



The State Bar of California

OPEN SESSION AGENDA ITEM 705 NOVEMBER 2019

DATE: November 14, 2019

TO: Members, Board of Trustees

FROM: Dag MacLeod, Chief of Mission Advancement & Accountability Division
Ron Pi, Principal Analyst, Office of Research & Institutional Accountability

SUBJECT: Report on Disparities in the Discipline System

EXECUTIVE SUMMARY

A State Bar study on disparities in the attorney discipline system found that differences in rates of disbarment and probation of nonwhite attorneys are explained primarily by an attorney's previous discipline history, the number of investigations opened against the attorney, and the percentage of investigations in which the attorney was not represented by counsel. The State Bar plans to continue its evaluation of this topic through further data analysis and operational review, taking corrective action as warranted to ensure the integrity of the attorney discipline system.

BACKGROUND

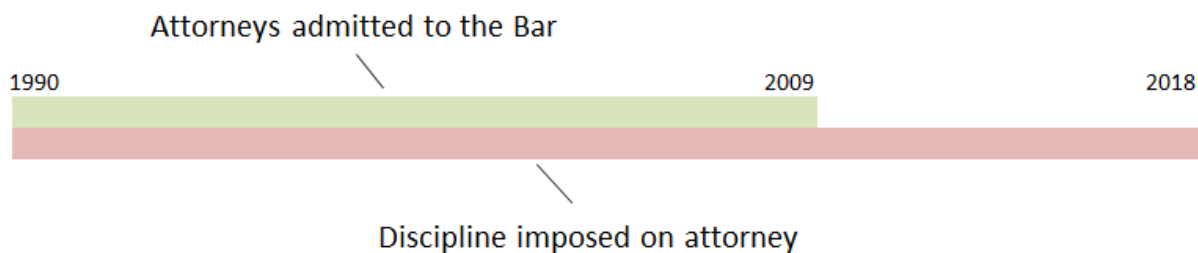
For years the State Bar has heard anecdotes regarding the over-representation of people of color in the attorney discipline system. In light of these assertions, and pursuant to the State Bar's statutory mission and Strategic Plan – both of which give the State Bar a mandate to work to eliminate bias and promote diversity in the legal profession – the State Bar initiated a rigorous, quantitative analysis to determine whether there is disproportionate representation of nonwhite attorneys in the attorney discipline system and, if so, to understand its origins, and take corrective action.

The study, attached to this agenda item, was conducted by George Farkas, Distinguished Professor in the School of Education at the University of California, Irvine.

The data set that forms the basis of the analysis includes 116,363 attorneys admitted to the State Bar between 1990 and 2009, and for whom race/ethnicity and gender information is available, representing 95 percent of all attorneys admitted during the period. The study evaluated the two most serious types of discipline imposed on this cohort of attorneys: probation or disbarment (including resignation with charges pending). The quantitative analysis evaluated the likelihood of attorneys of different racial/ethnic groups and genders being placed on probation or being disbarred.

To track the entire history of each attorney's contact with the discipline system, all complaints received, as well as their outcomes through the end of 2018, were examined. Case outcomes were used to create two measures: (1) Was the attorney ever placed on probation at least once but never disbarred during this period?; and (2) Was the attorney disbarred or did the attorney resign with charges pending during this period?

Figure 1. The study covered data on attorneys from 1990 through 2018



DISCUSSION

The analyses revealed that, without controlling for any factors potentially associated with case outcomes, there are statistically significant disparities with respect to both probation and disbarment. The largest gender/race disparities can be seen when comparing Black to White, male attorneys. The probation rate for Black, male attorneys over this time period was 3.2 percent, compared to 0.9 percent for White, male attorneys. The disbarment/resignation rate for Black, male attorneys was 3.9 percent compared to 1.0 percent for White males. Race differences were smaller for Hispanic males and for Black and Hispanic females compared to White females. There were no meaningful differences for Asians compared to Whites.¹

As with any study of this kind, it is essential to attempt to control for other factors that may account for the different discipline rates between race/ethnicity and gender subgroups. Introducing control variables allows for the analysis to distinguish between different factors that may explain the outcomes.

¹ Although the statistical models shown in the full report look at different racial/ethnic groups and at gender differences, the discussion in the report focuses on the largest of these differences, comparing Black, male attorneys to White, male attorneys.

The selection of control variables is informed by hypotheses about what might explain attorney discipline, and by the availability of data that can be used in the statistical analysis. For the analysis conducted by Dr. Farkas, the following additional factors were examined:

- Complaint history as measured by:
 - The number of complaints received;
 - The number of investigations opened;
 - Counsel representation, measured by the percent of investigations without counsel;
 - Number of times discipline was imposed previously; and
 - Number and type of various allegations;
- Number of years since first admitted to the Bar; and
- Firm type/size.

The Number of Complaints against Attorneys Explains Much of the Variance in Discipline across Groups

Among the variables listed above, it is notable that the total number of complaints against attorneys varied widely by group. The range varies from 46 percent of Black, male attorneys having had at least one complaint filed against them during the study period, to only 17 percent of Asian, female attorneys having had a complaint filed against them during the same period. Another measure of the difference in the number of complaints is the percentage of attorneys against whom 10 or more complaints have been filed. Only one percent of Asian, women attorneys had received 10 or more complaints. In contrast, 12 percent of Black, male attorneys had received 10 or more complaints.

**Table 1. Attorneys Admitted from 1990 to 2009
By Race/Ethnicity, Gender, and the Number of Complaints Received**

# of Complaints	<i>Number of Attorneys</i>					<i>Percent of Total</i>				
	Asian	Black	Hispanic	White	Total	Asian	Black	Hispanic	White	Total
<i>Male</i>										
0	5,812	996	2,266	32,432	41,845	73%	54%	56%	68%	67%
1-4	1,564	463	1,148	11,147	14,444	20%	25%	28%	23%	23%
5-9	307	153	330	2,220	3,044	4%	8%	8%	5%	5%
>=10	275	217	314	1,911	2,758	3%	12%	8%	4%	4%
Total	7,958	1,829	4,058	47,710	62,091	100%	100%	100%	100%	100%
<i>Female</i>										
0	7,709	1,678	2,671	29,375	41,798	83%	68%	69%	77%	77%
1-4	1,357	584	965	7,259	10,266	15%	24%	25%	19%	19%
5-9	128	121	152	993	1,412	1%	5%	4%	3%	3%
>=10	75	91	86	533	796	1%	4%	2%	1%	1%
Total	9,269	2,474	3,874	38,160	54,272	100%	100%	100%	100%	100%

The number of complaints against attorneys created special challenges for this evaluation because the bulk of complaints are received from the public, primarily clients; they are not a

function of the attorney discipline system, *per se*. To better understand the impact of this input on the system, a simulation analysis was conducted to hold the number of complaints against attorneys constant.

Looking at a scenario in which the same number of complaints is applied to attorneys across all racial/ethnic groups reduces the probation rate for Black male attorneys from 3.2 to 1.4 percent and reduces the disbarment rate for Black male attorneys from 3.9 to 1.6 percent. In other words, whereas almost four out of every one hundred Black, male attorneys (3.9 percent) in the sample was disbarred during the study period, if the number of complaints received against Black, male attorneys had been the same as the number of complaints against White, male attorneys, we would expect to have seen only 1.6 out of every one hundred Black, male attorneys disbarred.

While this simulation substantially reduces the differences between Black and White, male attorneys, it does not eliminate the difference altogether. After controlling for the number of complaints, the difference between White and Black, male attorney discipline remained: 1.4 percent of Black, male attorneys were placed on probation compared to .9 percent of White, male attorneys, and 1.6 percent of Black, male attorneys were disbarred, compared to one percent of White, male attorneys. Both of these differences were statistically significant.²

Representation by Counsel and Prior Discipline History Provide Additional Explanatory Power
Further analyses showed the impact of other variables on discipline rates. Statistically, these variables explained all of the differences in probation and disbarment rates by race/ethnicity. Among all variables included in the final analysis, prior discipline history was found to have the strongest effects on discipline outcomes, followed by the proportion of investigations in which the attorney under investigation was represented by counsel, and the number of investigations.

