

Perceptions of the State Bar of Arizona Disciplinary Process

June 2024

Dr. Shannon Portillo
School Director and Professor, School of Public Affairs (SPA)
Arizona State University
s.portillo@asu.edu

Andrew Bertucci
PhD Student, School of Public Affairs (SPA)
Arizona State University
aebertuc@asu.edu

Dr. Susan Miller
Associate Professor, School of Public Affairs (SPA)
Arizona State University
susan.m.miller@asu.edu

Dr. Kenja Hassan
Assistant Vice President Government and Community Engagement
Downtown Phoenix Campus, Government and Community Engagement
Arizona State University
kenja.hassan@asu.edu

Acknowledgements:

This report was made possible through funding provided by the Arizona State Bar. The findings do not necessarily reflect those of the Arizona State Bar. The researchers are grateful for the input of the Diversity Committee, Board of Governors, and staff from the Arizona State Bar in crafting the survey. The researchers also want to thank those who participated in the survey. Please direct any questions or concerns to Dr. Shannon Portillo at s.portillo@asu.edu.

About the Authors:

Shannon Portillo serves as director and professor in the School of Public Affairs at Arizona State University. Dr. Portillo's scholarship explores how formal policies and rules and informal social norms shape the work of public organizations. Her research has been funded by the National Science Foundation, Women's Foundation, the Army Research Institute, and other entities. She has been recognized for her scholarship and service, recently being inducted into the Congressionally chartered National Academy of Public Administration, winning the Hobby Prize for Ethics, Leadership and Public Policy, and receiving the Steeples Service to Kansas Award. Her third book, *The Myth of Bureaucratic Neutrality: An Examination of Merit and Representation* was published with Routledge Press. Community service is a core value. Dr. Portillo served as Co-Chair of Governor Kelly's Commission on Racial Equity and Justice and was elected Chair of the Douglas County Board of County Commissioners.

Andrew Bertucci is a PhD student in the Public Administration and Policy program at the School of Public Affairs at Arizona State University. He received both his Master's in Public Administration and his BA in Political Science from the University of Kansas.

Susan Miller is an associate professor in the School of Public Affairs at Arizona State University. Her research explores the consequences of institutional and program design for policy implementation and outcomes. Her work has been published in journals such as the *Journal of Public Administration Research and Theory* and *Public Administration Review*. From 2020-2024, she has served as part of the editorial team (co-editor or associate editor) for the *Journal of Public Administration Research and Theory*.

Kenja Hassan is an assistant vice president, in the Office of Government and Community Engagement at Arizona State University. Hassan holds a B.A. in Religion from Princeton University and a M.A. in Religious Studies from Arizona State University both with an emphasis on American Indian traditions. Her writings on American Indian religious land claims have been presented before congress and published in a compilation of oral histories. Her Ph.D. is from the Edson College of Nursing and Health Innovation at Arizona State university and addresses the importance of patient-provider relationships in equitable health outcomes for patients with HIV. Dr. Hassan has served on numerous boards and committees addressing access to healthcare, affordable housing, financial literacy, and support systems for women.

Table of Contents

Executive Summary	5
Introduction.....	10
Key Findings.....	15
Perceptions of Bias.....	15
Perceptions of General Bias in the Disciplinary System by Participant Characteristics.....	17
Further Consideration of Perceptions of Bias Among those Involved in Process	20
Open-Ended Survey Responses Regarding Bias	24
Perceptions of Effectiveness of the Disciplinary Process.....	30
Perceptions of Effectiveness in the Disciplinary System by Participant Characteristics.....	31
Timeliness of the Disciplinary System	33
Perceptions of Fairness in the Disciplinary Process	33
Perceptions of Full and Fair Opportunity to Defend against a Charge.....	33
Perceptions of Fairness to Defend against a Charge by Participant Characteristics.....	34
Perception of Full and Fair Opportunity to Defend against a Complaint.....	37
Perceptions of Fairness to Defend against a Complaint by Participant Characteristics.....	37
Views on Requiring Demographic Information.....	40
Comments and Suggestions from Survey Participants	41
Conclusion	60
Appendix A: Perceptions of the Disciplinary Process Survey	61
Appendix B: Sample Excel Workbook	70

Executive Summary

This report shares findings from a survey of the State of Arizona Bar membership that aimed to better understand law practitioners' perceptions of the disciplinary process and gauge perceived disparities. While this report is focused on perceptions of bias in the disciplinary process of legal professionals, legal professionals were also asked questions about its effectiveness and fairness.

This study was created in partnership with the Arizona State Bar to assess how the membership currently views the disciplinary process and if there are concerns that would necessitate further investigation and additional data collection. Researchers analyzed the survey and written comments to assess how the membership currently views the disciplinary process and its concerns. This study does not report on actual outcomes or disparities in the disciplinary process. In contrast to neighboring states, Arizona does not have administrative data that would allow for analysis of actual outcomes or disparities in the disciplinary process.

The survey was open from Nov 29, 2023 to Jan 5, 2024. The survey was opened by 3,556 Bar members (13% of those contacted), with 3,037 Bar members starting the survey (11.5%) and 2,481 Bar members finishing the survey¹ (9.4%). In addition to responding to multiple choice questions, over 1100 respondents shared comments in an open-ended question asking for additional thoughts on the topic.

While the survey and comments highlight areas of concern, participants did provide a number of actionable suggestions for the State Bar to consider. In the report we share the statistical analysis of the survey along with analysis of the written comments. We conclude the report with suggestions the State Bar might consider moving forward. The main suggestion is that the State Bar start collecting administrative data to allow for analysis of any potential disparities in the disciplinary system. At the conclusion of the report we present a data collection plan which would allow the State Bar to collect data for assessment and ongoing process improvement.

The following are highlights from the survey findings on the perceptions of bias, effectiveness, and fairness and the related associations of those perceptions.

Perceptions of Bias

All legal professionals surveyed were asked about their perception of whether there is bias in the disciplinary system. A small minority of legal professionals surveyed thought

¹ Participants did have the ability to skip questions. So the finish rate does not mean that participants necessarily answered every question.

that the disciplinary system as a whole is without bias (19% disagree or strongly disagree with the statement there is bias in the disciplinary system), compared to 45% of legal professionals that agree or strongly agree that there is bias in the disciplinary system.²

The perceptions of bias in the disciplinary system vary by role of involvement, practice setting, practice area, race and ethnicity, and gender. By role of involvement, a higher proportion of legal professionals who report being respondents in the disciplinary process, who personally know someone who has been involved as a respondent, who report serving as a respondent's counsel, or who report involvement as a complainant in the process agree or strongly agree that there is bias in the disciplinary process compared to those who did not report that type of involvement. Additionally, legal professionals that have reported serving as Bar Counsel, serving on the hearing panel, and/or serving on the Attorney Discipline Probable Cause Committee had a lower proportion of legal professionals agree or strongly agree there is bias in the disciplinary process compared to legal professionals that have not served in those roles. In practice settings, a lower proportion of legal professionals are public lawyers or in judicial, in-house, and nonprofit settings, or those in medium (10-24) or large (24+) firms agree or strongly agree that there is bias in the system. Legal professionals who practice criminal law have a higher percentage of legal professionals who agree or strongly agree that there is bias in the disciplinary system. Legal professionals of color had a higher percentage of participants who agree or strongly agree and a lower percentage who disagree or strongly disagree that there is bias in the disciplinary system compared to white legal professionals.

Legal professionals who indicated they had been a respondent in the disciplinary process, or knew someone who had, were asked whether they (or those they know personally) experienced bias and questions regarding the sources of the perceived bias experienced. When asked about their experiences of bias as a respondent, 45.6% disagreed or strongly disagreed that they experienced bias in the disciplinary process while 28.5% agreed or strongly agreed that they had experienced bias.³ Of the legal professionals surveyed who personally knew a legal professional who has been a respondent in the disciplinary process, 34.1% agreed or strongly agreed that the legal professional experienced the disciplinary process, while 27.5% disagreed or strongly disagreed that the legal professional experienced the disciplinary process.⁴ Area of practice and firm size are most noted sources of bias, though at relatively low rates (13% among those who have

² 36% of legal professionals neither agree or disagree that there is bias in the disciplinary process as a whole.

³ 25.9% of legal professionals surveyed who have been respondents in the disciplinary process neither agree nor disagree that they experienced bias in the process.

⁴ 38.4% of legal professionals surveyed neither agree nor disagree that the legal professional they know experienced bias in the disciplinary process.

been respondents and 15-16% among those who know a legal professional who has been a respondent).

In the open-ended questions, legal professionals referenced multiple factors of perceived bias in the disciplinary system, such as bias against legal professionals as a whole, bias based on firm size, practice setting, and practice area, bias based on political ideology and connections, and bias based on identity factors (race and gender).

Perceptions of Effectiveness of the Disciplinary System

Legal professionals surveyed were also asked about their perceptions of the effectiveness of the disciplinary process in enforcing the Rules of Professional Conduct. Legal professionals had mixed perceptions of the effectiveness of the disciplinary process, where 26.5% view the process as not effective at all or slightly effective, 33% view it as somewhat effective, and 21% view it as very or extremely effective (19.5% have no opinion).

Perceptions of effectiveness vary by participant characteristics such as the role in the process, practice setting, practice area, race and ethnicity, and gender. Legal professionals who reported having been respondents in the disciplinary process know someone who has been a respondent, has served as respondent counsel or has been a complainant view the disciplinary process as not effective at all or slightly effective compared to those who have not been in these roles. Notably, a much higher percentage of legal professionals who have not known a legal professional who has been a respondent in the disciplinary process had no opinion on the effectiveness of the disciplinary process, with 44% compared to 12% of survey participants who report knowing a respondent. Legal professionals that have reported serving as Bar Counsel, serving on the hearing panel, or serving on the Attorney Discipline Probable Cause Committee had a lower percentage of legal professionals (20%) that perceive the disciplinary system as not effective at all or slightly effective compared to 27% of legal professionals who have not served in those roles. Among practice settings, legal professionals in practice settings of solo, small firms, and those in Judicial, in-house, nonprofit, or public law have similar perceptions of effectiveness except for legal professionals in a Medium Firm (10-24) or Large Firm (24+), where 28% of legal professionals in the latter practice settings view the disciplinary process as not effective at all or slightly effective compared to 21% of those in a Medium Firm (10-24) or Large Firm (24+). By practice area, a higher percentage of legal professionals practicing criminal law (43%) view the process as not at all or slightly effective compared to 21% of legal professionals who do not practice criminal law. White and legal professionals of color had similar views on the effectiveness of the disciplinary process. Among gender characteristics, a higher percentage of male legal professionals view the disciplinary system as very or extremely effective (25%), while only 19% of women legal professionals view it as such.

Legal professionals who reported involvement as a respondent in the disciplinary process were asked an additional question about the effectiveness of the disciplinary process regarding whether the disciplinary matter was resolved in a timely manner. A majority of legal professionals believed their disciplinary matter was resolved in a timely manner (76.7%), and 23.3% believed that it was not resolved in a timely manner.

Perceptions of Fairness in the Disciplinary System

Survey questions that asked legal professionals' perceptions of fairness asked their opinion on whether the disciplinary system provides legal professionals with a full and fair opportunity to defend against a Bar charge and a Bar complaint. The responses were consistent for both scenarios. 42% of legal professionals agreed or strongly agreed that the system is fair when defending against a Bar charge,⁵ and 43% of participants perceive the disciplinary system as fair when defending against a complaint.⁶

While perceptions of fairness vary between participant characteristics, these perceptions are held for both perceptions of the disciplinary process in providing a full and fair opportunity to defend against a charge and complaint. A higher proportion of legal professionals who report having been respondents in the disciplinary process, know someone who has been a respondent, have served as respondent counsel, or have been a complainant disagree or strongly disagree that the process provides a full and fair opportunity to defend against a charge and complaint compared to those who have not been involved in those roles. A lower percentage of those who have reported involvement as Bar counsel, serving on the hearing panel, or serving on the Attorney Discipline Probable Cause Committee disagree or strongly disagree that the process provides a full and fair opportunity to defend against a charge and complaint compared to those who reported no involvement in those roles. Notably, a much higher percentage of legal professionals surveyed with Bar-side involvement (i.e., Bar counsel, serving on hearing panel) agree or strongly agree that the process provides a fair opportunity to defend against a charge and complaint compared to legal professionals surveyed who reported no involvement in those roles. In the practice setting, legal professionals in solo or small firms have lower percentages of agree or strongly agree and higher percentages of disagree or strongly disagree compared to legal professionals in practice settings of public lawyers or those in judicial, in-house, or nonprofit settings. A higher percentage of legal professionals who practice criminal law disagree or strongly disagree that the

⁵ 25% of legal professionals surveyed disagree or strongly disagree that the system is fair when defending against a Bar charge. 33.5% of legal professionals surveyed neither agree nor disagree that the system is fair when defending against a Bar charge.

⁶ 24% of legal professionals surveyed disagree or strongly disagree that the system is fair when defending against a Bar complaint. 33.4% of legal professionals surveyed neither agree nor disagree that the system is fair when defending against a Bar complaint.

process is fair when defending against a charge and complaint. A higher percentage of legal professionals of color disagree or strongly disagree that the process provides a full and fair opportunity to defend against a charge and complaint than white legal professionals. Among gender characteristics, male and female legal professionals had similar percentages for agreeing or strongly agreeing, but male legal professionals had a higher percentage who disagreed or strongly disagreed that the system provides a fair opportunity to defend against a charge and complaint.

Next Steps

The survey findings and comments left by legal professionals present their perceptions of the disciplinary process and areas of concern. While this study does not report on actual outcomes or disparities in the disciplinary process, the main suggestion is that the Arizona State Bar start collecting administrative data to fully assess potential disparities in the disciplinary system. A sample workbook for data collection is provided in Appendix B.

Introduction

The disciplinary process for attorneys in the state of Arizona begins with the State Bar of Arizona. The State Bar is responsible for receiving charges of misconduct and determining if formal complaints of misconduct will be filed with the Presiding Disciplinary Judge. The goal of the disciplinary process is to protect the public and the justice system from “attorneys who have not discharged their professional duties to clients, the public, the legal system, and the legal profession. The professional conduct of attorneys and the discipline process is governed by [Rules 41-74](#), Arizona Rules of the Supreme Court.”⁷

As with the legal system more broadly, it is imperative that the attorney disciplinary process operate without bias so both members of the profession and the general public have confidence in the fairness and effectiveness of the process. Neighboring states have undergone significant reviews of their disciplinary processes⁸, using administrative data to determine if there are disparities in complaints filed or outcomes. Starting in 1990 with updates every ten years, the “State Bar of New Mexico's Status of Minority Attorneys Report” found their disciplinary system does have disparate outcomes. Solo and small firms are disproportionately sanctioned, Hispanic attorneys are disciplined at a disproportionate rate,⁹ ¹⁰ male attorneys received more sanctions than female members¹¹, and both Black and Hispanic members received sanctions at

⁷ <https://www.azcourts.gov/attorneydiscipline>

⁸ Report on Disparities in the Discipline System (2019). The State Bar of California.

<https://board.calbar.ca.gov/docs/agendaItem/Public/agendaitem1000025090.pdf>

The State Bar of New Mexico task Force on Minority Involvement in the Profession. (1990) The status of Minority Attorneys in New Mexico. The State Bar of New Mexico.

<https://www.sbnm.org/Portals/NMBAR/PubRes/Reports/StatusMinorityAttysNM1.pdf?ver=Ie3xBOrH-XGOvAFFdOy-Mw%3d%3d>

The State Bar of New Mexico Task Force on Minorities in the Legal Profession (1999). The Status of Minority Attorneys in New Mexico- An update 1990-1999. The State Bar of New Mexico.

<https://www.sbnm.org/Portals/NMBAR/PubRes/Reports/minoritytaskforcereportupdate.pdf?ver=Ie3xBOrH-XGOvAFFdOy-Mw%3d%3d>

The State Bar of New Mexico’s Committee on Diversity in the Legal Profession (2009) The Status of Minority Attorneys in New Mexico- An update 1999-2009. State Bar of New Mexico.

<https://www.sbnm.org/Portals/NMBAR/PubRes/Reports/MinoritiesProfessionReportUpdate.pdf?ver=kshjH2muXAa8IjwFPWgW9A%3d%3d>

The State Bar of New Mexico’s Committee on Diversity in the Legal Profession (2020). Status of Minority Attorneys in New Mexico 2009- 2019. State Bar of New Mexico.

<https://www.sbnm.org/Portals/NMBAR/PubRes/Reports/StatusMinorityAttys2019.pdf?ver=Ie3xBOrH-XGOvAFFdOy-Mw%3d%3d>

⁹The State Bar of New Mexico task Force on Minority Involvement in the Profession. (1990) The status of Minority Attorneys in New Mexico. The State Bar of New Mexico.

