
Standard 23**	Refund of legal fee upon withdrawal of representation.	104 (16.5%)
Standard 24**	Aiding a non-lawyer in the unauthorized practice of law.	7 (1.1%)
Standard 25**	Practicing law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.	8 (1.3%)
Standard 26*	Sharing legal fees with a non-lawyer.	3 (.5%)
Standard 28*	Revealing the confidence and secrets of a client.	5 (.8%)
Standard 30*	Representing client when financial, business, property or personal interests of lawyer conflict with those of client.	18 (2.9%)
Standard 31**	Charging client an illegal or clearly excessive fee.	14 (2.2%)
Standard 33**	Entering into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client	5 (.8%)
Standard 35*	Accepting multiple employment when clients' interests conflict.	7 (1.1%)
Standard 36*	Continuing multiple employment when clients' interests conflict.	8 (1.3%)
Standard 37*	Representing multiple clients without full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.	5 (.8%)
Standard 39**	Aggregate settlement of claims of multiple clients without their informed consent to settle.	1 (.2%)
Standard 40*	Accepting compensation related to client matters from a non-client	2 (.3%)
Standard 42*	Practice with or in the form of a professional corporation or association authorized to practice law for a profit when non-lawyer owns interest or can direct or control lawyer.	1 (.2%)
Standard 43*	Handling a matter which he knows or should know that he is clearly incompetent to handle without associating with him a lawyer whom he reasonably believes to be competent to handle it.	5 (.8%)
Standard 44*	Willfully abandon or willfully disregard a legal matter.	234 (37.1%)
Standard 45*	Knowingly use perjured testimony or false evidence; make a false	143 (22.7%)

	statement of law or fact; participate in the creation or preservation of evidence when he knows or it is obvious that the evidence is false; counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent; knowingly engage in other illegal conduct or conduct contrary to a disciplinary rule; institute, cause to be instituted or settle a legal proceeding or claim without obtaining proper authorization from his client.	
Standard 46**	Concealing or knowingly failing to disclose that which is required by law to be revealed.	3 (.5%)
Standard 47**	Contacting or communicating directly with a client represented by other legal counsel.	2 (.3%)
Standard 50**	Engaging in undignified, discourteous or disruptive conduct which is degrading to the court or tribunal.	2 (.3%)
Standard 60**	Ex parte communications with a judge.	1 (.2%)
Standard 61*	Failing to promptly notify a client of the receipt of his funds, securities or other properties and shall promptly deliver such funds, securities or other properties to the client.	117 (18.6%)
Standard 62*	Failing to identify and label funds, securities and other properties of a client promptly upon receipt.	14 (2.2%)
Standard 63*	Failing to maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and promptly render appropriate accounts to his client regarding them.	158 (25.1%)
Standard 64*	Failing to pay any final judgment or rule absolute rendered against such lawyer for money collected by him as a lawyer within ten (10) days after the time appointed in the order or judgment.	3 (.5%)
Standard 65 */**	Commingle client funds and/or failing to account for trust property.	217 (34.4%)
Standard 66*	Conviction of any felony or misdemeanor involving moral turpitude.	160 (25.4%)
Standard 67*	Disbarment or suspension by another state.	19 (3%)
Standard 68**	Failing to respond in accordance with the State Disciplinary Board rules to disciplinary authorities.	190 (30.1%)
Standard 69*	Representing a client whose interests are adverse to the interests of a former client.	2 (.3%)
Standard 73*	Aiding in the unauthorized practice of law.	1 (.2%)

*Offenses punishable by disbarment; ** Offenses punishable by public reprimand

Figure 5.16

Trends in Dissenting

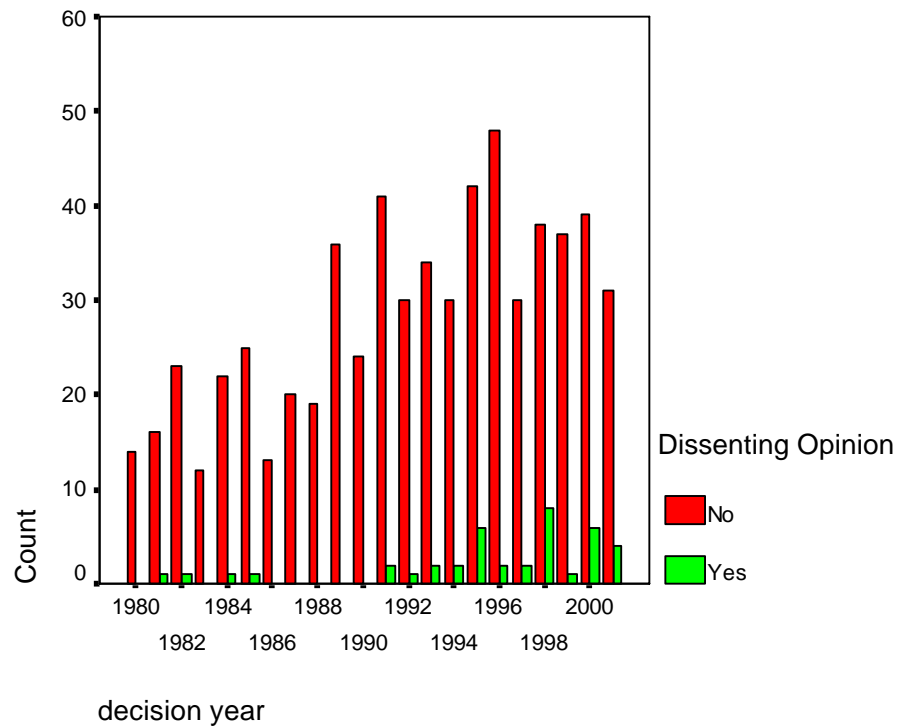


Table 5.8

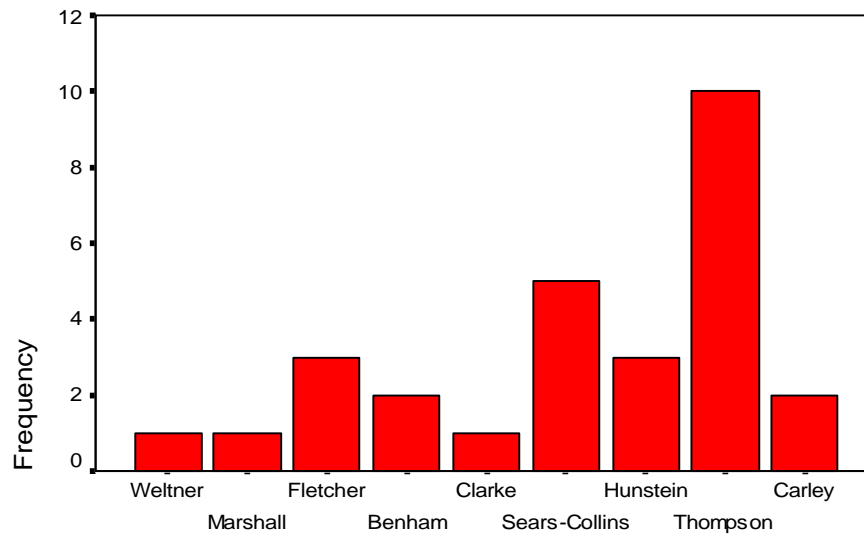
Dissenting Authors

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Hill	2	.3	5.0	5.0
	Smith	2	.3	5.0	10.0
	Fletcher	3	.5	7.5	17.5
	Hunt	3	.5	7.5	25.0
	Benham	7	1.1	17.5	42.5
	Sears-Collins	2	.3	5.0	47.5
	Hunstein	19	2.9	47.5	95.0
	Thompson	2	.3	5.0	100.0
	Total	40	6.0	100.0	
Missing	System	624	94.0		
Total		664	100.0		

Figure 5.17

First Justice Joining Dissenting Opinion

Dissenting Concur 1

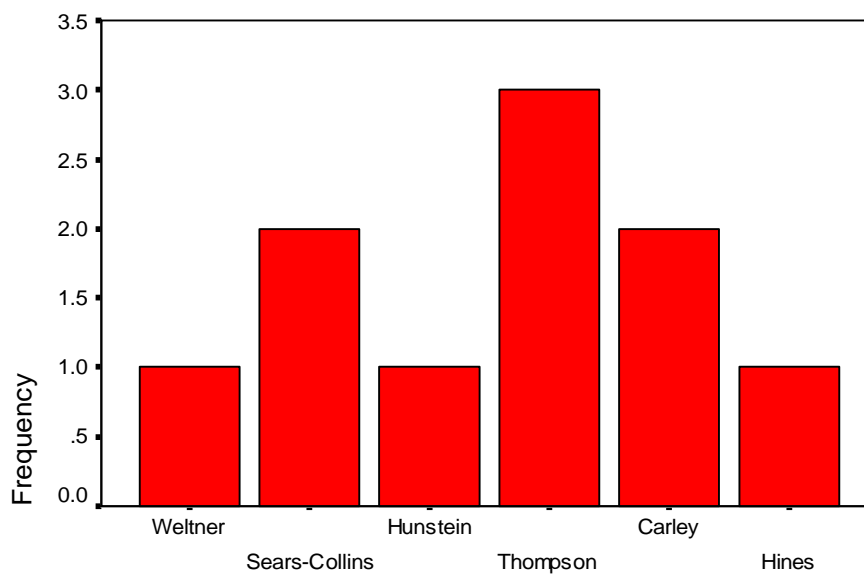


Dissenting Concur 1

Figure 5.18

Second Justice Joining Dissenting Opinion

Dissenting Concur 2



Dissenting Concur 2

Table 5.9

Dissent Severity

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Less Severe	7	1.1	25.9	25.9
	More Severe	20	3.0	74.1	100.0
	Total	27	4.1	100.0	
Missing	System	637	95.9		
Total		664	100.0		

Table 5.10

Responsive Pleading Filed

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	No	207	31.2	55.6	55.6
	Yes	165	24.8	44.4	100.0
	Total	372	56.0	100.0	
Missing	System	292	44.0		
Total		664	100.0		

