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The Talented Mr. Girardi: Applying the Neo-Weberian Conception of Professional Monopolies to American Legal Professional Discipline

Kendall Gail[1]

Abstract:

This essay analyzes the case of Thomas Girardi to illustrate the shortcomings of the contemporary American attorney discipline system, particularly its prioritization of lawyer reputational privacy over public protection. Employing a neo-Weberian framework, which aligns with the structure of the American legal profession, reveals how the legal field has established a monopoly over attorney discipline and is controlled by its own members. This self-regulation creates a predominantly private discipline process that undermines the process's stated objectives of fostering public trust and safeguarding the public interest. By closely examining Girardi's case and procedures within the discipline process, the essay advocates for increased publicity in attorney discipline to better align the system with its goals of accountability and public protection.

Keywords:

Attorney discipline, legal professionals, neo-Weberian, professional monopoly, professional regulation, Thomas Girardi.

Resumen:

Este ensayo analiza el caso de Thomas Girardi para ilustrar las deficiencias del sistema contemporáneo de disciplina de los abogados estadounidenses; en particular, su priorización de la privacidad de la reputación del abogado sobre la protección pública. El

This article was inspired by my real-world experience as a paralegal in Chicago and my master's thesis as a part of my degree in Sociology of Law at the International Institute for Sociology of Law (Oñati). I thank everyone who supported me as I explored this topic.

[1] Legal Assistant at Northwestern Pritzker School of Law, Email: kendall.gail@law.northwestern.edu, ORCID: https://orcid.org/0000-0001-7534-3479

empleo de un marco neoweberiano, que se ajusta a la estructura de la profesión jurídica estadounidense, revela cómo el ámbito jurídico ha establecido un monopolio sobre la disciplina de los abogados y está controlado por sus propios miembros. Esta autorregulación crea un proceso disciplinario predominantemente privado que socava los objetivos declarados del proceso de fomentar la confianza pública y salvaguardar el interés público. Al examinar de cerca el caso de Girardi y los procedimientos dentro del proceso disciplinario, el ensayo aboga por una mayor publicidad en la disciplina de los abogados para alinear mejor el sistema con sus objetivos de responsabilidad y protección pública.

Palabras clave:

Disciplina de los abogados, profesionales del derecho, neoweberiano, monopolio profesional, regulación profesional, Thomas Girardi.

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1. INTRODUCTION

The Honorable Judge Durkin had a question for California attorney Thomas Girardi ("Girardi") during an emergency hearing in December of 2020. He wanted to know why Girardi's clients, plaintiffs in a lawsuit against an airline manufacturer after their loved ones were killed in a plane crash, had not yet received their money nine months after the case had settled and defendants paid the settlement funds to Girardi's firm account (Hamilton and Ryan 2020).

In the American judicial system, this type of payment process is typical in civil cases. A defendant can agree via a legally binding settlement agreement to pay the plaintiff an amount of money to end the case instead of having a jury or judge decide the outcome (Legal Information Institute). Normally, the payment goes directly to the client's lawyer or law firm, who is trusted to deduct the proper fees and costs before sending the rest to the client. Attorneys are required to keep client funds separate from their own personal money, to keep meticulous records of what is in each account, and to distribute client money as soon as possible once it is received (American Bar Association – ABA -, *Model Rules of Professional Conduct* - MRPC -, 2024, R. 1.15).

Girardi did not follow this process. The money for the clients in the plane crash case had been received on time, but Girardi misappropriated the funds for his own personal use instead of sending the funds to their proper recipients. To cover his tracks, he lied to his clients about "tax issues" and other non-existent hold ups with the distribution (*In re Lion Air Flight JT 610 Crash* 2022). This was a surprising admission from Girardi, a prominent California attorney who had been practicing law since 1965 and who built a successful legal career practicing personal injury and consumer protection law, representing victims of mass shootings, chemical contaminations, and other injuries (Hamilton and Ryan 2020). However, after Girardi's confession that the money in the plane crash case was gone, deeper investigations discovered how he had misappropriated over $100,000,000.00 USD from his clients for over forty years without being caught (Hamilton and Ryan 2021).

An American lawyer's professional identity is defined by service to clients (Gillers 2013, 368). As a result, "most lawyers would agree that stealing from clients is the ultimate ethical transgression" because it violates this core identity and harms those the lawyer is supposed to serve (Miller 1990, 785). Lawyers who misappropriate money from their clients can face criminal charges and serve time in prison, and they are also subject to professional consequences that are directly related to their ability to practice law.

Professional discipline proceedings "serve to protect the public from lawyers who are unfit to practice," by responding to complaints against lawyers and deciding a corresponding consequence (ABA *Model Rules for Lawyer Disciplinary Enforcement* – MRLDE - R. 32 (2020)). These consequences could lead to a lawyer being disbarred, temporarily suspended from the practice of law, or participating in a rehabilitation or education program. The American legal profession is organized at the state level, with state bar organizations controlling membership, educational standards, and disciplinary procedures for those in the profession. State supreme court judges, who often have the final word over an attorneys' punishment after hearing recommendations from state bar organizations, are

themselves former lawyers, and therefore "share the background and world view of those they claim to regulate" (Rhode and Woolley 2012, 2765). This results in a monopoly over the process of professional discipline within the American legal profession; no outside groups have a say regarding disciplinary outcomes or structures. All disciplinary proceedings are controlled by the legal profession and the judiciary which means unlike other professional structures, "regulation of the American bar has remained under almost exclusive control of the group to be regulated" (Rhode 1994, 687).

