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Popular Threads on Solosez

Public Bar Complaints

An Open Letter to the State Bar Board of Governors:

Lawyer misconduct charges will go online because of your vote. You, who were voted in by the members of the State Bar to represent our interests, have completely ignored the interests of your members. As the California Bar Journal stated "The board. rejected opposition to online postings by the majority of those who contacted the bar about the proposal." It is a shame that you have taken such an approach and ignored the majority of your constituents.

You have, with one vote, managed to place access to legal services to the most needy of our population at risk. It is quite simple. Sole practitioners, especially those of us who practice social justice law, provide access to the legal system that is vital in a democratic system. My clients, for example, cannot afford to hire Mr. Bleich's firm or Ms. Fujie's firm. Even the 3% of attorney time that Mr. Bleich's firm spends on pro-bono time is a drop in the bucket compared to the legal work done by sole practitioners and small firm attorneys throughout the state When we honestly analyze the legal system, we see that small firm attorneys provide most of the legal work to most Californians (and most Americans, nationwide).

Of course, who is more likely to have a complaint filed against him? The attorney in the 100+ lawyer firm who represents the nation's biggest companies, or the sole practitioner representing individuals? In law firms with a managing partner, the complaint moves up the chain of command to be resolved. For the sole practitioner, there is no one else to call. Further, the corporate clients don't need to file complaints, they just pull their million dollars plus of legal work. The individual clients file complaints more often. This is played out in the back of the California Bar Journal where the discipline reads like a list of individuals making complaints against other individuals, not corporations complaining that mega law firms are violating the ethics rules. Sole practitioners, the very people who provide most of the legal services to individuals, face most of the complaints.

And how does a sole practitioner compete against the big firms? What is the best marketing for a small firm or a solo? Word of mouth. Reputation. My clients hire me because they have been told that I am good at what I do. They have found out, through a variety of sources, that I am an honest, ethical, hard working attorney. Of course, one resource is the State Bar website. This is how most small firm lawyers and sole practitioners get their work.

But, what happens if the State Bar decides to bring charges against a sole practitioner? The reputation that the attorney worked so hard for is gone

with just a few keystrokes. Sometimes it will be deserved. Sometimes it won't. The eight percent figure cited in the California Bar Journal (although other sources put the number higher) when the Bar does not prevail represents a fair number of attorneys whose reputations will have been wrongly sullied by your new system. While Mr. Bleich believes "Charges are just that," innocent until proven guilty has no meaning to the general public who will assume you are like the US Attorney with dog fighting charges - you never are wrong. Reputations will be ruined before one word has been uttered to the State Bar Court. You won't need to wait for an attorney to fight the charges, just the bringing of charges will put the sole practitioner out of business.

Interestingly, Scott Drexel, chief trial counsel, "wondered aloud if people 'want ready access' to disciplinary information when they hire a lawyer. 'I think the answer has to be yes,' he said." Mr. Drexel is WONDERING this when a vote is pending. Instead of wondering about whether the public wants this information and instead of thinking he knows the answer, why did the Bar not follow the lead of the board members who wanted more time to study the issue? A simple survey, which the Bar has done many times before, would have made it so Mr. Drexel does not have to wonder what information the public wants, but would rather have provided a firm answer as to what the public wants. This issue is too important for wondering or guessing. I wonder what Mr. Drexel would say if the California Legislature wondered if the public would like the Bar to be dissolved and voted based on their musings and not based on facts. I think the answer is he would not like votes based on wondering.

I spent three years volunteering on the board of CYLA. I have continued to offer my assistance to CYLA. I understand the commitment board members make - not just in time, but in family sacrifices. And I generally appreciate it. However, every board member who voted for this proposal should be ashamed. You have ignored the members of the Bar and you have put legal services to most Californians at risk. Why would any attorney want to open a law firm in a day and age when it is clear that the Board of Governors cares nothing about the sole practitioner or small firm attorney? Maybe its time that the Board composition be changed to more accurately reflect the membership of the Bar and the big firm attorneys be replaced by those of us who understand the needs of the majority of members of the State Bar?

Sincerely,

Jonathan
Jonathan G. Stein

Jonathan--

I understand your angst. The SBOT is pretty much ruled by well-connected lawyers as well. Your letter states that you believe the folks out in California "ignored the majority of your constituents". I believe that statement to be misleading, as what the quote in your letter referred to was that the board ignored the majority of those contacted. No where does it state that a majority of the members of the Cal. Bar were

contacted and made their opinions known. For a number of years the State Bar of Texas has maintained a web site (www.texasbar.com) where anyone can plug in a lawyer's name or bar card number and that person's info is shown. Part of that includes disciplinary activity. That includes disbarment, resignation, suspensions, and reprimands. Complaints that are not substantiated are not shown, only those where a grievance committee has taken some action against the lawyer.

And of course, the way to change the actions of those who ignore the masses is to vote them out of office next time around. More difficult to do with an organization like the State Bar as very few positions are elected. Still next election this issue may be one that has a lot to do with who gets selected.

Tom Simchak

FWIW, I think Tennessee's state bar has been making announcements of disciplinary matters available through its Board of Professional Responsibility website. It sounds like it operates similar to Texas in terms of the way the lawyer search function works.

