

2020

A Qualitative Study of Peer Reporting of Attorney Ethical Misconduct

Jason Alan Helm
Walden University

Follow this and additional works at: <https://scholarworks.waldenu.edu/dissertations>



Part of the [Ethics and Political Philosophy Commons](#), [Law Commons](#), and the [Public Policy Commons](#)

This Dissertation is brought to you for free and open access by the Walden Dissertations and Doctoral Studies Collection at ScholarWorks. It has been accepted for inclusion in Walden Dissertations and Doctoral Studies by an authorized administrator of ScholarWorks. For more information, please contact ScholarWorks@waldenu.edu.

Walden University

College of Social and Behavioral Sciences

This is to certify that the doctoral dissertation by

Jason A. Helm

has been found to be complete and satisfactory in all respects,
and that any and all revisions required by
the review committee have been made.

Review Committee

Dr. Richard Worch, Committee Chairperson,
Public Policy and Administration Faculty

Dr. Mark Stallo, Committee Member,
Public Policy and Administration Faculty

Dr. Gregory Campbell, University Reviewer,
Public Policy and Administration Faculty

Chief Academic Officer and Provost
Sue Subocz, Ph.D.

Walden University
2019

Abstract

A Qualitative Study of Peer Reporting of Attorney Ethical Misconduct

by

Jason A. Helm

JD, University of South Dakota School of Law, 2003

MA, University of South Dakota, 1998

BS, University of South Dakota, 1997

Proposal for Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Public Policy and Administration

Walden University

February, 2020

Abstract

Attorney misconduct affects the victims, the justice system, and the reputation of the entire legal profession. The legal profession suffers from a negative public perception because of a perceived lapse of ethical conduct. This study was designed as a general qualitative study and its purpose was to understand the processes attorneys experience regarding peer reporting of attorney ethical misconduct. The questions examined in this study was whether attorneys were willing to report their peer's ethical misconduct and why those attorneys decided to report or not report their peer's ethical misconduct. Twenty open-ended questionnaires were collected from a sampling of active, practicing attorneys in good standing located within the State of Michigan. Data was coded both manually and with the assistance of NVivo to find themes within the responses. The results of the questionnaire found that attorneys were willing to report their peer's ethical misconduct as required by the Model Rules of Professional Conduct. Reasons given for reporting by the respondents were a sense of duty, and to protect the interests of their clients. The reason given by the respondents on why an attorney may not report a peer's ethical misconduct was fear, ranging from fear of retaliation to fear of being mistaken. The social change implications of this study were to promote and assist attorneys to safely and confidently report ethical concerns and to improve the overall public perceptions of the legal profession. The legal profession self-governs its members in matters of ethical rules enforcement. A better understanding of the motivations and fears associated with peer reporting can help the Bar design solutions to address peer reporting concerns.

A Qualitative Study of Peer Reporting of Attorney Ethical Misconduct

by

Jason A. Helm

JD, University of South Dakota School of Law, 2003

MA, University of South Dakota, 1998

BS, University of South Dakota, 1997

Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

Doctor of Philosophy

Public Policy and Administration

Walden University

September 2019

Acknowledgments

I would like to thank my wife Sarah and my son Elijah for their love and support. I also would like to thank my parents and family for their encouragement. I would like to give a special thank you to my Committee Chair, Dr. Richard Worch. Your advice and assistance were invaluable to me and I could not have completed this research without you. I also would like to thank my other committee members, Dr. Mark Stallo and Dr. Gregory Campbell for their hard work and dedication in helping me to complete this study.

Table of Contents

Chapter 1: Introduction to the Study.....	1
Background.....	2
Problem Statement	8
Purpose of the Study	11
Research Question.....	13
Conceptual Framework/Theoretical Base	14
Nature of the Study	17
Definitions	20
Assumptions.....	21
Scope	22
Delimitations.....	25
Limitations.....	25
Significance of the Study.....	28
Chapter Summary.....	30
Chapter 2: Literature Review.....	32
Literature Search Strategy	36
Theoretical Framework	38
Literature Review of Related Methods	41
Peer Reviewed Literature	48
Literature Regarding Attorneys and Ethical Misconduct.....	48
Literature Relating to Ethics	56

Literature Regarding Whistleblowing	64
Literature Regarding Victim Reporting.....	84
Literature Regarding Crime Reporting.....	90
Literature Justification.....	108
Literature Review of Related Methods	110
Description of Methodology Literature.....	115
Chapter Summary.....	116
Chapter 3: Research Method	119
Research Design Derived Logically from the Problem Statement	123
Role of the Researcher	126
Setting and Sample.....	127
Data Collection Procedure.....	131
Data Analysis.....	135
Trustworthiness.....	137
Ethical Procedures.....	139
Chapter Summary.....	143
Chapter 4: Results	145
Background.....	145
Setting.....	147
Demographics	147
Data Collection	148
Findings of the Interviews	149

Results	159
Data Analysis	159
Evidence and Trustworthiness	160
Summary.....	162
Chapter 5: Discussion, Conclusions, and Recommendations.....	164
The Interpretations of the Findings.....	165
Limitations.....	168
Recommendations	168
Implications for Social Change.....	169
Reflection of the Researcher.....	171
Conclusion	172
References	174
Appendix A.....	186
Cover letter.....	186
Appendix B.....	187
Questionnaire	187

Chapter 1: Introduction to the Study

There are many jokes made at the expense of attorneys and of the legal profession. A vast majority of the jokes result from the ethical and character integrity of the attorney or of the profession. There is an old cliché that there is a hint of truth in every joke. Why do people often joke or comment regarding the likability and integrity of lawyers and the legal profession? Does the legal profession suffer from a negative public perception because of a perceived lapse in ethical conduct?

The mistakes and poor decisions of those individuals who violated some ethical rule are displayed every month in State Bar journals throughout the country. Every month one can read about the facts and circumstances that lead an attorney to receive either a reprimand, suspension of law license, or even disbarment. This display of an attorney's lapse of judgment helps instruct other attorneys by showing what types of behavior warrants disciplinary action and what the results of his or her actions may lead.

Attorney misconduct not only affects its victims and the justice system but also affects the reputation of the entire profession. Victims are often hesitant to report ethical misconduct because they do not want to become involved in the legal process or may be embarrassed by the incident. It may even be possible that a victim does not know he or she is a victim. If these incidents of ethical misconduct are under reported then it becomes difficult for the proper authorities to address the situation and enact measures to correct this problem. Many professions, including the field of law, rely on self-regulation in order to control its members and maintain professional integrity.

The topic of this study is what are the motivations for attorneys to report the ethical misconduct of a peer attorney. There is little literature relating to this specific topic. There seems to be a negative perception of attorneys and of the legal profession. I hope to expand the literature for this topic. I believe that by better understanding the motivations of peer reporting of attorney ethical misconduct the various state and county bar associations can improve how reporting occurs and can help provide services and education to attorneys. The social change implications are to promote and assist attorneys to safely and confidently report ethical concerns and to improve the overall public perceptions of the legal profession

This chapter will briefly examine the problem, purpose and research questions relating to peer reporting of attorney ethical misconduct. I also presented the layout of the methodology and framework I used for this study; including the scope, limitations, and assumptions associated with this study.

Background

In the business world if there are upset customers that do not complain, how can a business address those concerns? If victims of crime or of ethical violations fail to report their victimization how can the appropriate authorities correct the problem? A victim may not be aware of their victimization or simply may not want to become involved, thus it is the responsibility of the State Bar and its members to regulate the profession in order to maintain integrity.

The Preamble under Rule 1.0 of the Michigan Rules of Professional Conduct (2014) states that the legal profession is self-governing and that attorneys have the

responsibility to follow the rules of conduct and to aid in observing other lawyers (Michigan Rules, 2014). This statement clearly shows how important the legal profession believes in self-regulation of its members. It specifically comments on the importance of its members observing other members. Because there is a general reluctance of victims to report misconduct the concept of peer reporting becomes important.

The literature shows common reasons why whistleblowers and victims of crime choose not to report. The primary reason is a fear of retaliation (Bruns, Jackson, & Zhang, 2012; Cornock, 2011; Green & Latting, 2004; Kidd & Chayet, 1984; and Verschoor, 2012). However, the literature also shows that a desire to see justice is a primary motivating factor in reporting misconduct (Victor, Trevino, & Shapiro, 1993; Goldberg & Nold, 2001). My study tied the factors seen in whistleblowing and criminal victimization to attorney peer misconduct in order to fill this gap in the literature.

The legal profession relies on internal monitoring to govern its members. If the reasons for not reporting ethical misconduct are not understood and addressed, the full effectiveness of the reporting systems may be affected. Various reasons may influence an attorney from reporting misconduct. Previous research in relevant related fields, such as whistleblowing and criminal victimization, showed a pattern of various influences that affected an individual's rationale for reporting misconduct (Rebbitt, 2013; Kelk, 2013; Posick, 2013; Bjorkelo and Macko, 2012; Bruns, Jackson, and Zhang, 2012; Verschoor, 2012; Moore and McAuliffe, 2012; Cassematic and Wortley, 2012; Fredin, 2011; Cornock, 2011; de Graaf, 2010; Bannon, Ford & Meltzers, 2010; Thompson, Sitterle,

Clay, and Kingree, 2007; Green and Latting, 2004; Bryant and Williams, 2000; Trevino and Victor, 1992; Kidd and Chayet, 1984)

Ethical integrity is so important that the American Bar Association passed the Model Rules of Profession Conduct (Model Rules, 2014). Each state in turn has a codified version of the Model Rules of Professional Conduct. In Michigan, the state bar adopted the Michigan Rules of Professional Conduct (Michigan Rules, 2014). Every attorney within the jurisdiction is required to abide by the standards set forth within these rules. Since every member of the bar is expected to know and abide by these rules, the members of the bar are in the best position to monitor and report violations.

For this study, there was a general assumption that the attorneys responding have a general knowledge of ethical standards as defined by the Michigan Rules of Professional Conduct and the American Bar Associations Model Rules of Professional Conduct. The Michigan Rules of Professional Conduct are based on the Model Rules of Professional Conduct. The assumption that attorneys know about the Model Rules of Professional Conduct is based on the fact that a part of the Multistate Bar Exam has a separate ethics test in which those attorneys wishing to obtain bar membership require passage of this exam.

This study also assumed that the answers given by the attorneys are truthful and comply with the standards expected from members of the legal profession. The topic of morality and ethics, in theory, can appear black and white but in reality, can be quite vague. This is due to the potential of many individuals having different personal opinions regarding morality and ethics. Even though I recognized that individuals have

varying opinions regarding ethical interpretation, this study assumed that the Michigan Rules of Professional Conduct and the ABA's Rules of Professional Conduct precisely define the ethical expectations of the profession.

This study was limited to the state of Michigan but could be replicated in other states or at a national level. Sample size may also have been limited due to the sensitive nature of ethical studies. Additionally, the sample size may have been limited due to the fact that the subjects are professionals in which there is a premium on time and hourly billing and that this study was strictly voluntary. This study limited the participation to active, practicing attorneys. This helped ensure data was obtained from current attorneys and not retired individuals that may be older and from a different ethical era. The active requirement helped insure that participants were not currently being disciplined by the state bar and were currently practicing in good standing.

The scope of this study focused on the peer reporting of attorney ethical misconduct within the state of Michigan. The attorneys must have had a license to practice law in Michigan and must have been active and in good standing.

Greembaum (2003) stated reporting is an important aspect of self-regulation, enhances public image of the professional, and uncovers more misconduct through less costly means (p. 264). In order to better understand attorney peer reporting the broader concepts of whistleblowing and criminal victimization reporting was examined. Bruns, Jackson, and Zhang (2012) defined whistleblowing, categorized examples of observed misconduct, and examined peer reporting. Whistleblowing is a broad subject that

encompasses nearly all professions, yet the definition and reasoning for reporting misconduct remained fairly consistent.

I made several intentional choices when I designed this research study. I was a licensed member in good standing of the Michigan Bar. This fact greatly influenced my decision to use the State of Michigan as my geographic boundary for this study. I recognized the fact that individuals outside of the legal profession have negative perceptions of the general profession of law. As an attorney and as a scholar I hope the study of ethical misconduct will help strengthen outside perceptions and also help educate the legal community.

This study used a qualitative design that utilizes themes that may be common in a quantitative study, specifically the Cost-Benefit analysis. The subject of ethics and ethical misconduct lends itself to the qualitative design. The use of Cost-Benefit would not work directly in a qualitative design, but under a grounded theory approach I could examine the common themes seen in Cost-Benefit and apply them under a qualitative approach. The reason I used this route is that I believe that internal decision making is vital to ethical decision making and in turn the decision to report the observed ethical misconduct of a peer.

This study is significant because there is little research and limited peer reviewed articles regarding reporting attorney misconduct. The integrity of the legal profession relies heavily on self-governing and administering. This responsibility falls directly on the individual members of the Bar. In order to better understand the peer reporting

process works within the legal profession one must understand what motivates or prevents members from reporting or refraining from reporting misconduct.

Because there is little research regarding peer reporting of attorney misconduct one must look at different areas of study. Whistleblowing and criminal victimization share many common themes that can be used to help explain the motivations behind reporting ethical misconduct. This study helped bridge the gap between general ethical theory and practical application of enforcing ethical concepts engrained into every law student and attorney.

The integrity of the legal profession is important for many reasons. Our country and our society were built upon a foundation of law. The fundamental values we enjoy in our society would likely not exist if our government and legal system were not stable. The primary purpose of the legal profession is to ensure that justice is served and that the rights guaranteed by our Constitution are upheld. However, if the legal professionals that serve our society are not ethical the credibility of the entire system would be in jeopardy. Education is one of the first methods to ensure credibility and integrity. If attorneys and the State Bar Associations better understand what influences attorneys reporting observed misconduct then can be addressed. Humans make decisions every day. How these decisions are made vary greatly depending on the personality of the individual, the nature of the decision, and other numerous outside influences. The decision to report a peer attorney's ethical misconduct is no different. It is my hope that this study will help us understand how the decision to report ethical misconduct is made. This understanding

could help formulate educational programs and provide a mechanism to promote the reporting of ethical misconduct.

Problem Statement

Attorney misconduct not only affects its victims and the justice system but also effects the reputation of the entire profession. If incidents of attorney ethical misconduct are under reported, then it becomes difficult for the proper authorities to address the situation and enact measures to correct this problem. The purpose of my study was to understand the process that attorneys experience regarding peer reporting of attorney ethical misconduct and why those attorneys decide to report their peer's violation to the State Bar.

Ethical integrity is vital for the success of our legal system. The public needs to be confident that those professionals working in the legal system are fair and competent in their duties. Most importantly the public needs to be assured that their legal rights are being protected. Ethical misconduct not only harms the reputation of individual attorneys but also harms the entire profession.

Longan (2011) stated, "Lawyers need guidance in their continuing efforts to conform their conduct to the ethical norms of the profession" (p. 249). If the legal profession is expected to police its members it is important that the various State Bar Associations have the correct information to educate its members, to monitor for violations, and to enforce regulations. However, there are some disagreeing positions regarding how monitoring and reporting should occur. Greenbaum (2003) discussed the importance of mandatory peer reporting of ethical violations by other attorneys.

Greembaum believed that mandatory reporting is necessary because there is reluctance by peer attorneys to report misconduct (p. 266). DeBray (2009) takes the opposite position regarding mandatory reporting. DeBray recognizes the importance of reporting unethical or illegal conduct but believed that reporting should be voluntary and not mandatory. DeBray believed that mandatory reporting requirements negatively influences attitudes and perceptions of attorneys, which may cause an attorney not to report another attorney (DeBray, 2009). Negative attitudes and perceptions are not the only concern regarding the reporting of ethical misconduct. Winter (2011) studied how the attitudes and beliefs of members in a law firm can affect an individual's belief. This group mentality shapes how each member perceives ethical situations and could influence reporting of misconduct, especially of fellow firm members. Tolsma, Blaauw, and Grotenhuis, (2012) used a version of the cost-benefit model and applied it to their research regarding victim reporting. I believe the Tolsma et.al study helps frame my study because it showed the flexibility using cost-benefit themes in decision analysis. The similar themes seen in whistleblowing and victim reporting can be tied to ethical misconduct reporting. The Tolsma et.al study helped by showing that cost-benefit can be used in a whistleblowing type of study.

