

Outside Counsel

Attorney Convictions in New York

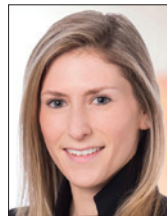
Prosecutions of lawyers in New York are often headline grabbing affairs, as evidenced by cases brought in recent years with varying degrees of success against Donald Trump's attorney, Michael Cohen, lawyers at Dewey & Leboeuf, and New York state politicians.

The public interest in these cases is understandable. In addition to the impact of the underlying conduct on alleged victims, each case raises the specter that the lawyer in the cross hairs of a prosecution may be convicted, incarcerated, required to pay restitution and fines that are generally not covered by professional liability insurance, and lose his or her license to practice law.

These cases also grab the attention of the legal community, particularly firm leaders and their general counsel and malpractice carriers who justifiably worry about how to reduce the likelihood that their colleagues and insureds will attract the ire of prosecutors. Law firm leaders



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and insurers have long focused on enhanced internal financial and ethical controls, and more recently on improved access to mental health and other support for their attorneys. All of this makes sense—in addition to the potential reputational impact on law firms there is the risk that law firms and their insurers will face substantial financial consequences.

Five years ago, in an effort to better understand how and why lawyers run afoul of the criminal courts, we analyzed the cases that resulted in criminal convictions of attorneys during the preceding six years. That study reflected that prosecutors were placing a considerable emphasis, in a post-recession New York, on cases involving mortgage related fraud. It also demonstrated that the vast majority of the criminal convictions in federal and state court arose out of less sophisticated

criminal conduct, often involving nothing more than theft of client funds.

Renewed Survey Results

This article updates our original survey with a review of criminal convictions of New York lawyers from January 2015 through December 2019. To gather this data, we relied primarily on decisions issued

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by the New York State Appellate Division disciplining attorneys who were convicted of crimes. The survey also aggregates information from press releases issued by federal and state prosecutors in New York and various media reports.

The results of the survey are set forth in the charts accompanying this article on page 7.

On a positive note, our survey suggests that on average, criminal conduct by attorneys has been markedly decreasing. Over the past five years, 148 New York-licensed

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attorneys were convicted of federal and state criminal offenses for an average of approximately 30 convictions per year. During the six years studied in our 2015 report, 244 New York-licensed attorneys were convicted for an average of 41 convictions per year. In other words, our survey shows that 27% fewer attorneys were convicted on average in the last five years than in the six years preceding our 2015 survey.

The survey also reflects that federal and state prosecutors both actively pursue prosecutions of attorneys, with prosecutors obtaining 74 convictions of attorneys in both federal and state courts during the five years covered by the survey.

Similar to the 2015 survey results, attorneys in the last five years were more likely to be convicted of fraud and theft-related offenses than other criminal misconduct. There were 45 fraud-related convictions in federal court and 41 larceny/theft-related convictions in state court during those years. More than half of the state theft-related convictions were for misappropriation of client funds.

Notably, attorneys are far more likely to engage in criminal conduct when they work in small law firms. More than 27% of the attorneys convicted in federal court were solo practitioners; and more than 44% worked in firms with ten or fewer attorneys. In state court, 53% of the attorneys were solo practitioners and 77% worked in firms with ten or fewer attorneys. Smaller firms often lack the infrastructure and support systems that are more prevalent in

larger firms, which likely contributes to the disparity of these figures.

Other Findings

Other findings derived from the data include the following:

First, criminal convictions of attorneys consistently varied from year to year but were highest in 2015 (with 46 total convictions). In 2016, there were 26 convictions; in 2017, 31 convictions; in 2018, 27 convictions; and through December 2019, only 18 convictions.

Second, a majority of convictions involved attorneys performing legal work as attorneys (77 of the 148) and appear to relate to their access to funds and positions of trust.