Sandy Rabinowitz

Ohio is the same. I don't have a problem with the Bar policing itself and one way of doing that is transparency in the disciplinary system. The public doesn't know about it well enough to use it unfortunately but I certainly check the OH Supreme's website when I run across an opposing counsel that I don't already know.

Erin Adams Armstrong, Esq.

What is a charge? Is it the filing of a complaint by a client, or something further down the line?

Rebecca Wiess

As a practical matter, the State Bar of California is NOT a trade association of lawyers. Instead it is a public corporation within the judicial branch of government, serving as an arm of the California Supreme Court.

As part of the judicial branch of government, it has an obligation to the public at large that trumps the desires of the licensees of that bar. The fact that solos are more likely to be charged and found in breach of ethical obligations is hardly a reason to keep information of those charges from the general population

Ernest Schaal

I think the problem is not with disclosing the names of the attorneys who were "charged and found" in breach of ethical obligations -- this

information is already available for a while on the California Bar website -- but with disclosing the names of those who are charged but NOT YET found. The point that Jonathan makes is that the higher percentage of solos (as well as small law firm attorneys) is likely to be charged -- but not necessarily found -- with some kind of professional misconduct. His reasoning – as I understand -- is that it is so because solos are more likely to represent individuals than larger firm attorneys (who mostly represent businesses) and individuals are more likely to complain and file charges against lawyers.

Ekaterina Schoenefeld

I have problems about including lists mere complaints against lawyers but I have less problem with lawyers who have been charged and I have no problem with full disclosure of disciplinary actions taken against lawyers.

As to mills being disproportionally accused of violations, my guess is that a major factor is that solos don't always have in place adequate support resources to prevent those violations from occurring.

One of the most common reasons for disciplinary actions is irregularities in trust funds. Many solos have to handle these funds themselves, and there is the temptation to use such funds as one's own.

Ernest Schaal

Ernest -

Quite frankly, I think you are way off on this.

1. The bar's obligation is to protect the public AND assist its members in meeting their obligations. One of an attorneys obligations is to provide services to those who cannot get access to the legal system. The State Bar says that for more than 75 years it has " provided greater access to the justice system for all citizens." In fact, the ABA has the 3% goal. If one of the purposes of the Bar is to provide access to the justice system, how does it do that? It does that by those of us out there everyday who provide actual legal help to actual people and not to corporations. It does that by people like the folks on this list who reduce rates, provide pro bono work and take on the "meat" of the legal system. Again, when people stop and are honest, it is sole practitioners who provide much of the work for most citizens and provide the backbone of the legal system. So, the bar has an obligation to weigh the two.

If we are weighing the two issues, how does this protect the public? Because it tells of someone who has been charged with violating a rule? What if that attorney qualifies for an attorney assistance program, which is to be confidential, and never has a finding against them? What if the attorney is innocent? How has the public been protected? Because they didn't hire the guy. Okay, so now the state bar has kept people from hiring 1 attorney and scared the crap out of the rest of the attorneys who will no longer want to handle cases. The public protection is minimal and the potential harm is great.

2. The fact that solos are more likely to be impacted is a reason to not do this. The people making the rules aren't impacted by the rules. They don't understand, nor did they make any effort to understand, the implication of their decision. Why? Because it doesn't affect them. The fact that you are going to impact most of the practicing lawyers in the state negatively, while providing very little (and no documented) protection is a very valid reason to not pursue this idiotic policy.

3. Solos have lots of protection in place. Most malpractice carriers requires solos to disclose more about their risk management than large firms, many of whom have no malpractice coverage but have "self insured." The problem is that solos have less of an ability to fight the charges and no ability to influence the charges. We also have more complaints because we represent people more likely to complain. When I was an insurance adjuster, we had a few attorneys who had some ethical lapses. Not once did we complain to the bar - we just pulled our business. That hurts a big firm more than a bar complaint. (Part of that problem is that MH rates a firm based on its highest rated partner, not its lowest rated partner. So, a firm with 75 CV rated attorneys and 10 attorneys who have been disciplined but 1 AV rated attorney becomes an AV rated firm. Somehow someone thinks that makes sense.)

4. To respond to Tom - actually most of the members of the Bar were represented in opposing this through the bar associations that objected. Every major bar association objected. Furthermore, more objections were lodged than the number of people who voted for any board of governor. We do have a system like the SBOT at www.calbar.ca.gov where attorneys who have been disciplined have the information listed. But charges are not listed and attorneys who enter into the State Bar's diversion program don't have anything listed. That will change under this to - but who gives a dang about the folks with additions or mental health issues?

I was involved. The problem, as those who were involved with me will attest, is the amount of time they want from you. It is impossible for an active sole practitioner to get involved with the State Bar yet we make up a majority of members. Unreal.

Jonathan G. Stein

You are so eloquent and I agree with you 100%!

Connie

Jonathan,

You think I am way off on this, and I think you are way off on this.

One thing we do agree on is that the bar has an obligation to protect the public AND an obligation to assist its members in meeting their obligations. It does not have an obligation to act as a trade association for those licensed under it, nor does it have an obligation to assist its members in avoiding their obligations or covering up breaches of those obligations.