This essay uses the story of Thomas Girardi as a case study to demonstrate the flaws of the modern American attorney discipline system's reliance on lawyer reputational privacy at the expense of public protection. The neo-Weberian framework for understanding professions is selected for this analysis because its conditions for professional structure closely mirror the current makeup of the American legal profession. This framework also provides an analytical lens to explain the formation of the legal profession and the formation of its discipline process. Using the neo-Weberian framework highlights how the American legal profession has created a monopoly on the process of attorney discipline by having the process be controlled by members of the legal profession. As a result of the power the legal profession has over its own regulation, the modern attorney discipline process is kept mostly private to protect lawyer reputations, which is at odds with the attorney discipline system's stated goals of public protection and building public trust in the discipline system.

Section 2 defines the neo-Weberian understanding of professions and then applies this lens to the legal profession to demonstrate how the legal profession works to create a monopoly over attorney discipline and what values are associated with this monopoly, including the idea of "inherent authority" and the importance of building public trust. Section 3 examines the case of Thomas Girardi through the neo-Weberian lens and critiques modern changes to the attorney discipline process. Section 4 calls to incorporate greater openness in the attorney discipline process.

2. NEO-WEBERIANISM AND SELF-REGULATION WITHIN THE LEGAL PROFESSION

Sociologists and legal scholars have different views on what defines a profession and how professions are structured. The neo-Weberian understanding of professions is used as an analytical framework in this essay to highlight how the American legal profession created a monopoly over its membership and, as a result, attorney discipline. The neo-Weberian framework, drawing from the scholarship of Max Weber, understands professions as made up of individuals with similar motivations and values who work to cement a monopoly on their chosen line of work without any interference from the state (Saks 2016). This phenomenon is defined as "social closure," in which a profession secures total control over their services through gatekeeping access to the profession and controlling the knowledge that the professionals use in their work (Macdonald 1999, 27-28). In the case of the American legal profession, lawyers serve as gatekeepers of a specific set of knowledge and are the only ones who can deliver this knowledge to the public because of intense licensing and educational requirements (Saks 2016).

The existence of lawyers as a profession dates back centuries, but the formalized professional monopoly is relatively new. In the late 19th and early 20th centuries, bar

organizations began emerging across American states to connect lawyers socially while also limiting who could call themselves a lawyer through the implementation of educational standards and entrance requirements. (Johnstone 1996, 195). Each of the 50 states now has their own bar Association that controls lawyers who practice law in that state. The American Bar Association ("ABA") was founded in 1878 to organize lawyer rules and admission requirements on a national level, and is now the largest voluntary association of lawyers in the world (American Bar Association).[1] The ABA oversees academic standards for American law schools, provides educational programs and other support for lawyers, and publishes "model rules" for attorney conduct and discipline (American Bar Association). The "model rules" are only guidelines for behavior and regulation; the ABA has no power to implement or enforce them since that power is given to each state's bar organization (Levin 2021, 470). Even so, lawyers study and learn the model rules during their schooling and are required to take, as part of the admission to every state bar, an ethics exam that tests on the model rules known as the Multistate Professional Responsibility Exam (MPRE) (National Conference of Bar Examiners). As a result, the profession has a fairly uniform understanding of ethics and what merits discipline (Wolfram 1989, 17).

In 1991, the ABA's Commission on Evaluation of Disciplinary Enforcement issued a report (CEDE Report) listing recommendations for how each state bar organization should set up their disciplinary process in response to growing inconsistencies across state systems. The CEDE Report played a large role in shaping ABA's Model Rules for Lawyer Disciplinary Enforcement (MRLDE); wording across the two documents is very similar, if not identical, in some areas. It is important to reiterate that the ABA has no authority over any type of lawyer discipline, regardless of the model rules they issue. That power remains with state bar organizations. However, "[i]n drafting disciplinary rules, every state to a greater...extent follows the lead of the American Bar Association" (Wolfram 1989, 17). This follow-the-leader approach means that the MRLDE suggestions for how attorney discipline should function appear in most state bar processes. State bars agree on the ethics rules for attorneys, what happens when such rules are broken, and that attorneys should be the ones in full control of the attorney discipline process. One notable exception to this relative uniformity can be found in California and will be explored more deeply further in this paper in Section 3.

The neo-Weberian framework provides a lens for understanding how the legal profession has created guidelines for membership within its rank and has relative uniformity of disciplinary procedure. While the ABA lacks formal authority, its model rules heavily influence state bar organizations, leading to a fairly uniform disciplinary system controlled exclusively by members of the legal profession. Social closure within the legal profession extends to its control over attorney discipline, and the next section discusses how the legal profession has been able to convince outsiders to trust its control through the idea of inherent authority.

