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ARTICLE

James Moliterno | John Keyser

Why Lawyers Do What They Do (When Behaving Ethically)

Abstract. Since the early 1990s, when David Wilkins published his influential paper “Who Should Govern Lawyers” in the *Harvard Law Review*, legal ethics scholars and professors have paid attention to the range of processes and devices that govern lawyer behavior. This Article will report on the results of a study currently underway that seeks to provide empirical evidence to answer the question posed in this Article’s title: Do lawyers train staff in confidentiality preservation because they fear bar discipline? Because they fear malpractice liability? Because they must comply with malpractice liability carrier demands? Because they honor client confidences for their own value and wish to protect them? Because the market forces them to do so? Because it is the right thing to do? The same, or similar, sets of questions may be asked about establishing conflict check procedures, devising their marketing to stay within norms, charging reasonable fees, and other professional ethics-related actions by lawyers. To gather data on these issues, the authors conducted a survey of the bars of Florida and Virginia and present on the findings.

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Advancement of the American Legal System (IAALS) in recognition of his career-long legal education reform work. He is the author or co-author of ten books including *The American Legal Profession in Crisis: Resistance and Responses to Change* (Oxford Univ. Press 2013) and of numerous articles on legal ethics and legal education. He has engaged in substantial international legal ethics and legal education reform work in Serbia, Armenia, Georgia, the Czech Republic, Kosovo, Slovakia, Spain, Japan, China, Indonesia and Thailand.

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I. INTRODUCTION

Prior to the early 1990s, professional responsibility courses in law schools focused almost exclusively on the ABA model ethics codes and sometimes local state codes. Even at that, such courses had come a long way since the days when they were an exercise in “chanting the Canons” for no credit.¹

In the late 1970s, as part of the post-Watergate credibility-restoration scramble, the ABA mandated that law schools require a professional responsibility course for graduation.²

Prior to any Watergate revelations, there was a watered down draft of section 302 in existence.³ However, the draft that existed before the full Watergate affair came to light did not mandate that law schools *require* a course in lawyer ethics; it merely required that law schools *offer* such a course, along with several others.⁴ The amendment to the draft resolution came during the February 1973 floor debate⁵ when a motion brought by the State Bar of Arizona was passed in the House of Delegates. Thus, the weak draft that existed before Watergate became a much stronger mandate by floor action in 1973, by which time there were new Watergate revelations emerging almost daily. Although it did not begin hearings until May, the Senate Select Committee (chaired by Sam Ervin) was formed on February 7, 1973.⁶ A month earlier still, when Judge Sirica opened the Watergate burglars’ trial on January 7, federal investigators already knew of the CREEP (Committee to Re-Elect the President) slush fund used to finance illegal activities against Democrats.⁷ The convictions

1. See Lawrence A. Dubin, *Professionalism Among Lawyers: The Law School's Role*, 68 MICH. B.J. 850, 851 (1989) (recalling the academic futility of attending classes related to legal ethics).

2. JAMES MOLITERNO, *THE AMERICAN LEGAL PROFESSION IN CRISIS: RESISTANCE AND RESPONSES TO CHANGE* ch. 5 (Oxford 2013).

3. 98 A.B.A. ANN. REP. 351, 354 (1973).

4. See *id.* at 353–54 (“The law school shall offer: (i) instruction in those subjects generally regarded as the core of the law school curriculum, (ii) training in professional skills, such as counseling, the drafting of legal documents and materials, and trial and appellate advocacy, (iii) instruction in the duties and responsibilities of the legal profession.”).

5. See *House Disapproves UMAVRA, Supports the Exclusionary Rule, and Adopts New Law School Standards*, 59 A.B.A. J. 384, 390 (1973) (“The house then voted to amend paragraph 302 in that form, so that subparagraph (a) (iii) as adopted reads: and provide and require for all student candidates for a professional degree instruction in the duties and responsibilities of the legal profession.”).

6. *Chronology: 1973*, WATERGATE.INFO., <http://watergate.info/chronology1973-chronology> (last visited Mar. 31, 2014).

7. *The Watergate Files, The Watergate Trial: Overview*, GERALD R. FORD LIBRARY & MUSEUM, http://www.fordlibrarymuseum.gov/museum/exhibits/watergate_files/content.php?section=1&page=

of McCord and Liddy were entered on January 30.⁸ As far back as August 1, 1972, the Washington Post reported that funds meant for CREEP had been deposited in a Watergate burglar's account.⁹ Regarding the floor amendment adoption in 1973, ABA President Robert Meserve said that this amendment evidenced the ABA's "desire that there be greater law school emphasis on the teaching of professional responsibility."¹⁰ Although it is fair to say that the major revelations were yet to come when the ethics course requirement was adopted in February 1973, the lawyer-involvement in Watergate was clearly exposed. "In August 1974, in the wake of Watergate, the following specification was added to the Standard, 'Such required instruction need not be limited to any pedagogical method as long as the history, goals, structure and responsibilities of the legal profession and its members, including [the ABA Code of Professional Responsibility] are all covered.'"¹¹

That move, along with the contemporaneous rapid development and adoption of the Multistate Professional Responsibility Exam (MPRE), gave new credibility to the course, long a stepchild of the rest of the curriculum.¹²

Casebooks and course books proliferated when only few had existed prior to the ABA accreditation move.¹³ Careers were adjusted and formed

a (last visited Mar. 31, 2014).

8. *Id.*

9. *Brief Timeline of Events*, WATERGATE.INFO, <http://watergate.info/chronology/brief.shtml> (last visited Mar. 13, 2014).

10. Robert W. Meserve, *President's Page*, 59 A.B.A. J. 327, 327 (1973).

11. Robert MacCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 TENN. L. REV. 1099, 1123 (1997) (citing SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS'N, LEGAL EDUC. AND PROF'L DEV.—AN EDUC. CONTINUUM 262, 263 (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, 1992)).

12. *Id.* See generally Paul T. Hayden, *Putting Ethics to the (National Standardized) Test: Tracing the Origins of the MPRE*, 71 FORDHAM L. REV. 1299 (2003) (tracing the major currents that spurred the MPRE's development).

13. The original casebook in the field was ELLIOT CHEATHAM, *CASES AND OTHER MATERIALS ON THE LEGAL PROFESSION* (Edmund M. Morgan et al. eds., 1938). Within a few years of the accreditation requirement, the books proliferated. A few of the more prominent books include: GARY BELLOW & BEA MOULTON, *THE LAWYERING PROCESS: ETHICS AND PROFESSIONAL RESPONSIBILITY* (Davis L. Shapiro et al. eds., 1981); ELIZABETH DVORKIN ET AL., *BECOMING A LAWYER: A HUMANISTIC PERSPECTIVE ON LEGAL EDUCATION AND PROFESSIONALISM* (Colum. U. Sch. of L. Project for the Study of Application of Humanistic Educ. in L. et al. eds., 1980); GEOFFREY C. HAZARD, JR. & DEBORAH L. RHODE, *THE LEGAL PROFESSION: RESPONSIBILITY AND REGULATION* (1985); ANDREW L. KAUFMAN, *PROBLEMS IN PROFESSIONAL RESPONSIBILITY* (Richard A. Epstein et al. eds., 3d ed. 1989); THOMAS L. SHAFFER & R. REDMOUNT, *LAWYERS, LAW STUDENTS AND PEOPLE* (1977); CHARLES W. WOLFRAM, *MODERN LEGAL ETHICS* (1986). In 2014, there are scores more.

for new faculty who were pressed into service to teach the new course, which was outside their core expertise.¹⁴

Standard 302 is broad in terms of teaching methodology and narrow in terms of subject matter focus. Coverage was required of the “history, goals, structure and responsibilities of the legal profession and its members, including [the ABA Code of Professional Responsibility].”¹⁵ There was no mention of the various other controls on lawyer conduct, such as malpractice liability, litigation sanctions, contempt of court, and so on.¹⁶ The main focuses, beyond history and structure, were the provisions of the ABA Model Code—the dominant model for lawyer discipline enforcement.

The narrow subject matter focus was natural: after all, the American legal profession has long claimed self-governance through the state bars and supreme courts’ enforcement of the profession-drafted ethics codes. Even in the face of evidence to the contrary, the profession has clung to this image of lawyers governing lawyers, reporting their fellows’ misdeeds.¹⁷ Naturally, the ABA’s accreditation standard focused on the self-governance aspects of the law governing lawyers.

That was the state of the ethics-teaching art until the early 1990s when the almost exclusive focus on the ABA codes and the disciplinary process changed as a result of David Wilkins’ groundbreaking article, *Who Should Regulate Lawyers?*¹⁸ The article laid out the reality that the ethics codes

14. Thomas D. Morgan and Ronald D. Rotunda, for example, were beginning faculty members at the University of Chicago Law School when the accreditation requirement was adopted. They were asked to teach the new lawyer ethics course and launched prominent careers in the field, with their problem-based course book becoming one of the leading authorities. See generally THOMAS D. MORGAN ET AL., PROFESSIONAL RESPONSIBILITY (Robert C. Clark et al. eds., 11th ed. 2011) (discussing problems in professional responsibility).

15. Robert MacCrate, *Educating a Changing Profession: From Clinic to Continuum*, 64 TENN. L. REV. 1099, 1123 (1997) (citing SECTION OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, AM. BAR ASS’N, LEGAL EDUC. AND PROF’L DEV.—AN EDUC. CONTINUUM 262, 263 (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, 1992)).

