Disciplinary Procedures

What It Tells Us about Practicing Attorneys in Japan

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I. The Independence of the Profession
II. The Scheme – Three Phases and their Functions
   1. Introductory Phase: Complaints to Bar Associations
   2. "Mediation and Conciliation" Procedure as the Second Phase
   3. Disciplinary Procedure – The Final Phase
III. Assessment and Some Observations
Appendix I: Tables
Appendix II: The 1949 Attorney Act

In order to practice in Japan, an attorney has to be registered at one of the 52 local bar associations. That local bar association can (1) disbar and revoke an attorney's qualification, not just as a practicing attorney but also the qualification allowing one to join the judiciary or the prosecutor's office (disbarment of up to three years), (2) order expulsion from that bar association and restrict the attorney's livelihood (unless another local bar association accepts and registers the person as its own member), (3) suspend business for not more than two years, during which time the attorney retains her qualification but is not allowed to practice, or (4) admonish a member. How serious are these measures and what do those penalties have to do with the independence of the profession?

I. THE INDEPENDENCE OF THE PROFESSION

Japanese practicing attorneys *(bengo-shi)* take their autonomous status very seriously. Historically, under the 1890 Court Structure Act, the Ministry of Justice *(shihō-shō)* and the Attorney General's Office *(kenji sōchō)* shared the power to control not just the judiciary, judges and prosecutors but all qualified legal professionals.[1] Chief prosecutors *(kenji-chō)* exercised the

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power to indict practicing attorneys before a high court *(kōso-in)* on their own or by petition from the bar association *(bengo-shi-kai)* with which the attorney was registered.[2]

The 1949 Attorney Act *(Bengo-shi-hō)* (Law No. 205/1949, hereinafter referred to as the Act) authorized local bar associations *(tan'i bengo-shi-kai)*[3] and the Japan Federation of Bar Associations (JFBA) (*Nihon Bengo-shi*

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1 The Court Structure Act of 1890 *(Saiban-sho kōsei-hō)* (Law No. 6/1890) provided for one common examination for judges and prosecutors *(hanji kenji tōyō shiken)*, and those who passed this examination spent eighteen months as judicial trainees *(shihō-kan shiho)* and had to pass another examination before they were assigned as judges or prosecutors. (There was a diploma privilege exempting those who graduated from law schools of the Tōkyō and Kyōto Imperial Universities such that they could become trainees without taking the first examination.) There was a separate examination for attorneys *(bengo-shi shiken)*. The Imperial University graduates enjoyed not just the above-mentioned exemption but were also allowed to become attorneys on graduation. Furthermore, those who passed the examination for judges and prosecutors were qualified as attorneys as well. This system lasted until 1922.

In 1923, the two examinations merged as a part of the Advanced Examination for Public Officials *(bunkan kōtō shiken)*. Those who passed the judicial section *(kōtō shiken shihō-ka shiken)* were able to practice as attorneys. Even though they took and passed the same examination, those aspiring to be judges or prosecutors had to pass with fairly impressive results before being admitted, and they spent the next eighteen months (and passed the second examination) as judicial trainees. (Those determined to become public officials at central government agencies sat for the administrative examination called *kōtō shiken gyōsei-ka shiken*. The latter was considered more difficult, hence the pre-war dominance of the Ministry of Justice over judges and prosecutors.)

The Attorney Act of 1933 *(Bengo-shi-hō)* (Law No. 53/1933) brought in several drastic changes: it introduced a separate, eighteen-month trainee system for attorneys (apprenticeship at law offices without pay); it allowed women to sit for the exam; and it handed over the disciplinary power over bar associations from chief prosecutors to the Minister of Justice. The separate training scheme symbolized, according to the pre-war Old Guards, the fact that prosecutors and judges were the servants of His Imperial Majesty (in office, in service of the court) while attorneys were in the Opposition (out of office/power, in opposition and in the wilderness). Many pre-war attorneys believed that they were the champions of the down-trodden and that they were fighting for the people against the oppression of those who ruled. It was true that they were protecting people's rights and liberties as they had to stand up against prosecutors (and the government of the day) for criminal defendants, and they were quite often disciplined for those activities.

2 Attorney Act of 1893 *(Bengo-shi-hō)* (Law No. 7/1893) Arts. 31–34.

3 There are fifty-two bar associations, one in each prefecture except in Hokkaidō (where there are four: *Asahikawa*, *Hakodate*, *Kushiro*, and *Sapporo*, possibly reflecting the difficulty of covering the huge and sparsely populated region in early days) and in Tōkyō (where there are three: *Tōkyō*, *Dai-Ichi Tōkyō* [Tōkyō, First] and *Dai-Ni Tōkyō* [Tōkyō, Second]; reflecting the ideological and hegemonic battles of the 1920s).

Rengō-kai, a.k.a. *Nichiben-ren*), instead of courts or the prosecutor's office, to take disciplinary actions against attorneys[4] and, since 2002, against legal professional corporations *(bengo-shi hōjin).*[5] Thus, many in the profession still firmly believe that the power to discipline and, therefore, to control fellow members' behavior is the cornerstone of the autonomy and independence of the profession. The mandatory registration system, in which all attorneys must be members of one of the local bar associations, is explained as the raison d'être of bar associations and their disciplinary power. At a time when the oppressive memories of the pre-war years were fairly vivid, many attorneys shared the belief that their independence was essential to protect the rights and liberties of not just their clients, but of society as a whole. Many still firmly hold this belief as the medical profession, by contrast, is

4 The original concept of an attorney appears to be similar to a barrister who may practice solo or in chamber-style partnership firms and who advocated in courtrooms. The difference is that people had direct access to attorneys, rather than using them in an intermediary fashion like solicitors, and they were thus known as *"daigen-nin*" (*daigen* is explained by I. SHINMURA (ed.), *Kōjien* [~ a dictionary], Tōkyō (1970) as "*honnin ni kawatte benron suru koto*" which translates as "pleading on behalf of the person concerned"). A young and inexperienced attorney usually started her practice with an experienced attorney and the latter was expected to train the former, not just about lawyering but also about how to run a law practice as a business. Younger attorneys, after spending a few years as associates, might be offered partnership with the original firm, be asked to join as a partner by another firm, set up their own solo practice or form a new partnership firm with others. In theory, all attorneys are equal, but their experiences may differ. This is reflected in attorneys calling each other *"sensei"* [master, Sir] regardless of their seniority (in practice as well as in actual age) in a society where seniority counts, as C. NAKANE wrote in her seminal book, *Tate shakai no ningen kankei* [Personal Relations in a Vertical Society] (Tōkyō 1967); English translation C. NAKANE, Japanese Society (renewed ed., repr., Berkeley 2008).

5 Legal professional corporations were introduced in 2002 by the 2001 Amendment to the Lawyers' Act *(Kaisei bengo-shi-hō)* (Law No. 41/2001).

The justifications for introducing legal professional corporations are (1) for the convenience of clients and (2) to stabilize the management of legal practice. The old-fashioned law firms may open as many overseas branch offices as they wish, but they are allowed to establish only one office in Japan, whereas legal professional corporations may establish and register fifty-two different offices at fifty-two different bar associations. The former usually provide one-stop, full-service to clients with several hundred qualified attorneys and other professionals. Because there is no jurisdictional restriction within Japan, an attorney registered at Fukuoka Bar may handle disputes arising in Hokkaidō, if the client so wishes. There are some legal professional corporations which have gone bankrupt, so the introduction of incorporated entities really does not seem to have solved precarious management practice.

presently regulated by Medical Ethics Council of the Ministry of Health, Labor and Welfare.[6]

Yet the memories of serious confrontations are no longer shared by most practicing attorneys today. Only a few of them today see themselves as constantly in opposition and fighting against the government of the day to protect people's rights and freedoms as their professional aim. In spite of the fact that Art. 1 of the Act has since 1949 stated that an attorney is entrusted with the mission to protect fundamental human rights and achieve social justice, most attorneys appear to consider themselves as being in the business of providing legal services and in fierce competition with each other and with other service professions – rather than as being warriors for rights, liberties or social justice. Unable to ignore the fact that members identify themselves as service providers (with clients to satisfy and reputations to protect) and believing that maintenance of disciplinary power is the key to preserving the autonomy and independence of attorneys as a profession, the JFBA and bar associations are becoming keen to respond to any complaints.