Thus, the disproportionate rate at which Black attorneys are put on probation and disbarred is associated with their having more complaints filed against them. This, in turn, makes it more likely that an attorney will be investigated and disciplined. To compound the disproportionate impact, Black attorneys in particular are less likely to be represented by counsel when they are under investigation by the State Bar. Looking at the total number of investigations by the State Bar, White attorneys were unrepresented in 7.9 percent of investigations of their cases; Black attorneys were unrepresented in 15.2 percent of the investigations of their cases.

Impact of Firm Size on Discipline

Although not the explicit focus of Dr. Farkas' report, the analysis does allow an exploration of another oft-cited anecdote about the attorney discipline system – that solo practitioners are disproportionately disciplined.

Currently, firm-size data are reported to the State Bar by complaining witnesses who may or may not know whether the respondent attorney is a solo practitioner. A pending State Bar rule proposal would mandate the reporting of firm size, which will enable more accurate analysis of

² The simulation also showed that the lower discipline rates for female attorneys compared to male attorneys were largely explained by the lower number of complaints received for female attorneys.

firm size-related issues going forward. In the interim, the present report provides for the analysis shown in Table 2 on the following page.

Table 2 shows data for attorneys with at least one complaint filed against them and for whom firm size data was available in the data set. It shows that solo attorneys represented in the study had higher rates of complaints filed against them than all other attorneys.

Table 2. Number of Complaints Received, by Firm Size and Type

# of Complaints	Solo		2-10		≥11		No response		Gov't lawyer		Total	
	N	%	N	%	N	%	N	%	N	%	N	%
1-4	6,801	64%	6,401	72%	2,747	89%	760	58%	2,826	84%	19,535	72%
5-9	1,947	18%	1,396	16%	241	8%	245	19%	416	12%	4,245	16%
≥10	1,902	18%	1,060	12%	111	4%	296	23%	108	3%	3,477	13%
Total	10,650	100%	8,857	100%	3,099	100%	1,301	100%	3,350	100%	27,257	100%

At the low end of the distribution – attorneys with 1 to 4 complaints, 64 percent of solo attorneys fall in this category, compared to 72 percent for attorneys in firms with 2 to 10 attorneys, and 89 percent for those in firms with more than 11 attorneys. On the other hand, 18 percent of solo practitioners have more than 10 complaints filed against them, compared to 12 percent for small-firm (2-10) attorneys and only 4 percent for attorneys in firms with eleven or more attorneys. As a result of receiving more complaints than attorneys in large firms or other practice settings, solo and small firm attorneys are faced with a higher chance of being investigated and ultimately disciplined.

Without controlling for any other factors, Table 3 shows the difference in both probation and disbarment rates for solo attorneys compared to other practice settings. While the rate of probation and disbarment for solos is approximately 5 percent for both discipline outcomes, the rates of discipline for all other groups combined are 1.5 percent for probation and 1.9 percent for disbarment.

Table 3. Probation and Disbarment Rates, by Firm Size and Type

Firm Size/Type	Total # of Attorneys	Probation		Disbarment	
		N	%	N	%
Solo	10,650	535	5.0%	564	5.3%
2-10	8,857	168	1.9%	191	2.2%
≥11	3,099	19	0.6%	23	0.7%
No response or Don't know	1,301	60	4.6%	102	7.8%
Gov't lawyer	3,350	7	0.2%	6	0.2%
Total	27,257	789	2.9%	886	3.3%

When other relevant factors are controlled for the disparate impact of solo practice was reduced by more than half, but remained statistically significant for the likelihood of an attorney being placed on probation. A separate model, looking at the impact of firm size on discipline, found that counsel representation plays a major role in explaining the differential rates of discipline for solo practitioners.

Next Steps

These findings raise a number of additional questions that should be investigated including:

Differential Rates of Complaints

It is unclear why the State Bar receives more complaints against Black, male attorneys than against other attorneys. Although the number of complaints across different allegation categories was largely similar across racial/ethnic groups, one notable exception is the number of Reportable Action, Banks (RAB). RABs reflect the circumstance where banking institutions notify the State Bar when there is NSF activity on a client trust account. Among attorneys with 10 or more complaints against them, Black, male attorneys had an average of 6.8 RABs whereas White, male attorneys had an average of 3.7. The State Bar will explore this differential rate of RAB matters, as well as overall disparities in complaint filings by race, gender, and solo practice status, as part of the next phase of discipline disparity work.

Impact of Practice Type

Another area that should be examined is practice type. The State Bar does not currently collect data on the type of law that attorneys practice, but it is plausible that the type of law an attorney practices has an impact on the likelihood of generating complaints from clients. The State Bar should seek data on the distribution of complaints across different practice areas or practice settings.

Impact of Counsel Representation

Another potential area for further investigation is the question of why a respondent's representation status has such a significant impact on disciplinary outcome. This assessment will explore the kinds of advocacy and procedural activities that occur in cases with and without counsel. In addition, reasons for disparities in the rate of representation, by race and solo practice status, will be assessed.

Impact of Prior Discipline

The way in which prior complaints and prior discipline are factored into decisions at intake and investigation stages will also be examined. These variables have a strong impact on whether an attorney is disciplined in the statistical models. The procedural and rule underpinnings for the ways in which prior complaint and prior discipline are taken into account in the discipline process need to be carefully reviewed.

To assist with these efforts, staff intends to enter into a contract with a consultant who has worked with justice systems on bias free decision-making and processes. It is anticipated that this consultant will make recommendations regarding areas including 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. Staff plans to work closely with the Chair and Vice-Chair of the Committee on Regulation and Discipline in the selection of a consultant and development of an action plan. Staff will also present the findings contained in the study at a meeting of all OCTC staff. Staff will report back to the Board of Trustees as it develops and implements these plans to continue monitoring and improving the equity of attorney discipline system.

FISCAL/PERSONNEL IMPACT

None at this time. Staff expects to enter into a contract for up to \$100,000 to support the Next Steps as outlined in this report.

RULE AMENDMENTS

None

BOARD OF TRUSTEES POLICY MANUAL AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

None

ATTACHMENT(S) LIST

- A. Discrepancies by Race and Gender in Attorney Discipline by the State Bar of California:
An Empirical Analysis

**DISCREPANCIES BY RACE AND GENDER IN ATTORNEY DISCIPLINE BY THE STATE
BAR OF CALIFORNIA: AN EMPIRICAL ANALYSIS**

**George Farkas¹
Distinguished Professor
School of Education
University of California, Irvine
gfarkas@uci.edu
10-31-19**

¹ With the assistance of Ron Pi, Principal Program Analyst, Office of Research & Institutional Accountability, The State Bar of California.

ABSTRACT

In order to understand the attorney discipline process by the State Bar of California, we focused on the two most serious outcomes of this process – probation or disbarment/resignation. The goal was to estimate attorney gender/race group differences in these outcomes. To do so we analyzed data for 116,363 attorneys admitted to the Bar between 1990 and 2009. Outcomes from 1990 to 2018 were used to create two measures: (1) was the attorney ever placed on probation at least once but never disbarred/resigned during this period, and (2) was the attorney disbarred or resigned during this period. We found that the largest gender/race disparities occurred when comparing Black to White male attorneys. The probation rate for Black male attorneys over this time period was 3.2%, compared to 0.9% for White male attorneys. The disbarment/resignation rate for Black male attorneys was 3.9% compared to 1.0% for White males. Race differences were smaller for Hispanic males and for Black and Hispanic females compared to White females. There were no meaningful differences for Asians compared to Whites.