Figure 5.19

Voluntary Petition

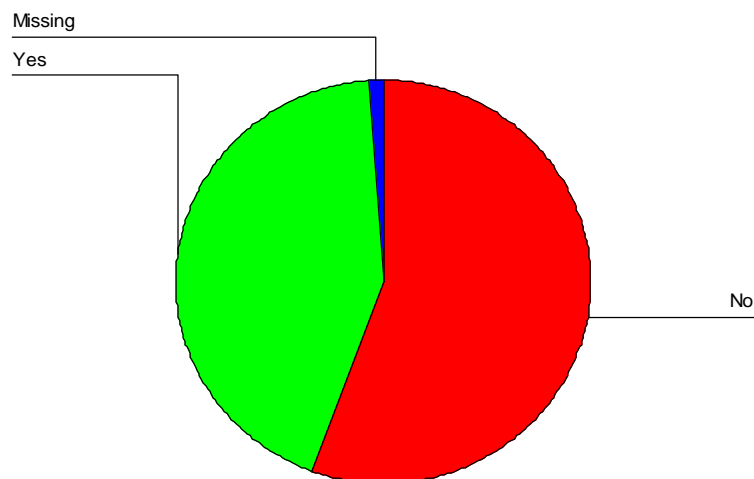


Figure 5.20

State Bar – Court Concurrence

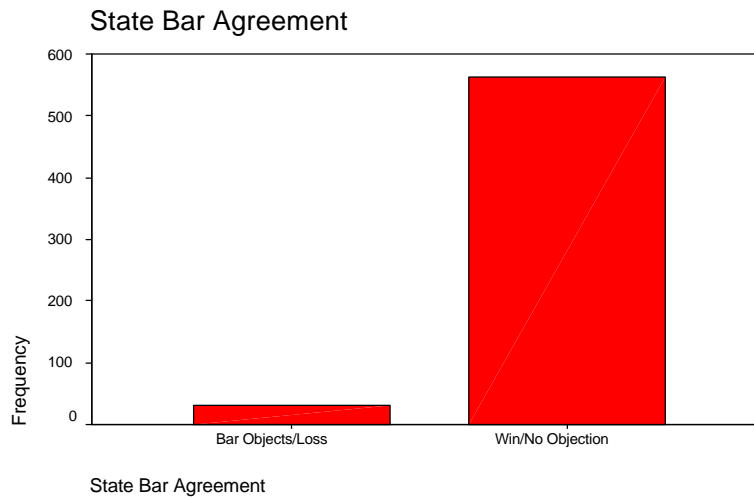


Figure 5.21

Investigate Panel – Court Concurrence

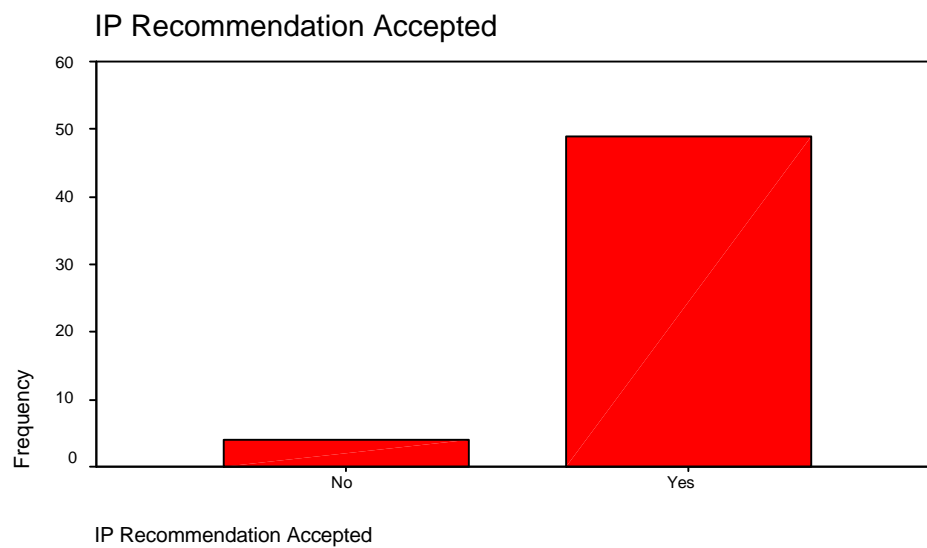


Figure 5.22

Special Master – Court Concurrence

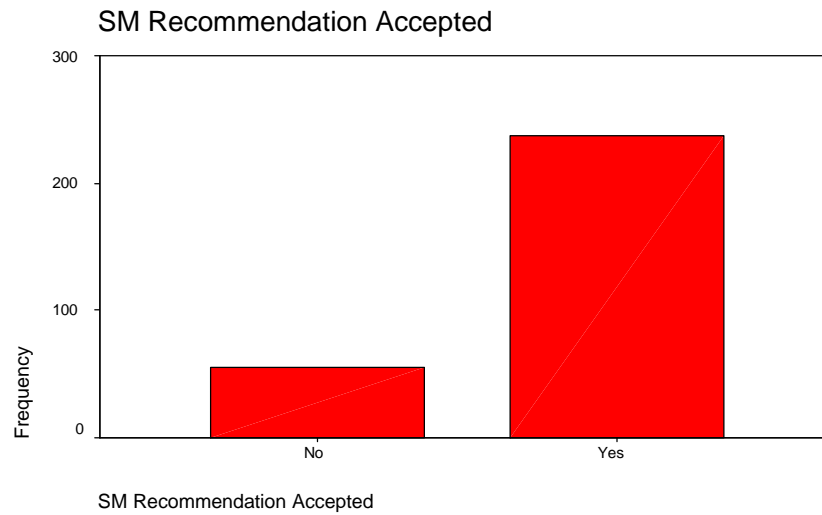


Figure 5.23

Review Panel – Special Master Concurrence

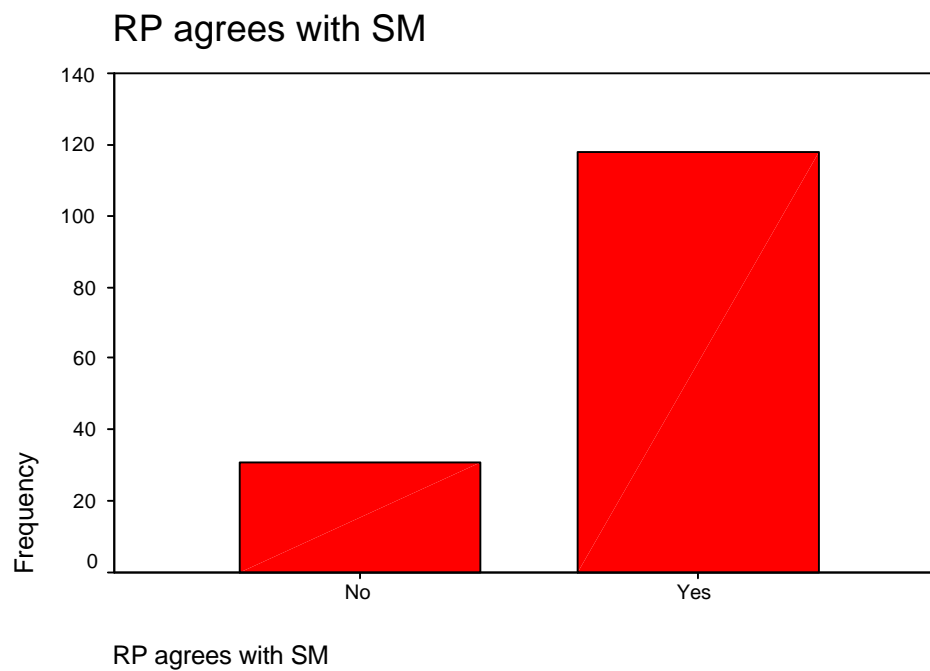
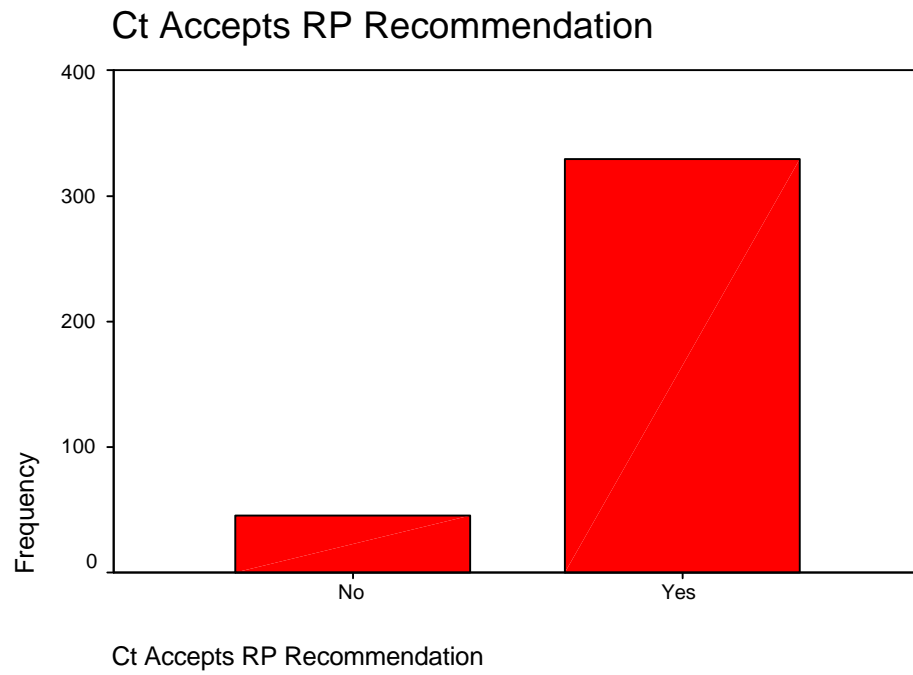


Figure 5.24

Review Panel – Court Concurrence



Chapter 6

Impact of Professional Education:

A Time Series Analysis

A. The Data

As discussed in Chapter 4, the data for the time series analysis portion of this work are obtained from the annual Reports of the General Counsel's Office for the years 1980 through 2001 and the staff of the Georgia Bar. Figures 6.1 through 6.3 compare the aggregate data from the State Bar to the data collected from Supreme Court discipline cases over the study period. These data sets are similar in trend and content. Differences do exist and some difference is to be expected since the court data are based upon the calendar year while the Bar operates and reports data based upon a fiscal year. The major difference is in total discipline cases which is, again, to be expected since the Bar data purport to capture the universe of discipline cases, including private discipline (1,811 total cases), while the Supreme Court case data set is a sample of public discipline cases (664 cases).

B. Results of Time Series Analysis

The time series model is expressed as $Y_t = \alpha + \beta_1 X_{1t} + \beta_2 X_{2t} + \beta_3 X_{3t} + \beta_4 X_{4t} + \beta_5 X_{5t} + e_t$.

The three dependent variables are: (1) annual percent of grievances filed against attorneys (number of grievances divided by active bar membership); (2) annual percent of discipline (disciplinary sanctions divided by active bar membership); (3) annual percent of suspensions and/or disbarments (suspensions and disbarments divided by active bar membership). The

independent variables are: a counter for year (X_1); two treatment dichotomous dummy variables (X_2 & X_4); two dummy variable counters of time (X_3 & X_5).

The results of the analysis for annual percent of grievances filed against Georgia attorneys from 1980 through 2001 are set forth in Table 6.1 and the trend line for this variable is shown in Figure 6.4. There was, as is graphically demonstrated in Figure 6.4, a sharp spike in the number of grievances filed in proportion to the practicing bar at and around the time of the 1985 “ethics” intervention. Overall, however, the number of grievances when adjusted for the growth in the bar has decreased over time. The spike in the trend line is also reflected in the model (See, Table 6.1) and is perhaps due to increased public/consumer awareness of either the grievance procedure or of the perceived problem of unethical conduct.

The model coefficients estimate post-intervention change in intercept and slope of the regression line. If the explored interventions have had observable impact, the coefficients should be significant and in the negative direction. For the grievance dependent variable, the coefficient for the 1985 slope is in the expected direction and highly significant. This significant slope shift indicates impact of the 1985 intervention in the form of a decrease (controlling for growth in bar membership) over time in the number of grievances filed against Georgia attorneys.

The second of the dependent variables tested is the total amount of attorney discipline, measured by the annual number of disciplinary sanctions divided by the number of actively practicing attorneys. The trend line for this variable (Figure 6.5), although more variable than the trend line for grievances, reveals that the number of attorneys being disciplined (again after adjustment for growth the bar) has also decreased over time. The decrease reflected in this trend line is again reflected in the results of analysis reported in Table 6.2. This dependent variable measures disciplinary sanctions while controlling for the increase in bar membership. The 1985

slope is, as was the case with the grievance variable, both in the expected direction and highly significant. This finding again suggests that the Bar's efforts to reduce the total volume of unethical and/or unprofessional conduct through continuing professional education has had a long term impact.

Finally, Figure 6.6 shows the trend line and Table 6.3 reports the analysis for the annual percent of prosecutions that result in the sanction of suspension or disbarment. The trend line shows a clear and steady overall increase in the annual percent of prosecutions that result in suspensions and disbarments. However, the intercept and slope variables do not even approach statistical significance. This result is unsurprising, since as seen in Chapter 5, violations that can subject attorneys to suspension or disbarment are largely violations that involve conduct not amenable to educational efforts. To probe for differences between cases involving criminal or quasi-criminal conduct and cases involving "professional" violations, the data set was split and the time series analysis re-run on subsets consisting only of violations involving criminal (subset1) or criminal and quasi-criminal conduct (subset2). However, while the coefficients were in the expected direction, statistical significance was not reached in either case. Since autocorrelation can affect findings of statistical significance and the Durbin-Watson statistic¹⁹ was suggestive of possible negative autocorrelation, the data were differenced and the model rerun with similar results for each of the dependent variables.

There are two key findings from this analysis. First, there is no support found for the perception that there has been an increase in unethical and/or unprofessional conduct among Georgia's practicing attorneys. The amount of grievance activity (measured by the ratio of grievances to practicing attorneys) is perhaps the best available overall measure of the amount of

consumer dissatisfaction with the legal profession and services. After controlling for growth in the profession, there was a decrease in grievance activity during the period of study. Likewise, the total amount of discipline, again controlling for growth in bar membership, has decreased. At the same time, there has been a proportionate increase in the number of severe sanctions (suspensions and disbarments) delivered to offending attorneys. Thus, the overall volume of bad conduct decreased while the severity of sanction for such conduct increased over the study period.