II. The Scheme – Three Phases and their Functions

1. *Introductory Phase: Complaints to Bar Associations*

Since 2004, all bar associations have established so-called "public complaint desks" *(shimin madoguchi)* where anyone can file complaints about attorneys. While the number of attorneys increased 245.7% in the years between 1998 and 2018 (the years for which data are available), the number of complaints increased by 662.7%. Should the bar and society be concerned about this increase of complaints? Apparently, the existence of complaint desks unveiled previously hidden complaints. The number of complaints per attorney between 2004 and 2018, in spite of notable increase in the number of attorneys, are fairly static whereas they more than doubled between 1998, when it started, and 2004, when it became available at all bar associations *(Table 1)*.

Clients complain most about how attorneys mishandled cases rather than the final results which, at first, appears puzzling. Were they not interested in the outcome or were they not expecting to win? But complaining clients might be thinking as follows: had the attorney followed my instructions faithfully, took my claims seriously and acted swiftly, or maintained civility when dealing with people concerned, I could/should/would have won the

6 Art. 1 Medical Practitioners' Act *(Ishi-hō)* (Law No. 201/1940) refers to improvement and promotion of public health and to healthy lives of citizens as the missions of medical practitioners, but Art. 2 entrusts licensing power to the Ministry of Health, Labor and Welfare. In my view, the monitoring function of the Ministry vis-à-vis medical practitioners is very weak.

case. If that is the accurate reading of the clients' reaction, almost three-fourths of complaints are about disappointing results. Interestingly, clients, opposing parties and others are all concerned with inappropriate manners and attitudes. This suggests that at least about a third of those concerned expect attorneys to be courteous and well-mannered as opposed to being aggressive and determined to win at all costs *(Table 2)*.

One may wonder whether (1) there are more complaints at bar associations with more attorneys, (2) the per capita number of attorneys affects the willingness to complain (with more attorneys, clients can find other more accommodating attorneys much more easily), (3) complaints are lodged primarily against a few "rotten apples".

The first hypothesis, "there are more complaints at bar associations with more attorneys" *almost* sounds right *(Table 3)*. There is no geographical/jurisdictional limitation on practice for most attorneys, and clients can search for and consult with any attorney.[7] In reality, attorneys are clustered in areas where they can find business *(Table 3)*. Most large bar associations appear to receive more than their share of complaints per attorney *(Table 4)*. The exception is *Dai-Ichi Tōkyō*.[8] There are theories as to why *Dai-Ichi Tōkyō* is different, but there is not much evidence to support any of them.[9]

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7 The exception is a group of attorneys registered as Okinawa attorneys *(Okinawa bengo-shi)* as provided by Act on Special Measures concerning Qualification of Attorneys Licensed in Okinawa as Attorneys Licensed in Japan (*Okinawa no Okinawa bengo-shi shikaku-sha tō ni taisuru honpō no bengo-shi shikaku tō no fuyo ni kansuru tokubetsu sochi-hō,* Law No. 33/1970). These are attorneys who were qualified as attorneys under the American Occupation (1945 to 1972) and who did not take or pass special bar examinations and corresponding training as designated by the Act. The latest information (as of March 2019) indicated that there are eight Okinawa attorneys still in practice.

8 In 1922, the Ministry of Justice introduced a new scheme to recruit attorneys, *supra* note 1. The introduction of measures to increase the number of attorneys induced some prominent figures (Makoto Egi, Yoshimichi Hara, Sei'ichi Kishi, and Takuzō Hanai, among others) – unhappy with the change in the atmosphere of the association (more bluntly, they lost the bar presidential election to a newly formed group) – to petition the Diet and form another independent bar association in March 1923. See, *supra* note 3.

9 The conventional wisdom in the Tōkyō area is that these attorneys and their law firms tend to have large corporations as their clients. If clients are unsatisfied, they can retain different attorneys and firms without resorting to a complaint procedure. Yet attorneys from the same law firms are not necessarily registered at the same bar association. This makes it difficult to support that proposition that, because their clients and opposing parties are business entities, they would complain directly to law firms rather than to bar associations in handling their affairs.

Another suggestion is that *Dai-Ichi Tōkyō* accepts a large number of those who were judges and prosecutors. Why this decreases the number of complaints or

The second hypothesis, "the density of attorneys (number of attorneys per general population of 10,000) affects the willingness to complain (as people would probably be more reluctant to complain in a fairly small community)" does not withstand scrutiny. Available data suggest analysis based on longer periods are necessary *(Table 5)*.

Some evidence supports the third hypothesis that "there are some rotten apples" who receive more than an average share of complaints. There might be few real "rotten apples in the barrel" attracting a lion's share.[10] At some bar associations, it is indeed a handful of attorneys who receive complaints, but at some other bar associations more than half of their members are implicated. There might be other factors which would explain this phenomenon better. Unfortunately, data concerning the number of complaint-receiving attorneys are available only for 2017 *(Tables 6* and *7)*.

Statistically speaking, somewhere between a quarter and a third of all attorneys face one complaint a year, meaning that all attorneys, on average, face one complaint every three or four years from a client, an opposing party or a third party – more often than not from their client. One wonders whether attorneys are really providing the adequate services that non-lawyers expect.

What do these public complaint desks do? They (1) provide information and options to those who are unhappy with attorney conduct, and (2) issue warnings to bar association directors *(riji-sha)* of possible misconduct so that they may alert attorneys of their troubles *(Table 8)*. If it is the case that a fair number of claimants are satisfied that they were able to air their complaints (ca. 16.0%) – some received application forms for various procedures (ca. 7.5%), but only a few received a recommendation to submit their complaint in writing (ca. 1.2%) – we can perhaps assume that most complaints are unlikely to lead to disciplinary actions by bar associations.

2. "Mediation and Conciliation" Procedure as the Second Phase

All bar associations also provide their own independent and autonomous (out-of-court or alternative) dispute resolution procedures (ADR) for clients who are in a course of business with attorneys, law firms and legal professional corporations (Art. 41 of the Act). The main purpose of these bar ADRs is to settle pecuniary disputes between clients and attorneys. Most often, they relate to what clients see as attorneys' demands for outrageous and exorbitant fees and as improper management of custodian accounts.

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whether there is any correlation – or causation – between having a larger share of experienced judges and prosecutors and receiving fewer complaints is beyond my understanding at the moment.

10 See *infra* note 16 and accompanying text.

Between 2008 and 2018, cases filed for dispute resolution procedures increased 141.8% and cases handled increased 137.3%. The number of cases filed for bar ADRs is only 4.4% to 6.6% of the number of complaints at public complaint desks. Furthermore, every year more cases were "not settled" than "settled." Were we to add "withdrawn" to "not settled" as an indication of dissatisfaction with these procedures, almost 60% must be of the view that their problems cannot be solved using these ADR mechanisms *(Table 9)*.

Compared to the complaints raised at public complaint desks, these numbers reflect a tiny fraction of the unsatisfactory feelings and discontent. Furthermore, the results obtained are not satisfactory either.

3. Disciplinary Procedure – The Final Phase

The Act provides that any person may make a request for disciplinary action with the bar association to which an attorney or a legal corporation belongs (Art. 58 para. 1 of the Act). Each local bar association has the same two-tier system: an indictment committee (*kōki i'in-kai,* the English translation by the JFBA is "disciplinary enforcement committee") and an adjudicative committee (*chōkai i'in-kai,* JFBA translation: "disciplinary action committee"). An indictment committee will screen requests for disciplinary actions by engaging in a preliminary investigation, and it will send cases worthy of serious investigation to an adjudicative committee which will then examine the matter and report to the bar association its conclusion on whether to discipline the "accused" attorney or the legal corporation. The investigation and adjudication processes themselves are document-based with one oral hearing (of one to two hours) for the "accused" attorney, with legal representation, at each stage. The bar association is to rule according to the resolution of these committees (Art. 58 paras. 5 and 6 of the Act). If the requesting party is not satisfied with any of the committee decisions, she may file her objections with the JFBA.

The JBFA also is equipped with its own indictment committee and adjudicating committee just like the local bar associations. Furthermore, the JFBA established a review board (*nichiben-ren kōki shinsa-kai*, JFBA translation: the JFBA Board of Discipline Review) which deals with requesting parties whose requests for disciplinary actions had been rejected at indictment committees both of the local bar association and of the JFBA. To be more precise, against the original bar association's resolution not to discipline or when the bar association has not resolved the matter in a timely manner, a requesting party may file objections to the JFBA (Art. 64 para.1 of the Act).

