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Florida Bar admits statistics snafu

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The Florida Bar is blaming a computer snafu for an embarrassing error. Bar officials say that statistics on attorney discipline for the last five years have been inaccurate.

At the same time, the Bar is trying to figure out why the number of attorney discipline cases dropped in the past 12 months, even as complaints about attorney involvement in mortgage fraud and housing-related fraud have skyrocketed.

"I'm never happy when we put inaccurate information out to the public, but I don't consider the statistical errors a huge problem," said Ken Marvin, director of lawyer regulation. "I'm more concerned with the downward trend than I am with the numbers. We had 34 less public reprimands last year, and I'm curious about that."

The faulty stats were listed on the Bar's Web site for years and were used internally when evaluating programs to handle complaints about attorney conduct, Martin said. Such programs include the Attorney Consumer Assistance Program (ACAP), a call center started five years ago.

He said the Bar is still evaluating the impact of the computer snafu. Because of the errors, it overestimated the total sanctions it secured against attorneys by 26 in 2005-06, 59 in 2006-07, 121 in 2007-08 and 25 in 2008-09.

The Bar's admission comes after a Business Journal reporter requested the latest statistics. The most recent ones, posted on the Bar's Web site on Sept. 25, showed a steep decline in disbarments. When questioned about the decline, the Bar temporarily removed all statistics, saying they were in error.

When the new stats were provided on Oct. 7, the decline was not as large.

Attorney Bob Jarvis, a law professor at **Nova Southeastern University** in Davie, called the Bar's admission troubling.

"It's a problem, and the Bar should be taken to task for it," said Jarvis, a member of the Bar. "We want to know if the Bar is being a good steward of the dues we pay."

Marvin blamed the faulty statistics on a computer glitch, where the Bar's mainframe system, an IBM product, had difficulty communicating with Lotus software programs.

"Somehow, [the computer system] was changing the coding, so that one case would become several cases," he said in a phone interview. Those were the numbers we were using. We did make evaluations based on the old stats."

Despite the statistics problems, Marvin said the Bar believes individual online records about attorney backgrounds are accurate. The Bar maintains an online database for every attorney, including whether he or she has a discipline history.

Florida is at or near the top of the FBI's list for mortgage fraud, and the Bar has disbarred numerous attorneys in the past two years for the offense. Marvin said the Bar is currently handling 100 complaints about attorneys involved in mortgage modification fraud, but they name a "handful" of attorneys. The Florida Attorney General's Office also has reported a huge rise in complaints about mortgage modification fraud – 756 complaints this year, compared with 61 last year – some of which involve attorneys.

Ryan Wiggins, spokesman for the attorney general, said the complaints are often about consumers who pay illegal fees up front when promised that their mortgage will be modified, and receive no benefit in return.

The Bar must petition the **Florida Supreme Court** to formally discipline an attorney, so case statistics are also available by reviewing the court records. A review of the records showed no big discrepancy between the court's records and the Bar's faulty stats. For example, the court's records of final orders and dispositions in 2007 showed the Bar had filed cases against 436 individuals all year at a rate of about 30 or 40 a month. The Bar's faulty statistics showed 391 total final orders in 2006-07, 450 in 2007-08 and 303 in 2008-09.

Bar membership rose 3 percent, to 87,010 attorneys, in 2008-09, with total fees collected of \$22 million. Of that, \$9.9 million was spent on discipline. The computer glitch also threw off the "cost per sanction" statistics.

The Bar expected the number of sanctions would decline after ACAP started five years ago, because the program was intended to nip problems in the bud by helping people address problems with attorneys early.

"That's why these statistics are so important," Marvin said.

ACAP has also taken effect during a time of suspicion and complaints against attorneys related to the economic and mortgage crisis.

Whether the Bar is effective or not in disciplining attorneys is a matter of debate and perspective, Jarvis said.

"Lawyers will tell you too many lawyers are being disciplined. Non-lawyers will tell you that lawyers get away with murder," he said. "It's very hard to know if your disciplinary program is working. We don't go out and independently investigate."

Attorneys who represent other attorneys in discipline and malpractice cases said they are not as troubled by a glitch over statistics.

"I really don't think enforcement of the rules has gone down at all," said Brian Tannebaum, managing partner at Tannebaum Weiss in Miami. "I find the Bar is asking for lawyers to respond to more complaints than ever. I would find it hard to believe the numbers are down, just based on my practice and the number of people I talk to. What we're finding is clients are looking more to their lawyers as someone to blame for the circumstances they're in."

Gary Reshefsky, an attorney who works for malpractice insurance provider MDW Insurance Group, said there is more scrutiny of attorneys than ever.

"There's probably a higher level of scrutiny now, for any regulatory body, especially in the financial sector, given all these big schemes that have been exposed, like Bernie Madoff's Ponzi scheme," Reshefsky said, adding internal statistics about cases handled and results should be cause for concern in any group.

Marvin said the Bar is continuing to evaluate the statistics and the impact of the computer glitch.

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