The second significant finding is that efforts to focus on the problem of unethical and unprofessional conduct in the form of the educational efforts of the Bar appear to have had a significant long term impact. More specifically, the 1984 intervention of requiring practicing attorneys to undergo annual legal ethics continuing education appears to have had a long term impact in the form of limiting and/or decreasing unethical and/or unprofessional conduct among Georgia's practicing attorneys. Of course, these findings cannot be interpreted to support the conclusion that the content of the doctrinal education itself has caused any decrease. Indeed, it is just as possible that the mere fact that the Bar instituted and enforced such a requirement sent a deterring message to practicing attorneys that the Georgia Bar recognized the national problem of unethical and unprofessional conduct and would henceforth aggressively prosecute the same. In other words, while these results show impact, they cannot establish that it was necessarily the instructional content of continuing education that caused the resulting decrease in unethical and/or unprofessional conduct.

19 Using critical values for $N=22$ and $K=5$, the Durbin-Watson statistic falls within the uncertainty zone for negative autocorrelation.

Figure 6.1

Disbarments in Bar Data vs. Disbarments in Collected Data

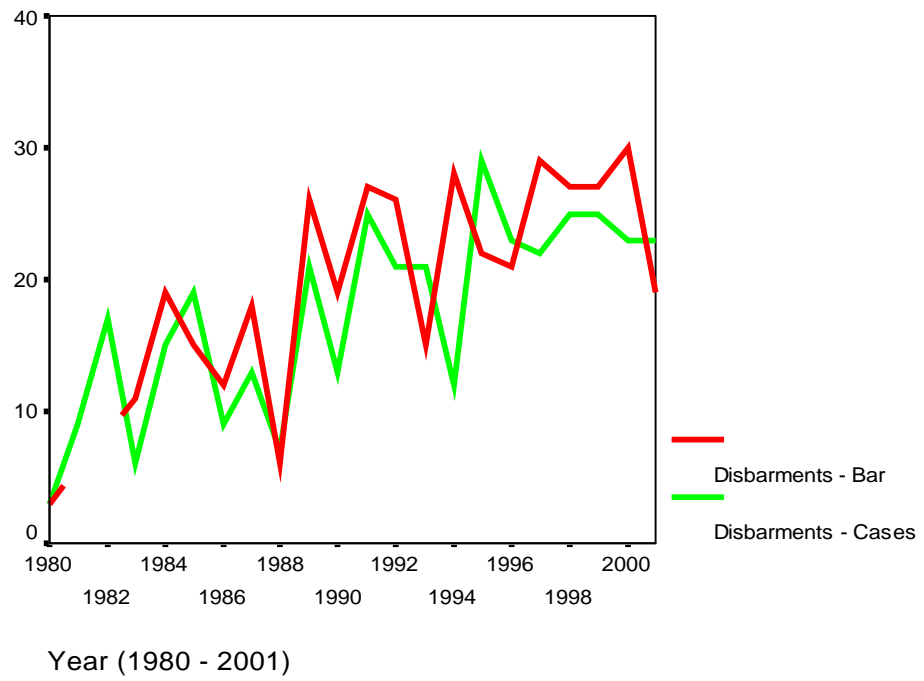


Figure 6.2

Suspensions in Bar Data vs. Suspensions in Collected Data

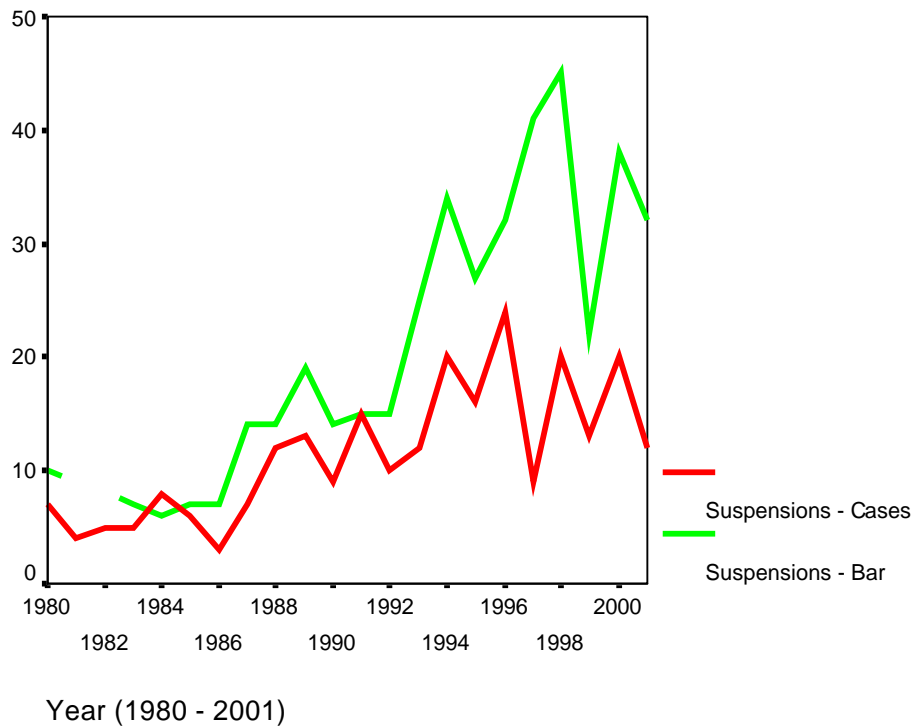
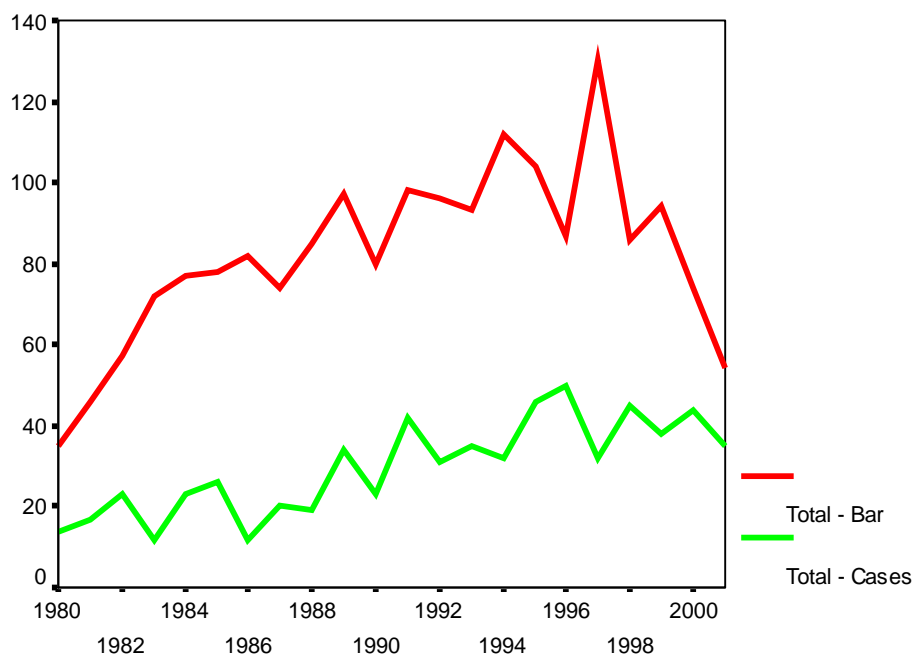


Figure 6.3

Total Bar Cases vs. Total Sample Cases



Year (1980 - 2001)

Table 6.1

Results of Time Series Analysis – Grievances

Model Summary (b)

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Durbin-Watson
1	.797(a)	.635	.521	.0153282	2.065

a Predictors: (Constant), 1991 slope, 1985 treatment, 1991 treatment, Counter, 1985 slope.

b Dependent Variable: Grievances Filed.

Coefficients (a)

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	Constant	.084	.016		5.251	.000
	Counter	.005	.005	1.388	.976	.343
	1985 treatment	.060	.019	1.161	3.228	.005
	1985 slope	-.018	.006	-4.782	-2.974	.009
	1991 treatment	.035	.015	.814	2.366	.031
	1991 slope	.010	.004	1.700	2.491	.024