<https://www.sbnm.org/Portals/NMBAR/PubRes/Reports/StatusMinorityAttysNM1.pdf?ver=Ie3xBOrH-XGOvAFFdOy-Mw%3d%3d>

¹⁰ The State Bar of New Mexico Task Force on Minorities in the Legal Profession (1999). The Status of Minority Attorneys in New Mexico- An update 1990-1999. The State Bar of New Mexico.

<https://www.sbnm.org/Portals/NMBAR/PubRes/Reports/minoritytaskforcereportupdate.pdf?ver=Ie3xBOrH-XGOvAFFdOy-Mw%3d%3d>

¹¹ The State Bar of New Mexico’s Committee on Diversity in the Legal Profession (2009) The Status of Minority Attorneys in New Mexico- An update 1999-2009. State Bar of New Mexico.

significantly higher levels than their bar membership levels.¹² In 2019, the State Bar of California released the “Report on Disparities in the Discipline System,” in which a study of disparities in outcomes by race and gender found that male attorneys had higher rates of probation and disbarment/resignation compared to female attorneys. Racial discrepancies were also more pronounced among males, Black and Hispanic attorneys were subject to higher rates of probation and disbarment/resignation than White attorneys, solo practitioners are disproportionately disciplined within the attorney discipline system. The California inquiry did find that the differences in rates of disbarment and probation were primarily explained by factors such as an attorney's previous discipline history, the number of investigations opened against the attorney, and the percentage of investigations where counsel did not represent the attorney.

Both the New Mexico and California reports were based off of administrative data covering outcomes of the disciplinary process. Arizona does not currently collect or maintain administrative data that would allow for a similar inquiry, however members of the Arizona Bar expressed interest in studying the potential of bias in the disciplinary process. In October of 2023, the State Bar of Arizona Board of Governors approved a study of perceptions of bias in the disciplinary process. Without administrative data, this study cannot determine whether there are disparities in the disciplinary process. However, this study does allow the Board of Governors to understand how members perceive the disciplinary process and any potential biases in the process. This may allow the Arizona State Bar to better understand if there is a need for further inquiry, additional communication about the process, or reform.

Informed by surveys from other states, researchers developed a survey to gather perceptions of the disciplinary process and the membership's interest in mandating the collection of demographic data. If the Bar were to mandate the collection of demographic data, as at least one neighboring state does, it would make the assessment of disparities in the disciplinary system more feasible. The survey findings reported here asked all members of the Arizona State Bar if they perceived bias in the disciplinary process. It went on to ask any member of the State Bar that had participated in the disciplinary process and perceived bias in the system, what factors led them to believe that there was bias in the system. The survey also asked members of the Arizona State Bar their views on effectiveness and fairness of the system. Finally, all members of the Bar were asked about their practice area, size of practice, and demographic questions. All survey participants were also given a chance to respond to an open-ended question asking if they had any additional thoughts on the disciplinary process, in addition to the survey's multiple choice questions.

<https://www.sbnm.org/Portals/NMBAR/PubRes/Reports/MinoritiesProfessionReportUpdate.pdf?ver=kshjH2muXAa8IjwFPWgW9A%3d%3d>

¹² The State Bar of New Mexico's Committee on Diversity in the Legal Profession (2020). Status of Minority Attorneys in New Mexico 2009- 2019. State Bar of New Mexico.

<https://www.sbnm.org/Portals/NMBAR/PubRes/Reports/StatusMinorityAttys2019.pdf?ver=Ie3xBOrH-XGOvAFFdOy-Mw%3d%3d>

The survey was developed in Fall of 2023 with input from the Arizona State Bar’s Diversity Committee and Bar staff. Once the committee and staff approved the survey, the Board of Governors voted to approve the survey before it was sent to Bar membership. A complete copy of the survey can be found in Appendix A. The survey was open from Nov 29, 2023 to Jan 5, 2024, 3,556 people opened the survey (13% of the members who received it), 3,037 responses from Bar members who started the survey, an 11.5% response rate, and 2,481 responses from Bar members who completed the survey,¹³ a 9.4% response rate for completed surveys.

The survey was sent to active members of the State Bar of Arizona, inactive members, members ineligible to practice, and judicial and other legal professionals with Bar membership. However, we cannot know if those who responded to the survey are representative of these individuals. One issue is that the State Bar of Arizona does not have demographic or background information on all of these individuals. This is a key limitation of this survey. The responses to this survey may not reflect the views of these individuals as a whole.

The 2022 State Bar of Arizona Demographic Report, a report of the available demographic data (gender, race and ethnicity, geography, age, years in practice, and practice area) as self-reported by the State Bar of Arizona membership provides an overview of Bar membership. According to the State Bar of Arizona, approximately 80% of members voluntarily share their demographic information. The comparison of the responses from the Perceptions of the Disciplinary Process Survey to the self-reported demographics from the 2022 State Bar of Arizona Demographic Report reveals some interesting contrasts in demographic representation. In terms of race/ethnicity, the Perceptions survey reported a higher percentage of Black or African American respondents (2.68%) compared to the State Bar Demographic Report (1.95%), a higher percentage among White or European American respondents (79.5%) compared to 69.16% in the State Bar report and a slightly higher percentage of Hispanic or Latino respondents (8.22%) compared to the State Bar Demographic Report (6.35%).¹⁴ The Perceptions survey had a slightly lower percentage of Asian or Asian American respondents (1.60%) than the State Bar Demographic Report (2.50%). Regarding the gender of the survey respondents, both surveys show a similar distribution, though with a larger proportion in the nonbinary/gender nonconforming and other group in the Perceptions survey.¹⁵ The age demographics between the survey respondents show the most significant differences, where the Perceptions survey shows a higher percentage of respondents over 60 (42.79%) compared to the 26.28% of respondents over 60 in the State Bar Demographic Report. Additionally, the Perceptions survey shows a lower

¹³ Participants did have the ability to skip questions. So the finish rate does not mean that participants necessarily answered every question.

¹⁴ Throughout the report, percentages are based on those responding.

¹⁵ In the Perceptions survey, these groups were asked about separately; however, we combine them with few responses.

percentage of respondents under 30 (1.88%) and those aged 31-40 (10.36%) compared to the State Bar Demographic Report, which had 3.73% and 22.34% for those age groups.

Table 1: Comparison of the Demographic Make-up of Survey Respondents

	Responses from the Perceptions of the Disciplinary Process Survey	%	2022 State Bar of Arizona Demographic Report	%
<i>Race/ Ethnicity</i>				
Asian or Asian American Alone, non-Hispanic or Latino	37	1.60%	448	2.50%
Black or African American Alone, non-Hispanic or Latino	62	2.68%	350	1.95%
Hispanic or Latino	190	8.22%	1,139	6.35%
White or European American Alone, non-Hispanic or Latino	1,838	79.50%	12,401	69.16%
Multiracial, non-Hispanic or Latino	46	1.99%	--	--
Other Race and Ethnicity, non-Hispanic or Latino	139	6.01%	--	--
Native American or Alaska Native Alone, non-Hispanic or Latino	--	--	189	1.05%
Native Hawaiian or other Pacific Islander Alone, non-Hispanic or Latino	--	--	3	0.02%
None of the above	--	--	2	0.01%
Prefer not to Answer	--	--	3398	18.95%
<i>Gender</i>				
Male	1,544	62.76%	11,835	63.46%
Female	865	35.16%	6,737	36.12%
Nonbinary/Gender nonconforming & Other	51	2.07%	--	--
Nonbinary/Genderqueer	--	--	2	0.01%
Prefer not to Answer	--	--	77	0.41%
<i>Age</i>				
Under 30	45	1.88%	701	3.73%
31-40	248	10.36%	4,198	22.34%
40-51	524	21.90%	4,763	25.35%
51-60	552	23.07%	4,190	22.30%
Over 60	1,024	42.79%	4,937	26.28%

An additional area of interest is the practice setting of the legal professional surveyed, which can not be compared to the State Bar Demographic Report, but is an area of interest for analysis of the survey responses. A majority of legal professionals that participated in the survey were in judicial, in-house, nonprofit or public practice settings (31.1%), followed by sole practitioner (28.9%), small firm, (23.8%) and legal professionals in medium firm (10-24) or large firms (24+) (16.1%) practice settings. See Table 2

Table 2: Practice Setting of Survey Respondents

	Responses from the Perceptions of the Disciplinary Process Survey	%
<i>Practice Setting</i>		
Sole Practitioner	717	28.9%
Judicial, In House, Nonprofit, or Public lawyer	770	31.1%
Medium Firm (10-24) or Large Firm (24+)	400	16.1%
Small Firm (2-9)	591	23.8%

In addition to quantitative responses, over 1100 participants shared qualitative responses to the open-ended question at the conclusion of the survey. While some of these were not substantive,¹⁶ 974 responses included substantial feedback. Below we share findings from both the quantitative and qualitative data. We start with findings from the quantitative survey data focusing on bias, effectiveness, and fairness as well as specific factors associated with these views. We then present data from the open-ended comments. After briefly sharing information on views associated with collecting demographic information, we conclude our report with suggestions shared by participants along with a data collection plan. The data collection plan would enable the Arizona State Bar to further study this issue with administrative data, similar to neighboring states.

Key Findings

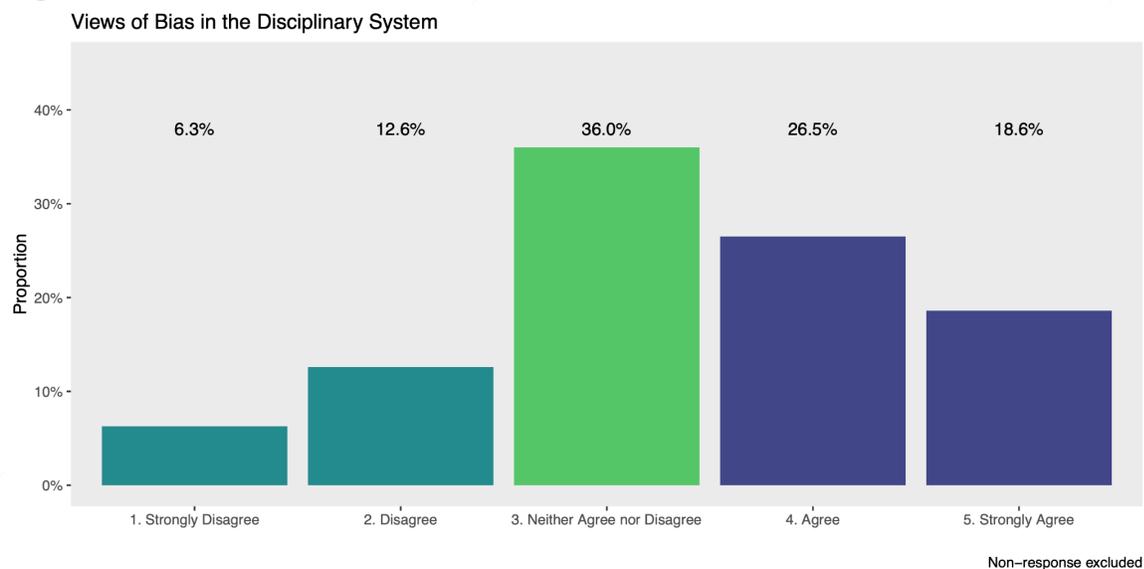
¹⁶ We are defining not substantive here to mean a one word or short answer such as “No” or “Thank you.” All substantive answers were included in the analysis presented in the report.

Perceptions of Bias

The survey asked about the extent to which the legal professionals surveyed agreed that there is bias in the disciplinary system.¹⁷ The responses range from strongly agree to strongly disagree on a five-point scale. It is important to note that this is not asking about a specific type of bias, but if the survey participant perceives bias in the disciplinary process in general. Figure 1 presents these results for the question of bias in general.¹⁸

In our sample, as Figure 1 shows, 45% of survey participants perceive bias compared to 19% of respondents who disagree that there is bias (36% neither agree nor disagree).¹⁹

Figure 1



Perceptions of General Bias in the Disciplinary System by Participant Characteristics.

The responses to perceptions of bias are broken down by five participant characteristics including involvement in the disciplinary process, practice setting, criminal law practice area, race and ethnicity, and gender.²⁰ These percentages are presented in Table 3.²¹

¹⁷ The full question is: To what extent do you agree with the following statement: There is bias in the disciplinary system.

¹⁸ Figure code adapted from: Ball, Will (2020, March 7). Visualising two ordinal variables using R. <https://will-ball.github.io/ordinalplots/>

¹⁹ Percentages may not always add to 100 due to rounding.

²⁰ All groups in Table 3 have over 150 survey participants, with most having well over that number.

²¹ We combined the response categories of strongly agree and agree and strongly disagree and disagree to ensure sufficient response numbers in each cell.

Table 3: Perceptions of Bias in the Disciplinary System by Participant Characteristics			
Involvement in the Disciplinary Process			
	Disagree or Strongly Disagree	Neither Agree nor Disagree	Agree or Strongly Agree
Respondent	18%	28%	53%
No involvement as a Respondent	21%	45%	34%
Personally knows a respondent in the process	19%	31%	50%
Does not personally know a respondent in the process	22%	56%	23%
Respondent Counsel	19%	23%	58%
No Involvement as Respondent Counsel	19%	38%	43%
Served as Bar Counsel, hearing panel, and/or the attorney discipline probable cause committee	37%	26%	37%
Not served in one of these roles	18%	38%	45%
Complainant	20%	24%	56%
No involvement as a Complainant	19%	39%	42%
Practice Setting			
	Disagree or Strongly Disagree	Neither Agree nor Disagree	Agree or Strongly Agree
Sole Practitioner	15%	35%	50%
Judicial, In house, Nonprofit or Public Lawyer	23%	38%	39%
Medium Firm (10-24) or Large Firm (24+)	23%	40%	37%
Small Firms (2-9)	18%	31%	51%
Practice Area of Criminal Law			
	Disagree or Strongly Disagree	Neither Agree nor Disagree	Agree or Strongly Agree
Criminal Law	12%	25%	63%
Not Criminal Law	21%	40%	39%
Race/ Ethnicity			
	Disagree or Strongly Disagree	Neither Agree nor Disagree	Agree or Strongly Agree

	Disagree	Disagree	
White Individuals	21%	37%	43%
Individuals of Color	15%	33%	51%
Gender			
	Disagree or Strongly Disagree	Neither Agree nor Disagree	Agree or Strongly Agree
Male	22%	34%	44%
Female	16%	41%	43%

Note: Those who identify as nonbinary/gender nonconforming or other are excluded as there are too few observations. The "Individuals of Color" category consists of respondents who identified as Arab, Middle Eastern, or North African, Asian or Asian American, Black or African American, Hispanic or Latino, Native American or Alaska Native, Native Hawaiian or Other Pacific Islander, and/or other race or ethnicity. Respondents could select more than one option.

Involvement in the Disciplinary Process

Involvement on the Respondent or Complainant Side

A higher proportion of legal professionals who report being respondents in the disciplinary process, who personally know someone who has been involved as a respondent, who report serving as a respondent's counsel, or who report involvement as a complainant in the process agree or strongly agree that there is bias in the disciplinary process compared to those who did not report that type of involvement. Similar percentages disagree or strongly disagree.

Involvement on the Disciplinary Process Side

A lower percentage of legal professionals who reported serving as Bar Counsel, serving on the hearing panel, and/or serving on the Attorney Discipline Probable Cause Committee (aggregated into one category) agree or strongly agree there is bias in the disciplinary process (37%) compared to legal professionals who have not served in these roles (45%). Also, a higher percentage with service on the Bar side disagrees or strongly disagrees (37% compared to 18%).

Practice Setting

Compared to sole practitioners (50%) and those in small firms (2-9) (51%), a lower percentage of those public lawyers or in judicial, in house, and nonprofit settings or those in medium (10-24) or large (24+) firms agree or strongly agree that there is bias in the system (39% and 37% respectively).

Area of Practice of Criminal Law

Compared to legal professionals who do not practice criminal law (39%), a higher percentage of legal professionals in the area of criminal law agree or strongly agree that there is bias in the disciplinary system (63%).

Race and Ethnicity

Among legal professionals of color, a higher percentage of participants agree or strongly agree there is bias in the disciplinary system (51%) and a lower percentage disagree or strongly disagree (15%), compared to white legal professionals (43% agree/strongly agree and 21% disagree/strongly disagree).

Gender

Male and female legal professionals have nearly the same level of agreement regarding the perception of bias in the disciplinary system, with 44% of male legal professionals and 43% of female legal professionals agreeing/strongly agreeing that there is bias in the disciplinary system.