Many of your "factual" statements seem questionable, like your statement that attorney's in large firms are somehow not affected by the ethical rules, or that large firms don't have significant impact on pro bono, or that large firms never serve anyone except corporations. Checking the Cal. bar website, I see you have only been licensed there since 2003, which might explain why you have such misconceptions about the legal community.

You stated that it is impossible for an active sole practitioner to get involved with the State Bar, but that is another misstatement of fact. The entire time I was a solo, I was on the executive committee of the Law Practice Management & Technology Section of the State Bar of California. Quite a few of the solos on this list are actively involved with their State Bar. Don't try to pretend that active involvement of solos with their State Bar is "unreal." That pig simply won't fly.

I am retired now, but I have worked as a solo, as a member of a law department, and as a member of a law firm, so I am very cognitive of the unique problems of being a solo versus being other types of lawyers, and why those problems. I often wrote about CLE articles for the LPM&T on ethics, in part so members of my section could get their ethics MCLE units. Researching those articles made me very cognitive of those unique problems. Solos constitute such a large segment of the disciplined attorneys, not merely because they constitute such a large sector of attorney population, but also because there is less support and monitoring of them than their fellow attorneys working in law firms or law departments. Solos are disproportionate high risk for alcoholism, substance abuse, and emotional problems, and the State Bar's diversion program that you dislike so much is particularly important for solos.

Being a solo is like running a small business, and many small businesses fail, and some solo practices fail too. You sound like you to think that the state bar "owes" you a living because you are a solo. It doesn't. Its primary obligation is not to you, but to your potential clients. That responsibility includes making sure that people have meaningful information in selecting their attorneys.

The State Bar of California is not listing every complaint received, instead it will list attorneys that are "charged." Only about 10% of the complaints submitted result in charges. This reporting mechanism is similar to the one in place for doctors in California.

Quoting from the California Bar Journal, "The board's six public members presented a united front that saw the question as a public protection issue. While acknowledging the peril of unfounded charges being posted online, they also emphasized that disciplinary notices already are public. 'People who are not connected and don't know who to call will go to the Web,' said George Davis, a media entrepreneur from Los Angeles. 'The people who will be harmed most are those who don't have access to information

Ernest Schaal

Ernest -

If you would have bothered to spend about 30 seconds reading my email, you wouldn't make such ill-informed statements. A little reading goes a long way. I was active with the State Bar and a member of the Board of California Young Lawyers Association. This point was very clear in my original letter. In fact, I volunteered with CYLA before I was elected and worked on editing "Opening A Law Office." I have also spoken at the last 3 annual meetings and gave a presentation at a CYLA/ABA YLD co-sponsored event. I was active in many state bar events and spent quite a bit of time on it. I still have offered my help to CYLA and answer questions for young lawyers, including CYLA board members. Thus, the amount of time I have been admitted has absolutely NO bearing on my statements, but your distance from the State of California and your lack of membership in the bar may be things that affect your judgment.

And, while you are now retired, my time with the State Bar ended in October so I think I am a bit more qualified to discuss who is involved with the State Bar than you are. You may have been correct in the 80s, but not now. In fact, a quick look at the BOG shows that the President and President elect work at firms with over 150 lawyers who represent big business. There are government lawyers and lawyers who work for the DA and the Public Defender. An awful lot of big firm lawyers.

Is there room for a solo to volunteer? Absolutely. Is there room for a solo on the BOG? Absolutely not. I guess a solo who doesn't have an active practice can join, but a solo who has an active practice doesn't have the time for the BOG because they require IN PERSON meetings.

Big firms are not immune from the State Bar, but are less likely to have complaints filed. This has been shown time and again in studies. Again, a bit of reading goes a long way. This is true for a variety of reasons, including the fact that big corporations don't file complaints. Could you imagine the CEO of IBM testifying before the State Bar Court? That will happen when I dunk a basketball. Instead, they just switch from BigLaw 1 to BigLaw 2. As you would have read in my last email, I saw this happen in my days as an adjuster. I have also seen it in my time pre-law when I had access to meetings of a Fortune 500 legal team.

As for the diversion program, if you would read for comprehension, you would see that I do like it. However, under this stupid new policy, and it is stupid, any attorney who qualifies for it will have had the charges made public before the diversion program can be instituted. So a diversion program that was created to protect attorneys with substance abuse problems or mental health problems loses its anonymity because the charges are made public FIRST. Yes, they put the charges up and then, and ONLY then, does the attorney qualify for the program. It makes the diversion program useless.

The State Bar actually doesn't owe me a living. As a very successful solo who provides advice to other solos and to who the State Bar refers people when they have questions on running a law firm, I get that the State Bar doesn't owe me anything. I actually prefer it that way. Besides, I prefer it when people who have never met me don't make assumptions about what I think just like I don't assume why people resign from the practice of law.

They owe me an obligation to be fair and to protect the public from attorneys who are problems. In fact, if the State Bar would butt out of how I run my business, it would make my life easier. But, they insist on instituting stupid policies made by people who have never run a small business or a small law firm. It would be like me telling Bill Gates how to run Microsoft.

