

Promoting Public Protection through an “Attorney Integrity” System: Lessons from the Australian Experience with Proactive Regulation of Lawyers

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One of my favorite cartoons shows a physician encouraging a patient to exercise. The physician says, “What fits your busy schedule better, exercising one hour a day or being dead 24 hours a day?”¹ This cartoon concisely captures the value of acting proactively.

Regulators in Australia have gotten the message. Rather than relying solely on the traditional approach to attorney regulation that relies heavily on complaints-driven systems of prosecuting alleged misconduct after it occurs, they have instituted a regulatory regime to help lawyers develop an “ethical infrastructure” enabling their practices to address the type of conduct that often leads to common consumer concerns. The new system, called “proactive management-based regulation,” has captured the attention of regulators, researchers, and lawyers around the world.

This essay uses the Australian approach as a springboard to discussing the role of proactive regulation of lawyers in advancing public protection. Part I of the essay provides information on the genesis and implementation of the system in Australia. Part II reviews key research findings from empirical studies on the impact of the new system on complaints registered against lawyers and the conduct of lawyers in firms. Part III suggests possibilities for using management-based principles to improve lawyer regulation and conduct in the United States and other jurisdictions. I conclude with a challenge for regulators and regulated persons to transform the heavy reliance on a “disciplinary” approach that largely swoops in after alleged misconduct to an “integrity” system in which lawyers and regulators work in partnership to raise the ethical bar in the interest of public protection.²

Part 1—The Genesis of Management-Based Regulation of Incorporated Legal Practices

The development of the current regulatory regime for incorporated legal practices can be traced to initiatives in Australia to liberalize business structures available to practitioners.³ After debate and study, the Council for the Law Society of New South Wales in Australia (NSW), adopted a resolution concluding that law practices should be able to incorporate and raise capital free from restrictions on the iden-

tity of shareholders.⁴ Within two years, the NSW Parliament enacted legislation allowing legal service providers to incorporate, share revenues and provide legal services alone or alongside other providers (who may or may not be legal practitioners) without any ownership restrictions.⁵ The legislation also permitted law practices to become publicly listed companies.

This legislation paved the way for the Australian personal injury firm of Slater & Gordon to publicly sell stock on the Australian securities exchange.⁶ Despite the publicity that surrounded the first offering of securities, the truly revolutionary change that occurred related to safeguards included in the legislation. Specifically, NSW legislators took the pioneering step of integrating the concept of “ethical infrastructure” into the statute allowing legal practitioners to incorporate their law practices with no restrictions on non-lawyer ownership.

To address questions related to the effect of non-lawyer ownership and limited liability, the statute imposes a number of management safeguards. First, the incorporated legal practice (ILP) must appoint a legal practitioner director to be generally responsible for the management of legal services provided by the firm.⁷ Second, the statute provides that the legal practitioner director must ensure that “appropriate management systems” are implemented and maintained to enable the provision of legal services in accordance with obligations imposed by law.⁸ The failure to implement and maintain appropriate management systems may constitute professional misconduct and can result in legal practitioner directors losing their practicing certificates and liquidation of the legal practice.⁹ Regardless of whether there are any non-lawyer owners, all incorporated legal practices must meet these requirements.

One thing missing in the legislation and legislative history was a definition of “appropriate management systems” (AMS). To examine the meaning of AMS and an approach for implementing the legislation, Steve Mark, the Legal Services Commissioner for NSW (LSC), developed a formal program for interested parties to consider how the legislation should be implemented.¹⁰ The forum included representatives of the Attorney General’s Department, the Law Society of NSW, the professional liability insurer, and lawyers from firms.¹¹ The participants reached a consensus, developing a regulatory framework and approach that would enable ILPs to implement policies and procedures appropriate for their circumstances. Thereafter, Commissioner Steve Mark collaborated with stakeholders to identify ten areas to be addressed in developing management systems.¹² They articulated ten objectives of sound law practice largely based on the types of concerns that trigger complaints against practitioners, such as conflicts of interest and billing practices.¹³