16. See *id.* (mentioning only the specific requirement for professional values).

17. Compare Bruce A. Green, *Whose Rules of Professional Conduct Should Govern Lawyers in Federal Court and How Should the Rules be Created?*, 64 GEO. WASH. L. REV. 460, 461–62 (1996) (“Lawyers refer to their profession as ‘self-regulating,’ but this term is misleading as well as wishful.”), with Dana A. Remus, *Out of Practice: The Twenty-First Century Legal Profession*, 63 DUKE L.J. 1243, 1250–51 (2014) (advancing that the “bar’s system of self-regulation [has] balanced lawyers’ competing duties to clients, the state, and the public” and furthermore that the bar has “demonstrated how its system of self-regulation balanced lawyers’ tripartite duties in furtherance of rule-of-law values”).

18. See generally David B. Wilkins, *Who Should Regulate Lawyers?*, 105 HARV. L. REV. 799 (1992) (exploring how traditional attorney disciplinary agencies “have been joined by a number of

and the disciplinary process were but one piece of what causes lawyers to behave as they do, and perhaps in some areas of governance, just a small piece.¹⁹ The article analyzed malpractice and other liability sources that have very different sets of motivators both for the lawyer being disciplined and the aggrieved party.²⁰ For example, while the disciplinary sanctions of disbarment and suspension are grotesquely harmful to the lawyer, they are very rare incidents.²¹ Furthermore, they produce nothing more than satisfaction for the aggrieved person or entity. In part, that explains why the sanctions are so rare: aggrieved parties are not motivated to make complaints.²² Indeed, corporate aggrieved parties appear to regard the disciplinary process as a waste of time and prefer to fire lawyers who harm their interests or file civil claims that have the potential to produce damages.²³ In part, as a result of the type of clientele for large firm lawyers, the disciplinary process is more prominently a device for policing the conduct of small firms and solo practitioners.²⁴

Wilkins wrote the wonderful kind of article that causes readers to say, “of course, how could I have missed that?” It resonated so deeply that a raft of others followed in its footsteps.²⁵

other systems designed to detect and deter unethical conduct”).

19. *See id.* at 809–11 (providing a detailed analysis of the regulation of lawyers).

20. *See id.* at 830–35 (analyzing sources of liability and their motivational basis for different actors).

21. *Id.* at 806 n.22, 829 n.121.

22. *See id.* at 829 n.121 (“In such cases, in exchange for disciplinary counsel’s promise not to seek either suspension or disbarment, the lawyer would agree to forego some of the elaborate due process protections that currently make most disciplinary proceedings so time consuming and expensive.”).

23. *See id.* at 828 n.113 (proclaiming that “aggrieved clients find disqualification motions and civil suits ‘more attractive’ than the disciplinary system”), 828 n. 116 (“Because corporate clients have so little incentive to report their lawyers, it is not surprising that these lawyers are rarely subject to professional discipline. The number of elite lawyers from major corporate firms who have ever been disciplined is exceedingly small.”).

24. *See id.* at 832 n.134 (“The vast majority of malpractice claims are filed against solo practitioners or lawyers in very small firms.”).

25. The article has been cited at least 283 times. *See* WESTLAW KEYCITE CONTENT, http://web2.westlaw.com/find/default.wl?cite=105+Harvard+Law+Review+801+&rs=WLW13.10&vr=2.0&rp=%2ffind%2fdefault.wl&sv=Split&fn=_top&mt=208 (last visited Mar. 31, 2014) (showing where Wilkins’ article has been cited). The following is a list of notable authors who wrote specifically based on the article. *See generally* Bruce A. Green, *Whose Rules of Professional Conduct Should Govern Lawyers in Federal Court and How Should the Rules Be Created?*, 64 GEO. WASH. L. REV. 460, 470–80 (1996) (proposing a third alternative for a uniform set of rules for professional conduct in federal courts); Fred C. Zacharias, *The Professional Discipline of Prosecutors*, 79 N.C. L. REV. 721 (2001) (discussing the reality of prosecutor discipline); *see also* Benjamin Hoorn Barton, *Why Do We Regulate Lawyers?: An Economic Analysis of the Justifications for Entry and Conduct Regulation*, 33 ARIZ. ST. L.J. 429 (2001) (comparing the justifications for entry and conduct

Once the professional responsibility professoriate had its eyes opened, courses began to expand into teaching malpractice liability, civil litigation sanctions (such as Federal Rule of Civil Procedure 11), and discovery sanctions, contempt, reversal of convictions for prosecutorial misconduct, ineffective assistance of counsel claims, and other areas. Some courses expanded further than the law to treat subjects such as the control of insurance companies over insurance defense lawyers—who, after all, actually represent their insured—and even the control exercised by malpractice insurance carriers over the lawyers they insure. The MPRE developed modestly as well, expanding in 1999 to cover “questions of professional responsibility aris[ing] in the context of procedural or evidentiary issues, such as the availability of litigation sanctions or the scope of the attorney–client evidentiary privilege”²⁶

The course books increased also and began to cover malpractice liability, litigation sanctions, lawyer–client evidentiary privilege and work-product doctrine, ineffective assistance of criminal defense counsel, and prosecutor misconduct resulting in conviction reversal.²⁷

Knowing more about why lawyers do what they do will provide disciplinary bodies, courts, bar associations, and the public with important information. For example, we may be able to discover more about allocating the proper attention and resources in furtherance of a more efficient regulation of lawyers. Perhaps because the Wilkins insight was so compelling, very little empirical evidence to support its assertions has been sought. This Article and the survey on which it reports embody such an effort. Though much more should be done, we try to provide a starting point to answer the question: Why Do Lawyers Do What They Do? Why do lawyers create conflict-check procedures, train staff to protect client

regulations with the current state of regulations); James E. Moliterno, *Practice Setting as an Organizing Theme for a Law and Ethics of Lawyering Curriculum*, 39 WM. & MARY L. REV. 393 (1998) (exploring the need for centralized themes in the substantive law).

26. NAT'L CONF. OF BAR EXAM'RS, 2013 MULTISTATE PROFESSIONAL RESPONSIBILITY EXAMINATION INFORMATION BOOKLET 10 (2013). See also Paul T. Hayden, *Putting Ethics to the (National Standardized) Test: Tracing the Origins of the MPRE*, 71 FORDHAM L. REV. 1299, 1303 (2003) (“Questions of professional responsibility arise in the context of procedural or evidentiary issues, such as the availability of litigation sanctions or the scope of the attorney–client privilege”).

27. For further review of these course books, among many, see STEPHEN GILLERS, REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS (Vicki Been et al. eds., 8th ed. 2009); GEOFFREY C. HAZARD, JR. ET AL., THE LAW AND ETHICS OF LAWYERING (Robert C. Clark et al. eds., 5th ed. 2010); JAMES E. MOLITERNO, CASES AND MATERIALS ON THE LAW GOVERNING LAWYERS (4th ed. 2012); LISA G. LERMAN & PHILLIP SCHRAG, ETHICAL PROBLEMS IN THE PRACTICE OF LAW (Vicki Been et al. eds., 3d ed. 2012); THOMAS D. MORGAN ET AL., PROFESSIONAL RESPONSIBILITY (Robert C. Clark et al. eds., 11th ed. 2011).

confidences, exercise caution in managing client funds, protect client information, and refrain from overcharging clients?

II. THE SURVEY INSTRUMENT AND ITS DISTRIBUTION

We set out to ask lawyers why they do what they do when they follow ethical norms. We enlisted the assistance of the Virginia State Bar and the Florida State Bar. While neither would sponsor nor endorse the research, they did provide the list of emails of currently licensed Virginia and Florida lawyers and granted us permission to use the lists.

We designed the survey instrument to be easy to complete, non-threatening, and likely to produce useful information. (The survey instrument we used is reproduced in Appendix A.) We described the goal of the survey as follows:

The goal of this survey is to explore the motivation of lawyers for acting ethically. In short, when lawyers behave ethically, why do they do so? All responses will be anonymous and will never be linked back to the individual respondent. The survey is being conducted for academic purposes only and will not be shared with any state bar or agency. This survey is not being funded by any state bar or agency. If you have any concerns or questions, feel free to contact one of the researchers

We instructed the participants as follows:

For each of the following behaviors, distribute 100 points to represent the relative importance of each reason why you engage in the behavior or practice. If you do not engage in the behavior (e.g., do not have conflict check procedures), leave the column blank. The column of percentages for each question you answer should sum to 100%.

We then asked about lawyer behaviors. We chose the following topics because they are issues that implicate considered choices rather than in-court, split-second decisions:

1. Having conflict-check procedures
2. Training staff to be sensitive to confidentiality issues and such
3. Maintaining proper client trust accounts
4. Not overcharging clients
5. Protecting client information
6. Using case management or other tools to meet filing and other deadlines

And for each activity, we gave the following options as motivators for the behavior:

- _____ % To avoid disciplinary sanctions
- _____ % To avoid malpractice liability
- _____ % To satisfy the requirements of your malpractice carrier
- _____ % To avoid judicial and other litigation sanctions
- _____ % To retain the continued business of your clients
- _____ % To attract new clients by word of mouth from satisfied clients
- _____ % To do the right thing without regard for other consequences
- _____ % Another reason not listed above (please specify)_____

Comments:

We then asked a series of demographic and practice-orientation questions to enable us to parse the data by size of practice, specialty of practice, age, and gender. And finally, because we provided different links for the Florida and Virginia lawyers, we enabled ourselves to examine whether there are consequential differences between those two groups.