The total number of complaints against an attorney varied widely, from none to well over a hundred during the study period. During the disciplinary process, each complaint was treated as a single case to be investigated. Where there were multiple complaints arriving close together, they were still treated as individual cases, but were often investigated together. We found that the number of complaints against an attorney over the entire study period was a strong predictor of the chance of probation or disbarment/resignation, and that Black male attorneys were subject to the highest average number of complaints. Arithmetically, other things being equal, a higher rate of complaints regarding a group of attorneys tends to be associated with a higher rate of negative disciplinary outcomes for that group. Since these complaints arrive at the Bar prior to the investigation process, we sought to remove this factor from our estimates of gender/race disproportionality. To do so we conducted simulations of the disciplinary rates that would have been experienced by Black male and other attorneys of color if they had the same distribution of number of complaints as Whites. Under these simulations, the probation and disbarment/resignation rates of Black male attorneys were greatly reduced, to 1.4% for probation and 1.6% for disbarment/resignation. We conclude that after adjustment for gender/race differences in the number of complaints received, differences between Black or Hispanic and White attorneys of the same gender averaged ½ percentage point or less. We also found that the lower discipline rates for female than for male attorneys were largely explained by the lower number of complaints received by females.

We also ran regression analyses to investigate the relationship between a host of attorney, attorney practice, and investigation characteristics on the probation and disbarment outcomes. We found that among attorneys with at least one investigation, the number of investigations opened, the % of investigations without counsel, and the number of prior disciplines might fully explained racial and gender differences in these outcomes. If further analyses are undertaken, they might usefully focus on understanding the sources of the greater average number of complaints experienced by Black and Hispanic than by White attorneys, as well as on how Bar staff take number of investigations, percent of these without counsel, and the number of prior disciplines into account during the investigation process.

Introduction

The State Bar of California is responsible for managing the admission of lawyers to the practice of law, investigating complaints of professional misconduct, and prescribing appropriate discipline. This report estimates the magnitude of, and seeks to understand the mechanisms of, any discrepancies by race and gender in the resulting patterns of attorney discipline. To do so, we analyzed data for all attorneys admitted to the California Bar between 1990 and 2009². Disciplinary records through 2018 were analyzed. These choices guaranteed that all of those analyzed had a minimum of nine years in practice. The methodology was to compare, within each gender, Asians, Blacks, and Hispanics to Whites. We will be investigating gender and race/ethnic discrepancies in the rates of disciplinary outcomes experienced by these attorneys. We will also examine mitigating circumstances that may help explain any such discrepancies.

We are examining the results of a process in which a complaint alleges professional misconduct against an attorney, and the Bar investigates this complaint. Each complaint involves one or more specific allegations, and each attorney may have been subject to no, one, a few, or multiple complaints during the time period under study. During the disciplinary process, each complaint was treated as a single case to be investigated. Where there were multiple complaints arriving close together, they were still treated as individual cases, but were often investigated together. The investigation of each case moves through a series of stages at each of which the case may be closed. Only a subset of the most serious cases lead to the most serious of the disciplinary outcomes -- probation (with or without suspension) of the attorney's license or disbarment/resignation. Such outcomes may occur at any time during an attorney's career. In this report we will focus on racial and gender disparities in the most serious outcome experienced by each attorney during the time period under study. Thus, the first of our studies will examine race/sex discrepancies in the chance that an attorney was placed on probation at least once during this period, but was never disbarred/resigned. The second study will examine the chance of disbarment/resignation during the time period.

Not surprisingly, we found that those attorneys who were subject to the greatest number of complaints also averaged the highest rates of probation and disbarment/resignation. This might be due to any of the following reasons: First, other things being equal, a greater number of complaints will likely be associated with a greater number of cases investigated, which should, as an arithmetic matter and on average, increase the probability of being disciplined, including severe disciplines. Second, more complaints per case may indicate that the case is more severe, raising the probability of a severe outcome. Finally, a greater number of complaints likely implies more past complaints, which may be taken into account during a particular

² The demographic information came from the Admissions database provided by the Bar Exam applicants prior to their being admitted to the Bar. Excluded from the analysis are a small percentage of attorneys (2.5%) for whom no gender or race/ethnicity information is available. Also excluded are those in the "Other" race/ethnicity category due to the small sample size; they represent less than one percent of the total.

investigation. Thus, in the analyses presented, we will group the attorneys within each gender/race group into categories according to the number of complaints received

Table 1 shows the sample of attorneys analyzed. There were a total of 62,091 males and 54,272 females. Among these, there was substantial variation in the number of complaints received. For males, 67% received no complaints; for females the figure was 77%. Table 1 also presents these results in percentages. Reading the top row of this table we see that no complaints were made against 68% of White males, while the comparable rates for Asian, Black, and Hispanic males were 73%, 54%, and 56%, respectively. The lower percentages of Black and Hispanic than of White male attorneys receiving no complaints suggest that a higher percentage of the members of these groups than of Whites may be subject to disciplinary action. A similar pattern is observed for females, with a lower percentage of Black and Hispanic females receiving no complaints than of White or Asian females.

**Table 1. Attorneys Admitted from 1990 to 2009
By Race/Ethnicity, Gender, and the Number of Complaints Received**

<i>Number of Attorneys</i>						<i>Percent of Total</i>				
# of Complaints	Asian	Black	Hispanic	White	Total	Asian	Black	Hispanic	White	Total
<i>Male</i>										
0	5,812	996	2,266	32,432	41,845	73%	54%	56%	68%	67%
1-4	1,564	463	1,148	11,147	14,444	20%	25%	28%	23%	23%
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Total	7,958	1,829	4,058	47,710	62,091	100%	100%	100%	100%	100%
<i>Female</i>										
0	7,709	1,678	2,671	29,375	41,798	83%	68%	69%	77%	77%
1-4	1,357	584	965	7,259	10,266	15%	24%	25%	19%	19%
5-9	128	121	152	993	1,412	1%	5%	4%	3%	3%
>=10	75	91	86	533	796	1%	4%	2%	1%	1%
Total	9,269	2,474	3,874	38,160	54,272	100%	100%	100%	100%	100%

Table 1 also shows that a higher percentage of Black and Hispanic than of White attorneys were subject to 10 or more complaints. In particular, among Black, Hispanic, and White males, respectively, 12%, 8%, and 4% of each sample received 10 or more complaints. A similar pattern was observed for females, but at much lower levels; 4%, 2%, and 1%, respectively, were subject to 10 or more complaints. The 12% of Black males subject to 10 or more complaints is a particularly striking statistic. Because it is three times the share of White males with this many complaints we may expect that this disproportion will by itself create a disproportion in the percent of each group ultimately subject to the more severe disciplinary penalties.

Table 2 shows greater detail on group differences in complaints received. The table reports the average number of complaints for each race/gender and number of complaints category. We see that within the 1-4 and 5-9 complaints categories the Black and Hispanic averages, whether male or female, are quite close to those for Whites. The exception is the >=10 category, where

Black male attorneys, in particular, average 28.7 complaints compared to 24.7 for White males. This difference may also be producing more severe disciplinary penalties for Black male attorneys.

Table 2. Average Number of Complaints Received by Gender, Race/Ethnicity, and Categories of Number of Complaints

Number of Complaints	Asian	Black	Hispanic	White	Total
<i>Male</i>					
None	0.0	0.0	0.0	0.0	0.0
1-4	1.8	1.9	1.9	1.8	1.8
5-9	6.5	6.5	6.7	6.5	6.5
>=10	27.1	28.7	24.5	24.7	25.2
Total	1.6	4.4	3.0	1.7	1.9
<i>Female</i>					
None	0.0	0.0	0.0	0.0	0.0
1-4	1.6	1.8	1.7	1.7	1.7
5-9	6.3	6.6	6.5	6.4	6.4
>=10	17.8	20.6	23.5	20.5	20.7
Total	0.5	1.5	1.2	0.8	0.8

Each complaint is associated with one or more specific allegations. As with complaints, we may expect that attorneys subject to more allegations over their careers will have a greater risk of eventual probation or disbarment/resignation. Table 3 reports on the career volume of these allegations across the groupings. We see that, for males, when we restrict attention to any particular category of number of complaints, the average number of allegations for Blacks and Hispanics is close to that for Whites. However, when we look at the average number of allegations for the total (entire male racial groups), we see that these are 6.2 for Black males, 4.6 for Hispanic males, and 2.6 for White males. The Black male average is more than twice that for White males. This is entirely a compositional effect – it occurs because a higher percentage of White than Black males are in the zero complaints category, and a higher percentage of Black than White males are in the higher categories of number of complaints, where the average number of allegations is particularly high. This again draws attention to the category of attorneys with >=10 complaints.