The regulator also devised a strategy requiring that a director with the incorporated firm go through a self-assessment process (SAP) in which the legal practitioner director completes a self-assessment form. The form lists the ten objectives with indicative criteria to assist legal practitioner directors in addressing each objective and demonstrating that the ILP has implemented appropriate management systems.¹⁴ In completing the form, the director rates the firm’s compliance with each of the ten objectives on a scale ranging from “Fully Compliant” to “Non-Compliant.”¹⁵ If a director indicates that the practice is non-compliant or only partially compliant, a representative from the Legal Services Commission works with the firm to achieve compliance.¹⁶

The self-assessment process is referred to as an “education toward compliance” approach because it gives practitioners the incentive to engage in self-examination, as well as tools and guidance that can assist a firm in developing workable systems. Because the approach focuses on prevention and mitigation, Professor Ted Schneyer, the father of the concept of “ethical infrastructure” refers to the NSW program as the prototype for what he referred to as “proactive management based regulation.”¹⁷ Unlike reactive regulation that disciplines lawyers for violating particular rules, the management-based approach assists firms in developing their “ethical infrastructure.”¹⁸ The expectation is that firms’ implementation of management policies and procedures will help firms build on the principles of sound practice and improve client service, while addressing the types of concerns that lead to complaints.

The proactive approach to regulation spread to other states in Australia. For example, the Legal Services Commissioner in Queensland implemented a comprehensive self-assessment program. His office also developed a number of tools for lawyers to use to evaluate and improve their practices.¹⁹

Outside of Australia, Canadian jurisdictions are seriously examining proactive regulation of lawyers. Both the Law Society of Upper Canada in Toronto and the Nova Scotia Barristers’ Society have presented programs and issued study papers for lawyers to learn about proactive regulation of lawyers.²⁰ The Nova Scotia Barristers’ Society has undertaken an extensive review of its regulatory and governance model, examining proactive regulation.²¹ With guidance of the former legal services commissioner in New South Wales, who developed the NSW regulatory regime, the Nova Scotia Barristers’ Society has drafted proposed regulatory objectives and a self-assessment tool that use a proactive management-based approach.²² In addition, the Canadian Bar Association, the national voluntary bar, has posted on its website a self-assessment tool for practitioners.²³

Part II—Research Findings on the Value of Proactive Regulation

One reason that regulators and lawyers are seriously examining proactive regulation is that empirical studies point to the positive impact of the “education towards compliance” approach. The first study involved a comprehensive quantitative analysis of the number of complaints relating to incorporated law practices in NSW. The study found that complaints rates for practitioners in incorporated firms went down by two thirds after the firms completed their initial self-assessment forms.²⁴ Another noteworthy finding was that the complaints rate for firms that completed the self-assessment process was one-third of the number of complaints registered against non-incorporated legal practices that had never completed the self-assessment process.²⁵ The researchers recommended further investigation using other research methods because complaints rates largely reflect consumer service issues and do not address other ethics concerns, such as duties to the courts.²⁶

Having conducted empirical research on law firm peer review and critically written about the traps associated with practicing in limited liability firms, I accepted the call to conduct additional research on the new regulatory regime for incorporated firms. Specifically, I wanted to obtain more data on the impact of the AMS requirement and the self-assessment process and to identify possible measures to improve management-based regulation of firms. To do so, I conducted a mixed method study in 2012, combining a survey and interviews. For the survey, I provided a questionnaire to legal practitioner

directors in 358 incorporated firms with two or more solicitors.²⁷ The survey instrument sought information on approaches, perspectives, effects, and experiences related to the AMS implementation and the self-assessment process.²⁸ In addition, we interviewed forty-one directors from incorporated firms with two or more solicitors.

