

Toward a Model for Evaluating Attorney Discipline Across Regions: The Ninth Circuit

Michael M. McKinney
East Tennessee State University

Douglas P. Dotterweich
East Tennessee State University

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. Analysis of reports compiled by state oversight organizations or boards responsible for investigation and disciplinary proceedings due to complaints filed against attorneys allowed for construction of the model. Future iterations of the model will include additional appellate regions. This paper examines the states located in the Ninth Circuit Court of Appeals.

INTRODUCTION

A recent news story about a dentist who had received payment but abandoned his practice and left his patients without completing the expected work inspired this research in the area of attorney discipline. In that case, the dentist relocated to another state and continued 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 and relocated, the prior case was not an issue when the dentist 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 their home state and subsequent application of the disciplinary process. 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. Each state's rules of professional conduct guide attorneys by providing requirements in this area. When a complaint is lodged, the state's disciplinary board is charged with conducting an investigation and administering disciplinary proceedings when warranted. These boards typically 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 determine whether significant relationships exist between the nature and disposition of complaints and the general population and percentage of lawyers in the originating state. Regional patterns in the nature and disposition of cases will also be a key focus. 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

Modification of the author's original state-related model was required when the BOPR changed its annual reporting format by eliminating useful categories. After failing to obtain the missing data, the authors began searching for annual reports from other states. The authors attempted to standardize categories since data formats varied by state. Data from state websites, supplemented by personal contact with state bar associations or boards of professional responsibility, will be combined to provide standardized state information. Such 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 in the United States Court of Appeals for the Ninth Circuit, 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. Comparisons to additional states and regions will be possible as the model continues to develop. The authors will attempt to determine whether geographic regions play a 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. Table I presents the frequency of complaints for states in the Ninth Circuit per 1,000 lawyers and per 100,000 population for 2013. Table I provides the rankings for these categories by standardized Z scores. In part A, 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.

Part B of the table presents frequency of complaints per 100,000 population 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. States in the Ninth Circuit will be compared to other regions of the country as the model continues to develop.

TABLE 1
2013 COMPLAINTS

PART A: PER 1,000 ATTORNEYS			PART B: PER 100,000 POPULATION		
ranked by Z score			ranked by Z score		
	per 1K atty	Z value		per 100K pop	Z value
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. Not all complaints are meritorious or worthy of further investigation. Many reasons exist for dismissal of claims. They may be frivolous, unfounded, or not have an appropriate factual basis or merit to satisfy the burden of proof required to proceed. Z scores will allow comparisons of the percentage of claims processed by each state.

The probability of sanctions against offending attorneys provides a third measure of performance. 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 allow cross-state comparisons of the percentage of claims that receive sanctions by level of severity.

POLICY IMPLICATIONS AND DIRECTIONS FOR FUTURE RESEARCH

Comparison of all regions of the United States Court of Appeals will be possible in the final model. 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 encourage discussion toward 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 consider collecting in order 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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