We initially sent an email to each recipient with a link to Survey Monkey where the survey would reside. Unfortunately, the return was quite low, in part because a significant number of recipients mistrusted the email as possible spam. We regrouped and sent the email again, this time directly from our Washington & Lee email address through a campus service for sending mass emails. Eventually, we received 347 responses from Virginia lawyers and decided to confine our study to this group.²⁸

As anticipated with shotgun email lists, some of the email addresses did not hit their mark. Some produced auto replies indicating that the intended recipient had moved or retired from law practice. Some produced personal responses from recipients indicating that they were in business or government settings making the survey's questions inapt.

III. THE RESULTS AND THEIR IMPLICATIONS

A. *Respondents by Age, Gender, Type of Practice*

Respondents were well distributed by age, quite close to national

28. Because Professor Moliterno has been on the faculty of Virginia law schools (William & Mary and Washington & Lee) since 1988, it is likely that some Virginia survey recipients are his former students.

distributions. Five percent might be classified as young lawyers (under 30), which is close to the number in the general lawyer population (4%). Thirty-seven percent might be described as mid-career (between 30–49) and the largest number 57.9%, were over fifty. The ABA breaks down the age categories in a slightly different way, but again, the numbers are quite close. Thirty-five percent of American lawyers are between age 30 and 44.²⁹ Sixty-two percent are over 44.³⁰

Almost two-thirds (64.6%) of respondents were men and just over one-third were women (35.4%). This is a reasonable reflection of the gender demography of today's profession (70% men, 30% women in 2005, with the trend line indicating that the national numbers are closer to our survey numbers in 2014).³¹

Respondents well represented various law practice sizes. Respondents from small practices (1–5 lawyers) accounted for 58% of respondents. Nineteen percent came from practices of 6–25 lawyers, and 22.7% came from law firms of over 25 lawyers. Again, the ABA data collection breaks the groups slightly differently, but once again, the respondents to our survey are distributed quite closely to the national distribution.³² Sixty-three percent of American lawyers practice in groups of 1–5 lawyers; 12% practice in groups of 6–20; and 26% practice in groups of more than twenty lawyers.³³

B. *General Observations from the Data*

1. Because we asked respondents to assign percentages to as many motivating factors as they wished to identify, two measures matter in evaluating their responses. First, it is important to know how often a particular reason was chosen by a respondent, no matter what the percentage of motivation they assigned. And second, it matters, perhaps more, to know the weighted response that was assigned by the group to a particular motivating factor. So, for example, of the 321 respondents who answered Question 1 regarding conflict-check procedures, 235 (73% of respondents) identified avoidance of discipline as one of their motivating factors and 270 (84% of respondents) identified doing the right thing as

29. ABA, *LAWYER DEMOGRAPHICS* (2013), available at http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2013.authcheckdam.pdf.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

one of their motivating factors. But the average weight given to avoiding discipline was about 20%, while the average weight given to doing the right thing was about 50%, so the weighted score for the two factors was 4743 (about twenty points times 235 respondents who listed this motivating factor) and 13568 (about fifty points times 270 respondents who listed this motivating factor) respectively, making doing the right thing arguably 2.9 times as important as avoiding discipline. So while doing the right thing motivates only 11% more respondents than avoiding discipline, it motivates them as a group much more powerfully. The weighted-motivation analysis will be emphasized question by question in this paper.

2. Overall, “doing the right thing” was the most powerful single motivator of conduct, although the combination of all legal sanctions was more powerful still. On every topic, doing the right thing was by far the greatest weighted motivator, averaging 44% of the motivation across the six questions. Except for Question 6, regarding meeting deadlines, where both malpractice and litigation sanction motivators were at their peak, the doing the right thing motivation was close to the equal of all other motivations combined. As expressed a number of times in the written comments, our respondents believe that lawyers should do the right thing for their clients without regard to the sanctions that may be available. This finding and the observation that market forces account for the second highest motivation (17% overall) calls into question the role of law. Thus, the actual “law” is well less than half (about 32% in our survey) the total motivation for lawyers to charge reasonable fees, meet deadlines, protect confidences, and avoid conflicts of interest.

3. A large number of respondents identified “another reason [not listed among the choices]” as a motivating factor. The only way to evaluate these other reasons is to read the written responses that identify them. Here, it appears that much of the time, the respondents have actually elaborated on one or more of the listed reasons. For example, many respondents who identified “another reason” as their motivation for having conflicts-check procedures suggested that if they failed to catch a conflict early on, they would eventually need to withdraw to the detriment of themselves and their clients.³⁴ Of course the reasons they would have to later withdraw

34. One respondent said, for example,

Because I will have to withdraw. For example, it's not fair to me or the client to go into a matter without knowing that I can finish it. If I find in the middle of a matter that there is a conflict, I'm out of there and it doesn't help anybody. It happened once when two separated parents with different last names each wanted to be the guardian for their adult handicapped

would be to avoid discipline, avoid malpractice, etc. Thus, these respondents blended their responses by elucidating their reasoning rather than by parsing the percentage owing to the reasons we listed in the survey.

Others, who identified the “another reason” motivator, simply restated in their own words a factor we had listed on the survey. One, for example, listed as the “other reason,” “I use my belief in virtue and morality.” This reason might as well have been captured by a positive response to “doing the right thing.” Another identified “Important to comply with rules of ethics” as the “other reason,” which might be a proxy for avoiding discipline, but might also have been a generalized response that many of our listed factors were at play for this respondent.

Still others saw the question in terms slightly different than we intended. For example, a few identified mandates of superiors as their “other reason” for using conflicts checks. “Complies with my firm policy,” and “A basic must-do” were listed as “other reasons.” Our goal was to get at the reasons that underlie why it is a firm policy or a basic “must-do.” These respondents did not go underneath the mandates of others.

Although a significant number of respondents identified “another reason,” overall they gave little weight to those other reasons. As indicated, often the other reason was no more than the aggregate of the available reasons on the survey. As a result, responses of “another reason” have been factored out of the findings in the remainder of this paper.

4. The fear of discipline does vary by the lawyering activity, and in ways that suit predictions. For many activities (i.e., conflict checks, training staff, meeting deadlines, and protecting confidences), fear of discipline provides a modest 12 or 13% of the motivation to behave ethically. But for maintaining client trust accounts, an activity that is monitored by the bar association and that produces especially harsh disciplinary consequences, the discipline-avoidance motivation leaps to double the usual (24%). On the other end, regarding overcharging clients, where the bar discipline has been, historically, rare, the discipline-avoidance motivation dips to an almost non-existent 3%.

child. I gave each their money back from my trust account, then had to scramble to make expenses. They have never followed through with the matter.

See generally Survey Results (on file with the author) (evaluating the answers given by various respondents).

C. *Question by Question, Some Predictable Results Regarding the Measure of Concern for Discipline*

Question 1. Conflict check procedures have become a staple of law practice, especially private practice. But accepting that nearly all lawyers engage check procedures, what motivates them to do so? About 73% identify avoiding discipline as a factor, and on average they weigh that factor at 15% of their motivation. Even more identify a malpractice-related motivation, with a combined weight of 19%. Litigation sanctions appear to account for 9% of the motivation while market-related motivations amount to 11% of the motivation. By a substantial margin, doing the right thing provides the greatest motivation-weight at 42%.

Question 2. Lawyers are responsible for training their staff in confidentiality protection.³⁵ Under the disciplinary rules, lawyers can have liability for the failure to provide reasonable supervision.³⁶ Under malpractice law, lawyers can have liability for negligent breaches by staff.³⁷ Few litigation sanctions relate to confidentiality breaches by staff. The motivation-weights seem to reflect the law's allocations regarding staff breaches of confidentiality. Thirteen percent of the motivation appears to come from discipline-avoidance; an almost identical 14% comes from malpractice concerns, and only 6% from the fear of the unlikely litigation sanctions. Here, market forces appear to be at play, accounting for 18% of the motivation-weight. Again, doing the right thing motivates more than anything else at 45%.

Question 3. Trust account violations account for some of the most grave disciplinary consequences.³⁸ Further, because trust accounts are subject to bar audits, the likelihood of discovery and pursuit by bar

35. See MODEL RULES OF PROF'L CONDUCT R. 1.6 cmt. 18 (2014) ("A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision."). For further discussion, see Model Rules 1.1, 5.1, and 5.3.

36. See generally *id.* R. 5.1 ("Responsibilities of Partners, Managers, and Supervisory Lawyers"); *Id.* R. 5.2 ("Responsibilities of a Subordinate Lawyer"); *Id.* R. 5.3 ("Responsibilities Regarding Nonlawyer Assistants").

37. See *Tegman v. Accident & Med. Investigations, Inc.*, 30 P.3d 8, 13 (Wash. Ct. App. 2001) ("As long as the paralegal does in fact have a supervising attorney who is responsible for the case, any deficiency in the quality of the supervision or in the quality of the paralegal's work goes to the attorney's negligence, not the paralegal's.").

38. Irene M. Ricci, *Client Trust Funds: How to Avoid Ethical Problems*, 11 GEO. J. LEGAL ETHICS 245, 247 (1998) ("Violations of trust account rules are one of the most common ethical violations brought before disciplinary boards.").

authorities is high.³⁹ By contrast, clients and courts rarely find out about trust account violations unless the bar authorities have ferreted them out in the first instance. Unsurprisingly, discipline-avoidance is the primary motivation regarding this topic, at 24%—almost double its motivation on most other topics. Also predictably, fear of litigation sanctions on this topic is a very modest 5% of the total motivation, and market-related reasons likewise are at a low point of 7%. Protection of trust accounts is such a fundamental expectation, that presumably lawyers do not regard themselves at any market advantage by doing what is expected of all lawyers as a basic requirement. Doing the right thing remains the strongest motivation at 40%, but on this topic it is well below twice the disciplinary avoidance motivation (40–24%) while on every other topic, it is close to three times the motivation and, in one instance, seventeen times the motivation.

