

Inside the Office of Bar Counsel:

Does Firm Size Matter?

Barbara Ann Williams, VSB Bar Counsel

In 1996, following its review of the Virginia State Bar, the Joint Legislative Audit and Review Commission recommended that the bar “conduct a formal assessment of the consistency in outcomes of the various district committees.” That recommendation prompted the bar to appoint a Special Committee to Study Consistency of Decision-Making Within the Disciplinary System. The special committee decided to analyze the consistency of decision-making with respect to individual attorney characteristics, including gender, race and firm size, and proposed that the bar retain Virginia Commonwealth University’s Center for Public Policy to do a statistical analysis.

The bar acted on the special committee’s proposal. The Center for Public Policy developed a “double-blind” survey process and initiated data collection on May 1, 1997. Collection of survey information ended on October 31, 1999. Statistical analysis of the information collected during the survey period found no statistically significant evidence that an attorney’s race or gender affects the resolution of a disciplinary case. However, the study did show that the number of concurrent cases initiated during the survey period and firm size are statistically significant in assessing the odds of an attorney being sanctioned. The study concluded that the greater the number of concurrent cases initiated against an attorney during the survey period, the greater the odds of the attorney being sanctioned. The study also found that the greater the number of attorneys in an attorney’s firm or practice, the lower the odds of the attorney being sanctioned.

While it makes sense that a flurry of complaints will increase the odds of an attorney being sanctioned, the reasons why firm size makes a difference are not self-evident. One reason may be that many sole and small firm practitioners handle the types of cases — criminal, family law and personal injury matters — that historically generate the most bar complaints. These practice areas are fraught with conflict and emotion, so it is not surprising that they trigger an unusually large number of complaints.

Moreover, for many years, the most common bar complaints have been failure to communicate and general neglect. Circumstances that frequently precipitate a breakdown in attorney-client communications and neglect of client matters include too much work, not enough help, lack of readily available guidance and inattention to law office administration. Sole and small firm practitioners are more likely to confront these problems than are attorneys in larger firms, which often have an extended support network of partners, associates and experienced non-lawyer staff.

In addition to these theories as to why firm size makes a difference, some members of the bar have wondered whether the

composition of the district committees and the Disciplinary Board affects the statistical odds of a sole practitioner or small firm attorney being sanctioned. These bar members question whether large firms are disproportionately represented on district committees and the board, and if so, whether there may be an institutional insensitivity to predicaments that sole and small firm practitioners frequently encounter. To answer these questions, the bar recently surveyed the lawyer members of the district committees and the Disciplinary Board to determine their firm size and whether there is a disparity in large firm representation.

“Firm size,” as used in the Consistency Study and this article, refers to the number of lawyers in law firms and other offices engaged in the practice of law, such as a county attorney’s office. The Consistency Study ranked firm size in terms of one member, two to three members, four to twelve members, and thirteen or more members. The same rankings are employed in this article.

When the committees are fully staffed, 119 lawyers serve on district committees—seven lawyers on each of the seventeen district committees and sections. Sixteen lawyers serve on the Disciplinary Board. The survey requested every lawyer on a district committee or the board to indicate his or her firm size. All lawyer members of the Disciplinary Board and the district committees responded to the survey.

The survey showed that 25 sole practitioners serving on district committees account for 21 percent of the lawyers volunteering their time to district committee service. There are 35 district committee members who work in two or three member law firms; they represent 29 percent of lawyers serving on district committees. 35 attorney district committee members hail from law firms of four to twelve lawyers; they comprise 29 percent of the lawyer district committee members. Twenty-four lawyers, representing 20 percent of the district committee lawyer membership, come from firms of thirteen or more lawyers. Totaled, the actual fractional percentages add up to .9998 or 100 percent.

Sole practitioners dominate some district committees. For example, four of the seven lawyer members of the First District Committee, which includes Southampton, Isle of Wight, Suffolk, Chesapeake, Hampton, Newport News, Portsmouth and Franklin, are sole practitioners.

The Third District, Section I, and the Fifth District, Section I are the only district committees that do not include at least one sole

Continued on Page 8

practitioner among their ranks. However, three of the seven lawyer members of the Third District, Section I, which covers Petersburg, Hopewell, Emporia, and Mechanicsville, come from two- or three-person firms. Four of the seven members of the Fifth District, Section I, which covers the City and County of Fairfax, work in four- to twelve-person firms.

Of the sixteen lawyers on the Disciplinary Board, one is a sole practitioner, four come from two- or three-person firms, three are in firms of four to twelve lawyers, and eight practice with more than thirteen lawyers, including one board member who is an Assistant United States Attorney.

Of the 119 lawyer positions on district committees, only five are filled by members of mega-firms, comprised of more than one hundred lawyers. Lawyers from mega-firms represent about 4%

of the district committee lawyer membership. One lawyer member of the Disciplinary Board practices with a mega-firm.

This year's survey of lawyer members of district committees and the board does not indicate that large firm lawyers are over-represented at the district committees level or on the Disciplinary Board. Nonetheless, the bar remains very mindful of the need to enlist lawyer volunteers who reflect the diversity of the bar, in terms of race, gender, practice area and firm size, to serve as adjudicators in the attorney disciplinary process. If you are interested in finding out more about the current members of the district committees and the Disciplinary Board, please check the membership lists posted on the Virginia State Bar's Web site at www.vsb.org, under the headings "About the Bar" and "Committees and Boards," or contact the Virginia State Bar office. 