Report By The State Bar of California

"Investigation and Prosecution of Disciplinary Complaints Against Attorneys in Solo Practice, Small Size Law Firms and Large Size Law Firms"

In Compliance With 1999 Senate Bill 143

June 2001

TABLE OF CONTENTS

The State Bar of California

180 Howard Street
San Francisco, CA 94105
(415) 538-2000

1149 South Hill Street
Los Angeles, CA 90015-2299
(213) 765-1000

EXECUTIVE SUMMARY

In 1999, the Legislature enacted Senate Bill 143 which dealt with the subject of attorney discipline in the State of California. SB143 added Section 6095.1 to the Business and Professions Code. Section 6095.1 requires the State Bar of California to compile statistics relating to the correlation of law firm size with complaints received and disciplinary action taken and then report those statistics to the Senate Committee on Judiciary and the Assembly Committee on Judiciary, on or before June 30, 2001.

Section 6095.1 charges the State Bar with focusing on two perceptions about the disciplinary system. First, the State Bar is charged with studying whether a disproportionate number of disciplinary proceedings are prosecuted against solo practitioners and small firm attorneys, as compared to proceedings brought against attorneys practicing in large law firms. Second, the State Bar is to report on procedures in place or under consideration to correct any institutional bias and report on changes that would make the discipline system more equitable.

The State Bar has found:

- The numbers and percentages of disciplinary prosecutions are commensurate with the numbers and percentages of investigations opened against solo practitioners and small firm practitioners, as compared to large firm attorneys.

- It is the number of complaints filed against solo practitioners and small firm practitioners that is disproportionate to the general attorney population in the three sizes of law firms.

- That there is no institutional bias against solo practitioners and small firm attorneys.

The State Bar's findings are based on a study conducted by a consultant, Hilton Farnkopf & Hobson, LLC. Statistics compiled by the consultant support long-held contentions by Bar staff and lawyers' defense counsel that solo and small firm attorneys:

- Often find themselves so overworked that they miss deadlines or fail to communicate with clients.

- Sometimes experience money worries and violate ethical rules by "borrowing" from

their clients' trust accounts.

- Do not have enough support staff to manage correspondence or back them up when they are involved in a trial, become ill, or take a vacation.

- Frequently, in contrast to large firm attorneys, do not cooperate with State Bar investigations of alleged misconduct or have the resources to employ a defense attorney.

- Often, even when they cooperate, do not have documentation to defend themselves against the allegations.

In this report, the State Bar describes what it will continue to do, and what it is considering doing, to ensure that resources are used fairly and equitably. Since the issue of disproportionate prosecutions begins with the number of complaints made against solo practitioners and small firm attorneys, the State Bar focuses on preventive measures designed to assist these attorneys to avoid having disciplinary complaints brought against them. Educational programs designed to assist solo practitioners and small firm attorneys are a major focus of the State Bar.

I. BUSINESS AND PROFESSIONS CODE SECTION 6095.1

For convenience, the text of Business and Professions Code Section 6095.1 is set forth below. It provides that:

> "(a) Beginning on April 1, 2000, and through March 31, 2001, the State Bar shall compile statistics indicating the number of complaints against attorneys, broken down to reflect the percentage of complaints brought against attorneys practicing as solo practitioners, in small law firms or partnerships, and in large law firms. The State Bar shall also compile statistics indicating the percentage of complaints that are investigated, the percentage of complaints that are prosecuted, and the outcomes of those prosecutions against solo practitioners, attorneys practicing in small law firms or partnerships, and attorneys practicing in large law firms. For the purposes of the study, agreements in lieu of discipline shall not be counted as prosecutions. Practicing attorneys shall provide any information that is requested by the bar deemed necessary for the purpose of compiling the statistics. For purposes of this section, "small law firm" means a firm, partnership, association, corporation, or limited liability partnership that includes 10 or fewer attorneys.
>
> (b) On or before June 30, 2001, the State Bar shall issue a written report to the Senate Committee on Judiciary and the Assembly Committee on Judiciary on procedures used in the disciplinary process to ensure that resources of the State Bar are used fairly and equitably in the investigation and prosecution of complaints against attorneys. In particular, the report shall focus on whether disciplinary proceedings are brought in disproportionate numbers against attorneys practicing as solo practitioners or in small law firms or partnership, as compared to proceedings brought against attorneys practicing in large law firms. The report shall also describe any procedures in place or under consideration to correct any institutional bias and shall include a discussion of, and recommendations regarding, any additional changes to the discipline process that would make it more equitable. In particular, the State Bar shall consider disciplinary avenues other than the investigation and prosecution of complaints against attorneys. After issuing the report, the State Bar shall continue to compile and maintain statistics pursuant to subdivision (a), and shall make those statistics available to the public upon request.
>
> (c) Procedures used in the disciplinary process shall ensure that resources of the State

Bar are used fairly and equitably in the investigation and prosecution of complaints against all attorneys. Disciplinary proceedings shall not be brought in disproportionate numbers against attorneys practicing as solo practitioners or in small law firms or partnerships, as compared to proceedings brought against attorneys practicing in large law firms, unless the number of complaints against solo practitioners, or attorneys practicing in small law firms or partnership, is commensurate with the higher number of disciplinary proceedings.

(d) The report of the State Bar prepared pursuant to this section shall not be used as a defense or mitigating factor in any disciplinary proceeding against an attorney."

II. CONSULTANT'S REPORT

The State Bar engaged the firm of Hilton Farnkopf & Hobson, LLC[1] to perform a statistical study of data gathered by the State Bar pursuant to Business and Professions Code Section 6095.1. This firm had previously assisted the State Bar in creating a formula for assessing disciplinary costs against publicly disciplined attorneys, as provided in Business and Professions Code Section 6086.10. For the report on law firm size of accused attorneys, the consultant firm was engaged to provide an independent analysis and report which compared the proportion of investigations opened and the proportion of cases prosecuted and completed in relation to firm size as defined in Section 6095.1.

A. DATA COLLECTION.

1. Sources of Information re Size of Attorney's Firm

[1]1. In April 2000, the State Bar of California sought requests from four qualified firms for proposals to perform a statistical study and prepare a written report related to law firm size and complaints against California attorneys. Following the State Bar's competitive bid process, in July 2000 the firm of Hilton Farnkopf & Hobson was selected to conduct the study at a cost of $49,906.00. The firm provides financial, economic, and general consulting services to legal, regulatory and industrial public agencies located primarily in the western United States. It works on numerous projects involving third party data, independent verification of financial and operational data, and report preparation. Among its clients are the Orange County Sanitation District, the Bay Area Water Users Association, the West Valley Solid Waste Management Authority, and the San Francisco Water Department.