Third, substance abuse and mental health issues, while difficult to distill from available records, do appear to be a factor in some of the crimes reflected in the survey. For example, 11 convictions in our survey were for drug-related offenses, and it appears that at least three other convictions involved substance abuse and another five involved attorneys with documented mental

State Court Convictions, 2015-2019

Conviction Category	Number of Convictions (74)
Larceny/theft-related	41
Misappropriation of funds	24
Grand larceny	6
Identity theft/forgery	4
Theft (other)	3
Mortgage-related	2
Insurance theft	1
Robbery	1
DUI/Drug-related	9
Tax-related	6
Bribery/obstruction of justice-related	5
Assault-related	4
Sexual offense	4
Conspiracy	3
Animal cruelty	1
Telecommunications-related	1

Practice (State)	Number of Cases
Solo	35
Firm with < 10 attorneys	16
Firm with > 100 attorneys	3
Non-legal (miscellaneous)	3
Politicians	2
Judge	2
Financial Services	2
Firm with 10-100 attorneys	1
Government	1
Unemployed	1
Insufficient data	8
Total	74

health challenges. According to research published by the ABA in 2017, between 40% and 70% of disciplinary proceedings and malpractice claims against attorneys involve substance abuse or depression or both. This is clearly an issue worth continued attention and study.

Fourth, the vast majority of the convicted attorneys are men. Indeed, 127 of the 148 attorneys who were convicted in the last five years are men. If substance abuse is

a driver for attorney misconduct, it is worth noting that a 2016 study of 12,825 individuals in the legal profession showed that 20.6% screened positive for hazardous, harmful and potentially alcohol-dependent behavior, with men having a higher proportion of positive screens to women. See Krill, Patrick R. et al., *The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys*, Journal of Addictive Medicine, January/February 2016.

Finally, it is worth noting that the attorneys featured in this survey are undoubtedly the exception to the rule. In 2017, there were 318,186 attorneys licensed in New York according to the New York State Office of Public Information. That same year, the survey revealed just 31 convictions, which works out to 0.01% of New York licensed attorneys.

Noteworthy Convictions

Some notable attorney convictions from the survey include:

- An attorney was sentenced to 15 years' imprisonment following his conviction for conspiring to transport 1,500 kilograms of cocaine on his private jet from Ecuador to Honduras.
- A former Big Law associate pleaded guilty to securities and wire fraud after soliciting \$10 million from 30 investors as part of a Ponzi scheme.
- An attorney, after being convicted of assaulting his wife, was ordered by the court to seek therapy. Although the doctor's

assessment of his initial condition suggested he was dealing with considerable mental and emotional strain with deep-rooted anger issues, the therapy was so helpful that the doctor signed off on the attorney's appeal to rejoin the New York bar.

- An attorney was convicted of misprision of a felony and sentenced to four months in prison in connection with his firm's closing of eight real estate transactions totaling \$4.8 million. While the attorney was not aware of the full extent of the scheme, he was aware others were using him to help defraud financial institutions; failed to notify authorities; and took affirmative steps to conceal the fraud.

Conclusion

Even as convictions of attorneys are declining on average, it is clear that theft and fraud related offenses continue to be a challenge for the legal industry, particularly at small law firms. Law firm leaders, bar associations, and malpractice carriers

Federal Court Convictions, 2015-2019

Conviction Category	Number of Convictions (74)
Fraud-related	45
Wire fraud	24
Mail fraud	6
Immigration fraud	4
Misappropriation of funds	3
Defraud US Government	2
Securities fraud	2
Mortgage fraud	2
Bank fraud	2
Bribery/obstruction of justice-related	10
Tax-related	8
Money laundering	4
Racketeering	2
Sexual offense	2
Drug-related	2
Illegal interception of communications	1

Practice (Federal)	Number of Cases
Solo	20
Firm with < 10 attorneys	12
Politicians	10
Firm with > 100 attorneys	9
Non-legal (miscellaneous)	9
Government	4
Firm with 10-100 attorneys	3
Financial Services	3
Judge	2
Insufficient data	2
Total	74

have plenty to work with to improve those numbers. Significant gains can be achieved by enhancing law firm infrastructure and procedures, and by building on growing evidence that substance abuse and mental health issues may lie at the root of a considerable amount of attorney misconduct.