Further Consideration of Perceptions of Bias Among those Involved in Process

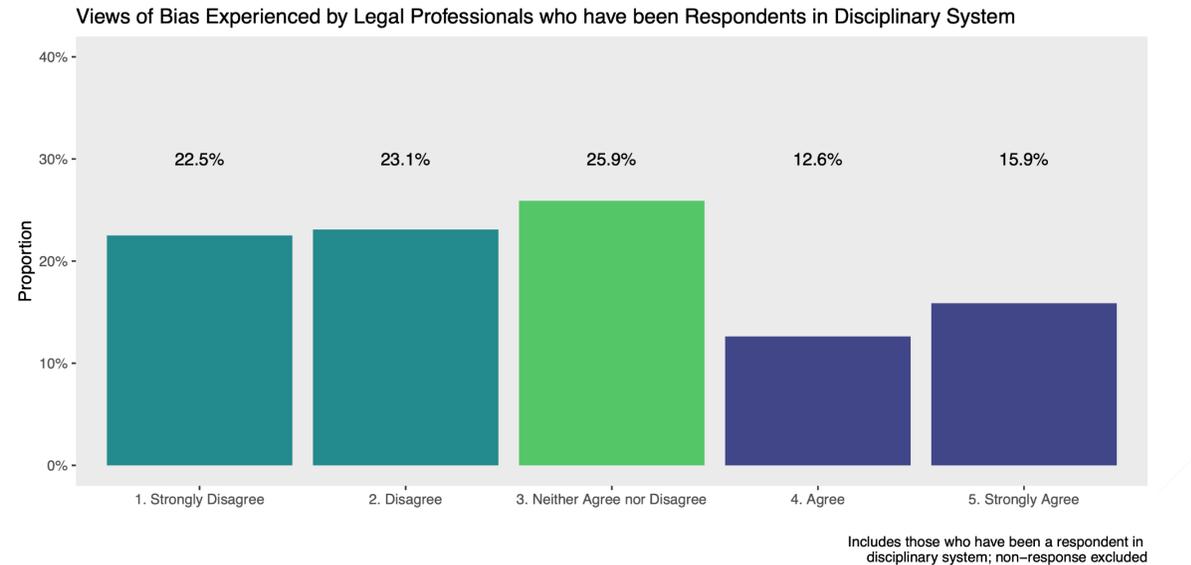
Along with asking the legal professionals surveyed their perceptions of general bias in the disciplinary system, the survey asked legal professionals who reported being a respondent in the disciplinary process or those who personally know a legal professional who was a respondent additional questions about whether they perceived experiencing bias in the disciplinary process and the sources of those perceived biases.

Legal Professional Involved in Process as Respondents

We asked survey participants if they have been involved in the disciplinary process in one or more of the following ways? Subject of a bar charge, Subject to an investigation, Entered into a diversion agreement, Subject of a bar complaint, Received an informal sanction (admonition, probation, restitution), Received a formal sanction (reprimand, suspension, disbarment).²² We then asked whether they experienced bias in the disciplinary process, with responses on a 5-point scale ranging from strongly agree to strongly disagree. The breakdown is presented in Figure 2.

²² The full question is: “Have you ever been involved in the disciplinary process in one or more of the following roles? Pursuant to Rule 46, Ariz. R. Sup. Ct, charge is defined as any allegation or other information of misconduct or incapacity that comes to the attention of the state bar and complaint is defined as a formal complaint prepared and filed with the disciplinary clerk. Subject of a bar charge, Subject to an investigation, Entered into a diversion agreement, Subject of a bar complaint, Received an informal sanction (admonition, probation, restitution), Received a formal sanction (reprimand, suspension, disbarment).” We also broke down this question by time, e.g., within the last 3 years, 3-7 years ago, and more than 7 years ago. We consider all “yes” responses together, as dividing by time produces few observations in some cells.

Figure 2



Among these legal professionals surveyed, 28.5% agree or strongly agree that they experienced bias in the disciplinary system, while 45.6% disagree or strongly disagree (with 25.9% responding neither agree nor disagree). It is important to note 1) that those responding to this question are those who have ever been a respondent in the system, not those who are currently involved in the system, and 2) that this is a question about their experience of bias, not whether they perceive bias in the system in general.

For legal professionals who responded that they agreed or strongly agreed to the above question, we asked about eight specific types of bias that formed their opinion in response to this question. We asked about 1) subject matter of your practice, 2) size of your firm, 3) your gender identity, 4) your race and/or ethnicity, 5) your sexual orientation, 6) your political orientation or connections, 7) your relationship with other members of the discipline process or the Bar, and 8) number of years you have practiced. Legal professionals surveyed could select more than one response. The counts and proportions are presented in Table 4. The proportions are out of all who answered the question about whether they experienced bias in the disciplinary system.²³ As Table 4 indicates, 13% selected their subject matter of practice and the size of their firm as contributing to the bias they experienced.

²³ Given that the sources of bias question was only answered by those who agreed/strongly agreed that they experienced bias, this assumes that those who answered disagree, strongly disagree, or neither agree nor disagree would not have selected any sources of bias.

Sources of Perceived Bias	Count	Percentage
Subject matter of your practice	182	13.1%
Size of your firm	182	13.1%
Your gender identity	40	2.9%
Your race and/or ethnicity	50	3.6%
Your political orientation or connections	75	5.4%
Your relationship with other members of the discipline process or the Bar	101	7.3%
The number of years you have practiced	57	4.1%

Note: We exclude “your sexual orientation” as there are few responses.

As some bias types are likely to affect individuals in particular groups, we look at the percentages for individuals with particular demographic and background characteristics who have been respondents that align with the sources of perceived bias, specifically criminal law as a practice area, practice setting, gender, and race and ethnicity.²⁴ 21.1% of those practicing criminal law reported area of practice as a perceived source of bias compared to 9.8% of those not practicing criminal law. 18.7% of sole practitioners and 15.4% of those in small firms reported firm size as a perceived source of bias compared to lower percentages in the other practice settings.²⁵ 6.6% of women report gender as a source of bias, which is higher than the percentage for men. Also, a higher percentage of individuals of color report race/ethnicity as a source of bias (15.6%) compared to white individuals.

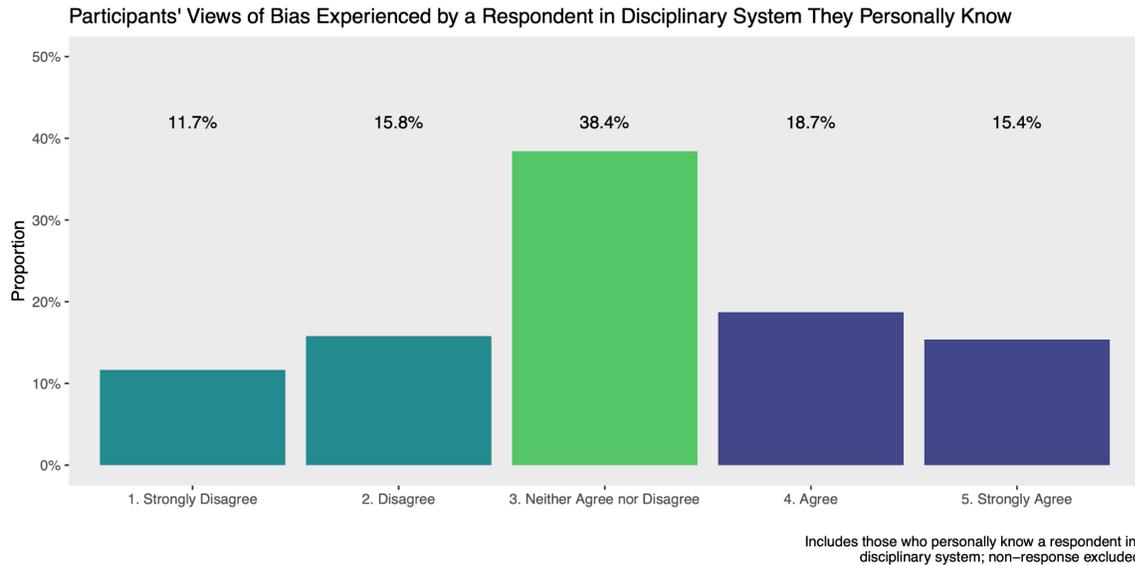
Legal Professionals who Personally Know a Respondent Involved in the Process

Echoing the above questions, we also asked survey participants if they have personally known a legal professional who has been involved in the disciplinary process in one or more of the following ways? Subject of a bar charge, Subject to an investigation, Entered into a diversion agreement, Subject of a bar complaint, Received an informal sanction (admonition, probation, restitution), Received a formal sanction (reprimand, suspension, disbarment). Similar to above, we then asked whether the legal professional experienced bias in the disciplinary process, with responses on a 5-point scale ranging from strongly agree to strongly disagree. The breakdown is presented in Figure 3.

²⁴ All of these characteristic groups have over 150 survey participants.

²⁵ For practice settings, gender, and race and ethnicity, we do not report certain percentages as there are few responses.

Figure 3



Among these survey participants, 34.1% agree or strongly agree that the legal professional they know experienced bias in the disciplinary system, while 27.5% disagree or strongly disagree (with 38.4% responding neither agree nor disagree).

For respondents who answered agree or strongly agree, we asked about eight specific types of bias that formed their opinion in response to this question. These are the same as above, just for the legal professional the participant knows. Participants could select more than one response. The counts and proportions are presented in Table 5. The proportions are out of all who answered the question about whether a legal professional they know experienced bias in the disciplinary system.²⁶ As Table 5 indicates, 16% of respondents selected the size of the firm contributing to the bias experienced by the legal professional they know.

²⁶ Given that the sources of bias question was only answered by those who agreed/strongly agreed that the legal professional they personally know experienced bias, this assumes that those who answered disagree, strongly disagree, or neither agree nor disagree would not have selected any types of bias.

Table 5. Sources of Perceived Bias Among Those Who Personally Know a Respondent in Disciplinary Process

Sources of Perceived Bias	Count	Percentage
Subject Matter of the Legal Professional's Practice	318	15%
Size of legal professional's firm	340	16%
Gender of the Legal Professional	92	4.3%
Race and/or Ethnicity of the Legal Professional	89	4.2%
Political orientation or connections of the Legal Professional	192	9%
Legal Professional's relationship with other members of the discipline process or the Bar	180	8.5%
Legal professional's years of practice	116	5.5%

Note: We exclude "Sexual orientation of the legal professional" as there are few responses

Open-Ended Survey Responses Regarding Bias

The open-ended responses to the survey provided a substantial discussion of bias. While a few respondents noted that there is no bias in the system, over 400 respondents described a perception of some kind of bias in their open-ended responses. In the open-ended section, participants were prompted by the question "Is there anything else about the disciplinary process that you would like to mention?" Thus, those who mentioned a specific type of bias were not being guided by the survey itself. Commenters noted bias both *against* certain groups and *in favor* of others. Types of bias discussed included practice setting (the size and setting of the legal practitioner), bias against particular practice areas, bias based on identity factors (race and gender), and bias based on political ideology.

Table 6. Types of Bias in Open-Ended Responses

Table 6. Counts of Bias Types in Open Ended Comments	
<i>Type of Bias</i>	<i>Count of responses referencing type of bias</i>
No bias	18
<i>Biased Against</i>	
Biased against legal professionals	125
Biased against small/solo firms	110
Biased against criminal defense	25
Biased against minorities legal professionals	22
Biased against women legal professionals	15
Biased against conservative legal professionals	10
Biased against prosecutors	9
Biased against legal professionals experiencing mental health challenges	5
Biased against family law	5
Biased against less connected legal professionals	5
Biased against rural legal professionals	3
Biased against government legal professionals	3
Biased against complainants	2
Biased against older legal professionals	1
<i>Biased in favor</i>	
Biased in favor of large firms	97
Biased in favor of complainant	61
Biased in favor of prosecutors	43
Biased in favor of well connected legal professionals	36
Biased in favor of conservative legal professionals	13
Biased in favor of criminal defense	12
Biased in favor of government legal professionals	7
Biased in favor of judges	6
Biased in favor of male legal professionals	4
Biased in favor of attorneys	3
<i>Biased due to</i>	
due to lack of understanding of practice area	20
due to politics	22
bias due to personal opinion	20

A few open-ended responses in the survey addressed the lack of bias in the disciplinary system. These responses generally stated that there was no bias in the disciplinary system. One survey participant who has served various roles in the disciplinary system expressed their belief that the disciplinary process is fair, objective, professional, and necessary.

“The discipline process is not biased.” (Nonprofit/Bankruptcy, Served as Bar counsel and respondent’s counsel, Black)

“I believe the disciplinary process is fair, objective, and professionally administered. It is also very necessary.” (Sole Practitioner, Civil Law/Trial Practice/Personal Injury and Wrongful Death, Served as Bar counsel, respondents counsel, and on hearing panel, White)

“It’s working just fine. The Bar does everything possible to provide a fair system. There is NO bias in the system. To suggest there is, is a ludicrous statement.” (Public lawyer, Criminal Law, respondent did not share their race)

Participants who have served on the hearing panel and as Bar counsel highlighted that the Bar and the disciplinary system make strides to provide a fair system that solely focuses on the conduct of the legal professionals, noting no bias towards respondents in the process. One survey participant who has served on the hearing panel in the disciplinary process acknowledges they have not observed any conscious bias, but if there is bias, the bias is unconscious and in favor of the respondent.

“I have served as a volunteer panel member for a few years now, and have noted no instances of bias toward a respondent lawyer based on race, sex, gender, orientation, etc. The panel's focus is solely on the conduct.” (Public lawyer, Other - Government, served on the hearing panel, White)

“The people who work hard at the State Bar have NO inherent bias. Everyone does what's right without bias or favor.” (Public lawyer/ Criminal Law, Served as Bar Counsel, White)

“If there is any unconscious bias, it's in favor of the lawyer as a colleague, over the complainant who may be a disgruntled client or other lay person who does not understand the legal system. I have not seen any evidence of racial/ethnic/religious or other bias in the disciplinary system.” (Small Firm (2-9), served on hearing panel, White)

The most commonly described type of bias, noted by about one fourth of legal professional surveyed who wrote about bias, was bias against solo and small to medium firms. After this, the most frequently noted form of perceived bias was in favor of large firms. Comments often included these dual biases as flip sides of the same coin. Often there was a perception that attorneys in large firms were supported by other staff attorneys when complaints were filed against them so they had the means to combat a complaint. Frequently, however, participants

shared the perception that the Bar does not pursue complaints against attorneys in large firms or is lenient in its sanctions against these attorneys because these firms financially support the Bar. When describing the difference between small/solo firms and large firms, some respondents felt that there was a lack of understanding or empathy among Bar staff for the amount of additional labor solo firms must undertake to run their small business unlike attorneys in large firms who have staff support for bookkeeping and H.R. Because small/solo firms did not always have the ability to manage all of the facets of their business they were in a much more vulnerable position with regard to making small mistakes with clients that could then result in a complaint. The phrase “low hanging fruit” was used to describe how people perceived the bias against small/solo firms. Some commenters described a suspicion that the Bar would take on complaints against firms that did not have the means to fight back in order to demonstrate its value to the public.

Commenters noted that certain practice areas were targeted more often due to the nature of those practice areas, in particular criminal and family law. While about 10 survey participants wrote that there was too much favor given to criminal defense attorneys, more than double that number of people wrote that there was bias against criminal defense attorneys. Comments revealed that people perceived two major reasons for biases against criminal and family law attorneys: 1) as highly personal and emotional areas of law; those practice areas receive greater complaints from dissatisfied clients and 2) the Bar counsel had insufficient knowledge of nuances within these areas of practice and therefore could not fairly process these complaints. In many comments, multiple forms of bias are perceived to coincide with firm size and practice area.

“Based on the statistics²⁷, small firms and criminal defense attorneys are disproportionately subjected to investigations and both formal and informal disciplinary actions. It is easy to explain the fact that smaller firms are more likely to be targeted due to their limited resources. It is simply not feasible for them to finance a defense. The ongoing problem with criminal defense attorneys being targeted is likely due to the fact that so many bar association attorneys come from prosecutorial backgrounds. This is likely why it is extremely rare that a prosecutor is sanctioned and very common for a criminal defense attorney to be. In my personal experience, defense attorneys are at least as ethical as prosecutors, so why the discrepancy? I remember discussing this issue with a former bar counsel who recognized the problem. He explained that the reason he hired former prosecutors for staff attorneys at the bar association was because it seemed to make sense to hire people who were used to investigating and prosecuting people. He simply did not think about the potential biases against defense attorneys.” (Sole Practitioner, Criminal Law, White)

²⁷ The State Bar of Arizona does not currently keep statistics that can verify this claim. However, we suggest later in the report that the State Bar start collecting data so they are able to look into claims like this.

“There are two main areas of bias I experienced, and I believe continue to exist within the disciplinary system: size of firm and practice area. Family lawyers are routinely subject to our complaints because all sorts of people get upset with their own lawyers, and, more so, with opposing counsel.” (Medium firm (51-60), Family Law, White)

“As a criminal defense attorney, I have very little faith that a prosecutor will be subjected to the same scrutiny as a solo practitioner defense attorney. Moreover, I am fearful that the Arizona bar does not understand the rigors and logistical issues related to the private practice criminal defense field.” (Sole Practitioner, Criminal Law, White)

In addition to a system that favors large firms due to their financial influence and reserves of resources, several groups of attorneys were noted as being favored: prosecutors (40), well-connected attorneys (33), judges (6), and government attorneys (6). Commenters wrote often that bias existed in favor of prosecutors because the Bar’s discipline team was made up of prosecutors implying that the Bar has a greater sense of relatability with other prosecutors. In contrast, a relative few (7) noted bias against prosecutors.