The Bar does have an obligation to provide access to the legal system. And to further that obligation, they have to make access affordable. As much as you like to believe that large law firms provide meaningful pro bono work, the reality is not the case. Large law firms provide pro bono when it results in good PR or there is something to gain. Solos provide pro bono and lo-bono work because the type of person who opens his (or her) own firm is the type who wants to help someone. I don't take clients who pay me $50 per month because it gets me publicity. I take it because, in my world, everyone deserves access to the system and I provide it to those who I can.

Only 10% of cases result in formal charges. However, the Bar admits they lose 8% of cases. Some reports put that number at 15%. So, you are ruining the reputation of 8 to 15% of the people where charges are brought when you can't prove your case. I guess its like the death penalty. You would probably think its okay to kill 8% of innocent people to punish the other 92% who committed the crime. I don't think 8% is an acceptable risk. In fact, the risk is even higher because the 8% number doesn't include the people in the diversion program. If that is another 5%, we are now looking at 13 to 20% of people who are charged who will not be convicted. That rate is just too high, regardless of what you or George Davis say.

You know, the old adage "Those who can, do. Those who can't, retire." It makes more sense now.

I won't debate this with you anymore. Honestly, I have better things to do and I have to respond to the many people who can read and understand my points. But, at least you reminded me of the side of solosez that has made me quit before.

Jonathan G. Stein

Jonathan-

This is obviously something you feel strongly about. I am not certain what your purpose was in posting the contents of your letter, but based on your letter and your rebuttal of Ernest's comments; it appears that you are too emotionally involved to maintain a logical thought process. Both your letter and your rebuttal are illogical expressions of a passionate plea quite similar to "the sky is falling". Specific comments are interspersed below:

On Wed, Aug 20, 2008 at 9:14 PM, Jonathan Stein
<jonathan@jonathangstein.com
> wrote:

> Ernest -
>

> Quite frankly, I think you are way off on this.
>
> 1. The bar's obligation is to protect the public AND assist its members in > meeting their obligations. One of an attorneys obligations is to provide > services to those who cannot get access to the legal system.

First, everyone has access to the courts. It is a constitutional right. That right does not extend to require free professional assistance except when charged with a crime that may incur a possible penalty of substantial jail time and the party cannot afford to hire their own counsel.

> The State Bar > says that for more than 75 years it has " provided greater access to the > justice system for all citizens." In fact, the ABA has the 3% goal. If one > of the purposes of the Bar is to provide access to the justice system, how > does it do that? It does that by those of us out there everyday who provide > actual legal help to actual people and not to corporations.

What basis do you have to support a statement like that? Sounds like sour grapes. What makes you think it is inherently nobler to represent individuals rather than corporations? Defending a crack dealer who is a three time loser serves a greater purpose than helping a corporation administer a benefits program according to ERISA guidelines or establish corporate employment policies that are compliant with EEOC, FMLA, ADA, and Sarbanes-Oxley? It is disingenuous to claim you serve a nobler purpose because you don't have any corporate clients.

It does that by > people like the folks on this list who reduce rates, provide pro bono work > and take on the "meat" of the legal system. Again, when people stop and are > honest, it is sole practitioners who provide much of the work for most > citizens and provide the backbone of the legal system.

Really? So you imply that people who disagree with you are closed and dishonest? That's a little like the preacher who says he speaks the word of God and anyone who disagrees with him is against God. I don't notice many posts from you on this list or Solomarketing where you seek help to find more pro bono work. I didn't realize this was a source of concern for you.

So, the bar has an > obligation to weigh the two.
>
> If we are weighing the two issues, how does this protect the public? > Because > it tells of someone who has been charged with violating a rule? What if > that > attorney qualifies for an attorney assistance program, which is to be > confidential, and never has a finding against them? What if the attorney is > innocent? How has the public been protected? Because they didn't hire the > guy. Okay, so now the state bar has kept people from hiring 1 attorney and > scared the crap out of the rest of the attorneys who will no longer want to > handle cases. The public protection is minimal and the potential harm is > great.

The state bar merely warns the public of a potential problem. Each individual determines whether or not this is a source of concern. If you extend this argument further, what is the purpose behind the newspapers

reporting arrests of individuals who have not yet been convicted? How about reporting private affairs of public figures? Credit bureaus reporting credit problems that have not been affirmed by a court judgment? Police arrest records being available to the public whether or not the charge resulted in a conviction? How about citizen groups who take photos of people, cars, and license plates in areas reputed to be a haven for prostitution? What is your claim? Do you claim that each person has some inherent right to keep their name off police blotters, court records, and out of newspapers unless and until they are convicted an exhausted all appeals? This reminds me of the movie 'Guys and Dolls' where one of the motley crew proudly states he has "23 arrests and no convictions". Must be a model citizen.

>
> > 2. The fact that solos are more likely to be impacted is a reason to not do > this. The people making the rules aren't impacted by the rules. They don't > understand, nor did they make any effort to understand, the implication of > their decision.

That is a pretty pompous statement. I presumed they were reasonably intelligent people.

Why? Because it doesn't affect them. The fact that you are > going to impact most of the practicing lawyers in the state negatively, > while providing very little (and no documented) protection is a very valid > reason to not pursue this idiotic policy.