These examples showed how complicated reporting ethical misconduct can be. This study helped further the understanding on why ethical conduct is reported and what can be done to promote the enforcement of ethical rules.

The issue regarding the motivating factors involved in the decision of attorneys to report a peer's ethical misconduct needs to be addressed because there is little actual peer

reviewed research concerning this subject. Much of the previous research has been in related fields of study such as whistleblowing and criminal victimization. Although a study of these subjects can help further the understanding of attorney reporting motivations they are not direct studies. Longan (2011) studies cases of attorney ethical misconduct brought before the Georgia Supreme Court within a one-year period. Longan acknowledged, "Lawyers need guidance in their continuing efforts to conform their conduct to the ethical norms of the profession" (Longan, 2011, p. 249). This statement shows there is a need for study so that guidance can be given.

A specific study on attorney reporting of ethical misconduct of peers can help educate attorneys that face ethical dilemmas, can help authorities provide discipline and training, and it can help educate the general public by showing the legal profession takes situations seriously. A proactive approach can greatly help influence the perceptions the general public has regarding the integrity of the legal profession.

This subject regarding the peer reporting of attorney ethical misconduct appeared to have major gaps with the literature. The general subject of attorney ethics has been substantially examined, however there appeared to be little peer reviewed research regarding the reasoning or motivations of attorneys to either report or not report ethical misconduct of peer attorneys (Long, 2009; Greenbaum, 2003; Longan, 2011; DeBray, 2009; Winter, 2010; Oldham and Whitley, 2002).

Related subjects such as whistleblowing and criminal victimization needed to be examined because of the lack of direct material within this subject. These fields are very diverse, especially whistleblowing. A majority of the literature regarding whistleblowing

spanned from agency, governmental or business whistleblowing (Rebbitt, 2013; Kelk, 2013; Posick, 2013; Bjorkelo and Macko, 2012; Bruns, Jackson, and Zhang, 2012; Verschoor, 2012; Moore and McAuliffe, 2012; Cassematic and Wortley, 2012; Fredin, 2011; Cornock, 2011; de Graaf, 2010; Bannon, Ford & Meltzers, 2010; Thompson, Sitterle, Clay, and Kingree, 2007; Green and Latting, 2004; Bryant and Williams, 2000; Trevino and Victor, 1992; Kidd and Chayet, 1984).

Purpose of the Study

The purpose of this qualitative study was to understand the process that attorneys experience regarding peer reporting of fellow attorney ethical misconduct and why those reporting attorneys decide to report their peer's violation to the State Bar. The question I examined was whether licensed, practicing attorneys within the State of Michigan are willing to report other attorney ethical misconduct and what factors influenced the decision to report or not report the ethical misconduct?

There are many vocations that are considered as "professional". This subjective list includes physicians, dentists, clergy, educators, engineers, scientists, attorneys, etc. Out of this list of professions, lawyers seem to have the most negative perceptions associated with them. Attorneys are often the subject of negative jokes and comments that seem to reflect the general perception of the legal profession. This study helped address potential ethical concerns that the profession may have, specifically peer reporting of ethical violations. If the proper authorities are aware of problems and concerns then it may be more likely steps could be taken to correct problems and address concerns.

Ethical misconduct not only affects the efficiency of the legal process but also affects the public's perception of attorneys and of the legal system. If the public has little or no faith in the justice system the process no longer operates efficiently. The main line of defense against attorney ethical misconduct is education and the enforcement of established rules. However, in order for the authorities to best enforce rules and establish training and educational programs they need to know about violations. All decisions have some type of consequence. The awareness of these potential consequences may influence an individual's decision. Do attorneys weigh these potential consequences by determining possible costs and benefits of making the decision to report ethical misconduct? If an attorney does weigh costs against benefits does that actually influence the choice to report or refrain from reporting ethical misconduct?

The intent of this study was to develop the grounded theory that utilized themes from a cost and benefit analysis. Since decisions have consequences, does an attorney weigh costs and benefits when making the decision to report ethical misconduct of a peer attorney? The literature regarding whistleblowing and criminal victimization share common reasoning for why individuals decide to report or not report misconduct. This study helped determine if the reasoning found in whistleblowing and criminal victimization carry over to reporting attorney ethical misconduct.

If we can understand the process that attorneys experience regarding peer reporting of other attorney ethical misconduct, we might understand why attorneys decide to report or not report their peer's violation to the State Bar. This study helped try to explain why attorneys decide to report or not report ethical misconduct and how that

attorney came to make that decision. In my opinion, the phenomenon of not reporting misconduct seems to be engrained in us at an early age. As a child I remember being chastised for “tattling”. This negative perception of “tattling” came not only from the adults but also from the other children, especially the perpetrator of the misconduct. Many negative slangs come from “tattling” such as “rat”, “snitch”, “nark”, “singing like a bird”, etc. These entrenched ideas make it difficult for an individual that has legitimate concerns to report misconduct. It is my hope that this study will help enlighten the legal profession and educate so that proper procedures and training can be established.

The decision to either report or not report ethical misconduct directly relates to the influences that guided that decision. This study helped determine that part of this influence is an internal cost-benefit rational. This study also helped determine that the stated rationales for reporting criminal victimization and general whistleblowing also applies to the reporting of attorney ethical misconduct. Numerous studies have been made in the fields of whistleblowing and in criminal victimization, yet very few studies have been made regarding the peer reporting motivations of attorney ethical misconduct. By examining whistleblowing and criminal victimization, common themes were seen.

Research Question

The question I examined was whether licensed, practicing attorneys within the State of Michigan were willing to report other attorney’s ethical misconduct and what factors influenced the decision to report? Why does an attorney choose to report or not report a peer’s ethical misconduct? Does an attorney weigh perceived costs against perceived benefits when making this decision? If so what are those perceived costs and

benefits? Previous studies in related fields such as whistleblowing and criminal victimization share common reasoning for reporting and not reporting misconduct. Do these common themes also apply to peer reporting of ethical misconduct and does those themes relate to the possible cost versus benefit?

These questions helped provide a foundation to examine the reporting habits of peer attorneys for other attorney ethical misconduct. Another approach could have been taken from the perception of victims, however a study of victims would present additional complications. A victim may not know he or she is a victim of misconduct or may be unwilling to become involved. The legal profession relies on self-enforcement of ethical rules. All practicing attorneys are members of their state's bar and thus are responsible for each other.

I believed the best way to gather information was to conduct an open questionnaire of attorneys within my jurisdiction. I selected a random sampling from the state and mailed a letter of explanation of this study with a questionnaire. Answers were then either mailed or emailed back to me.

Conceptual Framework/Theoretical Base

This study was conducted as a qualitative study utilizing a grounded theory. The grounded theory for this study is based on Cost-Benefit Analysis, which is typically used in quantitative studies. This study used the common themes typically used in Cost-Benefit Analysis but applied as a qualitative analysis.

A questionnaire was given to a sample of attorneys within the jurisdiction and the questioning took place within the state of Michigan. The questions focused on whether

the attorney has witnessed or been a victim of ethical misconduct by peer attorneys. The questionnaire also focused on the reporting of the misconduct and inquired on what factors led to the decision to report or not report the ethical misconduct to the State Bar. The Michigan Rules of Professional Conduct shall define ethical conduct or misconduct and shall be used as a basis for the reporting of certain conduct.

This qualitative study utilized the grounded theory approach to analyze what factors influence an attorney's peer reporting of ethical misconduct. The intent of a grounded theory study is to move beyond description and to generate or discover a theory (Creswell, 2013, p. 83). The theory I am examining is that attorneys utilize some type of internal analysis weighing perceived benefits versus perceived costs, when determining if ethical misconduct should be reported. Attorneys will be given the opportunity to explain through the questionnaires how and why reporting decisions were made.

Gourdriaan defined cost-benefit as "calculations made based on the expected expenditures and returns to the victim" (Gourdriaan, 2006, p. 23). This definition closely fits what my study is trying to answer, however not completely. I want to understand the process and not merely establish a correlation. For that reason, I want to establish a grounded theory that utilizes the common themes found within the Cost-Benefit Analysis. My study would better benefit from more open-ended answers from the subjects than a statistical analysis. A grounded theory approach allowed me to explore cost-benefit themes by adding further explanations and details.

Creswell (2013) stated "postpositivism has the elements of reductionistic, logical, empirical, cause-and-effect oriented, and deterministic based on a priori theories"

(Creswell, 2013, p.24). Researchers view inquiry as a series of logically related steps, believe in multiple perspectives from participants and use rigorous methods of qualitative data collection and analysis (p.24). These ideals work well with the grounded theory approach since it is crucial to develop a logical progression when creating a new idea or theory, or specifically in this study utilizing themes from a different methodology and using them in a different way.

Social Constructivism is defined when an “individual seeks understanding of the world in which they live and work” (Creswell, 2013, p.24). Creswell (2013) also stated that social constructionist’s “develop subjective meanings of their experiences” (p.24). A phenomenological study would benefit by using a social constructivism theory. A researcher can understand a common meaning for an incident better if that researcher can understand how individuals understand and interpret the world in which the subjects live in.

People make decisions every day, which can range from simple mundane to life altering. How decisions are made may vary greatly depending on the facts of the situation and the general personality of the individual. Reporting a colleague, friend, or professional associate is typically not a decision made lightly. It is easy to conceive that reporting may have consequences to the reporter. The pairing of a grounded qualitative study with themes found in cost-benefit analysis may help explain how reporter comes to the decision to report misconduct. A pure cost-benefit analysis would only look at the numbers associated with weighing pre-defined costs against benefits. As a grounded qualitative study, a respondent may have greater freedom to explain personally perceived

costs and benefits of their actions. The beliefs and personality of one reporter may vary greatly from another reporter. Although both individuals may report a similar act, it is possible that the reasons for doing so may vary. Utilizing a grounded theory that borrows from cost-benefit each respondent can explain how he or she came to that decision.

This study examined the attitudes of attorneys who witness or have first-hand knowledge of another attorney's ethical misconduct. This misconduct must be recent and have some relevance to the reporter. The decision to report or not report misconduct may be difficult depending on the circumstance and the personality or attitudes of the reporter. For this reason, it may be difficult to establish concrete reasoning for why a person chooses to report or not report misconduct. As a result, this study focused on individual reasoning on a cost-benefit level. As a qualitative grounded study, the subjects will be about to further elaborate on individual opinions.

Nature of the Study

The nature of this study was a qualitative methodology utilizing a grounded theory design. The questionnaire focused on attorneys' attitudes towards reporting ethical misconduct of other attorneys. The questionnaire also inquired about the factors involved in the decision to report or not report the ethical misconduct. Patton (2002) stated, "behaviors, opinions, feelings, knowledge, sensory data, and demographics are common interview questions", and "any kind of questions one might want to ask can be subsumed in one of these categories" (Paton, 2002, p. 351). These question classifications helped compose the opened ended questions. The recipient should feel free to anonymously

answer questions regarding ethical situations and how he or she responded to observing peer ethical misconduct.

Question classification is not the only important categorization used to collect and interpret data. Using software such as NVivo proved helpful in this qualitative research project. Good organization is one of the best techniques a researcher can utilize regardless of the methodology or style he or she chooses to employ. The key to this study was to understand the observer or reporter of ethical misconduct. Using NVivo to organize, store and compile data assisted in this comparison.

Creswell (2013) describes the grounded theory procedure data analysis, which includes open coding, axial coding, selective coding, and finally ending with a “discursive set of theoretical propositions” (p.195). The questionnaires will ultimately ask why he or she decided to report or not report the misconduct. The next stage of axial coding creates codes that help connect similarities or causal relationships. Selective coding involves selecting or creating a narrative.

I believe the grounded theory approach was the best approach for my study. Creswell (2013) stated, “the intent of grounded theory is to move beyond description and to generate or discover a theory for a process or an action” (p.83). In my study I wanted to establish a theory that that attorney ethical violations were under reported by peer attorneys and the reasons for under reporting or not reporting ethical violations are similar to those reasons found in general whistleblowing and crime reporting. The best way to gather information was to give an anonymous questionnaire to a sampling of attorneys within the jurisdiction. The phenomenon of the under-reporting by victims of

crimes has been well documented; however, the theories and documentations of victim crime reporting only seem to point towards criminal behavior and the fear of retribution. I believe a new theory explaining victimization of ethical conduct was appropriate.

The reason I chose the grounded theory approach is that there are numerous studies regarding ethics and whistleblowing; however, there are few specific studies that focused on the peer reporting of attorney ethical misconduct. A qualitative study allows for attorneys to explain why they chose to report or not to report a peer's misconduct. I believe the decision attorneys make can be explained by both previous related studies as well as examining responses of an anonymous questionnaire. I believe the decisions are made when the attorney weighs costs of reporting against the benefits. However, the Cost-Benefit Analysis, which is commonly found in quantitative studies would not allow for extended explanation of recipients reasoning. The grounded theory approach will allow the benefits and detriments found in previous studies, such as fear of retaliation or the need to see justice for example, to be examined against the reasoning given by the subjects.

This study focused on licensed, practicing attorneys within the state of Michigan. Since the topic of ethics can be sensitive, a questionnaire was administered allowing the attorneys to answer anonymously. I used a questionnaire instead of personal interviews because I believed that allowed for anonymity as well as allowed the busy attorney to participate as their schedule allowed. Due to the large number of attorneys within the state, a random sampling will be obtained. Because I am also a member in good standing of the State Bar I have access to a listing of attorneys within the state. Respondents then

mailed or emailed their responses, or completed the survey online. The results of the questionnaire was personally examined and coded in order to determine whether or not patterns existed. The focus of the questions was on the personal decisions to report or not report peer misconduct and what costs or benefits affected their decision.

Definitions

Operational Definitions “Misconduct” is defined as “behavior that is contrary to the values, standards and policies of the organization” (Plinio, Young & Lavery, 2010, p. 173).

“Whistleblowing” is defined as a disclosure by an employee or organization member of observed misconduct, acts, omissions, practices, policies or illegal and immoral practices that harm another, which disclosure may be needed to end or prevent the action (Bruns, Jackson, & Zhang, 2012, p. 9; Kaptein, 2010, p. 515; Mansbach & Bachner, 2009, p. 18; Zhuang, Thomas, & Miller, 2005, p. 463).

“Peer reporting” is defined as a type of whistleblowing that involved a peer (Zhuang, Thomas, and Miller, 2005, p. 463).

“Morals” and “morality” refers to what is judged as good conduct; and ethics refers to the study and analysis of what constitutes good or bad conduct (Pollock, 2016). For purposes of this study the terms “ethics” and “ethical” are interchangeable with the terms “moral” and “morality” (Pollock, 2016). Likewise the term “unethical” is interchangeable with “immoral” (Pollock, 2016).

Rule 8.4 of the American Bar Association’s Model Rules of Professional Conduct (2012) defines “attorney ethical misconduct” as the following:

- “It is professional misconduct for a lawyer to:
- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 - (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
 - (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; (d) engage in conduct that is prejudicial to the administration of justice;
 - (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
 - (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.”

Assumptions

For this study I assumed that the attorneys that responded to the questionnaire know the ethical requirements stated within both the ABA and Michigan Model Rules of Professional Conduct. Ethics is a required class for all law schools and a portion of the Bar Exam deals with ethics and the Model Rules of Professional Conduct. I also assumed that the respondents can recognize unethical behavior.

It is further assumed that the recipients are currently licensed, practicing members in good standing. Bar membership lists typically show whether the member is active and they are on the list because the individual is a member of the state bar. However, membership lists are updated yearly and thus it may be possible that a member could have retired or have been disciplined resulting in a removal of the good standing status.

Finally, it is assumed that the answers to the questionnaire accurate and truthful. Questions regarding ethical conduct can be sensitive, especially if an individual has done

something wrong or feels guilty about not doing something he or she believes should have been done. With an anonymous questionnaire it would be impossible to gauge the truthfulness of the answers and thus it must be assumed that if the respondent took the time to participate in the study that the answers are truthful.

