

EVALUATION AND REGULATION OF PROFESSIONAL ETHICS OF LAWYERS IN CHINA

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ABSTRACT

A professional code of conduct for lawyers is a standardized embodiment of professional ethics, and it is also the way of realizing self-regulation in the profession in China. Understanding the status of professional ethics within the profession is an important prerequisite for the effective regulation of the legal profession. Through a questionnaire survey of the general public and of legal professionals nationwide, one can describe the overall professional ethics of lawyers in China at a macro level. Through empirical research, the survey found that there are significant differences between various groups in how they understand and assess the current professional ethics of lawyers in China. These differences are based on such factors as occupation, gender, litigation experience, and educational level. The overall assessment and the differentiation pattern for professional ethics of lawyers are of great significance in guiding the improvement of the reform and the regulation of the legal profession.

Key words: lawyers; professional ethics; mendacious promise; false advertisement; occupational differentiation.

| | |
|---|-----|
| Introduction..... | 286 |
| I. Research Method and Survey Data..... | 288 |
| II. Differentiation Pattern of Assessments of Professional Ethics of Lawyers in China..... | 293 |
| A. The Current Assessment of Professional Ethics of Lawyers in China Is Not Promising But Is Slowly Improving | 293 |
| B. The Comments of Different Respondent Groups on Professional Ethics of Lawyers Show Clear Differences of Opinion..... | 294 |

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| | |
|---|-----|
| III. Policy Implications of the Differentiation Pattern of Assessments of the Professional Ethics of Lawyers..... | 304 |
| IV. Conclusion..... | 306 |

INTRODUCTION

In Western countries, the population often considers the legal profession as separate from other industries, thus requiring different standards in terms of professional knowledge, moral responsibility and self-management.¹ As an important part of the legal profession, laypeople consider lawyers to possess highly specialized knowledge that does not easily lend itself to external management due to information asymmetry.² The legal profession achieves self-regulation through a set of complete and rigorous professional ethical norms, often stricter than those of general industries both in scope and rigor.³ Legal professional ethics norms refer to both the basic ethical requirements by which lawyers, as an important part of the legal profession, should abide, and a series of professional codes of conduct derived from them.⁴ Therefore, legal professional ethics are an important means for the profession to achieve self-management, and it is also the most important supporting means for the legal profession to guarantee the quality of practice and improve the level of professional ethics.⁵ Although developed countries under the rule of law generally use professional ethics to regulate the practice of the local legal profession, the effectiveness and effect of the regulation have been questioned to some extent.⁶ Therefore, codes of conduct for lawyers, their disciplinary orientation, and regulatory methods need to be constantly adjusted and improved through *ex post* assessment. For example, the American Bar Association (“ABA”) specifically released an assessment report on the effect of lawyer discipline in the 1970s and 1990s, putting forward targeted improvement

¹ Li Xueyao (李学尧), (法律职业主义) [Legal Professionalism], 6 *Fǎxué yánjiū* (法学研究) [Chinese J.L.] 3, 3–5 (2005).

² WANG WENYU (王文宇), *MIN SHANGFA LILUN YU JINGJI FENXI* (民商法理论与经济分析) [CIVIL AND COMMERCIAL LAW THEORY AND ECONOMIC ANALYSIS] 330–31 (2002).

³ See, e.g., MODEL RULES OF PROF’L CONDUCT (AM. BAR ASS’N 2019).

⁴ See MODEL RULES OF PROF’L CONDUCT pmb. cmt. 7 (AM. BAR ASS’N 2019).

⁵ See WU HONGQI (吴洪淇), *FALU ZHIYE DE WEIJI YU GAIGE* (法律职业的危机与改革) [CRISIS AND REFORM OF THE LEGAL PROFESSION] 218–26 (2017) (discussing the nature, functions, and origin of professional ethics).

⁶ See generally Richard L. Abel, *Why Does the ABA Promulgate Ethical Rules?*, 59 *TEX. L. REV.* 639 (1981).

suggestions for the problems in lawyer discipline at that time, which effectively promoted the ABA's regulatory level for the profession itself.⁷ Therefore, an assessment of local lawyer professional ethics is a prerequisite for the establishment of an effective regulatory system for the legal profession.

The Chinese legal profession has gradually developed and fostered a huge legal service market.⁸ Compared with developed Western countries under the rule of law, the legal profession in China developed in a relatively short time.⁹ Since 1949, the legal profession has been primarily controlled by the state.¹⁰ The decoupling and restructuring process from full control by the state to self-regulation of the profession began only in the past two decades.¹¹ In 2000, the Ministry of Justice of China issued *the Implementation Plan for the Decoupling and Restructuring of Law Firms and Social Legal Consulting Service Institutions*.¹² According to this plan, most law firms became self-regulating social entities.¹³ Therefore, lawyers' self-regulation experience is still very limited, and professional ethics and norms for lawyers are not very developed. Despite this, through more than thirty years of development, the laws, regulations, and industry norms regulating China's legal profession have not only been increasing in quantity, but also changing in content.

⁷ See generally Am. Bar Ass'n Ctr. for Prof'l Responsibility, *Lawyer Regulation for a New Century: Report of the Commission on Evaluation of Disciplinary Enforcement* (1992) https://www.americanbar.org/groups/professional_responsibility/resources/report_archive/mckay_rerepo/ [perma.cc/MM93-UT2H] [hereinafter McKay Report].

⁸ See Li Hao (李豪), *Zhongguo lushi renshu yi chaoguo 30 wan* (我国执业律师人数已突破 30 万) [*The Number of Practicing Lawyers in China has Exceeded 300,000*], FAZHIRIBAO (法制日报) LEGAL DAILY (Jan. 9, 2017), http://www.legaldaily.com.cn/index/content/2017-01/09/content_6947998.htm?node=20908 [<https://perma.cc/Z8PD-JCEU>] (reporting that as of 2017, the number of lawyers nationwide exceeded 300,000; the number of law firms reached more than 25,000; and the annual income exceeded ¥67.9 billion).

⁹ See *Modern Legal Profession in China is Only 35 Years Old*, UCLA CTR. FOR CHINESE STUD. (Jan. 28, 2014), <https://international.ucla.edu/china/article/136768> [<https://perma.cc/W4PB-8ZME>].

¹⁰ Jing Li, *The Legal Profession of China in a Globalized World: Innovations and New Challenges*, 26 INT'L J. LEGAL PROF. 217, 233 (2019).