Yes, well I suppose anyone who disagrees with you is an idiot. If that is the criteria, I would proudly wear that mantle. I didn't realize that most of the practicing lawyers in California have had bar complaints filed against them. It wouldn't surprise me, I just didn't realize it. If that is the case, it would tend to diminish the impact of this great harm you foresee wouldn't it?
>
>
> 3. Solos have lots of protection in place. Most malpractice carriers > requires solos to disclose more about their risk management than large > firms, many of whom have no malpractice coverage but have "self insured." > The problem is that solos have less of an ability to fight the charges and > no ability to influence the charges.

Well, they are attorneys, presumably know other attorneys, and hopefully have the means to hire an attorney. Why do they have less ability to fight the charges? Are you suggesting that larger law firms can influence the charges or are you proposing that everyone have an opportunity to influence charges?

We also have more complaints because we > represent people more likely to complain.

That is one explanation. Another might be that they tend to undertake representation in areas they are fundamentally weak. Another might be

that they are more susceptible to financial pressures that offer greater temptations. Another might be because they tend to have ranked lower in law school which led to their decision to operate as a solo. I can think of several more possibilities for this unsubstantiated phenomena you claim.

When I was an insurance adjuster, > we had a few attorneys who had some ethical lapses. Not once did we > complain > to the bar - we just pulled our business. That hurts a big firm more than a > bar complaint. (Part of that problem is that MH rates a firm based on its > highest rated partner, not its lowest rated partner. So, a firm with 75 CV > rated attorneys and 10 attorneys who have been disciplined but 1 AV rated > attorney becomes an AV rated firm. Somehow someone thinks that makes > sense.)
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> 4. To respond to Tom - actually most of the members of the Bar were > represented in opposing this through the bar associations that objected. > Every major bar association objected. Furthermore, more objections were > lodged than the number of people who voted for any board of governor. We do > have a system like the SBOT at www.calbar.ca.gov where attorneys who have > been disciplined have the information listed. But charges are not listed > and > attorneys who enter into the State Bar's diversion program don't have > anything listed. That will change under this to - but who gives a dang > about > the folks with additions or mental health issues?

Caring about people with impairments is far different from a concern that those impairments may affect their ability to perform. Some clients might actually relate better to an attorney who has overcome personal difficulties. A substantial amount of the people arrested and charged with a crime everyday suffer from addiction or mental infirmities. Their names are freely available as a public record. Why would you view solo attorneys as being entitled to treatment above the treatment their clients receive? Priests, executives, celebrities, lawyers, doctors, and even politicians occasionally find themselves mentioned in the paper and on the police blotter. You propose that solo attorneys deserve immunity from any dissemination of derogatory information which might adversely affect their employability because they have a noble purpose in life?

Good luck with that.

D.A. "Duke" Drouillard

Duke _

There was nothing in my initial letter or my first response to Ernest that was emotional or illogical. In fact, only two people had such a reaction: you and Ernest. The other 100 or so people who have emailed me have thought it was well written.

Let me just respond to you as such: I don't care if some guy in Nebraska likes what I say or not. I posted the letter to let others know about this. While you may think the "sky is falling" is my theory, almost every bar organization in my state has written with similar concerns. So, apparently we all think the same way.

It must be nice to sit in your comfortable little office in the middle of the country and not have to worry about this. It must be nice to sit in your office and be able to call people illogical.

Its quite simple, however. If you don't like what I have to say, delete it the same way I delete your emails on every list I see them come up on.

Jonathan G. Stein

OK, back to the original issue -- I do think this publishing of charges will make some attorneys question representing some deserving but unstable individuals. Already attorneys have to weigh how many "difficult" clients they can handle, and this will add a strong finger to the scales on the side of turning away more clients.

For example, attorneys hesitate to represent a mentally ill individual who is prone to anger issues -- I used to represent many such individuals in landlord-tenant issues when I was a student and 90% of the time they thought I walked on water, 10% of the time I had ruined their lives. As a practicing attorney, if I cared like most people wisely do, then if such a client came to me for help now I would really hesitate because the chance of a charge being listed on the website would be a strong possibility.

As it is, I'm going to say "whatever!" because, well, I have an inner 14 year old who just gives the bird to authority figures at times. I certainly will not turn away any client just because of the chance of charges and maybe no one else will either - I hope they will not.

I personally thought the former system, which said online whenever at attorney was disciplined and you could write in and get records of what the discipline was, seemed fine.

Amy Kleinpeter

I don't think it is an accurate characterization of my off line messages to you, Jonathan, that I "thought [your posting] was well written."

As I wrote you, "I share some of your concerns regarding this decision by the California Bar, though not for the reasons you present. I may have found your reasoning more persuasive if it were free of ad hominem attacks on Ernest." And, "I have found with experience that, however challenging it is, it is still better to refrain from ad hominem attacks if one wishes to persuade others, including third parties."

In other words, let me be less tactful -- I found your postings poorly written and unpersuasive, even though I share your concerns.

As for your comment that "almost every bar organization in my state has written with similar concerns," I would expect that, since they are trade associations, with a primary interest in protecting practitioners. It is yet another manifestation of Upton Sinclair's observation, that "It is difficult to get a man to understand something when his salary depends upon his not

understanding it."