Question 4. Refraining from overcharging clients presents the most unusual set of motivation-weights. Avoiding discipline, avoiding malpractice and litigation sanctions *combined* amount to a mere 7% of the motivation-weight. The bar has historically been disinterested in policing lawyers for charging too much,⁴⁰ except in cases of fraudulent billings.⁴¹ Malpractice liability and litigation sanctions for overcharging would be rare. However, the market takes up the motivation-slack for the other three, accounting for more than a third (34%) of the total motivation-weight. Doing the right thing by not overcharging, a wrongful activity that is unlikely to be discovered, is more than half the total motivation (51%).

Question 5. Protecting client information is a core lawyer function. Here, more than on any other topic, lawyers say they protect client information because it is the right thing to do (53% of the motivation-weight, overall average 44%). Other factors are close to their overall averages (discipline avoidance 12%, overall average 12%; malpractice

39. *Id.* at 247–48 (“In addition, in 1993, the ABA adopted the Model Recordkeeping Rule making Model Rule 1.15 more explicit. Some jurisdictions have specific recordkeeping requirements, including such measures as authorization for an audit or other verification of a lawyer trust account.”).

40. Gabriel J. Chin, Scott C. Wells, *Can a Reasonable Doubt Have an Unreasonable Price? Limitations on Attorneys’ Fees in Criminal Cases*, 41 B.C. L. REV. 1, 3 (1999) (“[T]he authors have found no clear evidence that even one civil lawyer has ever been disciplined simply for charging a fee which was too high.”).

41. *Id.* (“[L]awyers are frequently disciplined for improprieties in connection with fees, such as misleading a client about how much a matter will cost, doing unnecessary work or lying about work performed.”).

avoidance 10% overall average 13.5%; litigation sanctions 5%, overall average 6%; and market-reasons 17%, overall average 17%).

Question 6. Maintaining procedures for meeting deadlines implicates litigation sanctions more than the other topics, with missing court deadlines being predictable ways of drawing court sanctions for delay, for obstructing discovery, for missing filing deadlines and the like. Not surprisingly, litigation sanctions reach their peak as a motivator on this topic (11%, almost double its average motivation of 6%). Avoiding discipline and market reasons are close to their overall averages at 12% and 16% respectively. Malpractice motivations, a likely consequence of missing deadlines, similar to litigation sanctions, reaches its peak on this topic (21% of the motivation weight compared to its average of 13.5%). Doing the right thing absorbs the loss of motivation from the peaks of malpractice avoidance and litigation sanction avoidance, falling to by far its lowest level, 32%, still the single greatest motivator on this as on every other topic.

D. *Differences by Age, Gender, Practice Size and Type*

Additional statistical tests were run on the data to determine if there are significant differences in responses based on age, gender, practice size and whether the lawyer is a litigator or non-litigator.

The sampling frame for the respondents was provided by the Virginia State Bar and contained upwards of 6,000 email addresses. Many of those emails, however, were no longer valid and resulted in undeliverable messages. The first wave of surveys went out in November and a follow-up to non-respondents was sent in December. At the end of data collection, we had received 347 valid responses. The independent variables were firm size, gender, age, and practice area. The dependent variables were the series of motivations⁴² for engaging in specific behaviors.⁴³ The two measures asking about attracting clients were combined into a "market" motivation and the two measures asking about malpractice were combined.

We analyzed the data using a one-way ANOVA (Analysis of Variance)

42. For example, "avoid disciplinary sanctions," "avoid malpractice liability," "satisfy the requirements of our malpractice carrier," "avoid judicial and other litigation sanctions," "retain the continued business of our clients," "attract new clients by word of mouth from satisfied clients," and "do the right thing without regard for other consequences."

43. For example, conflict checks, training staff, client trust accounts, not overcharging clients, protecting client information, and using case management software.

between groups.⁴⁴ We tested for the assumption of homogeneity-of-variance using Levene's test.⁴⁵ We examined Welch and Brown-Forsythe when the assumption was not met.⁴⁶

The statistically significant differences are reported on the following tables. Other differences in the response data lacked statistical significance.

Table 1: Litigator vs. Non-Litigator

Dependent	Independent	N	Mean	SD	Sig.
CONFLICT_D_SANCTION	NonLitigator	38	8.84	11.481	.010
	Litigator	107	15.71	19.311	
CONFLICT_JL_SANCTION	NonLitigator	38	4.21	6.527	.002
	Litigator	107	9.71	14.448	
TRAINING_JL_SANC	NonLitigator	38	2.37	4.612	.002
	Litigator	107	6.65	11.594	
TRUSTS_MALPRACTICE	NonLitigator	38	8.45	13.192	.017
	Litigator	107	15.59	20.848	
TRUSTS_RIGHT	NonLitigator	38	48.50	38.936	.031
	Litigator	107	32.40	37.552	
OVERCHARGING_RIGHT	NonLitigator	38	64.68	35.362	.021
	Litigator	107	48.39	39.297	
CLIENT_INFO_JL_SANCTION	NonLitigator	38	1.71	4.073	.006
	Litigator	107	4.83	9.303	
CASE_MG_JL_SANCTION	NonLitigator	38	2.89	6.939	.003
	Litigator	107	12.12	18.519	

44. See *Engineering Statistics Handbook – 1.3.5.4 One-Factor ANOVA*, NAT'L INST. OF STANDARDS AND TECH. – INFO. TECH. LABORATORY, <http://www.itl.nist.gov/div898/handbook/eda/section3/eda/section3/eda354.htm> (last visited Apr. 1, 2014) (explaining that one-factor ANOVA determines whether one factor has a significant effect on multiple groups of data).

45. See *Engineering Statistics Handbook – 1.3.5.10 Levene Test for Equality of Variances*, NAT'L INST. OF STANDARDS AND TECH. – INFO. TECH. LABORATORY, <http://www.itl.nist.gov/div898/handbook/eda/section3/eda35a.htm> (last visited Apr. 1, 2014) ("Levene's test is used to test of k samples have equal variances. Equal variances across samples are called homogeneity of variance. Some statistical tests, for example the analysis of variance, assume that variances are equal across groups or samples. The Levene test can be used to verify that assumption." (internal citation omitted)).

46. Welch is reported in the summary tables.

Table 2: Firm Size

Dependent	Independent	N	Mean	SD	Sig.
TRUSTS_RIGHT	1-5	199	39.96	37.648	.003
	6-25	66	23.98	33.027	
	26+	78	29.36	38.058	
OVERCHARGING_RIGHT	1-5	199	50.75	38.383	.002
	6-25	66	32.44	35.694	
	26+	78	43.95	40.348	

Table 3: Gender

Dependent	Independent	N	Mean	SD	Sig.
TRAINING_MARKET	Male	221	13.97	21.039	.022
	Female	121	20.59	27.559	
TRAINING_RIGHT	Male	221	43.45	35.755	.040
	Female	121	35.07	35.828	

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Table 4 : Age

Dependent	Independent	N	Mean	SD	Sig.
CONFLICT_JL_SANCTION	<30	17	19.71	20.499	.010
	30-49	126	9.07	12.447	
	50+	197	6.41	9.714	
CONFLICT_RIGHT	<30	17	17.06	27.332	.003
	30-49	126	36.98	35.490	
	50+	197	42.41	34.197	
TRAINING_JL_SANC	<30	17	14.00	13.537	.001
	30-49	126	7.74	11.614	
	50+	197	3.91	7.754	
TRAINING_RIGHT	<30	17	18.76	28.554	.008
	30-49	126	39.40	36.399	
	50+	197	43.21	35.769	
TRUSTS_MALPRACTICE	<30	17	27.65	23.791	.032
	30-49	126	11.32	15.651	
	50+	197	12.24	17.639	
TRUSTS_JL_SANCTION	<30	17	12.94	15.110	.044
	30-49	126	5.17	9.122	
	50+	197	3.94	8.374	
TRUSTS_RIGHT	<30	17	13.24	22.426	.001
	30-49	126	31.75	37.539	
	50+	197	38.45	37.795	
OVERCHARGING_RIGHT	<30	17	17.94	30.724	.001
	30-49	126	43.55	39.589	
	50+	197	49.62	37.926	
CLIENT_INFO_MALPRACTICE	<30	17	21.12	16.583	.025
	30-49	126	9.21	13.017	
	50+	197	9.59	13.965	
CLIENT_INFO_JL_SANCTION	<30	17	13.94	12.602	.003
	30-49	126	5.43	9.299	
	50+	197	3.57	7.823	
CLIENT_INFO_RIGHT	<30	17	25.41	27.998	.001
	30-49	126	51.84	35.814	
	50+	197	54.63	36.983	
CASE_MG_MALPRACTICE	<30	17	10.29	12.805	.001
	30-49	126	13.62	17.474	
	50+	197	21.77	24.861	
CASE_MG_JL_SANCTION	<30	17	16.94	18.767	.043
	30-49	126	11.06	17.214	
	50+	197	7.62	13.274	

1. Not surprisingly, litigators responded somewhat broadly with greater sensitivity to the litigation-sanction motivation. They also responded with slightly less sensitivity to the do-the-right-thing motivation.