2.1. INHERENT AUTHORITY

To achieve self-regulation on a profession-wide basis, lawyers and legal professional organizations have worked to convince others outside the system to take their monopoly for granted as a natural, inherent part of the judicial system, especially when it comes to disciplinary procedures (Abel 2011, 64). The "inherent powers doctrine" is a concept that

[1] See: https://www.americanbar.org/about_the_aba/

describes how judges and lawyers have relied on the natural idea that the "courts, and only courts, may regulate the practice of law" (Wolfram 1989, 14). The idea of the legal profession's inherent power to self-regulate can be seen in documents from the ABA and other state bar organizations when describing the initial set up of disciplinary processes. According to the ABA, "[t]he practice of law is so intimately connected and bound up with the exercise of judicial power and the administration of justice that the right to define and regulate its practice naturally and logically belongs in the judicial department...." (CEDE Report 1992, Recommendation 1 (commentary)). Simply put, lawyers are involved in the judicial system, so the judicial system naturally should regulate them, and therefore judges have the last say over an attorney's discipline process. What is interesting is that lawyers are involved in the regulatory process for many other professions and spheres – a doctor being sued for malpractice needs to involve lawyers, legislatures pass laws that are written and/or reviewed by lawyers, and lawyers are the basis for business negotiations worldwide. Since lawyers regulate the professions and businesses of others, there is no one else who could regulate their own profession but lawyers themselves since they alone have understanding of how it works and are so closely involved in it.

These closed systems of discipline reinforce the social closure of the legal profession (Abel 1989). "A key feature of neo-Weberianism is that...groups 'mobilize their members' in face of competition to extend and secure their market position with state support (Saks and Adams 2019, 3). With the state far outside the regulation process and the legal profession able to control the behavior of its members, the market position of lawyers is secured, and the resulting social closure is incredibly difficult for outsiders to penetrate. Therefore, lawyers can continue shaping their professional culture as they see fit, which they do through maintaining control of their own regulation. As a result of this unique, in-house structure where the judicial system has sole power to regulate those who work in it, "[i]n no country has the legal profession been more influential and more effective in protecting its right to regulatory independence" (Rhode 2015, 87-88).

There have been some pushbacks to this "inherent" authority to regulate discipline, including calls for legislative regulation instead of self-regulation when it comes to lawyer discipline (Rhode 2015, 107). The dominant narrative from the ABA is that legislative control over legal professionals, as opposed to judges and lawyers regulating conduct would do more harm than good to the legal profession and has no historical basis. The CEDE Report notes "[t]here is no compelling need for or inherent advantage in legislative control of the legal profession. Instead, there are strong reasons to retain judicial regulation...lawyers are officers of the court indispensable to the court's operations. As such, the courts must have the power to regulate them" (1992, Recommendation 1 (commentary)). These reactions further emphasize the profession's belief of and reliance on the inherent power of the judiciary to self-regulate.

Even though the legal profession relies on its inherent authority, that does not mean it is the absolute solution. The belief in the inherent authority to self-regulate does not appear in other professions. For example, medical practitioners have data regarding medical malpractice and other discipline compiled in the National Practitioner Data Bank, which is a federal data bank created and funded by Congress (Berenson 2001, 661). This federal data bank allows the tracking of malpractice actions across state lines, was created by the federal government, and is controlled by a group wholly outside of the practice of medicine, something which lawyers have decided cannot possibly work in their professional contexts. By declaring that it is only natural for attorneys to regulate their own and cement their

regulatory independence because no other field else could exhibit the same regulatory care, the monopoly the legal profession has over discipline of its membership is strengthened and protected. The use of terms such as "inherent" and "natural" for the legal profession's authority over its regulation when analyzed through the neo-Weberian framework underscore how the legal professional monopoly has worked to legitimize its exercise of such power at the expense of other regulatory options.

Having the regulatory system for lawyers be centralized and under full control of the legal profession fits squarely within the neo-Weberian framework of professional monopolies. The American legal profession insulates itself from outside influence by convincing others it is only natural for lawyers to regulate themselves, thereby reinforcing its closed status and keeping its power and influence away from outside influence, such as legislative regulation. However, this internal discipline only works if other people outside the legal profession can trust lawyers who regulate other aspects of society are just as zealously regulating themselves. The next section discusses how the actual set up of attorney discipline works to cultivate public trust in the attorney discipline process.

2.2. BUILDING TRUST IN ATTORNEY DISCIPLINE

This section discusses how the structure of attorney discipline is designed to convince outsiders that even though the legal profession has complete control over discipline, the process proceeds honestly and fairly. MRLDE Rule 31 says as much: "It is very important that the disciplinary system be structured not only to actually protect the public, but also to inspire confidence in the public that the profession is acting to regulate itself". There are two ways this occurs: 1) select inclusion of outsiders; and 2) making select discipline information public.