To obtain data on how the self-assessment process affected ethical norms, systems, conduct, and culture in firms, a starting point was to examine whether the completion of the self-assessment form contributes to the implementation and development of appropriate management systems. For this inquiry, one question asked respondents to identify all the steps taken in connection with the completion of the first self-assessment form. Table 1 sets forth the responses to the question. As expected, the vast majority (84%) reported that they had revised policies and procedures related to the delivery of legal services. Seventy-one percent of the respondents indicated that they had actually revised firm systems, policies and procedures. Close to half (47%) of the respondents reported that they had adopted new systems, policies, and procedures. In terms of encouraging training and initiatives, 29% indicated that their firms devoted more attention to ethics initiatives and 27% implemented more training for firm personnel. Quite simply, these findings point to the positive impact that the self-assessment process has in encouraging firms to examine and improve the firms' management systems, training, and ethical infrastructure. Interestingly, with respect to most steps taken by the firms, there was no significant difference related to firm size and steps taken.²⁹

See Table 1 at the end of this article.

Steps Taken by Firms in connection with the First Completion of the Self-Assessment Process Other survey results also revealed that the self-assessment process served as an educational experience for directors. For example, sixty-two percent of the respondents reported that they agreed or strongly agreed with the following statement: the self-assessment process "was a learning exercise that enabled our firm to improve client service." Only 15% disagreed or strongly disagreed.

Close to half of the respondents indicated that the self-assessment process contributed to consideration of ethics concerns. Forty-eight percent of respondents reported that they agreed or strongly agreed with the following statement: "The SAP prompted firm directors to reflect on ethical conduct" and 44% indicated that they agreed or strongly agreed that the "SAP enhanced awareness of ethics issues."³⁰ Only 23% disagreed or strongly disagreed with that statement. These results are consistent with other findings that suggest that larger percentages of respondents reported that the self-assessment process and the appropriate management systems requirement impacts management and client services matters more than general ethics concerns.³¹

The survey asked respondents to rate the impact of the self-assessment process on different aspects of practice, using the following scale: (1) no impact, (2) some impact, and (3) high impact. The largest percentage of respondents reported that the greatest impact was on matters related to firm management, risk management, and supervision.³² This is to be expected, because the ten objectives largely focus on systems related to practice management and supervision. The perceived impact was less for concerns not covered in the self-assessment form.

The interviews were particularly instructive in providing insights on directors' perspectives on the self-assessment process. Some respondents indicated that they were skeptical of the self-assessment process at the outset, but that their attitudes changed after they completed it.³³ Others noted that the process gave them a handle to convince other firm personnel to get on board in implementing systems.

Various findings indicate that the "education toward compliance" approach effectively provides guidance to directors.³⁴ Some directors reported that they had not thought about particular controls, until they read examples described in the self-assessment form. Those directors were likely to use the form as a template to learn about what is needed to address regulatory requirements. Beyond compliance to satisfy the minimum requirements, a number of respondents expressed interest in obtaining more guidance to improve their practices.

In short, findings from my study revealed that management-based regulation in NSW successfully provides firm directors the incentive, tools, and authority to take steps to improve the delivery of legal services. A significant percentage of directors learned from the process, taking steps to avoid problems and complaints, as suggested by the significant reduction in the number of complaints against firms that completed the process. The quantitative complaints data, coupled with the findings from my study, make a compelling case for exploring proactive regulation of firms.

Part III—Implementing and Encouraging Management-Based Approaches

Although self-assessment tools are available to interested attorneys, most may need some reason to devote time to seriously examining firm practices and to developing management systems. In Australia, the new regulatory regime for incorporated practices required that legal practitioner directors complete a self-assessment form for incorporated firms. In my study, a number of directors indicated that they had questioned or opposed being required to complete the self-assessment process, but that their opinions changed once they completed the process. This experience points to the importance of taking steps to promote the development of systems as part of a risk-management and practice-improvement program.

One approach to doing so is to include management-based approaches in regulatory reforms that relax prohibitions on alternative business structures (ABS). Given the resistance to ABS in the United States and the value of self-examination for all types of firms, regulators and other stakeholders should not await the advent of ABS. Rather a jurisdiction should implement a pilot program using management-based principles. The participants in the pilot program could be volunteers who agree to complete a self-assessment process. To encourage participation in the program, the completion of the self-assessment process could be treated as a possible mitigating factor if firm lawyers later are subject to discipline and the complaint relates to a matter involving practice management.