Something similar is observed for females of differing race/ethnicity. Among females there is more variation in average number of allegations across races than among males (for example, Black females with >=10 complaints actually average fewer allegations than similar Whites). Because of the greater shares of Black and Hispanic than White females in the higher number of complaints categories, the overall average number of allegations for Black and Hispanic females are, respectively, 2.0 and 1.8, compared to 1.1 for White females. As was the case for males, the different distributions of gender/race groups across number of complaints categories, particularly the >=10 category, strongly influences the total number of allegations for the group. But what are the details of these allegations for attorneys in the >=10 complaints category? These are shown in Table 4.

Table 3. Average Number of Allegations by Gender, Race/Ethnicity, and Categories of Number of Complaints

Number of Complaints	Asian	Black	Hispanic	White	Total
<i>Male</i>					
None	0.0	0.0	0.0	0.0	0.0
1-4	2.4	2.4	2.5	2.3	2.3
5-9	9.2	8.6	9.3	8.5	8.7
>=10	46.5	41.3	39.8	41.9	42.0
Total	2.4	6.2	4.6	2.6	2.8
<i>Female</i>					
None	0.0	0.0	0.0	0.0	0.0
1-4	2.0	2.1	2.2	2.1	2.1
5-9	8.8	9.0	9.0	8.4	8.5
>=10	25.9	27.7	38.6	30.8	31.0
Total	0.6	2.0	1.8	1.1	1.1

Table 4 shows that most allegation types have relatively similar averages across race/ethnic groups. Among males, the primary categories where Blacks have higher average allegations than Whites are Performance and Reportable Action complaints from banks (note that there were no Reportable Action allegations at the initial intake stage). For females, the largest Black-White difference is also Reportable Action – Bank.

Table 4. Average Number of Allegations by Allegation Type for Those with More Than Ten Complaints*

	Asian	Black	Hispanic	White	Total
<i>Male</i>					
Performance	14.0	14.3	14.0	13.1	13.4
Fees	8.2	6.5	6.7	7.3	7.2
Duties to Client	5.0	6.2	6.2	5.7	5.7
Personal Behavior	5.3	4.4	3.9	4.7	4.7
RP Action - Bank	5.8	6.8	3.7	3.7	4.2
Funds	4.0	4.2	3.5	3.5	3.6
Interference w Justice	3.1	3.0	3.0	3.4	3.3
Loan Modification	5.7	1.8	1.5	3.0	2.9
<i>Female</i>					
Performance	8.7	9.9	14.0	10.8	10.9
Fees	4.7	4.6	7.1	5.2	5.4
Duties to Client	3.6	4.6	5.5	4.9	4.8
RP Action - Bank	3.8	5.1	3.5	3.4	3.6
Personal Behavior	2.4	2.7	3.5	3.1	3.1
Interference w Justice	2.6	3.0	3.0	2.9	2.9
Funds	2.2	2.2	3.3	2.5	2.5

*Less frequent allegation types with an average of less than one are not included.

Understanding Racial Differences in Probation

We turn now to the determinants of an attorney receiving probation at least once in their career, but never reaching disbarred/resigned status. The results are shown as the numbers and percentages of attorneys receiving probation in Table 5. We see that for each race/ethnic group and for both males and females, the probation rate increases dramatically according to the number of complaints received. For example, overall, among males receiving 1-4 complaints, only 0.9% ultimately received probation during the time period under study. By contrast, 3.8% of males subject to 5-9 complaints, and 13.5% of males subject to 10 or more complaints were put on probation at least once. Rates were similar, but slightly lower, for females.

Table 5 shows that overall, 0.9% of White males were subject to probation (this is calculated as a simple rate for all White males, including those who were not subject to any complaints). By contrast, the overall probation rates for Black, Hispanic, and Asian males were, respectively, 3.2%, 1.9%, and 0.8%. ***The largest racial probation rate discrepancy is the difference between 3.2% for Black males and 0.9% for White males. Understanding the sources of this gap is a major goal of this report.***

Females show a similar pattern but at much lower levels. Thus, 0.4% of White female attorneys were put on probation, compared to 0.9%, 0.5%, and 0.2% of Black, Hispanic, and Asian female attorneys, respectively. Thus, the largest racial probation discrepancy among females is the difference between 0.4% for White females and 0.9% for Black females.

Table 5. Attorneys Disciplined by Probation

Number of Attorneys						Percent of Total				
# of	Asian	Black	Hispanic	White	Total	Asian	Black	Hispanic	White	Total
<i>Male</i>										
1-4	18	5	13	89	126	1.2%	1.1%	1.1%	0.8%	0.9%
5-9	13	10	12	78	116	4.2%	6.5%	3.6%	3.5%	3.8%
>=10	30	43	53	242	373	10.9%	19.8%	16.9%	12.7%	13.5%
Total	61	58	78	409	615	0.8%	3.2%	1.9%	0.9%	1.0%
<i>Female</i>										
1-4	3	5	4	39	53	0.2%	0.9%	0.4%	0.5%	0.5%
5-9	6	1	5	32	44	4.7%	0.8%	3.3%	3.2%	3.1%
>=10	5	17	10	63	96	6.7%	18.7%	11.6%	11.8%	12.1%
Total	14	23	19	134	193	0.2%	0.9%	0.5%	0.4%	0.4%

Note: These are actual numbers receiving probation in the left panel, and the probation rate for each combination of sex, race, and number of complaints in the right panel.

Number of Complaints as a Source of the Racial Gap in Probation

For each gender/race/ number of complaints combination, the number of attorneys disciplined with probation is arithmetically equal to the product of two numbers – the number of attorneys from that gender/race group subject to that number of complaints, and the rate at which

attorneys from that gender/race and number of complaints group are subject to probation³. We saw in Table 1 that Black and Hispanic attorneys tended to be more concentrated than Whites in the groups receiving greater numbers of complaints. We also see in Table 5, that within each of these number of complaint groupings, the percentage receiving probation was generally higher for Blacks than for Whites. This was particularly the case for Black compared to White males.

These two sources of the racial gap in probation -- the percentage distribution of the different numbers of complaints received by a group and the group-specific rate at which these complaints led to probation -- result from very different processes. The number of complaints against an attorney results from her/his interaction with clients, and is determined prior to the Bar's investigation processes. However, the rate at which these complaints result in probation for each gender/race group of attorneys is a direct result of the investigation and decision-making processes of Bar staff. We wish to test these latter processes for race- or gender-related disparities. ***As one step in doing so we undertook a statistical experiment: What would the racial/ethnic probation gaps be if Black, Hispanic, and Asian attorneys were subject to the same distribution of numbers of complaints as White attorneys?*** To do so we simply applied the gender/race and number of complaint specific probation rates of Table 5 to the White distribution of complaints in Table 1⁴. This simulation yields an estimate of the "counterfactual," the overall probation rates which attorneys of color would receive if their client complaint distribution were the same as Whites. These simulation results are compared to actual observed rates in Table 6.

The values in Table 6 show that a significant share of the race/ethnic probation rate differences in Table 5 may be attributable to the fact that, in general, Black and Hispanic attorneys tended to be subject to greater numbers of client complaints than White attorneys. (For example, in Table 1 we saw that 12% of Black male attorneys received 10 or more complaints, whereas this was the case for only 4% of White male attorneys.)

Table 6 shows that if Blacks and Hispanics are given the White distribution of numbers of complaints, their total percentage on probation declines. Thus, although Table 5 showed that 3.2% of Black male attorneys received probation as their most severe discipline, the simulated calculation reported in Table 6 shows that if Black males had the White male distribution of

³ To take an example, Table 1 shows 1,564 Asian male attorneys received 1-4 complaints. The right hand side of Table 5 shows that the probation rate for these attorneys was 1.2%. Then $1,564 \times .012 = 18$ (approximately, with differences due to rounding), as shown on the left hand side of Table 5.