The State Bar does not maintain demographic information on the size of the law firms in which members practice, nor is this information compiled by any third party entity known to the State Bar. In order to comply with SB 143, staff of the State Bar's Office of the Chief Trial Counsel began collecting data on complaints coming into the disciplinary system beginning April 1, 2000. Since the most reliable source of information would be the accused attorney, staff placed telephone calls informing the attorney that statistical information regarding law firm size was being gathered pursuant to statute and when possible, obtained the required information directly from the accused attorney. Where staff was unable to locate or communicate directly with the accused attorney, staff attempted to determine the information from such indirect sources as attorney letterhead or other information provided in the complaint file, or information gleaned from prior disciplinary experience with that attorney. Early on, staff compared the information they gathered with information provided by complainants on the size of the accused attorney's law firm. Staff quickly determined that while complainants provided the information to the best of their knowledge, in a significant number of instances, the complainant's perception was not accurate. Therefore, complainants were generally not utilized as a source for determining the size of an accused attorney's law firm. In situations where there was insufficient information on the size of an attorney's law firm, staff indicated the size as being unknown.

2. Size of Firm at Time of Complaint Versus Time of Misconduct.

State Bar staff gathered information on the size of the accused attorney's law firm at the time when the complainant filed the complaint. Later on, in January 2001, information was gathered for disciplined attorneys' firm sizes at the time that misconduct occurred. The State Bar found no statistically significant variation in the information regarding firm size based on when the information was gathered.

B. CONSULTANT'S METHODOLOGY.

Hilton Farnkopf & Hobson prepared a report dated June 5, 2001, which is attached to this report. The consultant's study was to be based on complaints coming into the disciplinary system between April 1, 2000 and March 31, 2001. However, to ensure timely compliance with the statutory reporting deadline, the consultant had to begin their work well in advance of the March 31, 2001 ending date for gathering data. Hilton Farnkopf & Hobson took a sample based on an assumption that there would be an estimated 4,000 investigations opened between April 1, 2000 and March 31, 2001. To achieve a 95 percent confidence level with a margin of error of plus/minus five percent, they calculated the total number of required sample investigation files as being 352. In actuality, the number of investigations opened between April 1, 2000 and March 31, 2001, was 3,255. Thus, they tested a

slightly larger sample than was required for this 95 percent confidence level.

The consultant also reviewed data accumulated by the State Bar on the size of law firm for a second group of attorneys. The second group were all attorneys for whom disciplinary cases were completed between April 1, 2000 and September 30, 2000. The number of attorneys disciplined between April 1, 2000 and September 30, 2000, was 218. The consultant made an assumption that the estimated number of attorneys for whom disciplinary cases were completed during a one year period beginning on April 1, 2000 and ending on March 31, 2001, would be 450 cases. In actuality, the number of discipline cases completed for the one year period was 416. This meant the sample size was larger than would have been required by the actual number of attorneys disciplined in the one year period. To achieve a 95 percent confidence level with a margin of error of plus/minus five percent, Hilton Farnkopf & Hobson sampled 208 files in which discipline was completed. Hilton Farnkopf & Hobson's definition of "completed" cases included prosecuted cases which ultimately resulted in no discipline being imposed.

Hilton Farnkopf & Hobson randomly selected case files which they wished to review. The consultant determined each attorney's firm size by reviewing the file contents, which included a distinctive orange colored sheet of paper on which the State Bar's staff had indicated the size of the attorney's law firm. If no documentation was found in the file, the consultant independently determined the firm size by telephone, by the file contents, or the internet. In two instances where the consultant was unable to determine the firm size for an attorney, the consultant replaced those attorneys with two attorneys from an alternates list. Thus, for all files reviewed by the consultant, the size of the accused attorney's law firm was known.

The consultant accepted the State Bar's representation that the Bar had provided a complete list of investigations opened and discipline cases completed during the one-year period being studied. The consultant selected a few files and independently called the attorney to verify the firm size recorded by State Bar staff. For each of the files selected, the consultant confirmed that the firm size recorded by staff was correct. The consultant did not verify the number of complaints which the State Bar opened against attorneys between April 1, 2000 and March 31, 2001.

C. CONSULTANT'S FINDINGS.

For investigations opened between April 1, 2000 and March 31, 2001, the consultant's sample population revealed the following numbers and percentages for size of law firms of accused attorneys in each category set forth in SB 143:

Table I

Sample of Investigations Opened

Law Firm Size	Number of Attorneys	Percentage of Total
1	241	68.47%
2-10	92	26.14%
11+	19	5.40%
Total	352	100.00%

Just over two-thirds of investigation files opened were for solo practitioners. Approximately one-fourth were for attorneys in small firms or partnerships of two to ten attorneys. Approximately one in twenty investigation files opened were for attorneys in large firms of more than ten attorneys.

For disciplinary cases completed between April 1, 2000 and March 31, 2001, the consultant's sample population revealed the following numbers and percentages for law firm size of accused attorneys for each category set forth in SB 143:

Table II

Sample of Disciplinary Cases Prosecuted and Completed

Law Firm Size	Number of Attorneys	Percentage of Total
1	163	78.37%
2-10	40	19.23%
11+	5	2.40%
Total	208	100.00%

Just over three-fourths of the disciplinary cases prosecuted and completed were for solo practitioners. Approximately one-fifth of the attorneys were in small firms or partnerships of two to ten attorneys.

Approximately one in forty-two of the disciplinary cases prosecuted and completed were for attorneys in large firms of more than ten attorneys.

Hilton Farnkopf & Hobson attempted to obtain demographic information on the size of law firms of attorneys who are members of the State Bar. The State Bar does not maintain this information. After expending some effort, the consultant determined that there is no single resource that contains an exhaustive listing of all attorneys and law firms in California. However, the consultant located a 1994 Rand study done for the State Bar which was conducted to provide an informed view of the future of the legal profession in California. Study participants were asked about the size of the law firm for which they worked. The consultant believes that the Rand study report indicates that a sufficient number of responses were received to be statistically valid. The 1994 Rand study, though dated, is the best available information of size of law firms in which California lawyers practice. The Rand study percentages of attorneys in different size law firms is given below:

Table III

Rand Study of Law Firm Demographics - 1994

Law Firm Size	Percentage
1	23%
2-10	33%
11+	42%
Non-law related	3%
Total	100%

D. CONSULTANT'S CONCLUSIONS.

The consultant noted that for solo practitioners and small firm practitioners, the proportion of investigations opened, and the proportion of discipline cases completed during the period of April 1, 2000 through March 31, 2001 is significantly greater than the proportion of attorneys reported in the Rand study. However, the consultant further noted that the Legislature's concern was that the proportion of disciplinary prosecutions and cases completed against solo and small size law firms, as compared to attorneys in large size law firms, be commensurate with the proportion of complaints against attorneys in each of those size categories. Hilton Farnkopf & Hobson concluded that, based on

the sample tested, the proportion of disciplinary cases completed for solo practitioners and small firm attorneys during the one year period of the study was much closer to the proportion of investigations opened for solo practitioner and small firm attorneys, although the proportion of cases completed exceeded the proportion of investigations opened by approximately ten percent, plus or minus five percent, for solo practitioners for the study period.