Short of implementing a new program, a jurisdiction could integrate management-based principles into current regulatory systems by providing incentives for lawyers to examine and improve the firm's policies and procedures related to the delivery of legal services. One possibility for doing so would be to use

management-based approaches as an alternative to discipline. Currently, in the United States approximately half of the states allow for minor misconduct allegations to be referred to diversion programs.³⁵ Some programs only allow for diversion of a disciplinary matter when the respondent suffers from an impairment. Other programs also allow for diversion when the complaint suggests that the respondent is experiencing practice management problems. In both types of programs, lawyers may obtain guidance, support, and tools to improve their practices. Diversion may provide an intervention opportunity for lawyers to obtain assistance and avoid problems in the future.

Jurisdictions should revise their procedural rules to allow for more diversion referrals if the facts suggest that the complaint involves minor misconduct related to practice management concerns. When such referrals are made, the diversion agreement could require that respondents first examine their practice management controls and report to the regulator on the management systems that they have implemented. Long-term diversion saves time and money if the remedial training helps lawyers avoid future misconduct. Even in the short term, diversion may cost less than processing a complaint through the formal disciplinary process.

In addition to assistance for lawyers in diversion program, the bar should devote more time and resources to assisting lawyers with practice management. The advantage of doing so is that it educates lawyers, improves the quality of legal services, and helps avoid the costs and headaches associated with disciplinary complaints.

Bar leaders who recognize the value of practice management should also take steps to create other incentives for lawyers to devote time and resources to serious examination of their practices. One possibility would be for interested players to create a certification program through which firms could obtain a credential by demonstrating that they meet certain requirements, such as the implementation of management systems. This would appeal to firms, similar to those in Australia, that are seeking Quality Management Certification under guidelines adopted by the International Organization for Standardization.³⁶ Firms that obtain such a certificate may use it for business development purposes to attract and retain clients.

Another incentive would be for insurers to require that firms complete a self-assessment or a practice review as a condition to obtaining insurance or a premium discount.³⁷ If insurers are willing to offer premium discounts for activities such as attending continuing legal education programs, they should jump at the opportunity to provide a discount for self-audits, given the research findings on the positive impact of self-audits on complaints and lawyer engagement in improving their practices.

In addition to encouraging lawyers to examine and improve their practice controls, interested parties should attempt to address concerns that might deter lawyers from engaging in internal reviews. For example, lawyers may be reluctant to systematically review their firm controls and practices because they are concerned about discovery of the results in the event of a malpractice case. To address reluctance of lawyers to examine firm practices and policies, it would be worthwhile to seek recognition of a self-evaluation privilege similar to the peer review privilege available to medical providers. With such a privilege, lawyers should be more comfortable participating in audits and practice reviews, without fear

that the material could be used in a later malpractice case.³⁸ A draft of a specimen privilege developed by risk management experts is reprinted in a longer article that I have written on the value of ethics audits.³⁹

Conclusion—Using Proactive Management-Based Approaches to Transform the Relationship between Lawyers and Regulators

The Australian experience and study results show that proactive, management-based approaches can help transform a lawyer disciplinary system from a reactive one to a proactive program that educates and assists lawyers in practicing ethically and efficiently. This enables regulators to reshape their relationships with lawyers and the public. No longer is the regulator focused on reacting to problems after complaints arise. Rather, the regulator becomes a partner working with lawyers to improve their practice controls and the delivery of quality legal services. This proactive approach promises to reduce the number of complaints and liability claims, while improving client satisfaction, the quality of legal services, and firm productivity,

It all comes down to advancing public protection. Dating back to the 1800s, public protection has been identified as the primary justification for imposing discipline on attorneys.⁴⁰ Although public protection is recognized as the first and foremost reason cited for disciplining attorneys,⁴¹ a reactive discipline system does not appear to be the best approach for advancing public protection. Despite improvements and good faith efforts by dedicated bar counsel and jurists, current disciplinary systems often do not produce redress or compensation for the harm suffered by many clients.⁴² The traditional approach to attorney regulation relies heavily on a complaints-driven system of prosecuting alleged misconduct after it occurs. Such a system provides little relief to the client or other person who is injured by the lawyer's misconduct. This is illustrated by the story of a complainant in a grievance matter. Following the completion of the disciplinary matter, the complainant reported that she had been victimized three times: first by the medical profession, then by her lawyer, and finally by the legal profession, which she believed was guilty of a cover-up.⁴³ This complainant joins the ranks of many other injured persons who do not feel as if current disciplinary systems, driven by complaints, provide them much protection. It often is difficult for injured persons to fully appreciate how the system protects the public by dealing with individual respondents and deterring misconduct by other lawyers. Furthermore, from the standpoint of consumer protection, attorney discipline systems in most U.S. jurisdictions largely fail to deal with many common concerns, such as complaints related to fee disputes and negligence.⁴⁴