The descriptor ‘well-connected’ is used to group several kinds of attorneys identified by commenters. These include attorneys who have political status as elected officials or appointees; attorneys who are socially visible as “advertising” attorneys; financially well-off attorneys; and attorneys who have positive relationships with Bar staff and people involved in the discipline process. Comments that included reference to judges indicated that 1) if a complaint comes from a judge then the complaint is more likely to be vigorously pursued and that 2) if a judge is perceived to have behaved unethically, that judge is not likely to face discipline. Government attorneys were lumped in with large firms as having a lesser version of size and resources of large firms to buffer them from scrutiny. When people wrote about the Bar having bias in favor of such people, the implication was that these attorneys were treated more leniently for similar violations than people who had less social status, or their violations were completely ignored.

“The well-connected are given a pass, the less connected get a partial pass, and the not-connected get hammered. Just reading who is attacked and why in the newspaper will evidences this” (Sole Practitioner, Estate and Trust/Family Law/Personal Injury and Wrongful Death, White).

Many commenters also noted that the system is biased against legal professionals or attorneys. Survey participants describe perceiving the disciplinary process as biased against legal professionals due to the presumption of guilt by Bar counsel and lack of help from the Arizona State Bar. The presumption of guilt of the legal professionals in the disciplinary process has

survey participants feeling as if the disciplinary process is not looking to find the truth but looking to resolve the complaint through discipline or paying the complainant. One survey participant described the experience of going through the disciplinary process and feeling as if they were treated guilty, which led to the legal professional walking away from the profession.

“It appears that there has been a shift in the disciplinary process against legal professionals. The Bar seems to be more concerned about going after attorneys then helping us. It is one thing to go after an Attorney for stealing from clients, harming clients, etc., but I have witnessed multiple instances of the Bar going after Attorneys for their practice styles (being too aggressive), or if they make a mistake due to workload. The bar should be used as a way to support and protect attorneys, not as big brother looking to come after us in any way possible. Being an Attorney used to be a prestigious career, where the public respected us. Now every client and opposing party uses the bar as a means of threats against us.”
(Sole Practitioner, Respondent did not share practice area, Multiracial)

“It presumes that the lawyer is guilty of whatever the complainant alleges, and it's up to the lawyer to prove their own innocence. Ultimately, the bar disciplinary process primarily ends with the bar telling the lawyer to pay the complainant whatever it'll take to make them go away. It's neither organized or reasonable, and any justice is an afterthought.” (Medium Firm (10-24), Respondent did share practice area, White)

“In my opinion and my situation, it honestly felt like 'guilty until proven innocent'. Despite the amount of evidence presented against the complainant, the only thing that mattered to the Bar was an adjudication of guilt. It was quite literally the most awful experience I have ever had, and it led to me walking away completely from the profession of law.” (In House, White)

Later in the report, we discuss the perceived purpose of the disciplinary system and provide suggestions for how the Bar might address the purpose of the disciplinary system and the role they play.

While some commenters focused on the legal profession as a whole, many focused on specific practice areas or size of practice. These areas are also related to specific identity factors. Some noted that the emphasis on criminal defense and family law, on small and solo firms, or those without social connections, leads to an undue burden on women attorneys and attorneys of color. About two dozen commenters noted that there was bias against legal professionals of color and slightly fewer noted bias against women. The bias against these groups were often tied to the overemphasis on small and solo firms and to practice areas.

“Based on the personal experience of a close friend and information I have heard re multiple other experiences, it is my impression that the disciplinary process is biased against solo practitioners and smaller practices and particularly those of color. It is my impression that the Bar prosecutes solo attorneys and minorities far more often than caucasian attorneys at 'large firms', prosecutes minor violations against such practitioners that it does not prosecute against lawyers at big firms and that it imposes more harsh discipline on solo attorneys and attorneys of color. In fact, I have been practicing for over 20 years and I have not heard of any big firm attorney being suspended or disbarred. It is further my impression that the bar uses its power to destroy someone's career and livelihood to force solo practitioners to plead to charges and accept harsh discipline either because they cannot afford to defend themselves or because the risk of losing their practice/license entirely is too great to challenge the bar disciplinary committee.” (Large Firm (24+), Civil Law/ Trial Practice, White)

“Disparity exists because smaller and solo practitioners and minorities experience more bias in the disciplinary process. There’s less diversity in the bar counsel ranks, and there’s a disconnect between actual practicing attorneys and bar counsel. Bar counsel is more likely to find probable cause to advance a bar complaint against attorneys that are minorities or that are in small or solo firms.” (Small Firm (2-9), Bankruptcy/ Business Law/ Estate and Trust/ Trial Practice/ Personal Injury and Wrongful Death, Black)

“This is a fact: The State Bar discriminates against solo female practitioners. Check the stats. Ask counsel who defend these charges. The Bar picks on women because they do not fight back, or that is the perception. I am a male, but know several defense attorneys who handle State Bar complaints and they all say this is so. Also, the Bar is notoriously prone to 'get' solo attorneys, but mainly females. This is primarily because Bar counsel lack experience - none are trial lawyers - so they go after the 'weakest' attorneys: Solo women. You really want to do some good with this survey look into this.” (Sole Practitioner, Civil Law/ Criminal Law, White)

“Lawyers of color are more likely to practice in areas with the highest rates of complaints (family, criminal) and may not have the resources or training to most effectively assist them in defending themselves” (Public lawyer, administrative law, Black).

“There is disparity in how different Bar Counsel deal with attorneys. There is very clear gender bias. In my case the Bar requested I respond to a complaint; I did, and the Bar waited over a year to make any further contact. Then the Bar wanted a response immediately regarding agreeing to discipline and refused to grant an extension even though I was 9 months pregnant. I gave birth 3 days before the Bar issued its discipline. I stipulated to it only to prevent harm to my baby from the stress of it all. The fact that an extension was not granted for giving birth to a baby and even a part of maternity leave is reprehensible, particularly after the Bar took so long to respond to my initial response to the Complaint. There was no urgency. It was arbitrary, biased, and I was forced by time to agree to something due to the impending birth of my child. The Bar also ignored my evidence and too much power is in the hands of one Bar counsel with antiquated and biased opinions of gender.” (Sole Practitioner, Civil Law/ Criminal Law/ Employment and Labor Law/ Trial Practice, Multiracial)

On the far end of the spectrum were people who believed the emphasis on pursuing complaints against attorneys of color was more intentional and more nefarious than by the simple fact of being in the wrong practice areas, “It seems to me, if you are a white male you can do no wrong. If you are a minority, do not report anything to the Bar because they make you guilty. They gun. The Bar guns for minorities... The Bar uses discipline to keep a check and balance on minorities. If a minority speaks out, if a minority reports a white person, if a minority goes against what society thinks is acceptable for its caste system it will be consequences to that attorney’s livelihood” (Sole practitioner, criminal law, Black).

Whether by unconscious bias or by the nature of profession, there is a sense that those groups who were previously not included in the profession, encounter a higher level of scrutiny by their professional association.

Commenters in the survey also discussed political ideology or partisan politics as increasingly shaping the disciplinary process.

“While I think the disciplinary staff tries to be impartial, I think in the last 3-5 years, concerns about politics and the legislature may have impacted decisions made by the staff.” (In House Counsel, Administrative Law/Business Law/Immigration Law/ International Law/ Public/Real Property, Respondent did not share race)

“While it is supposed to be non-political, my experience is that basic field investigation decisions are reversed based upon political intervention or political concerns within the Bar. In other instances I have seen the Bar refuse to act or

investigate when faced with potential political fallout.” (Small Firm (2-9), Real Property, White)

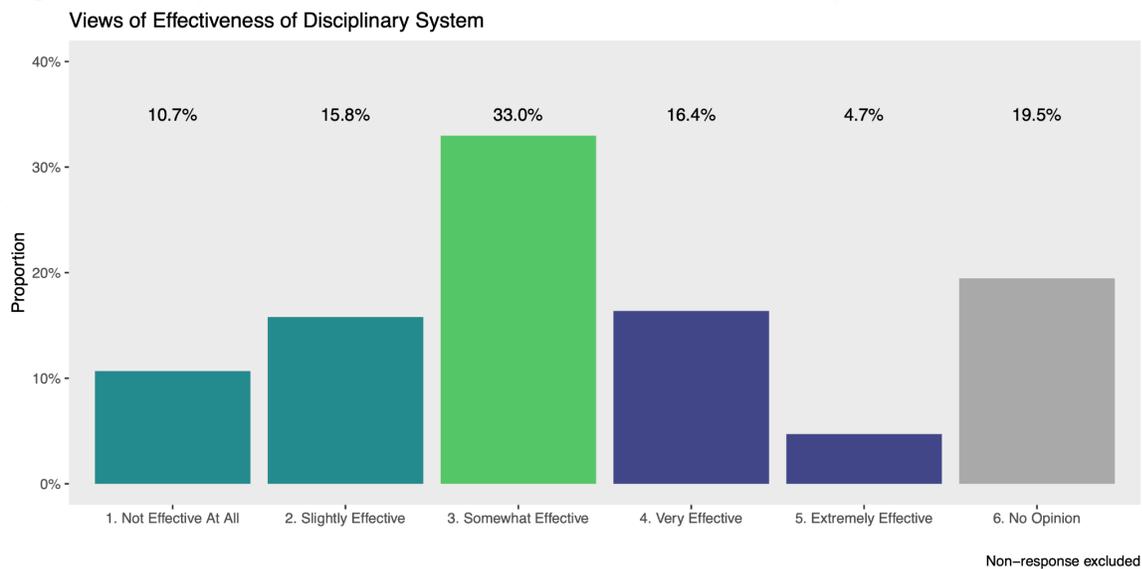
“In political cases, the political affiliation of the participants appears to affect the analysis of ethical allegations. This should go without saying, but both sides should operate under the same set of rules and enforcement standards.” (Small Firm (2-9), Political law, Respondent did not share their race)

Importantly, respondents discussed the process as being biased against both conservative and liberal viewpoints. The Bar was seen as shying away from anything that could be perceived as political, regardless of whether it was an ethical or rule violation.

Perceptions of Effectiveness of the Disciplinary Process

The survey asked about the effectiveness of the disciplinary system. Specifically, the question asked: “In your opinion, how effective is the existing disciplinary system in enforcing the Rules of Professional Conduct?” The responses included: “Not at all effective”, “Slightly effective,” “Somewhat effective,” “Very effective,” “Extremely effective,” and “No opinion.” The graph below shows the responses to this question (Figure 4).

Figure 4



As presented in Figure 4, 26.5% view the process as not effective at all or slightly effective, 33% view it as somewhat effective, and 21% view it as very or extremely effective (19.5% have no opinion).

Perceptions of Effectiveness in the Disciplinary System by Participant Characteristics.

The responses to perceptions of effectiveness are broken down by five participant characteristics including involvement in the process, practice setting, practice area of criminal law, race and ethnicity, and gender.²⁸ These percentages are presented in Table 7.

²⁸ All groups in Table 7 have over 150 survey participants, with most having well over that number.

Table 7: Perceptions of the Effectiveness of in the Disciplinary System by Participant Characteristics

Involvement in the Disciplinary Process				
	Not Effective at all or Slightly Effective	Somewhat Effective	Very Effective or Extremely Effective	No Opinion
Respondent	33%	35%	22%	10%
No involvement as a Respondent	20%	33%	22%	25%
Personally knows a respondent in the process	31%	36%	22%	12%
Does not personally know a respondent in the process	11%	25%	23%	41%
Respondent Counsel	35%	38%	22%	4.9%
No Involvement as Respondent Counsel	26%	34%	22%	19%
Served as Bar Counsel, hearing panel, and/or the attorney discipline probable cause committee	20%	41%	35%	4.2%
Not served in one of these roles	27%	34%	21%	18%
Complainant	41%	37%	17%	4.3%
No involvement as a Complainant	24%	34%	23%	19%
Practice Setting				
	Not Effective at all or Slightly Effective	Somewhat Effective	Very Effective or Extremely Effective	No Opinion
Sole Practitioner	28%	33%	23%	16%
Judicial, In house, Nonprofit or Public Lawyer	28%	33%	20%	18%
Medium Firm (10-24) or Large Firm (24+)	21%	38%	23%	18%
Small Firms (2-9)	28%	34%	23%	15%
Practice Area of Criminal Law				
	Not Effective at all or Slightly Effective	Somewhat Effective	Very Effective or Extremely Effective	No Opinion
Not Criminal Law	21%	33%	23%	22%
Criminal Law	43%	32%	15%	10%
Race/ Ethnicity				
	Not Effective at all or Slightly Effective	Somewhat Effective	Very Effective or Extremely Effective	No Opinion

White Individuals	26%	35%	23%	17%
Individuals of Color	29%	33%	21%	17%
Gender				
	Not Effective at all or Slightly Effective	Somewhat Effective	Very Effective or Extremely Effective	No Opinion
Male	26%	34%	25%	16%
Female	26%	35%	19%	20%

Note: Those who identify as nonbinary/gender nonconforming or other are excluded as there are few observations. The "Individuals of Color" category consists of respondents who identified as Arab, Middle Eastern, or North African, Asian or Asian American, Black or African American, Hispanic or Latino, Native American or Alaska Native, Native Hawaiian or Other Pacific Islander, and/or other race or ethnicity. Respondents could select more than one option.

Involvement in the Disciplinary Process

Involvement on Respondent-Side of the Process or as a Complainant

A higher proportion of legal professionals who report having been respondents in the disciplinary process, know someone who has been a respondent, have served as respondent counsel, or have been a complainant view the disciplinary process as not effective at all or slightly effective compared to those who have not been in these roles. Similar percentages view the process as very or extremely effective.

Notably, 41% of survey participants who did not know a respondent had no opinion on the effectiveness of the disciplinary process compared to 12% of survey participants who know a respondent.

Involvement on the Disciplinary Process Side

A lower percentage of those with bar-side involvement (20%) perceive the disciplinary system as not effective at all or slightly effective compared to 27% of those who have not served in those roles.

Practice Setting

Overall, those in different practice settings have similar views of effectiveness. Legal professionals in practice settings of solo, small firms, and those in Judicial, in-house, nonprofit, or public law have similar views of the effectiveness of the disciplinary system, with 28% viewing it as not effective at all or slightly effective compared to those in Medium Firm (10-24) or Large Firm (24+) where 21% view it as not effective at all or slightly effective.

Criminal Law Area of Practice

A higher percentage of those who practice criminal law view the process as not at all or slightly effective (43%) compared to those who do not (21%).

Race and Ethnicity

Overall, legal professionals of color and white legal professionals had similar views of the effectiveness of the disciplinary process.

Gender

Male and female legal professionals surveyed have similar perceptions of effectiveness in the disciplinary system. A higher proportion of male legal professionals viewed the disciplinary system as very or extremely effective (25%) compared to female legal professionals (19%), while a higher proportion of women had no opinion (20% compared 16%).

Timeliness of the Disciplinary System

Legal professionals surveyed who reported involvement as a respondent in the disciplinary process were asked an additional question related to the functioning of the disciplinary process based on their experience. Survey participants who had been respondents were asked if their disciplinary matter was resolved in a timely manner,²⁹ with yes or no responses. 76.7% responded yes, while 23.3% responded no.