¹¹ SIDA LIU, *THE LOGIC OF FRAGMENTATION: AN ECOLOGICAL ANALYSIS OF THE CHINESE LEGAL SERVICES MARKET* 15–21 (2009) (published dissertation, University of Chicago).

¹² This notice was issued in August 14, 2000 by the Ministry of Justice of China. The notice number is SIFATONG (司发通)2000[100]. 司法部 (SIFA BU) [MINISTRY OF JUSTICE], 关于下发《律师事务所社会法律咨询服务机构脱钩改制实施方案》的通知 (Guanyu xiafa "lushi shiwu suo shehui falu zixun fuwu jigou tuogou gaizhi shishi fang'an" de tongzhi) [*The Implementation Plan for the Decoupling and Restructuring of Law Firms and Social Legal Consulting Service Institutions*] (2000).

¹³ *Id.*

China has released five industry norms, including the *Professional Ethics and Practice Disciplinary Rules for Lawyers* (promulgated by the Ministry of Justice in 1993),¹⁴ the *Professional Ethics and Practice Discipline Rules* (adopted in 1996 and revised in 2001 by the All China Lawyers Association (“ACLA”)),¹⁵ and the *Code of Practice for Lawyers (Tentative)* (adopted in 2004 and last revised in 2017 by the ACLA).¹⁶ Through these norms, China has established a preliminary system of professional codes of conduct for lawyers in response to the need for professional ethics in the legal profession. However, a prerequisite for effective regulation of professional ethics for lawyers is a comprehensive, nationwide assessment of the status of professional ethics for lawyers. What is the basic situation of professional ethics of lawyers across the country? How do the general public and the legal profession itself assess the status of professional ethics of lawyers? Can the existing system of professional norms for lawyers effectively regulate improper practices of lawyers? Existing empirical materials lack the systematic analysis necessary to answer these questions. This paper provides a preliminary response through a large-scale questionnaire survey covering the general public and legal professionals (including judges, prosecutors, police officers, and lawyers) in thirty-one provincial-level regions in China.¹⁷

I. RESEARCH METHOD AND SURVEY DATA

A nationwide survey made by the Justice Index Project Research Group under the 2011 Program involved two different questionnaires—one for professionals and one for the public at large—and asked questions about professional ethics in the legal profession.¹⁸ Of the 6,200 copies of the professional questionnaires that were distributed, 5,848 were returned. Respondents include judges (1,474), prosecutors (1,509),

¹⁴ PROFESSIONAL ETHICS AND PRACTICE DISCIPLINARY RULES FOR LAWYERS, (MINISTRY OF JUSTICE OF CHINA 1993), *invalidated* in 2000.

¹⁵ ALL CHINA LAWYERS ASSOCIATION, PROFESSIONAL ETHICS AND PRACTICE DISCIPLINE RULES (2001).

¹⁶ ALL CHINA LAWYERS ASSOCIATION, CODE OF PRACTICE FOR LAWYERS (2017) (as amended) [hereinafter CODE OF PRACTICE FOR LAWYERS 2017].

¹⁷ See ZHANG BAOSHENG ET AL. (张保生), ZHONGGUO SIFA WENMING ZHISHU BAOGAO 2016 (中国司法文明指数报告 2016) [CHINA JUSTICE INDEX REPORT 2016] 34–37 (2017) [hereinafter CHINA JUSTICE INDEX REPORT 2016].

¹⁸ See generally *id.*

police officers (1,331), and lawyers (1,482).¹⁹ 18,552 copies of the public questionnaire were collected, and the respondents covered various social groups.²⁰ The distribution of the questionnaires followed general quota control and quality monitoring.²¹ Both the general public and professional questionnaires contained three questions involving the status of lawyer professional ethics.²² As the research space was very limited, the structure of the survey hindered the researchers' ability to ask more questions.²³ However, through correlation analysis and cross-over analysis, the overall distribution pattern of professional ethics of Chinese lawyers can be outlined based on an analysis of the existing questions in the questionnaires. Readers should note that this paper cites other objective data and other questionnaire survey data in addition to the relevant Justice Index Project research to support its arguments.²⁴

*Table 1. Demographics of Respondents of 2016 Professional Questionnaire Survey.*²⁵

| | |
|----------------------------|---|
| Profession | Judges (1,474), prosecutors (1,509), police officers (1,331), and lawyers (1,482) |
| Gender | Male (3,591) and female (2,227) |
| Age | 25 and younger (551), 26–35 (2,842), 36–45 (1,571), 46–55 (665), and 55+ (65) |
| Number of practicing years | 3 or fewer (1,029), 3–10 (2,330), 11–20 (1,311), and 20+ (712) |
| Educational background | Senior high school diploma and below (22), college degree (452), bachelor's degree (3,530), master's degree (1,603), and doctoral degree (73) |
| Political affiliation | Members of the Communist Party of China (4,106), members of democratic parties (103), people without party affiliation (72), members of the Communist Youth League (527), and the common people (997) |

¹⁹ *Id.* at 36; *see infra* Table 1. Note that fifty-two respondents did not answer the question regarding profession.

²⁰ CHINA JUSTICE INDEX REPORT 2016, *supra* note 17, at 36; *see infra* Table 1.

²¹ *See* CHINA JUSTICE INDEX REPORT 2016, *supra* note 17, at 36.

²² *Id.* at 34–37.

²³ *Id.* at 28.

²⁴ *See generally id.*

²⁵ Data on file with author. Note that the discrepancy between the total number of questionnaires that were returned (5,848) and each question's total number of responses is due to some respondents choosing not to answer the corresponding question.