Most lawyers want to do the right thing. A proactive system of “attorney integrity,” rather than “attorney discipline,” helps them do so by spurring lawyers to examine their practices and to learn what is necessary to comply with stated regulatory objectives.⁴⁵ A system similar to the Australian regulatory regime for incorporated firms can serve to educate and assist lawyers to get their houses in order.

The expectation is that implementation of a more proactive system in U.S. and Canadian jurisdictions would have similar impact that the adoption of the system had in Australia, contributing to a reduction in complaints, the implementation of policies and procedures, and improved client service.⁴⁶ The reduction in complaints can save the regulator money and enable disciplinary counsel to focus more on

those complaints that are filed. At the same time, the fortification of the ethical infrastructure of law practice promises to enhance both client and lawyer satisfaction while raising ethical standards for attorney conduct.

Endnotes

1. Cartoon by Randy Glasbergen. See GLASBERGEN CARTOON SERVICE (Feb. 23, 2015), <http://www.glasbergen.com>.
2. For a critical examination of the New York disciplinary systems, see Stephen Gillers, *Lowering the Bar: How Lawyer Discipline in New York Fails to Protect the Public*, 17 J. LEGIS. & PUBLIC POL'Y, 485, 490 (2014) (concluding that the New York system is “deficient in design and operation” and “fails the professed purpose of protecting the public and the administration of justice”).
3. For a detailed account of the development of the regulatory regime for incorporated practices in New South Wales, Australia, see Susan Fortney & Tahlia Gordon, *Adopting Law Firm Management Systems to Survive and Thrive: A Study of the Australian Approach to Management-Based Regulation*, 10 U. OF ST. THOMAS L.J. 152, 156-165 (2012).
4. See *id.* at 158, n. 30 (citing the Council for the Law Society’s resolution that stated, “[T]here should be no restriction on the holding of shares in an incorporated legal practice subject to legislation providing adequate safeguards for the integrity of the conduct of legal practice and appropriate amendment of the professional conduct and practice rules.”).
5. *Id.* at 158-59. The ownership rules were liberalized because the restrictions on ownership were viewed as anti-competitive. *Id.* at 158.
6. For more information on the first listing and regulatory issues, see Andrew Grech & Kirsten Morrison, *Slater & Gordon: The Listing Experience*, 22 GEO. J. LEGAL ETHICS 535 (2009).
7. The statute requires that an incorporated legal practice appoint a legal practitioner director to be responsible for the management of the legal services provided by the incorporated legal practice. New South Wales Consolidated Acts, *Legal Profession Act 2004* (NSW) §140(3) available at http://www.austlii.edu.au/au/legis/nsw/consol_act/lpa2004179/s140.html (last visited Feb. 23, 2015).
8. *Id.* To address independence of legal services providers, the section also states that the appropriate management systems are to be implemented and maintained to ensure that the obligations of Australian legal practitioners who are officers or employees of the practice are not affected by other officers or employees of the practice. *Id.* The statute also addresses the director’s responsibilities with respect to ethical breaches, stating that the “director must take reasonable action to ensure that breaches do not occur, and appropriate remedial action is taken in respect of breaches that do occur.” *Id.* at §140(4).
9. *Id.* at §140(5).
10. See Fortney & Gordon, *supra* note 3, at 160-64 (tracing the steps taken to involve various stakeholders in the process of shaping the meaning of “appropriate management systems” (AMS) and the regulatory structure to be used to help firms comply with the requirement that firms implement and maintain AMS).
11. *Id.* at 161 (citing the LEGAL SERVICES COMMISSIONER’S REPORT ON THE LEGAL PRACTICES STAKEHOLDERS FORUM).
12. For more information on the collaborative approach, see *id.* at 162-163.
13. As explained on the Legal Services Commissioner’s website, the ten objectives cover the areas that an ILP must address to demonstrate that the firm has AMS in place. The objectives are as follows:

1. Negligence
2. Communication
3. Delay
4. Liens/file transfer
5. Cost disclosure/billing practices/termination of retainer
6. Conflicts of interest
7. Records management
8. Undertakings
9. Supervision of practice and staff
10. Trust account regulations

For a description of each of these objectives, see Office of the Legal Services Commissioner, *Appropriate Management Systems to Achieve Compliance*,

http://www.olsc.nsw.gov.au/olsc/lsc_incorp/olsc_appropriate_management_systems.html (last updated Dec. 12, 2014).

14. Office of the Legal Services Commissioner, *Self-Assessment Process*, http://www.olsc.nsw.gov.au/olsc/lsc_incorp/olsc_self_assessment_process.html?s=1001 (last updated Dec. 12, 2014).

15. *Id.* For registered users, the Commission's website has an on-line portal to enable legal practitioner directors to assess the appropriateness of their management systems. *Id.*

16. For more information on the guidance that the Office of the Legal Services Commissioner provides in connection with the self-assessment process, see Fortney & Gordon, *supra* note 3, at 164-65.

17. Ted Schneyer, *On Further Reflection: How "Professional Self-Regulation" Should Promote Compliance with Broad Ethical Duties of Law Firm Management*, 53 ARIZ. L. REV. 576, 620 (2011).

18. *See id.* at 591-619 (analyzing the shortcomings of the traditional enforcement strategy in failing to encourage implementation of sound ethical infrastructures).

19. In addition to the self-assessment form, the website for the Legal Services Commission in Queensland includes a number of web-based tools that practitioners can use to systematically review firm policies, procedures, and practices. For access to the on-line surveys designed to allow firms to review or audit aspects of their workplace cultures or "ethical infrastructures," see Legal Services Commission, *Ethics Check for Law Firms*, <https://www.lsc.qld.gov.au/projects/ethics-checks> (last updated Oct. 25, 2013).

20. *E.g.*, The Law Society of Upper Canada released *Alternative Business Structures and the Legal Profession in Ontario: A Discussion Paper* to seek input from lawyers, paralegals, stakeholders, and the public. *See* News Release: Law Society aims to create dialogue with ABS discussion paper, Sept. 25, 2014, at http://www.lsuc.on.ca/uploadedFiles/For_the_Public/News/News_Archive/2014/abs-news-release-sept24-2014-final.pdf.

21. *See* Nova Scotia Barristers' Society, *Transform Regulation*, <http://nsbs.org/transform-regulation> (last visited Feb. 23, 2015).

22. For links to the Nova Scotia Barristers' Society consultation reports related to proactive regulation and the drafts of the proposed Regulatory Objectives and Self-Assessment Tool, see *id.*

23. The tool is available on the Canadian Bar Association website. See Ethical Practices Self-Evaluation Tool, <http://www.cba.org/cba/activities/code/ethical.aspx> (last visited Feb. 23, 2015) (noting that the “goal of the project was to assist lawyers and law firms by providing practical guidance on law firm structures, policies and procedures to ensure that ethical duties to clients, third parties and the public are fulfilled”).

24. Christine Parker, Tahlia Gordon & Steve Mark, *Regulating Law Firm Ethics Management: An Empirical Assessment of an Innovation in Regulation of the Legal Profession in New South Wales*, J.L. & SOC’Y 466, 471 (2010). A draft of this article is available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527315. For a summary of the research findings, see draft at page 5.

25. Draft, *supra* note 24, at 5.

26. *Id.* at 37.

27. The response rate for the survey was 39.4%. Fortney & Gordon *supra*, note 3, at 169. For more information on the survey methodology, see *id.* at 168-170.