Regards,

Yee Wah Chin

The egos on this list stun me. I wasn't talking about you. You, in fact, weren't anywhere near my thoughts when I said that I received positive feedback. WOW! That came out of nowhere. Let me be perfectly clear: if I am going to talk about you, and you are on this list, I will use your name. Otherwise, it takes a lot of b***s to assume someone is talking about you.

Short of that, I appreciate you telling me that you think it was poorly written and unpersuasive. Since I wasn't trying to persuade you, I am not that worried about it. However, the many people who proofed it for me thought it was well written and persuasive. So, one man's opinion (or three in this case) whose opinions matter not to me, aren't going to affect my thoughts or my continued advocacy on behalf solos and small firms.

As for the "trade associations," if you spent any time at the Conference of Delegates, you would quickly realize that these people never agree on anything and fight over everything. If they were so intent on protecting their own profession, more resolutions would be passed. But they suffer from "Yee Wah Chin"-it is - they all think that people are talking about them all the time.

In fact, these "trade associations," all reached the conclusion independently of one another. I belong to a few of these groups and am on the board of one. We had our discussion about this nonsense independent of knowing what anyone else was doing.

Its simple - if you want to debate the merits of what I said, that's fine. If you want to debate the way I said it, email me privately. I sure am not going to back down from a fight with any of you guys. (And yes, in this case, Yee, I meant you, Ernest and Duke so you can respond as you see fit. I told you - I will use your name when I am talking about you.)

Jonathan G. Stein

SC has had a feature whereby each member's disciplinary charges are linked from the entry for that person in the member directory on the bar's website for awhile now. I don't recall much, if any, outcry over it, and none since. It's just not a problem.

If there are charges that are resolved against the attorney, then the public deserves to know about it. Same with doctors. That's pretty obvious to me. It's a little stunning to me that anyone would argue with that. If there are charges that are formally made, I think the public has a right to know that, too.

Jonathan, with all due respect, 5 years in a profession hardly qualifies you as an expert on all things bar-related. You have an opinion - obviously, a strongly felt one - but there's just no need to resort to ad hominem attacks

on people in order to defend that opinion.

Regards,

Sheryl Schelin

Jonathan, I am almost flattered, since this may be the first time in my life that someone has accused me of an overblown ego. In any event, you responded to Duke that "In fact, only two people had such a reaction: you and Ernest. The other 100 or so people who have emailed me have thought it was well written."

Therefore, since I did email you off line, I assumed I was one of the "other 100 or so people who have emailed [you] have thought it was well written". Clearly I was mistaken. Thank you for clarifying. If I had known, I would have kept my emails to you off line. I will not assume that you mean me or are trying to persuade me unless you expressly indicate so.

As for experience with trade associations, I represent them, and I am the Programs Officer of the ABA Section of International Law, a member of its Council, and have also been chair or vice chair of committees of the ABA Section of Antitrust Law, the D.C. Bar and the Association of the Bar of the City of New York. Yes, I have a sense of how the ABA House of Delegates and voluntary bars work. With over 30 years of experience as a practicing lawyer, I also have a sense of how the profession works.

The fact that the various California bar associations reached the same conclusion independently is irrelevant to my point, that trade associations are inherently protectionist. They don't need to coordinate to reach the same conclusion.

By the way, it's "Yee Wah."

Regards,

YWC

Good Lord, people, calm down.

I agree with Jonathan that mere charges should not be made public, regardless of who the attorney is, solo or biglaw. I don't agree based on the huge social issues he's raised or on who is most likely to be affected, or anything else. I take a very narrow view: it is unfair to publicize charges when those charges are likely to directly, substantially, and perhaps permanently affect a person's ability to practice his or her chosen profession, unless and until those charges are proven. Basic fairness, really. I do not see it as akin to publicizing the names of those who have been arrested and charged with a crime for the simple reason that in those cases, the police have conducted an investigation and concluded that somebody has committed a crime. That is very different from a pissed-off layperson filing a charge against his attorney that is sufficiently well phrased that it meets whatever standard the Bar has for instituting charges

(and no, I don't see the Bar as the equivalent of the police and I don't see a Bar charge as the equivalent of a criminal charge). If the attorney is found to have committed a violation, that should certainly be available to the public. But a mere charge? I don't think so.

On the other hand, I'm probably being hypocritical here because my initial reaction if asked whether malpractice charges against a doctor should be publicly available before the case is settled or tried to plaintiff's verdict, I'd probably say yes. And I'd attempt to cover my hypocrisy by saying that medical mistakes are far more serious than a trust violation and the potential implications for the next patient far more serious than the implications for the next client. And I'd also point to the fact that the Bar is far more vigilant in going after attorneys than medical boards are at going after doctors.

But I'd do it all without hysterics.

Mitch

Andrew,

It is indeed beautiful today in Virginia. I came in from this glorious day, started reading these posts and the tone really darkened the day.

Curiously, I was reading yesterday that many of the virtual worlds have started to incorporate virtual courts and jails (and even vigilante groups!)to deal with those who misbehave online. It seems as though we are at that point ourselves.