The legal profession relies on the discovery of truth and the furtherance of justice. It is in the best interest of the profession that the individual members of the bar recognize the importance of enforcing ethical rules. One of the core tenants for practitioners within the legal profession is the ability to provide proof to assertions made. Unfortunately, there are times where there is no proof. For this reason, the previous assumption I made for this study must be recognized. It must be assumed that the participants of the study want to further the best interests of the profession and thus their answers would be accurate and truthful.

The legal profession is by its nature adversarial and competitive. In every case there is a “winner” and a “loser”. The nature of competition may create scenarios where an attorney might stretch ethics. The challenge is recognizing peer concerns of ethics versus negative emotions associated with losing a case. Therefore, there must be an assumption that ethical reporting is done for the proper reasons and not for retaliation, revenge or a bargaining tool.

Scope

Attorney misconduct can affect the victims of the misconduct, the justice system, and the reputation of the legal profession. If incidents of attorney ethical misconduct are under reported, then it becomes difficult for the proper authorities to address the situation

and enact measures to correct this problem. In order to address this problem, my study will focus on what consideration would influence a peer reporter to report misconduct. It is difficult to determine what considerations should be taken when ethics are involved. Law enforcement officers have a saying, “ignorance of the law is no excuse”. Likewise, ignorance of ethical rules and the perpetration of unethical conduct is typically not an excuse as far as many State Bar Disciplinary Committees are concerned. However, with experience comes knowledge. One consideration may be to ask the experience level of potential reporter. A new graduate in his or her first real job may have different influences than a seasoned attorney. Another consideration would be a comparison of different costs and benefits. A cost or benefit to one person may not necessarily have the same impact on another reporter. This study will focus on individual attorney’s subjective view of ethics and the role he or she plays in the enforcement of the ethical rules. The real-life application of ethical dilemmas can often be less obvious than scholastic scenarios. Life is rarely “black and white” thus obvious decisions may not be so obvious at the time an individual is forced to face that decision. For this reason the recipients of the questionnaire should be allowed to explain how decisions regarding reporting ethical misconduct were made.

The population for this study shall be limited to attorneys who are active, practicing members in good standing of the Michigan State Bar. A random sampling will be taken from that specific pool. The questioning was limited to an open-ended survey, allowing the respondents to answer the questions anonymously while providing as much detail as they wish. Although the questionnaire will allow for open-ended answers, the

recipients will be encouraged to reflect on potential costs and benefits they perceived while encountering or observing a peer attorney's ethical misconduct.

The design strategy for this study included elements from the naturalistic inquiry strategies. Patton (2002) describes this type of a strategy as a "studying real-world situations as they unfold naturally, nonmanipulative and noncontrolling with openness to whatever emerges" (p. 40). This was achieved with the anonymous questionnaire and because the questionnaire can be completed in private, with no direct influence or observation by the researcher, control and manipulation should be kept to a minimum. The analysis strategy I used is that of the holistic perspective. Patton (2002) describes this as, "the whole phenomenon under study is understood as a complex system that is more than the sum of its parts" (p. 41). The study of ethics and the decision to report a peer is dependent on personal opinions and beliefs. There are numerous variables depending on the subject's personality. The questionnaire allowed for individual explanation for why the subject decided to report or not report their peer's ethical misconduct.

One important consideration is whether this study has adequate transferability. Transferability when results of qualitative research can be generalized to other contexts or settings (Trochim, 2006). I believe this study could easily be replicated in other states besides Michigan. The study could also be expanded to a national examination of peer reporting of attorney ethical misconduct. I also believe that the basis of this study need not be limited to only attorneys but may be applicable to any profession that relies on internal enforcement of ethical conduct.

Delimitations

The subjects included in this study were licensed, practicing attorneys in good standing within the state of Michigan. The jurisdiction was limited for the purpose of efficiency; however, any state could have been selected for this study. In order for an attorney to practice law within the state of Michigan, or any other state, that attorney must be accepted into the State Bar. This is done either through either a successful passage of the bar exam or a transfer of a valid license from another jurisdiction.

Although an attorney may be properly license, he or she may not be practicing.

Examples of non-practicing attorneys may include professionals in academics, judges, or any individual who has a law degree and license but chose to pursue a different career.

The purpose of this specific study is to examine peer reporting of ethical misconduct.

Eliminating individuals who are not actively practicing and who are not licensed to practice will help ensure that the concept of peer reporting is fairly and accurately represented within the samples of this study.

Limitations

A potential limitation or gap in this study was the number of responses to the questionnaire. A study of ethics could potentially have a lower participation rate.

Subjects may have been reluctant to participate for various personal reasons. This study focused on peer reporting of known or observed ethical misconduct. It is possible that subjects may not have ever witnessed ethical misconduct. Although that information is useful, that potential gap could have skewed the results by reducing the number of

participates in the sample that had situations that warranted a decision to report or not report a peer's ethical misconduct.

Although this study could easily be duplicated in other states it is important to realize that attitudes may differ between locations. The ABA Model Rules of Profession Conduct are the standard throughout the United States, however attitudes towards reporting may vary. Rural and small population areas may have closer relationships among attorneys than in populated areas, resulting in a reluctance to report peers.

I disclose that my professional and educational background is a potential bias. I have a law degree and I am a member in good standing in the states of the Michigan Bar and Iowa Bar. I also worked for several years as an assistant prosecutor. I am not currently practicing because of my pursuit of my doctorate degree. Although I am a member in good standing and have a valid law license, the fact that I am not practicing law helps ensure no bias for this research project. The ultimate goal of this study is to help the legal profession and provide information that may help ensure that the legal profession remains professional and trustworthy. Data was reported as it was presented and the original questionnaires with the subject's answers have been kept for future examination and validation if so desired.

I was also a citizen of the state of Michigan during this research phase of this study. Michigan attorneys were purposely selected for this study because of both accessibility and the fact that I desire to contribute to the jurisdiction I was currently a resident. It should also be noted that I am not conducting this study for any legal

organization, including the Michigan Bar. This study is solely for academic purposes. I am happy to share any finding but the purpose of my study is for my doctoral study.

To minimize potential limitations, I shall remain focused solely on my area, which was Michigan. It is possible that geography plays no role in peer reporting of attorney ethical misconduct but to be sure every state or possible jurisdiction would need to be studied. Michigan has both urban and rural environments. A localized analysis of geography may be obtained by adding a question regarding an attorney's proximity of his or her practice to urban or rural areas.

Participation rate can be a challenge in any study. A study in ethics and the reporting of ethical misconduct may potentially make potential attorneys reluctant to participate. I hoped that by using an anonymous questionnaire an attorney would have felt more comfortable participating.

Every researcher faces the dilemma of what can be legitimately done in a research project and what is actually completed. Time and available resources often can affect how a study is conducted. My study is no different. One thing that this study did not do was examine attorneys that are not practicing law. An example of this classification included attorneys that are retired; attorneys that are working in education, business or government; and judges. All of these individuals could have a legitimate law degree and may have experiences dealing the reporting a peer's ethical misconduct but for the sake of efficiency limitations needed to be made. I believed focusing the study on practicing attorneys helped ensure the experiences were comparable. A practicing attorney's

misconduct may be significantly different than an attorney who observes some type of ethical misconduct while teaching a class.

One of the inherent problems of the selection process was the potential for low participation. Since this study limited the examination to licensed, practicing attorneys within Michigan, the beginning sample pool was already quite limited. In addition, attorneys, as professionals, have a premium on time. It was conceivable that many recipients of the questionnaire did not participate because they were too busy or felt their time could have been spent doing other things. Finally, recipients might have been less likely to participate because of the subject matter of this study.

Another challenge for this study was the methodology itself. The subject matter and research question best aligned with qualitative methods, which is how this study is designed. However, the themes used in this study such as cost/benefit are often associated with quantitative analysis. This study did not align with a quantitative or mixed methods design. I believed I can help reduce confusion by explaining this dilemma and assuring readers that this is not a cost/benefit study but instead merely used themes seen with cost/benefit analysis.

Significance of the Study

This study will add to the present literature by specifically focusing on attorneys and the motivations behind peer reporting. There is a vast amount of literature on general whistleblowing and victim reporting of crime. However, within these two broad topics there is little research that focused on whistleblowing by attorneys on other attorneys. Likewise, there is little research that focused on the reporting of victims of attorney

ethical misconduct. There is also numerous studies and law review articles about attorney ethical misconduct and the ABA Model Rules of Professional Conduct. Most of these articles and studies are about ethical themes or about specific cases of ethical misconduct. Little research has been done involving random samples of attorneys and their reporting habits regarding ethical misconduct. This study will attempt to fill this gap and add the existing literature by providing a study with a random sampling of attorneys answering a focused questionnaire regarding personal motivations on reporting peer ethical misconduct.

There are several ways the legal profession can benefit from this study. This study may first help identify whether there is a problem with the reporting system regarding attorney ethical misconduct. It also identified reasons why other attorneys chose not to report the misconduct of their peers. The State Bar may utilize this information to provide educational materials to attorneys. It could also help attorneys who may be struggling with the decision to report ethical misconduct by showing they are not isolated. Greater understanding of ethical misconduct and how reporting can affect other attorneys will help establish a better comfort level for those who may be struggling with that decision. People often fear the unknown. This study established a pattern of behavior regarding what influences the reporting of ethical misconduct. I hope then perhaps a portion of that fear may be eliminated. An ethical legal profession will not only help efficiency but also will help the general perception of attorneys and the justice system.

Ethical misconduct is not just an issue in the legal profession but is important for every profession. If a person is intentionally being unethical there may be a good chance that a victim of that misconduct would not know about the misconduct. The best way to enforce ethical rules is for the profession, whatever profession that may be, to enforce it themselves. The problem then becomes how can an organization enforce ethical rules on its members if they do not know about violations? This study helped provide a better understanding on the reporting habits of professionals regarding their peers. If a problem is recognized and addressed early it may be possible to minimize or prevent further occurrences. A person should not be afraid to do the right thing and report a known or observed misconduct, yet it is easy to be intimidated by one's peers. It is my hope that this study will promote safer and friendlier work environments. Most importantly I hope this study will provide ethical environments.

Social change does not come easily. So often the path of least resistance involves minding one's own business and not becoming involved when misconduct occurs. The basis of this study was to gain an understanding on what factors might influence a person to report or not report misconduct, or simply what benefits outweigh perceived costs of reporting misconduct. If society can see that the ultimate benefits of reporting misconduct outweigh individual costs the world may become a better place.

Chapter Summary

The purpose of my study was to understand the process that attorneys experience regarding peer reporting of attorney ethical misconduct and why those attorneys decide to report their peer's violation to the State Bar. The question I examined was whether

licensed, practicing attorneys within the State of Michigan are willing to report other attorney ethical misconduct and what factors influenced the decision to report or not report the ethical misconduct. Does an attorney weigh perceived costs against perceived benefits when deciding to report ethical misconduct of a peer attorney?

Since there are not many studies specifically relating to the peer reporting of attorney ethical misconduct the literature review will focus on related fields of study. There are many similarities between general whistleblowing and victims of crime who decide to report or not report their victimization. I believe these similarities helped provide insight to attorney reporting of ethical misconduct.

In Chapter 2, the focus of the literature review is about whistleblowing, criminal victimization, and attorney ethical misconduct. The reason for this approach was because there is a substantial gap in peer-reviewed literature regarding the reporting of attorney ethical misconduct by other attorneys. General whistleblowing and victim reporting contain similarities regarding why victims report the misconduct. I believe these similarities will continue into the legal profession and towards why attorneys report misconduct of their peers. The reasons given can be interpreted into perceived costs and benefits. Because the themes of costs and benefits can be seen within the studies, literature was also analyzed regarding its application. It is important to note that this study is not a cost/benefit study but it does recognize many themes associated with cost/benefit analysis.

Chapter 2: Literature Review

The mistakes and poor decisions of those individuals who violated some ethical rule are displayed every month in State Bar journals throughout the country. Every month one can read about the facts and circumstances that lead an attorney to receive either a reprimand, suspension of law license, or even disbarment. This display of an attorney's lapse of judgment helps instruct other attorneys by showing what types of behavior warrants disciplinary action and what the results of his or her actions may lead.

Attorney misconduct not only affects its victims and the justice system but also effects the reputation of the entire profession. Victims are often hesitant to report ethical misconduct because they do not want to become involved in the legal process or may be embarrassed by the incident. It may even be possible that a victim does not know he or she is a victim. If these incidents are under reported then it becomes difficult for the proper authorities to address the situation and enact measures to correct this problem.

The purpose of the study was to understand the process that attorneys experienced regarding peer reporting of attorney ethical misconduct and why those attorneys decided to report their peer's violation to the State Bar. The question I examined was how willing were licensed, practicing attorneys within the State of Michigan to report other attorney ethical misconduct, and what factors influenced the decision to report or not report the ethical misconduct?

The literature review for this study is divided into three main sections. The first section focused on the theoretical framework. The legal profession is one of logic and facts. This forms the basis of an attorney's argument when he or she advocates for the

client. Creswell (2013) stated “postpositivism has the elements of reductionistic, logical, empirical, cause-and-effect oriented, and deterministic based on priori theories” (p.24). The grounded theory approach was the best approach for this study. Creswell stated, “the intent of grounded theory is to move beyond description and to generate or discover a theory for a process or an action” (Creswell, 2013, p.83). I used themes seen in the Cost-Benefit Analysis, which is typically considered a quantitative theory, and utilize those themes in a qualitative analysis. I believe decisions utilizing a comparison of personal costs and benefits are seen in every person to some extent, whether it is a decision on what restaurant one wants to eat at or what specific product to purchase while shopping. The peer-reviewed literature regarding themes of cost and benefit will help explain how individuals make decisions.

The second section shall focus on peer reviewed subject material. The content material has three different subsections. This had to be done because of the fact that there was not much literature regarding the reporting habits of attorneys of ethical misconduct. I first examined specific literature that focused on attorneys and ethical misconduct. I then examined articles that explored the topic of whistleblowing. The final group of articles examined reporting criminal acts by victims. I believe a greater understanding is achieved by studying the concepts of whistleblowing and criminal reporting and apply those principles towards attorney ethical misconduct. The third section of this chapter shall focus on the methodology reviews.

The literature used for this proposal was found using the comprehensive search databases on the Walden University library website. The literature search found limited

articles regarding peer reporting of attorney ethical misconduct, thus I needed to utilize different search parameters. The first part of the literature review focused on attorney ethics. The next part of the literature review contains articles that primarily focused on the concept of whistleblowing. Whistleblowing can occur in any organization and field of study, however the majority of the whistleblowing literature focused on either whistleblowing in business or in governmental entities. The final part of the literature review examined crime reporting by victims. All of these different articles were selected to show common factors relating to the reporting of some type of misconduct. Many of the reasons for whistleblowing or not is very similar to reasons given for victims of crime reporting or not reporting their victimization. It is logical to imply that if there is a similarity between corporate whistleblowing and criminal victimization then those similar factors can be used to understand why attorneys may or may not choose to report peer misconduct.

The scope of the literature review in terms of when the article was published spanned from the years 1976 to 2016. A majority of the research articles fall between the years of 2008 to 2013. The older articles tended to focus on established principles that were either repeated in current articles or were the basis of current research. Many of the articles from the 1980's and early 1990's focused on crime reporting, criminalization, and its associated concepts. The focus of the articles shifted in the later 1990's and 2000's to business and corporate whistleblowing. The decision to keep some of the older articles was based on how the concepts within the articles were either supported or expanded upon in the more recent studies.

All of the articles were searched as a peer reviewed sources. A majority of the articles originated from professional journals. The articles that focused on legal concepts originated from law reviews.

The problem I addressed in this study was how negative perceptions of attorneys might in part be related to attorney ethical misconduct. Peer reporting is an important aspect in regulating the profession. What factors might contribute or prevent an attorney to report a peer's misconduct? In order to create a broader understanding, three main categories of literature were examined. The first category examined attorney issues of ethics, attitudes, and reporting. An example can be seen in a study conducted by Winter (2010) where the general attitude or philosophy of a law firm can affect the ethical philosophy of individual attorneys. DeBray (2009) and Greenbaum (2003) examined the topic of mandatory peer reporting of ethical misconduct.