⁴ For example, Table 1 showed that 12% of Black male attorneys, but only 4% of White male attorneys received ≥ 10 complaints. To apply the White male percent in this category to the calculation, since there are 1,829 Black male attorneys, $.04 \times 1,829 = 73$ (approximately, due to rounding). This is the number of Black male attorneys that would have received ≥ 10 complaints if the Black male share had equaled the White male share. The Black male rate of 19.8% (Table 5) for this category of # complaints is then applied to these 73, yielding 14 (approximately), which is the simulated number on probation for Black male attorneys with ≥ 10 complaints. Then apply this procedure to each of the categories of # of complaints for Black male attorneys, and add them up across categories. This yields the number of Black male attorneys simulated to receive probation. Divide this by the total number of Black male attorneys to get the overall rate of probation for Black male attorneys under the simulation.

complaints, there would be only 1.4% whose severest discipline was probation. The comparison of actual and simulated rates for all gender/race groups are summarized in Table 6.

Table 6. Actual and Simulated¹ Probation Rates

	Asian	Black	Hispanic	White	Total
<i>Male</i>					
Actual	0.8%	3.2%	1.9%	0.9%	1.0%
Simulated	0.9%	1.4%	1.1%	0.9%	0.9%
Remaining Difference					
from White Rate ²	0.0%	.05%*	0.2%	-	-
<i>Female</i>					
Actual	0.2%	0.9%	0.5%	0.4%	0.4%
Simulated	0.2%	0.4%	0.4%	0.4%	0.4%
Remaining Difference					
from White Rate ²	-0.2%	0.0%	0.0%	-	-

1. Simulated if all groups had the White distribution of number of complaints

2. These are the percentage points potentially attributable to factors within the Bar's control.

* Statistically significant at 5 percent level.

As just noted, the actual probation rate for Black male attorneys was 3.2%, whereas that for White male attorneys was 0.9%. The difference of 2.3 percentage points seems substantial. However, once the Black male rate is adjusted for the greater number of complaints they received, their probation rate is simulated to be only 1.4%. This is only 0.5 percentage point greater than the White male rate of 0.9%. ***Thus, Table 6 shows that after adjustment for the number of client complaints received by different gender/race groups, the largest gap is for Black compared to White male attorneys. This gap is 0.5 percentage point, and may be attributable to the different probation rates for different groups of attorneys (recall Table 5). It is statistically significant but relatively small in magnitude. We conclude that after the simulation to remove the effects of differences in the distribution of the number of complaints received, only Black and Hispanic male attorneys have higher probation rates than otherwise similar Whites, and these differences are less than 1/2 of a percentage point⁵.***

Regression Analyses to Measure the Effects of Multiple Variables on Probation Among Attorneys With At Least One Complaint

We have seen that Black and Hispanic attorneys, both male and female, were subject to a greater number of complaints than White attorneys, and that these differences may account

⁵ A further simulation could be undertaken to also remove Black-White male attorney differences in the average number of complaints received among those receiving ≥ 10 complaints (Table 2 shows this average to be 28.7 for Blacks and 24.7 for Whites). Doing so would further reduce the gap between the simulated Black and the White male probation rates.

for much, but not all, of the higher probation rates for Black and Hispanic, compared to White attorneys. In this section we look more closely at those attorneys with at least one complaint, in order to discover whether additional characteristics of the attorneys, their practices, and the allegations against them can explain the race/ethnic differences in suspension remaining after controlling for racial differences in number of complaints. The variables to be controlled (accounted for) include the nature of their practice, the years since they were admitted to the bar, their firm size, whether they worked for the government, the number of investigations of them opened, the % of these investigations where they were not themselves represented by an attorney, and the specifics of the allegations against them. Of course, attorneys with no complaints would have no chance of suspension, so the analysis in this section focuses only on attorneys with at least one complaint.

Table 7 shows regression analyses of the probability of ever being placed on probation. Each of the models 1-6 is a separate calculation, with more control variables being added to the calculation as we move from left to right. The first model shows differences in the percent of attorneys ever on probation between the nonwhite and White groups, with no variables controlled. We see that when examined as a raw rate (without controls), the Black probation rate is 2.7 percentage points higher than that for Whites, and this is statistically significant.⁶ The Hispanic rate is 0.98% percentage points higher than for Whites, and is also statistically significant.

Model 2 adds gender (coded female = 1) and the number of investigations opened as predictors. Both are statistically significant. Females are 1.3 percentage points less likely than males to be placed on probation. Attorneys subject to more investigations are more likely to be placed on probation. Results for Blacks and Hispanics are relatively unchanged. The third model in Table 7 adds the percentage of investigations in which the attorney being investigated did not have counsel. This variable is found to be a very strong and positive predictor of an individual's probability of being put on probation. With this variable controlled, the Black coefficient declines from .0258 to .0110, a major decrease of 57.4%. In other words, about half of the Black-White differential is explained by the fact that when being investigated by the Bar, more Black than White attorneys did not have counsel. (The difference was that 15% of Black attorneys did not have counsel, whereas for White attorneys it was 8%. For Hispanics, the rate was 10%.) Controlling this variable also strongly reduced the female-male probation differential, from -.0130 to -.0036, a 72.3% reduction! Much of the lower probation rate for female compared to male attorneys may be due to the fact that male attorneys are less likely to have counsel when being investigated.

⁶ Note that only attorneys with at least one complaint are included in this calculation. So Model 1 with this population of attorneys partially controls for race/ethnic differences in the number of complaints because it excludes attorneys with no complaints (thereby removing the effect of Whites having a higher percentage of attorneys with no complaints) but does not control for the fact that among attorneys with at least one complaint, Blacks and Hispanics average more complaints than Whites. As variables are added to successive models, this racial difference in the number of complaints for those with at least one complaint will be accounted for.

Table 7. Linear Regression on Probation, All Attorneys with Any Complaints

	Model 1	Model 2	Model 3	Model 4	Model 5	Model 6
Race/Ethnicity						
Asian	-0.0023	-0.0023	-0.0019	-0.0015	-0.0023	-0.0020
Black	0.0272***	0.0258***	0.0110**	0.0100**	0.0109*	0.0061
Hispanic	0.0098**	0.0090**	0.0061*	0.0060*	0.0068*	0.0059
Other	0.0141	0.0124	0.0037	0.0018	0.0006	-0.0027
Female		-0.0130***	-0.0036*	-0.0030	-0.0023	0.0004
# of Investigations Opened		0.0030***		0.0010***	0.0010***	-0.0012***
% of INV w/o counsel			0.2265***	0.2142***	0.2180***	0.1163***
Year Since Admitted				-0.0000	0.0001	-0.0002
Prof Employment				-0.0005	-0.0005	0.0050***
Fees				-0.0021***	-0.0024***	-0.0015**
Funds				-0.0021***	-0.0022***	-0.0013*
Performance				0.0009*	0.0009*	0.0002
Duties to Client				0.0003	0.0003	-0.0006
Inteference w Justice				0.0046***	0.0045***	0.0046***
Personal Behavior				0.0007	0.0005	0.0004
No Complaint Articulated				-0.0032	-0.0029	0.0015
Immigration Fraud				-0.0086	-0.0079	-0.0015
Loan Modification				0.0001	0.0003	0.0011***
Duties to State Bar				0.0210***	0.0151**	-0.0125**
Debt Resolution Complaint				-0.0011	-0.0008	-0.0033
Unauthorized Practice of Law				-0.1042***	-0.1068***	-0.1959***
<i>Firm Size/Type (Solo = base)</i>						
2-10					-0.0155***	-0.0102***
>=11					-0.0187***	-0.0123***
No response/DK					-0.0139**	-0.0140**
Govt lawyer					-0.0185***	-0.0133***
Number of prior disciplines						0.1272***
Constant	0.0226***	0.0229***	0.0060***	0.0015	0.0116***	0.0098***
R-Squared	0.0018	0.0231	0.1557	0.1619	0.1651	0.2491
N	32,720	32,720	32,720	32,720	27,257	27,257

Model 4 has the number of investigations opened and % of these without counsel, as well as years since admitted to the Bar, and the number of times the attorney was charged with each possible specific allegation over their time as a member of the Bar as predictors. Several of these are statistically significant with one surprise being the relatively strong *negative* effect of the unauthorized practice of law on probation. As we shall when we analyze the predictors of disbarment, the reason this variable strongly reduces the probability of probation is that it strongly increases the probability of disbarment. Controlling these variables reduced the female-male difference in probation rates to insignificance. Model 5 added the firm size and government lawyer variables to the equation as predictors. The coefficients indicate that both variables are significant – larger firm size or being a government lawyer both reduce the probability of probation. However, controlling these variables made little further change in the race or gender differentials in probation.