(a) When the resolution in question was of the original bar association's indictment committee, the JFBA refers the matter to its own indictment committee (Art. 64-2 para. 1 of the Act). (1) If this committee finds the

objection justified, the JFBA rescinds the original decision and sends the case to the original bar association's adjudicating committee (Art. 64-2 paras. 2 and 3 of the Act). (2) If it finds the original decision justified, the JFBA dismisses or rejects the objection (Art. 64-2 para. 5 of the Act).

(b) When the indictment committees of both the original bar association and the JFBA reject objections from the requesting party, the party may apply for review of that decision to the JFBA Review Board (Art. 64-3 para. 1 of the Act). (1) If the Review Board finds, by two-thirds of the Board members present, that there are appropriate grounds for the request to re-examine the matter, the JFBA shall send the case to the original bar association's adjudicating committee (Art. 64-4 paras. 2 and 3 of the Act).

(c) When the resolution in question was of the original bar association's adjudicating committee, the JFBA refers the matter to its own adjudicating committee (Art. 64-5 para. 1 of the Act). (1) An objection could be brought against a resolution to take no disciplinary action, or an objection could be against a resolution to discipline as being too lenient, both filed by the requesting party (Art. 64-5 paras. 2 and 4 of the Act). Objections could also be an appeal raised by a disciplined attorney requesting re-examination of the original bar association's resolution to discipline (Art. 59 of the Act). (2) If the committee agrees with the requesting party's objections, the JFBA is to overturn the original decision and impose appropriate disciplinary action accordingly (Art. 64-5 paras. 2 and 4 of the Act). (3) If the JFBA's adjudicating committee finds the original decision justified, the JFBA dismisses or rejects the objection (Art. 64-5 para. 5 of the Act).

(d) The requesting party may also file objections with the JFBA that the original bar association has not concluded its procedure within a reasonable period. When the JFBA indictment committee or adjudicating committee finds that there are grounds for that objection, it may make a resolution to that effect and the JFBA is to order the original bar association to promptly proceed (Arts. 64 para. 1, 64-5 para. 3 of the Act).

In short, the requesting party may file objections against any unfavorable (or unsatisfactory, in cases where the result is deemed too lenient) resolutions and decisions at every stage, but the attorney or corporation complained of can appeal to the JFBA's adjudicating committee only after the attorney or corporation is disciplined by the original bar association (Art. 59 of the Act) or is subject to disciplinary action by the JFBA (Art. 60 para. 1 of the Act). Yet the final opportunity is given to the disciplined attorney as she may file a lawsuit before the Tōkyō High Court to rescind the disciplinary action of the original bar association or of the JFBA (Art. 61

para. 1 of the Act), with the lawsuit being eventually appealable to the Supreme Court.[11]

The JFBA publishes the names of attorneys disciplined, their registered numbers, the bar associations responsible and the disciplinary measures themselves in its monthly journal "Liberty and Justice" *(Jiyūu To Seigi)* as well as in the Official Gazette *(Kanpō)* (Art. 64-6 para. 3 of the Act).

As with all systems in Japan reduced to writing, the disciplinary procedure as prescribed by the Act and provided by all bar associations is paper-perfect: it is open to the public to put forward a request for disciplinary action against any attorney, and all charges are adjudicated according to the amendment of the Attorney Act of 2003 and the Fundamental Code of Professional Conduct.[12] Indictment committees provide necessary safeguards for attorneys against groundless claims, and natural justice is satisfied by guaranteeing "notice and hearing" to the "accused" and by including non-attorney members in both the indictment and the adjudicating processes. Finally, any objection to each of the committee's recommendations can be contested before the JFBA. The disciplinary procedure appears to satisfy the Basic Principles on the Role of Lawyer (1990).[13] However it is only attorneys who can appeal decisions of bar associations which are based on recommendations of adjudicating committees.

On the one hand, one may still wonder whether the system is really properly functioning when one learns of the small number of attorneys who are actually disciplined[14] and of the lack of transparency at disciplinary

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11 The number of cases appealed to and decided by the Supreme Court per year in recent years (2016 to 2019) is 18.

12 The Diet enacted the new Attorney Act of 2003 (Law No. 128/2003), and the JFBA adopted the Fundamental Code of Professional Conduct *(Shokumu kihon kitei)*, which came into effect in April 2005. The Act and the Code form the grounds for attorneys' discipline procedure today.

13 Basic Principles on the Role of Lawyers, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. Under these Principles, disciplinary proceedings must at a minimum be based on (1) a code of professional conduct for lawyers, (2) appropriate procedures to consider charges or complaints against lawyers, with the right to a fair hearing and legal assistance for lawyers, (3) procedures occurring before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, subject to independent judicial review, and (4) rulings made according to the code and other recognized standards and ethics of the legal profession. The situation in Japan appears to live up to these expectations.

14 According to the statistics available from the JFBA's White Papers 2018 and 2019, between calendar years 2001 and 2018, there were 54,297 requests for disciplinary

process as a whole. It might seem that attorneys are scratching each other's back at the expense of the public. Furthermore, there is the three-year statute of repose (Art. 63 of the Act), and the filing of objections is limited to 60 days (Art. 64 para. 2 of the Act) or 30 days (Art. 64-3 para. 2 of the Act) after receiving notice of the resolutions by the original bar association or by the JFBA. All in all, it actually is not so easy for lay persons to navigate through this system *(Tables 12* and *13)*.

On the other hand, because the final result may deprive an attorney of her livelihood, most attorneys expect all decisions to be based on evidence at the standard of "beyond reasonable doubt" rather than a "preponderance" of the evidence. The notices of discipline published in the JFBA's monthly publication *"Jiyū To Seigi"* indicate all criminally indicted attorneys who have been disbarred.[15] Whereas the chances for claims to succeed are very slight, disciplined attorneys and legal professional corporations appear to fare better with their appeals lodged with the JFBA's disciplinary actions committee *(Tables 11* and *12)*. Disciplined attorneys have another chance to clear their names by appealing the JFBA decision to the Tōkyō High Court, and then to the Supreme Court, though it seems that few if any attorneys are successful there.

III. Assessment and Some Observations

In the first phase, public complaint desks give advice to those who feel there is cause to complain. Many might be satisfied with simply airing their complaints, but real solutions are not provided. The bar ADRs provide the opportunity to settle pecuniary disputes between clients and attorneys. Some attorneys have stated that it is easier to return whatever the claimants

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procedure (3016.5 per year). During the same period, 44 attorneys (2.4 per year) were disbarred and 59 (3.3 per year) were ordered to withdraw from bar associations.

15 About 80% of disbarments involve the misappropriation of funds, embezzlements, fraud and other serious crimes.

When crimes are apparently not involved, the most common issue is continuous non-payment of bar association fees. At first glance, the issue appears to be a matter of self-interest to bar associations (to secure their own organizational funds), but available information suggests something more sinister. In cases where attorneys are inactive (most often due to their advanced ages), these registered attorneys' names and offices are prone to be used by individuals engaged in unauthorized legal practices. Furthermore, the attorneys themselves are, in most cases, not aware of these illegal activities done under their own names. Bar associations strongly recommend that the attorneys themselves withdraw their registrations whenever they are not active. Some, unfortunately, are quite reluctant to follow the recommendations, stating that being registered as an attorney is the pride of their existence.

assert as owed rather than contest the claim, but that attitude probably is not shared by the majority of attorneys who have been asked to participate in this procedure, as the rate of satisfaction is not high. The final disciplinary procedure appears to be precise, logical and detailed as it is written, but the citizens concerned might wish to have a lawyer to guide them through the labyrinth of procedural traps. All in all, it actually is not so easy for laypersons to navigate through this system, as success rates show *(Tables 9, 10, 11, 12* and *13)*.

The White Papers on Attorneys (Japanese version) present interesting information. According to the 2019 version,[16] 1,162 attorneys were disciplined between January 1989 and March 2019. Of those, 857 were disciplined once, 169 experienced disciplinary actions twice, 85 three times, 37 four times, 11 five times, and three of them were disciplined eight times! But then, if their misconduct were really serious, they would have been disbarred or ordered to withdraw from bar associations, and they would not have had the chance to be disciplined so often, thus suggesting that a large majority of those disciplined are issued either an admonition or a fairly short period of suspension *(Table 14)*.