One aspect of attorney regulation facially counters the idea of inherent authority but actually serves as a connection between the general public and attorney discipline to lessen the initial appearance of overlapping interests. The ABA suggests, and most states have adopted, that initial hearings into charges of attorney misconduct should be brought in front of a panel of lawyers and non-lawyers, at a ratio of two lawyers for every one non-lawyer (MRLDE, R. 2). While this may seem directly opposite to the legal professional monopoly over attorney discipline, the ABA claims including non-lawyers "increases the credibility of the discipline...process in the eyes of the public" (MRLDE, R. 2 (commentary)) because their inclusions means the process is not just attorneys making decisions for other attorneys. Having non-lawyers on the hearing board allows an individual from outside the profession to have a voice. The CEDE Report notes "nonlawyers are a great benefit to the process...Nonlawyers bring a perspective that adds depth and breadth to the adjudication" (1992, Recommendation 12). Even so, the participation of non-lawyers is limited to one controlled aspect of attorney discipline; they sit on panels with lawyers and make non-binding recommendations on discipline that will be reviewed by the state supreme court. Nonlawyer participation, therefore, becomes a way to increase the perceived fairness of the attorney discipline system in the eyes of the public because it is not just attorneys deciding punishments for their peers. Demographics of nonlawyer members and their overall impact on disciplinary outcomes have not yet been thoroughly studied, so it is unclear if the ABA is correct in claiming that the public has increased trust in the process as a result of this inclusion. This presents an area for future research to understand the extent of nonlawyer participation on the results of and public trust in the discipline process. Notably,

California does not include non-lawyers in their discipline process, and this choice will be discussed in Section Three.

Another way the profession grows confidence in its discipline is by making a select amount of information about discipline proceedings public. When bar organizations first gained full control over lawyer regulation in the early 20th century, completely private disciplinary proceedings were the norm in order to protect lawyers from having untrue accusations follow them around if a complaint turned out to have no factual evidence behind it (Levin 2007, 14-17). However, this secrecy contrasts with the American judicial system, where all documents and court hearings are typically public in the interest of transparent justice (Rhode 2015, 115). This disconnect leads to immense distrust in attorney discipline since no one has access to what is going on behind closed doors (Rhode 2015, 115).

MRLDE Rule 2 makes clear that public information about discipline procedures and cases should be easily accessible upon request; "[p]ublic confidence in the discipline...process will be increased as the profession acknowledges the existence of lawyer misconduct and shows the public what the agency is doing about it" (2020). If a lawyer has their license to practice law altered in any way after a disciplinary proceeding, such as being suspended or fully disbarred, MRLDE Rule 10(d) recommends that information be made public, and the court who ordered this punishment should publish a written opinion explaining their reasoning. State bars began publishing attorney discipline information on their websites around the turn of the twenty-first century (Rhode 2015, 111), meaning most public information can now be found online. Per the ABA, publicizing a lawyer's discipline "helps protect the public and the legal community from being misled concerning the lawyer's eligibility to provide representation. In addition, public awareness of sanctions also enhances confidence in the disciplinary system as an effective means of responding to lawyer misconduct" (MRLDE, R. 17). While these steps are not specifically related to the structural procedure of the disciplinary system, it demonstrates the state bars' commitment to the appearance of public protection and transparency so they are able to keep their self-regulation intact. However, there are important distinctions made on what is considered public and what is not when it comes to the attorney disciplinary process, and these distinctions can have significant consequences.

A cornerstone of modern attorney discipline is that complaints are made public only after a state bar investigative team brings a formal complaint against the attorney; meaning that the public cannot see complaints lodged against an attorney if those who investigate the complaints deem they have no merit (Levin 2007, 21). If a case is deemed "minor" by the investigators and no formal charges are filed, no further investigations will be conducted and no public record of the misconduct will exist. And even when a complaint is deemed to have merit, not every proceeding, document, or complaint against an attorney within the disciplinary process is public. For lesser misconduct allegations, Rule 11 of the MRLDE lays out alternative programs that can be pursued instead of formal discipline, including "fee arbitration, arbitration, mediation, law office management assistance, lawyer assistance programs, psychological counseling, continuing legal education programs, ethics school or any other program authorized by the court". Such alternative programs will then not appear on an attorney's record, since it is not a formal discipline proceeding. "In other words, when private discipline is imposed, a lawyer has been found to have engaged in misconduct, but his reputation is protected on the theory that the lawyer is not someone from whom the public needs protection" (Levin 2007, 24). One notable exception is if an attorney who committed misconduct as a result of mental illness or addiction elects to participate in

psychological counseling or a rehabilitation program, this result and complaint will be automatically private, even if formal charges are filed (MRLDE, R. 11(c)). This privacy then protects a lawyer as they seek professional support for an illness, which is considerably different than a complaint being made private only because a lawyer elects a program other than formal discipline.