The second category examined the topic of whistleblowing. Bruns, Jackson, and Zhang (2012) defined whistleblowing, categorized examples of observed misconduct, and examined peer reporting. Kaptein (2010) also provided a definition of whistleblowing as well as identified different types of responses for observed misconduct. Much of the other literature mirrored these examples by providing similar definitions of whistleblowing and providing similar reasons for reporting or not reporting observed misconduct. This is relevant because the topic of whistleblowing broadly encompasses different fields of study. The literature ranged from business and economics, nursing and healthcare, and government or public employees. Although the fields of study differ, the general definitions and rationale for reporting were all similar.

The final category examined criminal victimization. The concept of crime rate being disproportionate to actual crime because of victim reluctance to report crimes is a well-established concept. Many of the reasons given by victims on why a crime was reported or why they chose not to report a crime was similar to reasons listed in the whistleblowing articles.

Literature Search Strategy

I used the Walden University online library and database services to conduct the research for the literature review for this study. The databases I utilized included Thoreau, Academic Search Complete, and ProQuest Central. In addition, a few articles were retrieved using Google Scholar. Within each database the articles were first limited by utilizing the “Peer Reviewed” and “Full Text” criteria. Initial searches were made with no date limitations. This allowed me to find older articles that still were still cited within other studies or older articles that still remained relevant. I then narrowed the search by restricting the results to only include articles published after the year 2008. This technique helped insure the article were recent and thus provide greater reliability. Key terms were entered into the search engine as a “Boolean/Phrase”. I would always use a minimum of two terms while searching, utilizing the “and” connector. Many times a third term was used with another “and” connector for the purpose of narrowing the search. I would also routinely use the “or” connector for the same word terms containing alternate suffixes.

I began the literature research by searching for the key terms of attorney, lawyer, and ethics. I also substituted ethics with ethical misconduct. The result of this search

was limited, which caused me to shift the search from attorney ethics to general ethics. The topic of general ethics became too broad so I focused the research by searching for reporting ethical misconduct. This search resulted in a reoccurring theme of whistleblowing. When I added the term whistleblowing to the search the relationship between ethical misconduct and the reporting of that misconduct became clearer. However, a large portion of the results from the whistleblowing search were business and economics oriented. The concepts discussed in business whistleblowing could be applied towards the social sciences, however I wanted to shift the literature research from business and economics back to legal profession. I then used the key terms of victimization, victims, and crime reporting. Many of the articles found under these search terms provided relevant, but older articles. The reason I had to use various terms and examine different fields of study was because there was little peer-reviewed research relating to the reporting of attorney ethical misconduct. I was able to accumulate a greater understanding of why attorneys chose to report or not report peer misconduct by examining a broad field of literature of similar topics.

I performed the literature search by first organizing basic terms and themes that I believed would produce results. I inserted these key terms into the main databases I utilized, which were Thoreau, Academic Search Complete, and ProQuest Central. The reason I selected these databases was due to the fact that those particular databases were ones that included other databases or sources. Each key term was used in each database until the results failed to produce useable articles. Although there was some duplication in results, the majority of the results differed when a different database was used. When

a particular term was used in each database I would either alter the search parameters or move on to a new term.

There was little peer-reviewed research regarding attorneys and the peer reporting of ethical misconduct. Because of this I had to examine several different, but related fields of study. There is substantial literature regarding whistleblowing in the corporate world. There also has been extensive studies regarding crime rate and criminal victimization. Corporate whistleblowing and criminal victimization and crime reporting are very similar and share many concepts. Many of the stated reasons for reporting or not reporting misconduct in the business realm are similar to reasons victims chose to report or not report crime. It is logical to apply these same concepts to the peer reporting of attorney ethical misconduct.

Theoretical Framework

The theoretical frameworks for this study utilize themes found in cost-benefit analysis and was applied to qualitative grounded theory methodology in order to help explain why attorneys choose to report ethical misconduct of their peers. Tolsma, Blaauw, and Grotenhuis, (2012) used a version of the cost-benefit model and applied it to their research. The authors of this article theorized that the reporting process itself is also a cost and theorize that if victims could report crime through some other method, such as Internet or phone, then costs such as time spent would not influence the decision to report a crime. I believe the Tolsma et.al study showed the flexibility using cost-benefit themes in decision analysis. Reporting ethical misconduct, criminal victimization reporting, and business whistleblowing share many similar concerns as it relates to reporting. These

themes tie those concerns together and helps explain why victims or observers of misconduct choose to report or not report the misconduct.

The literature regarding whistleblowing and victimization reporting state numerous reasons why an individual chooses or fails to choose to report the misconduct. An examination of these fields will help generate an understanding of peer reporting of attorney ethical misconduct. However, I believe there is potential for expanding this understanding. A good example may be seen in the study conducted by Tolsma, Blaauw, and Grotenhuis (2012) where the authors utilized a cost-benefit analysis to study criminal victimization reporting. Tolsma et.al theorized the reporting process itself may be a cost but ultimately found it did not affect reporting habits. This study helped show how cost-benefit analysis may be used to examine reporting habits of individuals that witnessed or were affected by misconduct. By utilizing themes found in cost-benefit analysis I theorize that an attorney makes the decision to report or not report based on perceived costs and benefits. If an attorney reports that he or she believes there are more benefits to reporting than not reporting then it is more likely that that attorney has or will report ethical misconduct. Likewise if an attorney reports that the costs outweigh the benefits then I believe it is more likely that the attorney has not or will not report ethical misconduct. Every person has potentially different perceptions of what they believe is a cost or a benefit and how those perceived costs and benefits weigh against each other. For this reason a qualitative study was chosen so that subjects would have the opportunity to elaborate or explain.

I believe a grounded theory approach is the best approach for this study. Creswell (2013) stated, “the intent of grounded theory is to move beyond description and to generate or discover a theory for a process or an action” (p.83). The decisions made by an individual who weighs benefits against consequences helps explain how an individual “seeks understanding of the world in which they live and work” (Creswell, 2013, p.24). A researcher can understand a common meaning for an incident better if they can understand how individuals understand and interpret the world in which the subjects live in. Understanding attorney misconduct might occur if we understand the reason why a peer attorney who observes ethical misconduct chooses to report or not report the incident. Under a grounded theory approach themes of perceived costs and benefits helped explain how attorneys decided to participate in the peer reporting of ethical misconduct.

In order to better understand the themes of costs and benefits utilized in the grounded theory study an examination of Cost-Benefit Analysis is needed. Cost-Benefit Analysis began as a tool for economic evaluation but then became widely used in governmental agencies as a result from President Reagan issuing an executive order directing regulatory agencies to comply with this analysis (Posner, 2001, p. 1139). This application towards public policy analysis helped to develop the potential of this analysis towards social applications. Cost-benefit analysis is a quantitative tool utilized for various reasons and by various fields of study. As an economic tool of analysis the literal cost of a project is compared to the projected benefits of that project. The strength of this approach is that it is fairly straightforward in regards to the comparison of raw numbers

or figures. However, a weakness is that either the cost or a future benefit at times may be speculation.

The Cost-benefit analysis became a useful tool within the social sciences because of its common sense application. Goudriaan, Lynch and Nieuwbeerta (2004) and Goudriaan (2006) successfully applied the cost-benefit analysis to criminal victimization. The non-reporting of crimes by victims has been a recognized problem in the field of criminology. Cost-benefit analysis attempts to explain why victims choose to report crime or to remain silent. Victims weigh the benefits of reporting their victimization to their perceived costs of reporting the victimization. A greater understanding on what victims perceive as a cost and a benefit will help provide potential solutions to either help reduce those perceived costs or to enhance the benefit of reporting.

Goudriaan (2006) defined cost-benefit as “calculations made based on the expected expenditures and returns to the victim” (p. 23). When an attorney decides to either report or not report an ethical misconduct of a peer I believe the reporter makes that decision based upon internal calculations of expenditures and returns.

Literature Review of Related Methods

An article by Goudriaan (2006) took the social context idea and expanded it to the socio-ecological model. The author discussed a Cost-Benefit relationship that a victim internalizes when determining whether or not to report the crime they were a victim. Goudriaan defined cost-benefit as “calculations made based on the expected expenditures and returns to the victim” (p. 23). Under this model various factors may

influence crime victim reporting based on perceived costs and benefits. Examples of benefits were identified as: likelihood perpetrator would be apprehended, feelings of justification and empowerment by punishing the perpetrator, decrease of feelings of revenge, feelings of enhanced personal safety, a feeling of helping society, restitution, etc. Examples of costs include: time, feelings of fear, emotional stress cause by reliving the experience, decreased chance of reconciliation if the perpetrator is known to the victim, and fear of reprisal and revenge (p. 24). These two examples are not exclusive and might include any other costs or benefits perceived by the victim.

When a person becomes victimized, he or she determines whether or not to report based on a comparison between costs and benefits of doing so. For example, if a crime is less serious, if there is a belief that there is a small likelihood of apprehension, and if the victims believes the time spent on the matter is not productive then the belief is that the costs outweigh the benefit and thus the crime will go unreported. However, if there is a belief that the perpetrator will be caught, the victim has strong feelings of either revenge or a need to see justice ensured, and a belief that law enforcement is competent and believes the story of the victim then there is a likelihood that the benefits outweigh the costs, such as time spent, and thus the victim may be more likely to report the crime.

Louis, Taylor and Neil (2004) studied how Cost-Benefit Analysis influenced group decision-making. Individuals often identify themselves with social groups, which often effect how they chose conflict behavior (p. 111). The authors wanted to test whether cost-benefit analysis for conflict decisions are contingent on a group level. The researchers found that identity created from cost-benefit decision-making is obscured in

groups (p. 137). Louis, Taylor and Neil stated “the results also challenge the view that individuals’ cost-benefit analysis are independent of identity processes” (p. 137).

Much of the literature found regarding cost-benefit revolves around individual project or individual decision-making. This study expands cost-benefit to group, or mob, mentality. The results imply the collective thinking of the social group replaces the individual decision-making derived from a cost-benefit analysis. Within the legal profession ethics is often addressed in both continuing education as well as law schools. The findings from Louis, Taylor and Neil (2004) may help explain why these group classes where the importance of both complying with ethical rules and reporting observed misconduct is stressed may differ from a single individual’s decision to not report misconduct.

The Cost-Benefit Analysis was originally a tool for economic decision-making (Buse, Siminica, & Circiumaru, 2008, p. 20). The Cost-Benefit Analysis compares the costs and benefits of two or more alternative in order to make decisions on a specific project. Buse, Siminica and Circiumaru (2008) explained there is a difference between the Cost-Benefit Analysis and Revenue and Cost Analysis. They stated the Cost-Benefit in the field of economics has three component: (1) financial analysis, (2) economic and social analysis, and (3) risk and sensitivity analysis (p. 20). This implies that when using this analysis, especially within the field of economics, financial debate is only one consideration.

Although the Cost-Benefit Analysis was originally applied to financial and business projects there is vast potential in its application to other fields of study. To

some degree every person utilizes this analysis for decisions made every day. When a person decides to report an ethical misconduct an understanding of the Cost-Benefit Analysis may help determine why a person makes the decision to report or remain silent.

Posner (2001) examined the use of Cost-Benefit Analysis in governmental agencies. The use of Cost-Benefit Analysis became widely used in governmental agencies as a result from President Reagan issuing an executive order directing regulatory agencies to comply with this analysis (p. 1139). Posner stated that Cost-Benefit Analysis is not the only form of analysis governmental agencies can use. Other examples might include Adjusted Life Years and Risk-Risk Analysis (p. 1144). However, Cost-Benefit tends include factors from both of the other systems thus making Cost-Benefit a more efficient form of analysis (p. 1145).

This article examined Cost-Benefit Analysis as a financial tool applied to governmental agencies. However, this article implies that Federal decision making bodies such as Congress or the President can also use Cost-Benefit to determine goals for various governmental entities. This implies a shift from a mere financial tool to a social tool used for decision making. The social utilization of Cost-Benefit Analysis can not only examines an issue, such as whistleblowing, from a financial point of view but also can examine it from a personal point of view. Every decision has consequences so the ultimate question then becomes does the benefit of that decision outweigh the cost?

In the article by Goudriaan, Lynch and Nieuwbeerta (2004) the authors studied victimization data to determine decisions of victims to report to law enforcement is determined by the situation and the seriousness of the crime. The authors explained this

phenomenon by using social context theory and Cost-Benefit Theory. It is often assumed that decisions to report criminal victimization is made on either a conscious or unconscious cost-benefit calculation (p. 934). Cost-benefit calculations are often determined by the seriousness of the crime (p. 935). The authors theorize that cost-benefit calculation is only one part of the decision to report criminal victimization. The authors believed social context also plays a role in reporting.

This article confirms that the Cost-Benefit Theory is often used in the field of Criminal Justice regarding the decision making of victims of crime to report. Examples of Cost-Benefit considerations are: knowledge about offender, perceived risk of retribution, amount of injury, amount of loss, means of contacting police, distance from event in time or space, perceived likelihood of police response, perceived chance to receive compensation or justice, guilt, shame, reputation, gender, and social stratification (Goudriaan, Lynch & Nieuwbeerta, 2004, p. 938). Although the focus of this article was on criminal victimization, the same cost-benefit principle could be applied to victims choosing to report ethical misconduct.

Livermore and Revesz (2003) examined how the federal government utilized cost-benefit analysis, specifically within the Environmental Protection Agency. Livermore and Revesz identified three different stages of development for cost-benefit analysis within governmental agencies. The first stage was visualized in the 1980's and involved the implementation of cost-benefit analysis within governmental agencies for the purpose of slowing the creation of administrative regulation (p. 1). The next stage took place a few years later and included the use of cost-benefit analysis for the purpose

of placing monetary value on health and environmental benefits of a regulation (p. 3). Livermore and Revesz identified the final state of development was realized during the economic downturn of 2008 in which agencies altered the focus to more broad economic factors such as employment, growth or energy (p. 5).

Although this article appeared to contain partisan beliefs regarding management of governmental agencies such as the EPA it showed how cost-benefit analysis evolved from a mere business and economic tool to a mechanism for creating policy and decision-making. As an economic tool cost-benefit numbers and values. As a social tool, cost-benefit not only examines economic value but also motivations and incentives.

Zerbe (2005) examined the Cost-Benefit Analysis and how ethics and morality can contribute to the analysis as applied to economics. Zerbe stated that a common criticism of Cost-Benefit Analysis is that important moral values are not considered (p. 307). Examples of these values include: equity, fairness, integrity, altruism, and future welfare (p. 307). To determine whether these factors from an economic point of view is should be included in analysis one should ask is whether people are willing to pay for them (p. 308). Zerbe argued that people are willing to pay for these factors. A comparison can be made to individuals who are willing to pay extra for green or environmental safeguards even though similar services can be obtained for a cheaper rate which are not environmentally friendly.

Although this article focuses on the economic application of Cost-Benefit analysis it recognizes the importance of morality and ethics in its application. If the subject is ethics instead of economics the question is whether the Cost-Benefit Analysis can or

should be utilized. Equity, fairness, integrity, altruism, and future welfare are values shared between disciplines and thus should be equally applied to both economics and social sciences.

Dreze and Stern (1987) examined cost-benefit analysis in economics in public works. Cost-Benefit Analysis was defined as “a consistent procedure for evaluating decisions in terms of their consequences” (p. 909). When a project is evaluated, a cost-benefit analysis provided a simple decision that consists of accepting only those projects that make a positive profit at shadow prices (p. 910). Cost-benefit analysis has two basic elements: the ability to predict consequences, and the willingness to evaluate them (p. 910). Dreze and Stern focused on cost-benefit analysis as it relates to economics in the public sector. The principles and definitions they provided are also relevant for a cost-benefit analysis in deciding to report observed ethical misconduct. Each victim or observer of ethical misconduct evaluates his or her decision to report the action in terms of the consequences of doing so. A victim or observer attempts to predict the consequences of becoming involved and whether or not they are willing to evaluate the consequences.

Stewart and Mueller (2014) conducted a study of airport security utilizing a Cost-Benefit Analysis. The researchers examined the likelihood of a terror attack, the cost of security, likelihood of hazard, risk reduction and expected losses (p. 19). The purpose was to assess absolute risk and cost effectiveness of airport security (p. 20). The researchers conducted statistical analysis and found that by using a Cost-Benefit Analysis

that current airport security is greater than calculated risks suggesting that relaxation of security measures might be justified (p. 27).