This gives rise to the suspicion that attorneys are scratching each other's back, so to speak, or being too lenient. Yet, disbarment, an order to withdraw, or suspension of business would deprive them of their livelihood, forever or temporarily in theory. Some clients may even withdraw their relationship with an attorney because of a resolution to admonish that attorney. There is ample reason for the procedure to be taken seriously. The more serious cases of disbarment and orders to withdraw indicate that serious incidents are disciplined: the number of those disbarred[17] between 2001 and 2018 was 44 (an average of 2.4 per year), while 62 were ordered to withdraw from the bar association[18] (an average of 3.4 per year). In the

16 NICHIBEN-REN [JFBA], *Bengo-shi hakusho 2019-nen ban* [The White Paper on Attorneys 2019] 177.

17 Decisions to disbar do not prevent, in theory, disqualified attorneys from applying to a bar association after three years, after finding suitable attorneys to sponsor their application. All lawyers well situated so as to be familiar with information about disciplinary procedures confirmed that no one so far has succeeded in re-registration.

18 In theory, the "accused" attorney is not disqualified and may apply for registration to another bar association after three years. Once the disciplinary procedure begins, "accused" attorneys are not permitted to change their bar registrations; otherwise, they may be able to escape being disciplined by the original bar association. There have been cases of attorneys who, after the decision became final, applied to register at a different bar association after a short period of time, often unsuccessfully according to lawyers familiar with these matters.

process, "accused" attorneys are afforded "natural justice", i.e. adequate notice and a hearing, and their cases are adjudicated by impartial adjudicating committees.[19] Although the process is not open to the public, the conclusions are published in *"Jiyū To Seigi"* and *"Kanpō",* and disciplined attorneys can appeal to the Tōkyō High Court (Art. 61 para. 1 of the Act) for an independent judicial review, which is open to the public. Cases listed in *"Jiyū To Seigi"* suggest that appellants' rate of success at the Tōkyō High Court and then at the Supreme Court is very low. It appears at least that courts believe bar associations and the JFBA are exercising their disciplinary power properly.

One last observation: more attorneys with sufficient – 10 to 29 years' – experience appear to be subject to discipline than those with less or more experience *(Table 15)*. Yet the older attorneys are more prone to be disciplined than the younger ones *(Table 16)*. This suggests that attorneys who began their practice as attorneys at later stages of their lives are more likely

19 All adjudicating committees consist of one chair who is an attorney plus the same number of attorneys and non-attorneys (judges, prosecutors and legal academics) as their members. According to "The Theories and Practices of Attorney Discipline Procedure", *(Bengo-shi chōkai tetsuzuki no kenkyū to jitsumu),* third party/non-attorney participation has been included in the Act (Art. 33 para. 2 item 8 of the Act) as an essential component of each bar association's constitution since 1949, and most bar associations have established committees with four to eleven attorney members and three third-party members accordingly. In 1979, with frequent disruptions by defendants (assumed to have been encouraged by their legal counsels) at criminal trials related to student unrest at universities, the JFBA introduced a rule increasing the number of third-party members on its adjudicating committee to seven (two judges, two prosecutors and three law professors) and asked all bar associations to increase the number of third-party members (to one number less than their number of attorney members) at each and every adjudicating committee. With one attorney functioning as the chair, the presence and the view of third-party members, in theory, can hardly be ignored. It must be added that each and every bar association has the autonomy to decide precise procedure beyond what is prescribed by the Act.

The JFBA Review Board is another story. It was established in 2004, amending the Act (Art. 64-3 of the Act) as part of the twenty-first century legal reform *(shihō kaikaku)* to ensure fairness in the finality of the disciplinary procedure. Its members are all legal academics (having any experience as a practicing attorney, judge or prosecutor is deemed disqualifying), and the number and membership are kept confidential, except for the chair, whose name appears in its annual reports, "The Collection of Disciplinary Cases" *(Bengo-shi chōkai jiken giketsu reishū).* A rough estimate is that of about 150 requests annually, the White Papers of the JFBA 2018 and 2019 show no case having been remanded to the adjudicating committee of the original bar association, although the Review Board remanded one case to the original bar association's adjudicative committee, which eventually recommended suspending the attorney from his business for two months.

to be disciplined. They might be influenced by other work ethics (of jobs they had before becoming attorneys). If so, there must be something distinctly different in the professional ethics of attorneys (as exemplified by the 2004 Fundamental Code of Professional Conduct) as compared to other professions, occupations or fields of work.

The conclusion here is that the disciplinary procedure itself is not user-friendly and might not be helpful in achieving the result sought by laypeople. It also appears that this disciplinary power of the bar does not directly enhance the independence and autonomy of the bar and attorneys in general as the JFBA claims. Yet this system of self-policing is probably helping indoctrinate attorneys with a distinct sense of professional ethics. My suspicion is that people initiate and request disciplinary actions because the public does not necessarily share the same conception of ethics.

APPENDIX I: TABLES[20]

Table 1: Numbers of Attorneys (at the end of March each year), Complaints and Complaints per Attorney (calendar years)

Year	Attorneys	Complaints	Complaints per Attorney
1950	5,827	–	–
1960	6,321	–	–
1970	8,478	–	–
1980	11,441	–	–
1990	13,800	–	–
1998	16,305	2,203	0.14
1999	16,731	2,533	0.15
2000	17,126	2,791	0.16
2001	18,243	3,224	0.18
2002	18,838	5,050	0.27
2003	19,508	6,646	0.34
2004	20,224	8,112	0.40
2005	21,185	8,212	0.39
2006	22,021	8,861	0.40
2007	23,119	8,668	0.37
2008	25,041	9,427	0.38
2009	26,930	9,764	0.36
2010	28,789	10,807	0.38
2011	30,485	11,129	0.37
2012	32,088	11,020	0.34
2013	33,624	11,986	0.36
2014	35,045	13,893	0.40
2015	36,415	14,822	0.40
2016	37,680	15,064	0.40
2017	38,980	14,829	0.38
2018	40,066	14,599	0.36
2019	41,118	–	–

[20] All data hereinafter are taken from JFBA's "White Papers on Attorneys" (*Bengo-shi hakusho*), published annually, unless explicitly stated as otherwise. Every year, the JFBA publishes English and Japanese versions of its white paper. Unfortunately for non-Japanese-reading audiences, the English version does not provide as much information as the similar-looking Japanese counterpart, although the two versions share many of the same texts and diagrams.

Table 2: Number and Nature of Complaints by Complainants

In 2017

	Number of Complaints			Number of Attorneys Subject to Complaints
Clients	9,286		(62.6%)	6,380 (57.1%)
Final outcomes	631	6.8%	(4.3%)	
Handling	2,626	28.3%	(17.7%)	
Delays	1,449	15.6%	(9.8%)	
Manners	2,243	24.2%	(15.1%)	
Fees & accounts	1,439	15.5%	(9.7%)	
Opposing parties	3,470		(23.4%)	3,015 (27.0%)
Final outcomes	106	3.1%	(0.7%)	
Handling	648	18.7%	(4.4%)	
Delays	289	8.3%	(1.9%)	
Manners	1,968	56.7%	(13.3%)	
Others	2,073		(14.0%)	1,771 (15.9%)
Final outcomes	57	2.7%	(0.4%)	
Manners	716	34.5%	(4.8%)	
Total	14,829			11,166

In 2018 (Number of Attorneys Subject to Complaints is not available)

	Number of Complaints		
Clients	9,261		(63.4%)
Final outcomes	612	6.6%	(4.2%)
Handling	2,577	27.8%	(17.7%)
Delays	1,545	16.7%	(10.6%)
Manners	2,318	25.0%	(15.9%)
Fees & accounts	1,418	15.3%	(9.7%)
Opposing parties	3,338		(22.9%)
Final outcomes	60	1.8%	(0.4%)
Handling	611	18.3%	(4.2%)
Delays	305	9.1%	(2.1%)
Manners	1,928	57.8%	(13.2%)
Others	2,000		(13.7%)
Final outcomes	57	2.9%	(0.4%)
Manners	756	37.8%	(5.2%)
Total	14,599		