I have written our moderator privately, and asked that he consider suspending or expelling those who cannot behave after being privately admonished. I believe he intends to do that. I love the collegiality of this list, the banter, the professional exchanges (even when we disagree), but acid-filled notes and personal insults are counter to the ethos of this list.

We are perhaps wise to remember the wisdom of George Elliot: "Wear a smile and have friends; wear a scowl and have wrinkles."

Regards,

Sharon D. Nelson, Esq.

I'm all for dispassionate tone and common courtesy but sometimes people get way out of hand because they feel strongly about something and respond in anger and hit send reflexively rather than letting it sit for a bit. I would just suggest that decisions to suspend or especially to expel should take into consideration the overall contributions by the poster in question rather than be made solely in reaction to a single post or thread. I am assuming that the feeling is that Jonathan is one of the people who went overboard, and I think his long-term contributions in particular deserve to be considered. Others who have a tendency to act simply as gadflies on the list perhaps should be considered differently.

Mitch Matorin

Mitch -

Thanks for your kind words. That $20 is in the mail in non-consecutive $1s.

I posted on a topic that I thought was important. I shared my views. Some people don't like my views. Some people don't like my views but were too lazy to read. But, hey, suddenly thousands of people are talking about this topic. I guess I was successful, and since my self esteem is not tied to anyone here (not that I don't like some of you, but lets be real - if you haven't talked to me on the phone, we are just acquaintances) I am not upset that two people decided to list how dumb I was and one person decided to post about how he (or she, I haven't quite figured it out yet, but its like Pat from SNL) didn't like my writing (and then decided to take a private email and post it to the list). Since I have had over 100 positive personal responses and less than half a dozen negative, I call that a win.

I am of a very simple opinion: if you think I said something offensive, then just let me know. A quick email would do the trick. Lots of people do it. Just don't assert that I should use the lawyer assistance program or I will tell you to bleep off.

Look folks, if you don't like something someone says, either set up a rule in your email client to delete those messages or use the delete key. Our list administrator is a good guy and will keep the problem children away.

He knows my phone number, both home and work, and my email address. If he thinks I went over the line, I will get a call and/or email suggesting that I a) stop it and b) if I don't, he wont remove me, but will spar with me one day, probably April 2, 2009. I am sure the same goes with other people. He knows how to remove you, suspend you, or ban you just like COTE used to do. There is no need to report people or suggest that they don't belong. Ultimately, if you don't like it, you can do what others have done and start your own list, ie solopol, soloright, sololeft, solohand, etc.... Feel free to start solo-jonathan-is-a-bleep.

Now maybe if people want to talk about the subject at hand we can get back to that. If you don't, that's fine too. But stop attacking people, stop whining and stop complaining. And if you don't like something I said, delete my emails. Sheesh.

Jonathan G. Stein

Unfortunately I missed the fireworks; I had to work my cases. What happened?

For the record I am against unproven charges against lawyers being published on the internet, by a bar association that we fund, and that is supposed to advocate for us, until they are proven.

It seems like more and more every year the California State Bar is working

against lawyers and its members. I think maybe it is time to abolish the State Bar and just let the California Supreme Court handle discipline. This way we do not have to pay 400 bucks a year to an organization that seems to hate us, and does not really do anything to make our life easier! Where is all of our dues money really going? 200k or so lawyers paying 400 bucks a year in dues. You do the math! I would expect the organization to do more to help us! Instead we are paying full time zealots big money to think of more ways to make our job harder! It does not make sense to me.

Norman Gregory Fernandez, Esq.

Gee, David. I can't resist such a cordial invitation ;-)

It may be a problem, it may be real; but I think it is over rated. It is my understanding that only substantiated charges will become a public record. If unsubstantiated charges, or mere complaints, were published then it might become somewhat like epinion.com and thoroughly confuse everyone.

There are several members of Solosez who have been sanctioned and even suspended from the practice of law by their state bar. That information does not affect my impression of them or the advice they provide. Rather, I think it just adds to the credibility of the profession as a whole that even good attorneys make mistakes or inappropriate choices at times. My own doctor was sanctioned for having consensual sex with a former patient. Since I am not female, this did not concern me very much. He is an excellent doctor. I don't expect people to be perfect. In fact, I am a little suspicious of people who present the appearance of being perfect. I like people who are as honest about their shortcomings as they are about their strengths. Tim Allen is one such person. When the press discovered he had done a 14 month stretch on a federal conviction for possession of drugs; a lot of people thought it would be the end of his career. Tim didn't deny it or make excuses; he simply said yeah I did it, it was stupid, now I just want to make people laugh. The press lost interest; he took all the wind out of their sails. I really like people who are that forthright. Can you guess how I feel about certain politicians who admit they smoked marijuana but assert they never inhaled? Was he deceiving his roach buddies or deceiving the American voter? I doubt either was fooled.

I suspect the vast majority of people aren't going to check the bar site before they hire a lawyer. But if they check, and it matters to them; then they should know upfront. The purpose of public records is to promote openness and honesty. I think measures to promote secrecy will not be well received by the general public or speak well of the attorneys who promoted that secrecy.