Model 6 added the number of prior disciplines to the equation. This measures the sum of the following variables -- for each investigation the attorney underwent, the number of prior disciplines on the attorney's record at that time. This is found to be a strong positive predictor

of the probability of probation. With this variable controlled all the race/ethnic variables become insignificant. The remaining Black-White difference in the probation rate is now only 0.61 of a percentage point, and the Hispanic-White difference is now 0.59 of a percentage point, with neither being statistically significantly different from the White rate. Thus, it appears that, in addition to the greater number of complaints against Black than White attorneys, the strongest inference for the higher probation rates of Blacks is that a higher percentage of Black than White attorneys do not have counsel when they undergo an investigation, and that at each of these investigations, Black attorneys have a larger number of prior disciplines than White attorneys. This inference is supported very strongly by the beta weights (standardized regression coefficients) reported in the regression in the Appendix (p. 20). These are the usual way to compare the magnitudes of effect of different predictors in a regression. Larger beta weights imply a variable with a stronger effect. On p. 20 we replicated the equation in Model 6 of Table 7, but also computed beta weights. By far the largest coefficient (.374) is for the effect of # of prior disciplines (summed over all the investigations of each attorney) on probation. Next most important (.197) is the % of investigations that occurred without counsel. Compared to those variables, the beta weights for the other predictors in the equation are of much smaller magnitude⁷. We also find in the table of averages of all predictors, separately by race/ethnicity, in the Appendix on p. 19, that Black attorneys had a higher average on these two variables than any other race group. In particular, the Black average of # of prior disciplines was .222, whereas that for Whites was .100 (less than ½ the Black total). Regarding the % of investigations without counsel, the Black average was .152 while that for White was .079 (about half the value). There is little doubt that the primary reason that the Black suspension rate was 2.7 percentage points higher than that for Whites was because Blacks had higher average values on these variables, combined with their strong effects on probation rates.

Racial Differences in Disbarment/Resignation

What about the most serious discipline – disbarment or resignation? Table 8 shows the number and percent of attorneys with this outcome, separately for groups defined by gender, race, and the number of complaints received. As was true for probation, the largest racial discrepancies occur for Black male attorneys subject to 10 or more complaints. These attorneys have a disbarment/resignation rate of 26.3%, compared with a rate of 17.9% for White males who also had ≥ 10 complaints.

Overall, 3.9% of Black male attorneys in our sample were disbarred or resigned during the period under study. The comparable rate for White male attorneys was 1.0%. This is by far the

⁷ One anomaly in the estimated coefficients for Model 6 is that the coefficient for the number of investigations opened has now turned negative. However, in regressions with such a large number of control variables an issue of multicollinearity sometimes arises – this is when the joint distribution of several predictor variables is such that at least one of the predictors can be strongly predicted by a subset of others. Under these conditions the coefficients of one or more of the variables can suddenly switch signs. A test for this is to compute the variance inflation factors (vif) of all the predictors. We have done so, and the vif for # of investigations opened is particularly large. As a result we believe that the negative sign for this variable in Model 6 can be attributed to multicollinearity and safely ignored.

largest overall difference between Black or Hispanic and White attorneys in the table, and it is larger than the Black-White male probation rate difference in Table 5. As before, this is partly due to the fact that a higher percentage of Black than White male attorneys had 10 or more complaints, combined with the fact that among male attorneys with this number of complaints, Blacks are more likely than Whites to experience disbarment/resignation (26.3% versus 17.9% in Table 8). As before, we wish to remove the effect of the greater number of complaints

Table 8. Attorneys Disbarred or Resigned

Number of Attorneys						Percent of Total				
# of										
Complaints	Asian	Black	Hispanic	White	Total	Asian	Black	Hispanic	White	Total
<i>Male</i>										
1-4	12	5	5	73	96	0.8%	1.1%	0.4%	0.7%	0.7%
5-9	15	10	9	83	118	4.9%	6.5%	2.7%	3.7%	3.9%
>=10	58	57	54	342	521	21.1%	26.3%	17.2%	17.9%	18.9%
Total	85	72	68	498	735	1.1%	3.9%	1.7%	1.0%	1.2%
<i>Female</i>										
1-4	8	6	2	30	48	0.6%	1.0%	0.2%	0.4%	0.5%
5-9	3	4	2	31	40	2.3%	3.3%	1.3%	3.1%	2.8%
>=10	8	13	14	77	117	10.7%	14.3%	16.3%	14.4%	14.7%
Total	19	23	18	138	205	0.2%	0.9%	0.5%	0.4%	0.4%

Note: The left panel shows actual numbers disbarred or resigned, and the right panel shows the disbarment/resignation rate for each combination of sex, race, and number of complaints.

received by Black male attorneys so that we are left with the (simulated) percentage of Black males that would have been disbarred/resigned if the Black attorneys had the same distribution of number of complaints as the Whites. The results of doing so are shown in Table 9.

This table shows that after adjusting for gender/race group differences in the number of complaints, the Black male disbarment/resignation rate is reduced from 3.9% to 1.6%, and that for Hispanic males is reduced from 1.7% to 0.9%. ***Thus, the only meaningful race group difference in disbarment/resignation in Table 8, after the simulation to remove the effects of differences in the distribution of the number of complaints received by different race groups, are the remaining 0.6% gap between Black and White males and the remaining 0.3% gap between Asian and White males.⁸ Both are statistically significant but small in magnitude.***

⁸ As was the case for the simulation of probation rates, a further simulation could be undertaken for disbarment/resignation rates, to remove Black-White male attorney differences in the average number of complaints received among those receiving >=10 complaints (Table 2 shows this average to be 28.7 for Blacks and 24.7 for Whites). Doing so would further reduce the gap between the simulated Black and the White male disbarment/resignation rates.

Regression Analyses to Measure the Effects of Multiple Variables on Disbarment/Resignation Among Attorneys With At Least One Complaint

To bring multiple control variables into the analysis of race/ethnic and gender differences in disbarment/resignation, we repeat the analysis of Table 7, but for disbarment. The results are shown in Table 10.

Model 1 shows that when analyzing data for those attorneys with at least one complaint, and without any control variables, the Black disbarment/resignation rate is 3.2 percentage points higher than that for Whites, a statistically significant finding. Model 2 adds gender and the number of investigations opened to the regression. Both variables are statistically significant.

Table 9. Actual and Simulated¹ Disbarment/Resignation Rates

	Asian	Black	Hispanic	White	Total
<i>Male</i>					
Actual	1.1%	3.9%	1.7%	1.0%	1.2%
Simulated	1.3%	1.6%	0.9%	1.0%	1.1%
Remaining Difference from White Rate	0.3%*	0.6%*	-0.1%	-	-
<i>Female</i>					
Actual	0.2%	0.9%	0.5%	0.4%	0.4%
Simulated	0.3%	0.5%	0.3%	0.4%	0.4%
Remaining Difference from White Rate	-0.1%	0.1%	-0.1%	-	-

1. Simulated if all groups had the White distribution of number of complaints

* Statistically significant at 5 percent level.