Table 3: Attorneys are Clustered around Large Cities

Bar Associations	Number of Attorneys registered as of March 2017		Number of Attorneys registered as of March 2019	
Tōkyō Metropolitan Area	22,182	(55.4%)	22,926	(55.8%)
Tōkyō	8,271		8,493	
Dai-Ichi Tōkyō	5,205		5,482	
Dai-ni Tōkyō	5,403		5,602	
Kanagawa-ken (Yokohama)	1,635		1,657	
Saitama	870		878	
Chiba	798		814	
Kansai Area	6,264	(15.6%)	6,398	(15.6%)
Ōsaka	4,562		4,651	
Hyōgo-ken (Kōbe)	934		964	
Kyōto	768		783	
Aichi-ken (Nagoya)	1,958	(4.9%)	1,999	(4.9%)
Fukuoka-ken	1,281	(3.2%)	1,314	(3.2%)
Total	40,066		41,118	

Table 4: Number of Complaints and Complaints per Attorney

In Calendar Year 2017

Bar Associations	Complaints	Attorneys	Complaints per attorney
Tōkyō	3,145	8,195	0.38
Dai-Ni Tōkyō	1,593	5,389	0.20
Ōsaka	1,344	4,539	0.30
Kanagawa-ken (Yokohama)	1,162	1,617	0.72
Aichi-ken (Nagoya)	1,145	1,959	0.58
Fukuoka-ken	799	1,283	0.62
Dai-Ichi Tōkyō	739	5,170	0.14
Hyōgo-ken (Kobe)	495	927	0.53
Kyōto	473	767	0.62
Sapporo	441	790	0.56
Total / Average	14,829	39,865	0.37

In Calendar Year 2018

Bar Associations	Complaints	Attorneys	Complaints per attorney
Tōkyō	3,445	8,446	0.41
Dai-Ni Tōkyō	1,589	5,573	0.29
Ōsaka	1,377	4,634	0.30
Aichi-ken (Nagoya)	1,094	1,998	0.55
Kanagawa-ken (Yokohama)	996	1,650	0.60
Fukuoka-ken	748	1,312	0.57
Dai-Ichi Tōkyō	628	5,457	0.12
Hyōgo-ken (Kobe)	545	955	0.57
Sapporo	431	805	0.54
Kyōto	392	781	0.50
Total / Average	14,599	40,934	0.36

Table 5. Bar Associations Receiving the Most and the Least Complaints per Attorney

In Calendar Year 2017

Bar Association	Attorneys		Complaints	Complaints per attorney
	Number	per 10,000		
Ehime	165	1.20	150	0.91
Okayama	399	2.10	299	0.75
Kanagawa-ken	1,617	1.79	1,162	0.72
Niigata-ken	279	1.24	196	0.70
Kyōto	767	2.95	473	0.62
Fukuoka-ken	1,283	2.51	799	0.62
Kagawa-ken	176	1.79	28	0.16
Dai-Ichi Tōkyō	5,170	13.76	739	0.14
Toyama-ken	123	1.18	14	0.11
Aomori-ken	116	0.88	13	0.11
Fukushima-ken	202	0.89	20	0.10
Chiba-ken	796	1.28	49	0.06
Total	39,865	3.15	14,829	0.37

In Calendar Year 2018

Bar Association	Attorneys		complaints	complaints per attorney
	Number	per 10,000		
Niigata-ken	287	1.29	242	0.84
Shimane-ken	84	1.24	69	0.82
Okayama	410	2.15	327	0.80
Kagoshima-ken	214	1.33	147	0.69
Nagasaki-ken	159	1.20	107	0.67
Akita-ken	77	0.78	49	0.64
Dai-Ichi Tōkyō	5,457	14.16	628	0.12
Tokushima	93	1.26	11	0.11
Ehime	164	1.22	11	0.07
Toyama-ken	124	1.16	8	0.06
Fukushima-ken	202	1.08	13	0.06
Chiba-ken	813	1.30	37	0.05
Total	40,934	3.24	14,599	0.36

Table 6: Number of Complaints per Complained-of-Attorneys in 2017

Bar Associations	Complaints	Complained-of-Attorney	Complaints / Complained-of-Attorney
Ibaragi-ken	162	83	1.95
Niigata-ken	196	112	1.75
Yamanashi-ken	21	12	1.75
Tokushima	19	11	1.73
Shizuoka-ken	188	109	1.72
Asahikawa	37	37	1.00
Ehime	150	150	1.00
Fukushima-ken	20	20	1.00
Kagawa-ken	28	28	1.00
Kanazawa	84	84	1.00
Kōchi	13	13	1.00
Miyazaki-ken	65	65	1.00
Toyama-ken	14	14	1.00
Kumamoto-ken	130	131	0.99
Total	14,829	11,166	1.33

Table 7: Number and Percentage of Complained-of-Attorneys in 2017

Bar Association	Complained-of-Attorneys	Attorneys	Complained-of-Attorneys/ Attorneys
Chiba-ken	30	796	3.8%
Hakodate	4	55	7.3%
Aomori-ken	11	116	9.5%
Yamanashi-ken	12	121	9.9%
Fukushima-ken	20	202	9.9%
Asahikawa	37	74	50.0%
Sapporo	396	790	50.1%
Fukuoka-ken	666	1,283	51.9%
Okayama	231	399	57.9%
Ehime[21]	150	165	90.9%
Average			28.0%

Table 8: Advice from Complaint Desks

Advice given	2017		2018	
Explanation about disciplinary system, dispute conciliation system, and fee system	1,797	12.8%	1,648	12.1%
Handing out application forms for discipline procedure, dispute conciliation procedure	1,076	7.6%	1,023	7.5%
Recommendation to consult with one's retained attorney(s) (again)	1,832	13.0%	1,675	12.3%
Recommendation to visit legal service centers	1,067	7.6%	1,000	7.4%
Recommendation to submit the complaint in writing	168	1.2%	171	1.3%
Claimants are satisfied that they were able to air their complaints, no further action needed	2,208	15.7%	2,171	16.0%
Informed the attorney(s) about complaints about them	2,744	19.5%	2,831	20.8%
Ask the attorney(s) who is/are the subject of complaint to explain the circumstances of complaint	323	2.3%	293	2.2%
Advise the attorney(s) who is/are the subject of complaint to take appropriate actions	250	1.8%	209	1.5%
Bar associations director(s) (*riji-sha*) acted promptly as an emergency measure	179[3]	1.3%	202	1.5%
Others	2,442	17.3%	2,361	17.4%
Total	14,086		13,584	

Table 9: Bar ADRs Compared with Complaints to the Public Complaint Desks

Total Number of New Cases Filed for Dispute Resolution

2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
512	619	717	641	633	645	701	650	730	739	726

Compared with Total Number of Complaints Filed and the Percentage Thereof

9,427	9,764	10,807	11,129	11,020	11,986	13,893	14,822	15,064	14,829	14,599
5.4%	6.3%	6.6%	5.8%	5.7%	5.4%	5.1%	4.4%	4.9%	5.0%	5.0%

Number of Dispute Resolution Procedure Cases Dealt with and their Outcomes by Year

	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
handled	499	571	693	676	644	607	611	696	692	798	685
settled	164	210	226	227	252	219	233	242	271	306	263
%	32.9	36.8	32.6	33.6	39.1	36.1	38.1	34.8	39.2	38.3	38.4
not settled	232	223	313	302	265	259	293	338	298	316	292
%	46.5	39.1	45.2	44.6	41.2	42.7	48.0	48.6	43.1	39.6	42.6
withdrawn	83	124	131	133	115	108	121	97	96	140	109
%	16.6	21.7	18.9	19.7	17.9	17.8	19.8	13.9	13.9	17.5	16.0
others	20	14	23	14	12	21	14	19	27	36	21

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21 In the case of the Ehime Bar Association in 2017, the opposing parties were dissatisfied with the outcomes (53) and did not consider the manner or attitude to be appropriate (53), but they were satisfied that the bar association listened to their complaints and they did not expect any further actions to be taken by the bar (96).

22 In 2017, Tōkyō (67, 2.1%), Saitama (25, 9.4%), Fukuoka (38, 4.8%) and Okinawa (39, 76.5%) were the bar associations whose directors acted promptly on a fairly large number of complaints.
In 2018, the Tōkyō (92, 2.6%), Fukuoka (26, 3.5%) and Okinawa (61, 84.7%) bar associations continued to act promptly.