a Dependent Variable: Grievances Filed

Figure 6.4

Grievances Trend Line

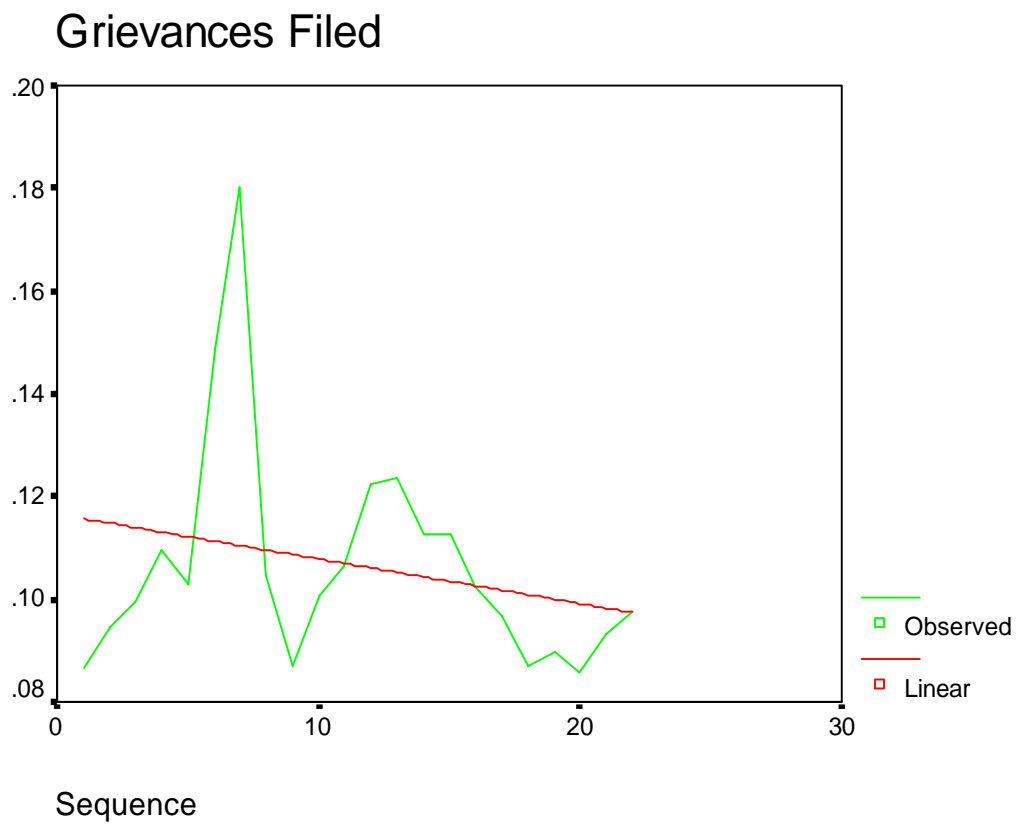


Figure 6.5

Disciple Trend Line

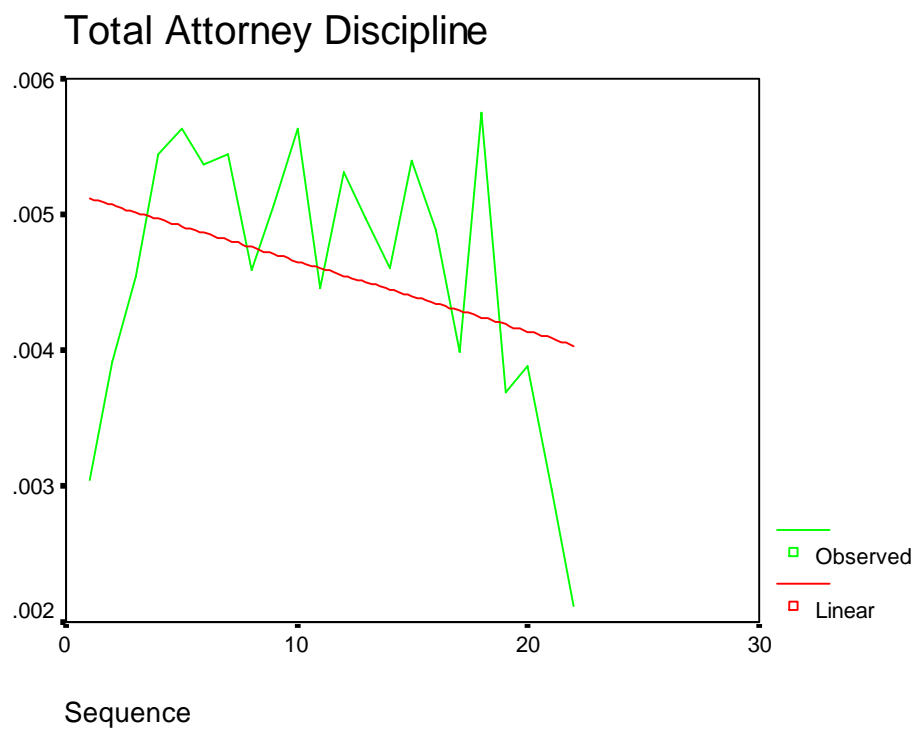


Figure 6.6

Suspension & Disbarment Trend Line

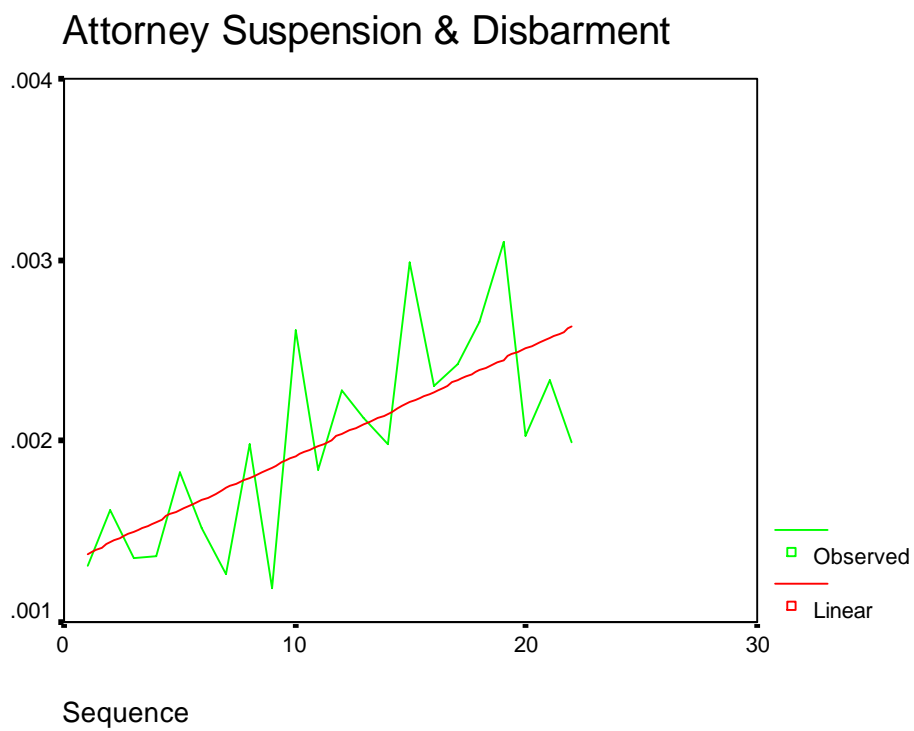


Table 6.2

Results of Time Series Analysis – Discipline

Model Summary (b)

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Durbin-Watson
1	.841(a)	.708	.616	.0006118	2.132

a Predictors: (Constant), 1991 slope, 1985 treatment, 1991 treatment, Counter, 1985 slope.

b Dependent Variable: Total Attorney Discipline.

Coefficients (a)

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	Constant	.002	.001		3.894	.001
	Counter	.001	.000	4.422	3.476	.003
	1985 treatment	.000	.001	-.181	-.561	.582
	1985 slope	-.001	.000	-4.590	-3.189	.006
	1991 treatment	.001	.001	.544	1.767	.096
	1991 slope	.000	.000	-.619	-1.014	.326

a Dependent Variable: Total Attorney Discipline.

Table 6.3

Results of Time Series Analysis – Suspensions & Disbarments

Model Summary (b)

Model	R	R Square	Adjusted R Square	Std. Error of the Estimate	Durbin-Watson
1	.762(a)	.581	.450	.0004088	2.737

a Predictors: (Constant), 1991 slope, 1985 treatment, 1991 treatment, Counter, 1985 slope.

b Dependent Variable: Attorney Suspension & Disbarment.

Coefficients (a)

Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	Constant	.001	.000		2.924	.010
	Counter	7.991E-05	.000	.941	.618	.545
	1985 treatment	.000	.000	-.316	-.822	.423
	1985 slope	5.930E-05	.000	.630	.366	.719
	1991 treatment	.000	.000	.271	.737	.472
	1991 slope	.000	.000	-.958	-1.312	.208

a Dependent Variable: Attorney Suspension & Disbarment.

Chapter 7

Perception of the Profession by Legal Professionals

The third major part of this work examines perceptions and attitudes of legal professionals regarding the state of the legal profession in Georgia. The practice areas of the practicing lawyers interviewed ranged from highly specialized big firm transactional and litigation work to the classic sole practitioner or small firm general practice. Judges were interviewed at both the trial and court of last resort levels of the state court system and the trial level of the federal system. The total legal experience of those interviewed ranged from three to forty-three years and the mean experience was 24.2 years. The range of judicial experience of those interviewed was from nine to twenty-five years experience and the mean judicial experience was 17.2 years. Perhaps due to the selection bias in favor of experienced lawyers and jurists, 90% of those with reported Martindale Hubbell ratings had either an AV or BV rating. Thirty-six percent of the persons interviewed were from the metro Atlanta area and minority lawyers and judges constituted 28.5% of those persons interviewed. The types of law practices of those interviewed were categorized into criminal/prosecutorial practice (21.4%), general practice (57.1%), specialized litigation practice (14.3%), and specialized transactional practice (7.1%). The interviews themselves (N=14) were loosely structured around those questions set forth in Appendix “B.”

A. Perceptions of the overall “state of the profession.”

The rather low esteem in which the profession is held by the non-legal community is well established. How do professionals perceive the state of the legal profession in Georgia?

Generally those interviewed, both lawyers and judges, believe that the vast majority of lawyers in Georgia are honest, ethical and professional. Interviewees were asked, if they felt comfortable doing so, to rate both the professionalism and ethics of Georgia lawyers on a scale of one to ten, with ten being the highest and ideal state. Ratings for professionalism ranged from 3 to 8 with an average rating of 6.6. Ratings for ethics ranged from 4.5 to 9.5 with an average rating of 7.25. Interestingly, for several of those interviewed, the distinction between professionalism and ethics was of little significance. While some saw clear differences between professional conduct and ethical violations, others saw it as a theoretical distinction without practical difference. To these persons, lawyers who are unprofessional are likely to be unethical and those who are unethical are *per se* unprofessional. In other words, there are “good” lawyers and “bad” lawyers. Good lawyers are ethical and professional; bad lawyers are either unethical or unprofessional.

Even given the high overall evaluation of most in regard to the general state of professionalism and ethics in the legal profession, all those interviewed identified problems and the need for improvement in both areas. Ethics violations were seen as inevitable to the extent that those violations were the result of character flaws and criminal behavior. As one interviewee put it, “thieves are thieves” whether they are lawyers, doctors or accountants and there will always be some in any profession who will abuse their positions and prey on their clients. Of those disciplined in the study sample, 25.4% were for criminal violations (Standard 66) and 16.5%, 2.2%, 18.6%, and 34.4% (Standards 23, 31, 61 and 65 respectively) were for conduct relating to client finances of, or potentially of, a quasi-criminal nature. While some “defect of character” violations was to be expected, particular concern was expressed by those interviewed in regard to deteriorating professionalism and ethical violations relating to willful misrepresentation (primarily Standards 4 and 45) and competency (primarily Standards 43 and

44). Again, in the study sample Standard 4 was allegedly violated in 40%, Standard 44 in 37.1%, Standard 43 in .8%, and Standard 45 in 22.7% of the cases.

According to one of the most experienced jurists interviewed, while the majority of lawyers are still “honest and honorable,” there is a significant decrease in civility and professionalism. The professional norm has gone from trusting your fellow professional until that trust is proven to be misplaced to one of initial wariness in which there is no initial expectation and assumption of utmost honesty and professionalism. Perhaps the most troubling thing to this jurist is that good lawyers and judges have come to “accept the way things have become.” This concern was echoed by another jurist who believes that lawyers can no longer take what another lawyer tells you “to the bank.” Several of those interviewed cited *sua sponte* the failure of judges to police and enforce professional norms in their courts as a significant contributing factor to both professional and ethical problems. Some of the lawyers and judges likewise criticized themselves and their peers as being unwilling to get involved (in the case of lawyers) by reporting violations and being reluctant (in the case of judges) to sanction lawyers for violations.

Indeed, one lawyer interviewed stated that she saw more unprofessional conduct from bench to bar than among lawyers and another stated that the first thing that needed to be done to improve professionalism was to improve the professionalism of judges in terms of their professional duties to oversee the professional conduct of those practicing in their courts. The concern over a perceived failure of judges to police their courts appears to be widespread – in 2003 the litigation section of the Atlanta Bar Association passed a Resolution in which the Association “respectfully requests and strongly encourages the members of the Georgia judiciary to more effectively sanction in a meaningful way those who clearly and convincingly materially

misrepresent the facts or law . . . or who engage in significant discovery abuses.” (Resolution of Atlanta Bar Association Litigation Section, 2003).

B. Perceived trends in professionalism and ethics.

Similar results were obtained when interviewees were asked whether or not they had discerned any trends in professionalism and ethics over the course of their careers. Fifty-three percent reported a perceived decline in both professionalism and ethics over the course of their careers. Sixty-nine percent reported only a perceived decline in professionalism. Thirty percent felt there had been no significant change in professional and ethical conduct over their careers or that they had been practicing an insufficient time to have an informed opinion. The majority of those interviewed (79%) felt that the profession’s problems are caused by only a small number of unethical and unprofessional lawyers. Objectionable conduct is seen as being largely limited to a small number of lawyers and not as pervasive throughout the bar. In other words, for these professionals, the problems in the profession are not thought to be the result of multiple and occasional violations by any significant percentage of practicing lawyers.

However, the great majority of those interviewed also felt that this small number of “bad” lawyers has increased over the course of their careers and continues to increase. For some this increase was limited to a particular type of lawyer and for others this was seen as merely a by-product of the growth of the bar with there being no percentage increase in the numbers of unprofessional and/or unethical lawyers. No interviewee went so far as to say that they believed that unprofessional and unethical conduct was “pervasive” in the profession. However, a significant minority (21%) of those interviewed concluded that the problems with professionalism and ethics cannot fairly be traced just to a small group of lawyers. As one lawyer put it, the problem is “more than isolated, but less than pervasive.” For these

professionals the problems, again especially with regard to professionalism, are infectious and growing. One jurist speculated that more problems are becoming apparent with professionalism than ethics since, in the case of unethical conduct, penalties are severe enough to provide some deterrent effect. On the other hand, professional violations are largely unreported and unaddressed by the bar and by the bench.

While professionalism and ethics are perceived to be in the decline, there was a split in regard to whether the technical competency of the bar has increased or decreased. Technical competency is, of course, a component of both ethics and professionalism. An incompetent lawyer who represents a client in a field in which he or she knows that they have no business practicing violates Standard 43 of the disciplinary rules. Technical competence was seen by some clearly to have increased. Those that disagreed are of the opinion that younger lawyers are increasingly unable to spot the “crux of arguments” and do not recognize the facts that are truly important to their cases. Perhaps predictably, this disagreement occurred primarily between those whose practices and dockets are more specialized (who perceive competency among specialists to have increased) and those whose practices and dockets were more general in nature (who noted increasing problems with the competency of younger lawyers). Those in specialized practices who perceived a decrease of competency attributed that decrease to the entry into the market of general practitioners who were attempting practice “over their heads” in a specialized area. In this regard, a jurist interviewed offered the explanation that increasing specialization has rendered the true “general practitioner” an endangered if not extinct species. Assuming there is general practice market shrinkage, some lawyers may be setting themselves up for professional and ethical difficulties related with competency by attempting to handle matters that should be referred to specialists.