On four of the six topics, they responded that they were motivated by litigation sanction to a greater degree than non-litigators. One likely explanation is that they practice in court settings and naturally have more concern for the obviously greater likelihood of experiencing litigation sanctions than the non-litigators. The significance score for these differences is high (.002, .002, .003, and .006).

On two of the six topics, they expressed less sensitivity for doing the right thing than non-litigators. The two topics, managing trust accounts and overcharging, may be less closely related to their litigation functions than the other four topics. The significance score for these two differences is much more modest than the four litigation sanction differences (.021 and .031).

2. Only two sets of responses varied significantly by firm size, with small-practice lawyers favoring the do-the-right-thing response on the managing trust accounts and overcharging topics.

3. The gender-related differences were quite modest. Women respondents had a slightly heightened sensitivity to market forces, but only as related to the single topic of training staff. Additionally, they had a slightly reduced sensitivity to doing the right thing with respect to only the same topic, training staff. In light of the age difference on the same topic with older lawyers favoring the "do-the-right-thing" response, this result may be explained by the relatively younger population of women in the group of respondents and the bar generally. The gender differences were of no particular note in the end, meaning there was almost no statistical significance to the responses given based on gender.

4. The most significant and broad response differences were found based on the age of the respondents. By significant margins and with high significance scores, older lawyers say they are motivated more by doing the right thing and younger lawyers say they are motivated by the range of legal sanctions, including discipline, malpractice, and litigation sanctions. These differences were not confined to a few of the six topics questioned, but instead applied to each and every one of the six, although the sharpness of the difference was more pronounced in some topics and less in others.

IV. CONCLUSION

It appears that lawyers care more about avoiding discipline in predictable areas, such as maintenance of trust accounts, than in most areas. By contrast, they seem to care very little about bar discipline in areas of historical non-enforcement, such as fees. They seem to evaluate the likelihood and gravity of discipline consistently with general knowledge about the application of discipline in some areas covered by the codes more than other areas.

Overall, malpractice avoidance may be no greater motivation than discipline, but in predictable areas, it is the substantially greater motivator. Likewise, litigation sanctions are a modest motivator except in areas most likely to produce them.

The market for clients is a more powerful motivator than any law-related motivator, and doing the right thing is by far the greatest single motivator of ethical conduct.

All in all, lawyers appear to behave quite rationally, being motivated by the law and the control devices most likely to be triggered by particular categories of misconduct.

Gender and firm size appear to have little or no effect on the responses. By contrast, the litigation or non-litigation nature of practice, and especially age, do appear to make significant differences in the responses. Older lawyers appear to be more motivated by doing the right thing and younger lawyers more on various legal sanctions.

The findings from this survey match well the predictions that would be made by most legal ethics teachers and scholars. Our hope is that these findings will spur further research.

Appendix A

The goal of this survey is to explore the motivation of lawyers for acting ethically. All responses will be anonymous and will never be linked back to the individual respondent. The survey is being conducted for academic purposes only and will not be shared with any state bar or agency. This survey is not being funded by any state bar or agency. If you have any concerns or questions, feel free to contact one of the researchers . . .

For each of the following behaviors, distribute 100 points to represent the relative importance of each reason. The column of percentages for each question should sum to 100%.

1. Having conflict check procedures
 - _____ % To avoid disciplinary sanctions
 - _____ % To avoid malpractice liability
 - _____ % To satisfy the requirements of their malpractice carrier
 - _____ % To avoid judicial and other litigation sanctions
 - _____ % To retain the continued business of their clients
 - _____ % To attract new clients by word of mouth from satisfied clients
 - _____ % To do the right thing without regard for other consequences
 - _____ % Another reason not listed about (please specify) _____

Comments:

-
2. Training staff to be sensitive to confidentiality issues and such,
 - _____ % To avoid disciplinary sanctions
 - _____ % To avoid malpractice liability
 - _____ % To satisfy the requirements of their malpractice carrier
 - _____ % To avoid judicial and other litigation sanctions
 - _____ % To retain the continued business of their clients
 - _____ % To attract new clients by word of mouth from satisfied clients
 - _____ % To do the right thing without regard for other consequences
 - _____ % Another reason not listed about (please specify) _____

Comments:

-
3. Maintaining proper client trust accounts
 - _____ % To avoid disciplinary sanctions
 - _____ % To avoid malpractice liability
 - _____ % To satisfy the requirements of their malpractice carrier
 - _____ % To avoid judicial and other litigation sanctions
 - _____ % To retain the continued business of their clients
 - _____ % To attract new clients by word of mouth from satisfied clients

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_____% To do the right thing without regard for other consequences
 _____% Another reason not listed about (please specify)_____

Comments:

4. Not overcharging clients

_____% To avoid disciplinary sanctions
 _____% To avoid malpractice liability
 _____% To satisfy the requirements of their malpractice carrier
 _____% To avoid judicial and other litigation sanctions
 _____% To retain the continued business of their clients
 _____% To attract new clients by word of mouth from satisfied clients
 _____% To do the right thing without regard for other consequences
 _____% Another reason not listed about (please specify)_____

Comments:

5. Protecting client information

_____% To avoid disciplinary sanctions
 _____% To avoid malpractice liability
 _____% To satisfy the requirements of their malpractice carrier
 _____% To avoid judicial and other litigation sanctions
 _____% To retain the continued business of their clients
 _____% To attract new clients by word of mouth from satisfied clients
 _____% To do the right thing without regard for other consequences
 _____% Another reason not listed about (please specify)_____

Comments:

6. Using case management or other tools to meet filing and other deadlines

_____% To avoid disciplinary sanctions
 _____% To avoid malpractice liability
 _____% To satisfy the requirements of their malpractice carrier
 _____% To avoid judicial and other litigation sanctions
 _____% To retain the continued business of their clients
 _____% To attract new clients by word of mouth from satisfied clients
 _____% To do the right thing without regard for other consequences
 _____% Another reason not listed about (please specify)_____

Comments:

Please provide us some information about yourself to aid in our analysis

of the motivations for ethical conduct.

7. Which of the following best describes your legal occupation or classification?

- Sole practitioner
- Partner/shareholder
- Associate
- Managing partner
- Practitioner with one or more associates
- Of counsel
- State government attorney
- Local government attorney
- Federal government attorney
- Judge
- Corporate counsel
- Legal aid/legal service
- Other position (please specify) _____

8. What is the total number of attorneys in your firm or office?

- One attorney
- 2 to 5 attorneys
- 6 to 10 attorneys
- 11 to 25 attorneys
- Over 25 attorneys

9. What is your primary practice area?

- General (no one area greater than 50% of practice)
- Bankruptcy
- Business/corporate
- Civil litigation – defense
- Civil litigation – plaintiff
- Criminal – defense
- Criminal – prosecution
- Estate planning
- Family law
- Government lawyer (non-criminal)
- Immigration
- Intellectual property/patent
- Labor/employment
- Real estate/land use/environmental
- Tax
- Workers' compensation
- Other (please specify) _____

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Why Lawyers Do What They Do

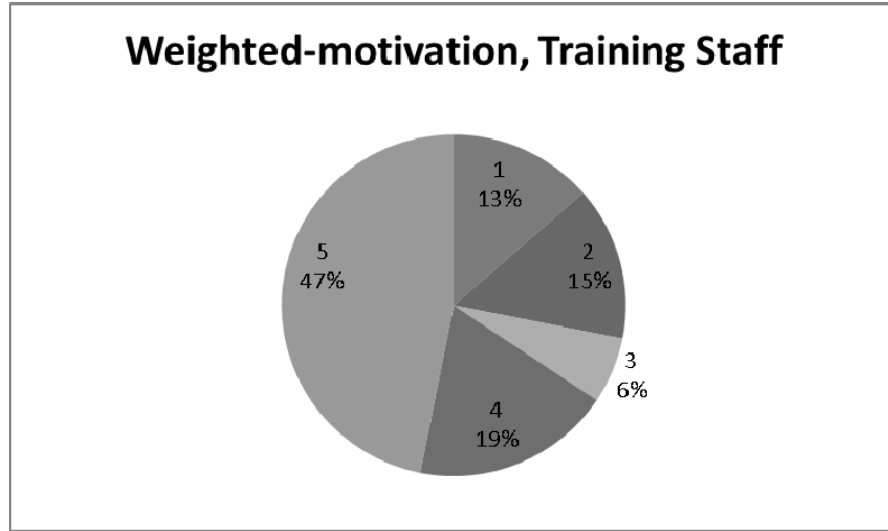
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10. Gender
 Female
 Male
11. Age
 Under 30
 30-39
 40-49
 50-59
 60 or above