Perceptions of Fairness in the Disciplinary Process

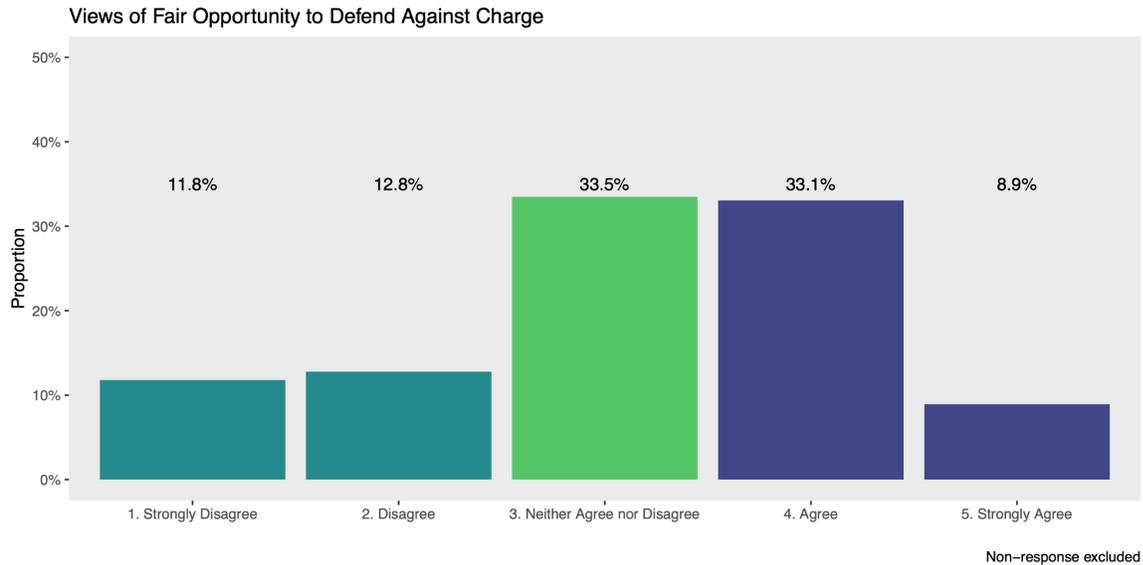
Perceptions of Full and Fair Opportunity to Defend against a Charge

The survey asked the extent to which the survey participant agreed that the disciplinary system provides a legal professional “a full and fair opportunity to defend against a charge.”³⁰ On a five-point scale, the responses ranged from “strongly agree” to “strongly disagree.” Figure 5 presents the response to this question.

²⁹ The full question is: “If you were involved in the disciplinary process, was it resolved in a timely manner?”

³⁰ The full question is: “To what extent do you agree with the following statement: The existing disciplinary system provides a legal professional with a full and fair opportunity to defend against a charge. Charge, as defined by Rule 46, Ariz. R. Sup. Ct, means any allegation or other information of misconduct or incapacity that comes to the attention of the state bar.”

Figure 5



As presented in Figure 5, 42% of participants agree or strongly agree that the disciplinary system is fair when defending against a charge compared to 25% of respondents who disagree or strongly disagree (33.5% neither agree nor disagree).

Perceptions of Fairness to Defend against a Charge by Participant Characteristics

The responses to perceptions of fairness to defend against a charge in the disciplinary process are broken down by five participant characteristics, including involvement in the process, practice setting, practice area of criminal law, race and ethnicity, and gender.³¹ These percentages are reported in Table 8.

³¹ All groups in Table 8 have over 150 survey participants, with most having well over that number.

Table 8: Perceptions of Fairness to Defend against a Charge by Participant Characteristics

Involvement in the Disciplinary Process			
	Disagree or Strongly Disagree	Neither Agree nor Disagree	Agree or Strongly Agree
Respondent	33%	24%	43%
No involvement as a respondent	14%	43%	44%
Personally knows a respondent in process	29%	28%	43%
Does not personally know a respondent in the process	5.9%	52%	42%
Respondent Counsel	40%	18%	42%
No Involvement as Respondent Counsel	23%	34%	43%
Served as Bar Counsel, hearing panel, and/or the attorney discipline probable cause committee	16%	17%	67%
Not served in one of these roles	24%	34%	42%
Complainant	30%	22%	47%
No involvement as a Complainant	23%	35%	42%
Practice Setting			
	Disagree or Strongly Disagree	Neither Agree nor Disagree	Agree or Strongly Agree
Solo Practitioner	31%	32%	37%
Judicial, In house, Nonprofit or Public Lawyer	15%	34%	51%
Medium Firm (10-24) or Large Firm (24+)	22%	31%	47%
Small Firms (2-9)	31%	30%	39%
Practice Area of Criminal Law			
	Disagree or Strongly Disagree	Neither Agree nor Disagree	Agree or Strongly Agree
Criminal Law	37%	30%	33%
Not Criminal Law	21%	35%	45%
Race/ Ethnicity			
	Disagree or Strongly Disagree	Neither Agree nor Disagree	Agree or Strongly Agree

White Individuals	22%	32%	46%
Individuals of Color	32%	32%	36%
Gender			
	Disagree or Strongly Disagree	Neither Agree nor Disagree	Agree or Strongly Agree
Male	25%	31%	44%
Female	21%	36%	43%

Note: Those who identify as nonbinary/gender nonconforming or other are excluded as there are few observations.

The "Individuals of Color" category consists of respondents who identified as Arab, Middle Eastern, or North African, Asian or Asian American, Black or African American, Hispanic or Latino, Native American or Alaska Native, Native Hawaiian or Other Pacific Islander, and/or other race or ethnicity. Respondents could select more than one option.

Involvement in the Disciplinary Process

Involvement on Respondent-Side of the Process or as a Complainant

Similar to other views of the process, a higher proportion of legal professionals who report having been respondents in the disciplinary process, know someone who has been a respondent, have served as respondent counsel, or have been a complainant disagree or strongly disagree that the process provides a full and fair opportunity to defend against a charge compared to those who have not been involved in that way. Similar percentages for the agree/strongly agree response across groups, except for complainants (47% agree or strongly agree compared to 42% who have not been a complainant).

Involvement on the Disciplinary Process Side

A lower percentage of those with bar-side involvement (16%) disagree or strongly disagree that the process provides a fair opportunity to defend against a charge compared to 24% of those who have not served in those roles. 67% of those with Bar-side involvement agree or strongly agree that the process provides a fair opportunity to defend against a charge compared to 42% of those without a Bar-side role.

Practice Setting

Among sole practitioners and those in small firms, 31% disagree or strongly disagree that the process provides a fair opportunity to defend against a charge. 22% of those in medium and large firms and 15% of public lawyers or those in judicial, in house, or nonprofit settings (aggregate category) respond this way. The pattern is reversed for agree/strongly agree, with a lower percentage among sole practitioners and those in small firms.

Criminal Law Area of Practice

A higher percentage of those who practice criminal law disagree/strongly disagree with this view of fairness (37%) compared to 21% of those who do not practice criminal law.

Race and Ethnicity

Among legal professionals of color, 32% disagree/strongly disagree that the process provides a full and fair opportunity to defend against a charge. 22% of white legal professionals hold this view. This pattern is reversed for the agree/strongly disagree response, 46% of white legal professionals giving this response and 36% of legal professionals of color.

Gender

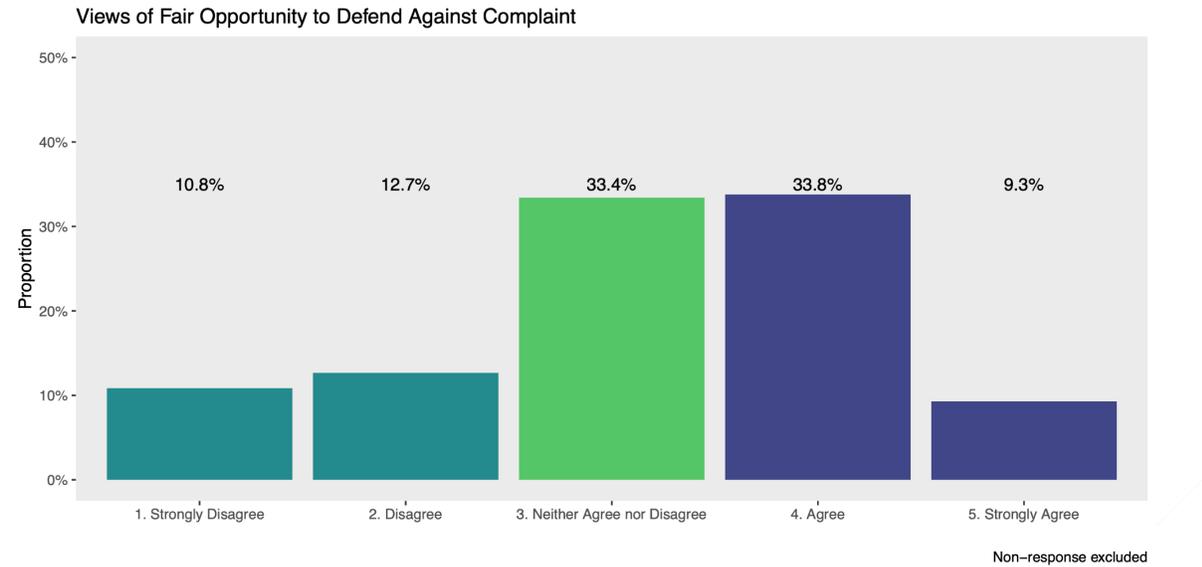
The responses across male and female legal professionals are similar, with a higher proportion of male legal professionals disagreeing/strongly disagreeing that the system provides a fair opportunity to defend against a charge (25% compared 21% for female legal professionals) and a higher percentage of female legal professionals neither agreeing or disagreeing.

Perception of Full and Fair Opportunity to Defend against a Complaint

The responses to the question about whether legal professionals surveyed agree that the disciplinary system provides a full and fair opportunity to defend against a complaint echo those regarding the opportunity to defend against a charge.³² Again the responses are on a five-point scale, ranging from strongly agree to strongly disagree. The percentages are presented in Figure 6.

³² The full question is: “To what extent do you agree with the following statement: The existing disciplinary system provides a legal professional with a full and fair opportunity to defend against a complaint, as defined by Rule 46, Ariz. R. Sup. Ct, means a formal complaint prepared and filed with the disciplinary clerk.”

Figure 6



As presented in Figure 6, 43% of participants perceive the disciplinary system as fair when defending against a complaint compared to 24% who disagree (33.4% neither agree nor disagree).

Perceptions of Fairness to Defend against a Compliant by Participant Characteristics

The responses to perceptions of fairness to defend against a complaint in the disciplinary process are broken down by five participant characteristics, including involvement in process, practice setting, practice area of criminal law, race and ethnicity, and gender.³³ These percentages are presented in Table 9.

³³ All groups in Table 9 have over 150 survey participants, with most having well over that number.

Table 9: Perceptions of Fairness to Defend against a Complaint by Participant Characteristics

Involvement in the Disciplinary Process			
	Disagree or Strongly Disagree	Neither Agree nor Disagree	Agree or Strongly Agree
Respondent	31%	25%	44%
No involvement as a respondent	13%	42%	45%
Personally knows a respondent in the process	28%	28%	44%
Does not know a respondent in the process	5.6%	52%	42%
Respondent Counsel	37%	22%	41%
No Involvement as respondent counsel	22%	34%	44%
Served as Bar counsel, hearing panel, and/or the attorney discipline probable cause committee	18%	15%	67%
Not served in one of these roles	23%	35%	43%
Complainant	28%	24%	48%
No involvement as a Complainant	22%	35%	44%
Practice Setting			
	Disagree or Strongly Disagree	Neither Agree nor Disagree	Agree or Strongly Agree
Sole Practitioner	28%	34%	38%
Judicial, In house, Nonprofit or Public Lawyer	15%	33%	52%
Medium Firm (10-24) or Large Firm (24+)	21%	32%	48%
Small Firms (2-9)	30%	30%	40%
Practice Area of Criminal Law			
	Disagree or Strongly Disagree	Neither Agree nor Disagree	Agree or Strongly Agree
Criminal Law	37%	28%	35%
Not Criminal Law	19%	35%	46%
Race/ Ethnicity			
	Disagree or Strongly Disagree	Neither Agree nor Disagree	Agree or Strongly Agree

White Individuals	21%	32%	47%
Individuals of Color	30%	33%	36%
Gender			
	Disagree or Strongly Disagree	Neither Agree nor Disagree	Agree or Strongly Agree
Male	24%	31%	45%
Female	19%	36%	45%
<p>Note: Those who identify as nonbinary/gender nonconforming or other are excluded as there are few observations.</p> <p>The "Individuals of Color" category consists of respondents who identified as Arab, Middle Eastern, or North African, Asian or Asian American, Black or African American, Hispanic or Latino, Native American or Alaska Native, Native Hawaiian or Other Pacific Islander, and/or other race or ethnicity. Respondents could select more than one option.</p>			

Involvement in the Disciplinary Process

Involvement on Respondent-Side of the Process or as a Complainant

Consistent with views that the process provides a full and fair opportunity to defend against a charge, a higher percentage of legal professionals who report having been respondents in the disciplinary process, know someone who has been a respondent, have served as respondent counsel, or have been a complainant disagree or strongly disagree that the process provides a full and fair opportunity to defend against a complaint compared to those who have not been involved in the disciplinary process in those roles.

Involvement on the Disciplinary Process Side

Consistent with views expressed that the process provides a full and fair opportunity to defend against a charge, a lower percentage of those who reported involvement as bar counsel, serving on the hearing panel, or serving on the Attorney Discipline Probable Cause Committee disagree/strongly disagree that the process provides a full and fair opportunity to defend against a complaint compared to survey participants who no involvement in those roles. Additionally, 67% of those who have served in these roles agree or strongly agree that the process provides a fair opportunity to defend against a complaint compared to 42% of those who have not been involved in those roles.

Practice Setting

Legal professionals in practice settings of solo and small firms have a higher proportion who disagree/strongly disagree that the disciplinary system provides a full and fair opportunity to defend against a complaint (28% and 30% respectively) compared to those in practice settings of judicial, in-house, nonprofit or public settings (15%) and in medium and large firms (21%). Similarly, the reverse is seen for those who agree or strongly agree, with higher percentages for

those in practice settings of judicial, in-house, nonprofit, or public settings and medium and large firm settings and lower percentages for solo and small firm practice settings.

Criminal Law Area of Practice

Similar to views on fairness of defending against a charge, legal professionals in the practice area of criminal law have a higher percentage (37%) who disagree/strongly disagree that the disciplinary process provides legal professionals with a full and fair opportunity to defend against a complaint compared to legal professionals that do not practice criminal law (19%).

Race and Ethnicity

Consistent with perceptions of whether the disciplinary process provides a full and fair opportunity to defend against a charge, legal professionals of color have a higher proportion who disagree/strongly disagree that the disciplinary system provides a full and fair opportunity to defend against a complaint compared to white legal professionals (30% compared to 21%). A higher proportion of white legal professionals (47%) also agree/strongly agree compared to legal professionals of color (36%).

Gender

Views of whether the disciplinary process provides a full and fair opportunity to defend against a complaint are similar among male and female legal professionals with 45% of male and female legal professionals who agree/strongly agree. However, male legal professionals had a higher percentage (24%) than female legal professionals (19%) who disagree or strongly disagree with this view, while a higher percentage of female legal professionals neither agree nor disagree (36% compared to 31%).

Views on Requiring Demographic Information

The Arizona State Bar does not currently require the collection of demographic data of legal professionals who are members. Legal professionals may share this information if they would like, and according to the State Bar, approximately 80% of members share their demographic information. This is a practice that varies by state with some states requiring demographic information as part of the process to be admitted to the Bar. Our survey asked about views on requiring demographic information to understand how the membership would feel about requiring this information, which would make it easier to assess if there are disparities in the disciplinary process. Survey participants overwhelmingly disagreed with the idea of requiring the collection of demographic information. Approximately, two-thirds of respondents were against requiring collection of demographic information (67.2%) and one third favored it (32.8%). We look at this broken down by race and ethnicity, gender, and ideology; we report those percentages below in Table 10.

Table 10

Should legal professionals be required to provide demographic information to the State Bar of Arizona? Yes/No	
Percentage Responding Yes	
<u>Race/Ethnicity</u>	
Individuals of Color	38%
White Individuals	35%
<u>Gender</u>	
Male	34%
Female	35%
<u>Ideology</u>	
Conservative	25%
Moderate	34%
Liberal	48%
Prefer not to say	16%

Comments and Suggestions from Survey Participants

Over 1100 survey participants wrote in open-ended comments on the survey. While a small number of these (191) were one word or unsubstantial comments (like “Thank you” or “N/A”), 974 did provide substantial feedback. These comments included a number of specific suggestions for the Arizona State Bar and about the disciplinary process. Below we share some of the most relevant comments along with suggestions that the Arizona State Bar and Arizona Supreme Court might consider in administering the disciplinary process.

Understanding the Process - The Goal of the Process, Transparency, and the Role of the Bar

The Arizona State Bar lists several purposes of disciplinary proceedings, such as protecting the public, protecting the integrity of the legal system, ensuring the administration of justice, deterring further unethical conduct, educating lawyers and the public to deter unethical behavior, and rehabilitating the lawyer.³⁴ In the survey responses, multiple legal professionals highlighted these goals and expressed a need for the disciplinary process to protect the public from legal professionals acting unethically or unprofessionally.

³⁴ State Bar of Arizona. (n.d.). Lawyer Regulation. AZbar. Retrieved May 23, 2024, from <https://www.azbar.org/for-legal-professionals/lawyer-regulation>

“I found the disciplinary process to fairly balance enforcement of the ethical rules, protecting the public interest and the attorney involved.” (Respondent did not share practice setting, Business Law/Civil Law/Real Property, Respondent did not share race)

“I think that a disciplinary system is necessary to keep bad actors from practicing law.” (Small Firm (2-9), Civil Law, White)

“I believe the disciplinary process is fair, objective, and professionally administered. It is also very necessary.” (Sole Practitioner, Civil Law/Trial Practice/Personal Injury and Wrongful Death, White)

Some survey respondents, however, noted that the purpose of the disciplinary system has diverged from its stated goals. One of the most commonly referenced divergences is the idea of the State Bar using the disciplinary process as a consumer watchdog process. Some legal professionals describe the purpose of the disciplinary process as a consumer watchdog as detrimental, a way to go after legal professionals instead of being a resource, and more concerned with the public perception of the legal profession than determining if the legal professional committed a violation. The purpose of the disciplinary process as a consumer watchdog seems to negate the other purposes of the disciplinary process, which are to deter unethical behavior, educate, and rehabilitate.