The reliance on privacy in minor cases of misconduct, can lead to problems because "the confidentiality of the process, unless some public sanction is issued, means that attorneys with large numbers of pending or dismissed complaints receive a 'clean bill of health' from disciplinary authorities" (Rhode 1994, 696). Since most consumers of legal services are "one-shot" players, meaning they have normally one encounter with the legal system and therefore need to search for an attorney rather than having one permanently on retainer, keeping information on lawyer discipline publicly available allows consumers to have information on who they are choosing to represent them (Abel 2008). This caveat of publicizing only after formal charges makes it that lawyers who have unfounded or minor complaints brought against them do not have blemishes on their reputation, and members of the public looking to hire an attorney will not have the full picture of this attorney's background. This secrecy is at odds with the fact that civil complaints, police arrest reports, and some criminal hearings are also all public knowledge regardless of guilt or innocence (Levin 2007, 24). This structure is not seen in other professions; doctors, as mentioned previously, have a national database that logs malpractice (Berenson 2001, 661). Even if one complaint is not supported with evidence and destroyed, an attorney might commit the same act again and receive a new complaint with no record of the past allegation, and someone who chooses this person to represent them will have no knowledge of their behavior. This practice of destroying records that do not result in formal complaints and keeping private discipline away from public knowledge can protect the lawyer's reputation while weakening public protection, as seen in the case of Thomas Girardi.

3. CASE STUDY: THOMAS GIRARDI

The story of Thomas Girardi ("Girardi") is made for TV – literally. Erika Jayne, Girardi's third wife, became a cast member on the American reality TV show *The Real Housewives of Beverly Hills* in 2015, showing off her and her husband's wealth and their high-society lifestyle (Hamilton and Ryan 2020). Girardi became a widely known name within the California bar after the success of the film *Erin Brockovich*, a dramatization of one of Girardi's cases against a gas and electricity company, and for his work on multi-million-dollar personal injury and class-action settlements (Hamilton and Ryan 2020).

In 2020, when it was revealed Girardi had not paid his clients in the plane crash case, the following investigations led to revelations that Girardi had been misappropriating money from clients for over forty years, for a total of around $100,000,000.00. And this conduct was not a secret – the *Los Angeles Times* reported in early March 2021 that over Girardi's career he had been subject to private disciplinary proceedings from the State Bar of California ("California Bar"), but none had ever resulted in formal charges (Hamilton and Ryan 2021). During Girardi's career, over 200 client complaints against him were submitted to the California Bar and forty-four alleged mishandling of client funds (Lazar 2021, 4). And yet, "from his admission in 1965 through February 2021, no information was available to the public regarding any of the disciplinary matters pertaining to Girardi that were investigated by the State Bar" (Lazar 2021, 2).

Girardi's case is an extreme one, but it demonstrates what can happen when attorney discipline becomes more about privacy in place of public punishment. This section begins with an explanation into the unique features of California's attorney discipline process, the problems with this process and its values that prevented discovery of Girardi's misconduct, and ends with a discussion on movements in attorney discipline systems to keep records private. Girardi's case study highlights issues and weaknesses within the self-regulated discipline process that run directly counter to the values of public protection the monopoly claims to cultivate.

3.1. CALIFORNIA'S ATTORNEY DISCIPLINE SYSTEM

The process of attorney discipline in California is unlike any other state bar. It functions within an entirely separate court system with judges that only hear attorney discipline cases called the "State Bar Court" run by the Office of the Chief Trial Counsel (OCTC). The OCTC is the organization that specifically oversees discipline cases and brings formal charges against an attorney, similar to a prosecutor's office. Attorney discipline in California is much more aligned with a traditional case proceeding as a result of this design, given that there is only one judge who eventually makes a ruling after allowing both sides to exchange evidence and present arguments. While the California Bar touts its State Bar Court as the only such structure in the country (State Bar of California), there is a reason it is the only one. Having judges involved in the initial stages of discipline is directly counter to the ABA's recommendation for how attorney discipline should be structured, as discussed above, and provides no opportunities for panels for review or even non-lawyer input. And crucially the structure of the State Bar Court allows for "out of court" settlements, where the accused attorney, the judge, and the OCTC can work out an agreement outside of the formal discipline proceedings, an agreement which will not appear in any public record. This private discipline means that even though a formal complaint was filed, this discipline will not show up in an attorney's discipline history.

Although the California Bar does not directly follow the ABA's recommendations for the structure of their discipline system, there are still similarities that contribute to the monopoly of attorney discipline within the profession as a whole. These include only publicizing formal charges, having strict guidelines for what complaints are investigated, and expunging records after certain periods. The process of filing formal charges against an attorney accused of misconduct also mirrors the ABA recommendations. In Girardi's case, a notice of formal disciplinary charges was filed against him by the California Bar's Chief Trial Counsel, the office of attorneys who prosecute attorney discipline cases, in State Bar Court on March 20, 2021 – three months after the initial discovery in the plane crash case described in the introduction. This notice contained fourteen different counts related to three separate cases from 2018 to 2020 where Girardi misappropriated and lied about the status of settlement funds, including the plane crash case (Notice of Disciplinary Charges 2023). This one formal complaint with allegations from three recent cases represents a small portion of what is now known about Girardi's patterns of misconduct, given that OCTC investigators could only support allegations for the more recent matters rather than re-conducting investigations into closed cases.

Between December 2020, when the plane crash case hearing took place, and March 2021, when the notice of disciplinary charges was filed, 82-year-old Girardi had been diagnosed with Alzheimer's disease and his firm had filed for bankruptcy (Hamilton and Ryan 2021).