This study shows how the Cost-Benefit Analysis can be utilized in a practical purpose. This study used statistical data with economic data to draw a conclusion for potential action. This shows not only an economic use for the analysis but also shows the potential that Cost-Benefit Analysis could be used to help determine social and political policy. One weakness is how factors are given weight. For this study one could argue there is no economic value on a human life to justify putting that life in risk. For my study a valid question may be how the individuals give value to costs and benefits towards factors that may affect an attorney reporting peer ethical misconduct. I believe this could be addressed in the questionnaire by having the recipient personally answer that question.

Peer Reviewed Literature

Literature Regarding Attorneys and Ethical Misconduct

The following articles specifically relate to attorney ethical misconduct. The Longan (2011) article discussed reasons an attorney would face disciplinary action. These are all related to attorney ethical misconduct. Although the article recognizes the importance of guidance from Bar Association it does not address the importance of peer reporting or any motivations associated with it. Articles by Greenbaum (2003), DeBray (2009), and Oldham and Whitledge (2002) examine mandatory reporting. There is a difference of opinion in these articles regarding the effectiveness of mandatory reporting. Although mandatory reporting may be a motivation for reporting ethical misconduct it

does not exclusively answer the question regarding individual motivations for reporting or not reporting misconduct. The article by Long (2009) is the most useful out of this group. Not only does it examine ethical issues in law firms but also addresses themes found in whistleblowing literature.

Longan (2011) examined cases of attorney ethical misconduct brought before the Georgia Supreme Court in a one-year period. The Court made decisions regarding attorney disbarments, long and short-term suspensions, ineffective assistance of counsel, and malpractice suits. Longan identified three primary reasons for attorney disbarment: (1) misconduct with respect to money; (2) abandonment of clients; and (3) a felony conviction of the attorney (p. 217). Indefinite suspensions occurred as a result of attorney's mental impairments such as dementia, bipolar disorder, and severer depression. Lesser suspensions of an attorney's legal license often resulted from lesser infractions or some type of mitigating circumstance that affected a greater infraction.

This article examined actual attorney misconduct within a year time period. Lapse of judgment was a common theme for each of the ethical misconducts perpetrated by the attorneys in this article. Longan (2011) stated, "Lawyers need guidance in their continuing efforts to conform their conduct to the ethical norms of the profession" (p. 249). This guidance is achieved if the State Bar organizations recognizes specific problem areas relating to attorney ethical conduct. Although this article does not discuss actual reporting or problems or concerns associated with reporting misconduct it does provide insight on common areas of ethical concerns that may result in attorney disbarment. Knowledge of these common pitfalls may help attorneys recognize

misconduct and thus lead to better reporting. A peer attorney, specifically a young partner in a firm may witness misconduct discussed in this article but may not report because they do not recognize the common areas of concern.

Long (2009) examined whistleblowing in law firms. Under the Model Rules of Professional Conduct law firm partners are required to supervise subordinate attorneys and ensure all attorneys within the firm comply with their ethical obligations (p. 787). Many firms, however, lack an “ethical infrastructure”. This infrastructure consists of procedures to report ethical misconduct, and provide support especially to junior partners within the firm. Long (2009) also stated other reasons why a lawyer might not report misconduct of another lawyer to disciplinary authorities are that the lawyer might not know for certain that misconduct is occurring or fear of retaliation.

Fear of retaliation, and selective knowledge of misconduct are reoccurring themes seen in this article. These concepts are not only evident in the legal profession, but also are common in whistleblowing within other professions. When these concepts are examined we may obtain a better understanding on why attorneys might not report ethical misconduct. If ethical misconduct is underreported, state bar associations may miss an opportunity to address a potential problem.

Long (2009) directly addresses the research question relating to what factors may influence the decision to report misconduct. Long (2009) stated fear of retaliation, lack of a mechanism to report misconduct, and general knowledge of what a violation may be contributes to the decision to report misconduct. Although Long’s study is specifically

focused on private law firms it is conceivable that those same concerns reach into the public sector.

Greenbaum (2003) discussed mandatory reporting of ethical violations by other attorneys. The author discussed how a majority of the states have some type of mandatory reporting for attorneys that witness ethical violations. This article stated there are several justifications for mandatory reporting. “(1) Mandatory reporting is an important aspect of self-regulation, (2) Mandatory reporting enhances public image of the profession, (3) Mandatory reporting uncovers more misconduct through less costly means” (p. 264). Greenbaum further stated that mandatory reporting requirement is “necessary to overcome the general reluctance of members of the bar to report the misconduct of their peers” (p. 266). The mandatory reporting of misconduct also promotes professionalism and establishes a sense of independence from outside organizations or professions.

This article recognizes the fact that there is a reluctance to report ethic violations and thus mandatory reporting is necessary. If there is such a strong reluctance by attorneys to report a violation then it is possible that even with the mandatory reporting requirements events may still go unreported. There is a fine line between mandatory reporting of any perceived misconduct and a system of voluntary reporting. It is important for state and local bar organizations to recognized the need for some type of mandatory reporting but at the same time not over compensate and establish unreasonably unobtainable reporting requirements.

Why a person chooses to report ethical misconduct may relate to the laws and regulations of the jurisdiction. It is important to know for my study if Michigan has a mandated peer reporting requirement. It does then one reason a peer attorney may report is because of that mandate. However, this would also open up many interesting questions regarding the mandate's success rate and whether or not attorneys even consider mandatory reporting as a reason to report misconduct.

DeBray (2009) questioned the wisdom of an Alabama ethics rule, which was based on Rule 8.3 of the American Bar Association's Model Rules of Professional Conduct. Attorneys are required by Alabama Law to report unethical and illegal conduct of peers. The author acknowledges that reporting unethical and illegal conduct is important for ensuring public trust in the legal profession and to maintain integrity and legitimacy of legal profession. However, DeBray believed that mandatory reporting is not the answer. He cited examples in which mandatory reporting in the state of Illinois caused a substantial increase of frivolous reports by attorneys that used the system as tactical advantage in case negotiations with other attorneys. Another concern was raised regarding whether an attorney is required to mandatory report him or her self and if doing so would violate his or her right against self-incrimination. DeBray stated it was essential for the legal profession to police its members but believes voluntary reporting instead of mandatory reporting.

This article specifically examines the topic of mandatory peer reporting of unethical or illegal conduct perpetrated by attorneys. Mandatory reporting of unethical or illegal behavior and the pros and cons associated with it may directly influence attitudes

and perceptions of attorneys that encounter ethical misconduct. Negative attitudes and perceptions associated with reporting unethical behavior may cause an attorney not to report a peer and thus affect the information State Bar obtains regarding ethics.

This article is relevant to my research questions because it directly examines mandatory reporting of peer attorneys. One important aspect to my study is what factors influenced the decision to report. DeBray (2009) argued that mandatory reporting and its process was abused in several different jurisdictions. This leads to the possibility of over reporting of ethical misconduct. It also leads to the conclusion that attorneys may solely rely on a mandatory statute as an excuse to report instead of other perceived benefits.

Winter (2010) conducted a case study of a law firm for the purpose of understanding how the firm's member's professional ideals and values might influence ethical perceptions. Winter stated "the extent to which lawyer behavior is judged proper or improper will depend on the way lawyers organize their practices and extent to which specific values and professional ideals are socially constructed and understood" (p. 297). To examine morality Winter used a framework of managing legitimacy to explain how ethical values may shape a legal practice. This framework was divided into three subsections: (1) Moral legitimacy, (2) Cognitive legitimacy, and (3) Pragmatic legitimacy (p. 298). Moral legitimacy was defined as "positive normative evaluation of the organization and its activities on judgments about whether the activity is the right thing to do" (p. 398). Cognitive legitimacy was defined as "accepted definitions of appropriateness and interpretability and as a perception or assumption represents a reaction of observers to the organization as they see it" (p. 299). Pragmatic legitimacy

was defined as “self-interested calculations of an organization’s most immediate audiences” (p. 299). Winter found that the studied firm had a strong sense of moral legitimacy, which was reflected in the accepted attitude of “doing the right thing”. The firm also had strong cognitive legitimacy that was reflected by the “taken-for-granted” assumptions such as not hiring attorneys and staff that do not share the values of the firm (p. 302). Pragmatic legitimacy was reflected by how the firm can satisfy lawyers’ needs for personal support and responsibility. An example of this is seen when attorneys within the firm actively help by answering questions and providing positive support.

This article explores how the conduct and beliefs of a law firm can affect the moral beliefs of the individual members. The article discussed an example of how some firms require junior partners to work long hours. The studied firm did not require attorneys to work unusually long hours. If an attorney is required to forsake their personal life for the work, it sends a message that one must win at all costs. This attitude could easily become reflected in ethical decisions. It is important to understand how general perceptions and attitudes in a work environment can positively or negatively effect personal decision making in regards to ethics. Why an individual chooses to report or not report a peer’s ethical misconduct may be answered by the environment and training in which a young attorney resides. The attitudes of surrounding peers may greatly influence an attorney’s decision to report observed misconduct.

Oldham and Whitley (2002) examined how attorney reporting of ethical misconduct relates to the American Bar Association’s Model Rules of Professional Conduct, Rule 8.3. This rule requires attorneys to report misconduct of other attorneys if

there is knowledge of a committed violation regarding honesty, trustworthiness, or fitness (p. 881). This rule is important because no other government agency oversees attorney behavior (p. 881). Oldham and Whitley acknowledged that Rule 8.3 only covers a narrow range of conduct, which includes: dishonesty, fraud, deceit, criminal activity, honesty, trustworthiness, and fitness as a lawyer (pp. 881-882). A common problem that creates a barrier for attorneys to report misconduct is the fact that law partners, especially junior partners, can be forced out of a partnership resulting in that person losing his or her job (p. 888). The law firm can easily state the discharge was due to business reasons and not retaliation (p. 888). However, an attorney could face potential discipline by not reporting according to Rule 8.3.

Self-regulation of the legal profession is vital for ensuring professional integrity and legitimacy. The Model Rules of Professional Conduct are supposed to assist attorneys and the legal profession by providing rules and guidelines that helps to protect the attorney, clients and profession. Unfortunately, as Oldham and Whitley (2002) pointed out the idealism of the rules might not reflect reality. The fear of losing one's employment is a strong incentive for not reporting misconduct, however by not reporting the attorney faces potential penalty because of the wording of Rule 8.3.

This study helps answer the research question on whether attorneys are willing to report the ethical misconduct of their peers and what factors contribute to the decision to report or not report the misconduct? The cost of unemployment may substantially outweigh the benefit of following Model Rule 8.3. I believe some type of counter would help balance this potential cost/benefit imbalance. For example greater protections could

be offered to those that report peer attorneys so that their employment would not be jeopardized. Another option may be to make the penalty for not reporting more severe than losing employment, such as disbarment.

Literature Relating to Ethics

The following articles are about ethics and its relationship to my study. These articles help provide insight on the reporting of ethical misconduct and the reasons why someone may report ethical concerns. Although these articles help create a greater understanding of reasons for reporting ethical misconduct, these articles are limited to their individual professions. Although motivations may differ between the medical, legal and education professions, I believe the general concepts can be applied to provide a better understanding for my study.

Nitsch, Baetz, and Hughes (2005) stated that there are four factors involved with the non-reporting phenomenon in regards to code of conduct. The four factors that they labeled were: (1) factual non-responsibility; (2) moral non-responsibility; (3) consequential exoneration; and, (4) functional exoneration (pp. 337-338). This study specifically examined the reasoning of college students to not report academic dishonesty. There is a concern that if students learn to rationalize not reporting ethical misconduct at school then they may become more likely to not report ethical misconduct in the business world.

This article takes open-ended responses to questions relating to non-reporting of ethical misconduct and categorizes them into four explanations. These categories represent common themes or rationales seen in other fields of study on why people chose

to not report ethical misconduct. These categories could easily be applied to why an attorney may choose to not report ethical misconduct of a colleague. An attorney may fear reporting because he or she believes there is little evidence to support the claim. Because there is a professional relationship between attorneys he or she may believe the action is not severe enough to justify reporting, or may believe reporting will result in unfair consequences. An attorney may fear retribution for reporting ethical misconduct, especially in the form of personal reputation. An attorney may also choose not to report misconduct because there may be a belief that the conduct is commonly perpetrated by every attorney, including that person. Ethical codes of conduct become irrelevant if it is not enforced by the implementing organization, and an action of misconduct can only be addressed if the enforcing organization knows there is a violation.

A study conducted by Plinio, Young and Lavery (2010) studied data from the 2009 National Business Ethics Survey conducted by the Ethics Resource Center. The results showed nearly half of the respondents observed misconduct in their workplace in the prior year. Misconduct was defined in the survey as “behavior that is contrary to the values, standards and policies of the organization” (p. 173). The study further showed this rate was consistent over the past decade. The authors also reported that employees are more comfortable and more likely to make inquiries or report misconduct within the organization, yet at the same time those employees had concerns regarding their protection if misconduct was reported. The authors also stated that the data showed compliance and educational programs positively affected observed misconduct. Also the

research showed colleague behavior was an important determinant of ethical behavior of other employees.

This study directly studied the themes of whistleblowing and ethical misconduct. Although this study is about the business world the principles can easily be applied to the legal profession. “A key factor to determine the state of ethics in organizations is to look at the rate of reported observed misconduct” (Plinio, Young, & Lavery, 2010, p. 173). This statement clearly demonstrates the importance of strong ethical practices within any organization or profession. “A strong ethics program is essential to mitigating unethical behavior and in creating an environment where employees are confident in reporting observed misconduct” (p. 190). This statement shows the importance of continuing education programs as well as having an approachable and reliable system for reporting misconduct.

This article relates to the research question by defining misconduct and acknowledging that workers often witness some type of workplace misconduct (Plinio, Young, & Lavery, 2010). The reporting process may influence why someone chooses to report a peer’s misconduct.

Kirkland (2007) recounts a personal experience in which the author was forced to report a colleague’s unethical actions. The essay describes how Kirkland’s colleague was on a tenure committee and was required to attend and evaluate a class of a third professor that was up for tenure. The perpetrator filed a false report to the tenure committee and as a result was forced to resign. Kirkland was the other member of the tenure committee and was the one that caught perpetrator and reported him to the Dean. Kirkland used this

personal experience to explore whistleblowing and why individuals choose to report a colleague. Individuals are more likely to report a colleague if it is a person you do not have a close relationship. Individuals that had prior neutral or negative integrations are more inclined to investigate and report misconduct.

According to the author, personal relationships directly influence whether or not a colleague chooses to take action against another colleague. This article provides personal feelings and reflections regarding the topic of ethical misconduct and the reporting of that misconduct. This article provides insight on lying, responsibility, and personal struggle of reporting an associate.

This article explores a personal experience on who is more likely to report a colleague's misconduct and why. This question relates directly to my research question regarding whether or not Michigan attorneys are willing to report ethical misconduct and what factors influence this decision. Each individual may have specific reasons and motivations for reporting misconduct. Although this article was about ethical misconduct within a college tenure committee, the insights and personal experiences discussed may help provide better understanding towards reporting attorney misconduct.

Verschoor (2013) studied how ethical behavior differs among the different generations. Verschoor studied four generational groups that were identified as Traditionalists, Baby Boomers, Generation X, and Millennials. The study showed that there was significant difference in attitudes regarding workplace ethics among the identified groups. The youngest group, the Millennials, felt greater pressure from colleagues or associates to break ethical rules (p. 11). Verschoor believed that a possible

solution to this particular issue was for organizations to concentrate on ethical issues during new employee orientation (p. 11). Verschoor further stated, “strong ethics and compliance program has a significant role in developing and maintaining an organization’s culture” (p. 12). This means that an organization that takes a serious stance on ethical compliance is more likely to have a workplace atmosphere that promotes ethical behavior. The study also identified the Millennial group as group more likely to report misconduct so long as: (1) they are allowed to use company recourses to report the misconduct, (2) they felt prepared to handle an ethical dilemma or situation, likely through training, (3) they can receive ethical advice from somewhere within the organization, and (4) they can rely on coworkers for support (p. 12).

The theme of this study was how age affects attitudes and perceptions regarding ethical misconduct. The older generations tended to have more loyalty to the organization and based ethical attitudes from the organization’s hierarchy. In contrast the younger generations tended to be more self-oriented and based ethical attitudes from social interactions (Verschoor, p. 13).