This article focuses on the subjective assessment of lawyers' professional ethics by the general public and legal professionals themselves. The emphasis on subjective assessment is primarily based on two reasons. First, although the ACLA and local bar associations have statistics on lawyers' violations of professional ethics in practice,²⁶ these statistics cannot provide a whole picture of the professional ethics of lawyers. Due to the information asymmetry between lawyers and clients, many clients may not choose to complain even if they are troubled by lawyers' misconduct.²⁷ Even some lawyers themselves do not understand the basic requirements of professional norms. This lack of understanding is not uncommon, even in the United States.²⁸ This means that the professional ethics of lawyers reflected by these objective data may be just the tip of the iceberg. It is said in some survey reports that "for every such complaint filed and dismissed, undoubtedly many more clients simply give up without filing a complaint and then blame the profession."²⁹ Measuring the subjective aspect of the professional ethics of lawyers can make up for the deficiencies of the objective aspect, to some extent, and expose the true feelings of the respondents. Second, and more importantly, the fundamental purpose of the formulation of professional ethics for lawyers is to respond to the general public's doubts about the legitimacy of the self-regulatory power of the legal profession. This imperative makes understanding the general public's overall assessment of professional ethics of lawyers crucial.³⁰

The problems of false advertisement, mendacious promise, and improper contact with the judge in legal practice were involved in the questionnaire. The questionnaire's first question was: "how likely is it that a lawyer makes a false advertisement in your area?"³¹ This question focused on the problem of lawyers' false advertisements in practice. The

²⁶ See, e.g., Ning Hong (宁宏) & Sun Li (孙莉), *Shei zai huisun lushi de shengyu zhonghua quanguo lu xie zhijie shouli tousu njin de tongji fenxi* (谁在毁损律师的声誉 中华全国律协直接受理投诉案件的统计分析) [*Who is Destroying the Reputation of Lawyers: A Statistical Analysis of All Complaints Directly Handled by the All-China Lawyers Association*], 1 *ZHONGGUO LÜSHI* (中国律师) [CHINESE LAW] 26 (2003).

²⁷ See RICHARD L. ABEL, *AMERICAN LAWYERS* 144 (1989) ("Individual clients who might be motivated to complain about lawyer misconduct are ignorant of the content of ethical rules and poorly situated to perceive most lawyer misbehavior.") [hereinafter *AMERICAN LAWYERS*].

²⁸ *Id.* at 142-44.

²⁹ McKay Report, *supra* note 7.

³⁰ See MODEL RULES OF PROF'L CONDUCT pmb1. cmt. 6 (AM. BAR ASS'N 2019).

³¹ CHINA JUSTICE INDEX REPORT 2016, *supra* note 17, at 31.

Code of Practice for Lawyers contains very clear provisions on lawyers' promotions in practice.³² Article 32 stipulates that "lawyers and law firms shall not conduct promotions that distort facts or laws or may cause the general public to have irrational expectations on lawyers."³³ Article 33 stipulates that a "lawyer or a law firm may promote a professional legal service field in which he/it is engaged but shall not self-declare or imply that he/it is recognized or proved to be an authority or expert in some professional field."³⁴ Therefore, it can be said that false advertisement is one of the acts explicitly prohibited by the *Code of Conduct for Lawyers in Practice*.

The second question was: "how likely is it that a lawyer makes a mendacious promise in your area?"³⁵ The *Code of Conduct for Lawyers in Practice* also explicitly prohibits lawyers from making mendacious promises; Section 2 of Chapter 4 is entitled "prohibiting false promises."³⁶ Under this section, Article 44 stipulates that "lawyers shall make analysis in accordance with the law based on facts and evidence provided by clients and provide analytical opinions for clients."³⁷

The third question was: "how likely is it that a lawyer makes improper contacts with a judge in your area?"³⁸ The *Code of Conduct for Lawyers in Practice* also explicitly prohibits improper contacts between lawyers and judges. Article 69 stipulates that, "in the process of handling a case, the lawyer shall not make private contacts with judicial or arbitration personnel involved in the case,"³⁹ and Article 70 stipulates that "the lawyer shall not bribe the personnel of the judicial organ or the arbitration agency and shall not deal with the judicial or arbitration personnel who undertake the case by promising returns or providing other benefits (including material benefits and interests in non-material forms)."⁴⁰ In addition to the *Code of Conduct for Lawyers in Practice*, Article 16 of the *Basic Rules for Professional Ethics for Judges* also

³² See generally CODE OF PRACTICE FOR LAWYERS 2017, *supra* note 16, arts. 32–34.

³³ *Id.* art. 32.

³⁴ *Id.* art. 33.

³⁵ CHINA JUSTICE INDEX REPORT 2016, *supra* note 17, at 32.

³⁶ CODE OF PRACTICE FOR LAWYERS 2017, *supra* note 16, c. 4 § 2.

³⁷ *Id.* art. 44 ("律师根据委托人提供的事实和证据, 依据法律规定进行分析, 向委托人提出分析性意见").

³⁸ CHINA JUSTICE INDEX REPORT 2016, *supra* note 17, at 32.

³⁹ CODE OF PRACTICE FOR LAWYERS 2017, *supra* note 16, art. 69.

⁴⁰ *Id.* art. 70.

explicitly prohibits “improper contacts” between judges and clients, and judges and agents ad litem.⁴¹

In the sociological empirical approach, when an object is assessed through an appropriate question, a basic technical requirement is that the assessment question must be reasonable, appropriate, and answerable.⁴² Only if these three basic criteria are met, respondents’ answers can roughly reflect their true judgment. First, these three questions all relate to professional ethics that are prominent in Chinese lawyers’ careers and make those ethics easier for respondents to understand. That is, compared with highly professional questions such as those on conflicts of interest, these three questions are more easily understood by the general public.

False advertisement and mendacious promise are among the most common problems in professional ethics according to respondents.⁴³ Improper lawyer-judge contact is a serious problem exposed in judicial corruption in recent years.⁴⁴ Through these three typical questions on professional ethics of lawyers, an insight into the basic situation of professional ethics of lawyers can be gained. In other words, we anticipated that the status of professional ethics of lawyers in different regions and across types could be characterized with these three typical cases.

Second, the improper professional behaviors involved in these three questions are all prohibited by the *Code of Conduct for Lawyers in Practice* without exception.⁴⁵ This means that the formal norms of professional ethics for lawyers in China explicitly prohibit this behavior. This is no longer just a negative assessment at the ethical level but a comprehensive prohibition at the normative level. This avoids ethical ambiguity and helps respondents make clearer assessments. Third, these

⁴¹ SUPREME COURT OF CHINA, BASIC RULES OF PROFESSIONAL ETHICS FOR JUDGES, art. 16 (2001) (as amended).

⁴² See PETER H. ROSSI ET AL., EVALUATION: A SYSTEMATIC APPROACH 69–73, 97 (7th ed. 2004).