How do these perceptions of changes and trends compare to the study data? Again, when adjusted for membership growth the data do not support the proposition that there has been any dramatic and disproportionate increase in unprofessional and unethical conduct. Of course, as with any data, they do not tell the whole story. The data should be a good indicator of the increase (or proportional lack thereof) of unethical conduct directed towards clients. The disciplinary system is driven by client grievances and there is no reason to believe that clients have become less likely to report violations over time. However, as several of those interviewed noted, there is a reluctance among many professionals to engage in lawyer on lawyer or judge on lawyer reporting of violations. Thus, violations that do not directly and materially impact clients may go unreported. This is especially true in the realm of professionalism. Indeed, clients can be totally unaware of professional violations that are lawyer to lawyer or lawyer to judge and out of client sight (e.g., unprofessional conduct in court in a motion hearing or in regard to a discovery dispute) or can even tacitly or implicitly encourage these violations if they are perceived to promote their interests.

C. Characteristics associated with unprofessional and/or unethical conduct.

Is unethical and/or unprofessional conduct perceived to be associated with any particular type of attorney? The majority of those interviewed associated such conduct with one or more attorney characteristics. The characteristics noted most frequently were: younger/less experienced lawyers (in the context of both ethical and professional problems); sole or small firm practice (in the context of competency problems); metro lawyers (in the context of professionalism problems); African-American lawyers (in the context of both ethical and professionalism problems). Interestingly, only one person interviewed identified the quality of law school as a characteristic they suspected was associated with increased unprofessional and/or

unethical conduct. For the majority of those interviewed professionalism problems in the form of a lack of civility, respect for fellow professionals and the court, and untoward contentiousness to the detriment of client interest were associated with inexperienced, solo or small firm, lawyers from the metro Atlanta area. Why these characteristics? For most the explanation is the unlucky combination of all three factors.

1. Professional experience.

Those “hanging out a shingle” in any locale are seen as being woefully unprepared to practice law and inherently dangerous to the unsuspecting public. Law schools are perceived to do a good job in educating and producing academically qualified candidates for bar membership. However, these same candidates are also perceived to be vastly under-prepared to “practice” law and ignorant of professional norms and expectations. As one lawyer put it, they are entering a world in which there are “unwritten rules” of conduct which must be imparted either through mentoring or hard experience. Another was of the opinion that newer lawyers, especially within the metro area, appear “more willing to fudge” and that they often express some surprise when an “old school” lawyer is professionally accommodating without confrontation and written confirmation. Others felt that the problems associated with inexperienced lawyers could be at least partly due to increased economic pressures and mounting initial law school debt faced by new lawyers and an associated impatience on the part of new lawyers to “put in the time” necessary to build a practice.

This perception was not directly supported in the study data if (as one interviewee did) one defines an inexperienced attorney as one with five years or less practice experience. The median experience of those subject to discipline was sixteen years and the mean was eighteen years. One factor that might help explain this discrepancy was indirectly offered by a member of

the bar's office of general counsel who commented that they rarely publicly discipline any one who has not already had one or more disciplinary problems and run-ins with the disciplinary system. Although repeat offenders were not common in the public discipline cases in this study, private discipline is confidential and the data only reflect past discipline to the extent that the court makes specific reference to it as an aggravating factor. Thus, the fact that an attorney is not sanctioned until he or she has been practicing for an average of eighteen years before being before the Supreme Court for public discipline does not exclude the possibility that he or she was a "problem child" for many prior years. Another likely factor is that the public discipline cases studied probably do not capture much of the unprofessional conduct that does not directly relate to or harm clients. This conduct is deemed to be less serious and, if reported or sanctioned at all, it is likely to be dealt with through private and confidential discipline.

2. Sole practitioners, small firms and small town practice.

Sole practitioners or small firm lawyers often have no one to instruct them as to prevailing professional norms of conduct. Sole practitioners are without partners or professional employers with whom they have a fiduciary relationship and can rely upon for instruction and support. In small firms, economic, time and billing pressure can prevent sufficient instruction and if the "instructor" him or herself never received sufficient indoctrination, the cycle can perpetuate with new lawyers receiving no or improper instruction as to norms of conduct. Larger firms can utilize formal or informal mentoring programs. However, in order for these programs to be effective, large firms must commit to relieving new lawyers of sufficient billing pressure to have the time to take full advantage of these programs. The problem of flawed instruction also still exists in large firms. By way of illustration, one judge interviewed noted that some large firms have occupational cultures that encourage "scorched earth" litigation tactics and that these

tactics appear to be passed on to new lawyers through socialization. Mentoring can, therefore, certainly instill improper as well as proper norms of conduct.

Sole or small firm practice can sometimes be mitigated by the presence of a strong and closely connected local legal culture and active and cohesive local bar organization. However, even in smaller communities this local legal culture and community have been, according to some interviewed, weakened by increasing specialization. Whereas lawyers would once primarily deal with the other lawyers in their locale as generalists and handling a wide variety of client affairs, specialization can result in lawyers in different practice areas who may have offices a block apart in smaller communities but have no or very little professional contact. Interestingly, there may be enough specialization to break down local ties (e.g., a small town lawyer may practice only real estate law or have a workers' compensation practice) but not the extreme degree of specialization necessary for a separate and discrete community to form (e.g., lawyers practicing only complex tax or securities law in large metro law firms).

When the topic shifts to ethical concerns, and especially conduct related to incompetence, preparedness, and "being in over one's head," the focus shifts to sole and small firm lawyers. Indeed, for most interview subjects unethical conduct related to competency was primarily associated with sole and small firm lawyers. Sole practitioners and small firm lawyers, sometimes facing significant economic pressure, were seen by several interviewees as having a tendency to "spread themselves too thin" with resulting competency problems both in the form of operating outside of their expertise and cutting corners in providing legal services to their clients. Why would such conduct be associated with this type practice? One possibility, as pointed out by one large firm lawyer, is a correlation between inexperience and sole and small firm practice. There may be just as many (or more) inexperienced lawyers in large firm settings;

however, the inexperienced in large law firms acquire significant responsibilities more slowly and within a system of institutionalized supervision, checks and balances. Thus, there is probably less opportunity for the inexperienced to engage in unprofessional and/or unethical conduct in a large firm setting. This is consistent with the data in that firms with membership of over 25 lawyers accounted for only 2.4% of those disciplined.

3. Sole practitioners, small firms and metropolitan practice.

Larger firms in the metro area have their own firm institutions and culture. Moreover, the extreme specialization in large law firms can also create its own community. As one lawyer of highly specialized transactional work in a large firm explained, when there is a limited number of lawyers practicing in a highly specialized area, there is both the opportunity and necessity to develop closer professional relationships. A lawyer in this type of practice may spend more time with lawyers from the relatively few other firms with lawyers in the practice area than the vast majority of the dozens or hundreds of other lawyers in his or her firm. Again, of course, firm culture can cut both ways in creating and enforcing norms of conduct and can promote professional or unprofessional conduct.

The loser in this scenario is the sole practitioner or small firm lawyer in metropolitan areas. These lawyers can have little or nothing in the way of firm support or mentoring and the sheer size of the legal community hinders the development of community relationships. As pointed out by several interviewees, there is a natural, human reluctance to offend those who you will be dealing with on a continuing basis. As one lawyer put it, “you don’t ____ with those you will see next week.” If lawyers practice under circumstances in which they will rarely if ever have to deal with another lawyer or judge again in their careers, this restraint mechanism is largely ineffective.

The data strongly support the perception of sole practice or small firm practice as a characteristic of those disciplined. Sole practitioners or members of law firms with less than 10 members make up the great majority of those disciplined in the data. However, sole or small firm practice is not correlated with small town practice with slightly more than half of those disciplined being from the metropolitan Atlanta area. Lawyers from the metro area appear to be represented in the public disciplinary data roughly in proportion to their membership in the bar. Thus, while certainly not conclusive, the data are certainly consistent with the perception of many of those interviewed that it is the unhappy correspondence of sole or small firm legal practice in a large metropolitan setting that contributes to unprofessional and unethical behavior and the likelihood of disciplinary prosecution and sanction.

4. Race and gender.

Gender was generally not associated by those interviewed as being related to the likelihood of professional discipline. Those who mentioned gender at all were of the opinion that men are disciplined more frequently than women and experience professionalism problems more frequently for the simple reason that most lawyers are still male. No one was of the opinion that women experienced difficulties with professionalism or were disciplined for ethical violations in disproportionate numbers given their representation in the bar. The data confirmed that women are sanctioned for professional and ethical violations less frequently than men. However, although the data on female bar membership are incomplete, the data that do exist suggest that over the study period female membership in the bar has steadily grown at a rate that surpasses the number of female bar members subject to professional discipline. One female interviewee (a sole practitioner), although she would not necessarily expect that female bar members would be disciplined less frequently, provided a possible explanation for such a

finding. In her opinion, women lawyers are both less likely to “hang out a shingle” than male lawyers and more likely to avoid practices (such as litigation) which might be more likely to propagate client grievances. Thus, women lawyers may not share the other characteristics associated with disciplinary problems, especially the sole practitioner characteristic, in the same proportion as male lawyers. Others might argue that women lawyers “speaking with a different voice,” might simply be less likely due to gender difference to engage in unprofessional or unethical conduct. Unfortunately, neither explanation can be directly examined with the available data.

The perception of disproportionate professional and ethical problems among African-American lawyers cannot be evaluated by any existing and available data. Twenty-one percent of those interviewed did, however, report a belief that African-American lawyers commit and are disciplined for ethical and/or professional violations at a significantly greater rate than would be expected given the percentage of African-American lawyers in the bar. Two of the interviewees directly involved in the disciplinary process noted that both some members of the Supreme Court and the State Bar Board of Governors are concerned over what they perceive to be a disproportionate number of violations among African-American attorneys. One of these two noted that while no formal data are kept, during one recent disciplinary year thirteen (13) of the twenty-five (25) persons disbarred were African-American attorneys. Another jurist noted that two of the three African-American lawyers practicing in that community had experienced disciplinary problems and ultimately been disbarred.

Possible explanations for any such disparity include: (1) discrimination in prosecution; (2) discrimination in adjudication; (3) disproportionate numbers of African-American attorneys who are concurrently metro, inexperienced, and/or sole practitioners or small firm attorneys; (4)

disproportionate numbers of African-American attorneys who also have some unidentified characteristic that contributes to unethical and/or unprofessional conduct. While none of these explanations can be ruled out, some are rendered less likely than others by the nature of the disciplinary process. Discrimination in prosecution seems unlikely since the prosecutorial process is driven by client grievances and since frivolity reviews are made upon a record basis. Discrimination in adjudication is also rendered less likely by the fact that cases are decided by the Georgia Supreme Court based upon a record that does not identify attorneys by race.

The most likely explanation appears to be, as one interviewee put it, that African-American lawyers otherwise and independently of race “fit the profile” of those likely to run afoul of professional norms and ethical rules. Again, although the data for verification are not available, it is reasonable to assume that most African-American lawyers practice in the metro Atlanta area. The oldest (since 1947) and largest minority bar association in Georgia, the Gate City Bar Association, is based in Atlanta. It is also reasonable to suppose that African-American lawyers are, due to historic obstacles to entry and opportunity in the profession, both more likely as a group to have fewer numbers of experienced practitioners and less likely as a group to practice in large firm settings.

There are, of course, other possible explanations if, in fact, African-American lawyers are disproportionately committing and being disciplined for professional and ethical violations. For example, one of those interviewed directly involved in the disciplinary process also reported a belief that professional and ethical problems seem to be unfailingly associated with stressful and/or traumatic events in lawyers’ personal lives. Unlike race, these problems are reflected in the data (See, Chapter 5, *infra*) and it is also possible that African-American lawyers disproportionately experience these difficulties.

5. Legal education.

Only one person interviewed identified law school education, and more specifically graduation from a non-ABA approved law school, as a characteristic associated with disproportionate professional and ethical violations. Such a relationship, of course, assumes that professionalism and ethics are things that are and can be “taught” through formal education and training and that non-ABA law schools would not do as good a job as ABA approved schools in providing such education and training. Another possible explanation for the failure of those interviewed to identify non-ABA law school education as a factor may be due to the scarcity of such schools and their graduates in recent years. Again, although the membership data were incomplete, graduates of non-accredited law schools comprised a little less than one-third (30%) of all the disciplined attorneys in the data for whom this information could be found in Martindale-Hubbell. At the same time, only five percent of those passing the bar from 1996 through 2001 were graduates of non-ABA approved law schools. Thus, it does appear likely that non-ABA accredited law school graduates are (or were) disciplined in greater proportion than would be expected given their membership in the bar. This may very well, once again, be a consequence of an increased likelihood of such graduates to practice as sole practitioners and in metro areas (67% of the disciplined attorneys who could be identified as graduating from non-accredited law schools practiced in the metro area and 36% were identified as practicing in “Atlanta”).