The consultant suggested one reason for the disproportion is the difference in populations of attorneys studied. The sample of investigations opened was for attorneys for whom complaints were received between April 1, 2000 through March 31, 2001, and most of these cases had not been completed by the end of the study period. On the other hand, the consultant noted that the sample of disciplinary cases prosecuted to completion during the one-year study period represented complaints received as long ago as 1991.[2] Only five of the sample cases where discipline was completed during the study period were complaints which were also opened for investigation during the study period. The consultant reported that the timing of the completion of disciplinary cases would affect the relative proportions calculated.

E. NUMBER OF COMPLAINTS MADE AGAINST ATTORNEYS.

Between April 1, 2000 and March 31, 2001, the State Bar received 12,461 inquiries about California attorneys. An inquiry is a communication received by the Intake Unit of the Office of the Chief Trial Counsel concerning the conduct of a member. It is evaluated to determine whether any action is warranted by the State Bar. Inquiries remain in the Intake Unit for resolution, unless they are turned into a "complaint". The Office of the Chief Trial Counsel's Intake Unit opens a "complaint" when it determines that an inquiry or other communication warrants an investigation of alleged misconduct which, if the allegations are proven, may result in discipline of the member. For the inquiries received between April 1, 2000 and March 31, 2001, the State Bar determined that 54 percent were about solo practitioners, 35 percent were about small firm practitioners, and 11 percent were about large size law firms.

Although the State Bar received 12,461 communications as inquiries during the one year study period, only 3,255 "complaints" were opened for investigation. What are the reasons why an inquiry would not become a complaint?

---

[2]2. Completion of the 1991 complaint was delayed due to the virtual shut down of the discipline system in June 1998, which is described in the next section of the report.

1. Inquiry Resolutions.

Each year the State Bar is required by legislation to make an annual report on the discipline system to the Chief Justice of the California Supreme Court, the Governor, the Speaker of the Assembly, and the President Pro Tempore of the Senate. Included in the information provided in the Annual Report is a chart showing the resolution of inquiries received for the calendar year and for several prior calendar years. For calendar years 1997, 1998, 1999, and 2000, roughly half of the inquiries do not proceed to investigation due to insufficient evidence/proof of the allegations. Other reasons why inquiries do not proceed on to investigation include: the matter is appropriate for resolution by fee arbitration, there is no merit to the concern expressed, conduct is already being monitored as a criminal action or conviction, lack of jurisdiction, accused attorney was disbarred or resigned with charges pending in another matter, or the matter was resolved between the complainant and accused attorney.

2. Prioritization of Allegations.

The Office of the Chief Trial Counsel recognizes that many matters entering the system do not rise to a level warranting formal discipline. As a result, an important function of the Intake Unit is to identify, at the earliest possible moment, cases for appropriate non-disciplinary disposition. A component of the determination of which matters will be opened for investigation was created as a result of the State Bar's recent funding crisis. As background, in June 1998 the State Bar was forced to dramatically reduce its operations when former Governor Pete Wilson's vetoed the State Bar's fee bill for 1998. The State Bar's disciplinary system was virtually shut down for eight months, until March 1, 1999, when the California Supreme Court issued a special fee assessment on attorneys which permitted the discipline system to reopen. The Office of the Chief Trial Counsel had to deal with approximately 8,000 unaddressed disciplinary matters lying dormant in the discipline system and a staff reduction after the reopening of the system, to 65 percent of pre-shut down numbers. The Office of the Chief Trial Counsel, in consultation with Discipline Special Master Elwood Lui who was appointed by the Supreme Court to oversee disbursement of the funds generated by the special assessment, proposed to the Board of Governors of the State Bar that a priority system be utilized for categorizing and resolving complaints. The Statement of Disciplinary Priorities is a tool used to promptly resolve low priority matters, thereby clearing them out of the discipline system with a minimal use of investigative resources and allowing the overall resources of the Office of the Chief Trial Counsel to focus upon the most egregious cases.

The Statement of Disciplinary Priorities designates as Priority I and Priority II, those matters which pose the most significant threat of harm to the public and which are likely to result in discipline

being imposed. For example, misappropriation of client funds, a pattern of failing to perform services, or multiple violations which, when taken in their entirety are likely to result in at least one year actual suspension, are given a Priority I designation. Priority I and Priority II complaints are promptly identified, opened for investigation and prosecuted. Priority III and Priority IV designations are those matters in which there is no apparent substantial harm to the clients or others, and which are unlikely to result in disciplinary action and may even be dismissed outright or held for further evaluation depending on available resources. The Intake Unit has the ability to issue resource letters to resolve minor matters which would not result in discipline being imposed, even if misconduct were established. Some Priority III and IV matters are resolved in this way. Examples of Priority III designation are an isolated delay or failure to deliver a client file, or a fee dispute surrounding failure to return an unearned fee after partial work is completed. Priority III and Priority IV matters stay in the Intake Unit, except where the matter relates to an attorney for whom other complaints are being investigated in which case the matter may be sent forward for investigation and consideration in conjunction with the other open investigation matters.

The Priorities have been utilized since March 1, 1999 to determine which complaints will be investigated. The Intake Unit's staff reviews the allegations raised by a complainant and designates the appropriate priority for the allegations taken in their entirety. As a result of this process, the number of inquiries that are opened and advanced to complaint status are on a downward trend.

The 3,255 investigation files opened between April 1, 2000 and March 31, 2001 were Priority I and II matters. A few Priority III and IV matters were sent forward for investigation and consideration in conjunction with other open investigations.

III. ARE COMPLAINTS PROSECUTED IN DISPROPORTIONATE NUMBERS?

Subsection (b) of Business and Professions Code Section 6095.1 instructs the State Bar to focus on whether disciplinary proceedings are brought in disproportionate numbers against attorneys practicing as solo practitioners or in small law firms as compared to proceedings brought against attorneys practicing in large law firms. Subsection (c) of Section 6095.1 further provides that disciplinary proceedings shall not be brought in disproportionate numbers against solo practitioners or attorneys in small law firms, as compared to proceedings brought against attorneys in large law firms, unless the number of complaints against solo practitioners or attorneys in small law firms is commensurate with the higher number of disciplinary proceedings. (Emphasis added.)