Table 10: Number of Disciplinary Cases Dealt With in Calendar Years 2017 and 2018

		2017	2018
Requests for disciplinary procedure		2,864	12,684
Bar associations' investigative committees recommend	further adjudication	61	66
	dismissal	1,245	2,141
	pending	1,552	10,477
Bar associations' adjudicating committees recommend	discipline	10	12
	disbarment	0	0
	order to withdraw	0	0
	suspension	6	2
	admonition	4	10
	no discipline	4	8
	pending	47	45
Requests to JFBA investigative committee after bar associations' dismissals			
JFBA investigative committee recommends	further adjudication at bar associations' adjudicating committees	0	0
	dismissal	258	251
	pending	171	164
Requests to JFBA Review Board		142	137
JFBA Review Board recommends	further adjudication at bar associations/ adjudicating committees	0	0
	dismissal	37	8
	pending	105	129
Renewed requests to bar associations' adjudicating committees		0	0
Renewed requests to JFBA adjudicating committee against recommendations to dismiss at bar associations' adjudicative committees		0	3
	pending	0	3
Appeals to the JFBA adjudicating committee against recommendations to dismiss at bar associations' adjudicative committees		0	0

Table 11: Appeals Filed with the JFBA by attorneys

	2015	2016	2017
Appeals by attorneys filed with JFBA	62	60	66
Original decisions cancelled	6	1	3
Original decisions mitigated	1	2	2
Appeals dismissed	26	30	24
Not decided yet	29	27	37

Table 12: Appeals by Attorneys and Objections by Claimants Filed with the JFBA[23]

Vol.			Indictment Committee	Review Board	Adjudicating Committee[24]
15	2013		7 (6)	15 (3)	17 (2)
		Appeal	–	–	14 (2)
		Objection	7 (6)	15 (3)	6
16	2014		10 (6)	10 (4)	12 (2)
		Appeal	–	–	10 (2)
		Objection	10 (6)	10 (4)	3
17	2015		6 (5)	11 (1)	10 (5)
		Appeal	–	–	6 (3)
		Objection	6 (5)	11 (1)	4 (2)
18	2016		5 (5)	14 (4)	10 (6)
		Appeal	–	–	8 (5)
		Objection	5 (5)	14 (4)	4 (1)
19	2017		7 (7)	11 (0)	10 (2)
		Appeal	–		6 (1)
		Objection	7 (7)	11 (0)	6 (1)
20	2018		3 (1)	11 (5)	8 (2)
		Appeal	–	–	7 (1)
		Objection	3 (1)	11 (5)	3 (1)
21	2019		7 (4)	10 (3)	12 (5)
		Appeal	–	–	10 (5)
		Objection	7 (4)	10 (3)	5

23 From "The Collection of Disciplinary Cases" *(Bengo-shi chōkai jiken giketsu re-ishū)* for the years 2013 to 2019, available at Tōkyō & Dai-Ni Bar Associations' Joint Library *(Tōkyō & Dai-Ni Tōkyō bengo-shi-kai gōdō tosho-kan).*

24 Both attorneys may appeal and claimants may object to the same resolution of original bar association.

Table 13: Number of cases filed at all bar associations and at the JFBA and their outcomes

	2015	2016	2017
New requests for disciplinary action	2,681	3,480	2,864
Disciplinary actions taken	97	114	106
Decisions of no disciplinary action	2,191	2,872	2,347
Claims of no action filed with JFBA (DEC)	951	672	718
JFBA sent the cases back to original bar association	6	8	1
Claims of delay filed with JFBA (DEC)	51	430	186
JFBA ordered prompt proceedings	18	241	39
Objections filed with JFBA (DAC)	69	85	91
Original decisions rescinded or altered	1	2	2
Objections dismissed	36	31	42
Not decided	30	49	45
Objections filed with JFBA (BDR)	605	478	448
JFBA sent the cases back to original bar association	4	0	35
Objections dismissed	454	406	252
Not yet decided	146	72	161

Table 14: Number of attorneys who were disciplined

	1989 to 2018	1989 to 2019
Once	830	857
Twice	160	169
Three times	80	85
Four times	34	37
Five times	10	11
Eight times	2	3

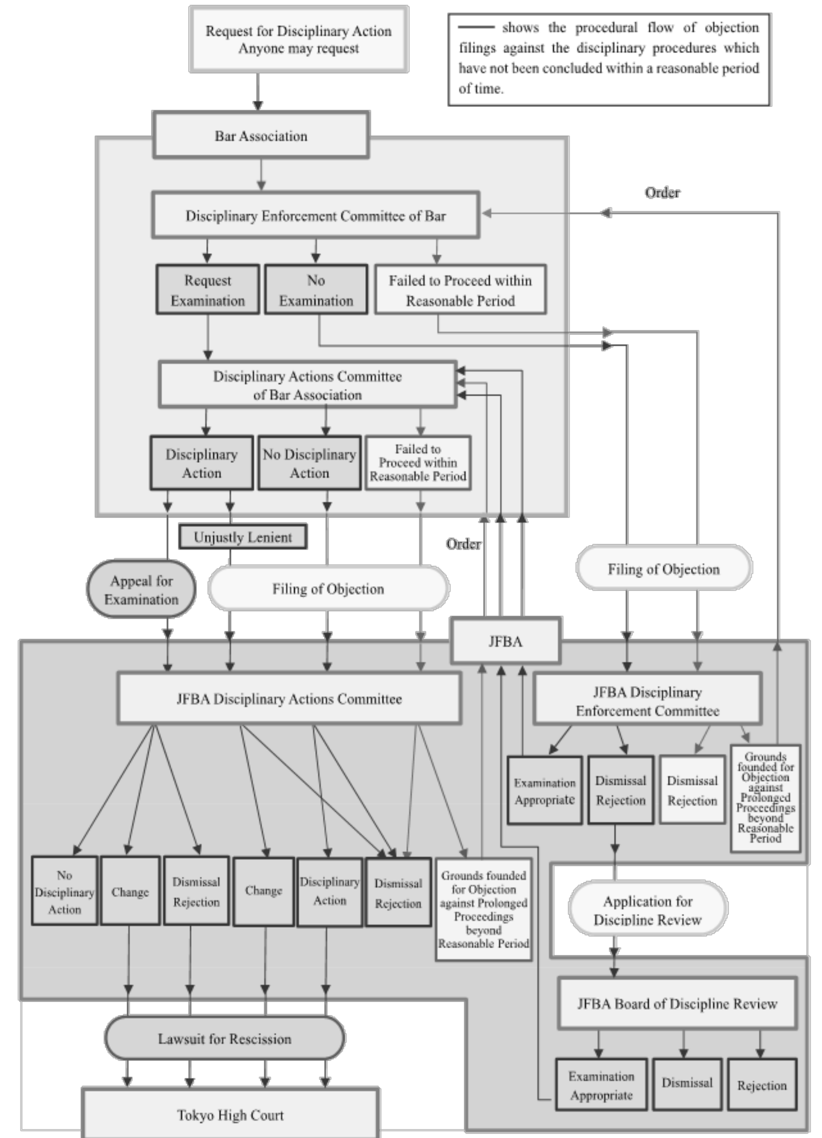
Table 15: Number of attorneys disciplined by age cohort

Age	2014	2015	2016	2017	2018	average
Younger than 40	9	6	8	12	12	9.4
40–49	17	20	24	26	17	20.8
50–59	19	11	26	19	19	18.8
60–69	30	27	22	27	16	24.4
70 and older	35	32	28	16	23	26.8

Table 16: Number of attorneys disciplined by length of practice/experience

Experience	2014	2015	2016	2017	2018	average
1 to 9 years	20	10	14	23	14	16.2
10 to 19 years	18	26	27	24	30	25
20 to 29 years	26	15	28	28	18	23
30 to 39 years	26	24	18	12	14	18.8
40 or more years	20	21	21	13	11	17.2

Procedural Flow of Disciplinary Procedures[25]



[25] JFBA, White Paper on Attorneys 2018, 104.

Appendix II

The 1949 Attorney Act *(Bengo-shi-hō)* (Law No. 205/1949)[26]

Art. 1 para. 1 An attorney is entrusted with the mission of protecting fundamental human rights and achieving social justice.

para. 2 An attorney shall, in keeping with the mission specified set forth in the preceding paragraph, perform his/her duties in good faith and endeavor to maintain the social order and to improve the legal system.

Art. 33 para. 1 A bar association shall formulate its articles of association with the approval of the Japan Federation of Bar Associations (JFBA).

para. 2 The following matters shall be stipulated in the articles of association of a bar association:

…

(vii) Rules pertaining to the ethics of attorneys and maintaining the discipline of its members;

(viii) Rules pertaining to disciplinary matters, the Indictment Committee and the Adjudicating Committee;

…

(xii) Rules pertaining to settlement of disputes concerning the performance of duties of a member

…

para. 3 Any amendment in the matters stipulated in the preceding paragraph shall be subject to the approval of the JFBA.