This article relates to my research question by attempting to explain factors that may affect reporting of misconduct. The legal profession can use this study to help promote the reporting of ethical misconduct. Younger attorneys might take ethical cues from social interactions. If a firm promotes winning at all costs, then it is conceivable that those younger attorneys will be more likely to commit some type of misconduct and would be less likely to report observed misconduct. Older attorneys would be more likely to base ethical decisions on the perceived good of the organization. If there is a

generational difference, bar organizations can create educational programs focused on generational attitudes and beliefs.

Lord and Bjerregaard (2003) discussed the impact of ethics courses in Criminal Justice and Legal education. The results of the study showed ethics courses had little impact on ethical behavior and perceptions regarding the seriousness of that behavior. The findings implied that long-held values are the least susceptible to change. However, this study was limited to one university with two different ethic courses.

Although education is important, this study demonstrated that core beliefs are not easily changed. Ethics courses are important in providing guidance to students and professionals. This education can dramatically help young professionals especially when the course discusses common problems regarding ethical decision-making. This particularly helps by demonstrating what not to do. This study showed that although education can be a good guide, it would not ultimately change a person's core beliefs that cause ethical decision-making. Continuing education is important part of the legal profession. Many jurisdictions require a certain number of hours every year, a portion of which must be designated as ethics education. Lord & Bjerregaard's (2003) study showed that this education provides important guidance but will likely not impact a conscious or deliberate decision to act unethically.

When examining why an attorney may report ethical misconduct of a peer and what factors may assist in that decision it is possible that one answer may be simply the core ethics and values of the individual observing the misconduct. Internal beliefs may

be a fundamental reason for reporting or not reporting peer misconduct. . Lord & Bjerregaard's (2003) study showed that core beliefs should be considered.

Raniga, Hider, Spriggs, and Ardagh (2005) conducted a study that examined a New Zealand law that required physicians and other medical personnel to report professional misconduct. The results of the study showed that medical personnel recognized that mistakes are made and decisions should be open for discussion (p. 11). However, less than half of the respondents to the study agreed with the mandatory reporting law (p. 12). There was a belief that having a mandatory reporting law that reports to an external agency creates a "punitive atmosphere and a culture of fear" (p. 12). The implication is that medical professionals believe they are better capable of handling misconduct.

As a profession, attorneys have many things in common with physicians. These two professions have their own specialized schools, both professions have strict ethical codes that govern behavior, and both are governed by professional organizations. A study regarding mandatory reporting of professional misconduct within the medical profession can provide valuable insight on the legal profession. If a state requires mandatory reporting of attorney misconduct, it is possible that those attorneys share similar attitudes as those medical professionals in the Raniga *et. al* study (2005).

This study helps us understand what factors contribute to an attorney reporting the ethical misconduct of a peer. Some jurisdictions have mandatory reporting but is that the sole reason a lawyer would report ethical misconduct? If Raniga *et. al* (2005) holds true then the answer would likely be no. If mandatory reporting creates resentment and fear

then an argument could be made that mandatory reporting of ethical misconduct would be unsuccessful. However, it is also possible that if there was mandatory reporting then blame could be transferred to the law instead of to the individual thus alleviating guilt for reporting a colleague.

Victor, Trevino, and Shapiro (1993) studied how justice and social context factors effected the reporting of unethical behavior by peers. The authors stated that peer reporting is typically not required as a part of the job but instead is voluntary performed for the purpose to helping management and provide a better work environment (p. 254). Victor, Trevino, and Shapiro believed that because reporting is an activity that is beyond an employee's normal scope the concept of justice or injustice motivates reporting activity (p. 254). The concept of justice was split into two different categories, distributive justice and procedural justice. Distributive justice was defined as perceived fairness of outcome, and procedural justice was defined as "fairness of the decision making criteria and procedures used to determine outcomes" (p. 254). The authors also theorized that social context also played a role on reporting habits. Examples of social context included role responsibility and interests of group members (p. 255). Victor, Trevino, and Shapiro's research showed only procedural justices had any effect on peer reporting (p. 261). The results of distributive and retributive justice were not significant (p. 261). The results also showed that social contexts, especially the inclination to peer report, were the most influential independent variable (p. 258).

The implication that reporting behavior is voluntary action that needs additional motivating factors such as justice or social relationships can help one understand why

peers within the legal profession choose to report or refrain from reporting ethical misconduct. If an attorney believes he or she is furthering the concept of justice, then according to Victor, Trevino, and Shapiro (1993) they will be more likely to report the misconduct.

This study helps answer the research question on whether attorneys are willing to report the ethical misconduct of their peers and what factors contribute to the decision to report or not report the misconduct? Many of the previous studies have focused on costs associated with reporting misconduct, primarily fear. The study by Victor, Trevino, and Shapiro (1993) focused on a potential benefit of reporting misconduct. Justice can potentially be a motivating factor to offset fear.

Literature Regarding Whistleblowing

The literature regarding whistleblowing comes closest to addressing the main issue in my study. However, whistleblowing is broad subject that encompasses many different professions. In order to make sense of such a broad subject I examined common themes within the literature. Articles by Bruns, Jackson, and Zhang (2012); Verschoor (2012); Cornock (2011); and Bjorkelo and Macko (2012) focused on the negative reasons why an individual may not report misconduct whereas Miceli and Near (1991) focused on positive reasons. Many of the other articles focused on different variables such as age and gender. It is necessary to examine these articles as a whole in order to grasp commonality between the article and help understand whistleblowing as a whole.

In an article by Miceli and Near (1991) the researchers examined factors associated with whistleblowing by internal auditors (p. 113). The article showed that

Directors of Internal Auditing who observed perceived incidents of wrongdoing were less likely to report these incidents when they did not feel compelled morally or by role prescription to do so or if the auditors worked in a highly bureaucratic organization (p. 126). The study also showed that the auditors were more likely to report incidents to external agencies when they felt that the public or their co-workers were harmed by the wrongdoing, the wrongdoing involved theft by relatively low-level workers, there were few other observers, or the organization was highly regulated (p. 127).

This article examines how organizations, instead of individuals, might handle reported misconduct. It is conceivable that the results found by Miceli and Near (1991) might represent larger organizations based on the fact internal auditors were referenced. This distinction can be applied to larger law firms as compared to small practices. For a firm to report misconduct to the State Bar it must believe, according to Miceli and Near, the public or their co-workers were harmed by the wrongdoing, the wrongdoing involved theft by relatively low-level workers, there were few other observers, or the organization was highly regulated (p. 127). If the State Bar, through continuing education, defines misconduct and demonstrates how the public or the firm might be harmed then it might more likely to report peer attorney's misconduct.

This article helps address the question on what factors may influence a decision to report misconduct. Miceli and Near (1991) believed that if an employee perceived that the organization's misconduct harmed the public or other workers then there would be a greater likelihood of the misconduct being reported. This helps support the idea that a

perceived benefit, in this case protection or justice for the general good, may influence the reporting of misconduct.

Stansbury and Victor (2008) conducted research on whistleblowing specifically in regards to age. Stansbury and Victor applied the life-course theory of criminology to their study. This theory examines people's lives, structural contexts, and social change while focusing on time and context. The researchers found that employees that were both younger and had less experience with the organization were less likely to report observed workplace misconduct (p. 296). However, as employees gained experience and age these factors only accounted for a portion of the shift towards a favorable attitude towards whistleblowing (p. 296). This implies that early in a person's career social pressure contributes towards the decision to become a whistleblower, whereas later in a person's career other factors influence a person's willingness to report misconduct.

This study applied the life-course theory towards common variables such as age and experience in order to explain whistleblowing. Although the results were mixed, valuable information can be taken from this study. According to Stansbury and Victor's study (2008) a new attorney that recently graduated from law school and is working in a firm, as his or her first job, is less likely to report observed misconduct than an older partner who has been with the organization for longer period of time.

The findings appear to support the idea that younger, less experienced employees fear retaliation and thus may be more unlikely to report observed ethical misconduct. This supports my research question regarding what factors influence attorneys to report a peer's misconduct. If findings in Stansbury and Victor (2008) hold true to my study, then

measures could be taken to educate and protect young attorneys that choose to report misconduct.

Sims and Keenan (1998) conducted a study of examining variables that may affect external whistleblowing. The authors defined age, gender, education, organizational tenure, formal policies, informal policies, supervisor expectations, ideal values, job satisfaction, and organizational commitment as independent variables and whistleblowing as the dependent variable (p. 415). Sims and Keenan conducted a step-wise multiple regression analysis to determine if the variables were significant predictors of external whistleblowing behavior. They found supervisor expectations, informal policies, ideal values, and gender as statistically significant predictors.

This study dealt with themes relating to external whistleblowing as compared to internal whistleblowing. Whistleblowing was defined as “present or former organization members reporting illegal, unethical, or illegitimate activities under the control of organization leaders to parties who are willing and able to take action to correct the wrongdoing” (Sims and Keenan, 1998, p. 411). If an organization can understand what may lead an employee to report unethical behavior, then that organization can help promote attitudes and procedures to help facilitate the reporting of unethical behavior. Another benefit may be the development of educational programs that addresses behavior and the reporting of misconduct.

This study directly relates to the research question regarding what factors can influence a person to report misconduct. Although this article focuses on general whistleblowing, it may help explain why an attorney may choose to report a peer’s

misconduct. The predictors found statistically significant by Sims and Keenan (1998) could help target concern areas of reporting attorney ethical misconduct.

Bruns, Jackson, and Zhang (2012) stated, “One important tool in preventing and detecting fraudulent activities is a peer-reporting system” (p. 8). Whistleblowing was defined as “reporting by employees of the observed misconduct of others” (p. 9). Observed misconduct was categorized into four separate subtypes: (1) personal misbehavior, (2) product quality, (3) honesty within interactions, and (4) illegal or unethical use of resources (p. 9). Bruns, Jackson, and Zhang used the findings from surveys conducted by the Ethics Resource Center and the Association of Certified Fraud Examiners to propose steps for creating a whistleblowing system within an organization. For a peer-reporting system to be successful employees must be willing to report and cooperate with investigations. A reason often attributed to none reporting is a fear of retaliation (p. 9). To help counter this fear three steps for designing a peer-reporting system was proposed. They include: (1) ensuring proper ethical environment in the organization, (2) promote the perception that employees are treated fairly, and (3) provide clear communication between employees and upper management (p. 10).

This study examined whistleblowing and proposed steps to help promote peer reporting of observed ethical misconduct. The premise of this study directly relates to my study in that it attempted to understand peer reporting of misconduct by finding reasons, or factors, that may influence a person to report or not report misconduct. Although this study does not focus on attorneys, the principles may apply to the reporting of attorney ethical misconduct by peer attorneys. Employees are often hesitant to report

misconduct because of a fear of retaliation. This fear often stems from a corporate attitude that monetary growth must occur at any costs (p. 10). This type of attitude may promote dishonest or unethical decisions and any person that reports these decisions are considered not loyal and thus expendable. A strong ethical culture is important but that in itself cannot compensate for management that acts with questionable personal ethical standards (Bruns, Jackson, & Zhang, 2012, p. 10). The legal profession can utilize this business study to help promote the peer reporting of ethical misconduct. Law firms that focus on production and winning lose sight of the legal profession's true purpose, which is ensuring justice is served. A young attorney may be less likely to report observed ethical misconduct because he or she may be trapped in a must win to earn environment. Attitudes of law firms and practices must be changed from a winner take all mentality to its true purpose of ensuring justice for its clients and the entire legal system.

Lobel (2012) stated that the purpose of whistleblowing is to instill ethical norms of behavior to prevent misconduct and to detect ongoing organizational corruption. Lobel examined the broad concept of whistleblowing and how whistleblowing laws vary depending on the professional field and the governing law associated with that profession. Over the past several years various laws have offered greater whistleblowing protections, which should create ethical conduct within organizations.

This article explored the history of whistleblowing and how evolving standards reflected through new laws have helped offer greater protections to whistleblowers. This article also discussed how gender might play a role in the whistleblower phenomenon by explaining how past studies showed females tend to be more proactive in whistleblowing.

In the economic and business world males tend to still have a substantial majority in management positions. Many times this creates a “boys club” environment that could affect reporting attitudes. The legal profession is more diverse now than in the past but in larger, older firms the senior partners are conceivably older males.

This article relates to my research question by examining how gender may relate to reporting of ethical misconduct. Intimidation or gender related friendships (boy’s club) can influence the reporter’s decision to become involved by reporting misconduct.

Verschoor (2012) studied retaliation for whistleblowing ethical misconduct. According to the results of a 2011 National Business Ethics Survey retaliation against whistleblowers has spread to senior management, which has previously been considered “safe” (p. 13). The Ethics Resource Center President explained that when retaliation occurs for reporting ethical misconduct a company gains two additional problems, an additional observed misconduct victimizing the reporter, and the formation of a “cancerous” environment (p. 13). The survey results showed that workers that felt comfortable to initially report observed misconduct experienced less retaliation than those workers that initially reported misconduct to higher management or to an organization’s central office instead of immediate supervisors. This disparity was explained by the fact that more significant violations are typically reported to higher management, and the immediate supervisor’s involvement (p. 14). However, organizations that have a culture that supports open communication are more likely to support whistleblowers.

A possible reason for why a person may choose not to report observed ethical misconduct is fear of retaliation. Types of retaliation range from physical harm, online harassment, harassment at work and at their home, hour or pay cut, and job shift or demotion (Verschoor, 2012, p. 14). The legal profession can learn from this study on how to recognize and address retaliation in ethical whistleblowing. The damaging effects of retaliation for whistleblowers can be reduced by: (1) targeting managers with anti-retaliation training so that they may deal with the situation in a more productive way, (2) provide broad communication to employees expressing support for those that report observed ethical misconduct, (3) be fair and consistent, (4) take decisive and visible action if a claim of retaliation is substantiated, and (5) follow up on all claims (pp. 14, 69). Verschoor's study relates to my research question by attempting to explain how fear affects a person's motivations when reporting misconduct. When I examine why an attorney reports a peer's misconduct fear of some type of retaliation may influence the decision and heavily count as a perceived cost versus a perceived benefit.

Kaptein (2010) examined whistleblowing and the influence of ethical culture on employees' decision to report observed misconduct. Whistleblowing was defined as "disclosure of organization members of illegal, immoral, or illegitimate practices under the control of their employers to persons or organizations that may be able to effect action" (p. 515). Kaptein identified five different types of responses for observed misconduct: inaction, confronting the perpetrator, reporting to management, contacting an internal hotline, and external whistleblowing (p. 515). The results of the research showed that ethical culture of organizations did affect the type of response made by an

employee. Ethical cultures that promote clarity, supportability and sanctionability positively related to the internal actions, which were confrontation, reporting to management and hotline (p. 524).

This study expanded the traditional categorization of whistleblowing from the two categories of internal and external to five different categorizations. Internal whistleblowing was broke down into confrontation, reporting to management and calling an internal hotline (Kaptein, 2010, p. 524). External whistleblowing was broke down into inaction and internal whistleblowing. These different choices may help determine what course of action an employee may take when confronted with observed ethical misconduct. This study helps my research question by attempting to categorize different responses for observed misconduct. These categories can help explain why reporters of misconduct choose to report that misconduct.

Green and Latting (2004) examined whistleblowing in the field of social work. They identified consistent themes when defining whistleblowing. These themes include (1) notifying powerful others of wrongful practices, (2) motivated by wanting to help or prevent unnecessary harm, and (3) the whistleblower has access to information or has personally observed misconduct (p. 220). Green and Latting recognized that whistleblowing may result in some type of repercussion. These repercussions may include: the organization believing the whistleblower is not loyal or traitorous, damage to the reputation of both the organization and the whistleblower, physical abuse, blacklisting, premature termination, lawsuits, and a depletion of the whistleblower's personal assets (p. 221).

This article shows many of the negative aspects of whistleblowing. Green & Latting (2004) stated “few employees who observe wrongful practices actually report them” (p. 220). Although this article examines social work the principles could easily apply to the field of law. The article by Green & Latting (2004) relates to my question regarding what influences attorneys to report ethical misconduct of peers by examining the negative aspects of reporting. An attorney may choose not to report ethical misconduct because of a fear of repercussions. Negative reputation may be damaging not only to the attorney’s business but also to that person’s reputation in the Court.