28. See *id.* at 172-182 (analyzing the research questions and significance of the findings).

29. *Id.* at 172.

30. *Id.* at 175.

31. *Id.*

32. *Id.* at 177.

33. Twenty-four percent of respondents indicated that their opinions of the self-assessment process changed after completing it. In the text entries, 78% described positive changes in their impressions. *Id.* at 174.

34. Various respondents noted that the process prompted them to reflect on firm systems and procedures, focus on areas where the firm needed systems in place, and formalize practices.” *Id.* at 173. This sentiment was captured by one respondent who stated, “The Self Assessment Form is a good checklist for assessing our firm’s compliance and potential improvements.” *Id.* at n. 125.

35. Susan Saab Fortney, *The Role of Ethics Audits in Improving Management Systems and Practice: An Empirical Examination of Management-Based Regulation of Law Firms*, 4 ST. MARY’S J. LEGAL MAL. & ETHICS 112, 131 (2014) (noting that some form of diversion program currently exists in twenty-four states plus the District of Columbia).

36. *Id.* at 125.

37. See *id.* at 138-41 (identifying possibilities for insurers).

38. For a discussion of the importance of recognizing a self-evaluation privilege see *id.* at 141-147.

39. *Id.* at n. 184, at 147.

40. As stated by the U.S. Supreme Court in *Ex parte Wall*, 107 U.S. 265 (1883), an attorney discipline “proceeding is not for the purpose of punishment, but for the purpose of preserving the courts from the official ministrations of persons unfit to practice in them.”

41. In a seminal work examining problems with imposing sanctions on lawyers, Professor Leslie C. Levin describes the purpose of sanctions and disciplinary standards as follows: “Three reasons are typically cited for imposing discipline on lawyers: first and foremost, protection of the public, second, protection of the administration of justice, and third, preservation of confidence in the legal profession.” Leslie C. Levin, *The Emperor’s Clothes and Other Tales About the Standards for Imposing Lawyer Discipline Sanctions*, 48 AMERICAN U. L. REV. 1, 17-18 (1998).

42. See Judith L. Maute, *Bar Associations, Self-Regulation and Consumer Protection: Whither Thou Goest?*, 2008 PROF. LAW. 53, 70 (stating that the traditional disciplinary model declines to act upon the vast majority of client grievances about isolated instances of neglect, inadequate services, and excessive fees).

43. Marcia Johnson, *The Disciplinary System and the Public*, BENCH & BAR OF MINNESOTA (Sept. 1995), available at [http://lprb.mncourts.gov/articles/Articles/The%20Disciplinary%20System%20and%20the%20Public%20\(Rights%20of%20complainants\).pdf](http://lprb.mncourts.gov/articles/Articles/The%20Disciplinary%20System%20and%20the%20Public%20(Rights%20of%20complainants).pdf) (reporting on a newspaper story that questioned the private discipline of attorneys and the treatment of the public).

44. Some jurisdictions have established consumer assistance programs to help address common consumer concerns. Programs may vary as to whether they simply help resolve the particular complaint or assist the lawyer in improving practices to prevent problems from occurring in the future.

45. Deborah L. Rhode & Alice Woolley, *Comparative Perspective on Lawyer Regulation: An Agenda for Reform in the United States and Canada*, 80 FORDHAM L. REV. 2761, 2767 (2012) (noting that attorneys “too often receive reprimands rather than the training and oversight that will assist them in averting future problems”).

46. For a compelling discussion of proactive regulation, see Ted Schneyer, *The Case for Proactive Management-Based Regulation to Improve Professional Self-Regulation for U.S. Lawyers*, 42 HOFS-TRA L. REV. 233 (2013).

Table 1

Steps Taken by Firms in connection with the First Completion of the Self-Assessment Process

Reviewed firm policies/procedures relating to the delivery of legal services	84%
Revised firm systems, policies, or procedures	71%
Adopted new systems, policies, or procedures	47%
Strengthened firm management	42%
Devoted more attention to ethics initiatives	29%
Implemented more training for firm personnel	27%
Sought guidance from the Legal Services Commissioner/another person/organization	13%
Hired consultant to assist in developing policies and procedures	6%