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DELIVERING MONEY AND POWER EVERY BUSINESS DAY

Blind over-sight?

COMPLAINTS AGAINST ATTORNEYS ARE EXPLODING, BUT CRITICS SAY THE DISCIPLINARY SYSTEM IS SLOW AND PROTECTS THE PROFESSION. NOW, THE BAR HAS BEGUN TO REVIEW HOW IT PROTECTS THE PUBLIC FROM LAWYER MISCONDUCT.

The first grievance letter regarding Miami lawyer Louis Robles arrived at The Florida Bar office in December 1998. By 2000, the pile of letters had grown to more than 25. Then 50.

Letter after letter, the complaints were the same: "We signed the settlement papers, but have not received any money," one Washington couple wrote.



Bar president
Myles McGrane

"I have called Mr. Robles' office about 40 times, only to get the run-around," an Orlando man wrote.

"These lawyers are charging me for everything," a retired Ohio laborer declared, "including the use of their computer, interest incurred in their borrowing money from somebody else to do my case, fees for doctors I have never seen, fees for the food the lawyers ate, the car they drove and every phone call they made."

"Can't anyone stop this man or slow him down?" another deplored.

But Robles wasn't stopped until four years later, when The Florida

Bar finally had the prominent mass tort lawyer disbarred for misappropriating more than \$800,000 from his client's trust funds. By then, some of the 8,500 clients that Robles had represented in class-action lawsuits against asbestos manufacturers had already died of cancer. Others were still waiting for their checks.

Time for a review

Although Florida Bar officials say Florida has one of the toughest attorney discipline systems in the country, some legal consumers, Republican lawmakers and attorneys who have been disciplined by the Bar complain that the system is biased, ineffective and unfair. Critics say the disciplinary wheels move much too slowly, and that the Bar is more intent on protecting lawyers, particularly well-established ones in larger firms, than in fulfilling its duty to the public.

Now, for the first time in 14 years, the Bar has decided to review its system for protecting the public from misconduct by lawyers.

In June, Bar president Myles McGrane established a 25-member Special Commission to Review Lawyer Discipline, which was charged with making suggestions for a major overhaul of the Bar's

attorney regulation system. The commission is comprised of circuit and appellate judges, lawyers, a layperson and retired Supreme Court Justice Major Harding.

The commission was established in the wake of the Robles investigation and a \$750,000 public relations campaign, "Dignity in Law," that the Bar introduced last year to improve the image of lawyers around the state.

McGrane, along with Jacksonville criminal defense lawyer Henry Coxe III, who chairs the commission, says they launched the review because the Bar hadn't reviewed the disciplinary system since 1989, and the Bar spends \$10 million a year on disciplinary activities — more than one third of its \$28 million annual budget. Both denied that establishing the commission had anything to do with the Robles case.

"That's a helluva lot of money," said Coxe, a partner at Bedell Dittmar DeVault Pillans & Coxe. "When we're allocating that much of our budget annually for one particular item, I don't see why we shouldn't make sure we're doing it right."

At the special commission's first meeting in September, McGrane told the members gathered in a Tampa Marriott confer-

Seeking input

The commission, which has met twice this fall, is sending a survey to the Bar's 72,000 members to elicit input on the disciplinary system. To get feedback from consumers, they also plan to mail the surveys to roughly 6,500 people who have filed complaints with the Bar in the last three years.

The commission will review the comments and issue a report with recommendations for changing the disciplinary system by June. The report will be reviewed by the Board of Governors and ultimately submitted to the Supreme Court for adoption.

Many of the concerns expressed by the commission members mirror the findings in a new report by HALT, an independent Washington, D.C., legal reform group founded in 1978 by Paul Hasse and Matt Valecic. The non-profit organization has more than 50,000 members and is funded by private contributions.

In 2002, HALT rated all 50 states and the District of Columbia on the quality of their lawyer regulation systems, using data from the American Bar Association and its own state surveys. Of the 51 jurisdictions, HALT ranked Florida second in responsiveness to Bar complaints, imposition of adequate discipline and openness of its disciplinary process.

Still, Florida's overall grade was only a C+. Massachusetts, which ranked first, got a B-. The lowest ranked states included Alaska,



Most disciplined lawyers tend to be older practitioners who become overwhelmed by a burgeoning practice, according to Tony Boggs, director of the Bar's legal division.

ence room that their assignment was open-ended.

"We're not having this study because there are problems with the system," McGrane said. "Your charge is very vague, to evaluate the efficacy of the discipline system and come back with recommendations. It was purposely vague because we don't know where this study will go."

Throughout the daylong meeting, commission members discussed complaints that the current disciplinary system takes too long and that the type of sanctions imposed on lawyers vary wildly throughout the state.