As noted in Table I, which lists the percentages of Sample of Investigations Opened by firm size, and Table II, which lists the percentages of Sample of Disciplinary Cases Prosecuted and

Completed, the consultant found that the proportion of cases where disciplinary prosecutions were brought and completed exceeded the proportion of investigations opened by approximately ten percent for solo practitioners for the study period, with a five percent margin for error. A further comparison shows that for small firm attorneys, the proportion of cases where disciplinary prosecutions were brought and completed exceeded the proportion of investigations opened by approximately seven percent, with a five percent margin for error. The question is, then, whether the ten percent differential in the two tables for solo practitioners and the seven percent differential for small firm attorneys is "disproportionate" or is "commensurate." A combination of several factors contribute to an explanation of the differentials.

The State Bar believes the numbers and percentages of cases prosecuted versus investigated for each category of law firm size is not disparate. The common measure or standard for prosecuting cases are the factors described below, not the size of an attorney's law firm.

1. Different Attorney Populations Sampled.

Hilton Farnkopf & Hobson cite one reason why the differentials could exist. The populations of attorneys sampled were not the same. For the same one year time period, there was an overlap of only five complaints which were opened for investigation and which were prosecuted to completion.

2. Utilization of the Statement of Disciplinary Priorities.

The Office of the Chief Trial Counsel began utilizing the Statement of Disciplinary Priorities in March 1999. Thus, the Priorities, as they are known at the State Bar, were not utilized for both populations of attorneys. They were utilized for the attorneys in the investigation-opened sample population, whereas they were not utilized for the attorneys in the discipline cases-completed sample population. Conceptually, it should not make a difference whether the Statement of Disciplinary Priorities were used or not, because the Priorities are results driven and the allegations which do not go forward under their use would not result in discipline anyway. Nonetheless, it should be pointed out that they were used for one but not both sample populations.

3. Attorneys Who Do Not Cooperate and Who Default In Proceedings.

Another reason for the slightly higher percentage of prosecutions against solo practitioners and

small firm practitioners could be the significantly higher numbers of these two types of attorneys, particularly solo practitioners, who do not cooperate with the State Bar at the investigation stage. There are a noticeable number of investigations in which the accused attorney does not cooperate as is required by Business and Professions Code Section 6008(i). The State Bar does not maintain statistics on the numbers or percentages of attorneys in each of the three sizes of law firms (solo, small firm, large firm, as defined by SB 143) who do not cooperate with the State Bar during the investigation of a complaint. However, it is the State Bar's experience that usually the non-cooperating accused attorney is a solo practitioner, less often is he or she from a small size law firm, and in virtually no instances is he or she from a large size law firm. When an attorney fails to cooperate, then the State Bar is in the position of weighing the evidence it gathers and determining the appropriate resolution for an investigation without the benefit of exculpatory or mitigating evidence. It is the State Bar's estimate that in approximately twenty-five to thirty percent of disciplinary prosecutions the accused attorney fails to participate and that the vast majority of these defaulting attorneys are solo practitioners.

4. Qualitative Factors, Not Quantitative Factors, Drive The Discipline System.

Basic concepts which are the foundation of the attorney disciplinary system show that it is primarily driven by qualitative considerations and factors. The primary purpose of the California attorney discipline system is protection of the public, the courts and the legal profession. In disciplinary proceedings, the State Bar must meet its burden of proof by clear and convincing evidence to a reasonable certainty. The Rules of Professional Conduct adopted by the Supreme Court and the duties of attorneys established by the Legislature are viewed as being minimum standards of professional conduct. At the same time, some professional duties tend to be more technical and non-serious and normally do not result in investigation and prosecution. For example, a member's failure to maintain a current address and telephone number with the State Bar does not normally result in disciplinary prosecution. As a consequence of recent funding difficulties which limited the resources that can be allocated to the discipline function, in 1999, the disciplinary system began utilizing a system of assigning priorities to complaints according to the probable outcome for the allegations in accordance with the vast amount of case law developed by the Supreme Court and the State Bar Court. Non-serious, minor, and technical allegations which, even if proven, would not result in discipline are given lower priority designations and normally do not become a complaint opened for investigated. Once an investigation is undertaken for allegations that could result in discipline, the main determinants of the outcome of the investigation are whether there is harm to a client or the public, whether the burden of proof can be sustained, and the appropriate level of disposition in accordance with case law and Standards for Attorney Sanctions For Professional Misconduct which were developed in 1986. The size of an accused attorney's law firm is not a factor that drives the disciplinary system. At no point in the discipline system does the State Bar gather information on the size of an accused attorney's law

firm. The only reliable source of this information, if gathered, is the accused attorney him or herself.[3] Thus, qualitative factors, rather than quantitative factors relating to the size of an accused attorney's size of law firm, drive the determination of whether to prosecute a case to completion.

IV. IS THERE INSTITUTIONAL BIAS?

In addition to focusing on whether complaints are prosecuted in disproportionate numbers, SB143 instructs the State Bar to describe any procedure in place and/or under consideration to correct institutional bias. First, there is the consideration of whether institutional bias exists against solo practitioners and attorneys in small size law firms. The State Bar believes the answer is "**No**," given the above-described factors which drive the system and other reasons set forth below.

The attorney discipline system is predominantly complaint driven. The numbers and percentages found by the consultants show that over two-thirds of complaints are made against solo practitioners and approximately one-fourth are made against attorneys in small size firms or partnerships. Given that two-thirds of client complaints received are against solo practitioners, it is not surprising that solo practitioners are the subject of 68.47 percent of the investigations opened and 78.37 percent of the disciplinary cases prosecuted and completed.

Additionally, approximately 40 percent of formal disciplinary proceedings are not driven by client complaints. These other types of disciplinary matters come to the State Bar by operation of law, where size of firm is unknown and irrelevant.

The State Bar is mandated by legislation to monitor, investigate, and initiate these other types of disciplinary proceedings which have the protection of the general public rather than an individual client as their primary purpose. For example, District Attorneys and the courts are required by Business and Professions Code Sections 6101 and 6102 to notify the State Bar of the pendency of charges and subsequent conviction of attorneys in criminal actions. The State Bar is required to transmit to the State

---

[3] 1. From time to time it is suggested that the State Bar gather from its members demographic statistics on factors such as size of law firm, type of practice and ethnicity. This is a controversial subject for the State Bar. On the one hand, there is the belief that by gathering demographic information the State Bar will gain information that will assist it in identifying and addressing the needs of its members. On the other hand, many members fear the State Bar will use the demographic information against them in an unfair manner. There is concern that some of these members might not respond or, if they do respond, that they might not provide accurate information.