“The disciplinary process has evolved into nothing more than a consumer advocacy watchdog more concerned about the public's perception of the legal profession than with protecting all parties' (lawyer and client) interests in the actual process to determine whether or not a violation of the ethical rules has occurred.” (Medium Firm (10-24), Criminal Law, White)

“Over the past 20 years the State Bar has become too zealous in protecting the rights of consumers, to the detriment of its members.” (Large Firm (24+), Trial Practice, White)

“The Bar thinks of itself as a consumer protection agency out to get lawyers instead of being what it should be: a resource for lawyers.” (Public lawyer, Administrative Law/ Bankruptcy/ Civil Law/ Criminal Law/ Public /Trial Practice, White)

Some respondents were also concerned that the disciplinary process was being used as a tool to expand the State Bar's budget. Respondents specifically focused on the role of financial sanctions, arguing that the State Bar manipulates their mission to expand their financial reach.

“The bar under the guise of 'protecting the public' will unjustly punish attorneys and make offers of settlement where the attorney has done nothing wrong in an effort to extort money for the Bar. Everyone knows it's a shakedown process. I knew one attorney who was forced into diversion rather than fight a bar charge over having not timely responded to a single email. That's not an exaggeration.” (Small Firm (2-9), Criminal Law, Respondent did not include their race)

“There seems to be a focus only on sanctioning lawyers for financial reasons. There are lawyers practicing who are unethical that seem to get away with it.” (Judicial, White)

“The sole purpose of the State Bar disciplinary department has devolved into self preservation and expansion. Sole practitioners are targeted, members of large firms which support and donate to the State Bar are largely given a pass. Contrary to the stated purpose, the disciplinary process does NOT exist to protect the public. Rather, it exists to protect and expand the State Bar's budget.” (Sole Practitioner, Bankruptcy/Criminal Law, Respondent did not include their race)

The state courts have a clear goal for the attorney disciplinary process. The goal of the disciplinary process is to protect the public and the justice system from “attorneys who have not discharged their professional duties to clients, the public, the legal system, and the legal profession. The professional conduct of attorneys and the discipline process is governed by [Rules 41-74](#), Arizona Rules of the Supreme Court.”³⁵ From comments received on the survey, it is clear that not all legal professionals understand the process as working towards this goal.

Some survey participants’ responses also expressed limited knowledge of how the process works. For some legal professionals they reported only learning about the disciplinary process as they went through it. Several participants suggested that the State Bar should provide different ways to make the disciplinary process more transparent to Bar members to help avoid the disciplinary process, ease anxiety, and increase confidence and trust in the process.

“The Bar does not provide sufficient information to its members about how the process works and its often done in secret so there is a lack of understanding and accountability.” (Small Firm (2-9), Public Law, Hispanic/Latino)

³⁵ <https://www.azcourts.gov/attorneydiscipline>

“I have been shocked by complaints that have been dismissed and complaints that have been sustained. The process currently lacks complete transparency. The process also needs to be clearly delineated and easily researchable online. (For example, an attorney applies for judicial office, fails to disclose pending bar investigation, claiming the rules do not require, although attorney had been found in violation and was just awaiting sanctions). It is impossible to tell where in the process the attorney's case was. Also, it needs to be disclosed how much investigation into the complaint that the bar actually does - or does evidence of the violation need to be presented to the bar on a silver platter? I am aware of a complaint that was submitted that would have been easily verifiable but was dismissed, without explanation. So ... it is a shadowy, shady process that does not instill confidence in the bar community.” (Sole Practitioner, Criminal Law, White)

Respondents had suggestions for increased transparency for members of the State Bar and the public. For the public the State Bar could provide frequently asked questions (FAQ) about the process and more accessible online resources for research about particular charges. For legal professionals who are subject to the disciplinary process, the State Bar could provide training and seminars on the disciplinary process to reduce fear of the process and anxieties around individuals using the disciplinary process as a threat. One legal professional suggests a free webinar on the disciplinary process for individuals who have received a bar charge be offered.

“Ideally, I'd like to see more training on what happens in the bar process but also more transparency for attorneys who have been formally charged or informally disciplined.” (Public Lawyer, Criminal Law, White)

“It's a very scary and intimidating process even if there is a bar complaint based on retaliation (e.g. you represent plaintiff and defendant as a pro per is angry about the subject matter or outcome) etc. I think it would be nice to have regular FREE webinars on the process if you receive a bar complaint to ease the extreme anxiety.” (Large Firm (24+), Civil Law/Workers' Compensation/ Health Care Litigation, White)

“I think perhaps there should be more transparency. It's an unknown scary process if you've never been involved in it and I think attorneys use the threats of bar complaints to arm twist; and they're able to use the threats of bar complaints because we don't really know what goes on. Even if we believe we were correct in our beliefs and practices, we are afraid of a bar complaint and so we give in. I think if the proceedings were more transparent and the bar should have seminars

and walk us through scenarios and how the bar works it would remove some of the inherent fear and everybody's on a level playing field so that threats of bar complaints are not as coercive because we know what to expect." (Sole Practitioner, Criminal Law, Black)

One respondent even suggested that the State Bar should require legal practitioners to serve on disciplinary hearing panels to better understand the disciplinary process, "Most practitioners don't really know what goes on in the disciplinary process if they have not been implicated themselves. Perhaps, the Bar should require practitioners to serve on disciplinary charge review/hearing panels" (In House Counsel, Alternative Dispute Resolution/Business Law, White).

Respondents also had concerns about Bar counsel and suggested that Bar counsel have additional training in specific areas of law or running legal practices. Numerous participants questioned the competency of Bar counsel and noted how it negatively affects investigations into the charges, and the representation of the State Bar in prosecuting discipline in the formal disciplinary proceedings. The survey responses from legal professionals highlighted concerns over the individuals serving as Bar counsel, such as needing more experience in practicing law or needing more knowledge in the practice area where a bar charge or complainant is brought. Some responses, especially those from small firms and criminal law practitioners, discuss Bar counsels' lack of knowledge of a certain practice area, allowing baseless Bar charges and complaints to continue through the disciplinary process.

"...Lastly, most of the bar counsel are former prosecutors who have very little experience representing clients let alone difficult criminal ones. They lack perspective and proportionality". (Public Lawyer, Civil Law, White)

"Additionally, Bar investigation counsel rarely have the experience to determine true credible claims and treat every claim as truth before hearing the facts from the accused counsel. The process needs to be regulated by practicing professionals in the actual practice areas; not desk attorneys who don't know what real practice is" (Small Firm (2-9), Civil Law/ Criminal Law/ Family Law, Black)

"Also the Bar attorneys have little to no experience in the real world of running a practice. Additionally, they have NO knowledge of criminal law and treat it the same way they treat civil, which it clearly is not!" (Sole Practitioner, Criminal Law, White)

"I think that there is a lack of understanding of what happens in practice generally. Although people investigating are attorneys, they often have vastly

different experiences than smaller firms, women, minorities, etc.” (Judicial, White)

“Bar prosecutors should be better trained across practice areas to better understand the situations individual attorneys face. Ideally, Bar prosecutors should come from a criminal law background and have experience negotiating plea offers and valuing a trial case...” (Public lawyer, Criminal Law, White)

“The State Bar attorney's lack a fundamental knowledge of different areas of the law is concerning in different ethics investigations. For example, a bar attorney who has very limited practice in criminal courts and a lack of law/rules in the criminal arena should NOT be investigating a criminal law attorney for alleged ethics violations and this is true in the reverse. A bar attorney whose background is criminal law for a vast majority of their experience before joining bar counsel should not be investigating a civil attorney or a family law attorney for alleged ethics violations in that arena because of the lack of knowledge of the actual day to day practice. This is akin to a heart surgeon commenting on the skill of a brain surgeon. Both are surgeon's but one has completely different skills and trainings. If any attorney is referred and a case is opened, then an attorney of the same field of practice with no less than 15 years of actual experience should be assigned to the investigation. The current perception of the bar is to take away the livelihood of practicing attorneys and NOT to give the attorney under investigation a fair investigation by assigning attorneys who have no experience in the same area as the attorney who is under investigation. The bar attorney conducting the investigation should be of the same field of practice as the accused and should know the culture of the different courts. The truth is the criminal bench is different than the civil bench and criminal bench is different than the family law bench and that is a huge factor that the current bar staff clearly do not take into consideration. The law, statutes and rules are vastly different as well and what may look like an ethics violation to an untrained attorney may not be to a trained attorney.” (Small Firm (2-9), Criminal Law, Respondent did not provide their race)

Many responses from legal professionals expressed wanting the Bar to help its membership, such as being a resource for attorneys and not a source of stress. Many legal professionals described perceiving the disciplinary process as solely there to serve the interests of the public or only there to punish the attorney. Even in those responses, many legal professionals wanted the Bar to be more supportive of its members. One respondent noted, “The first goal of the disciplinary process should be to help the lawyer resolve a problem, as opposed to trying to punish the lawyer

at all costs” (Sole Practitioner, Business Law/Criminal Law/Estate and Trust/Family Law/Real Property/Tax Law/ Personal Injury and Wrongful Death, Black).

A few legal professionals suggested that due to the serious nature of the disciplinary process legal professionals should have the right to some sort of representation.

“I think that attorneys should be entitled to have a lawyer appointed to represent them and assist them with responding to a Bar Charge.” (Small Firm (2-9), Family Law/Juvenile Law, Multiracial)

“Due to the possible severity of sanction (loss of license or suspension or reputation), it would be beneficial to have appointed defense counsel.” (Public lawyer, Criminal Law/Trial Practice, White)

Additional support from the Bar may be especially important for small firm and solo practitioners, who are more likely to be people of color.

“Small firms or solo practitioners are treated unfairly in the process. They don't have the resources to defend complaints. If suspended for even a short period of time it essentially equates disbarment and is almost impossible to recover from. The completely unreasonably fast process of taking a complaint to trial makes it impossible to defend, resulting in coercion to accept whatever consent decree the State Bar is forcing upon you.” (Sole Practitioner, Alternative Dispute Resolution/Business Law/ Civil Law/ Trial Practice/ Personal Injury and Wrongful Death, White)

“Bar complaint and discipline process is biased against sole practitioners, usually persons of color, who tend not to have good representation in the process.” (Sole Practitioner, Alternative Dispute Resolution/Employment and Labor Law, Hispanic)

One concern that legal professionals had was the treatment and lack of support from the Bar for legal professionals experiencing mental health crises or substance abuse. One legal professional describes watching fellow legal professionals experiencing mental health or physical health crises but failing to reach out to the Bar for support due to fear.

“The bar does a very poor job of supporting bar members who are sole practitioners or rural members. Over the years, I have watched multiple attorneys in my community (no less than 5) experience mental health or physical health episodes brought on by the stress of practicing law who have crashed and burned,

many of them harming clients directly. The bar's response in assisting those practitioners is woefully inadequate and they are not trusted. They are perceived as punitive to attorneys who, as a result, fail to reach out for help for fear of retribution and so issues are avoided, and there is little support when a sole practitioner needs to enter into inpatient mental health treatment or substance abuse treatment.” (Small Firm (2-9), Estate and Trust/Real Property, White)

Additionally, a few legal professionals described experiences of self-reporting and seeking help from the State Bar. However, due to those interactions, the legal professionals would avoid self-reporting in the future. One solo practitioner describes an experience in which he self-reported only to be met with disrespect and an adversarial nature. Another practitioner in a small firm describes an experience in which the questions asked by the Bar staff were hostile, leaving her feeling as if the Bar was not there to support the legal professional.

“I self reported and sought help from the Bar's practice advisor, who came to my practice to consult. The meeting and results were totally worthless. When discussing the merits of the bar complaints against me, as a sole practitioner, bar counsel treated me with complete disrespect, lied to me about the agreement we reached, and was unnecessarily adversarial. That bar counsel should have been sanctioned.” (Sole Practitioner, Business Law/Civil Law/International Law/Real Property /Franchise and Securities, White)

“When I called to ask questions I was met with hostility and the person I spoke to made it sound like I was already guilty.. 'Why did you call the probation department?' 'you called the police on your client' Even when I said that I was scared for my safety he told me I should have called ethics first. It was, and remains, a horrible experience. I have thought of not practicing anymore as a minority woman. I thought I would have more support. The BAR is here to assist the accuser and not support or hear the attorney.” (Small Firm (2-9), Criminal Law, Hispanic)

One suggestion is to provide a self-reporting/self-help process where legal professionals can go without fear of repercussions or a more proactive approach by the Bar in seeking out legal professionals before harm is committed.

“Having spoken with multiple counsel, both subject to disciplinary proceedings and those who have felt that they were headed in that direction, a consensus felt that there should be more resources available and the Bar should actively seek out lawyers who are struggling with the “stereotypical” lawyer issues prior to their collapse. Given that lawyers are attributed with the highest rate of addiction/abuse

of substances among professionals, may have very little business acumen forging ahead as a sole practitioner, and may be practicing “in a bubble,” pro-active peer assistance programs and the like could prevent competent lawyers from further missteps impacting their careers and livelihood.” (Sole Practitioner, Criminal Law, White)

“Should focus more on prevention and encourage safe harbors/self-reporting without fear of getting disciplined” (Small Firm (2-9), Business Law/Civil Law/Trial Practice/Personal Injury and Wrongful Death, White)

The Process

As part of the Rules of Professional Conduct, legal professionals have an ethical duty to report other legal professionals’ misconduct and violations to maintain the integrity of the profession. Survey responses detailed the challenges that legal professionals face in maintaining the integrity of the profession due to the lack of anonymity required in reporting other legal professionals’ misconduct. Participants’ responses identified hesitancy by legal professionals to report others in order to keep a working relationship or to avoid reprisal and, therefore, allowing professional misconduct to go unreported.

“..attorneys are afraid to report other attorneys (or judges), because it isn't anonymous and we have to continue to work with them. Thus, bad behavior is observed and continues and people/cases are harmed.”
(Respondent did not share practice setting or area of law, White)

“I think the bar needs to better understand the issues that are unique to specific areas of law (in my case, criminal) and how it impacts complaints. Of particular note is that criminal attorneys (especially on the defense side) cannot freely submit bar complaints on prosecutors without fear of reprisal (e.g. prosecutors treating our clients worse as a result) because we have to work with the same prosecutorial offices over and over. Also, there seems to be a lack of knowledge as to how serious some issues in the criminal world can be for defendants.” (Sole Practitioner, Criminal Law, White)

“In small and rural communities, it would be really helpful to be able to report anonymously. In such a small legal community, many lawyers are less likely to report misconduct knowing that they will continue to work with the same people. They will be opposing counsel and/or prosecute cases against future clients and there is a real concern about causing issues

for clients by creating animosity.” (Public lawyer, American Indian Law/Criminal Law, White)

While study participants noted that a lack of anonymity for reports may prevent members of the legal profession from submitting claims, many did want to see more scrutiny of claims made by the general public. There was a concern about the general ease and accessibility of the public to submit a Bar charge, creating a frustration apparent in many of the legal professionals’ responses discussing this issue. Legal professional responses described how allowing individuals to submit baseless Bar charges or false information creates an unnecessary burden on legal professionals to respond and defend against those claims.

“It is far too easy for the general public to make the life of a lawyer hellish - to say nutso, false things and force the attorney to spend their day defending against that complaint. The disciplinary process is important, and yes, the general public should have a right to file a complaint against an attorney who is not following the rules of ethics. But I've seen people file complaints against lawyers because the person is mad the lawyer will not take his/her case, or mad that the attorney will not / can not provide free services to the person.”(Respondent did not share practice setting or area of practice, Multiracial)

“The only 'bias' ... in the system ... seems to be a bias against attorneys and in favor of clients -- who can say pretty much any old thing they want to say without consequence. The attorney can be 'put through the wringer' and there are no consequences for the complainant whose claims are found to be unsubstantiated. I'd like to see some accountability against the unsuccessful complainants, as I understand it takes hours and hours and hours out of the charged attorney's -- uncompensated -- time to respond to even frivolous complaints.” (Small Firm (2-9), Civil Law/ Elder Law, Mental Health & Special Needs Planning/ Estate and Trust, White)

“It is too easy for anyone to file a charge online against an attorney simply because they are unhappy with an attorney. There should be some minimal requirements for an on-line complaint/grievance to be filed.” (Public lawyer, Criminal Law, White)

Once a bar charge is received, an intake Bar Counsel is assigned to review it to determine whether the Bar charge should be dismissed, resolved through a diversion agreement, or referred for a screening investigation. The intake Bar Counsel may gather preliminary information by calling the Complainant and Respondent to discuss the Bar Charge. Most legal professionals’

responses referencing the intake process of the disciplinary process consist of praise or criticism of the vetting of charges. A majority of these responses are from solo/ small firm practitioners.