William Vose, chief assistant state attorney in Orlando, expressed concern that many lawyers who have been convicted of criminal felonies continue to

practice for months before the Bar catches up with them.

Bill White, chief assistant public defender in Duval County, said public defenders are unfairly burdened with grievances filed by prisoners who are merely unhappy with their convictions. There has to be a more efficient way to dispose of the frivolous complaints, he said.

Some of the judicial members of the committee, including Pasco Circuit Judge Lynn Tepper and former Justice Harding, said that judges often report lawyers who've misbehaved in their courtroom, only to have the Bar do nothing.

"Judges continually complain that they make these referrals, then never hear back," Harding said.

Judging lawyers

How Florida rates in disciplinary actions compared with other states and jurisdictions with similar numbers of attorneys (All figures 2001)

	No. of Lawyers	Complaints	Cases investigated	Disbarments (involuntary)	Disbarments (voluntary)	Suspensions	Reprimands/admonishments	Probations	Public sanctions	Bar does discipline?
Illinois	74,311	5,811	6,781	10	16	79	17	16	127	N
Texas	69,341	8,962	2,746	39	24	185	76	N/A	324	Y
Florida	62,999	8,691	10,933	20	29	133	121	109	414	Y
New Jersey	56,278	6,650	1,276	11	20	84	54	0	172	N
Pennsylvania	54,063	4,738	N/A	11	20	42	2	10	75	N
Washington DC	53,848	1,376	720	16	10	128	8	5	132	N
Massachusetts	43,181	1,133	2,559	14	17	37	32	7	104	N

*Includes cases pending from previous years. Source: The American Bar Association

Kentucky, Montana, North Carolina and Pennsylvania, which came in last.

The report found a nationwide pattern of “toothless sanctions, unnecessary secrecy, biased procedures and endless delays.” Out of thousands of complaints filed against attorneys each year, the states’ discipline systems yielded only a “tiny trickle of disbarments, suspensions and reprimands,” HALT said.



James Turner

The low grades among even top-ranked states such as Florida mean that the problem of inadequate attorney discipline is nationwide, said James Turner, executive director of HALT. “Most state systems are intolerably slow and overly secret, which erodes public trust,” he said. “The system should be designed to protect consumers, not lawyers. Lawyers can take care of themselves.”

But lawyers who represent those facing disciplinary prosecution insist that Florida has a tough system.

“I encourage anyone who thinks this is a good ’ole boy club to sit in on the trials or grievance committee meetings,” said Andrew Berman, a partner at Young Berman Karpf & Gonzalez in North Miami Beach, who has been representing lawyers in disciplinary cases for more than 15 years. “In most cases, lawyers who do their clients wrong get their just dessert.”

In all 50 states and Washington D.C., lawyer regulation is handled by the highest court in the jurisdiction, which then designates an organization to prosecute attorney misconduct. In 19 states including Florida, lawyer regulation is delegated to the bar.

Grievance committees

As the investigative arm of the state Supreme Court, The Florida Bar has been responsible since 1955 for prosecuting lawyers who engage in ethical misconduct. To do so, the Bar uses grievance committees and its own staff counsel to evaluate the complaints.

The grievance committees are typically comprised of nine members: six lawyers and three so-called public members, who are not attorneys. The members of the grievance committees are volunteers. There are 80 grievance committees statewide. Some judicial circuits have more than one committee to handle the high volume of grievances, such as Miami-Dade County, which has 15.

The Florida Bar is based in Tallahassee. It maintains branch offices in Miami, Fort Lauderdale, Orlando and Tampa. The branch offices are staffed by six or seven Bar prosecutors and a handful of contracted part-time investigators. The staff reviews complaints about lawyers to determine whether the allegations amount to a violation of the Rules Regulating the Florida Bar.

When Bar counsel determines that an allegation could constitute ethical misconduct, it is forwarded to one of the local grievance committees. The grievance committee then investigates the complaint to determine whether there is probable cause for unethical conduct. If so, the Bar counsel files a formal complaint with the Supreme Court.

The Supreme Court then directs the chief judge of the circuit where the accused lawyer practices to appoint a local trial judge as the so-called referee. The referee conducts a hearing and recommends sanctions, if any.

The referee outlines his or her findings and recommendations in a report, which is submitted to the Florida Supreme Court for final approval. The sanctions range from public reprimands to disbarment.

A recent example of a disbarment is the case of Alan Karten, a Miami criminal defense attorney

who was permanently disbarred in October 2002 for selling a client’s classic car collection without permission while the client was in federal prison in Arkansas for a cocaine trafficking conviction.

Karten claimed it was part of a verbal agreement he had with his client, Nelson Loynaz Jr., to help pay off \$30,000 that Loynaz owed the federal government. But Loynaz said he had never given Karten such authorization.