⁴³ For example, in the *Warnings from Practice of Lawyers in Beijing* published by the Beijing Bar Association, deceptive promotion is emphasized as one of the six basic types of violation. See BEIJING LUSHI XIEHUI (北京律师协会) [BEIJING BAR ASSOCIATION], BEIJING LUCHI ZHIYE JINGSHI LU (北京律师执业警示录) [WARNINGS FROM PRACTICE OF LAWYERS IN BEIJING] 221–52 (2005) [hereinafter WARNINGS FROM PRACTICE OF LAWYERS IN BEIJING].

⁴⁴ See generally Li Jiabin (李嘉斌), *Sifa fubai zhong lushi goudui xingwei guizhi tanxi —yi faguan yu lushi de chunli boyi wei shijiao* (司法腐败中律师勾兑行为规制探析——以法官与律师的纯利博弈为视角) [Analysis of the Regulation of Lawyers’ Blending Behavior in Judicial Corruption—From the Perspective of the Pure Profit Game between Judge and Lawyer], 5 HAERBIN XUEYUAN XUEBAO (哈尔滨学院学报) [J. HARBIN U.] 44 (2019).

⁴⁵ CODE OF PRACTICE FOR LAWYERS 2017, *supra* note 16, arts. 31–32.

three questions are intelligible and evaluable for both legal professionals and the general public. These three questions primarily focus on subjective assessments. A summary of these assessments can reflect the general public's and legal professionals' overall assessment of professional ethics of lawyers in the region.

II. DIFFERENTIATION PATTERN OF ASSESSMENTS OF PROFESSIONAL ETHICS OF LAWYERS IN CHINA

The overall pattern of assessments of professional ethics of lawyers can be seen from a cross-analysis based on a combination of respondents' answers to the three questions and their background information.

A. THE CURRENT ASSESSMENT OF PROFESSIONAL ETHICS OF LAWYERS IN CHINA IS NOT PROMISING BUT IS SLOWLY IMPROVING

The dissatisfaction of these respondents in the three aspects is shown in the table below.⁴⁶ In 2015, the justice index research group distributed questionnaires on the same questions in twenty provincial-level regions across the country.⁴⁷ We can draw two conclusions from the table. First, the 2015 data shows that about 30% of the respondents ticked "likely or very likely" in terms of the three indicators (mendacious promise, false advertisement, and improper lawyer-judge contact).⁴⁸ In other words, regardless of the objective performance of the legal profession in these three improper occupational behaviors, at least nearly 30% of respondents made negative comments about local lawyers in terms of these three behaviors.⁴⁹ This is supported by another nationwide survey initiated by Wang Lusheng from the School of Law, Southeast University.⁵⁰ In the Southeast University survey, which involved 6,916 respondents across the country, when answering the question "do you

⁴⁶ See *infra* Table 2.

⁴⁷ See ZHANG BAOSHENG ET AL. (张保生), ZHONGGUO SIFA WENMING ZHISHU BAOGAO 2015 (中国司法文明指数报告 2015) [CHINA JUSTICE INDEX REPORT 2015] 98 (2016).

⁴⁸ See *infra* Table 2.

⁴⁹ See *infra* Table 2.

⁵⁰ Wang Lusheng (王禄生), Gongzhong xinzhong de xingshi fazhi zhuangkuang (公众心中的刑事法治状况) [GPP: General Public Survey] 16 (2016) (unpublished).

believe that local lawyers are truthful?”⁵¹ 4.9% (339) of the respondents ticked “extremely not believe,” 37.41% (2587) “not quite believe,” and less than “half believe” and “believe” (44.13% and 3.48%, respectively).⁵² Although the data cannot be directly compared because of some differences in method, the two nationwide questionnaire surveys reflect common problems. And second, compared with the 2015 data, the 2016 data showed some progress in all the three aspects.⁵³ The number of respondents who made negative comments in the three aspects dropped about 4%–7%.⁵⁴ This means that legal professionals and the general public made more positive comments of professional ethics of local lawyers, in 2016 compared to 2015.⁵⁵

*Table 2. Comments on Professional Ethics of Lawyers in Different Years.*⁵⁶

| Year | False advertisement (likely or very likely) | Mendacious promise (likely or very likely) | Improper lawyer-judge contact (likely or very likely) |
|------|---|--|---|
| 2015 | 29.9% | 29.9% | 26.4% |
| 2016 | 22.6% | 23.6% | 22.7% |

B. THE COMMENTS OF DIFFERENT RESPONDENT GROUPS ON PROFESSIONAL ETHICS OF LAWYERS SHOW CLEAR DIFFERENCES OF OPINION

Legal professionals’ comments on false advertisement and mendacious promise are more negative than those of the general public, and this difference is very significant (up to 5%–7%).⁵⁷ This is in stark contrast to the general public’s comments on lawyers in the United States. According to a survey made by the ABA, only 20% of general public respondents believe that lawyers are “honest and ethical.”⁵⁸

⁵¹ *Id.* at 1.

⁵² *Id.* at 5.

⁵³ See *infra* Table 2.

⁵⁴ See *infra* Table 2.

⁵⁵ See *infra* Table 2.

⁵⁶ Data on file with author.

⁵⁷ See *infra* Table 3.

⁵⁸ DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION* 4 (2003).

Lawyers' professional reputation is far lower than that of other practitioners according to the general public, and lawyers ranked only before used car dealers in this regard.⁵⁹ Even "90 to 95 percent of surveyed [American] parents do not want their children to become lawyers."⁶⁰

The case is the opposite in terms of lawyer-judge contact. In our survey in China, the proportion of general public respondents who made negative comments on improper lawyer-judge contact is 5.7 percentage points higher than that of legal professional respondents.⁶¹ Such a contrast is likely related to a series of major judicial corruption cases that have been seen in recent years.⁶² The general public's comments on lawyers' integrity are very negative.⁶³ Lawyers' image as "brokers" is widely known in media and some popular novels.⁶⁴ But this may be precisely what is relatively ignored by professional behavior rules. In the future, in the construction of professional ethics of lawyers, more efforts will be needed to regulate the probity of lawyers, especially in terms of improper lawyer-judge contacts.

*Table 3. Comments of Different Respondent Groups on Professional Ethics of Lawyers.*⁶⁵

| Respondent group | False advertisement (likely or very likely) | Mendacious promise (likely or very likely) | Improper lawyer-judge contact (likely or very likely) |
|---------------------|---|--|---|
| Legal professionals | 26.5% | 29.4% | 18.4% |
| The general public | 21.5% | 21.8% | 24.1% |

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See *infra* Table 3.

