

# **TOWARD A MODEL FOR EVALUATING ATTORNEY DISCIPLINE ACROSS REGIONS: THE NINTH CIRCUIT**

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## **ABSTRACT**

This paper builds upon initial findings as a first step in building a model to assess the efficacy of attorney disciplinary systems or processes in individual states or appellate regions. Reports compiled by state oversight organizations or boards responsible for investigation and disciplinary proceedings due to complaints filed against attorneys were analyzed to begin construction of the model. The model has been expanded geographically by appellate regions. This paper examines the states located in the Ninth Circuit Court of Appeals.

**Key Words:** attorney discipline, sanctions, complaints

## **INTRODUCTION**

A recent news story about a dentist abandoning his practice and leaving his patients without completing work for which payment had been made inspired this research in the area of attorney discipline. In that case, the dentist simply relocated to another state and reportedly was granted the right to practice. Attempts by the media and a district attorney general to obtain specific information about the situation or the status of any disciplinary action from the state dental licensing agency were unsuccessful. Since the dentist voluntarily retired his license in the former state, the case was closed and didn't present an issue when the dentist relocated and applied for a license to practice. One author was personally familiar with another situation where a client had paid two different attorneys for services never received. These situations prompted the authors to begin research into complaints lodged against attorneys in the state of Tennessee and subsequent application of the disciplinary process for legal officials. The work has since expanded geographically and this paper addresses states in the Ninth Circuit.

## **BACKGROUND AND PURPOSE OF STUDY**

Attorneys licensed by a state are required to exercise ethical practices in their legal activities. The requirements in this area are established by each state's rules of professional conduct which provide guidance to attorneys practicing in the state. When a complaint is lodged, the state's disciplinary board is charged with conducting an investigation and administering disciplinary proceedings when warranted. These boards publish annual reports which provide aggregate information about complaints and proceedings. In Tennessee, for example, the Board of Professional Responsibility (BOPR) handles these duties. An annual report typically provides information such as the number of complaints filed,

the number of investigations conducted and the type of discipline rendered throughout the reporting period. Reports vary from state to state, with some states providing generous amounts of useful information and some states furnishing very little. The purpose of this study is to compile and analyze the data provided in these reports to determine whether significant relationships can be found between the nature and disposition of complaints and the general population and percentage of lawyers in a state from which the complaint originated. Patterns in the nature and disposition of cases over time will be examined to determine if regional differences exist. The ultimate objective is to extend the study to states in all regions of the country to provide a national picture of legal disciplinary practices.

## **EXPERIMENTAL DESIGN AND METHODOLOGY**

The original state-related model developed by the authors had to be significantly modified when the BOPR changed its annual reporting format by eliminating vital categories. After failing to obtain the missing data, the authors began searching for annual reports from other states. Since data were reported in various formats the authors attempted to standardize the categories. The authors will continue to access state websites to gather relevant aggregate data, but such information will be supplemented by personal contact with state bar associations or Boards of Professional Responsibility when necessary to standardize the information. When comparable data can be obtained and processed, the information should provide comparative analyses at state, regional and national levels. The intent of the analysis is to draw policy conclusions of importance to state bar associations and their ethics boards, practicing attorneys and judges, clients, and additional users of legal information. The statistical analysis will be accomplished using Excel and may gravitate to SPSS as the study proceeds.

## **PROPOSED ANALYSIS AND INITIAL FINDINGS**

State bar associations provide information about complaints filed against attorneys. This paper examines results from the nine states grouped located in the Ninth Circuit of the United States Court of Appeals, located in the western region of the nation. The Ninth Circuit includes the states of Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon and Washington. The analysis initially uses a five-year time line for years 2010-2014 but will later be enlarged to identify trends in attorney discipline. The scope will also be expanded to incorporate additional states and regions for comparison. The authors will attempt to determine whether geographic regions play a substantial role in how a complaint proceeds through the system and/or the resultant discipline.

### **Frequency of Complaints**

The initial analysis provides information related to the frequency of complaints against attorneys relative to the state population and the number of licensed attorneys in the state. The frequency of complaints in 2013 for states in the Ninth Circuit were converted to a standardized Z score per 1,000 lawyers in the state and per 100,000 population. Table I provides the rankings for these categories by Z score. The Z scores indicate that Oregon is closest to the average among Ninth Circuit states with Arizona and Nevada reporting a greater than average number of complaints filed. Alaska has the lowest incidence of complaints.