Females have disbarment/resignation rates 1.3 percentage points lower than males. A higher number of investigations opened increases the chance of disbarment/resignation. With these variables controlled, the Black-White difference in rates is reduced to 2.5 percentage points, which is still statistically significant.

Model 3 adds the % of investigations without counsel to the equation (and removes number of investigations opened). As was the case for predicting probation (Table 7), this is a very strong predictor of disbarment/resignation. In fact it is even stronger than for probation (coefficient of .227 in Model 3 of Table 7, .317 in Model 3 of Table 10). Importantly, with this variable controlled, the Black-White difference in rates declines from .025 in Model 2 of Table 10 to .009 in Model 3 of this table. This is a decline of 63%, and shows that this variable is a very important reason for the higher disbarment/resignation rates of Black compared to White attorneys.

Model 4 adds the # of investigations opened back in to the equation, and also adds years since admitted to the Bar and the number of each of the different allegation types. Many of these are statistically significant, with particularly strong positive effects from the % of investigations

without counsel and the allegation of the unauthorized practice of law. With all these variables controlled the Black coefficient has declined to a statistically insignificant 0.23 percent. This is a major finding – these two variables may play a particularly strong role in explaining Black-White differences in disbarment/resignation. Further, the Hispanic coefficient is negative, indicating that after adjustment for these variables, Hispanics actually have *lower* disbarment/resignation rates than Whites.

Table 10. Linear Regression on Disbarment, All Attorneys with Any Complaints

	Model -1	Model -2	Model -3	Model -4	Model -5	Model -6
Race/Ethnicity						
Asian	0.0016	0.0005	0.0022	0.0021	0.0019	0.0023
Black	0.0319***	0.0250***	0.0092*	0.0023	0.0010	-0.0053
Hispanic	0.0023	-0.0008	-0.0030	-0.0053*	-0.0065*	-0.0078**
Other	0.0317***	0.0261**	0.0170*	0.0143	0.0163	0.0120
Female		-0.0132***	-0.0040*	-0.0002	-0.0003	0.0034*
# of Investigations Opened		0.0084***		0.0062***	0.0059***	0.0030***
% of INV w/o counsel			0.3170***	0.2394***	0.2333***	0.0979***
Year Since Admitted				0.0003*	0.0002	-0.0002
Prof Employment				-0.0165***	-0.0168***	-0.0094***
Fees				0.0002	0.0006	0.0019***
Funds				0.0014**	0.0012*	0.0025***
Performance				-0.0007*	-0.0008*	-0.0017***
Duties to Client				0.0061***	0.0061***	0.0049***
Inteference w Justice				-0.0080***	-0.0079***	-0.0077***
Personal Behavior				0.0031***	0.0034***	0.0033***
No Complaint Articulated				-0.0078*	-0.0071*	-0.0011
Immigration Fraud				-0.0575***	-0.0569***	-0.0484***
Loan Modification				-0.0027***	-0.0028***	-0.0017***
Duties to State Bar				0.0681***	0.0722***	0.0354***
Debt Resolution Complaint				0.0078***	0.0078***	0.0044**
Unauthorized Practice of Law				0.3314***	0.3325***	0.2139***
<i>Firm Size/Type (Solo = base)</i>						
2-10					-0.0070***	0.0001
>=11					-0.0042	0.0044
No response/DK					0.0124**	0.0123**
Govt lawyer					-0.0007	0.0062*
Number of prior disciplines						0.1694***
Constant	0.0264***	0.0187***	0.0028*	-0.0057**	-0.0016	-0.0040
R-Squared	0.0020	0.1356	0.2619	0.3392	0.3384	0.4716
N	32,720	32,720	32,720	32,720	27,257	27,257

Model 5 adds firm size and whether or not a government lawyer to the equation. The Black coefficient remains insignificant and becomes even smaller at .0010. The Hispanic coefficient remains negative. These variables might explain any disbarment/resignation differences between these groups and Whites. In fact, in Model 5 there are no remaining positive differences between any of the race groups and Whites, or between males and females. Model 6 adds the number of prior disciplines to the equations. As was the case for predicting probation, this is a strong positive predictor. Once again, there are no significant race/ethnicity or gender coefficients. Examining the coefficients in Model 6 in this table, it appears that # of

prior disciplines and % of investigations without counsel are particularly strong predictors, as is unauthorized practice of law. Once again we look at the Appendix table of beta weights for Model 6. By far the strongest predictor is # of prior disciplines, with a beta weight of .471. Next in importance are % of investigations without counsel (beta = .157) and number of investigations opened (beta = .132). This is a very similar finding as that for probation. Blacks have higher rates of disbarment/resignation than Whites because these variables are important predictors of that outcome, and because Blacks have higher values on these variables than Whites.

Summary and Discussion

The goal of this report was to estimate and understand gender/race group differences in the discipline administered to attorneys by the State Bar of California. To do so, we analyzed data on 62,091 male and 54,272 female attorneys admitted to the Bar between 1990 and 2009. Disciplinary records for these attorneys were analyzed for the period 1990 to 2018. The outcomes examined were probation (at least once, and as the most severe discipline experienced) and disbarment/resignation.

Results show that male attorneys have higher probation and disbarment/resignation rates than females, and that racial discrepancies are higher among males than females. The largest racial differences were between Black and White male attorneys. The probation rate for Black male attorneys was 3.2% while that for White male attorneys was 0.9%. The disbarment/resignation rate for Black male attorneys was 3.9% while that for White male attorneys was 1.0%. For Hispanic males the probation rate was 1.9% and the disbarment/resignation rate was 1.7%.

These discipline differences between White male attorneys and male attorneys of color have two components. One is the distribution of the number of complaints that a gender/race group was subject to, and the other is the rate at which attorneys in a particular gender/race group and with a given number of complaints were disciplined. Complaints come to the Bar prior to their investigation, so that only the discipline rates applied to these complaints are attributable to actions of Bar staff. Further, Black and Hispanic attorneys averaged greater numbers of complaints than White attorneys. Accordingly, we undertook simulations to estimate the probation and disbarment/resignation rates that would have been experienced by Black and Hispanic attorneys if their distribution of complaints had been the same as those of White attorneys.

The result of these simulations was to greatly reduce the size of the gender/race group disparities in discipline. For Black males, the group with the largest differences from Whites, the probation rate declined from 3.2% to 1.4% and the disbarment/resignation rate declined from 3.9% to 1.6%. These simulated rates for Black males were only about ½ of a percentage point higher than the rates for White males. Similar results were found for Black females and for Hispanics.

We also used regression analysis to test for the ability of a range of attorney, attorney practice, and investigation characteristics as predictors of probation and disbarment among attorneys

with at least one complaint. We found that these variables might explain all race/ethnic and gender differences in these outcomes. While many of these predictors were statistically significant, a few stood out as being the strongest predictors and doing the most to explain racial/ethnic differences in probation and disbarment/resignation. These were the # of investigations opened, the percent of investigations without counsel, and the number of prior disciplines. Racial differences in the outcomes may be largely attributable to racial differences in these variables.

This study had several limitations. We did not examine outcomes for attorneys admitted to the Bar before 1990 or after 2009. We did not have information available on attorneys' areas of practice, which could affect both the number and type of complaints received against them. Other possible control variables were also unavailable. If further analyses are undertaken, they might usefully focus on understanding the sources of the greater average number of complaints experienced by Black and Hispanic than by White attorneys, as well as on how Bar staff take these into account during the investigation process. In particular, further investigation might profitably focus on the effects of an attorney not having counsel during an investigation, and the number of prior disciplines an attorney had during an investigation, on the outcome of the investigation.