Rebbit (2013) examined whistleblowing from the perspective that it is a form of “principled dissent” within an organization. Principled dissent was defined as “constructive criticism or the effort by individuals to protest or change the organizational status because of their conscientious objection to current policy or practice” (p. 58). Rebbit further stated that dissent is a safety issue and often individuals are forced between ethics and normality or safety and non-safety (p. 58). Principled dissent begins with morals and professional conduct and which builds to safety and compliance issues in manufacturing organizations (p.59). Rebbit acknowledges there can often be a price to dissent, or whistleblowing. He stated fear of retaliation is a main reason for not reporting misconduct (p. 60). Once a whistleblower goes public an organization may discredit the individual in order to dismiss the allegations (p. 60). The whistleblower may also be dismissed or let go by the organization. An organization may also attempt to buy off the whistleblower by offering a severance for that person’s termination conditioned on silence.

This article provided an alternative way to look at whistleblowing. Employees that are whistleblowers are often quality employees who want to work for the organization and do want the organization to succeed (Rebbitt, 2013, p. 59). The practice of law revolves around confrontation, yet in law firms and organizations dissent and confrontation are looked poorly on. Dissenting opinions especially in regards to ethical issues might incur the same type of retaliation Rebbitt discussed leading to a fear by the dissenter not to report the misconduct.

This article by Rebbitt (2013) relates to my research question of whether or not attorneys are willing to report the ethical misconduct of peer attorneys by examining why individuals may report misconduct. Rebbitt found fear as a primary reason for not reporting misconduct. If the issue of fear can be addressed, it may be possible to help promote the reporting of misconduct and thus promote the enforcement of ethical rules.

Cornock (2011) examined a case where a nurse received professional censure resulting from whistleblowing. This particular article did not give specifics of the nurse's case, however the implication was that the censure resulted from a combination of the whistleblowing and accused own violation of the nurse's ethical code. Several reasons for not reporting observed ethical misconduct are given in this article. Cornock stated there are three categories of reasoning for not reporting, which are (1) Fear of what will happen to whistleblowers as a consequence, (2) That there is no reason to report the incident, and (3) Uncertain what action to take (p. 21). Examples of fear include confidentiality, assigning blame to the reporter, identification and isolation of the reporter, and removal from the workplace (p. 21). Examples of reasoning include belief

of non-action by management towards the problem, fear of disproportionate punishment resulting from the whistleblowing, belief that the problem can be handled informally (p. 21). Examples of uncertainty include not knowing who to report an incident or even not knowing that an action is illegal or unethical.

Although this article focused on ethics in nursing, the principles might also apply to the legal profession. The focus of this article was why individuals might not report observed misconduct. Fear, reasoning, and uncertainty are common reasons any person regardless of profession may utilize in making a decision to report observed ethical misconduct.

The article by Cornock (2011) helps provide understanding to my research question regarding what factors may influence an attorney to report or not report ethical misconduct of a peer. Cornock showed an example of how a whistleblower was retaliated against for reporting misconduct. Fear of retaliation is a common factor in the literature for why an individual may not report misconduct. It is important to recognize this so reporters can be protected for reporting legitimate concerns.

Bannon, Ford and Meltzer (2010) examined results from the Ethics Resource Center's 2009 National Business Ethics Survey. A strong ethical culture helps prevent ethical misconduct. A strong ethical culture contains four essential elements; (1) ethical leadership, (2) supervisor reinforcement, (3) peer commitment, and (4) embedded ethical values (p. 56). The survey cited many reasons employees do not report misconduct. These reasons include "a belief that their actions will not result in any meaningful action, fear of being isolated or ostracized, and fear of retaliation by management" (p. 57).

Examples of specific retaliation cited by the survey included getting the cold shoulder from colleagues, exclusion from activities, verbal or physical abuse, denial of promotion or pay raises, demotion, or threat of termination (p. 57). Promoting a strong ethical culture helps alleviate both the misconduct and the fears associated with reporting misconduct. A monitored and updated training program given to new employees that tests employees on presented information helps establish an ethical culture (p. 58).

This study examined ethical culture in business and how promoting a strong ethical culture helps reduce ethical misconduct as well as promote reporting of observed ethical misconduct. Although this survey and study focused on the business sector the legal profession can utilize the information in order to help promote a stronger ethical culture. A fear of retaliation is not only a business sector issue, but ranges to every profession. People want to feel comfortable and secure at their workplace. If a person's security is threatened when they do the right thing and report misconduct then there is a possibility that misconduct will not be reported.

Bannon, Ford & Meltzer's (2010) study addresses my research question regarding what factors might influence an attorney from reporting ethical misconduct of a peer. If an attorney weighs costs against benefits of reporting misconduct many of the negative reasons found by Bannon et.al could be applied.

Mansbach & Bachner (2009) studied the attitudes of students and their relation to whistleblowing. Whistleblowing is defined as "the disclosure by a person working within an organization of acts, omissions, practices, or policies by persons within the organization that wrong or harm a third party with the intention of the disclosing a

wrongdoing to an end and to prevent further such misbehavior” (p. 18). The study showed that students take workplace violations seriously and are more likely to report it as an internal matter. An interesting point mentioned within the article was that according to the subjects within this study, it is not a matter of reporting or not reporting but a primary concern was how to report the incident and to whom should the incident be reported.

Although this study focused on social work, the themes of whistleblowing or internal self-reporting and attitudes towards reporting misconduct can also apply to the legal profession. Attorneys, through their respective state bar organizations internally police the legal profession. The Nansbach & Bachner (2009) article supports the premise that an organization and its members are more likely to report misconduct via an internal process as opposed to utilizing external controls. These findings could be applied to the legal profession and to the question regarding what factors contribute to an attorney reporting ethical misconduct of a peer attorney.

Miceli and Near (1988) studied whistleblowing and its relationship to prosocial behavior. Miceli and Near found that whistleblowers were more likely than observers of misconduct to: (1) hold professional positions, (2) have a more positive attitude to their work environment, (3) had longer tenure within the organization, (4) are recognized for good performance, (5) tend to be male, (6) members of larger work groups, and (7) responsive to complaints (pp. 276-278).

The results of this study suggest that recognizing these relationships might encourage whistleblowing within the organization (Miceli & Near, 1988, p. 276).

Whistleblowers are often stigmatized for being unreliable or disloyal. The results of this study imply the opposite. Employees that care about their organization and have experience are in a better position to report observed misconduct. A new attorney should be able to depend on an experienced partner for support in ethical matters. However, problems occur when pressure to overlook or commit ethical misconduct comes from senior positions. Junior members should be supported and encouraged by veteran attorneys who fit Miceli and Near's profile.

This study relates to my research question regarding whether attorneys are willing to report ethical misconduct of peers. The study by Miceli and Near (1988) implies that attitude and experience are factors in determining who may become a whistleblower. An attorney who is more experience is likely to be more confident and comfortable within the profession. Miceli and Near's study would imply that these individuals may be more likely to report misconduct of peers.

Miceli, Near, and Dworkin (2009) studied whistleblowing and how organizations can promote the reporting of observed misconduct. Although reporting misconduct can clearly benefit society, the organization may also benefit for the reporting of misconduct (p. 379). Miceli, Near and Dworkin list three reasons on how the organization may benefit. These reasons include: (1) If the organization corrects the problem, then employees have no need to notify outside authorities and thus preventing a negative reputation for the organization; (2) The culture of the organization is improved because employees feel satisfaction; and (3) Self correction might prevent legislative or governmental interference (p. 380). The authors recommend several steps organizational

managers can take to help encourage whistleblowing and correct issues. Before specific concerns are reported management can: encourage moral development of the organization, establish anti-retaliation policies, provide educational materials to employees that are readily available, orient and train employees in ethics and the reporting of misconduct, and provide incentives or valid internal reporting (p. 383). Once a concern is actually reported management should: focus on the misconduct and not the individual that reported the misconduct, take swift and corrective action, and provide clear communication with administration (p. 383).

This study focused on how organization can take specific actions in order to benefit from employees reporting misconduct internally. Regardless of the organization or field of study, negative publicity can harm the public image of the organization and decrease the pride of the members of that organization. An organization can take action to help both prevent ethical misconduct and correct issues as they arise. This concept should also be applied to the field of law.

This article relates to the research question of whether attorneys are willing to report ethical misconduct of peers by examining the benefits an origination may have by promoting reporters of misconduct. Although the study by Miceli, Near, and Dworkin (2009) relates to organizations and not individuals it still may have strong implications towards the legal profession. The legal profession can be very social. All of the attorneys within a jurisdiction must belong to the state bar and many belong to local bar associations. This community is an organization and thus the organizational analysis by Miceli, Near and Dworkin can easily apply.

Kelk (2013) examined the consequences of whistleblowing within the nursing profession. Kelk stated that whistleblowing is difficult for everyone but might be more challenging for nurses because their loyalties are split between their employment and their duty towards the patient (p. 61). Whistleblowing is often seen in a negative context, which is reflected in what people call those who report misconduct. Examples of this include: “betrayer, canary, nark, snitch, tattler, rat and stool pigeon” (p. 61). The author suggests a possible solution might be for an organization to have a hot line to report observed misconduct, which would keep the integrity of the reporter intact. If this fails or is not an option, a professional needs to know when to report. Delk listed three factors to determine when to report: (1) the ability to report and be protected, (2) the necessity of reporting the incident, and (3) statutes of limitation or time limits for reporting (p. 62). Kelk also discussed the risks employees face when reporting misconduct. These risks include losing current or future employment, fear of physical violence, fear for their family, and fear of reputation (p. 63).

This article focused on whistleblowing within the nursing profession. Attorneys might have similar issues regarding whistleblowing. Just as nurses and physicians, attorneys also must divide their loyalty between their employers and their clients. Attorneys want to help their clients to the best of their ability but the desire to help could cause an attorney to cross a line. Opposing attorneys, partners, support staff, and court personnel should have a mechanism to safely report concerns. Kelk (2013) provided some explanation on why misconduct might not be reported.

This article helps us understand the question on whether attorneys are willing to report the ethical misconduct of their peers and what factors contribute to the decision to report or not report the misconduct? Many of the reasons listed for not reporting are similar to reasons listed in various other articles, thus showing fear as a consistent mitigating factor.

Bjorkelo and Macko (2012) studied whistleblowing and the stigma associated with reporting misconduct. They acknowledge the general perceptions of those who report misconduct tend to be negative and hostile (p. 70). Bjorkelo and Macko stated “stigma lies in the reaction that others respond with in such situations” (p. 71). This statement implies that the attitudes of peers and colleagues create the negative perception of whistleblowers. The researchers found that even though there are negative attitudes regarding whistleblowing employees are still willing to report misconduct (p. 72). The most common reporters of misconduct are employees who are in a position to report such as union or personal safety representatives (p. 72). The authors suggest that one way to reduce stigma of reporting misconduct is to relate the act of reporting to other duties that are typically considered positive within society (p. 74).

This study recognizes the fact that reporting misconduct often creates a negative perception of the reporter and thus could create a negative or hostile work environment. Recognizing this concept might help an organization plan and implement a reporting system that is supported by peers thus minimizing the negative stigma associated with reporting misconduct. The legal profession is full of conflict. One party is always at odds with another party. In this type of environment, it is always beneficial to have

allies. If a partner commits some type of misconduct and is reported by a peer it is easy to see how negative stigma could isolate a younger attorney and thus prevent them from whistleblowing.

This study helps answer the research question on whether attorneys are willing to report the ethical misconduct of their peers and what factors contribute to the decision to report or not report the misconduct? If the perceived cost of isolation outweighs the potential benefits of reporting a peer's misconduct it is likely the ethical misconduct would not be reported. In order to help alleviate issues such as this, authorities may need to provide some type of support system or a type of anonymous system for reporting.

Moore and McAuliffe (2012) studied reluctance to report misconduct, specifically within the nursing profession. The researchers examined questionnaires that focused on the reporting habits of clinical nurses. Moore and McAuliffe found almost all of the respondents expressed that reporting is in the best interest of the patients and that it is their ethical duty to report an incident (p. 335). However, less than half neither agreed nor disagreed that some type of ethics committee would influence reporting an incident (p. 335). When the respondents were asked reasons for not reporting an incident the main reasons included fear of retribution and not wanting to cause trouble (p. 337). The researchers also found that nurse managers were more likely to report than staff nurses (p. 337).

Although this study focused on nurses and healthcare, the reasons for not reporting misconduct might also apply towards the legal profession. The primary reasons given by Moore and McAuliffe (2012) for not reporting is fear and guilt (p. 337).

Attorneys are similar to healthcare professionals in that they share a sense of responsibility to their clients or patients. The Moore and McAuliffe study implies that even though these professionals believe they have an ethical duty, they will likely not report if the fear or guilt outweighs the individual's sense of duty. This study helps answer the research question on whether attorneys are willing to report the ethical misconduct of their peers and what factors contribute to the decision to report or not report the misconduct?

Zhuang, Thomas, and Miller (2005) studied whistleblowing and peer reporting differ with culture. The researchers specifically compared reporting habits between Chinese students and Canadian students. The authors defined whistleblowing as “a disclosure by organization members of illegal, immoral, or illegitimate practices” (p. 463). They further defined peer reporting as a type of whistleblowing that involved a peer (p. 463). Students from both countries were given hypothetical scenarios that focused on whistleblowing or peer reporting (p. 470-471). Zhuang, Thomas, and Miller found that there was a difference between Canadian and Chinese cultures in regards to attitudes relating to reporting. The Chinese students identified the organization as the in-group, whereas Canadian students identified the in-group as their coworkers (p. 477). The Chinese students were more likely to report peers because in their belief unethical behavior was harmful to the organization (p. 477). Canadians were more likely to report supervisor misconduct because they held supervisors to a higher standard, whereas the Chinese belief was that supervisors were entitled to extra privilege (p. 478).

This study was an interesting comparison between eastern and western cultures. It is important to realize that cultures vary between countries, which then influences basic norms and attitudes. If cultures vary between countries, it is possible that general attitudes might differ between states or even counties. The difference would not likely be as dramatic as the cultural differences seen in the Zhuang, Thomas, and Miller (2005) study. These possible attitude differences could affect reporting habits of attorneys within that jurisdiction. The attitude of an urban attorney from a populated state could differ from a rural, Midwest attorney.

This study helps answer the research question on whether attorneys are willing to report the ethical misconduct of their peers and what factors contribute to the decision to report or not report the misconduct? Cultural differences could easily be overlooked. However, it is important to consider how attitudes may differ between different cultures. Even within our own country culture can differ between geographic regions or even between urban and rural areas. Since perceptions can differ the decision to report misconduct and the costs and benefits related to the reporting may also vary depending on who observes the misconduct and where that individual is located.

Literature Regarding Victim Reporting

The literature regarding victim reporting, in my opinion, provides valuable insight on the motivations or reporting misconduct. Whether an individual is a victim of ethical misconduct or criminality, the reasons appear consistent for motivations on reporting the misconduct. Fear is not only a common motivator within whistleblowing literature Bruns, Jackson, and Zhang (2012); Verschoor (2012); Cornock (2011); and Bjorkelo and

Macko (2012); but also, is a common motivator within the literature for victim reporting Cassematic and Wortley (2012); Zavala (2010). However once an individual decides to report fear no longer becomes a factor (Cassematic and Wortley, 2012).

Fredin (2011) studied the relationship between not reporting observed misconduct and regret. The results of the study showed that the participants in the experiment experienced more regret when they did not report a hypothetical misconduct (p. 423). Fredin discussed that the cost of remaining silent is often overlooked and can be often overshadowed by cost of retaliation when misconduct is reported (p. 423). The results imply that employees need more awareness of the effects caused by possible regret associated with not reporting misconduct (p. 424). The awareness may lead to more reporting of observed ethical misconduct.

Greater awareness of regret provides organizations a mechanism for promoting the reporting of observed ethical misconduct. Fredin (2011) stated, “the costs of staying silent tend to get less attention (than other potential costs such as retaliation), and thus may be ignored by individuals aware of organizational wrongdoing” (p. 423). If an individual weighs the costs against the benefits of reporting wrongdoing then that decision is already flawed if regret is not considered.