Legal professionals who praise the intake process focus on informal review as an exceptional and effective process that saves time from responding to a meritless charge. One legal practitioner remarks on how effective the informal review and telephone call from the intake bar counsel are compared to the previous process.

“The informal preliminary review of Bar Complaints is an exceptional process. Saves time and prevents waste of effort on obviously meritless complaints.”
(Small Firm (2-9), Civil Law/ Criminal Law/ Employment and Labor Law/ Juvenile Law/ Personal Injury and Wrongful Death, White)

“The telephone call from Bar Counsel to discuss a Bar Complaint is so much better and effective than the previous process that made you prepare a lengthy formal written repose since many of the bar complaints can be resolved after a telephonic discussion and explanation with Bar Counsel.” (Small Firm (2-9), Criminal Law/Family Law/Juvenile Law, White)

A few legal professionals noted their appreciation of when the intake bar counsel has dismissed a frivolous bar charge, but was not notified that a bar charge was submitted against them. One respondent noted, “The complaint filed against me years ago was dismissed as completely frivolous and no one from the Bar even told me it was filed. I thought that was odd. I found out about it years later. I appreciate the Bar realizing immediately that the complaint had no merit, but I would have appreciated at least knowing it was filed” (Public lawyer, Public law, White).

Legal professionals’ criticism of the intake process centers on the ease and accessibility of individuals submitting meritless bar charges or from an opposing party. These charges are then moved through the disciplinary process, causing legal professionals to spend time and money responding to and defending against them. For example, one legal professional said, “Complaints without any merit are accepted and attorneys are required to defend. Sometimes this is an opposing party who is displeased with a court order, or a substance-abusing client that you have terminated, who waits five years and files a charge. There must be a better way to screen without disrupting a person’s practice and yet serving the public” (Small Firm (2-9), Elder Law, Mental Health & Special Needs Planning/Estate and Trust, White).

As the intake bar counsel’s role requires their discretion in deciding whether the Bar charge should be dismissed or proceed throughout the process, some legal professionals perceive the use of discretion by the intake Bar counsel as unfair. Another legal professional remarks that the decision made by the intake Bar counsel drove the conclusion of the rest of the disciplinary proceedings

“I think the bias occurs in the initial complaint process. Complainants are typically non-lawyers and they do not understand the rules. I believe based upon practice in other states, bar complaints should be referred to the offending attorney for response before being dismissed. Complainant's feel like the bar sides with the attorneys and dismisses the complaints without fully understanding what happened. Having the intake person make the decision does not give an appearance of fairness.” (Small Firm (2-9), Bankruptcy/ Business Law/ Civil Law/Other, White)

“The process seems driven by a conclusion reached by the intake representative for the Bar. Once a decision is made - even before an investigation, the investigation is designed to achieve the predetermined conclusion. The process also seems unnecessarily adversarial, especially for a professional who is cooperating fully. I've participated in knock-down, drag out civil litigation matters that had less vitriol than what I've observed and received from Bar representatives.” (Small Firm (2-9), Civil Law/ Family Law, White)

Once the Bar charge has been referred to for a screening investigation, the assigned litigation Bar counsel then sends a copy of the charge to the Respondent and a request for a written response to the charge. The litigation Bar counsel reviews the charge, the Respondent's response, and evidence and may conduct an investigation or obtain more evidence to create a Report of Investigation and recommendations for the outcome. Legal professionals' comments on this stage in the disciplinary process discuss the Bar counsel carrying out the investigation and responding to the bar charge.

Some legal professionals in the survey responses discussed the Bar investigators as focusing on the facts and wanting to get to the truth, while carrying out investigations.

“Bar counsel are fair and do a thorough investigation, focusing on the facts of the charge and the corresponding rules of professional conduct, if applicable. Many people that are unhappy with the discipline system are unhappy with the result, but that neither means that the system is unfair or that there is bias; it only means that the disgruntled participant did not get the outcome they wanted or expected.” (In House, Other (In-house counsel), Multiracial)

“I have had several occasions where bar counsel/investigator contacted me for information about an investigation they were performing against another attorney. The bar counsel/investigator was always professional and appeared to want to get

to the truth of the matter.” (In House, Personal Injury and Wrongful Death, White)

In contrast, other legal professionals see the Bar counsel carrying out investigations as a source of bias against legal professionals. Some legal professionals discuss instances in which they perceived the Bar investigators to be carrying out investigations in ways that are looking to find violations committed by the legal professionals. The two legal professionals describe two types of bias perceived in the disciplinary system: bias against the attorney and political bias.

“There is one particular bar counsel who appears to be after all attorneys. Every attorney that I know who has been disciplined in the past 7 years has had this same bar counsel. Literally, all that I have known who have had issues with the bar to the point that they were disciplined had the same bar counsel. Any interactions with other bar counsels were met with understanding and willingness to discuss without charges but this one bar counsel never listened or considered the attorneys' situation when doing the investigation. It is as if she is out for blood and wants all attorneys to suffer. I have never met anyone who had this bar counsel investigate and not find bar charges and complaints against someone. It is ridiculous. “ (Small Firm (2-9), Family Law, White)

“The lawyer, of course, is considered in a position of strength and this means he was the wrongdoer. This kind of reductionism hardly involves critical analysis in the investigation and making out a Bar charge. It is the new bias afoot in the law and now manifesting in Bar investigations. The Bar may be in danger of becoming another administrative policing body employing soldiers who want to achieve political or emotional justice rather than doing the hard, important, and authorized work of determining objectively if an ethics violation that needs redress has occurred. Investigating without any bias, including underdog affinity, and perceived historical social injustice, bias is essential. Those biases should play no part in the Bar's disciplinary process but I have reason to think that it does. This underdog bias in combination with interloping Bar investigators translating best practice judgments into ethics violations is perverse to its purpose and harms good and high-character lawyers. Now, attorneys trying to operate with honesty and some reasonable amount of zeal for their clients will pay thousands of dollars to defend themselves from an interloping bureaucracy that will not stop until a pound of flesh is extracted to do abstract justice. Most lawyers cannot afford to go to the mat on these matters because of the time, effort, and money it takes. I used to really appreciate the Bar. I thought it went after dishonest lawyers that concretely harmed innocent people. But is it becoming a hive of investigator-bullies performing as best practice experts and social justice judges? This makes it

difficult to trust the Bar.” (Public lawyer, Civil Law, respondent did not share their race)

Various legal professionals had a lot to say about the screening process, regarding the requirement of legal professionals to provide a written response to the Bar charge. Many legal professionals are frustrated by needing to spend time responding to charges only for the charge to be dismissed or the time spent to respond to a baseless Bar charge.

“Recent bar complaint against an attorney who is under my supervision. Per State Bar request, a Response was filed. Five minutes after the Response was submitted, the Bar called to state the Complaint was being dismissed as it did not present any info to substantiate an ethics violation. If the Complaint itself was insufficient, why require the attorney and law firm to spend a substantial amount of time preparing a Response.” (Nonprofit, respondent did not share their race)

“There needs to be more investigation into attorneys that break the rules, and do not talk to clients. I know plenty of attorneys that consistently break the rules and get bar complaints, and nothing ever happens. But, there needs to be a balance. I had to waste 3 hours of time building my file to submit to bar counsel on a completely baseless bar complaint against me. Client claimed I never talked to her, and was not prepared for arbitration. I built the file to show in the few months of representation dozens of emails, and calls, with contact 1-2 times weekly, and there was never an arbitration. I do not want to discourage people filing complaints, but when its this bad, there might need to be a bond placed that at least could compensate for wasted attorney time. Some people just cannot take accountability.” (Small Firm (2-9), Business Law/ Civil Law, White)

In the disciplinary process, the Attorney Disciplinary Probable Cause Committee (ADPCC) is independent of the Arizona State Bar and a Committee of the Supreme Court of Arizona. The ADPCC consists of nine members, six Bar members, and three nonlawyers, who meet monthly to review the recommendations submitted by the Bar Counsel investigator and dismiss appeals. In the Committee’s Monthly meetings, the Respondent, the Respondent’s attorney, and the public can not attend the meeting. Only the Bar Counsel can appear at the meeting for a brief presentation. The Respondent may submit a written response to the State Bar’s report of investigation for the Committee’s consideration.

The Committee may change the decision made by the Bar, dismiss, refer for more investigation, or affirm the Bar’s decision. If the Committee affirms the Bar’s decision for an order of diversion or order of informal discipline, and the Respondent does not object, the order becomes

final. If the Committee affirms the Bar's decision for a formal sanction, then an order of probable cause is issued, and the matter is directed to formal disciplinary proceedings.³⁶

Regarding the suggestions made by legal professionals in the survey responses, one legal professional suggested that the Committee allow Complaints and Respondents be allowed to present at the meeting along with the Bar Counsel. Another legal professional practicing in the area of Ethics, discipline defense, and legal malpractice defense response shares the same sentiment, expressing that it is unfair only to have the Bar Counsel present to ADPCC.

“I believe that complainants and respondents are not allowed to be present for probable cause panel hearings, which if so should be changed.” (Sole Practitioner, Criminal Law, White)

“It is unfair to allow Bar counsel to present to ADPCC, but not allow respondents to present...” (Large Firm (24+), Ethics, discipline defense and legal malpractice defense, White)

In the disciplinary process, once the State Bar files a Complaint with the Disciplinary Clerk of the Supreme Court, the Complaint proceeds to formal proceedings. A hearing is held before the disciplinary hearing panel if the matter is not settled. The hearing panel consists of three members: the Presiding Disciplinary Judge, a voluntary attorney, and a voluntary non-attorney who is a member of the public.

Several survey respondents praised the different components of the formal hearing in the disciplinary process, such as the presiding disciplinary judge and the hearing panel. A few legal professionals remarked that these components of the disciplinary process are fair and efficient and decrease the likelihood of bias.

“In my opinion, our disciplinary process, particularly with the appointment of the PDJ, has improved considerably, both with respect to fairness and to speed.” (Sole Practitioner, Civil Law/ Trial Practice/ Personal Injury and Wrongful Death, White)

“Wonderful approach to have a PDJ, an attorney member, and a public member on the hearing panel. The diffused panel decreases the likelihood for bias. Further, the panels that I have observed have been thoughtful and balanced in their process.” (In House, Business Law/ International Law, Respondent did not share their race)

³⁶ Rule 50, Ariz. R. Sup. Ct

Volunteers are appointed from a pool of volunteer attorneys and public members by the Chief Justice to serve on hearing panels. For an attorney to serve on the Hearing Panel, the attorney must have been an active or judicial member of the State Bar for at least five of the seven years before the appointment.³⁷

In the survey, a few legal professionals wrote responses suggesting changes to the eligibility and requirements of attorneys serving on hearing panels. One suggests broader representation in the advertisements for attorneys to serve on bar panels, including federal attorneys, “Advertising for attorneys to sit on the bar panel appears to be very narrow and doesn’t include federal attorneys. There should be a broader representation” (Public lawyer, Administrative Law/Alternative Dispute Resolution/American Indian Law/Civil Law/Employment and Labor Law/Public, Multiracial). Additional commenters suggested that hearing panels should include attorneys with specific practice area backgrounds or particular lengths of service in the profession.

In the formal proceedings of the disciplinary process, the Bar counsel and the respondent are required to serve each other initial disclosure statements. The initial disclosure statement should include items such as witness information and expert witness information that the Bar counsel is expected to call, information of individuals with relevant knowledge, tangible evidence, documents, history of prior discipline, evidence in aggravation or mitigation that may be presented, and the actual and legal bases in which the Respondent may rely on to contest the allegations in the complaint at the hearing.³⁸

A concern brought by legal professionals is regarding the information required by respondents in the initial disclosure statement, in which respondents are to list out the actual and legal bases that they may use in the hearing to contest the allegations. However, the same is not required of Bar Counsel. In the responses by legal professionals, they describe feeling as if the Bar counsel can allege vague rule violations without articulating the facts supporting each alleged rule violation. The legal professionals in the survey describe feeling unsure of what facts support what rule violation and as if the Bar counsel is using as many violations as they can to see what sticks. This is similar to the same feelings held by other legal professionals' responses in the survey as if the Bar counsel is looking for violations committed by the legal professional.

The suggestions presented by participants in the survey are that Bar counsel should specifically identify which facts are a violation of each rule.

“The State Bar should be required to comply with standard notice pleading requirements in disciplinary matters. Notices and complaints are structured in a manner that does not afford the respondent a fair opportunity to know what is being charged against them. Instead, vague and general allegations are put

³⁷ Rule 52, Ariz. R. Sup. Ct

³⁸ Rule 58, Ariz. R. Sup. Ct

together, without any indication as to what general allegation is being alleged as a violation of which specific rule. The standard is clear and convincing evidence, yet the notices and complaints are devoid of anything coming close to clear and convincing. A similar situation would be if civil complaints were permitted to allege general allegations (i.e., Plaintiff and Defendant entered into a contract, and then the complaint simply says 'breach of contract') and then have a sentence at the end that says, 'These actions are a breach of contract, breach of the covenant of good faith and fair dealing, fraud, negligent misrepresentation, tortious interference with business expectations, and caused damages to Plaintiff.' There is no basis or ability for a Respondent to know what allegations constitute the basis for the thrown-together alleged violations of the Rules of Professional Conduct. I believe the disciplinary process would be better served if the State Bar were required, like plaintiffs in civil actions, to detail their notices and complaints to more specifically identify which alleged facts are a violation of each specific Rule that is alleged to have been violated.” (Sole Practitioner, Administrative Law/ Business Law/ Civil Law/ Trial Practice, White)

“The process is biased towards the bar and heavily against respondents. For example, in a bar complaint, the bar can allege rule violations, without having to articulate the facts supporting each individual alleged rule violation. In other words, the bar can list a bunch of rule violations, and the respondent is left to guess which facts the bar believes support each alleged rule violation, which puts the respondent in the impossible position of having to read the bar’s mind. The bar should have to state which facts support each alleged rule violation, without being able to throw the kitchen sink and just to see what sticks.” (Sole Practitioner, Estate and Trust, White)

“It is unfair to allow Bar counsel to present to ADPCC, but not allow the respondent to present. It is unfair to require respondent to disclose the factual and legal bases of his or her defenses in the initial disclosure statement, with no corresponding requirement that the Bar disclose the factual and legal bases for its allegations (Rule 58(e)). It is unfair to require the respondent to participate in settlement conferences in a formal proceeding, when Bar counsel does not participate with authority to settle for all sanctions set forth in Rule 60.” (Large Firm (24+), Ethics, discipline defense and legal malpractice defense, White)

Expunging Public Records

Survey participants suggested that the State Bar set up a way to expunge public records of legal professionals' discipline records due to the prosecutorial nature of the disciplinary process, the

meritlessness of charges and complaints, and the acceptance of discipline due to the lack of resources to defend against Bar charges and complaints.

“The bar allows anyone to file a bar complaint, no matter how frivolous. The bar has gotten better summarily dismissing them after a phone call to the attorney, but the bar should be able to summarily dismiss many without even a phone call. Even the most frivolous complaint is indicated on the website, and this simply is not right to do. There needs to be more specific criteria on when a bar complaint should be able to show up on the bar's website. Frivolous complaints should not be open as a public record.” (Sole Practitioner, Bankruptcy/ Civil Law/ Estate and Trust/Real Property, Middle Eastern)

“I may be mistaken, but I believe any complaint stays on the attorney's record for a certain amount of time even if found to be completely baseless. It just seems odd that any disgruntled person can file a complaint about nothing and the attorney has to defend against it. It just seems like there should be some stopgap preventing/early dismissing such complaints.” (Small Firm (2-9), Civil Law/Employment and Labor Law/ Trial Practice, White)

“Any member of the public can submit a charge to the Bar. After the Bar inquires and determines there is no validity to the charge, the charge should not remain on the attorney's record. My understanding is that the 'charge' remains there for 3 years; anyone wanting to call the Bar can get the information. Given that the Bar has determined the 'charge' has no substance, keeping the 'charge' available is not protecting the public or the attorney.” (Sole Practitioner, Elder Law, Mental Health & Special Needs Planning/ Estate and Trust, White)

“Fixing the problems going forward is not enough. Thousands who unjustly received punishment still have that mark in their records. Those records must be expunged. It is the only way to restore any kind of faith in the system. No attorney I know believes that the system has been fair in the last five to ten years.” (Medium Firm (10-24), Trial Practice, Native American)

The Cost of the Disciplinary Process - Finances, Time, and Emotion

In the responses, the cost of the disciplinary process comes up in regards to the cost of the disciplinary process for the Bar and the cost of legal professionals to defend themselves. Responses on the costs of the disciplinary process for the Bar discuss that the disciplinary system is expensive for all involved and that the Bar spends too much of its budget on the disciplinary process due to giving too much attention to meritless claims. For example, one respondent shared, “My perception is that the bar disciplinary procedure is too expensive for all involved, & much more rigorous than disciplinary procedures for other licensed professionals in Arizona (for example, nurses & doctors). What percentage of my bar dues goes to fund disciplinary investigations & proceedings?” (Medium Firm (10-24) respondent did not share practice area or race).