Likewise, few of those interviewed mentioned continuing legal education as a factor in the prevention of professional and ethical violations. For those that did make mention of CLE, it was as an afterthought. The general perception was that CLE regarding ethics was maybe useful as a reinforcement of law school ethics education and MPRE (Multistate Professional

Responsibility Examination) preparation. However, no one interviewed identified the cause of most ethical violations as being the lack of exposure to and understanding of ethical canons and/or disciplinary rules. Those who mentioned professionalism CLE at all did not perceive it as effective in preventing professional and ethical violations. One jurist commented that unprofessional and unethical conduct does not appear to be the result of ignorance of proper conduct and ethical rules; rather, it appears that a growing number of lawyers have “blinders on” with regard to the rules. Another lawyer commented that today’s lawyers are “too smart and cynical” to benefit from CLE courses on professionalism and ethics.

These perceptions are not inconsistent with the findings of the time series analysis reported in Chapter 6. While there does appear to be at least some long term positive impact as the result of the bar’s formal institution of an ethics component to continuing legal education, there were no significant intercept changes in the expected direction as a result of the ethics requirement and no apparent impact whatsoever to the professionalism component instituted in 1991. As one of the most experienced lawyers interviewed put it, there are very probably positive long term benefits from focusing on and discussing issues of professionalism and ethics. However, a couple of annual hours of lectures on professionalism and ethics is not a panacea for the unprofessional and unethical conduct of bar members, and, to be fair, the bar does not hold its requirement for professionalism and ethics CLE hours out as such.

When asked the question, “if not ignorance,” what motivates these violations, most interviewed felt that the motivation for unprofessional and unethical conduct was typically unrelated to the duty and desire to zealously represent their client. Instead, violations were almost always seen to be the product of, as one lawyer put it, “the needs of lawyers and not the needs of clients.” Unprofessional conduct especially is seen as being the product of either very

basic character flaws or ego fulfillment – i.e., the desire to “win.” In other words, some see, especially in younger lawyers, a blurring of the fundamental concept of professionalism. When the legal profession becomes a business, the client’s fight becomes the personal fight of the lawyer – both win or both lose with dollars as the measure of success. There is a blurring of the line separating the client dispute and the lawyer’s professional duty and it is this very separation that allows lawyers to rise above the client fight in dealing with each other as professionals. By way of illustration, one lawyer recalled anecdotally a case in which her client lost and opposing counsel proudly announced that he “had kicked her ass.”

One jurist compared increasing unprofessional and unethical conduct in cases in which the violation could not be traced to a lawyer’s personal financial gain to conduct observed over a long period of time on the part of lawyers defending condemned criminals in death penalty cases. Many of these lawyers, convinced that the death penalty is wrong, are seen as interested more in subverting existing law than in following the law and as having adopted strategies in which the end justifies the means. Thus, for these lawyers professional and ethical violations are insignificant and outweighed by the greater good of preventing executions. What this jurist is seeing is an increased “end justifies the means” approach to law practice, with a much less noble end. More specifically, more and more lawyers appear willing to cave into client pressure to “win” at all costs, especially in gray areas where unprofessional and unethical conduct is susceptible to rationalization. This willingness to pander to clients and to do what it takes to “win” is, in turn, perceived to be directly related to economic pressures and a decline in client loyalty in which clients are increasingly willing to “jump ship” if they encounter a set back. This jurist has seen with increasing frequency instances in which a client will experience a set back in litigation (e.g., a summary judgment or other motion may be denied) fire his first lawyer(s) and

hire new counsel. If that new counsel is also unsuccessful at trial, that lawyer or firm is fired and a third lawyer or law firm is engaged to handle an appeal.

D. Methods of preventing unprofessional and unethical conduct.

Several suggestions were offered by the interviewees as potential methods through which the professionalism and ethics of lawyers can be improved by the bar. While most felt that the state bar aggressively prosecutes alleged violations, 35% cited a need for increased and more effective prosecution in order to deter violations. As might be expected, the prosecutors interviewed were both the most critical of enforcement efforts and some of the strongest proponents of strict conventional prosecutorial enforcement as the primary method for dealing with professional violations. As one interviewee put it, the best way to deter violations is the threat of “swift and sure” punishment. Others, as noted heretofore, suggested that the “weak link” in the enforcement chain was the reporting of violations and not the prosecutorial response. These interviewees pointed to the need for increased reporting of violations by the bar and bench and for judicial enforcement outside of the current disciplinary process.

Others (both members of the bench and bar) expressed frustration in regard to a perceived inconsistency in punishment for the same or similar violations based upon the bar and the courts application of the “aggravating” or “mitigating” circumstances in arriving at sanctions. When suspension was the selected sanction, there was great variability in the data in regard to length of that suspension for many offenses (especially as would be imagined for violations of those Standards, like Standard 65, that can be sanctioned by any sentence from public reprimand to disbarment). However, once again disbarment was the single most frequent sanction and its application was consistent throughout the severe and “client money” offenses (e.g., 76% disbarred in cases involving violation of Standard 66; 77% disbarred in cases involving violation

of Standard 61; 79% disbarred in cases involving violation of Standard 62; 73% disbarred in cases involving violation of Standard 63; 71% disbarred in cases involving violation of Standard 65).

Both aggravating and mitigating circumstances were cited by the court in a significant percentage (25% and 19% respectively) of cases in the data. The presence of aggravating circumstances was positively and significantly correlated (.05 two-tailed level) with severity of sanctions and the presence of mitigating circumstances was negatively and significantly correlated (.01 two-tailed level) with the severity of sanctions. The individual mitigating factors significantly correlated with severity of sanction were good reputation, no prior record, mental impairment, lack of bad intent, expression of remorse, cooperation with disciplinary authorities, and payment of restitution. The only individual aggravating factors significantly correlated with severity of sanction were lack of cooperation with disciplinary authorities, multiple offenses, and a finding of dishonest motive.

Aside from traditional disciplinary prosecution of violations by the bar, the most common suggestion for improvement was the development of mentoring programs for new lawyers. Mentoring, whether bar sponsored, intra-firm, or informal, is the process through which new lawyers can be exposed to professional norms and standards and learn those “unwritten” rules of conduct that cannot be imparted in a formal classroom setting. New lawyers may know the technical procedure for noticing a deposition or placing a matter on the court’s calendar, but knowing how to technically perform a task is in many cases not the same as knowing how to get things done without alienating co-counsel, opposing counsel and court personnel. In addition to its educational benefit, mentoring, and especially mentoring that occurs between non-associated lawyers and across firms, can help strengthen legal communities and local legal culture. Those

interviewed familiar with the bar's efforts in this regard were encouraged and hopeful that the programs would be expanded. Other less frequently mentioned suggestions included the need to strengthen local bar associations, the need to more stringently screen those who were allowed to sit for the bar, a limitation upon the number of times an applicant can sit for the bar, programs to decrease the amount of debt many new law graduates must service, increased use of the bar's law practice management program, and restrictions on legal advertising.

Once again, the great majority of those interviewed were of the opinion that the state bar does a good job in regulating the profession. As one lawyer put it, "self regulation" works and the best evidence of this is the "fact" that the "vast majority of lawyers are professional and ethical." No one interviewed perceived the state bar as a white-wash operation interested in protecting the profession at the public's expense. To the contrary, most felt that the bar was extremely adversarial and aggressive in its prosecution of alleged ethical violations by its members. If anything, there was a feeling that the bar is sometimes overzealous in its prosecution of the technical violation of professional and ethical rules. While prosecution was largely seen as appropriate, sanctioning was perceived as many times being too harsh for technical violations and too lenient for "big violations." In the data, technical violations involving client finances did make up a significant portion of the disciplinary cases (Standard 61 – 18.6%; Standard 62 – 2.2%; Standard 63 – 25.1%; Standard 65 – 34.4%).

There is little evidence that, at least in public discipline, attorneys are as a general rule "getting off easy." The majority of all those publicly sanctioned are disbarred or suspended for at least one year (See, Table 5.7). In addition, although there are isolated cases of seemingly incongruent leniency, the data do not indicate that lawyers (at least in public discipline cases) typically are given multiple chances once found guilty of serious violations. There are few

repeat offenders and disbarment is the general rule, rather than the rare exception, at the public discipline level.

In terms of the disciplinary process, there was a high degree of unanimity among all system actors in the data. Justices still rarely dissent in attorney discipline cases, although it does appear that, perhaps due to the changing composition and diversification of the bar and bench, dissent is increasing. Moreover, the Georgia Supreme Court agreed with and/or accepted the disciplinary recommendations and findings of the state bar or the system hierarchical filtering actors (e.g., special master, investigative panel, review panel) in the great majority of cases. Unanimity is, of course, a double edged sword. Unanimity is desirable in a system, but can reinforce and entrench a flawed and dysfunctional system. None of those interviewed perceived the system as seriously dysfunctional and there is nothing in the data to suggest there being a crisis in the profession.

Modifications or alternatives to self regulation were uniformly approached with a great degree of skepticism. Three of these modifications or alternatives were discussed during one or more of the interviews: increased participation of non-professionals in the regulatory process; regulation by an independent regulatory body; and regulation primarily through the tort system. The least objectionable of these was the idea that the regulatory process could be modified to include more participation by non-professionals. While this proposal was not strongly objected to, it was also not seen as likely to be particularly helpful in addressing professional and ethical concerns. In this regard, the reaction of most interviewed was that “it takes a lawyer to examine these things.” Thus, the increased involvement of non-professionals with little idea of the realities of practice was generally thought to be of little benefit.

The prospect of turning the discipline of lawyers over to an independent, third-party regulatory body was likewise not an attractive option to those interviewed. Some felt that independent regulation might be appropriate, but only as an unfortunate, last resort. As things stand, all were of the opinion that the current system, although it has problems, “works” and third-party regulation is unnecessary. As one lawyer pointed out, despite the low esteem in which the public holds the legal profession, there has been no public or consumer “outcry” for reform. Apart from the fact that, according to those interviewed, self regulation works to protect the consumer, self regulation was deemed to be important in its own right to the profession. More specifically, it was felt that no profession could be considered reputable unless it publicly condemns improper conduct and disciplines its members who do wrong. In order for the profession to survive as a “profession,” the public needs to know that the bar will police itself. Thus, independent regulation, while not objected to on workability grounds, was considered to be a last resort remedy for professional abuses. As one lawyer put it, the problems with the existing disciplinary system need to be addressed and the bar needs to fully “enforce its own rules before considering [other alternatives].”

The idea of professional regulation modeled after the existing tort system was generally thought, to put it mildly, to be a very bad idea. The first thing that most pointed out was that there is already under the current system the right to bring an independent tort action against lawyers who harm clients through their professional malpractice. According to one judge, there is no evidence that malpractice suits have, for example, improved the medical profession. Another lawyer was more emphatic in stating the opinion that medical malpractice litigation, while it works well as a conduit to transfer wealth, has “failed miserably” in addressing the short-comings of physicians and has failed to “weed out” bad physicians. The primary use of

tort actions to sanction professional and ethical violations was, moreover, seen as extremely difficult, if not impossible, because there are relatively few professional and ethical rules that define what conduct is improper with enough specificity to form the basis of negligence standards of care.

Even assuming that rules and standards could be developed, the threat of a malpractice suit is not seen as much of deterrent since, especially for lawyers, suing and being sued has lost much if not all of its stigma. Law suits, while they may compensate clients, do not provide the public and professional condemnation of disciplinary sanction. A traditional tort remedy would also not remove the “guilty” lawyer from practice, potentially giving lawyers willing to pay for the privilege the opportunity to re-offend. Moreover, the client who was allegedly harmed by unprofessional conduct in ways that cannot easily be compensated monetarily would be disadvantaged under a tort system.