Even though he was given a chance to respond to the charges from the California Bar, Girardi and his legal representatives did not file any response or appear in any hearings. As a result of his inaction, the California Bar filed a Petition for Disbarment and a motion asking the judge to accept the allegations in the notice as true and to agree with their recommendation that Girardi should lose his license to practice law, since Girardi did not take his allotted opportunity to respond to the charges against him (SBC-21-O-30192 2021, Motion for Entry of Default). The judge agreed with the California Bar and on January 10, 2022, formally recommended that the California Supreme Court disbar Girardi (SBC-21-O-30192 2022, Decision and Order). The California Supreme Court concurred with this recommendation via written order on June 1, 2022, and Girardi was officially disbarred (SBC-21-O-30689 2022, Final Discipline Order). Because Girardi and his legal representatives never filed any responses to the California Bar's motions and petitions, the California Bar faced zero resistance in disbarring Girardi, though the process still took over a year from the filing of initial charges to his disbarment.

Outside of State Bar Court, Girardi was indicted in California federal court on criminal charges related to his misappropriation of client funds. Despite his Alzheimer's diagnoses, he was found by the judge to the competent to stand trial, meaning that he was able to understand the charges against him and support his attorneys in this case (Thomas 2024). A jury delivered a guilty verdict, and in June 2025, days before his 86th birthday, Girardi was sentenced to over seven years in federal prison and ordered to pay $2.3 million in restitution to victims (Alsharif and Chen 2025). Girardi's lawyers have appealed the sentencing, so it will take some more court proceedings before Girardi's sentence is finalized and he serves any time (Brown 2025).

3.2. GIRARDI AND PRIVACY IN ATTORNEY DISCIPLINE

The story of Thomas Girardi and his years of unexamined misconduct is an extraordinary one, but serves as an example for what can happen when the monopoly over attorney discipline resolves matters privately and closes cases without proper investigation or oversight. This reliance on selective public information means that the public, and oftentimes investigators, are in the dark about aspects of an attorney's disciplinary system.

As discussed above in Section Two, modern attorney discipline has moved from solely private proceedings and records to allowing selective information from discipline proceedings to appear on attorneys' public records. Such information often only includes formal charges brought against an attorney; complaints that are resolved or deemed to have not enough evidence do not appear on an attorney's record. And attorneys who commit a minor violation of rules of conduct can be subject to private discipline and reprimands that would not appear on an attorneys' public record. As a result, "[b]ecause the vast majority of complaints never result in public sanctions and the vast majority of malpractice actions never result in published opinions, consumers lack crucial knowledge about lawyers' practice history" (Rhode and Woolley 2012, 2768). This invisibility of disciplinary complaints and lack of prosecutorial action perpetuates social closure and paints a rosier picture of the profession.

Even though Girardi had been the subject of over 200 complaints to the California Bar across his career from 1982 to 2021, none of these complaints resulted in public punishment or appeared on his permanent record because none resulted in formal charges

from the California Bar and the OCTC. Once the extent of his misconduct was uncovered, the California Bar faced immense public criticism for the way that it hides potentially repeated conduct from not only investigators, but from the public at large. Two reports investigated the California Bar's treatment of Girardi over the years – the Lazar Report from 2021, and the May Report from 2023 (Lazar 2021, May 2023). Alyse Lazar is a former California Bar employee who was hired to review documents and files from complaints and investigations into Girardi's conduct. Aaron May is a California attorney who had his own private practice and was hired by the California Bar to conduct a wide-reaching investigation into the Bar's handling of Girardi's conduct that went further than Lazar's file review (State Bar of California 2023). May and his team reviewed over 950,000 documents, issued 23 subpoenas, and interviewed, either voluntarily or under compulsion, 74 witnesses (State Bar of California 2023). These reports detailed how 44 of the complaints against Girardi, over one-third overall, involved the misuse of client trust accounts – a blatant violation of attorney ethics and California Bar rules of conduct. Regardless of the type of misconduct alleged, the Lazar Report found "[t]he vast majority of files were deemed to not warrant any disciplinary action and were closed at either the intake or investigation levels" (Lazar 2021, 3), meaning they never became public or resulted in any further investigation. These reports also detailed how most of the complaints against Girardi were settled out of court. There were private mediations in which Girardi and the complaining client, via a mediator, resolved whatever disagreement or what misconduct was alleged. Investigations could be closed at the discretion of a state bar employee who singlehandedly deemed there was no need for further action (May 2023). And because the matters were continually closed and not made public, state bar staff in the future could not rely on them when evaluating new complaints, and the public could not see that Girardi had years of complaints lodged against him that never resulted in formal charges (Lazar 2021).