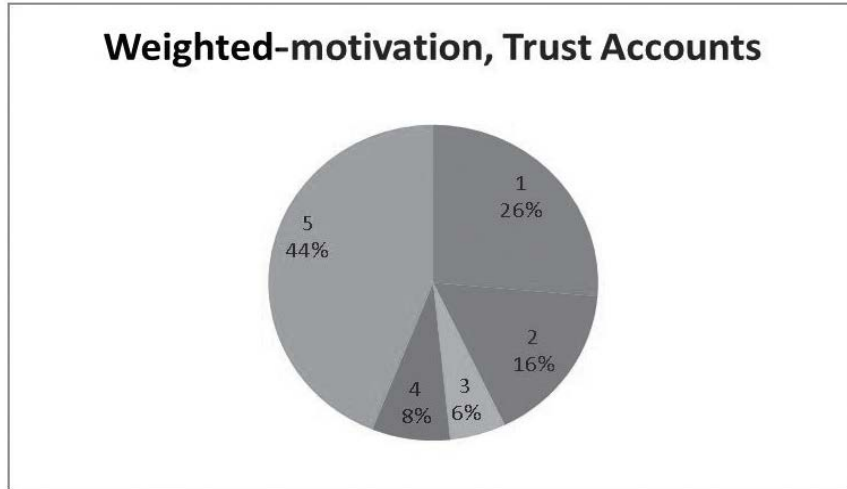
Appendix B

Weighted-Motivation Chart and Graphs

	Total weight	Discipline (%)	Malpractice (%)	Litigation Sanctions (%)	Market Motivations (%)	Doing the Right Thing (%)
Question 1	32100	15%	19%	9%	11%	42%
Question 2	31400	13	14	6	18	45
Question 3	30100	24	15	5	7	40
Question 4	31200	3	2	2	34	51
Question 5	33800	12	10	5	17	53
Question 6	30500	12	21	11	16	32
Overall		13	13.5	6	17	44



- 1. Discipline
- 2. Malpractice
- 3. Litigation Sanctions
- 4. Market Motivations
- 5. Doing the Right Thing

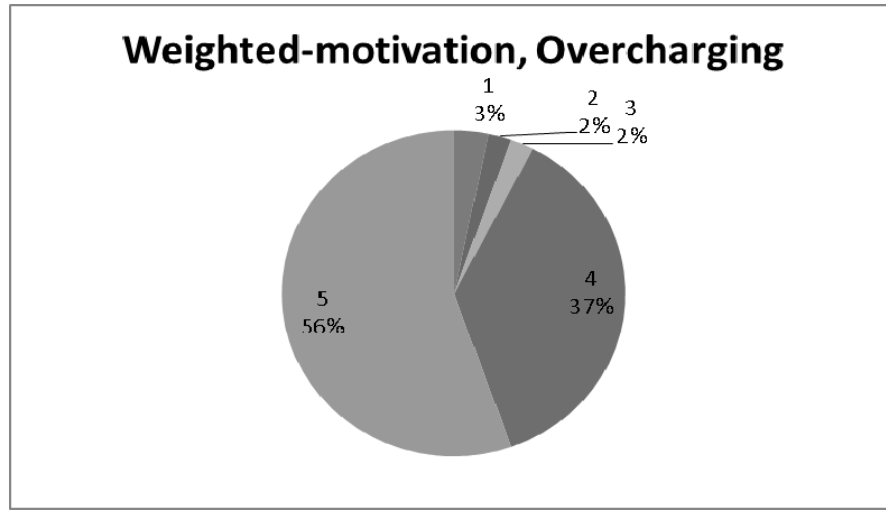


- 1. Discipline
- 2. Malpractice
- 3. Litigation Sanctions
- 4. Market Motivations
- 5. Doing the Right Thing

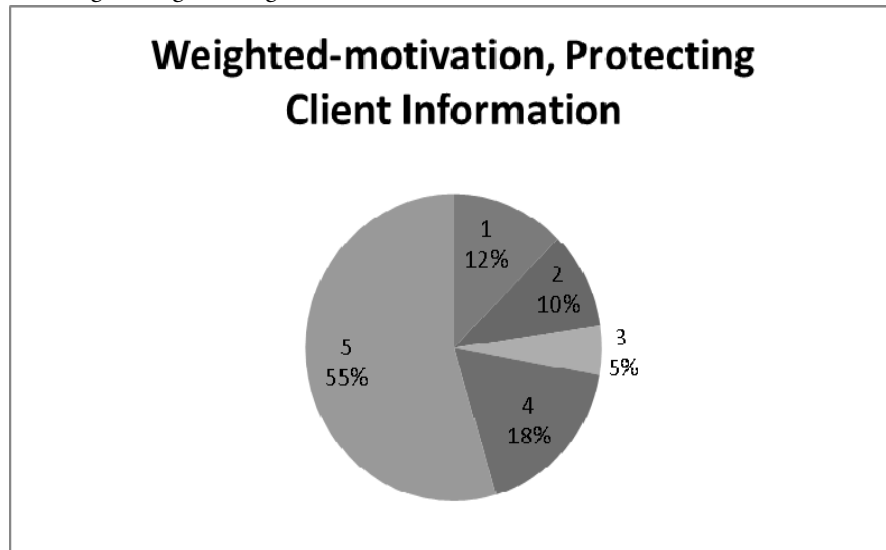
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Why Lawyers Do What They Do

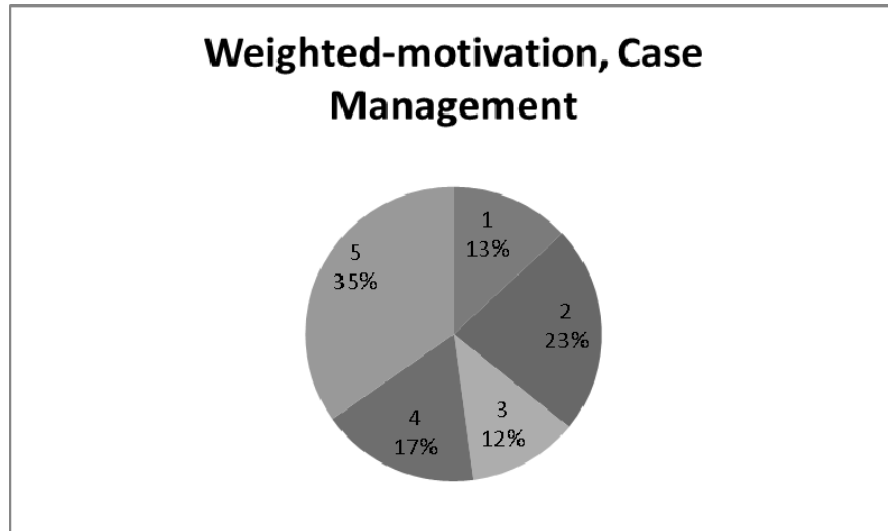
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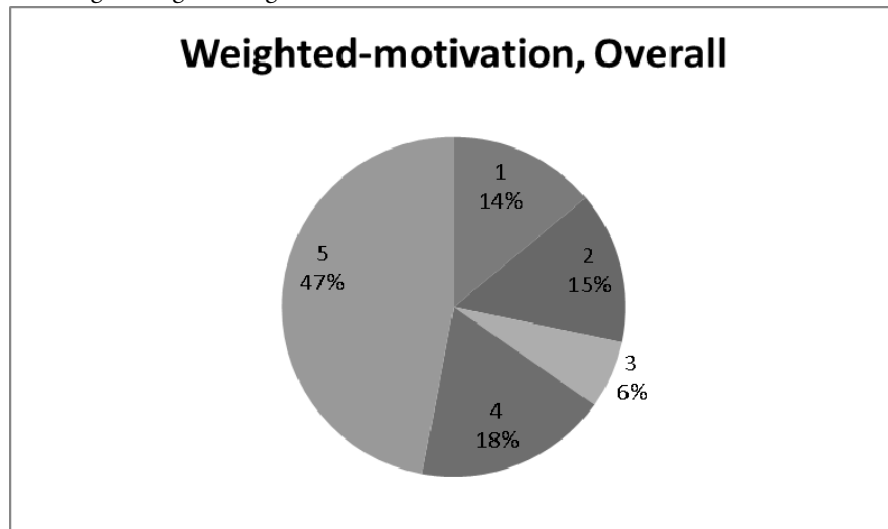
1. Discipline
2. Malpractice
3. Litigation Sanctions
4. Market Motivations
5. Doing the Right Thing



1. Discipline
2. Malpractice
3. Litigation Sanctions
4. Market Motivations
5. Doing the Right Thing



1. Discipline
2. Malpractice
3. Litigation Sanctions
4. Market Motivations
5. Doing the Right Thing



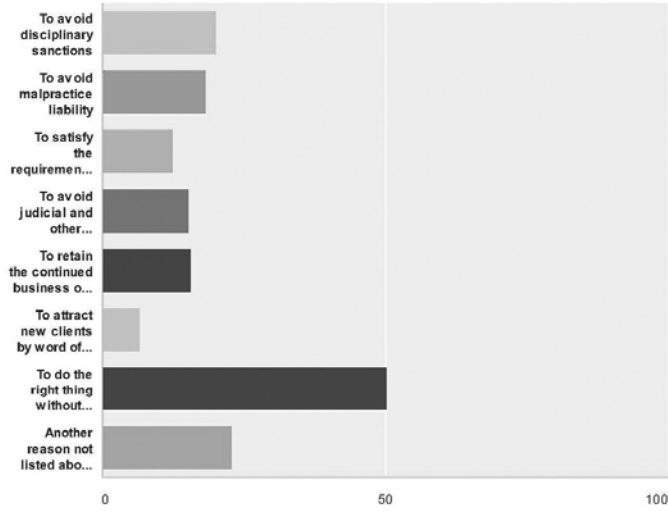
1. Discipline
2. Malpractice
3. Litigation Sanctions
4. Market Motivations
5. Doing the Right Thing

Appendix C

Lawyer Ethics Survey

Q1 [1] Having conflict check procedures

Answered: 321 Skipped: 26



Answer Choices	Average Number	Total Number	Responses
To avoid disciplinary sanctions	20	4,743	235
To avoid malpractice liability	18	3,919	215
To satisfy the requirements of our malpractice carrier	12	2,091	168
To avoid judicial and other litigation sanctions	15	2,801	183
To retain the continued business of our clients	16	2,636	167
To attract new clients by word of mouth from satisfied clients	7	827	122
To do the right thing without regard for other consequences	50	13,568	270
Another reason not listed above (please specify in the comment box below)	23	1,515	66
Total Respondents: 321			

Lawyer Ethics Survey

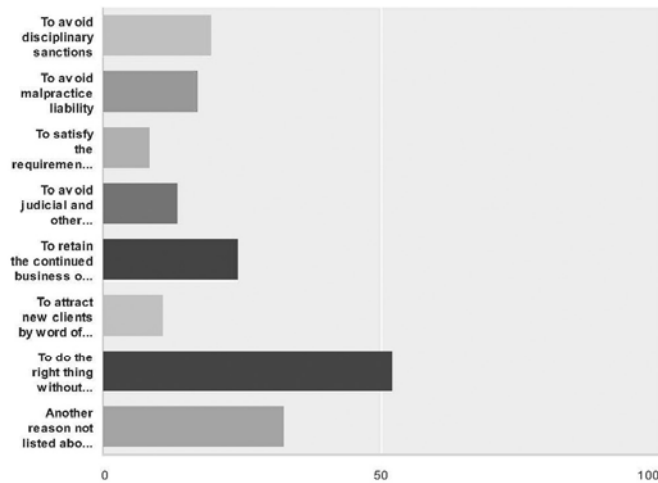
Q2 [1A] If you answered "Another Reason" for the question above, please specify the reason here. Also, provide any additional comment(s) for the question above.