One lawyer likened the tort system approach to throwing the public to the wolves. Indeed, without more comprehensive reform, another lawyer pointed out that clients would have to risk the outcome uncertainty and bear the cost of litigation, including attorney fees, in an effort to be compensated for their former attorney’s wrongful conduct. Another pointed out that such a system would suffer from the start due to the information and knowledge disparity that exists between lawyers and clients. Clients often do not know that a lawyer has been unethical (especially in the context of competency) and that this breach has harmed their interest unless they are subsequently informed of the breach and how it harmed their interest by another lawyer. Bar disciplinary counsel can provide information to the consumer in the absence of individual economic interest. There would also be little market incentive for a private malpractice attorney (again under the current tort system) to prosecute cases involving abstract interests, cases

involving small monetary claims, or cases that are difficult of proof. In sum, those interviewed who commented on the issue felt that the malpractice remedy was appropriate in addition to, but not in lieu of, a professional disciplinary system. The one partial concession to the idea was made by an attorney who was of the opinion that the malpractice remedy might be of more use as a deterrent if attorneys were required to maintain malpractice insurance.

Chapter 8

Conclusion

This study was embarked upon in order to investigate basic theoretical questions in regard to the nature of legal ethics and professional discipline and along the way to draw, for the first time, a comprehensive empirical picture of professional discipline in Georgia.

Theoretically, the fundamental question is whether the Dominant View of legal ethics, and its implications for professional discipline, professional education, and professional self regulation, is supported by what is taking place in practice in a typical disciplinary system in the legal profession. The investigation itself is three-pronged. First, the basic nature of the system was examined using both aggregate data compiled by the State Bar and original data gleaned from Georgia Supreme Court disciplinary decisions from 1980 through 2001. While this empirical investigation is “first generation” and the ability to make causal conclusions is limited, nothing similar in scope has been previously attempted in Georgia (or to the author’s knowledge in any other jurisdiction). Second, using a multiple interrupted time series analysis, the efforts of the profession to self regulate and the impacts, if any, of professional education were examined. Finally, judges and lawyers were interviewed to get some idea of how the profession perceives the problems of unethical and unprofessional conduct and the ongoing efforts of the profession to control and reduce the frequency of such conduct.

A. Who is being disciplined?

What is the profile of the attorney most likely to run afoul of the professional disciplinary system in Georgia? Statistically, this attorney, most probably a “he,” practices law as a sole

practitioner or in a small firm. Given the composition of the bar overall, he is also probably a Caucasian male. He is at the lower end of middle age, engaged in a general practice, and is not a neophyte in terms of legal experience. He is most likely either not listed in Martindale-Hubbell or, if listed, is likely to have achieved no rating. It is quite probable that he graduated from a non-ABA accredited law school, practices in the metropolitan area and has a history of recent personal problems.

The legal professionals interviewed in this study generally had a consistent intuitive understanding of the characteristics of those likely to run into professional and/or ethical difficulties. The one characteristic that they strongly perceived to be a characteristic of those committing professional violations that had no direct empirical support was the perception of the problem as being driven by “new” and inexperienced lawyers. This discrepancy is most likely due to the nature of the problems that most of those interviewed associated with “new” lawyers and the nature of the data.

First, most complained that the primary problem with these lawyers was in realm of professionalism. While professionalism and ethics certainly can and do overlap, the ethical rules do not, and are generally not designed to, primarily govern attorney to attorney or attorney to court relationships. This, of course, is one of the criticisms of the Dominant View of legal ethics. Arguably, a contextual view which placed less emphasis on establishing the ethical parameters of a lawyer’s conduct vis-à-vis his client might better address issues of professionalism. As a consequence and unlike ethical violations, professional violations have not been formally addressed in a disciplinary context and for the most part are not captured in the data. Second, the data for which attorney characteristics could be identified are of public discipline cases. Public discipline cases are historically the tip of the iceberg in the disciplinary

world and, although the frequency of private discipline is on the decline, there are a “below the water line” number of private disciplinary cases that escape scrutiny. Generally, the offenses subject to private, confidential discipline will be those cases deemed under the Dominant View to be less serious – including conduct that, while certainly “unprofessional,” does not rise to the level of an ethical violation. These two factors, separately, or most probably in concert, may explain why the data does not comport with the perception of professionals, especially the most experienced professionals, that unprofessional conduct is most commonly associated with less experienced practitioners.

B. What are attorneys being disciplined for and how are they disciplined?

Public discipline in Georgia is primarily used to deal with serious ethical violations. The majority of violations for which attorneys are prosecuted and publicly disciplined involve either conduct that would otherwise be criminal (21.8%) or involve the mishandling of client funds (44.4%). These type violations typically do not require complex ethical judgment in either the lawyer’s pre-violation determination of the appropriateness of conduct or the court’s post-violation adjudication. In addition, the proof of these violations by the disciplinary authorities would typically be relatively straight-forward. Thus, it should come as no surprise that the vast majority of sanctions that could be identified (96%) are in the form of disciplinary sanctions or disbarment with the single most prevalent sanction being disbarment (58%). Likewise, it is unsurprising that many offenders fail to respond or to present a vigorous defense and that acquittal is virtually unheard of – complete exoneration was the holding in only one-half of one percent of the public discipline cases in the data.

The disciplinary process itself is characterized by judicial unanimity and a process similar in form and outcome to criminal plea bargaining. Decisions are almost exclusively rendered on a

per curiam basis and dissent as measured by dissenting opinions, although increasing, is rare (6%). The disciplinary system, if analogized to criminal justice system models, is much more akin to an assembly line than to a due process model. In a little more than one-half of all cases the accused attorney fails to file responsive pleadings. Moreover, in approximately 40% of all cases the attorney is before the court upon a petition for voluntary discipline. Finally, and predictably, there is very little disagreement as to the appropriate sanction between the court and the state bar.

The court in its written opinions formally identified facts and circumstances as either aggravating or mitigating the severity of the offense and, therefore, the severity of the sanction in a significant percentage (25% and 19% respectively) of cases. Both the presence of aggravating factors and mitigating factors are significantly correlated in the expected direction with the severity of the court's sanction. Although this is only a correlation, the data suggests that the court is mindful of such mitigating circumstances in sentencing as: (1) the offenders good reputation; (2) lack of prior record; (3) mental impairment; (3) lack of bad intent; (4) expression of remorse; (5) cooperation with disciplinary authorities; and (6) payment of restitution. Conversely, the court would appear to place the most emphasis in aggravation upon finding a lack of cooperation with disciplinary authorities, the existence of multiple offenses, and the presence of a dishonest motive.

C. Is unethical and unprofessional conduct on the rise and does education matter?

When growth in the bar is controlled for, there is no significant increase of the number of client grievances being lodged with the state bar. Thus, while the profession has, as a consequence of growth, certainly experienced an increase in unprofessional/unethical conduct as measured by consumer complaints, this increase is not an indication that the overall ethics and

professionalism of the legal profession in Georgia has diminished over time. In other words, while the sheer quantity of bad conduct has increased, there does not appear to have been any qualitative decrease in professional ethics.

Where, then, does the perception of an unethical and unprofessional bar come from? While some members of the profession would like to attribute the increasingly negative public perception of the profession to solely to ignorance and/or a media instilled prejudice, the perceptions of practitioners cannot be discounted as easily. The sample interviewed almost unanimously believed that the profession, especially in regard to professionalism and professionalism related ethical violations (e.g., misrepresenting law to the court) are in fact on the rise and a significant problem facing the legal profession. As discussed heretofore, the most likely reconciliation between the empirical findings and this perception is that the data do not capture these types of violations well. This failure in the data is, in turn, a reflection of the lack of emphasis placed by the rules and by the disciplinary institutions upon disciplining violations that are not clear (and often criminal) violations that directly harm clients.

The lack of significant experience is not a part of the profile of the typical attorney facing professional discipline. Thus, at least facially it does not appear that practice experience, including continuing educational experience, necessarily will prevent unprofessional conduct. However, law school education, if one equates ABA approval to more effective ethics and professionalism instruction, is, again at least facially, related to the likelihood of discipline. Those who graduate from non-ABA approved law schools do appear to be sanctioned disproportionately to their bar membership. In the time series analysis utilized in this study and discussed in Chapter 6, efforts to “educate” practicing professionals in order to control or limit unethical/unprofessional conduct appear to have little impact. A certain amount of “rule based”

instruction and education is certainly necessary and valuable in helping to prevent the well-intentioned from committing ethical violations. However, it appears likely that the primary benefit of such education is reaped in law school education.

The most that can be said from the time series results is that cumulatively professional ethics and professionalism education may have some long term impact in reducing or limiting the amount of unethical or unprofessional conduct. Again, this finding does not necessarily suggest an implementation problem. In fact, the more probable explanation for this finding is the interaction of a number of factors, not the least of which is the fact that the system is, as it probably should be, geared towards preventing and punishing those severe violations that involve fraudulent if not outright criminal behavior. These are the violations that appear most frequently in public discipline and are the most common fodder for client grievances. No lawyer who steals from her client needs to be told that it is wrong to do so or that she will face severe professional consequences if and when she is caught.

D. The Dominant View, self regulation and professional education.

Under the prevailing view, the most appropriate institutional method of professional discipline is self regulation, ethical and professional rules are presumably capable of being, and should be, strictly enforced, and the understanding of these rules should curtail (although not eliminate) rule violations. Empirically, there is no evidence that self regulation has been ineffective in preventing or limiting improper attorney conduct or that it is failing. In fact, over the twenty year period of study, the bar has been able basically to stay the course despite the fact that its membership has more than doubled. Consumer complaints have not proportionately increased and professionals, especially in regard to the enforcement of ethical violations, believe that the bar is effective and aggressive in its regulatory efforts. The bar has, again when adjusted

for the growth in membership, been able to limit unethical and to some extent unprofessional conduct without there being any explosion in the numbers of those attorneys who are publicly disciplined.

The bar is perceived as being much less successful when dealing with professionalism issues. This perception probably stems from several factors. First, given the underlying premise of the prevailing view, lawyer to lawyer and lawyer to court conduct is not emphasized in the rules. Since the disciplinary system, in turn, is designed to enforce these categorical rules, conduct that is unprofessional is unlikely to be prosecuted unless it also impacts the rights of a client. This is clearly reflected in the data. At least in public discipline, the great majority of cases involve client related conduct and the standard most directly associated with professional decorum (See, Table 5.7, Standard 50) is punishable by no more than a public reprimand and was alleged to have been violated in only .3% of the public discipline cases.

Second, professionalism is in some respects more difficult to define than many ethical rules. It is relatively easy to prohibit a lawyer from stealing his client's money. It is much more difficult to set forth the parameters of acceptable professional conduct and, perhaps just as important from a disciplinary perspective, more difficult of proof. Indeed, most of those interviewed viewed professionalism as being basically the application of the "Golden Rule" to the practice setting. In other words, professionalism is contextual and may be even less amenable to categorical rules than ethics.

Finally, there is an apparent reluctance among lawyers and judges to report, and among judges to sanction, conduct that does not directly implicate client rights. This reluctance exists even though professionalism, or the lack thereof, was by far the most frequent and emphatic criticism among those interviewed for this study. This reluctance may be rooted in many factors

including, but certainly not limited to, a desire not to tattle on one's peers, a feeling that the system will not take it seriously and appropriately sanction such conduct, and/or an unwillingness to damage the livelihood of a fellow professional.

Under the prevailing view, the profession should strictly enforce and sanction rule violations. The findings of this study are generally consistent. The rules most commonly dealt with in public discipline cases (with the exception of the very broad "catch-all" rules such as Standards 3 and 4 that can conceivably cover a very wide range of conduct) are those that lend themselves most readily to categorical analysis and for which there is a relatively simplistic ethical decision calculus. There is very little dissent in the disciplinary process at any level and the Supreme Court rarely deliberates at length over guilt. The decisions are almost exclusively preoccupied with determining the proper sanction and, even when guilt is at issue, the standard is whether the rule was adhered to – not whether the conduct, albeit rule breaking, seemed likely to promote the interest of justice. This, again, is unsurprising given the existing rules which structure the prosecution and adjudication of professional violations. Finally, although there is significant citation of and apparent reliance upon mitigating and aggravating factors which would tend to support a contextual view at least in regard to the sentencing phase of disciplinary adjudication, there is little leniency in punishment. At least at the public discipline level, an attorney before the Supreme Court is almost certainly going to be significantly disciplined, and is more likely than not going to be disbarred if the conduct is subject to disbarment under the rules and involves criminal conduct or client funds.