⁶² In the case of Guo Jingyi (former deputy director of the Department of Treaty and Law of the Ministry of Commerce), the case of Huang Songyou (former vice president of the Supreme People's Court), the case of Xi Xiaoming (former vice president of the Supreme People's Court), the case of Shanghai judges hiring sex workers, and the case of Pei Jinquan (former vice president of the Shenzhen Intermediate People's Court), there were improper lawyer-judge contacts. Zheng Xiaolou (郑小楼), *Fa Guan Fu Bai Bao Gao* (法官腐败报告) [*Report on Corruption of Judges*], 15 CAI JING (财经) [CAIJING MAG.] 75–77 (May 27, 2013) (analyzing 200 cases of judges involved in corruption from 1995 to 2013 and finding that at least thirty-two of them involved brokerage activities of lawyers or legal professionals).

⁶³ See *infra* Table 3.

⁶⁴ Fang Liufang (方流芳), *Pi Fu You Zhi, Ke Di San Jun* (匹夫有志, 可敌三军) [*Where There Is Ambition, There Is Victory*], 4 LV SHI WEN ZHAI (律师文摘) [LAW. DIG.] 1 (2012).

⁶⁵ Data on file with author.

As can be seen from the different subgroups in the legal professional group regarding false advertisement and mendacious promise, judges' comments are the most negative, and lawyers' self-comments are the most positive.⁶⁶ The proportion of judges making negative comments is 5.5 percentage points higher than that of lawyers making negative comments.⁶⁷ On improper lawyer-judge contact, police officers' comments are the most negative, and judges' self-comments are the most positive.⁶⁸ Lawyers' comments on this are also very bad (23.2% of them ticked "likely or very likely" when asked).⁶⁹

Two things can be seen from this contrast. First, a subgroup's comments on the professional ethics of themselves are generally more positive than those of other subgroups.⁷⁰ Both lawyers' and judges' comments on professional ethics of themselves are more positive than those of other subgroups.⁷¹ The reason why a subgroup's self-comments are more positive may be its self-interest or better understanding of themselves. One example is that bar associations themselves lack sufficient motivation to discipline members for improper practice or violating professional ethics.⁷² This requires that there be enough representatives of the general public and other legal professionals, in addition to lawyers themselves, present in the assessment and disciplinary organizations for professional ethics of lawyers.⁷³ Second, judges' comments on professional ethics of lawyers are more negative than those of prosecutors and police officers, and lawyers' comments on improper lawyer-judge contact are much more negative than those of judges.⁷⁴ This, in a sense, reflects that judges' and lawyers' comments on professional ethics of each other are negative.

The fact that lawyers' and judges' comments on professional ethics of each other are negative has been confirmed to some extent in other empirical research. Some scholars conducted a questionnaire survey on the relationship between judges and lawyers in Beijing in

⁶⁶ See *infra* Table 4.

⁶⁷ See *infra* Table 4.

⁶⁸ See *infra* Table 4.

⁶⁹ See *infra* Table 4.

⁷⁰ See *infra* Table 4.

⁷¹ See *infra* Table 4.

⁷² See AMERICAN LAWYERS, *supra* note 27, at 145.

⁷³ McKay Report, *supra* note 7, Recommendation 4.

⁷⁴ See *infra* Table 4.

2006.⁷⁵ It found that, on the question “are you satisfied with the overall situation of judges?”, the lawyer respondents’ satisfaction rate was 42%.⁷⁶ The reasons for dissatisfaction in 58% of the lawyer respondents primarily included: lacking knowledge (47%), extorting bribes (39%), and failing to respect lawyers (14%).⁷⁷ On the question “are you satisfied with the overall situation of lawyers?” the judges’ satisfaction rate was 48%.⁷⁸ The reasons for dissatisfaction in 52% of the judge respondents included: lawyers’ behavior of disregarding ethics in pursuit of interests, unfair charging, and perjuring.⁷⁹ On the question “what do you think are the best and the worst aspects of lawyers?”, the judge respondents thought that the best aspects of lawyers were lawyers’ professionalism (50%) and good practicing attitude (13%), and the worst aspect of lawyers were lawyers’ poor professional ethics (43%) and bad image (31%).⁸⁰ It can be seen that the phenomenon that lawyers’ and judges’ negative comments on professional ethics of each other have existed for a long time without fundamental change over years.⁸¹

*Table 4. Comments of Different Subgroups of Legal Professionals by Occupation on Professional Ethics of Lawyers.*⁸²

| Subgroup of legal professionals by occupation | False advertisement (likely or very likely) | Mendacious promise (likely or very likely) | Improper lawyer-judge contact (likely or very likely) |
|---|---|--|---|
| Lawyers | 23.9% | 25.1% | 23.2% |
| Judges | 30.4% | 35.8% | 8.7% |
| Prosecutors | 26.6% | 29% | 18.2% |
| Police officers | 24.9% | 27.6% | 23.8% |

⁷⁵ Li Yan (李 晓), *Guanyu lǚshī yǔ fǎguān guānxi de shízhèng yánjiū* (关于律师与法官关系的实证研究) [*An Empirical Study on the Relationship between Lawyers and Judges*], 7 FAZHUYANJIU (法治研究) [RES. ON RULE L.] 44, 7 (2008) [hereinafter Beijing Study].

⁷⁶ *Id.* at 46.

⁷⁷ *Id.* at 46.

⁷⁸ *Id.* at 45.

⁷⁹ *Id.* at 46.

⁸⁰ *Id.* at 47.

⁸¹ *Id.* at 46.

⁸² Data on file with author.

The number of practicing years and age of legal professionals also affected their evaluation to the legal ethics of themselves. By number of practicing years and age of legal professionals, three important characteristics can be seen from Table 5.⁸³ First, comments of the subgroup under age twenty-five who have been practicing for fewer than three years are the most positive.⁸⁴ This subgroup is engaged in legal practice activities at legal practice organizations after they graduated from law schools.⁸⁵ Second, as the age and the number of practicing years of a subgroup increase, the more negative their comments on professional ethics of local lawyers are.⁸⁶ As their age reaches thirty-six to forty-five and when they have worked for thirteen to twenty years, negative comments hit a peak.⁸⁷ Irrespective of the type of legal professional surveyed (police officers, prosecutors, judges, and lawyers), when they reach that age and they have worked for eleven to twenty years, they should be the backbone of their organizations, marking the golden age of their career and undertaking the most important tasks at their organizations.⁸⁸ It is noteworthy that this subgroup made the most negative comments on professional ethics of local lawyers.⁸⁹ Third, comments of the subgroup whose age is above fifty-five are relatively more positive.⁹⁰ Thus, on the whole, comments of different subgroups of legal professionals by number of practicing years and age on professional ethics of local lawyers show a U-shaped variation tendency.⁹¹

⁸³ See *infra* Table 5.