Answered: 38 Skipped: 309

Lawyer Ethics Survey

Q3 [2] Training staff to be sensitive to confidentiality issues and such

Answered: 314 Skipped: 33



Answer Choices	Average Number	Total Number	Responses
To avoid disciplinary sanctions	20	4,019	205
To avoid malpractice liability	17	3,211	187
To satisfy the requirements of our malpractice carrier	8	1,032	122
To avoid judicial and other litigation sanctions	13	1,984	147
To retain the continued business of our clients	24	4,270	176
To attract new clients by word of mouth from satisfied clients	11	1,333	122
To do the right thing without regard for other consequences	52	14,022	270
Another reason not listed above (please specify in the comment box below)	33	1,529	47
Total Respondents: 314			

Lawyer Ethics Survey

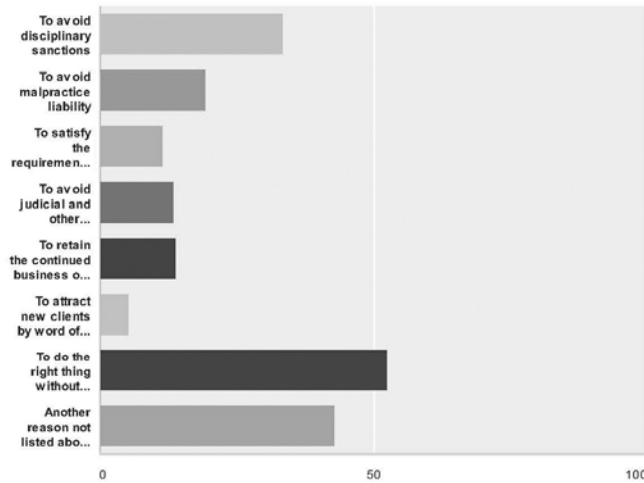
Q4 [2A] If you answered "Another Reason" for the question above, please specify the reason here. Also, provide any additional comment(s) for the question above.

Answered: 29 Skipped: 318

Lawyer Ethics Survey

Q5 [3] Maintaining proper client trust accounts

Answered: 301 Skipped: 46



Answer Choices	Average Number	Total Number	Responses
To avoid disciplinary sanctions	33	7,294	219
To avoid malpractice liability	19	3,049	158
To satisfy the requirements of our malpractice carrier	12	1,358	117
To avoid judicial and other litigation sanctions	14	1,648	122
To retain the continued business of our clients	14	1,624	116
To attract new clients by word of mouth from satisfied clients	5	426	79
To do the right thing without regard for other consequences	52	12,051	230
Another reason not listed above (please specify in the comment box below)	43	2,650	62
Total Respondents: 301			

Lawyer Ethics Survey

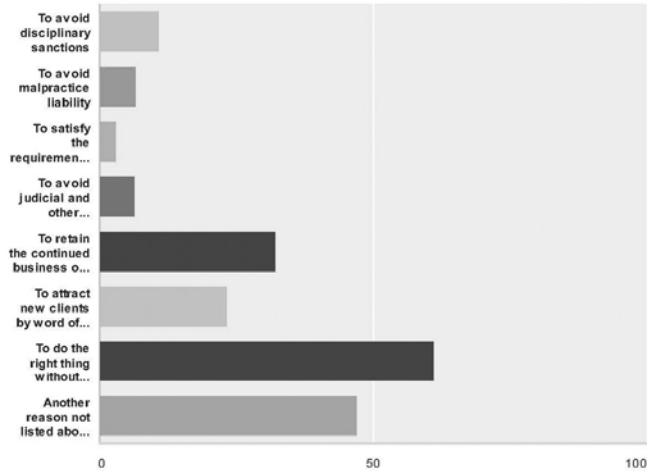
Q6 [3A] If you answered "Another Reason" for the question above, please specify the reason here. Also, provide any additional comment(s) for the question above.

Answered: 47 Skipped: 300

Lawyer Ethics Survey

Q7 [4] Not overcharging clients

Answered: 312 Skipped: 35



Answer Choices	Average Number	Total Number	Responses
To avoid disciplinary sanctions	11	1,033	95
To avoid malpractice liability	7	537	81
To satisfy the requirements of our malpractice carrier	3	216	71
To avoid judicial and other litigation sanctions	7	528	81
To retain the continued business of our clients	32	6,402	199
To attract new clients by word of mouth from satisfied clients	23	4,030	172
To do the right thing without regard for other consequences	61	15,818	259
Another reason not listed above (please specify in the comment box below)	47	2,636	56
Total Respondents: 312			

Lawyer Ethics Survey

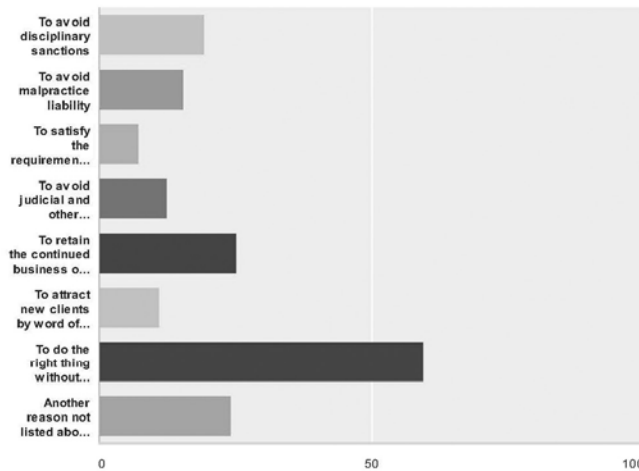
Q8 [4A] If you answered "Another Reason" for the question above, please specify the reason here. Also, provide any additional comment(s) for the question above.

Answered: 47 Skipped: 300

Lawyer Ethics Survey

Q9 [5] Protecting client information

Answered: 338 Skipped: 9



Answer Choices	Average Number	Total Number	Responses
To avoid disciplinary sanctions	19	3,902	202
To avoid malpractice liability	16	2,605	168
To satisfy the requirements of our malpractice carrier	7	814	110
To avoid judicial and other litigation sanctions	13	1,624	129
To retain the continued business of our clients	25	4,554	181
To attract new clients by word of mouth from satisfied clients	11	1,324	119
To do the right thing without regard for other consequences	59	17,942	302
Another reason not listed above (please specify in the comment box below)	24	1,035	43
Total Respondents: 338			

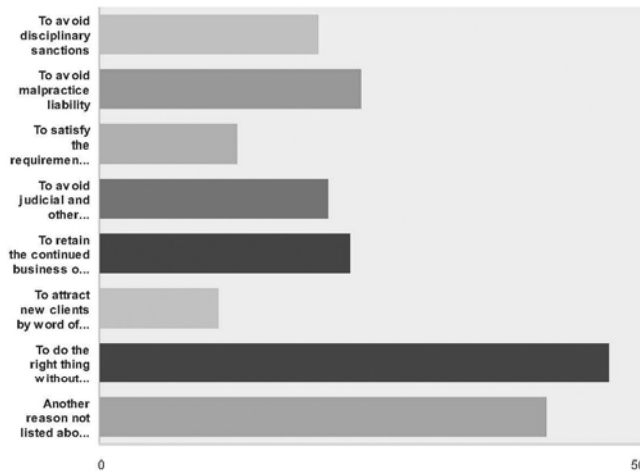
Lawyer Ethics Survey

Q10 [5A] If you answered "Another Reason" for the question above, please specify the reason here. Also, provide any additional comment(s) for the question above.