Art. 41 A bar association may, upon request of an attorney, a legal professional corporation (lpc), the party in question, or others concerned, mediate any dispute regarding the duties of an attorney or the activities of a legal professional corporation.

Art. 56 para. 1 An attorney or lpc shall be subject to disciplinary actions if the attorney or lpc violates this Act or the articles of association of the bar association to which the attorney or lpc belongs or of the JFBA, or damages the order or reputation of said bar association or misbehaves in a manner impairing the attorney's or lpc's own integrity, whether in the conduct of her professional activities or not.

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26 The translation of the Act is taken from the Japanese government website "Japanese Law Translation" at *http://www.japaneselawtranslation.go.jp/* with some changes made by the author.

para. 2 Disciplinary actions shall be taken by the bar association to which the attorney or lpc belongs.

Art. 57 para. 1 There shall be four kinds of disciplinary actions against attorneys, as follows

(i) Admonition;

(ii) Suspension for not more than two years;

(iii) Order to withdraw from the bar association to which he/she belongs; or

(iv) Disbarment.

para. 2 There shall be four kinds of disciplinary actions against lpcs, as follows:

(i) Admonition;

(ii) Suspension of the Legal Professional Corporation or of its law office for not more than two years;

(iii) Order to withdraw from the bar association to which it belongs (this action shall be limited to lpcs with only a secondary law office within the jurisdiction of the association); or

(iv) Disbarment (this action shall be limited to lpcs whose principal law office is within the district of the association).

Art. 58 para. 1 Any person who believes that there are grounds for disciplining an attorney or an lpc may make a request disciplinary action against the bar association to which said attorney or lpc belongs, attaching thereto an explanation of such grounds.

para. 2 If a bar association finds that there are grounds for disciplining an attorney or an lpc who is a member thereof, or if there has been a request as set forth in the preceding paragraph, the bar association shall cause its indictment committee to make an investigation regarding the disciplinary procedures against such member.

para. 3 If an indictment committee finds, based on an examination pursuant to the preceding paragraph, that it would be appropriate to refer the matter to the adjudicating committee to examine the case with respect to the accused (the "accused" here and hereinafter refers to the attorney or lpc being subject to the disciplinary procedure), the indictment committee shall adopt a resolution to that effect. In such a case, the bar association shall, based on said resolution, refer the matter to the adjudicating committee for examination.

para. 4 If the indictment committee finds, based on an investigation pursuant to para. 2, that the request mentioned in para. 1 hereof is not legitimate, or is unable to commence the disciplinary procedure against the accused, or finds that there are no grounds to discipline the accused, or it is

apparent that disciplinary action should not be imposed in light of the relative importance of the case or other extenuating circumstances, the indictment committee shall adopt a resolution that it shall not refer the matter to the adjudicating committee for examination. In such case, the bar association shall issue a ruling to the effect that it will not discipline the accused.

para. 5 If the adjudicating committee finds, based on an examination pursuant to para. 3, that it is appropriate to discipline the accused, it shall adopt a resolution to that effect setting forth the details of the disposition to be undertaken. In such a case, the bar association shall, based on said resolution, discipline the accused.

para. 6 If the adjudicating committee finds, based on an examination pursuant to paragraph 3, that it is appropriate not to discipline the accused, it shall adopt a resolution to that effect. In such a case, the bar association shall, based on said resolution, issue a ruling that it will not discipline the accused.

Art. 60 para. 1 If the JFBA itself finds that it is appropriate to discipline an attorney or lpc regarding the circumstances set forth in Art. 56 para. 1, it may discipline the attorney or the lpc as set forth in the following paras. 2 through 6.

para. 2 If the JFBA finds that there are grounds to discipline an attorney or an lpc, it may cause the indictment committee of the JFBA to investigate the matter.

para. 3 If the indictment committee of the JFBA finds, based on an examination pursuant to the preceding paragraph, that it would be appropriate to refer the matter to the adjudicating committee of the JFBA for examination with respect to the accused, the indictment committee shall adopt a resolution to that effect. In such a case, the JFBA shall, based on said resolution, refer the matter to the adjudicating committee of the JFBA for examination.

para. 4 If the indictment committee of the JFBA finds, based on an investigation pursuant to para. 2, that it is not able to commence disciplinary procedures against the accused, or that there are no grounds to discipline the accused, or it is apparent that disciplinary actions should not be imposed in light of the relative importance of the case or other extenuating circumstances, the indictment committee shall adopt a resolution that it will not refer the matter to the adjudicating committee of the JFBA for examination. In such a case, the JFBA shall issue a ruling that it will not discipline the accused.

Art. 61 para. 1 A person whose appeal regarding a disciplinary action imposed by a bar association pursuant to the provisions of Art. 56 is dismissed

or rejected or who is subject to disciplinary actions by the JFBA pursuant to the provisions of Art. 60, may institute a lawsuit for rescission of such decision with the Tōkyō High Court.

Art. 63 No disciplinary procedures shall be initiated after the lapse of three years from the time the grounds for such action arose.

Art. 64 para. 1 If, despite a request for discipline made against an attorney or lpc pursuant to the provisions of Art. 58 para. 1, a bar association issues a ruling not to discipline the accused attorney, etc., or has not concluded disciplinary procedures within a reasonable period, the requesting party (hereinafter referred to as "requesting party") may file an objection thereto with the JFBA. The same shall apply to cases where the requesting party finds that disciplinary actions imposed by the bar association were unjustly lenient.

para. 2 The filing of an objection pursuant to the provisions of the preceding paragraph (other than an objection that disciplinary procedures have not been concluded within a reasonable period) shall be made within 60 days from the day following the day of receipt of a notice from the bar association pursuant to the provisions of Art. 64-7 para. 1, item (ii), of its decision not to discipline, or the date of receipt of a notice regarding disciplinary action pursuant to the provisions of Art. 64-6 para. 2.

Art. 64-2 para. 2 If an objection is filed regarding the original bar association's ruling not to discipline the accused attorney, etc. pursuant to the provisions of Art. 58 para. 4, and based on an examination of the objection set forth in the preceding paragraph, the indictment committee of the JFBA finds it appropriate to refer the case back to the adjudicating committee of the original bar association for investigation, the indictment committee of the JFBA shall adopt a resolution to that effect. In such a case, the JFBA shall, based on such resolution, rescind the original bar association's decision not to discipline the accused, and remand the case to the original bar association.

para. 3 The original bar association that receives a matter in accordance with the provisions of the preceding paragraph shall have its adjudicating committee examine the matter. In such a case, the provisions of Art. 58 paras. 5 and 6 shall apply mutatis mutandis.

para. 5 If the indictment committee of the JFBA finds that it is appropriate to dismiss the objection as not being legitimate, or rejects the objection as being groundless, the indictment committee of the JFBA shall adopt a resolution to that effect. In such a case, the JFBA shall, based on such resolution, issue a ruling dismissing or rejecting the objection.

Art. 64-3 para. 1 If a requesting party is dissatisfied with a ruling issued by the JFBA in accordance with para. 5 of the preceding article dismissing or rejecting the objection filed pursuant to the provisions of para. 2 of the same article, she may apply to the JFBA for a discipline review by the board of discipline review. In such a case, the JFBA shall request that the board of discipline review conduct a discipline review.

para. 2 The application for a discipline review pursuant to the provisions of the preceding paragraph shall be made within a period of 30 days commencing from the date following the date of receipt of notice from the JFBA of its ruling dismissing or rejecting the objection in accordance with the provisions of Art. 64-7 para. 2, item (vi).

Art. 64-4 para. 1 If, based on the discipline review set forth in para. 1 of the preceding article, the board of discipline review finds that it is appropriate to have the matter examined by the adjudicating committee of the original bar association, the board of discipline review shall adopt a resolution to that effect. This resolution must be adopted by a two-thirds majority of the committee members present.

para. 2 If the preceding paragraph applies, the JFBA, based on the resolution of the preceding paragraph, shall remand the matter to the original bar association after rescinding its ruling dismissing or rejecting the objection, as well as the ruling rendered by the original bar association not to discipline the accused attorney, etc.

para. 3 The original bar association to which a matter pursuant to the provisions of the preceding paragraph has been remanded shall have its adjudicating committee conduct an examination of the matter. In such a case, the provisions of Art. 58 paras. 5 and 6 shall apply mutatis mutandis.

para. 4 If the board finds that it is appropriate to dismiss the application for a discipline review as not being legitimate, the board shall adopt a resolution to that effect. In such a case, the JFBA shall, based on said resolution, issue a ruling dismissing the application for a discipline review.

para. 5 Except for the case set forth in the preceding paragraph, if the board is unable to adopt a resolution as set forth in para. 1 hereof, the board shall adopt a resolution to that effect. In such a case, the JFBA shall, based on said resolution, issue a ruling rejecting the application for a discipline review.