⁸⁴ See *infra* Table 5.

⁸⁵ CHINA JUSTICE INDEX REPORT 2016, *supra* note 17, at 35.

⁸⁶ See *infra* Table 5.

⁸⁷ See *infra* Table 5.

⁸⁸ For example, the average age of the first batch of judges on regular payroll in Beijing is 40.6, and their average number of practicing years is sixteen. Zhang Lei (张蕾), Beijing shou pi ru e faguan 2019 ren (北京首批入额法官 2019 人) [*Beijing's First Batch of 2019 Judges*], SOHU HAO (搜 狐 号) [SOHU] (May 10, 2016), https://www.sohu.com/a/74634390_362018 [<https://perma.cc/A632-HKXD>]. The average age of the first batch of judges on regular payroll in Shanghai is 43.9, and their average number of practicing years is eighteen. *Shanghai shou pi ru e faguan pingjun ganle 18 nian sifa gongzuo, chao 5 cheng ju shuo bo xuewei* (上海首批入额法官平均干了 18 年司法工作, 超 5 成具硕博学位) [*The First Batch of Judges in Shanghai Have Spent an Average of 18 Years in Judicial Work, and Over 50% Have Master's Degree*], PENGPAI XINWEN LIU JING (澎湃新闻 刘旌) [SURGING NEWS] (July 23, 2015), https://www.thepaper.cn/newsDetail_forward_1355785 [<https://perma.cc/U35E-Z3CR>]. The average age of the first batch of prosecutors on regular payroll is 44.7, and their average number of practicing years is nineteen. *Id.*

⁸⁹ See *infra* Table 5.

⁹⁰ See *infra* Table 5.

⁹¹ See *infra* Table 5.

Table 5. Comments of Different Subgroups of Legal Professionals by Number of Practicing Years/Age on Professional Ethics of Lawyers.⁹²

| Subgroup of legal professionals by number of practicing years/age | False advertisement (likely or very likely) | Mendacious promise (likely or very likely) | Improper lawyer-judge contact (likely or very likely) |
|---|---|--|---|
| Fewer than 3 years in practice | 16.4% | 17.8% | 10.8% |
| 3–10 years in practice | 28.7% | 31% | 17.7% |
| 11–20 years in practice | 32.4% | 36.4% | 24.1% |
| More than 20 years in practice | 26.3% | 32% | 21.3% |
| 25 years old or younger | 16% | 15.7% | 10.7% |
| Aged 26–35 | 27.1% | 29.6% | 16.9% |
| Aged 36–45 | 29.3% | 33.5% | 22.3% |
| Aged 46–55 | 26.9% | 30.7% | 22.8% |
| Older than 55 | 23.1% | 29.3% | 21.5% |

Looking at the general public by occupation, among all social occupation groups, comments of migrant workers on professional ethics of lawyers are the most negative.⁹³ Migrant workers believe most strongly that lawyers will engage in false advertisement, mendacious promise, and improper lawyer-judge contact.⁹⁴ On the one hand, when migrant workers, who come to cities from the countryside to make a living, enter a society of strangers, they inevitably encounter a series of challenges such as finding housing and looking for a job.⁹⁵ They are also more likely to encounter legal issues.⁹⁶ American legal sociologist

⁹² Data on file with author.

⁹³ See *infra* Table 6.

⁹⁴ See *infra* Table 6.

⁹⁵ ZHU SULI (朱苏力), FAZHI JI QI BENTU ZIYUAN (法治及其本土资源) [THE RULE OF LAW AND ITS NATIVE RESOURCES] 112 (2004).

⁹⁶ *Id.* at 113.

Donald J. Black observed the impact of the distance between people on the behavior of law: among people with close ties, law is inactive.⁹⁷ That is, incidents of legal action increase with the relational distance between people.⁹⁸ When the realities of people are completely separate or isolated, law begins to diminish.⁹⁹ Obviously, in migrant workers' realities, the relational distance between people is still one that needs law. On the other hand, due to the relatively weak economic conditions of migrant workers, they are destined not to be able to enjoy the best quality legal services. This leads to a contradiction between supply and demand, and the legal demand of migrant workers is unlikely to be fully satisfied. This demonstrates that migrant workers are a group that is in urgent need of the legal assistance from lawyers' public welfare activities.¹⁰⁰

As at least one scholar has already realized, local lawyers have an overly-generalized understanding of lawyers' public welfare activities.¹⁰¹ For example, the *Report on Social Responsibility of Lawyers in Beijing* in 2010, the first report on social responsibility of lawyers in China, shows that 76.87% of lawyers in Beijing have fulfilled their social responsibilities in various forms.¹⁰² The lawyers perform their social responsibilities in up to twenty-six ways, including participating in the administration and discussion of state affairs, participating in legislation, serving national defense, making charitable donations, and conducting legal studies.¹⁰³ Of course, it should be noted that many lawyers have begun to provide public welfare services for migrant workers consciously in various ways, but such individual efforts are not enough from a national perspective.¹⁰⁴

⁹⁷ See DONALD BLACK, *THE BEHAVIOR OF LAW* 40–48 (1976).

⁹⁸ See *id.* at 41–42.

⁹⁹ *Id.* at 42–43.

¹⁰⁰ Chen Yi (陈宜) & Zhang Tao (张涛), Jiejin zhengyi: Nongmin gong falu yuanzhu shengtai fenxi ji lujing jiangou (接近正义: 农民工法律援助生态分析及路径建构) [Approaching Justice: Ecological Analysis and Path Construction of Migrant Workers], 33 XUE XI LUN TAN (学习论坛) [TRIBUNE OF STUDY], 69,9 (2017).

¹⁰¹ Xu Shen Jian, *Tisheng lushi gongyi falu fuwu* (提升律师公益法律服务) [Improving the Public Legal Service of Lawyers], JIAN CHA RI BAO [PROSECURATE DAILY], Mar. 13, 2013.