Bar Court, which has authority delegated from the Supreme Court, the record of any conviction which involves or may involve moral turpitude. In 1999, the State Bar monitored 392 such actions and transmitted 80 to the State Bar Court. In the year 2000, the State Bar monitored 478 criminal actions and transmitted 92 criminal convictions to the State Bar Court. Secondly, courts, insurers and attorneys are required by Business and Professions Code Section 6086.8 to notify the State Bar of judgments, claims, actions for damages, settlements, or arbitration awards against an attorney for fraud, misrepresentation, breach of fiduciary duty, or negligence committed in a professional capacity. There are other actions against attorneys which the courts must report to the State Bar pursuant to Business and Professions Code section 6086.7. These actions deal with orders of contempt, modification or reversal of judgments based on misconduct, incompetent representation or willful misrepresentation, or the imposition of judicial sanctions against the attorney. Third, financial institutions are required to report instances where there is a dishonored instrument in attorney trust accounts (Business and Professions Code Section 6091.1). Fourth, attorneys themselves have self-reporting requirements for seven types of types of actions listed in Business and Professions Code Section 6068(o). The State Bar groups the reports received from courts, insurers, financial institutions and attorneys under the name of **"**Reportable Actions." In 1999, the State Bar received 5,563 Reportable Actions. In 2000, the State Bar received 4,175 Reportable Actions. Those Reportable Actions which contain sufficient indication of misconduct warranting further evaluation are turned into investigation files which are then investigated and prosecuted along with complainant generated matters. Fifth, the Legislature has provided for the State Bar to prosecute, on an expedited basis, members of the State Bar who were prosecuted for professional misconduct in another jurisdiction (Business and Professions Code Section 6049.1). As is the case for complaints generated by complainants, the State Bar does not know the size of law firm of attorneys who are the subject of these types of proceedings.

The notion that factors unique to the practice environment place make solo or small firm practitioners more "at risk" is also confirmed by trends indicating the number and percentages of legal malpractice claims against solo practitioners and small firm practitioners are much higher than for large firm attorneys. In April 2001, the American Bar Association's Standing Committee on Lawyers' Professional Liability published a report entitled "Profile of Legal Malpractice Claims 1996-1999". This committee gathered data from lawyer-owned and commercial malpractice insurers on legal malpractice claims for the period of January 1, 1996 through December 31, 1999. Lawyer-owned insurance companies which provide coverage in over 30 states and several Canadian provinces and eight commercial malpractice insurers, provided data for the report. The standing committee cautions that the data they collected does not cover the entire lawyer population, that a significant percentage of practicing lawyers have no malpractice coverage. Therefore, uninsured lawyers' claims cannot be represented in an insurance-based study. Nonetheless, the standing committee's data shows that, even for attorneys who are covered by malpractice insurance, the percent of claims filed against sole

practitioners was 35 percent, the percent of claims filed against attorneys in firms with two to five attorneys was 39 percent, and the percent of claims filed against attorneys in firms size six to ten attorneys was 12 percent for the time period studied. The standing committee noted that the greatest number of claims arose from firms with less than five attorneys because the average firm size in many states is two to three attorneys and an overwhelming percentage of attorneys work as solo practitioners (47 percent). The information gathered in this ABA study gives independent corroboration that factors other than institutional bias explain why solo practitioners and small firm practitioners are the subjects of a much higher number and percentage of claims, regardless of whether the setting is the malpractice arena or the disciplinary arena.

V. WHAT IS IT ABOUT SOLO PRACTITIONERS AND SMALL FIRM PRACTITIONERS THAT MAKES THEM THE SUBJECT OF A HIGHER PERCENTAGE OF COMPLAINTS?

In the past ten years, the State Bar has reviewed the perception that its discipline system focuses unfairly on solo or small firm practitioners. The State Bar concluded, as have others independent of the State Bar, that certain characteristics of solo and small firm practitioners make them more likely to be the subject of disciplinary complaints and that certain characteristics of large firm attorneys decrease the likelihood that they will be the subject of disciplinary complaints. These are discussed below.

A. 1994 REPORT TO THE DISCIPLINE EVALUATION COMMITTEE.

In 1993, then-State Bar President Margaret Morrow established the Discipline Evaluation Committee ("DEC") to evaluate the cost efficiency and effectiveness of the State Bar's lawyer discipline system. DEC was chaired by United States Court of Appeals Justice Arthur Alarcon. Committee members included two other judges, two certified public accountants, a solo practitioner, a small firm practitioner, a large firm practitioner, a court administrator, a management consultant, and a public defender. Part of the mission of DEC was to review the fairness of the disciplinary system and to make recommendations to ensure consumer protection and fair process for attorneys. DEC found that there is no evidence of selective prosecution of solo practitioners as compared to members of law firms.

As part of DEC's review, in July 1994 the State Bar's Office of the Chief Trial Counsel submitted a report entitled "Correlation of Firm Size and Practice Area with Complaints Received and Action Taken." In its report, the Office of the Chief Trial Counsel addressed the perception that the

State Bar's discipline system focuses unfairly on solo or small firm practitioners. In the report, the Office of the Chief Trial Counsel noted that large law firms generally represent large institutional or business clients who are often in a very powerful bargaining position and able to compel satisfactory performance from their lawyers. When their clients are dissatisfied, they can afford to change attorneys, negotiate for a reduction in fees, or litigate. They do not call upon the State Bar for assistance. On the other hand, clients of solo practitioners and small firms tend to be individuals with much less leverage in the attorney/client relationship, and hence these clients are more likely to bring their problems to the State Bar's attention. Furthermore, attorneys who practice in the context of a large firm or institutional practice have the practical advantage of ready access to mentors, peer support and office management systems. They usually practice under a system of built-in procedures that prevent many rule violations such as those associated with the handling of client funds and conflicts of interest. This support goes a long way toward helping them avoid running afoul of the discipline system. Peers are available to return client calls, cover court appearances, step in when they fall ill or assist when they simply become overwhelmed. Solo practitioners lack these support systems.

As part of the 1994 report to DEC, information was gathered on the substantive areas of law practiced by attorneys against whom disciplinary or alternatives-to-disciplinary action was taken. Approximately forty-five percent of these attorneys practiced in personal injury law, followed by approximately ten percent in family law, approximately eight percent in criminal law, and approximately five percent in workers' compensation.

