



# The State Bar of California

## State Bar Conducts First of Its Kind Study on Racial Disparities in Attorney Discipline

The State Bar's statutory mission includes eliminating bias and promoting diversity in the legal profession. Pursuant to that mission, the State Bar undertook a rigorous, quantitative analysis to determine whether there is disproportionate representation of nonwhite attorneys in the discipline system.

### Study Purpose and Scope

Undertaken by George Farkas, Distinguished Professor in the School of Education at the University of California, Irvine, the study evaluated the likelihood of attorneys of different racial/ethnic groups and genders being placed on probation or disbarred.

- The data set included all attorneys admitted to the State Bar between 1990 and 2009 for whom race/ethnicity and gender information was available.
- The study population, 116,363, represents 95 percent of all attorneys admitted during the period.
- The study evaluated probations and disbarments between 1990 and 2018.

### Rates of Discipline Differ

Absent controls for contributing factors, the analysis found statistically significant disparities in probation and disbarment. The largest gender/race disparities were found between black male attorneys and their white male counterparts.

- During the study period, 3.2 percent of black male attorneys were placed on probation, compared to 0.9 percent of white male attorneys.
- During the study period, 3.9 percent of black male attorneys were disbarred or resigned, compared to 1.0 percent of white males.
- Differences were smaller for Latino males and for black and Latino females compared to white females.
- There were no meaningful differences for Asians compared to whites.

### Bases for Discipline Disparities

Once additional information on the attorneys was taken into consideration in the statistical analysis, the study found that differential rates of disbarment and probation of black male attorneys are largely explained by:

- an attorney's previous discipline history, which was found to have the strongest effect on discipline outcomes;
- the number of complaints received about an attorney;

- the number of investigations opened against an attorney; and
- the percentage of investigations in which the attorney was represented by counsel.

### **Solo Practitioners**

The State Bar expanded upon Dr. Farkas's analysis to examine the question of whether solo practitioners are disproportionately disciplined. The study found that, without controlling for other factors relevant to the discipline rate, solo practitioners are more likely than attorneys in larger firms to be disciplined.

When the statistical model evaluating discipline by firm size controls for other factors, such as number of complaints and percentage of investigations in which the attorney was represented by counsel, the disproportionate impact on solo practitioners declines substantially, but remains statistically significant for the likelihood of an attorney being placed on probation.

### **Next Steps**

To continue monitoring and improving the equity of its attorney discipline processes, the State Bar will:

- Further study the issues raised by the analysis: disparities in the number of complaints filed by attorney race, gender, and solo practice status; how complaints and prior discipline are taken into account during the State Bar investigations process; and the bases for the differential impact of counsel representation on disciplinary outcomes.
- Engage a consultant on bias-free decision-making and processes to make recommendations for:
  - Targeted preventative measures the State Bar can take,
  - Options for whether and how to take prior complaints into account in the discipline process, and
  - Decision matrices and other standardized tools to address any unintended bias in the discipline system.