Answered: 20 Skipped: 327

Q11 [6] Using case management or other tools to meet filing and other deadlines

Answered: 305 Skipped: 42



Answer Choices	Average Number	Total Number	Responses
To avoid disciplinary sanctions	20	3,656	182
To avoid malpractice liability	24	4,793	200
To satisfy the requirements of our malpractice carrier	13	1,547	122
To avoid judicial and other litigation sanctions	21	3,257	155
To retain the continued business of our clients	23	3,630	158
To attract new clients by word of mouth from satisfied clients	11	1,174	107
To do the right thing without regard for other consequences	47	9,704	208
Another reason not listed above (please specify in the comment box below)	41	2,739	67
Total Respondents: 305			

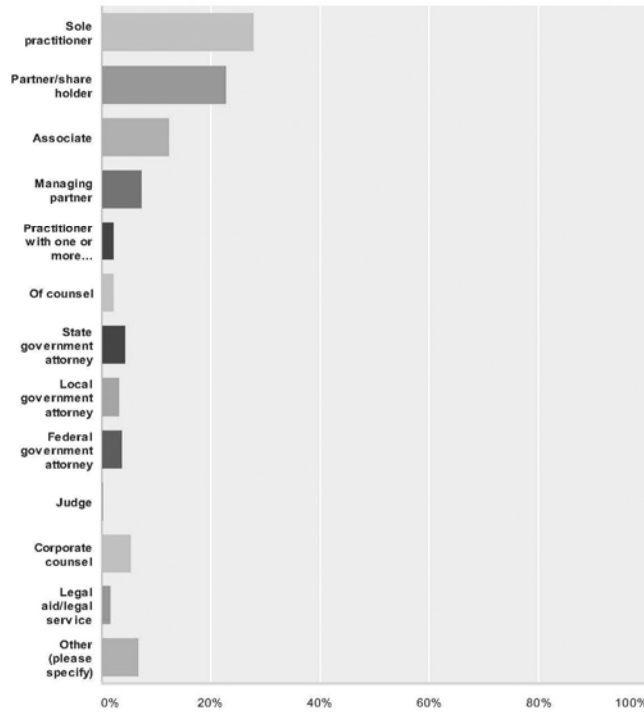
Lawyer Ethics Survey

Q12 [6A] If you answered "Another Reason" for the question above, please specify the reason here. Also, provide any additional comment(s) for the question above.

Answered: 48 Skipped: 299

Q13 [7] Which of the following best describes your legal occupation or classification?

Answered: 343 Skipped: 4



Answer Choices	Responses
Sole practitioner	27.70% 95
Partner/shareholder	22.74% 78
Associate	12.24% 42
Managing partner	7.29% 25

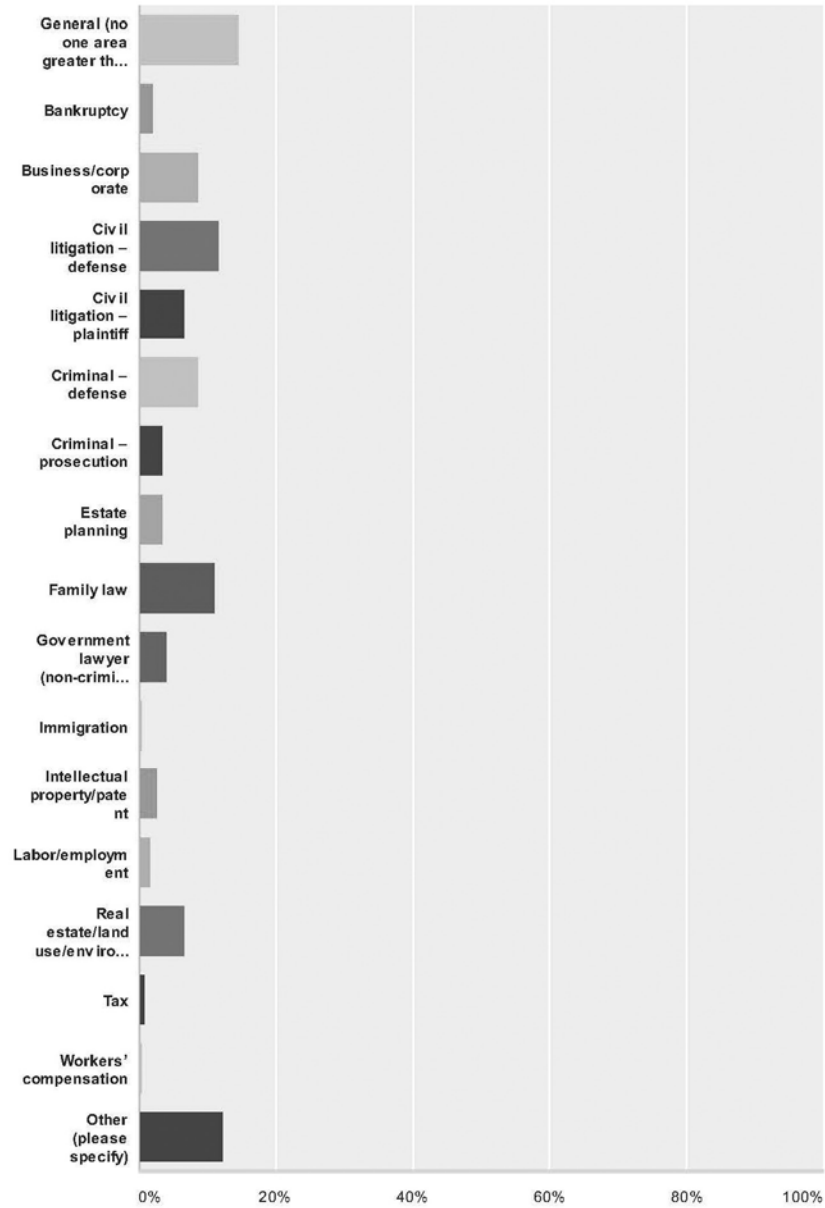
Lawyer Ethics Survey

Practitioner with one or more associates	2.33%	8
Of counsel	2.33%	8
State government attorney	4.37%	15
Local government attorney	3.21%	11
Federal government attorney	3.79%	13
Judge	0.29%	1
Corporate counsel	5.25%	18
Legal aid/legal service	1.75%	6
Other (please specify)	6.71%	23
Total		343

Lawyer Ethics Survey

Q14 [8] What is your primary practice area?

Answered: 343 Skipped: 4



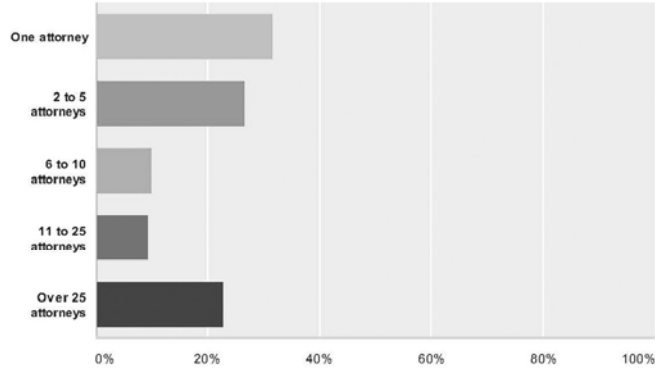
Lawyer Ethics Survey

Answer Choices	Responses	
General (no one area greater than 50% of practice)	14.58%	50
Bankruptcy	2.04%	7
Business/corporate	8.75%	30
Civil litigation – defense	11.66%	40
Civil litigation – plaintiff	6.71%	23
Criminal – defense	8.75%	30
Criminal – prosecution	3.50%	12
Estate planning	3.50%	12
Family law	11.08%	38
Government lawyer (non-criminal)	4.08%	14
Immigration	0.58%	2
Intellectual property/patent	2.62%	9
Labor/employment	1.75%	6
Real estate/land use/environmental	6.71%	23
Tax	0.87%	3
Workers' compensation	0.58%	2
Other (please specify)	12.24%	42
Total		343

Lawyer Ethics Survey

Q15 [9] What is the total number of attorneys in your firm or office?

Answered: 343 Skipped: 4

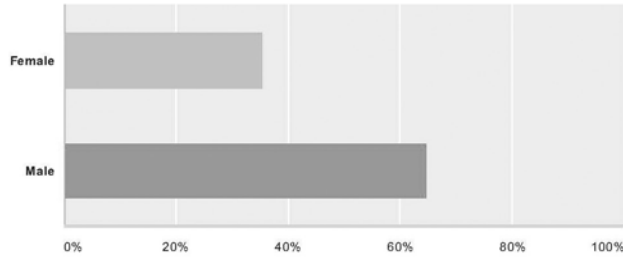


Answer Choices	Responses	
One attorney	31.49%	108
2 to 5 attorneys	26.53%	91
6 to 10 attorneys	9.91%	34
11 to 25 attorneys	9.33%	32
Over 25 attorneys	22.74%	78
Total		343

Lawyer Ethics Survey

Q16 [10] Gender

Answered: 342 Skipped: 5

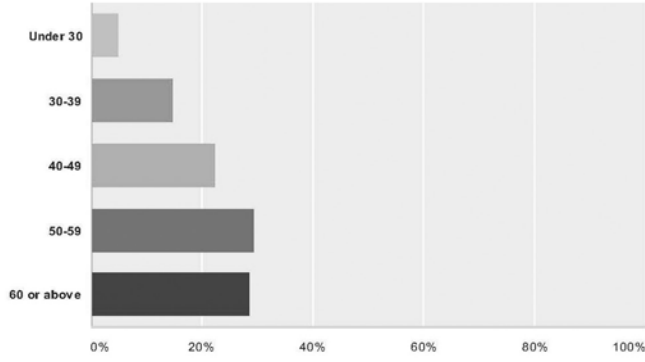


Answer Choices	Responses	
Female	35.38%	121
Male	64.62%	221
Total		342

Lawyer Ethics Survey

Q17 [11] Age

Answered: 340 Skipped: 7



Answer Choices	Responses	
Under 30	5%	17
30-39	14.71%	50
40-49	22.35%	76
50-59	29.41%	100
60 or above	28.53%	97
Total		340

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Why Lawyers Do What They Do

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