B. INTAKE UNIT'S SURVEY.

In March 2000, the Office of the Chief Trial Counsel's Intake Unit conducted a survey of the calls coming in through its 800 telephone number which is a dedicated telephone number for the public to bring potential disciplinary concerns to the Bar's attention. The survey revealed that 67 percent of the calls were from clients, another 14 percent were from a friend or relative of the client. Nearly one-fourth of the calls, some 23 percent, concerned allegations of failure to communicate adequately. This was followed by 18 percent concerning failure to perform, delay, or abandonment; 15 percent concerning fee disputes; and ten percent concerning improper handling of monies. The March 2000 survey also included data gathered on the substantive practice areas of attorneys against whom calls were made. Twenty-five percent of the attorneys practiced in personal injury law, 24 percent practiced in family law, followed by eight percent in criminal law and eight percent in building contract disputes.

C. OBSERVATIONS OF DISCIPLINARY DEFENSE COUNSEL.

Disciplinary defense counsel and a Bar disciplinary counsel were interviewed for an article published by lexisONE in February 2001 about why small firm attorneys face the most disciplinary actions. Disciplinary defense counsel noted a number of reasons why small firms generate more complaints – they do not have enough support staff to keep track of all the phone calls and letters they receive, and if a lawyer is involved in another trial, goes on vacation or gets sick, there may be no one at the office to take care of a client's problems. Additionally, solo and small firm attorneys can find themselves so overworked that they miss a statute of limitations, neglect to communicate a settlement offer or fail to return a client's phone call. In a large firm, while these mistakes could result in a reprimand from the firm or even the loss of a job, it would not usually result in a complaint to the Bar. Defense counsel noted that money worries can get many small and solo practitioners in trouble, as cash-strapped attorneys may "borrow" from their clients' trust accounts often lead to trouble if there are insufficient funds in the trust account because the insufficient fund activity triggers a report by the financial institution to the State Bar. Large firms, on the other hand, have enough money to avoid insufficient fund situations. Moreover, large firm practitioners seldom have ready access to client trust accounts, which are typically managed by law firm accounting managers who are not attorneys.

D. OBSERVATIONS BY THE OFFICE OF THE CHIEF TRIAL COUNSEL.

Large firm practitioners have traditionally cooperated with the State Bar at the earliest opportunity to do so, which may be as early as when the matter is in the Intake Unit. They frequently employ attorneys to counsel them through the discipline system. They frequently have documentation in their client file to provide as evidence for their positions in response to allegations. By contrast, the vast majority of non-cooperating and defaulting attorneys in the discipline system are solo practitioners and, to a lesser extent, small firm practitioners. Even when they respond during an investigation, solo practitioners frequently do not have documentation to substantiate their position, particularly for allegations regarding communication issues.

VI. PROCEDURES USED IN THE DISCIPLINARY PROCESS TO ENSURE BAR RESOURCES ARE USED FAIRLY AND EQUITABLY, AND HOW TO MAKE THE DISCIPLINARY PROCESS MORE EQUITABLE.

A. THINGS THE BAR WILL CONTINUE TO DO TO ENSURE BAR RESOURCES ARE USED FAIRLY AND EQUITABLY.

1. Education.

The attorney discipline system is, in large part, a complainant driven system. Between April 1, 2000 and March 31, 2001, 54 percent of the inquiries were about solo practitioners, and 35 percent were about small size law firm practitioners. The State Bar has attempted to address the needs of solo and small firm practitioners through a variety of educational programs.

The State Bar participates with local bar associations in state wide "Bridging the Gap" programs conducted for newly admitted attorneys. These programs provide materials and information geared to assisting the new attorney to becoming a practicing attorney.

The State Bar has two sections which are particularly relevant to solo and small firm practitioners regardless of the substantive areas of law in which the practice. State Bar sections are separately funded by their members who pay section dues each year. The Solo and Small Firm Section of the State Bar sponsors a program at the State Bar's Annual Meeting and another program at a mid-year educational conference called the "Section Institute". In 1999, this section published a Mentor Directory for its members. The Mentor Directory is a listing of attorneys in various fields of practice who have agreed to provide a portion of their time to answer questions from other attorneys who may not be as well-versed in a particular field of practice. A recent newsletter published by the Solo and Small Firm Section contains an article on creating a business plan for the practice, and another article with suggestions for increasing efficiency such as case management, preparing clients for trial, and telephone etiquette including a tip on how-to-avoid "I Called You and You Did Not Call Me Back." Another article gave a 50 point checklist for a safer practice.

The other State Bar Section of particular relevance is the Law Practice Management and Technology Section. This Section publishes newsletters, sponsors multiple programs at the State Bar's Annual Meeting and the mid year Section Institute, and has a web site which contains information of interest to practitioners. Recent newsletters contain articles relevant to solo and small firm practitioners such as " lexisONE: The New Internet Resource for Small Firm Attorneys"; "Creating an Effective Law Office Business Plan"; "Conquer Time Wasters And Take Control Of Your Day"; and "Is Your License In Jeopardy? Poor Trust Accounting Practices Can Jeopardize Your Business". This section provides a low cost MCLE service to its members in that, after reading selected articles in the newsletter, members may complete a test provided in the newsletter to receive credit toward the minimum continuing legal education ("MCLE") requirement.

In terms of substantive areas of law, practitioners in personal injury law, family law, criminal law, workers' compensation and building contract disputes receive the highest percentage of calls to the State Bar's 800 number and have disciplinary action taken against them in the highest percentages.

The State Bar has sections on family law, criminal law, real property law, and business law. These sections also provide education newsletters and programs to educate and assist their members.

For attorneys who find themselves in the discipline system, the State Bar has established two remedial education courses. The State Bar's Ethics School, which began in the early 1990s as the first of its kind in the nation, has served as a model for Ethics Schools developed in other states. It is based on a concept similar to that used in traffic school. Ethics School, which is a day long session for non-disciplined as well as disciplined attorneys, provides instruction and materials on the major factors that cause attorneys to come under scrutiny from the discipline system. These include alcohol and substance abuse, stress factors, formation issues in the attorney/client relationship, fees and fee agreements, and substantive ethical issues such as communication, performance, termination of the attorney/client relationship, conflicts of interest, and advertisement and solicitation which are recurrent problems for many attorneys. Client Trust Accounting School is the second remedial education course developed for attorneys in the attorney discipline system. This half day session is geared specifically to attorneys who have difficulties with the ethical duties and issues of client trust accounts, entrusted funds and other entrusted properties. There is interest in expanding the audience for these courses to permit any interested member, whether in the discipline system or not, to attend. The State Bar attempts to be responsive to this interest by opening classes to interested members, within the limits of its resources. In addition, highlights from Ethics School were videotaped in the mid 1990s. The videotape, which covers topics such as formation of the attorney client relationship, withdrawal from employment, and client trust accounting, is available at a small cost to members and is approved for MCLE credit. Furthermore, the State Bar has produced a handbook on client trust accounting which is available at low cost to members. The handbook is a practical guide created to assist attorneys in complying with record keeping standards for client trust accounts and entrusted funds and other property.