¹⁰² BEIJING SHI LUSHI XIEHUI (北京市律师协会) [BEIJING LAW. ASS'N], BEIJING SHI LUSHI SHEHUI ZEREN BAOGAO (北京市律师社会责任报告) [REPORT ON SOCIAL RESPONSIBILITY OF LAWYERS IN BEIJING] 87 (2010).

¹⁰³ *Id.* at 1.

¹⁰⁴ Jian, *supra* note 101, at 70.

Table 6. Comments of Different Subgroups of General Public by Occupation on Professional Ethics of Lawyers.¹⁰⁵

| Subgroup of general public by occupation | False advertisement (likely or very likely) | Mendacious promise (likely or very likely) | Improper lawyer-judge contact (likely or very likely) |
|--|---|--|---|
| Personnel of Party and government offices | 21.5% | 21.4% | 20.5% |
| Personnel of public institutions | 19.9% | 20.5% | 23.1% |
| Enterprise and service industry practitioner | 21.4% | 21.8% | 24.4% |
| Migrant workers | 22.9% | 22.9% | 26.9% |
| Farmers | 21.5% | 22.3% | 25.2% |
| Retirees | 20.7% | 20.7% | 22.1% |

By gender, in both the general public and legal professionals, comments of female respondents on professional ethics of lawyers are more positive than those of male respondents.¹⁰⁶ As can be seen from the table below, among the general public respondents, the proportion of male respondents making negative comments is 4%–5% higher than the proportion of female respondents making negative comments in the three aspects.¹⁰⁷ Among the legal professional respondents, the proportion of male respondents making negative comments is about 7% higher than the proportion of female respondents making negative comments in the three aspects.¹⁰⁸ The fact that comments of female respondents on professional ethics of local lawyers are more positive than those of male respondents may result from two trends.

¹⁰⁵ CHINA JUSTICE INDEX REPORT 2016, *supra* note 17, at 36.

¹⁰⁶ Data on file with author.

¹⁰⁷ See *infra* Table 7.

¹⁰⁸ See *infra* Table 7.

Table 7. Comments of Different Subgroups by Gender on Professional Ethics of Lawyers.¹⁰⁹

| Subgroup by gender | False advertisement (likely or very likely) | Mendacious promise (likely or very likely) | Improper lawyer-judge contact (likely or very likely) |
|-------------------------|---|--|---|
| Male (general public) | 23.4% | 24.3% | 26.8% |
| Female (general public) | 19.4% | 19.2% | 21.3% |
| Male (professionals) | 29.1% | 32.2% | 21.7% |
| Female (professionals) | 22.2% | 24.9% | 13.1% |

Among the public, comments of those who participated in litigation activities on professional ethics of lawyers are significantly more negative than comments of those who did not participate in litigation activities.¹¹⁰ Among those making negative comments on professional ethics of lawyers, the proportion of those who participated in litigation activities is 7%–9% higher than the proportion of those who did not participate in litigation activities.¹¹¹ This indicates that the general public's experience of legal services offered by lawyers is not good, and their comments on professional ethics of lawyers after the experience show a significant downward trend. Therefore, improving the litigation experience of the general public should be an important area in the future regulation of professional lawyer ethics.

¹⁰⁹ Data on file with author.

¹¹⁰ See *infra* Table 8.

¹¹¹ See *infra* Table 8.

*Table 8. Comments on Professional Ethics of Lawyers by Different Subgroups of the General Public by Litigation Experience.*¹¹²

| Subgroup of general public by litigation experience | False advertisement (likely or very likely) | Mendacious promise (likely or very likely) | Improper lawyer-judge contact (likely or very likely) |
|--|---|--|---|
| Those who participated in litigation activities | 28.8% | 28.5% | 29.9% |
| Those who did not participate in litigation activities | 19.4% | 20% | 22.6% |

Among the general public, more highly educated individuals view the professional ethics of local lawyers more negatively.¹¹³ As the subgroup with a higher educational level is more likely to be of the higher-income, it can be said that comments of social elites on professional ethics of local lawyers are more negative than other groups.

*Table 9. Comments on Professional Ethics of Lawyers by Different Subgroups of the General Public by Educational Level.*¹¹⁴

| Subgroup of general public by educational level | False advertisement (likely or very likely) | Mendacious promise (likely or very likely) | Improper lawyer-judge contact (likely or very likely) |
|---|---|--|---|
| Junior high school diploma and below | 21.1% | 20.6% | 22.8% |
| Senior high school/technical secondary school diploma | 20.2% | 20.6% | 23.4% |
| Bachelor's degree/college degree | 21.5% | 22.2% | 24.6% |
| Master's degree | 26.1% | 25.8% | 26.2% |

¹¹² Data on file with author.

¹¹³ See *infra* Table 9.

¹¹⁴ Data on file with author.

III. POLICY IMPLICATIONS OF THE DIFFERENTIATION PATTERN OF ASSESSMENTS OF THE PROFESSIONAL ETHICS OF LAWYERS

The differentiation pattern of assessments of professional ethics of local lawyers from multiple dimensions including profession, legal occupation, number of practicing years, gender, litigation experience, and educational level is presented above.¹¹⁵ The general public are external to the legal profession. However, the general public constitute lawyers' practice environment and they are observers of lawyers' practice activities and those affected by these activities. Therefore, the general public are the most important assessors of the professional ethics of lawyers. This means that both the formulation of the lawyer professional ethics system and the design of the lawyer professional ethics implementation system must make necessary responses to such an external assessment pattern.

First, in the process of formulating and revising professional ethics for lawyers, more consideration must be given to the standpoint of such external groups. At present, the revision of the professional ethics for lawyers in China is mostly regarded as the lawyer profession's or even bar associations' own business.¹¹⁶ The demands of other legal occupations and the general public are not adequately considered. Even its own professional committees did not solicit advice.¹¹⁷ In the future of professional ethics norms for lawyers, a mechanism for more rational absorption of demands of the legal profession and the general public must be constructed, so that there can be a stronger social foundation for the formation and revision of applicable norms. In the process of the construction of such a mechanism, all parties involved in the above-mentioned differentiation pattern should have a voice, especially those who make negative comments.

Second, in the process of the formulation and implementation of the professional ethics for lawyers, more responses must be given to the demands of certain groups. As shown above, in the subgroups of legal

¹¹⁵ See *supra* Table 9.

