

TESTIMONY IN SUPPORT OF HOUSE BILL 292/SENATE BILL 555 CONCERNING OCCUPATIONAL LICENSING BOARDS AND COMMISSION ON JUDICIAL DISABILITIES

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My name is Carolyn Elefant. I own a small law firm, the Law Offices of Carolyn Elefant and was admitted to practice in Maryland in May 2000. In addition to running my own law firm, I am founder and publisher of MyShingle.com, dedicated to celebrating and empowering solo and small firm lawyers and which has earned me national recognition as “the patron saint of solo and small firm lawyers.”

I submit this testimony in support of the requirement in [House Bill 292](#)/Senate Bill 555 that professional licensing boards file an annual report that discloses the gender, race and nature of the penalty for each disciplinary action taken but urge that the legislation be clarified to ensure that the disclosure requirement applies to the Attorney Grievance Commission and the Office of Bar Counsel which both play a role in lawyer disciplinary actions in Maryland. As I explain below, disclosure of the race, gender and size of law firms targeted is the first step to addressing the pervasive bias by the grievance committee and Bar Counsel against solo and small practitioners and lawyers of color. In the words of management consultant Peter Drucker, “If you can’t measure it, you can’t manage it” - and until the legal profession begins to employ data to measure the true extent of bias, we cannot fully understand or solve the problem.

I. Why Addressing Bias Against Solos/Smalls and Lawyers of Colors Matters Now More Than Ever

Disciplinary bias against small and specifically, solo law firms has been documented for decades. In fact, one of my first feature articles on MyShingle penned in February 2003 was titled [The Bar’s Dirty Little Not So Secret Secret: Disciplinary Systems Discriminate Against Solo Law Firms](#). Other scholarship reaches similar conclusions.¹ In many

¹ See Jennifer Gerarda Brown & Liana G.T. Wolf, *The Paradox and Promise of Restorative Attorney Discipline*, 12 NEV. L.J. 1, 254-55 (2012)(noting that solo and small firm lawyers are disproportionately disciplined in comparison to large firm lawyers); Deborah J. Merritt, [Bar Exam Scores and Lawyer Discipline](#), LAW SCHOOL CAFÉ (June 3, 2017), (noting that over 90% of discipline is against solo and small firm practitioners); L. Levin, [The Ethical World of Solo & Small Firm Practitioners](#) (2004)(describing greater number of disciplinary actions against solos and smalls).

instances, solos and smalls are disciplined for relatively low-level acts of omission - failure to return phone calls or promptly refund a disputed fee.²

More recently and to their credit, several states have launched investigations of claims of racial bias in lawyer disciplinary proceedings. A November 2019 [Report](#) by the California Bar found racial disparities in attorney discipline, with black, male attorneys most frequently subject of disciplinary actions and harsher penalties.³ And recent research by New Mexico and Illinois bar regulators revealed that African American and Hispanic attorneys are disproportionately sanctioned.⁴

Although Maryland has not released formal reports on bias, through my blog, I have learned of several disciplinary actions in Maryland where the harsh outcome, in my view, are explained in part due to the race of the attorney or small size of the law firm involved. Maryland, however, unlike the states mentioned above does not make disciplinary statistics on discipline available so it is impossible to assess the full extent of the anecdotal evidence on bias well-known to many Maryland practitioners..

Although state-sanctioned bias is never acceptable, the consequences are far worse at this juncture in the legal profession's history. As I have written many times at MyShingle, private law firms have proven themselves utterly incapable of improving [gender](#) and [racial](#) diversity in partnership ranks where it actually counts. Consequently, [women](#) and [minority lawyers](#) are increasingly turning to law firm ownership to achieve the career satisfaction, power, respect and influence that is unattainable at biglaw. So when regulators disproportionately crack down on solo and small law firms, they block the last viable path for success for many women and minority lawyers.

II. We Can Only Manage That Which We Can Measure

House Bill 292 does not cure the problem of bias but it would yield the type of data available in states like California to enable the legal profession to begin to understand the nature and extent of the problem by requiring licensing boards to collect data on the

² M. Markovic, [Protecting the Guild or Protecting the Public?](#) (SSRN, posted/revised December 2021).

³ See *California Report*, *supra* and ABA Journal story, online at <https://www.abajournal.com/news/article/california-bar-study-finds-racial-disparities-in-lawyer-discipline>.

⁴N. Leong, [State Court Diversity and Attorney Discipline](#), 89 Fordham L.Rev. Issue 4 (2020) at n. 51.

gender and race of those disciplined. Although House Bill 292 does not expressly require collection and disclosure of data on law firm size, that metric should also be included since as I have described, solo and small firm lawyers are frequently targeted.

With data on the nature of disciplinary charges, we can also assess whether complaints resulted from bonafide bad acts and lawyer greed, disgruntled clients seeking retribution for a bad outcome that was no fault of their attorney or benign office management mishaps that are easily rectified with technology training or practice management courses. Data disclosure and transparency can thus be used to improve the profession and support the solo and small firm lawyers who help expand access to justice to individuals who cannot afford large firms.

My final recommendation for HB 292 would be to draft it to ensure that it applies to all of the many bodies involved in lawyer discipline. In contrast to other professionals, lawyers are governed by the Board of Bar Examiners, the Attorney Grievance Committee and Bar Counsel - and the bill should make clear that every agency involved in lawyer discipline should be subject to disclosure requirements, and not just the licensing board.

Thank you for the opportunity to submit this testimony both written and before the Committee. I may be contacted with additional questions at carolyn@carolynelefant.com