Investigations also found Girardi maintained close relationships and friendships with high-ranking California Bar employees and would pay for expensive lunches, parties and trips on private jets with these same employees (Lazar 2021, 19-20; Hamilton and Ryan 2021; May 2023, 3). The May Report looked deeper into these friendships with California Bar employees and found that "the State Bar's handling of past discipline complaints against Girardi was more likely than not affected by Girardi's connections to and influence at the State Bar, and that there were multiple State Bar insiders who did not properly disclose their connections to Girardi, including employees who handled Girardi discipline cases" (May 2023, 3). The May Report found that "[a]t least nine Girardi cases were handled by employees who had a connection to, or appear to have received benefits from, Girardi or his law firm. All of those cases were closed without public discipline" (May 2023, 4). According to a press release from the California Bar, none of those employees named in this report are still employed by the Bar, and it does not appear they faced any further criminal consequences resulting from their conduct (State Bar of California 2023). Girardi was an incredibly powerful player in the California legal world, and having connections within the California Bar was a side effect of his influence (May 2023). These findings underscore how Girardi's influence and connections within the California Bar may have compromised the integrity of disciplinary proceedings against him, and how his misconduct was able to be kept out of public knowledge.

In some cases where Girardi was accused of not paying clients in a timely fashion, the California Bar investigators closed the case once he repaid the clients and thereby "resolved" his misconduct, leading to no consequences for Girardi and no public record of

the complaint (Lazar 2021, 1). The 2023 May Report describes how most allegations of misconduct followed a strikingly similar pattern:

> Girardi settled a case and received settlement funds but, even after multiple requests from the client, did not pay the client her share of the proceeds. The client would then, out of desperation, file a complaint with the State Bar against Girardi. Shortly after the complaint was filed, Girardi would pay the client what was owed and, as part of the arrangement, the client would drop the complaint. At that point, the State Bar would close the case, even though in many instances the evidence of violations were clear-cut. A similar type of complaint was from Girardi's co-counsels, who would allege that Girardi failed to pay them their fair share of settlements. Those complaints were also resolved in a similar manner– a complaint was filed, Girardi would pay off his co-counsel, co-counsel would withdraw their complaint, and the State Bar would close the case. (May 2023, 20)

Crucially, closing the case meant that there was never a follow up investigation from the California Bar into where the money Girardi paid to clients was rightfully theirs. This meant Girardi could carry on paying clients with money from settlements that were not theirs, continuing his cycle of misconduct with no consequence (Lazar 2021, 1). As a result of the closed complaints with no disciplinary action, "staff who had not handled prior cases on Girardi might assume all the closed complaints had no merit rather than considering that Girardi was engaging in patterns of misconduct" (Lazar 2021, 18). Employees "failed to look at this bigger picture due in part to the fact that these files were handled by many different investigators and attorneys (...). On a case-by-case basis, these closures appeared to be appropriate, however, except as otherwise noted, they did not involve a sufficient investigation to be certain" (Lazar 2021, 5). Closing files and not taking any action is a large reason as to how Girardi was able to continue his misconduct for years. The Lazar Report specifically concluded that the State Bar should revise their practices "pertaining to the investigation of files involving an attorney with a large volume of similar State Bar complaints to identify patterns of possible misconduct rather than simply closing them on a case-by-case basis" – doing so earlier would have raised flags immediately about the repetition of Girardi's behavior and potentially could have stopped him from practicing earlier, saving clients from his misconduct (Lazar 2021, 21). The California Bar choosing not to continue investigations and instead treating matters as closed made Girardi's discipline record seem spotless, even though he had complaints lodged against him for years. When viewed with a neo-Weberian lens, keeping complaints private and working to remove complaints after a period of years continues the monopoly the legal profession has over its discipline and allows the profession as a whole to paint a different picture of its discipline. The public is only allowed a temporary glimpse into the most serious, proven allegations.

3.3. NEW PROCEDURES

Even with Girardi's case as a warning sign, it does not appear the California Bar has learned its lesson, and it does not seem like the profession will change any time soon. In May of 2024 the California Bar approved a new plan to automatically remove all records that did not result in disbarment after eight years, if no other discipline has occurred in that time (State Bar of California 2024). The ABA recommends that if a complaint against a lawyer does not result in formal charges, such records be destroyed after only three years in order to "accommodate[] those who are concerned that the mere existence of a record of a

dismissed complaint will unfairly stigmatize the lawyer" (MRLDE, R. 4((commentary)). The ABA explains that once a matter has been dismissed:

> ... there is little justification for retaining the records indefinitely and thereby subjecting the lawyer to whatever implications may be drawn from the fact that the complaint was made. The mere existence of these records suggests that they may have some significance despite the dismissal. The perception is that complaints once filed will always constitute a threat lawyers are helpless to fully combat. (MRLDE, R. 4 (commentary))

Keeping discipline private and completing removing old records could cause patterns to go unrecognized. According to a press release by the California State Bar, this decision to remove records after eight years "balanc[es] the State Bar's commitment to public protection with considerations of fairness and equity for attorneys who have fulfilled requirements for redressing isolated misconduct" (California Bar 2024). However, as seen with Girardi, if these records were removed, patterns could not be detected, and the public would not be able to make an informed decision about the attorney they choose to hire. This decision highlights the tendency of attorney discipline to protect attorney reputation and believing in rehabilitation over having someone who needs legal services be fully informed about the attorney they chose to work with.