¹¹⁶ See Liu Yanxun (刘炎迅) et al., *Lǚshī zhíyè xíngwéi guīfàn xiūdìng yǐn zhēngyì, lǚshī zāo wǎngluò' fēng kǒulìng* (律师执业行为规范修订引争议, 律师遭网络'封口令') [*Amid Disputes about Revision of Code of Conduct for Lawyers in Practice, Lawyers Are Muzzled on the Internet*], NANFANG ZHOU MO (南方周末) [SOUTHERN WEEKLY] (June 19, 2014), <http://www.infzm.com/content/101601> [<https://perma.cc/33GQ-6SS9>].

¹¹⁷ See *id.*

professionals by occupation, the most negative comments on professional ethics of lawyers are from judges.¹¹⁸ In the subgroups by number of practicing years and age, the subgroup whose age is thirty-six to forty-five was most negative about legal ethics of lawyers in their local areas.¹¹⁹ For the subgroups of the general public by occupation, the migrant workers were the most negative.¹²⁰ In the subgroups of the general public by education level, those with master's degree and above were the most negative.¹²¹ Then, in the future, the construction of legal professional ethics and the implementation of norms must emphatically respond to the perceptions of these groups. The sources of these groups' perceptions should be further identified, so that targeted responses can be made. For example, the process should be more responsive to the needs of migrant workers through system construction activities such as targeted legal aid.

Third, greater response should be given to the specific misconduct of lawyers. This survey only covered three types of misconduct including false advertisement, mendacious promise, and improper lawyer-judge contact.¹²² As mentioned above, these three behaviors are all prohibited by the *Code of Conduct for Lawyers in Practice*, but these behaviors have not disappeared because of the prohibition by the code of conduct.¹²³ In the future, bar associations can respond by more effectively dealing with disciplinary actions against such behaviors. Current disciplinary actions against lawyers are more closed and secretive, and they cannot adequately incentivize lawyers to change their behavior nor respond to the perceptions and demands of the general public.¹²⁴ In the United States, "over forty-four thousand [ethics]

¹¹⁸ See *supra* Table 9.

¹¹⁹ See *supra* Table 5.

¹²⁰ See *supra* Table 6.

¹²¹ See *supra* Table 9.

¹²² CHINA JUSTICE INDEX REPORT 2016, *supra* note 17, at 35.

¹²³ See generally CODE OF PRACTICE FOR LAWYERS 2017, *supra* note 16, arts. 32, 33, 44, 69, 70.

¹²⁴ This situation has begun to change. For example, ACLA began to issue the "Notice by ACLA on Disciplinary Actions" on its WeChat public account, Chinese Lawyer, in the first half of 2017, but only it posts the statistics and does not post specific cases. See ACLA, *Notice on Establishing The Center of Protecting The Practice Right of Lawyers and The Center of Accepting Complaints* (关于律师协会成立维护律师执业权利中心 投诉受理查处中心的通知) [*Guanyu chengli weihu lushi zhiye quanli zhongxin tousu shouli chachu zhongxin de tongzhi*] (Feb. 10, 2017). The Beijing Bar Association publishes the *Warnings from Practice of Lawyers in Beijing* every few years, but it is only for internal publication and the individuals and law firms involved are all anonymous. WARNINGS FROM PRACTICE OF LAWYERS IN BEIJING, *supra* note 43, at 2.

complaints were summarily dismissed,” with some jurisdictions summarily dismissing “up to 90% of all [ethics] complaints filed.”¹²⁵ Even in complaints received by lawyer disciplinary agencies, the proportion of those that were handled publicly was smaller than 2%.¹²⁶ Therefore, professional ethics for lawyers can be made more authoritative only through the construction of a more open disciplinary mechanism through the introduction of more social forces into discipline for lawyers.

IV. CONCLUSION

This paper outlines the basic distribution of assessments of professional ethics of lawyers in China. Through quantitative data analysis, this paper intends to showcase the impressions of legal professional ethics from the perspective of the general public and legal professionals. As some scholars have found in research on the criminal justice system, “quantitative surveys have a number of limitations . . . , but with respect to policy-driven research they are to be preferred over qualitative designs.”¹²⁷ Quantitative research has strong advantages in understanding respondents’ comments on and attitudes toward a certain problem, but its explanation behind these comments and attitudes seems to be somewhat inadequate.¹²⁸ Therefore, the quantitative research in this paper may be subject to similar problems, though the author has tried to explain as much as possible by using some qualitative information and theory. The distribution pattern presented will become an important basis for further empirical research.

For a country with fewer than forty years of legal service development, China has achieved a rapid increase of the legal profession in a complex institutional environment.¹²⁹ On the one hand, such a rapid development process is the result of an astonishing increase in legal service providers and the expansion of the legal services market and, on the other hand, the process of continuous development and improvement of the management and supporting systems for the legal profession. The institutional changes in the legal profession should respond to the

¹²⁵ McKay Report, *supra* note 7.

¹²⁶ RHODE, *supra* note 58, at 16.

¹²⁷ JULIAN ROBERTS & MIKE HOUGH, UNDERSTANDING PUBLIC ATTITUDES TO CRIMINAL JUSTICE 19 (2005), at 11

¹²⁸ *See id.*

¹²⁹ LIU, *supra* note 11, at 15.

expectations of society on legal services and the needs of development of the legal services market.

These two realms are often in conflict, and professional ethical norms for lawyers are a normative mechanism for coordination of the conflict and the pivotal mechanism for coalescing public and professional ethics.¹³⁰ The integration of the morals and interests of the legal profession and the general public have turned abstract professional ethics into regulations for lawyers.¹³¹ Therefore, the formulation and improvement of professional ethical norms for lawyers is not only a matter of the legal profession itself or even bar associations themselves. The role of coordinator of professional ethics for lawyers can be played only through further integration of the basic demands of the general public and the the interests of the legal profession.

¹³⁰ Sun Xiaoxia (孙笑侠), *Zhi Ye Lun Li Yu Da Zhong Lun Li De Fen Ye ——Wei Shen ME Yao Chong Su Wo Men de Fa Lv Zhi Ye Lun Li* (职业伦理与大众伦理的分野——为什么要重塑我们的法律职业伦理) [*The Dividing Line between Professional Ethics and Public Ethics – Why Should Our Legal Professional Ethics Be Reshaped*], 3 *ZHONG WAI FA XUE* (中外法学) [PEKING U. L. J.] at 5 (2002).

¹³¹ See generally, STEPHEN GILLERS, *REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS* 1–5 (Concise ed. 2015).