Art. 64-5 para. 1 If an objection is filed pursuant to the provisions of Art. 64 para. 1, and the matter had been previously investigated by the adjudicating committee of the original bar association, the JFBA shall have its adjudicating committee conduct an examination of the objection.

para. 2 If an objection is filed regarding the original bar association's decision not to discipline the accused pursuant to the provisions of Art. 58 para. (6), and based on an examination of the objection set forth in the preceding paragraph, the adjudicating committee of the JFBA finds that it is appropriate to discipline the accused attorney, etc., the committee shall adopt a resolution to that effect, setting forth the details of the disciplinary action. In such a case, the JFBA shall, based on such resolution, overturn the original bar association's decision not to discipline the accused, and discipline the accused itself.

para. 3 If an objection is filed that the original bar association has not concluded disciplinary procedures within a reasonable period, and the adjudicating committee of the JFBA finds that there are grounds for the objection based on an examination of the objection pursuant to para. 1 hereof, it shall adopt a resolution to that effect. In such a case, the JFBA shall, based on such resolution, order the original bar association to promptly proceed with disciplinary procedures, and either discipline the accused or issue a ruling that it will not discipline the accused.

para. 4 If an objection is filed that the disciplinary actions imposed by the original bar association were unjustly lenient, and the adjudicating committee of the JFBA finds that there are grounds for the objection based on an examination of the objection pursuant to para. 1 hereof, it shall set forth the details of such disciplinary actions and adopt a resolution ordering that the disciplinary actions be changed. In such a case, the JFBA shall, based on such resolution, overturn the disciplinary actions imposed by the original bar association, and itself impose disciplinary actions against the accused.

para. 5 If the adjudicating committee of the JFBA finds that it is appropriate to dismiss the objection as not being legitimate, or to reject the objection as being groundless, it shall adopt a resolution to that effect. In such a case, the JFBA shall, based on said resolution, issue a ruling dismissing or rejecting the objection.

Art. 64-6 para. 3 If disciplinary actions are imposed against an accused, by the bar association or the JFBA, the JFBA shall make public the details of the disciplinary actions in the Official Gazette without delay.

Art. 66-2 para. 1 The committee members of an adjudicating committee of a bar association shall be individually appointed by the president of the bar association from among attorneys, judges, public prosecutors and academic experts. In such a case, the committee members who are judges or public prosecutors shall be appointed based on the recommendations from the High Court or the District Court or by the superintendent public prosecutor

of the High Public Prosecutors' Office or the chief public prosecutor of the District Public Prosecutors' Office located within the same jurisdiction, and the other members shall be appointed based on a resolution adopted at a general meeting of the bar association.

SUMMARY

Through the system of mandatory registration and disciplinary power, bar associations monitor professional ethics of practicing attorneys in Japan. When attorneys see themselves as legal service providers rather than as the guardians of fundamental rights and freedoms, the concept that disciplinary power is indispensable to the autonomy and independence of the bar and attorneys appears quaint. Nevertheless, local bar associations and the Japanese Federation of Bar Associations (JFBA) are keen to respond to complaints, are willing to settle disputes between clients and attorneys, and have an intricate procedure to deal with requests to discipline their members.

Are the procedures provided by bar associations helpful to people who are dissatisfied with attorneys? Bar associations' public complaint desks do not resolve conflicts; rather, they give advice to complainants, and many of those complainants appear to be satisfied with having aired their complaints. Bar associations' ADR also generally appears unsatisfactory for the small number of people who put forward pecuniary claims against attorneys about attorney fees and custodian accounts. Anyone can request the commencement of a two-tiered disciplinary procedure. Indictment committees are established to reject groundless and frivolous allegations, and adjudicating committees are to scrutinize and evaluate evidence. When two indictment committees, those of the local bar association and of the JFBA, reject a request for discipline, the JFBA convenes a review board. In other words, the requesting party is given the opportunity to object to all unfavorable decisions. Are attorneys really disciplined? Definitely yes, when they have committed serious crimes, but usually not in those cases where clients felt they lost their case because the attorney mishandled the issue. Attorneys take requests for disciplinary procedure very seriously as these could result in their disbarment; thus, they are given "notice and hearing" and the complaints are heard by impartial and independent adjudicators. A disciplined attorney can appeal the decision of the bar or the JFBA to the Tōkyō High Court and to the Supreme Court, but the rate of success is very low.

The disciplinary power and procedure do not directly enhance the independence and autonomy of the bar or of attorneys in general, but they appear to strengthen distinct professional ethics among most attorneys.

ZUSAMMENFASSUNG

Durch ein System von obligatorischer Registrierung und ihre Kompetenz zu Disziplinarmaßnahmen beaufsichtigen Anwaltskammern das Berufsethos der praktizierenden Anwaltschaft in Japan. Allerdings scheint die Vorstellung, dass die Kompetenz zu Disziplinarmaßnahmen notwendig sei, um die Unabhängigkeit und Selbstständigkeit der Anwaltskammern und Anwaltschaft zu garantieren, aus der Zeit gefallen, wenn sich Rechtsanwälte und Rechtsanwältinnen eher als Dienstleister und Dienstleisterinnen denn als Hüter und Hüterinnen von Grundrechten und Grundfreiheiten begreifen.

Sind die Verfahren der Anwaltskammern hilfreich für Menschen, die mit Rechtsanwälten und Rechtsanwältinnen unzufrieden sind? Die öffentlichen Beschwerdestellen der Anwaltskammern lösen keine Konflikte, sondern beraten diejenigen, die sich beschweren, und viele von ihnen scheinen zufrieden, die Gelegenheit erhalten zu haben, ihre Beschwerden zu äußern. Auch die altnativen Streitbeilegungsverfahren der Anwaltskammern scheinen nicht zufriedenstellend für die kleine Zahl der Personen, die so Zahlungsansprüche gegen Rechtsanwälte und Rechtsanwältinnen geltend machen. Jeder kann den Beginn eines zweistufigen Disziplinarverfahrens beantragen. Disziplinarkomitees sind eingerichtet, um haltlose und unseriöse Vorwürfe zurückzuweisen, und Beurteilungskomitees prüfen und bewerten die Beweise. Wenn zwei Disziplinarkomitees, das der lokalen Anwaltskammer und das der nationalen Vereinigung der japanischen Anwaltskammern (JFBA) einen Antrag auf Disziplinarmaßnamen abgelehnt haben, ruft die JFBA einen Prüfungsausschuss ein. Damit haben die Antragsteller die Möglichkeit, jede nachteilige Entscheidung zu beanstanden. Werden Rechtsanwälte und Rechtsanwältinnen tatsächlich gemaßregelt? Definitiv in Fällen von schweren Straftaten, jedoch regelmäßig nicht in Fällen, in denen die Mandantschaft das Gefühl hat, ihren Prozess aufgrund von Anwaltsfehlern verloren zu haben. Rechtsanwälte und Rechtsanwältinnen nehmen Disziplinarverfahren ernst, da sie aus der Anwaltskammer ausgeschlossen werden könnten; sie werden benachrichtigt und angehört und die Vorwürfe werden von unparteiischen und unabhängigen Juroren und Jurorinnen verhandelt. Gemaßregelte Rechtsanwälte und Rechtsanwältinnen können gegen die Entscheidungen der Anwaltskammer oder der JFBA vor dem OG Tōkyō und dem OGH vorgehen, aber die Erfolgsaussichten sind gering.

Die Kompetenz zu Disziplinarmaßnahmen und das Verfahren bei den Anwaltskammern tragen nicht unmittelbar zur Unabhängigkeit und Selbstständigkeit der Kammern oder der Anwaltschaft im Allgemeinen bei, aber sie scheinen ein eigenes Berufsethos in der Anwaltschaft zu stärken.

(Die Redaktion)