The bar has required continuing legal education in ethics since 1984 and in professionalism since 1990. These requirements are a direct reflection of the prevailing view and, more specifically, the presumption that ethics and professionalism can be promoted, at least

partially, through traditional, doctrinal education. The contextual views of legal ethics do not discount education; however, the education appropriate under such views is not the same as the education deemed appropriate under the prevailing view. More specifically, while the prevailing view stresses doctrinal “class room” education, contextual views eschew doctrinal education in favor of experiential education. The difference between these two types of education would be akin to the difference between a class or seminar designed to educate and inform in regard to formal ethical rules and a mentoring or “apprenticeship” type program designed to educate through practice and exposure to a range of real world practice scenarios.

The evidence in regard to the utility of doctrinal education is mixed. In terms of professionalism, it has certainly had limited, if any, impact. Professionals perceive significant and increasing problems with unprofessional behavior, especially among younger attorneys who are also those who have been exposed to “professionalism” education for the majority if not all of their law school and professional careers. The 1990 introduction of a professionalism component had no discernable positive impact in the reduction of violations either short or long term. As might be expected, doctrinal education had more of an effect with regard to ethical violations with the 1984 ethical component to continuing legal education having an impact in reducing the number of violations.

The prevailing view is clearly reflected in Georgia’s professional self regulatory and disciplinary system. The system, in turn, works reasonably well when addressing ethical violations, especially those related to criminal and fraudulent conduct directed towards the consumer. The system appears to be less successful in dealing with issues of professionalism and professionalism-related ethics violations. In this regard, professionalism problems may very well be better suited to a more contextual method of education, such as mentoring. Overall,

violations are generally perceived in the profession to be appropriately and efficiently addressed, and, in the absence of significant consumer pressure for change, professional self regulation is in no danger of being supplanted.

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Appendix “A”

Code Book

Case ID: _____

Case name: _____

Case citation: _____

Year: _____

General Attorney Conduct: (1 - general unprofessional/incompetence; 2 - client confidence/records; 3 - client finances; 4 - criminal conviction (misdemeanor); 5 - criminal conviction (felony);

Ethical Standard violated: _____ (1 through 74 B corresponding to Ethical Standards violated)

Sanction: _____ (0 - none/acquittal; 1 - Formal Admonition; 2 - Investigative Panel Reprimand; 3 - Review Panel Reprimand; 4 - Public Reprimand; 5 - Suspension (5.1 - 1 year suspension, 5.2 - two year, etc.); 6 - Disbarment; 99 - Indefinite suspension).

Per Curium Opinion: 0 - No; 1 - Yes

Justice: _____

Dissent: 0 - No; 1 - Yes

Justice(s): _____

Concurrence: 0 - No; 1 - Yes

Justice(s): _____

Response by Attorney: 0 - No; 1 - Yes

Voluntary Petition: 0 - No; 1 - Yes

SM 0 - No; 1 - Yes

SM recommendation accepted: 0 - No; 1 - Yes

Reviewed by Review Panel: 0 - No; 1 - Yes

Review Panel Agree w/SM: 0 - No; 1 - Yes

Investigative Panel: 0 - No; 1 - Yes

Mitigating circumstances found: 0 - No; 1 - Yes _____

Aggravating circumstances found: 0 - No; 1 - Yes _____

Drug/Alcohol Related: 0 - No; 1 - Yes

Attorney Characteristics:

Gender: 0 - male; 1 - female

Race: 0 - Anglo; 2 - African American; 3 - Other _____

Law School: _____

Type of Practice: _____

Year Graduated: _____

Years Experience: _____ (before relevant conduct)

Year admitted: _____

Atlanta Metro area: 0 - No; 1 - Yes

Firm membership: 0 - No; 1 - Yes

Firm size: 0 - small (1 - 10); 1 - small to mid (10-25); 2 - mid (25 -50); 3 - mid to large (50 - 100); 4 - large (100-200); 5 - very large (200 plus)

Appendix “B”

Interview Questions*

- (1) Describe the nature of your professional experience.
- (2) Describe the nature of your present and/or prior legal practice (judges asked to describe their docket).
- (3) What is your opinion of the overall state of legal profession in Georgia?
- (4) Have you discerned any particular trends in the quality or nature of the professional/ethical conduct of lawyers?
- (5) Does the quality or nature of the professional/ethical conduct of legal professionals vary greatly or is it more or less uniform?
- (6) Do you think/notice that any particular type of attorney or characteristic is associated with unprofessional/unethical conduct?
- (7) Do you think that the quality of legal representation has increased, decreased or stayed the same?
- (8) What are the most effective methods of ensuring that legal professionals act professionally/ethically?
- (9) Who is/should be primarily responsible for ensuring that legal professionals act professionally/ethically?
- (10) Would professional rules of conduct or a tort system/legal malpractice system more effective in ensuring that lawyers are competent and act professionally and ethically?

- (11) Should a lawyer's duty to the profession/court/public be equal to the duty to his or her client?

*Questions used to structure an informal interview process. They may not have been asked verbatim to all those interviewed.

Appendix “C”

ASPIRATIONAL STATEMENT ON PROFESSIONALISM

The Court believes there are unfortunate trends of commercialization and loss of professional community in the current practice of law. These trends are manifested in an undue emphasis on the financial rewards of practice, a lack of courtesy and civility among members of our profession, a lack of respect for the judiciary and for our systems of justice, and a lack of regard for others and for the common good. As a community of professionals, we should strive to make the internal rewards of service, craft, and character, and not the external reward of financial gain, the primary rewards of the practice of law. In our practices we should remember that the primary justification for who we are and what we do is the common good we can achieve through the faithful representation of people who desire to resolve their disputes in a peaceful manner and to prevent future disputes. We should remember, and we should help our clients remember, that the way in which our clients resolve their disputes defines part of the character of our society and we should act accordingly.

As professionals, we need aspirational ideals to help bind us together in a professional community. Accordingly, the Court issues the following Aspirational Statement setting forth general and specific aspirational ideals of our profession. This statement is a beginning list of the ideals of our profession. It is primarily illustrative. Our purpose is not to regulate, and certainly not to provide a basis for discipline, but rather to assist the Bar's efforts to maintain a professionalism that can stand against the negative trends of commercialization and loss of community. It is the Court's hope that Georgia's lawyers, judges, and legal educators will use the following aspirational ideals to reexamine the justifications of the practice of law in our society and to consider the implications of those justifications for their conduct. The Court feels that enhancement of professionalism can be best brought about by the cooperative efforts of the organized bar, the courts, and the law schools with each group working independently, but also jointly in that effort.

GENERAL ASPIRATIONAL IDEALS

As a lawyer, I will aspire:

- (a) To put fidelity to clients and, through clients, to the common good, before selfish interests.
- (b) To model for others, and particularly for my clients, the respect due to those we call upon to resolve our disputes and the regard due to all participants in our dispute resolution processes.
- (c) To avoid all forms of wrongful discrimination in all of my activities including discrimination on the basis of race, religion, sex, age, handicap, veteran status, or national origin. The social goals of equality and fairness will be personal goals for me.
- (d) To preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.
- (e) To make the law, the legal system, and other dispute resolution processes available to all.

- (f) To practice with a personal commitment to the rules governing our profession and to encourage others to do the same.
- (g) To preserve the dignity and the integrity of our profession by my conduct. The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.
- (h) To achieve the excellence of our craft, especially those that permit me to be the moral voice of clients to the public in advocacy while being the moral voice of the public to clients in counseling. Good lawyering should be a moral achievement for both the lawyer and the client.
- (i) To practice law not as a business, but as a calling in the spirit of public service.

SPECIFIC ASPIRATIONAL IDEALS

As to clients, I will aspire:

- (a) To expeditious and economical achievement of all client objectives.
- (b) To fully informed client decision-making. As a professional, I should:
 - (1) Counsel clients about all forms of dispute resolution;
 - (2) Counsel clients about the value of cooperation as a means towards the productive resolution of disputes;
 - (3) Maintain the sympathetic detachment that permits objective and independent advice to clients;
 - (4) Communicate promptly and clearly with clients; and,
 - (5) Reach clear agreements with clients concerning the nature of the representation.
- (c) To fair and equitable fee agreements. As a professional, I should:
 - (1) Discuss alternative methods of charging fees with all clients;
 - (2) Offer fee arrangements that reflect the true value of the services rendered;
 - (3) Reach agreements with clients as early in the relationship as possible;
 - (4) Determine the amount of fees by consideration of many factors and not just time spent by the attorney;
 - (5) Provide written agreements as to all fee arrangements; and
 - (6) Resolve all fee disputes through the arbitration methods provided by the State Bar of Georgia.

(d) To comply with the obligations of confidentiality and the avoidance of conflicting loyalties in a manner designed to achieve the fidelity to clients that is the purpose of these obligations.

As to opposing parties and their counsel, I will aspire:

(a) To cooperate with opposing counsel in a manner consistent with the competent representation of all parties. As a professional, I should:

- (1) Notify opposing counsel in a timely fashion of any canceled appearance;
- (2) Grant reasonable requests for extensions or scheduling changes; and,
- (3) Consult with opposing counsel in the scheduling of appearances, meetings, and depositions.

(b) To treat opposing counsel in a manner consistent with his or her professional obligations and consistent with the dignity of the search for justice. As a professional, I should:

- (1) Not serve motions or pleadings in such a manner or at such a time as to preclude opportunity for a competent response;
- (2) Be courteous and civil in all communications;
- (3) Respond promptly to all requests by opposing counsel;
- (4) Avoid rudeness and other acts of disrespect in all meetings including depositions and negotiations;
- (5) Prepare documents that accurately reflect the agreement of all parties; and
- (6) Clearly identify all changes made in documents submitted by opposing counsel for review.

As to the courts, other tribunals, and to those who assist them, I will aspire:

(a) To represent my clients in a manner consistent with the proper functioning of a fair, efficient, and humane system of justice. As a professional, I should:

- (1) Avoid non-essential litigation and non-essential pleading in litigation;
- (2) Explore the possibilities of settlement of all litigated matters;
- (3) Seek non-coerced agreement between the parties on procedural and discovery matters;
- (4) Avoid all delays not dictated by a competent presentation of a client's claims;
- (5) Prevent misuses of court time by verifying the availability of key participants for scheduled appearances before the court and by being punctual; and
- (6) Advise clients about the obligations of civility, courtesy, fairness, cooperation, and other proper behavior expected of those who use our systems of justice.

(b) To model for others the respect due to our courts. As a professional I should:

- (1) Act with complete honesty;
- (2) Know court rules and procedures;
- (3) Give appropriate deference to court rulings;
- (4) Avoid undue familiarity with members of the judiciary;
- (5) Avoid unfounded, unsubstantiated, or unjustified public criticism of members of the judiciary;
- (6) Show respect by attire and demeanor;
- (7) Assist the judiciary in determining the applicable law; and,
- (8) Seek to understand the judiciary's obligations of informed and impartial decision-making.

As to my colleagues in the practice of law, I will aspire:

- (a) To recognize and to develop our interdependence;
- (b) To respect the needs of others, especially the need to develop as a whole person; and,
- (c) To assist my colleagues become better people in the practice of law and to accept their assistance offered to me.

As to our profession, I will aspire:

(a) To improve the practice of law. As a professional, I should:

- (1) Assist in continuing legal education efforts;
- (2) Assist in organized bar activities; and,
- (3) Assist law schools in the education of our future lawyers.

(b) To protect the public from incompetent or other wrongful lawyering. As a professional, I should:

- (1) Assist in bar admissions activities;
- (2) Report violations of ethical regulations by fellow lawyers; and,
- (3) Assist in the enforcement of the legal and ethical standards imposed upon all lawyers.

As to the public and our systems of justice, I will aspire:

(a) To counsel clients about the moral and social consequences of their conduct.

(b) To consider the effect of my conduct on the image of our systems of justice including the social effect of advertising methods.

(c) To provide the pro bono representation that is necessary to make our system of justice available to all.

(d) To support organizations that provide pro bono representation to indigent clients.

(e) To improve our laws and legal system by, for example:

(1) Serving as a public official;

(2) Assisting in the education of the public concerning our laws and legal system;

(3) Commenting publicly upon our laws; and,

(4) Using other appropriate methods of effecting positive change in our laws and legal system.