Most legal professionals’ responses discuss the cost of the disciplinary process borne by legal professionals when feeling like the disciplinary process is unfair towards them such as bias in favor of the complainant or bias against the attorney. Additionally, this connects to how legal professionals perceive the disciplinary process such as the purpose is to punish the legal professional or that the purpose of the disciplinary process is to extract money for the Bar’s budget that allows for meritless claims to go forth in the process.

Similarly, legal professionals discuss the amount of time that the process can take. Time and cost were often discussed together. Both of these were then related to the overall purpose of the disciplinary process. As one respondent noted, this can tie to feeling the process itself is illegitimate.

“The entire process moves much too slowly. It is much too time consuming and expensive to address a charge even when the case is never taken to the PC panel and is ultimately dismissed. The bar needs to work toward expediting the investigation process to minimize the stress on the lawyer under investigation and the cost of counsel. Outcomes, at times, seem random or influenced by practice area. One lawyer is dishonest with the court and gets suspended for six months and a day and another, in a different practice area, has their case dismissed after the PC finding. The perception most lawyers I know have is that the bar is more interested in catching someone doing something wrong than helping to get the lawyer on the right track. Accounting errors and workload mismanagement are two examples where instruction and oversight would be better than punishment. (While the goal of bar discipline may not be to punish the lawyer, it certainly does so.) A self-regulating profession in a profession that is based on an adversarial system must diligently guard against having the discipline system become a weapon in a litigant's arsenal to use against opposing counsel. Weaponizing bar complaints and the disciplinary process is becoming more and more common for some opposing counsel and the bar is allowing itself to be a part of this problem.

Complaints filed by opposing counsel should be eyed with suspicion and they need to be investigated quickly and lawyers who file baseless complaints need to be admonished or disciplined. Knowing a bar investigation could take months or even more than a year and cause 10s of thousands to be spent on representation may be just the type of outcome opposing counsel wants after (or even during) hard-fought litigation. This is particularly true when there is little or no consequence to filing a baseless or exaggerated complaint.” (Public lawyer, Criminal Law, White)

Study participants discussed a number of concerns and potential suggestions for changes to the process. Throughout there was a theme of wanting more information and transparency regarding the process. In addition to sharing more information about how the process works, one way of ensuring the public conversation about the process is accurate is collecting administrative data about each stage of the process.

Further Research - Collecting Administrative Data

Survey comments included a number of requests for detailed statistical information regarding outcomes of the disciplinary process. Respondents suggested the Arizona State Bar regularly report on the outcome of disciplinary proceedings across a number of identities, practice areas, and firm sizes. Respondents noted that sharing statistics would confirm bias or create a credible rebuttal to claims of bias in the system. While the Arizona State Bar does not currently maintain administrative data that would allow for sharing or analysis, it is possible to collect that data moving forward. In appendix B, we have included a sample excel workbook and detailed instructions that the Bar could use to start a database. Once enough cases have been collected in the system, it would be easy to run regular reports from this database to determine if there are disparate outcomes. Collaborating with academic researchers to establish the database and regularly run reports would also lend credibility to the process.

Conclusion

While it is beyond the scope of this study to say whether there are actual disparities or biases in the attorney disciplinary process in Arizona, the survey administered as part of this project demonstrated that a substantial number of legal professionals in the state perceive bias in the system. Legal professionals who have participated in the disciplinary process from the outside (i.e., complainants, respondents (or knowing a legal professional who has been a respondent), and respondent’s counsel) are associated with a higher likelihood of perceiving bias in the system compared to those who have not participated. Consistent with findings from studies in neighboring states, size of practice and race or ethnicity are also associated with differences in perceptions of bias. Legal professionals with solo practices or practicing in small firms are more

likely to perceive bias in the system. People of color who have been respondents are also associated with a higher likelihood of perceiving bias in the system. Additionally, legal professionals practicing criminal law are consistently more likely to agree that there is bias in the system. While these findings are not novel based on research in other states and anecdotal discussions prior to the administration of the current survey, the extent of perceived bias (45% of survey participants agree or strongly agree) and volume of open-ended comments signal a need to collect and assess outcome data on the process and consider some reform measures.

The Arizona State Bar has the opportunity to address the findings from this study by focusing on collecting data on the process and outcomes of the disciplinary process. This could pinpoint where, if at all, actual bias exists in the system. Beyond additional data collection, there are also opportunities to more clearly communicate with members of the State Bar and public regarding the purpose and process of the disciplinary system. Members expressed an interest in increased support as they navigate the process and more transparency in decision making and communication. Increased communication and training may bolster trust in the process.

Collecting data to ensure the disciplinary process is free from bias and addressing the legal profession's perceptions of bias, fairness, and effectiveness of the disciplinary process are vital for maintaining the public's trust in the legal profession and justice system.

Appendix A: Perceptions of the Disciplinary Process Survey

Perceptions of the Disciplinary Process Survey

Q1: Which of the following areas of law do you practice?

● Administrative Law	● Civil Litigation	● Family Law
● Alternative Dispute Resolution	● Construction Law	● Immigration Law
● American Indian Law	● Criminal Law	● International Law
● Animal Law	● Elder Law, Mental Health Special Needs Planning	● Juvenile Law
● Antitrust Law	● Employment & Labor Law	● Personal Injury and Wrongful Death
● Bankruptcy	● Environmental and Natural Resources Law	● Public
● Business Law	● Estate and Trust	● Real Property
● Tax Law	● Trial Practice	● Workers' Compensation
● Other _____		

Q2: In your opinion, how effective is the existing disciplinary system in enforcing the Rules of Professional Conduct ? ³⁹

- Not at all Effective
- Slightly Effective
- Somewhat Effective
- Very Effective
- Extremely Effective

³⁹ Adapted from Oregon https://www.osbar.org/surveys_research/disciplinary.html#1

- No opinion

Q3: To what extent do you agree with the following statement: The existing disciplinary system provides a legal professional with a full and fair opportunity to defend against a charge
Charge, as defined by Rule 46, Ariz. R. Sup. Ct, means means any allegation or other information of misconduct or incapacity that comes to the attention of the state bar

- Strongly disagree
- Disagree
- Neither agree nor disagree
- Agree
- Strongly agree

Q4: To what extent do you agree with the following statement: The existing disciplinary system provides a legal professional with a full and fair opportunity to defend against a complaint.⁴⁰
Complaint, as defined by Rule 46, Ariz. R. Sup. Ct, means a formal complaint prepared and filed with the disciplinary clerk

- Strongly disagree
- Disagree
- Neither agree nor disagree
- Agree
- Strongly agree

Q5: To what extent do you agree with the following statement: There is bias in the disciplinary system.⁴¹

- Strongly disagree
- Disagree
- Neither agree nor disagree
- Agree
- Strongly agree

Q6: Have you personally known a legal professional that has been involved in the disciplinary process in one or more of the following ways?

Pursuant to Rule 46, Ariz. R. Sup. Ct, charge is defined as any allegation or other information of misconduct or incapacity that comes to the attention of the state bar and complaint is defined as a formal complaint prepared and filed with the disciplinary clerk

	Yes, within the years	Yes, 3 to 7 years	Yes, more than 7 ago	No
--	-----------------------	-------------------	----------------------	----

⁴⁰ Adapted from Oregon https://www.osbar.org/surveys_research/disciplinary.html#1

⁴¹ Adapted from Oregon https://www.osbar.org/surveys_research/disciplinary.html#1 (changed for grammar)

Subject of a bar charge	•	•	•	•
Entered into a diversion agree	•	•	•	•
Subject to an investigation	•	•	•	•
Subject of a bar complaint	•	•	•	•
Received an informal sanction (admonition, probation, restitution)	•	•	•	•
Received a formal sanction (reprimand, suspension, disbarment)	•	•	•	•

Q7: If yes, did the legal professional experience bias in the disciplinary process?

- Strongly disagree
- Disagree
- Neither agree nor disagree
- Agree
- Strongly agree

Q8: If you answered Agree or Strongly Agree to question 7, what factors formed your opinion?⁴²

- Subject matter of legal professional's practice
- Size of legal professional's firm
- Gender of legal professional
- Race and/or Ethnicity of legal professional
- Sexual orientation of legal professional
- Legal professional's years of practice
- Political orientation or connections of legal professional
- Legal professional's relationship with other members of the discipline process or Bar

⁴² Adapted from Oregon https://www.osbar.org/surveys_research/disciplinary.html#1 (changed responses)

Q9: Have you ever been involved in the disciplinary process in one or more of the following roles

As defined by Rule 46, Ariz. R. Sup. Ct, charge is to mean any allegation or other information of misconduct or incapacity that comes to the attention of the state bar and complaint is to mean a formal complaint prepared and filed with the disciplinary clerk

	Yes, within the years	Yes, 3 to 7 years	Yes, more than 7 ago	No
Subject of a bar charge	•	•	•	•
Subject to an investigation	•	•	•	•
Entered into a diversion agree	•	•	•	•
Subject of a bar complaint	•	•	•	•
Received an informal sanction (admonition, probation, restitution)	•	•	•	•
Received a formal sanction (reprimand, suspension, disbarment)	•	•	•	•

Q10: If yes, did you experience bias in the disciplinary process?

- Strongly disagree
- Disagree
- Neither agree nor disagree
- Agree
- Strongly agree

Q11: If you answered Agree or Strongly Agree to question 10, what factors formed your opinion?⁴³

- Subject matter of your practice
- Size of your firm

⁴³ Adapted from Oregon https://www.osbar.org/surveys_research/disciplinary.html#1 (changed responses)

- Your Gender
- Your Race and/or Ethnicity of legal professional
- Your Sexual orientation of legal professional
- The amount of years you have practiced
- Your political orientation or connections of legal professional
- Your relationship with other members of the discipline process or Bar

Q12: If you were involved in the disciplinary process, was it resolved in a timely manner?

- Yes
- No

Q13: Have you ever participated in the disciplinary process in one or more of the following roles:

	Yes, within the last 3 years	Yes, 3 to 7 years ago	Yes, more than 7 years ago	No
Respondent's counsel	●	●	●	●
Bar counsel	●	●	●	●
Attorney Discipline Probable Cause Committee	●	●	●	●
Hearing Panel	●	●	●	●
Complainant	●	●	●	●

Q14: If yes, based on your experience, was there bias in the disciplinary system?

- Strongly disagree
- Disagree
- Neither agree nor disagree
- Agree
- Strongly agree

Q15: If you answered Agree or Strongly Agree to question 14, what factors formed your opinion? ⁴⁴

- Subject matter of legal professional's practice

⁴⁴ Adapted from Oregon https://www.osbar.org/surveys_research/disciplinary.html#1 (changed responses)

- Size of legal professional's firm
- Gender of legal professional
- Race and/or Ethnicity of legal professional
- Sexual orientation of legal professional
- Legal professional's years of practice
- Political orientation or connections of legal professional
- Legal professional's relationship with other members of the discipline process or Bar

Q16: Is there anything else about the disciplinary process that you would like to mention?

Q17: Should legal professionals be required to provide demographic information to the State Bar of Arizona

- Yes
- No

Demographic Questions

Q18: What is your practice setting?

● Judicial
● Small firm (2-9)
● Medium firm (10-24)
● Large firm (25+)
● Nonprofit
● Public Lawyer
● In House
● Sole Practitioner

Q19: What is your gender?

- Male

- Female
- Nonbinary/gender nonconforming
- Other _____

Q20: Are you transgender?

- Yes
- No

Q21: What is your sexual orientation

- Heterosexual
- Lesbian
- Gay
- Bisexual
- other _____

Q22: What is your age?

- 30 years or younger
- 31-40 years
- 41-50 years
- 51-60 years
- 61 years and over

Q23: How would you describe your race or ethnicity?

- Arab, Middle Eastern, or North African—For example, Algerian, Egyptian, Iraqi, Jordanian, Sudanese, Syrian, Yemeni
- Asian or Asian American—For example, Asian Indian, Chinese, Filipino, Japanese, Korean, Nepalese, Vietnamese
- Black or African American—For example, Ethiopian, Haitian, Jamaican, Nigerian, Somalian
- Hispanic or Latino—For example, Colombian, Cuban, Dominican, Mexican or Mexican American, Puerto Rican, Salvadoran
- Native American or Alaska Native—For example, Arapaho, Blackfeet Tribe, Mayan, Native Village of Barrow Inupiat Traditional Government, Navajo Nation,
- Native Hawaiian or Other Pacific Islander—For example, Chamorro, Fijian, Marshallese, Native Hawaiian, Samoan, Tongan
- White or European American—For example, English, French, German, Irish, Italian, Polish
- Some other race, ethnicity, or origin

Please specify: _____

Q24: How would you describe your disability/ ability status?

- Mobility impairment
- Sensory (hearing or vision)
- Learning (e.g. ADHD, dyslexia)
- Mental health disorder
- A disability not listed above
- I do not identify with a disability or impairment
- Prefer not to answer

Q25: How would you describe your political views?

- Very conservative
- Conservative
- Moderate
- Liberal
- Very Liberal
- Prefer not to say

Q26: How much trust and confidence do you have in the following institutions:

	A great deal	Fair amount	Not very muc	None at all	No opinion
Federal gover	●	●	●	●	●
State governn	●	●	●	●	●
Local Govern	●	●	●	●	●

Q27: How long have you been practicing law?

- Less than 5 years
- 5-10 years
- 11-15 years
- 16-20 years
- Over 20 years

Q28: What is your income?

- \$35,000 or less
- \$36,000-\$55,000
- \$56,000-\$75,000

- \$76,000-\$100,000
- \$101,000 -\$200,000
- Over \$200,000

Appendix B: Sample Excel Workbook

Below is a sample workbook for the Arizona State Bar to start a database. Please see the [sample workbook](#) for a complete example of the database.

Data collection begins with the submission of a Bar charge and with regular updates as the complaint moves through the disciplinary process.

1. The Intake Process

Once a Bar Charge is submitted, the intake Bar counsel should create a respondent ID for the respondent in the demographics section and fill in the date of the charge received and the source of the bar charge in the Intake process section.

a) Demographics section

Demographics									
Respondent ID	Race/Ethnicity	Gender	Sexual Orientation	Age	Disability Status	Firm Size	Practice Setting	Practice Area	Years of Practice

b) Intake process section

Intake Process			
Date of Bar Charge	Source of Bar Charge	Intake Process Decision	Date of Intake Decision
	<i>(public, lawyer, judge, other legal professional, etc.)</i>	<i>(Dismissed, diversion, charge forwarded, etc.)</i>	

When the intake Bar counsel makes informal contact with the respondent, the intake Bar counsel should try to collect the respondent's demographic information. Once an intake decision has been made, the intake process decision and the date of the intake decision should be filled in for the database.

2. Screening Process

Once the Bar charge is forwarded to the screening process, the investigating bar counsel should fill in the date of the screening process for when the Bar charge has been received. When the investigator has made a decision, the screening decision and date of the screening decision should be filled in for the database.

Screening Process		
Date of Screening Process	Screening Decision	Date of Screening Decision
	<i>e.g diversion, discipline or dismissal.</i>	

3. Attorney Discipline Probable Cause Committee (ADPCC)

The date of ADPCC hearing should be filled in for the database once ADPCC hearing is assigned. Once an order is issued by the ADPCC, the order issued and date of order issued should be filled in, in the database

Attorney Discipline Probable Cause Committee (ADPCC)		
Date of ADPCC hearing	Order Issued	Date of Order Issued
	<i>e.g. issued an order of diversion, an order of informal discipline (an Admonition, Probation, Restitution), or order of probable cause</i>	

4. Formal Proceedings

If a complaint is filed with the Disciplinary Clerk of the Supreme Court, the date the complaint is filed should be entered into the database. Once a decision is made in the formal proceedings, the Formal Complaint Disposition and the date of the Formal Complaint Disposition should be filled in on the database.

<i>Formal Proceedings</i>		
Date of Formal Complaint	Formal Complaint Disposition	Date of Formal Complaint Disposition

5. Appeals process

If an appeal is filed, the date of the filing should be entered into the database for the corresponding respondent ID. Once an appeal decision has been made, the appeal disposition and the date of that appeal disposition should be entered into the database.

<i>Appeals Process</i>		
Date of Appeal	Appeal Disposition	Date of Appeal Disposition