The State Bar has a Speakers Bureau and Outreach Program which provides staff to participate in programs by local bars, specialty bars, minority bars, and civic organizations. Some of the program topics deal specifically with issues relevant to solo and small firm practitioners.

2. Informal, Alternative Dispositions In The Discipline Process.

In the discipline process, the State Bar utilizes informal resolutions which deal with minor, technical ethical lapses that are primarily unintentional and usually unaccompanied by client harm. Primary goals of the informal resolutions are providing support to the attorney and ensuring public protection. One of the informal resolutions is an agreement in lieu of discipline (see Business and Professions Code Sections 6068(l) and 6092.5(i)) which is an agreement between the member and the Office of the Chief Trial Counsel in lieu of disciplinary prosecution and which sets forth conditions the member agrees to meet. It is not unusual for one or more conditions to be an

educational requirement such as attendance at Ethics School. A second informal resolution is the utilization of a "resource" letter in cases where there is a probable violation or a potential for a future violation of the Rules of Professional Conduct and/or the State Bar Act which is minimal and would not lead to discipline. The resource letter refers the member to resources that can assist the member in avoiding future problems and/or the filing of future complaints alleging similar violations. The resource letter is a dismissal of the complaint.

3. Low Cost MCLE Courses.

The State Bar has developed a low cost way for members to fulfill part of their MCLE requirements by way of the State Bar's website. Over 100 participatory and self study MCLE courses are posted at the website, with more due to be added in the future. This should benefit solo and small firm practitioners with limited access to live continuing education courses.

The State Bar publishes a monthly newspaper for its members called the "California Bar Journal." A regular feature is MCLE self-study on a topic of interest to members, followed by a self-assessment test on the content. Members are invited to read the article, take the test and turn it into the Bar for MCLE credit. Among recent articles is one on attorney stress and impairment and how emotional distress can adversely impact a lawyer's practice and personal life if it is not managed or treated.

4. Ethics Hotline For Members.

The State Bar maintains an 800 telephone number for members to call when they need free legal assistance on ethical situations and the responsibilities confronting them in their practices. The Ethics Hotline has trained staff who answer questions and provide written material about relevant rules, statutes, and case law citations. Thousands of calls from members are received each year. In the calendar year 2000, the ethics hotline staff responded to over 16,000 telephone calls and distributed almost 1,200 packets of local bar association and State Bar ethics opinions to members seeking assistance.

5. Lawyers Personal Assistance Program and The Other Bar.

Members' dues fund the Lawyers Personal Assistance Program which provides members with confidential counseling and referrals for chemical dependancy and emotional stress issues. The Lawyers Personal Assistance Program provides a brochure entitled "When Attorneys Need Help" to members, MCLE providers and workshops offered by law firms and bar associations throughout the

state.

The "Other Bar" is a long standing program operated by attorneys who are in recovery and are able, in a confidential environment, to assist attorneys facing personal and practice difficulties occasioned by chemical dependancy. The State Bar has sponsored this program for years.

6. Assistance for Disabled Practitioners.

Occasionally, disciplinary complaints are made against solo practitioners who become unable to practice law due to disability. In 1998, legislation was passed to assist solo practitioners who are stricken suddenly and become disabled. The legislation, which became effective January 1, 1999, adopts a statutory scheme to manage the practices of disabled lawyers by authorizing the probate court to appoint a "practice administrator" to assume day-to-day responsibilities for the law practice and a trustee to be part of a potential conservatorship or estate plan when a solo practitioner dies or becomes disabled. Two articles were printed in the "California Bar Journal" to make members aware of the new statutes and provide other options to assist such members. The two articles, written by attorney Ellen Peck, are available on the State Bar's website.

When an attorney becomes disabled or is otherwise incapable of attending to his or her law practice, application may be made for the appropriate state superior court to assume responsibility for the law practice (Business and Professions Code Sections 6190 et seq.). The State Bar initiates the application in most cases and works with volunteer attorneys under the supervision of the court.

B. ADDITIONAL DISCIPLINARY AVENUES OTHER THAN PROSECUTION.

SB 143 specifies that the State Bar, in its report, shall describe any procedures in place or under consideration to correct any institutional bias and include a discussion of, and recommendations regarding, any additional changes to the discipline process that would make it more equitable. In particular, the State Bar shall consider disciplinary avenues other than the investigation and prosecution of complaints against attorneys.

1. Existing Informal, Alternative Dispositions.

The State Bar currently has informal, alternative dispositions in the discipline system. These are

agreements in lieu of discipline and resource letters, which are discussed above.

2. Proposed Legislation Re An Attorney Diversion And Assistance Program.

On February 22, 2001, Senator John Burton introduced SB 479. This bill requires the Board of Governors of the State Bar to establish and administer an attorney diversion and assistance program to provide services for the treatment and recovery of attorneys due to abuse of drugs and alcohol. The State Bar supports SB 479 and has provided input to Senator Burton's office for refinement of its provisions.

Alcohol and drug abuse plague a larger percentage of the legal profession than members of other professions. An American Bar Association commission recently estimated that over 15 percent of the nation's lawyers abuse alcohol or drugs, compared to only 10 percent of the general population. It has been said that every member of the State Bar of California either knows an attorney who has a drug or alcohol abuse problem or has the problem. It affects members both in and out of the discipline system. Although statistics have not been gathered, it is estimated that in roughly one-third to one-half of discipline cases drug or alcohol abuse is a factor. It is in this context that SB 479, could become a mechanism that could make the discipline process more equitable for solo and small firm practitioners. One of the primary objectives of SB 479 is to reduce the number of disciplinary complaints and provide an effective alternative to disciplinary actions.

SB 479 would require the State Bar to establish and administer an assistance program to provide services for the treatment and recovery of attorneys who may be impaired due to mental illness or drug or alcohol abuse. Under proposed SB 479, the program would be funded in whole or in part by a $10 fee collected as part of the annual dues for active State Bar members. SB 479 also directs the State Bar to engage in additional outreach activities to members of the legal community, including a three hour program at no cost to participants on the prevention, detection and treatment of substance abuse and mental illness. The bill expressly provides that the program would not limit or alter the powers of the Supreme Court to discipline attorneys. Attorneys who are not the subject of investigation may self refer themselves to the program and attorneys in the discipline system may be referred by the Office of the Chief Trial Counsel or the State Bar Court.