A memo from the California Bar to its members and board of trustees about this new eight-year rule contains results from a survey during a period of public comment in which attorneys and attorneys were asked what they thought. 47% of attorneys polled agreed that this new rule should be implemented, compared with an overwhelming 84% of non-attorneys who did not agree (Ellis 2024, 2). This stark disparity between attorneys and non-attorneys demonstrates the difference in priorities in those inside and outside the profession; members of the public are concerned about the removal of important information from the public record, and attorneys want to protect their records and focus more on rehabilitation. A quote from one respondent against the new rule explains how "[a]ttorney misconduct often causes lifelong harm to victims, and an eight-year expungement period fails to address this impact. Public trust and transparency are crucial; concealing past misconduct undermines both" (Ellis 2024, 3). However, one response from someone in favor of the plan did not think it went far enough: "[a]nything over 8 years is history. If there were more than one offense that did not warrant disbarment, they should all be removed from the public record. Why publicly stigmatize someone for acts that are history?" (Ellis 2024, 4). These quotes are illustrative examples of the struggle between public protection and attorney protection when it comes to modern attorney discipline – the public wants as much information as they can about attorneys they might hire, and attorneys want to keep professionals on the right track.

This eight-year removal policy also runs counter to the research and literature on attorney discipline; modern studies are presenting data that it might do more harm than good to keep records private and continually expunge them. It is important to connect repeat offenses to the reliance on private discipline, because "[w]hile it is possible that attorneys who receive one private admonition will never find themselves before a disciplinary board again, that is often not the case. Indeed, many clients are victimized by lawyers who had previously received more than one private sanction" (Levin 2007, 29). This was the case for Girardi and his clients – he engaged in similar patterns for decades. In fact, the CEDE Report from the ABA found "ample experience to demonstrate that public proceedings or

public records of dismissed complaints do no harm to innocent lawyers' reputations. On the contrary, secrecy does great harm to the reputation of the profession as a whole" (1992, Recommendation 7 (commentary)). A 2024 study from Florida, a state that implemented a policy in 2007 where all discipline records were privatized after ten years, compared discipline history of lawyers who offended before and after this 2007 privatization. This study found that most disciplined lawyers will not benefit from policies that hide disciplinary records, hiding records removes a strong signal of risk of future misconduct, and hiding records does not influence misconduct (Rozema 2024, 2-3). This finding is significant because it demonstrates that removing discipline history from public knowledge and from a regulatory agency database does not change a lawyers' behavior; someone who has offended in the past is more likely to offend again. Not destroying records, it seems, could make investigatory staff more likely to connect instances of past misconduct with current complaints, which would result in allegations being taken more seriously or uncovering larger patterns (Levin 2007, 32). If the attorney discipline system aims to protect clients, it should be more proactive in associating past complaints with current alleged misconduct rather than closing non-proven complaints just to protect an attorneys' reputation. The monopoly the legal profession has built around itself when it comes to attorney discipline works still to protect its members, potentially at the expense of public information.

Girardi's story is an extreme one – he was engaging in misconduct for decades, and yet nothing was done by the California Bar to prevent it, even though they had numerous allegations that were kept private. They did not detect patterns as they were forming, and as a result, many clients were injured in the same way year after year. While the attorney discipline system aims to protect the public and build public trust in how the system functions, privatizing records in order to protect attorney reputations can do more harm than good, especially if attorneys are still engaging in patterns of misconduct. If the profession and its monopoly over discipline continues to move in directions where more complaints are expunged, it is possible that crucial patterns can be missed by investigators. When examined in tandem with the neo-Weberian understanding of professional monopolies, Girardi's story emphasizes the dangers of keeping information away from the public and how the public can lose trust in a closed system, even though the espoused goals of the system are to build trust and protect the public.

4. CONCLUSION

By applying the neo-Weberian framework of professional analysis to the American legal profession, it is clear that lawyers created this system of attorney regulation and discipline in order to keep their monopoly intact and allow attorneys to regulate their own without any outside influence. Both Girardi's manipulations and the California Bar's failures resulted in preventable injuries to clients who came to the legal system to seek relief, and instead, were re-victimized. As Judge Durkin wrote after Girardi's misconduct came to light, Girardi "took advantage of vulnerable people at their most vulnerable moments, and he used the prestige of his profession (...) to do it" (*In re Lion Air Flight JT 610 Crash* 2022, 13). Current issues with state disciplinary processes result in a system that could be doing more to achieve its stated goal of public protection. Lawyers are a unique profession because of the trust and power given to them in their course of business, and the vitality of their profession to the justice system. When such trust is violated, this disciplinary system needs to be trusted to listen to client concerns, be transparent about all types of decisions made, regardless of the nature of the conduct, and continue to make efforts to offer

educational resources and data to the public. The concept of private discipline for "minor" misconduct should be reconsidered to present consumers of legal services with full information on the past conduct of their attorneys to catch repeating instances of misconduct, and to build trust in the discipline process overall. Disciplinary records should not be expunged, and more documents should be public in order to give the general population, and the profession, a clearer view of attorney discipline. Hiding documents does not help investigators nor those who come to the legal system looking for a representative. The legal profession is counted on to bring justice to everyone; its disciplinary system should be held to the same standard, if not a higher one.

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