After a hearing in March 2000, the case referee, Miami-Circuit Judge Jerald Bagley, found the convict’s story more credible than Karten’s and recommended disbarment.

“The whole thing is horrendous,” Karten said after he was disbarred. “On the basis of one man’s opinion, I lose everything.”

Lawyer suspension

Suspensions, the most common disciplinary action, can range from a few days to three years. They are often the punishment in cases involving lawyers who have been convicted of criminal offenses, such as North Palm Beach lawyer John Skrandel. In January, Skrandel was suspended for three years after he was convicted of aggravated assault with a firearm for pulling a gun on a Little League coach during a dispute over use of a batting cage.

When attorneys are suspended for 91 days or more, they must prove that they have been rehabilitated before their law license is reinstated. Proving rehabilitation often involves a showing that they’ve performed community service, made restitution to their victims, undergone counseling, or attended Bar programs such as attorney ethics school, a one-day seminar that educates attorneys on avoiding conflicts of interest.

Public reprimands are often administered in cases such as that of Michael Foulkes, an immigration lawyer who was reprimanded for neglecting a client who paid him a \$750 retainer to help her get a U.S. work permit.

In most cases, the complaints the Bar receives are from attorney clients, although many are referred by trial and appellate judges, other lawyers and financial institutions. The Bar does not initiate its own investigations, but responds to complaints logged with its offices.

In recent years, the Bar has received an average of 9,000 complaints a year, involving 4,500 to 5,000 lawyers. The total number of annual disciplinary actions has ranged from 391 to 472, including between 20 to 38 disbarments.

Compared to other states with similar numbers of lawyers, Florida investigated the most grievances and administered the highest amount of public sanctions in 2001, according to American Bar Association statistics.

"As a whole, I think the system works," said Tamarac lawyer Kevin Tynan, a former Bar attorney who now represents lawyers accused of violating Bar rules.

The typical lawyer appearing before the Board of Governors for a public reprimand is an overextended solo practitioner in his or her mid-40s who simply got overwhelmed by the demands of a growing caseload, Tony Boggs, director of the Bar's legal division, told the special committee during its September meeting in Tampa.

"They tend to be older lawyers who just weren't equipped to deal with a burgeoning practice," Boggs said.

To help these attorneys, the Bar often diverts them into programs such as Lawyers Office Management Assistance Services. LOMAS advisers meet with attorneys to review problems they are having managing the business side of their practices.

"The most common complaint from clients is that their attorneys don't call them back," said J.R. Phelps, director of LOMAS, which is based in Tallahassee. "The attorneys tell us they are too busy."

Through LOMAS, the attorneys

learn systems for logging their communication with clients and training their secretaries and paralegals to answer client questions. They also get help organizing their banking systems.

Cases are also referred to Florida Lawyers Assistance, a nonprofit organization that provides counseling for lawyers with drug, alcohol and psychological problems.

Alternatively, the Bar diverts numerous legal consumers to its Attorney Consumer Assistance Program, a consumer hotline staffed by four full-time attorneys who help clients resolve minor disputes with their lawyers.

Despite the Bar's efforts to address its members' shortcomings, critics of the system say the Bar is too forgiving. State Rep. Fred Brummer, R-Apopka, a frequent critic of the Bar, cites the case of former state Rep. Steven Effman as a prime example.

In April, the married Sunrise Democrat was suspended from practicing law for 91 days after pleading no contest to Bar disciplinary charges that he had sex with three female divorce clients from 1998 to 2000.

One of the women involved, a legislative aide of another House

member, claimed that she and Effman not only had sex, but that he billed her for their time together. Another claimed she had to have an abortion, which Effman refused to pay for.

Five months after being suspended, Effman's law license was reinstated. He is now back practicing divorce law in Plantation.

"Effman took advantage of several women and got only a slap on the wrist," Brummer said. "That was a perfect example of the way the Bar lets off those who are close friends of the Board of Governors."

Effman could not be reached for comment.

But the Bar prosecutor on the case, Joel Klaitz, denied that Effman received preferential treatment. He said Effman's sanction was appropriate because of the rehabilitation requirement of a 91-day suspension.

Before his law license was reinstated, Effman had to prove by "clear and convincing evidence" that he had been rehabilitated, Klaitz said.

Over the years, Republican legislators have tried numerous times to take control of the Bar's budget and disciplinary system. Three years ago, Brummer sponsored an

Millions for discipline

The Florida Bar spends millions each year regulating the state's lawyers. Here's a breakdown of the tens of thousands of cases that have been investigated over last five years and their resolution.