Appendix Tables Related to the Regressions

Summary Statistics of Predictor Variables, p.19

Beta Weights (Standardized Regression Coefficients) for Predicting Probation, p. 20

Beta Weights (Standardized Regression Coefficients) for Predicting Disbarment/Resignation, p.
21

Summary Statistics of Predictor Variables

	Asian (N=3,706)		Black (N=1,629)		Hispanic (N=2,995)		White (N=24,063)		Other (N=327)		Total (N=32,720)	
	Mean	SD	Mean	SD	Mean	SD	Mean	SD	Mean	SD	Mean	SD
Female (0/1)	0.421	0.494	0.489	0.500	0.402	0.490	0.365	0.481	0.398	0.490	0.381	0.486
# of Investigations Opened	1.725	14.151	2.511	6.365	1.918	6.183	1.497	5.652	2.209	5.887	1.619	7.217
% of INV w/o counsel	0.078	0.257	0.152	0.346	0.096	0.285	0.079	0.260	0.126	0.321	0.085	0.268
Number of prior disciplines	0.095	0.419	0.222	0.674	0.128	0.512	0.100	0.440	0.180	0.592	0.109	0.462
Year Since Admitted	10.062	5.549	11.605	5.610	10.683	5.702	12.201	5.690	10.067	5.834	11.769	5.726
Prof Employment	0.104	0.682	0.063	0.390	0.107	0.485	0.104	0.715	0.113	0.749	0.102	0.681
Fees	1.009	12.299	1.396	4.509	1.234	4.623	0.987	7.754	1.483	4.518	1.038	8.033
Funds	0.508	2.263	0.842	2.305	0.624	2.414	0.491	2.474	0.700	2.280	0.525	2.437
Performance	2.081	13.469	3.445	7.006	2.973	7.166	2.095	9.992	2.890	6.584	2.249	10.083
Duties to Client	0.831	2.927	1.554	3.012	1.275	3.348	0.981	3.476	1.260	2.674	1.022	3.381
Inteference w Justice	0.831	1.461	1.066	2.116	0.946	1.700	0.927	1.864	1.199	1.982	0.927	1.824
Personal Behavior	0.852	4.416	1.152	2.642	0.926	2.222	0.878	3.045	1.257	2.878	0.897	3.149
No Complaint Articulated	0.049	0.401	0.077	0.379	0.080	0.367	0.044	0.355	0.058	0.247	0.049	0.362
Immigration Fraud	0.008	0.125	0.001	0.035	0.009	0.169	0.001	0.036	0.000	0.000	0.003	0.074
Loan Modification	0.488	15.002	0.286	3.306	0.226	2.370	0.269	8.416	0.242	1.753	0.290	8.870
Duties to State Bar	0.031	0.192	0.060	0.264	0.031	0.191	0.031	0.195	0.067	0.263	0.032	0.200
Debt Resolution Complaint	0.006	0.077	0.015	0.317	0.005	0.091	0.013	0.629	0.000	0.000	0.011	0.545
Unauthorized Practice of Law	0.002	0.052	0.004	0.061	0.003	0.066	0.001	0.040	0.000	0.000	0.002	0.045
Solo (0/1)	0.412	0.492	0.428	0.495	0.383	0.486	0.385	0.487	0.468	0.500	0.391	0.488
2-10 (0/1)	0.288	0.453	0.217	0.413	0.322	0.467	0.339	0.474	0.275	0.447	0.325	0.468
>=11 (0/1)	0.116	0.320	0.097	0.296	0.092	0.288	0.118	0.322	0.106	0.308	0.114	0.317
No response/DK (0/1)	0.039	0.193	0.069	0.253	0.048	0.214	0.047	0.213	0.060	0.238	0.048	0.213
Govt lawyer (0/1)	0.145	0.353	0.188	0.391	0.155	0.362	0.111	0.314	0.092	0.289	0.123	0.328

Linear Regression on Probation, All Attorneys with Any Complaints

Dep: Probation	Coef.	Std. Err.	t	P>t	Beta	Sig
Race/Ethnicity						
Asian	-0.002	0.003	-0.720	0.471	-0.004	
Black	0.006	0.004	1.500	0.134	0.008	
Hispanic	0.006	0.003	1.920	0.054	0.010	
Other	-0.003	0.009	-0.310	0.756	-0.002	
Female	0.000	0.002	0.230	0.818	0.001	
# of Investigations Opened	-0.001	0.000	-4.290	0.000	-0.056	***
% of INV w/o counsel	0.116	0.004	28.840	0.000	0.197	***
Number of prior disciplines	0.127	0.002	55.180	0.000	0.374	***
Year Since Admitted	0.000	0.000	-1.230	0.220	-0.007	
Prof Employment	0.005	0.001	3.510	0.000	0.022	***
Fees	-0.001	0.000	-3.120	0.002	-0.078	**
Funds	-0.001	0.001	-2.450	0.014	-0.020	*
Performance	0.000	0.000	0.580	0.564	0.014	
Duties to Client	-0.001	0.001	-0.970	0.333	-0.013	
Inteference w Justice	0.005	0.001	7.740	0.000	0.054	***
Personal Behavior	0.000	0.001	0.720	0.474	0.008	
No Complaint Articulated	0.002	0.003	0.470	0.641	0.004	
Immigration Fraud	-0.001	0.011	-0.130	0.895	-0.001	
Loan Modification	0.001	0.000	4.040	0.000	0.066	***
Duties to State Bar	-0.012	0.004	-2.840	0.004	-0.016	**
Debt Resolution Complaint	-0.003	0.002	-1.950	0.051	-0.012	
Unauthorized Practice of Law	-0.196	0.018	-10.800	0.000	-0.058	***
<i>Firm Size/Type (Solo = base)</i>						
2-10	-0.010	0.002	-4.850	0.000	-0.029	***
>=11	-0.012	0.003	-4.090	0.000	-0.023	***
No response/DK	-0.014	0.004	-3.250	0.001	-0.018	**
Govt lawyer	-0.013	0.003	-4.530	0.000	-0.026	***
Constant	0.010	0.003	3.82	0		
R-squared	0.248					
N	27,257					

Linear Regression on Disbarment, All Attorneys with Any Complaints

Dep: Disbarment	Coef.	Std. Err.	t	P>t	Beta	Sig
Race/Ethnicity						
Asian	0.002	0.002	0.920	0.356	0.004	
Black	-0.005	0.004	-1.480	0.138	-0.007	
Hispanic	-0.008	0.003	-2.890	0.004	-0.013	
Other	0.012	0.008	1.550	0.121	0.007	
Female	0.003	0.002	2.050	0.041	0.009	*
# of Investigations Opened	0.003	0.000	12.050	0.000	0.132	***
% of INV w/o counsel	0.098	0.004	27.370	0.000	0.157	***
Number of prior disciplines	0.169	0.002	82.870	0.000	0.471	***
Year Since Admitted	0.000	0.000	-1.250	0.213	-0.006	
Prof Employment	-0.009	0.001	-7.380	0.000	-0.039	***
Fees	0.002	0.000	4.400	0.000	0.092	***
Funds	0.002	0.000	5.290	0.000	0.037	***
Performance	-0.002	0.000	-5.330	0.000	-0.105	***
Duties to Client	0.005	0.001	8.970	0.000	0.102	***
Inteference w Justice	-0.008	0.001	-14.680	0.000	-0.085	***
Personal Behavior	0.003	0.001	6.460	0.000	0.063	***
No Complaint Articulated	-0.001	0.003	-0.390	0.697	-0.003	
Immigration Fraud	-0.048	0.010	-4.860	0.000	-0.022	***
Loan Modification	-0.002	0.000	-6.810	0.000	-0.093	***
Duties to State Bar	0.035	0.004	9.070	0.000	0.043	***
Debt Resolution Complaint	0.004	0.002	2.880	0.004	0.015	***
Unauthorized Practice of Law	0.214	0.016	13.300	0.000	0.060	***
<i>Firm Size/Type (Solo = base)</i>						
2-10	0.000	0.002	0.070	0.947	0.000	
>=11	0.004	0.003	1.650	0.099	0.008	
No response/DK	0.012	0.004	3.230	0.001	0.015	**
Govt lawyer	0.006	0.003	2.370	0.018	0.011	*
Constant	-0.004	0.002	-1.75	0.08		
R-squared	0.472					
N	27,257					