Few people are thrilled to see their name on a registered sex offender list. Politicians aren't fond of special interest groups who republish their voting record. People with bad credit reports may have difficulty securing some jobs. Employers routinely ask applicants for self-disclosure of all arrests and use dishonesty as a basis to discharge an employee if a discrepancy is later found. Judges may not be overly fond of the rankings they receive each year from members of the bar. Some things in life are unpleasant; we

cope and move on.

It may be useful if the attorneys who are presented with a substantiated charge had the opportunity to compose a brief explanation which would be posted along with the charge; similar to protesting a disputed entry on one's credit report. So I, for one, would prefer to shed a little light on the subject rather than hide skeletons in the closet. Besides, its always a lot of fun to watch the cockroaches scatter when you turn on the light.

Duke Drouillard

Far be it from me to turn down non-consecutive bills, but you may want to keep them because I have to point out that the delete key works on both ends of the Internets, y'know? And despite my love of irony, I do prefer it to be a bit more subtle than calling people lazy and making offensive "Pat" comments then turning around and telling people to stop with the personal attacks....

Mitch Matorin

This seems to be a similar to the public damage caused to those who are accused, but not charged, with a crime. Certainly, we have all encountered--or at lease heard about--those who use civil or criminal accusations, and the social damage therefrom, as a weapon. It is well accepted that an arrest is held against people even if they are not charged and are not found guilty in court, and this remains the case even as the standard for probable cause is going down.

Still, we accept this. We accept it because while there is harm to the wrongfully accused, there is also a public benefit to those who are put on notice of criminals or wrongdoers before their charges are finalized. The publicity is a long standing part of our legal tradition.

It is obvious that the system proposed by the California bar will result in similar damage to some attorneys. What is less obvious, as with the issues surrounding accusations in criminal and civil court, is whether the damage caused to the attorneys is outweighed by the benefits of early notification to the public. Obviously there is room to disagree here; I do not think that the answer is as clear as some appear to be suggesting.

Erik Hammarlund

I'm a solo practitioner who is licensed in both Illinois and California. Recently, California passed two initiatives which solo attorneys there took great offense to, and responded by saying both decisions were biased against solos. I disagree with those statements, and feel that the CA bar's actions weren't biased against solos.

First, California required, in certain situations, disclosure of malpractice insurance to clients. In Illinois, as in several other states, attorneys must disclose on their registration whether or not they have malpractice insurance. In Illinois, that disclosure is listed on the bar website

(www.iardc.org, if you wish to look me up). Illinois also requires that you **disclose** (but not prove) whether or not you have engaged in any *pro bono* services in the past year, or donated to a legal assistance organization (it is not published, and for now is for record purposes only). California has no such requirement.

Second, California now publishes lawyer discipline online. Illinois has been doing this for a number of years, and one can search recent complaints, or search decisions back as far as 2001 (or earlier, if you are looking at a particular attorney. On the ARDC website, search James Himmel for an example (the older case is frequently used in law school ethics classes).). What I think people such as Jonathan lose site of is that, in Illinois, 6,000 *complaints* are filed annually; most complaints are resolved with little to no involvement by the attorney. Usually, what happens is that a client disagrees with a bill, or more likely, wants to avoid paying a bill, and files a charge against the attorney.

Of the 6,000 complaints filed, less than 1/3 result in charges against a lawyer. As soon as charges are filed, they are posted and available online. If one is so inclined, one can follow a case through the system and attend the hearings. (Sadly, one of my colleagues was recently charged. We are on a committee together, and to my knowledge, I am the only one aware of the charges.)

As in California, charges in Illinois are a serious issue, and generally result in some form of discipline. Rarely does one escape. However, if that does happen - and I've seen a few instances where it does - the decision is published online. Actually, all decisions, good and bad, are published. Frivolous complaints (a/k/a 'bitching' or 'whining') made by disgruntled clients never see the light of day in either IL or CA.

As far as solo vs law firm lawyers, it is true in both IL and CA that charges are filed more often against solos. Some of the reasons Duke gave are the reasons for this disparity - often IL cases of misconduct involve commingling funds (the joke here is that you can shoot someone and get censured, but mix funds and you're out the door), which are more likely to occur when a solo is strapped for cash. Firms don't have this issue (usually) because they have resources they can tap into for capital which are not available to most solos. Furthermore, solos tend to deal with clients who may have unrealistic expectations. Neighbors sue each other over minor infractions and expect millions; business don't want to waste valuable resources chasing pennies, and will go after real money. The client who thinks he has a 'sure winner' on thin facts is more likely to file charges when the case goes against him (as it usually does) than the business who loses a contract dispute. "I should have won, you must have screwed up" is the logic, right or wrong.

You can debate the topic ad infinitum, but we as a society often publicly accuse - some people have been named as suspects on thin evidence in criminal matters - but never publicly retract. I think the public has a right to know if there is a risk that the attorney they just paid (or are about to pay) a retainer to may be disbarred or suspended before their matter is resolved.

Illinois has had a few cases of attorneys disbarred because they continued to practice law while suspended, and failed to inform clients of their suspensions. I imagine California has too.

You may not think that California's new policy is good, but I don't mind it, since I already have to deal with it. And if you're not engaging in bad behavior, you have little to worry about. Remember - if you're wondering "Can I do this?", you probably can't.

Greg Zbylut

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