	1997-98	1998-99	1999-2000	2000-01	2001-02
Bar population	58,108	59,741	61,014	62,722	62,999
Dues collected	\$11.9 mil	\$12.2 mil	\$12.5 mil	\$12.9 mil	\$17.8 mil
Amount spent on discipline	\$6.5 mil	\$6.7 mil	\$7.1 mil	\$7.8 mil	\$8.3 mil
% of dues spent on discipline	55%	55%	57%	60%	47%
Number of grievances filed	9,317	9,101	9,491	9,280	8,691
Disbarments	32	29	35	38	20
Disciplinary resignations	38	44	30	38	29
Suspensions	150	144	132	155	133
Public reprimands	60	49	43	57	69
Admonishments	62	66	57	70	52
Probations	73	71	93	114	109
Total final orders	417	403	391	472	414

Note: Data is for the Bar's fiscal year, which runs July 1 to June 30. Source: The Florida Bar

unsuccessful bill to put attorney discipline under the executive branch.

But attorneys say that would be unconstitutional and unwise. "Quite simply, Article V of the Florida Constitution says that the Supreme Court has exclusive jurisdiction of lawyers," said Richard McFarlain, a Tallahassee lawyer who was the Bar's chief lobbyist for 35 years. "To undo that, they'd have to go after the court's jurisdictional power and change the constitution."

Stephen Metz, the Bar's current lobbyist, said the Legislature hasn't made any recent moves to take over Bar regulation. "Fortunately, the Bar has a strong case that its disciplinary procedures are more open to the public and more effective in terms of the number of cases we get involved in," said Metz, a partner at Metz Hauser & Husband in Tallahassee.

Another political advantage of the Bar's self-regulatory system is that it's completely funded by member dues, rather than tax revenues, Metz said. Switching to executive branch regulation could cost the cash-strapped state lots of money.

Although legal reform groups like HALT don't advocate turning over lawyer regulation to the executive branch, they contend that having lawyers on the grievance committees is an inherent conflict of interest. HALT recommends that non-lawyers should review disciplinary cases under the guidance of lawyers or judges.

"If a jury of non-lawyers is good enough to decide Kobe Bryant's case, a jury is good enough to decide whether a lawyer has cheated his or her client," Turner said. "This isn't rocket science."

But Coxe and other lawyers argue that attorneys must remain the primary participants because they are most familiar with the rules of practicing law, the demands of running law practices, and the challenges lawyers face representing clients in complex

and contentious matters.

To have non-lawyers more heavily involved in the process would require the presence of lawyers to "constantly educate the non-lawyers about what the standards are in every single situation," he said.

But it's not just consumers and Republican legislators who are critical of The Florida Bar discipline system. Some attorneys who have been disciplined by the Bar also criticize the Bar for its lack of uniform sanctions.

Warren Trazenfeld, a Miami lawyer who represents plaintiffs in legal malpractice lawsuits, complained that he was investigated by the Bar twice for the same incident, and that two separate grievance committees reached opposite conclusions.

In 1998, the Bar investigated Trazenfeld for allegedly intimidating a defense witness in a legal malpractice case. The first time, the grievance committee found no probable cause for allegations that Trazenfeld had engaged in prejudicial conduct and failed to show fairness to opposing counsel.

But a year later, the Bar reopened its file on Trazenfeld after his client filed a Bar complaint against him, claiming he had ruined her case by intimidating a defense witness without her knowledge. The first investigation had been prompted by an adverse appellate ruling against Trazenfeld and his client.

The second grievance committee found probable cause that Trazenfeld violated Bar rules by engaging in prejudicial conduct and failing to keep a client properly informed.

"Two different committees looked at the same thing I did," said Trazenfeld, who pleaded no contest to the charges in July and was suspended for 10 days. "One said there was probable cause, another said there was none. The lack of consistency is problematic."

Those reviewing the Robles file also initially had a difference of

opinion on the appropriate sanction. In January, Robles' attorney and Bar counsel Randolph Brombacher had worked out a deal to allow Robles to surrender his law license for five years in exchange for his full cooperation with the Bar and turning over his files.

But although a disciplinary resignation is technically the same as disbarment, the Bar's Board of Governors rejected the deal because of concern about public perception. The board instead decided to push for Robles' disbarment.

"The charges were so egregious and we were afraid that the public wouldn't understand that resigning and disbarment were the same thing," McGrane said.

By the time Robles was finally disbarred in May, his case had spent 14 months under investigation by Bar counsel, 16 months before the grievance committee and two years pending trial before the case referee.

Although four years may seem like a long time to get an unethical attorney disbarred, those who participated in the grievance process defended the Bar's work in one of the most complex and voluminous disciplinary cases it had ever prosecuted.

"I'm very proud of the result that the Bar got in that case," said David Rothman, the designated reviewer who supervised the grievance committee that investigated Robles.

"There were so many files, it was as if we had opened Pandora's Box," said Rothman, a criminal lawyer and partner at Thornton & Rothman in Miami. "It wasn't that we didn't want to move quickly, we just wanted to make sure we knew what was going on before we did." ♦

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