

# HALT



## HOW ACCOUNTABLE IS THE CIVIL JUSTICE SYSTEM?

*Measures designed to protect legal consumers against unethical lawyers—are they working?*

- According to the American Bar Association, in 2002, 121,000 complaints were filed against the nation's 1.2 million lawyers.<sup>1</sup>
- Of these 121,000 complaints, only 3.5 percent led to formal discipline and just one percent resulted in disbarment.<sup>2</sup>
- Of these 121,000 complaints, 96.5 percent led to no discipline or only informal slaps on the wrist in the form of “private sanctions.”<sup>3</sup>

*How does lawyer self-regulation contribute to consumer mistrust in the civil justice system?*

- According to a HALT study, in 50 states (including the District of Columbia), lawyers make up at least two-thirds of the committee adjudicating attorney discipline complaints.<sup>4</sup>
- According to that same study, in 12 states lawyers make up 100% of discipline hearing panels.<sup>5</sup>
- A Columbia Law School nationwide survey found that two out of three Americans do not think lawyers are even “somewhat honest.”<sup>6</sup>
- A 2003 CNN/*USA Today*/Gallup poll found that 84% percent of Americans do not believe lawyers have “high ethical standards.”<sup>7</sup>
- According to the *National Law Journal*, 69% of Americans think that lawyers are more focused on making money than serving their clients.<sup>8</sup>

*How does the appearance of judicial impropriety contribute to consumer distrust of the civil justice system?*

- According to a study conducted by Justice at Stake, when asked “How would you rate the job being done by judges in your state,” more than one-third (37%) of people surveyed answered “fair” or “poor.”<sup>9</sup>
- That same study found that, when asked how well the word “independent” described judges, more than one-third (35%) of people surveyed answered “not too well” or “not well at all.”<sup>10</sup>
- That same study found that, when asked how well the word “impartial” described judges, more than one-third (34%) of people surveyed answered “not too well” or “not well at all.”<sup>11</sup>

<sup>1</sup> American Bar Association, *Survey on Lawyer Discipline Systems* (2002).

<sup>2</sup> American Bar Association, *Survey on Lawyer Discipline Systems* (2002).

<sup>3</sup> American Bar Association, *Survey on Lawyer Discipline Systems* (2002).

<sup>4</sup> HALT, *Lawyer Discipline Report Card* (2002).

<sup>5</sup> HALT, *Lawyer Discipline Report Card* (2002).

<sup>6</sup> Columbia Law School, *Lawyers and the Legal Profession* (2002).

<sup>7</sup> CNN/*USA Today*/Gallup Poll (2003).

<sup>8</sup> National Law Journal, “Polishing the Image,” Sept. 16, 2002.

<sup>9</sup> Justice at Stake Campaign, *Justice at Stake Frequency Questionnaire* (2001).

<sup>10</sup> Justice at Stake Campaign, *Justice at Stake Frequency Questionnaire* (2001).

<sup>11</sup> Justice at Stake Campaign, *Justice at Stake Frequency Questionnaire* (2001).

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## HOW ACCESSIBLE IS THE CIVIL JUSTICE SYSTEM?

*Just how serious is the problem of access? How much could nonlawyer alternatives help?*

- According to the American Bar Association, each year 38 million low- and moderate-income Americans are closed out of the civil justice system because they cannot afford to hire a lawyer.<sup>12</sup>
- A 2002 American Bar Association survey found that 71% of respondents had faced a legal situation that might have led them to hire a lawyer in the past year, but only half of them planned to hire one. The most frequent reasons given involved high legal fees.<sup>13</sup>
- According to *USA Today*, Americans could save \$3.3 billion a year (as of 1999) by using independent paralegals instead of lawyers to handle routine matters in common legal areas.<sup>14</sup>
- According to *Broward Daily Business Review*, a divorce with full legal representation could cost between \$5,000 and \$15,000, while filing *pro se* could cost less than \$350.<sup>15</sup>
- A New Hampshire judicial branch study found that legal services and *pro bono* programs meet at most one-quarter of the overall need for affordable legal services.<sup>16</sup>

*Over the past decade, there has been a literal explosion of high-quality products that let Americans take charge of their own legal affairs. How can self-help materials help?*

- According to *Broward Daily Business Review*, in Florida, 65% of divorce cases are filed by people representing themselves (*pro se*).<sup>17</sup>
- A New Hampshire judicial branch study found that in the state's district court civil cases, 85% involved at least one *pro se* party.<sup>18</sup>
- According to that same study, at a 1999 National Conference on Pro Se Litigation, almost all (95%) of the participating courts reported an increase in the number of *pro se* litigants.<sup>19</sup>

*Unauthorized practice of law prohibitions – consumer protection or lawyer protection?*

- According to *USA Today*, a 1995 study found that 70% of complaints of unauthorized practice of law filed over five years in Arizona were filed by lawyers.<sup>20</sup>
- A 1980 *Stanford Law Review* study found that a mere 2% of complaints of unauthorized practice of law arose from consumer complaints involving a claim of injury.<sup>21</sup>
- Annually, the Florida Bar spends \$1.4 million prosecuting unauthorized practice cases.<sup>22</sup>

<sup>12</sup> American Bar Association, *Agenda for Access: The American People and Civil Justice – Final Report on the Implications of Comprehensive Legal Needs Study* (1996).

<sup>13</sup> *National Law Journal*, "Polishing the Image" (September 16, 2002).

<sup>14</sup> *USA Today*, "Public Loses as Lawyers Block Access to Cheap Legal Help" (Feb. 19, 1999).

<sup>15</sup> *Broward Daily Business Review*, "Divorcing Couples Can Now Use Lawyers for Piecework Tasks, but Some Attorneys Fear New Rules Will Create Liability" (December 18, 2003).

<sup>16</sup> State of New Hampshire Judicial Branch, *Challenge to Justice: A Report on Self-Represented Litigants in New Hampshire Courts* (2004).

<sup>17</sup> *Broward Daily Business Review*, "Divorcing Couples Can Now Use Lawyers for Piecework Tasks, but Some Attorneys Fear New Rules Will Create Liability" (December 18, 2003).

<sup>18</sup> State of New Hampshire Judicial Branch, *Challenge to Justice: A Report on Self-Represented Litigants in New Hampshire Courts* (2004).

<sup>19</sup> State of New Hampshire Judicial Branch, *Challenge to Justice: A Report on Self-Represented Litigants in New Hampshire Courts* (2004).

<sup>20</sup> *USA Today*, "Public Loses as Lawyers Block Access to Cheap Legal Help" (Feb. 19, 1999).

<sup>21</sup> *Stanford Law Review*, "Policing the Professional Monopoly," Deborah Rhode (1980).

<sup>22</sup> *Miami Herald*, "Increase Penalties for Phony Lawyers," Miles McGrane (March 12, 2004).