The frequency of complaints per 100,000 population was also examined using the same methodology. Washington is closest to the average in this category with Nevada and Arizona again having the highest

incidence of complaints. Hawaii leads the circuit with the lowest number of complaints filed as measured against the general population. This analysis provides a first snapshot in looking at patterns of the incidence of complaints in the region and allows comparison between specific states. The examination will grow to construct five-year trends and measure the performance of individual states over time as compared to others in the region. As the authors are currently conducting this analysis nationwide, comparisons will then be made with states in other regions of the country.

**TABLE 1: 2013 COMPLAINTS**

| <b>PART A: PER 1,000 ATTORNEYS<br/>ranked by Z score</b> |                    |                | <b>PART B: PER 100,000 POPULATION<br/>ranked by Z score</b> |                     |                |
|----------------------------------------------------------|--------------------|----------------|-------------------------------------------------------------|---------------------|----------------|
|                                                          | <b>per 1K atty</b> | <b>Z value</b> |                                                             | <b>per 100K pop</b> | <b>Z value</b> |
| Alaska                                                   | 59.33              | -0.93          | Hawaii                                                      | 18.56               | -1.17          |
| Hawaii                                                   | 62.92              | -0.88          | Idaho                                                       | 22.89               | -0.88          |
| California                                               | 79.98              | -0.63          | Alaska                                                      | 25.17               | -0.74          |
| Idaho                                                    | 99.06              | -0.36          | Montana                                                     | 31.52               | -0.32          |
| Washington                                               | 99.91              | -0.35          | California                                                  | 34.04               | -0.16          |
| Montana                                                  | 105.06             | -0.28          | Washington                                                  | 34.44               | -0.13          |
| Oregon                                                   | 135.14             | 0.15           | Oregon                                                      | 42.21               | 0.37           |
| Arizona                                                  | 215.45             | 1.29           | Arizona                                                     | 52.70               | 1.05           |
| Nevada                                                   | 263.84             | 1.98           | Nevada                                                      | 66.95               | 1.98           |

### **Other Measures of Performance**

The model will evolve to incorporate other measures of performance. The authors are currently compiling data related to the actual percentage of claims processed in each state by the various disciplinary boards. The mere filing of a complaint does not necessarily make the claim meritorious or even worthy of further investigation as scores of frivolous complaints are dismissed and many others discarded for other reasons. The claim may not have an appropriate factual basis or enough merit to satisfy the burden of proof required to proceed. Z scores for the percentage of claims processed in each state will be calculated for comparison purposes.

A third measure of performance to be studied involves the probability that sanctions will be imposed against offending attorneys. A claim might have adequate substance to survive summary dismissal but lack sufficient merit to warrant sanctions. If levied, sanctions can range from generally light repercussions, in terms of perceived implications regarding an attorney’s ability to practice, to extremely heavy consequences. Minor or less serious infractions could result in admonitions, reprimands or censures while more onerous behavior or severe misconduct can result in suspension of the attorney’s license to practice law for a defined period of time or even termination of the license for the most egregious offenses. In this category, the authors will examine the various levels of penalties administered in terms of the numbers imposed in each state in comparison with data from other states to determine whether significant differences exist in the administration of complaints and the severity of sanctions. Z scores will be constructed for the percentage of claims that receive sanctions by level of severity to allow cross-state comparisons.

## **POLICY IMPLICATIONS AND DIRECTIONS FOR FUTURE RESEARCH**

The research will be used to develop comparative data for all regions in the United States Courts of Appeal. In the preliminary collection process, the authors encountered a diverse mix of information available from state to state. The authors believe that a more consistent reporting system would be very helpful in analyzing performance in the area of lawyer discipline. The research should provide information to prompt discussion of a more uniform system of data collection and reporting among states. The authors intend to provide recommendations addressing the types of data that all state bar associations should collect to enhance future research efforts. With uniform data and benchmarks, states can measure their performance in this area as compared to other states to better assess their own performance. The findings and recommendations of this study should be especially useful to the legal and business community, including bar associations, Boards of Professional Responsibility, and Disciplinary Counsel for all states, as well as individual and business clients seeking legal representation, practicing attorneys and judges.

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