C. THINGS THE BAR IS CONSIDERING DOING TO MAKE THE DISCIPLINE PROCESS MORE EQUITABLE.

1. Pro Per Handbook for Attorneys.

The State Bar is also considering the development of a handbook for attorneys who are the subject of disciplinary proceedings. A significant majority of the attorneys against whom disciplinary charges are filed represent themselves before the State Bar Court and have little or no experience in disciplinary proceedings. The proposed handbook would provide guidance to those attorneys, whether solo practitioners, members of small firms or large firm practitioners.

2. Additional "Self-Help" Handbooks and Remedial Courses.

Prior to June 1998, the State Bar was in the process of developing a third topic for its remedial education program. A handbook of fees and fee agreements was being drafted with an eye to creating a second specialized school similar to that created for client trust accounting issues. The State Bar is considering reviving its effort to finalize the draft handbook, create the second specialized school in its remedial education program, and developing new handbooks and specialized courses in other topic areas to guide solo and small firm lawyers through practice difficulties which often lead to discipline.

3. Study the Rules of Professional Conduct re Implications for Solo and Small Firm Practitioners, and Large Firm Practitioners.

The American Bar Association appointed an Ethics 2000 Commission which is expected to issue a report this summer at the ABA's annual meeting in Chicago. The scope of the Ethics 2000 Commission's study includes review of the Model Rules of Professional Conduct for potential future modification, where appropriate. The State Bar is in the process of requesting authorization from its Board of Governors for appointment of a State Bar commission on revision of the California Rules of Professional Conduct.

It is recognized that many of the Rules of Professional Conduct and provisions of the State Bar Act were enacted when most attorneys were solo or small firm practitioners. The paramount focus was on individual responsibility. The practice of law has changed and is much more collective in its sense of responsibility with accountability shared among many in a large firm setting. The new commission is scheduled to review and make recommendations for changes in the Rules of Professional Conduct. Staff will ensure that part of the commission's charge is to review the Rules to assure that they take into account the realities of modern day practice, including the role of the firm and collective practice environment.

4. Member Call Center.

The State Bar is in the early stages of creating a member call center where members may obtain one-stop assistance. The concept is patterned after the toll free Intake number where the public can bring their concerns about member activity. Currently there is no central location where members can obtain assistance with inquiries about membership services, membership records, legal certification programs, the ethics hotline, fee arbitration, client security fund, and other programs maintained by the State Bar. It is anticipated that the member call center will be located in the Los Angeles office of the State Bar.

5. Additional Assistance at the State Bar's Website.

The State Bar is considering creating a sub-site on the State Bar's web site which would be dedicated to helping attorneys resolve ethical issues that might arise in their practice, with specific focus on providing information of assistance to solo practitioners and small firm practitioners. This site may include the possibility of attorneys being able to e-mail questions to the Ethics Hotline, the text of the Client Trust Accounting handbook and other relevant publications. The site could have links to ethics opinions, information on the Lawyers Personal Assistance Program, the Attorney Diversion and Assistance Program, information on mentor programs run by local bar associations, and links to the "Solo and Small Firm" and "Law Practice Management and Technology" Sections and their materials which are published on the State Bar's web site. Information on this new sub-site could be published in the "California Bar Journal" and other legal publications.

6. Law Office Management Assistance.

Prior to the reduction in operations in June 1998, a law office management audit pilot program was developed. This was one of the programs which could not be revitalized when the State Bar reopened in March 1999. In 1998, the average cost for a one-day audit of a practitioner's law office was $2,500. During the time that the State Bar was testing this pilot program, which was a little over a year, approximately fifteen attorneys in the discipline system voluntarily signed up for the audit at a cost of $500 each. The remaining $2,000 was funded by monies generated by malpractice coverage payments. Although the State Bar is not in a position to pay for most of the cost of on-site audits, under consideration is the possibility of providing a low cost program at the Annual Meeting, at the Section Institute, and in conjunction with local

bar associations.

7. Independent Assistance to Accused Attorneys.

The State Bar is considering the creation of a program to provide independent assistance to attorneys who are faced with disciplinary complaints. The independent assistance program would be somewhat akin to a small claims court facilitator in that disciplinary defense counsel or other attorneys who are independent of the State Bar's disciplinary offices could provide assistance on how to respond during the investigation or participate in the disciplinary proceeding. This assistance could be provided at a reduced rate or at no cost to the attorney being investigated or prosecuted. It is possible that local bar associations could participate in such a program.

8. Practical Skills Training For Attorneys Going Into Solo Practice.

Also under consideration is a practical skills and training requirement for attorneys, especially those who are admitted less than three or four years, to participate in and successfully complete in order to go into solo practice. The program would focus on the day to day operations and ethical considerations of a solo practitioner. The State Bar would try to provide the program at minimal cost, possibly incorporating some of its Ethics School programs as components.

9. Three-Hour Course Which Links MCLE Required Subjects.

The State Bar is considering the creation of a free three hour course in which the curriculum will link law office management, substance abuse, and elimination of bias with ethical obligations of attorneys. Other than the bias requirement, the other three topics have long been identified as being factors that tend to bring attorneys into the discipline system.

VII. SUMMARY

The State Bar is concerned about perceptions by the Legislature and our membership that higher numbers and percentages of solo practitioners and small firm practitioners have investigations opened and have disciplinary cases completed against them. However, the evidence shows that the percentages of investigations opened versus percentages of cases completed are commensurate, rather than disproportionate, and that there is no institutional bias against these practitioners. The reasons and factors are discussed in this report.

The public, the legal profession, the courts, the Legislature, and the State Bar itself, all jointly share an interest in assuring that attorney discipline system in the State of California is a fair one with due process rights for all who are involved, whether they be a complainant, an accused attorney, or another group with interests in the outcome. The State Bar is constantly mindful that it must be vigilant in assuring a fair disciplinary system for all constituents. The State Bar is committed to working with the Legislature, the Supreme Court, the Governor, and its membership, to ensure that California's attorney disciplinary system remains the best and continues to be the model for other states to follow.

Attachments: SB 143,
Resume of Hilton Farnkopf & Hobson, LLC
Consultant's report,
Inquiry Resolution chart from the 2000 Annual Report on the Discipline System,
Office of the Chief Trial Counsel's "Statement of Disciplinary Priorities",
Discipline Evaluation Committee report - Excerpt,
Office of the Chief Trial Counsel's July 1, 1994 report to DEC,
Intake Unit's survey conducted in March 2000,
lexisONE article on "Small Firm Attorneys Face the Most Disciplinary Actions"