This article relates to my research question because Fredin (2011) discussed regret as negative consequence of not report observed misconduct. My study attempts to explain what factors contribute to attorneys reporting ethical misconduct of their peers. Regret, according to Fredin (2011), may in fact be a considering factor. I believe this

would especially be true for an individual who may have witnessed something in the past and is witnessing another occasion of misconduct.

Cassematic and Wortley (2012) conducted a study of Australian public sector employees. The goal was to determine whether personal variables, such as gender, tenure, age, job satisfaction, and trust in management could predict if an employee would be more likely to become a whistleblower or remain as a non-reporting observer.

Cassematic and Wortley found that personal variables had little impact on whether a person becomes a whistleblower, and thus any employee could become a whistleblower (p. 630). They further found that personal victimization and seriousness of the observed infraction were the most influential variables in predicting whistleblowing (p. 630).

Cassematic and Wortley also found that fear of reprisal contributes to the decision of observers to remain silent but if the observer decides to report the misconduct the fear of reprisal becomes a non-issue (p. 630).

Although this study was focused on Australian public employees it could have strong implications towards reporting ethical misconduct in the American legal profession. Literature has shown that fear of retaliation is a strong motivating factor in not reporting ethical or illegal misconduct. Cassematic and Wortley's study reaffirms this factor but adds an additional concept, which is once an individual decides to report misconduct fear of retaliation is no longer a factor (Cassematic & Wortley, 2012, p. 630). This implies that if an employee can overcome the initial fear of retaliation they will likely continue the reporting process to its conclusion.

I believe this shows that once a reporter makes a decision to continue the process that individual has either reconciled to the fact that retaliation is possible or believes that retaliation will not occur because the incident is now public. Cassematic & Wortley (2012) relate to my research question by finding fear as a possible factor in not whistleblowing. Fear of reprisal can be transferred over to attorneys that observe ethical misconduct of peers.

Zavala (2010) studied the role that deviance played in reducing the willingness of victims of violence to report their victimization. He wanted to determine whether the victim's personal involvement in either related or unrelated deviant behavior effected the decision to report domestic violence (p. 23). Zavala stated several reasons why an individual may choose not to report their victimization. Victims may fear they would self-incriminate themselves, victim may be less likely to trust legal authorities if they are also involved in some type of deviant behavior (p. 23). The results of the research showed that victims were more likely to report victimization if a stranger perpetrated it, if a weapon was involved, and if the perpetrator was on drugs or alcohol at the time of the victimization (pp. 28-30). However, there was no statistical significance in whether the victim's deviant acts, such as individual drug use, affected reporting (p. 28).

This study focused on the reporting of criminal victimization, specifically by those victims that may also participate in deviant behavior. The reasons stated by Zavala (2010) on the reasons why an individual might not report victimization could also apply to those victimized by attorney ethical misconduct (p. 23). An attorney's client may also

be guilty of his or her own deviant behavior. The results of Zavala's study might also be applicable to deviant clients victimized by attorney misconduct.

The article by Zavala (2010) relates to my research question regarding whether attorneys are willing to report the ethical misconduct of a peer. Zavala focused on whether the deviance of the victim affects their reporting. An attorney or his or her client may be a victim of another attorney's ethical misconduct while he or she is committing some type of misconduct. This leads to an interesting question on whether or not either one of those attorneys would report the ethical misconduct of the other.

de Graaf (2010) studied data taken from various governmental agencies in the Netherlands in order to determine who reports integrity violations within public organization and what reasons were given for reporting integrity violations. The research found the majority of integrity reports came from institutional controls and then by perceived victims of some type of action (pp. 771-772). The reasons de Graaf found for integrity reporting was due to a sense of justice by the observer, concern for the security of the organization, and the seriousness of the violation (p. 776). An interesting negative consequence of reporting integrity violations is that the reporters would often feel responsibility for causing the perpetrator's punishment (p. 776). The research also showed reporters often experience conflicting loyalties between their sense of justice and their dedication to their colleagues and the organization (p. 775).

The study conducted by de Graaf (2010) supported many of the common themes associated with reporting or whistleblowing. Reporters feared receiving negative labels, such as snitch, and were often confronted with a personal conflict of loyalties. For an

attorney who wants to report ethical misconduct, it is logical to assume they would also experience a conflict of loyalties. Young attorneys especially might feel this conflict of loyalties, especially if the firm or the attorney they are working with gave the reporter his or her first employment opportunity. This sense of loyalty then leads to the reported feelings of guilt and responsibility if a punishment results from the reporting of the conduct (p. 775). If the Bar is aware of this concept, then it could be addressed in ethical training and continuing education.

This study helps answer the research question on whether attorneys are willing to report the ethical misconduct of their peers and what factors contribute to the decision to report or not report the misconduct? The sense of ensuring justice is served versus the guilt associated with reporting misconduct (de Graaf , 2010) is a great example of a cost being weighed against a benefit.

Trevino and Victor (1992) examined how peer groups might influence an individual's willingness to report misconduct. It is often costly to provide direct oversight and monitoring so organizations must rely on peer or self-reporting (p. 38). Trevino and Victor stated "peer reporting occurs when group members go outside their group to report a member's misconduct" (p. 39). Peer reporting consists of whistleblowing and group norm enforcement (p. 39). What this means is that an individual must balance reporting misconduct with norms established by the other employees. Since group loyalty is considered an important norm, employees might react negatively to a person who reports misconduct to an authority outside the group (p. 40). However, this group norm can be countered if the group believes the misconduct harms

the group, thus making the reporting beneficial (p. 41). The researchers also found that if the group liked the reporter, or found them trustworthy, then the reporter was better accepted after reporting a violation (p. 57).

Trevino and Victor (1992) were able to help explain why peer reporting can be difficult. Group psychology has a potentially strong impact on the decisions individuals have regarding whether to report misconduct. This study helps answer the research question on whether attorneys are willing to report the ethical misconduct of their peers and what factors contribute to the decision to report or not report the misconduct? An attorney not in a solo practice might also face similar group pressures regarding whether to report ethical misconduct. If the reporting is perceived to threaten the rest of the group, pressure is likely to be exerted to not report. Knowing how group psychology works can help Bar Associations structure educational seminars for ethics and help structure their reporting system.

Literature Regarding Crime Reporting

The literature regarding crime reporting is closely related to both victim reporting and whistleblowing. Just like the literature discussed in the victim reporting section and the whistleblowing section, fear was a common theme regarding a reluctance to report a crime (Thompson, Sitterle, Clay, and Kingree, 2007; Nofziger & Stein, 2006; Posick 2013; Kidd and Chayet, 1984). Although the articles in this section are specifically focused on crime and victim reporting, the reasoning for reporting or not reporting the conduct is very similar to those found in the literature regarding whistleblowing.

Tolsma, Blaauw, and Grotenhuis (2012) conducted a study regarding the reporting process and how it relates to the socio-ecological model of explaining crime reporting. The authors discussed how under this model the expected benefits of reporting crime must outweigh the expected costs of reporting the crime in order for the victim to actually report that crime. The authors of this article theorized that the reporting process is in itself a cost and theorized that if victims could report crime through some other method, such as Internet or phone, then costs such as time spent would not influence the decision to report a crime. The results of the study showed that reporting a crime through an alternative method, such as Internet or phone, did not affect the decision to report a crime. The results implied that people want the face-to-face interaction.

Although this article discussed reporting of crime instead of ethical misconduct, I believe crime and ethical violations would be comparable in regards to victim willingness to report. This article showed patterns of behavior and how cost-benefit analysis could be used to analyze potential reasons for a person's decision to report unethical conduct. Cost-benefit analysis can be applied to the simplest decisions we make every day. We may choose not to go to the grocery store because having a certain item is not worth fighting traffic at a particular time of day. If these "costs" can be identified, the legal profession can address these issues and help make it less "costly" and thus promote the reporting of criminal or unethical misconduct.

This article relates to my research question by directly using a cost-benefit analysis in a reporting context. Tolsma, Blaauw, & Grotenhuis (2012) examined reasons

why an individual may report criminal victimization. This reasoning can easily be applied to what influences an attorney to report the ethical misconduct of a peer.

Skogan (1984) examined criminal victimization and how cost-benefit relates to crime reporting. Skogan stated the decision to report is related to the direct experiences of those individuals involved (p. 120). Examples of factors that contribute to cost-benefit determination include: seriousness of the offence, insurance coverage, obligation and efficacy, victim culpability (pp. 120-123). Skogan found factors such as demographics contributed little to the crime reporting (p. 124). The decision to report criminal activity can affect the victims, bystanders, confidants and the community at large (p. 114) because non-reporting may become a potential source of resource misallocation (p. 115).

Although this article specifically referred to crime reporting the concepts could easily apply towards reporting ethical misconduct. The cost-benefit analysis for ethics would also logically rely the perceptions and experiences of the individuals involved just like in crime reporting. Skogan (1984) stated the most common excuse for not reporting a crime was the perception that it was not serious enough (p. 120). It is conceivable that likewise an individual would not report an ethics violation because of the perception that it was serious enough. The cost of reporting a less serious crime needs to somehow be reduced so that the benefit of reporting is more appealing regardless of severity.

The study by Skogan (1984) also examines crime reporting and victimization by utilizing the cost-benefit analysis. Many of the same reasons Skogan found for victims not reporting their victimization could also apply to attorney ethical misconduct and what factors may influence an attorney to report a peer.

Thompson, Sitterle, Clay, and Kingree (2007) studied criminal victimization among college students. The researchers wanted to examine what possible reasons may contribute to a victim on crime for not reporting the victimization. Thompson et al. found the most that the most commonly cited reason for not reporting was the perception that the incident was not serious enough to warrant reporting (p. 279). Other given reasons included: not wanting anyone to know what happened, not wanting police involvement, not wanting to get the offender into trouble, and feeling ashamed or embarrassed by the incident (p. 279). The researchers listed several reasons a low reporting rate is problematic: (1) apprehension of the offender, (2) victim access to social, medical, or legal services, and (3) higher psychological recovery rate (p. 277).

The results of this study imply there is a greater need for institutions to provide some type of intervention or educational program to assist victimized individuals (Thompson et al., 2007, p. 281). Although this study focused on criminal victimization, the same principles can be applied to victims of ethical misconduct. Victims of ethical misconduct can easily feel the stigma of shame and embarrassment. It is also plausible the other reasons listed by Thompson et al. (2007) also apply to those victimized by ethical misconduct. The problems associated with not reporting victimization may also apply to ethical misconduct. If an individual is violating ethical codes and is not reported, the perpetrator is likely to continue the behavior. Also, the victim may not have access to other services or remedies that may be available if the misconduct was reported.

This article relates to my research question of what factors contribute to attorneys reporting ethical misconduct of peers. Many of the reasons found by Thompson et al.

(2007) could be considered costs and may easily be applied to reporting of attorney ethical misconduct. A greater understanding of why an individual chooses to not report misconduct will give us a greater understanding of what barriers exist and what could be done to overcome those barriers.

Nofziger and Stein (2006) studied predictors of juveniles reporting their criminal victimization. They specifically focused on the juvenile's lifestyle and how that may inhibit the reporting of physical and sexual assault. The lifestyle elements that were the focus of this study was the victim's association with deviant peers and the victim's participation in deviant behavior (p. 372). The researchers found that victims were more likely to report if the victimization was physical in nature (p. 374). Also, the younger the victim was the more likely he or she would report victimization (p. 375). Females were generally more likely to report victimization than males (p. p. 374). The fear of injury or death increased the odds of reporting in all categories (p. 375).

Juvenile victims of crime have increased drugs and alcohol problems, are more likely to become offenders in acts of violence, are more likely to start fights or bully other kids, and are at a greater risk for depression, anxiety and suicide (Nofziger & Stein, 2006, p. 371). For these reasons it is important that assistance be available for those juvenile victims of crime. However, if the victimization is unreported it is less likely those individuals that need specialized services likely not have access to those services. Ethical misconduct may also be under-reported for various reasons. By understanding potential factors that might influence not reporting victimization, steps can be taken to help correct and alleviate this deficiency.

Although the article by Nofziger & Stein (2006) is about reporting criminal victimization by deviant juveniles it can help provide understanding to my research question about whether or not attorneys are willing to report their peer's ethical misconduct. Fear was both a deterrent and a reason for reporting juvenile criminalization. Nofziger and Stein's study showed that if the victim was afraid of some type of negative consequence or of some type of physical harm he or she may be more likely to report. This opens up the possibility that if an attorney is afraid of some type of negative consequence for not reporting he or she may be more likely to report their peer's misconduct.

Posick (2013) studied criminal victimization and factors that influence police reporting. Posick focused on how emotional reactions might help influence police reporting. Posick stated "emotions are one mechanism that impacts the way we behave and, to an extent, the behavior of those around us" (p. 3). An example of how emotions might influence reporting might include personal emotions and motivations or emotions perceived by friends and family of the victim who as a result of their observations report for the victim (p. 4). According to Posick a person cannot have fear without being fearful of someone or something; or a person cannot have anger without being angry at someone or something (p. 3). This concept links emotion to cognition and thus Posick theorized that emotions play an essential role in the decisions victims have regarding reporting to the police (p. 3). The results of the research showed emotional distress and intensity had a significant and positive relationship with police reporting (p. 12).

This study focused on how emotional state plays a part in a victim's decision to report. Feeling some type of emotional response is a natural reaction to any situation a person might experience. Knowledge about what motivates victim reporting helps provide a better understanding of how to fix the problem and provide services to assist victims (Posick, 2013, p. 1). If a victim of attorney ethical misconduct uses an internal cost-benefit analysis to determine to report their victimization, it is logical that emotions might somehow influence this internal debate.

This study relates to my question on what factors may contribute to an attorney's decision to report or not report the ethical misconduct of a peer. According to the literature fear is a substantial factor in a person's decision not to report misconduct. Posick (2013) takes a different approach to fear and theorized fear can also become a motivator to report criminal misconduct. It is important to note that there is a difference between a victim of crime and attorney ethical misconduct. However, this study helps the understanding of how fear can be a potential motivator as well as a deterrent.

Kidd and Chayet (1984) studied reporting of criminal victimization and factors that may inhibit reporting. Kidd and Chayet listed three main factors which are: (1) fear, (2) thoughts of personal and police powerlessness, and (3) threats of further victimization from authorities (p. 40). When a person is victimized they commonly experience fear and anxiety about their safety and security (p. 41). It is common for a victim to try to avoid or minimize that fear and thus they may avoid contacting the authorities because the victim does not want to face those fears (p. 41) Powerlessness occurs when the victims see themselves as helpless, venerable and impotent (p. 42). These feelings also

are reflecting to the authorities. A victim may not report crimes because of the belief that nothing can be done. (p. 43). After a person is victimized they want to protect themselves and avoid possible further victimization (p. 44). Once a person is victimized it is a common perception that their chance of future or continued victimization is greater (p. 44). The feelings of fear, powerlessness and fear of future victimization collectively contribute to a victim's decision to not report a crime (p. 46).

Although the focus of this article was on the reporting habits of victims of criminal activities, the principles can easily be implied to victims of attorney ethical misconduct. Victims of ethical misconduct might also experience fear, powerlessness, and fear of further victimization. These three factors can seem to relate to an internal cost-benefit analysis that ultimately influences how a victim decides on reporting or not reporting misconduct.

This study also helps answer what factors contribute to an attorney's decision to report or not report ethical misconduct. Fear plays an important role in criminal victimization reporting (Kidd & Chayet, 1984). This concept can easily be applied to the motivations behind peer reporting of attorney ethical misconduct.

Carcach (1997) studied the discrepancy between criminal incidents reported to the police and the numbers of people who responded to a victim survey regarding criminal victimization. The results of the survey showed reasons for not reporting crimes include: The crime was trivial, police could or would not do anything, the incident was a private matter, fear of reprisal or revenge, and in property cases nothing was actually stolen or damaged (p. 3). Those factors coincided with Skogan's (1984) factors affecting reporting

behavior, which include: seriousness of the victimization, possibility of compensation, attitudes towards police, past behavior of the victim, and the relationship between the victim and the offender (Carcach, 1997, p. 2). Carach found that factors that contribute to the decision to report crimes include: seriousness of the criminal incident, victim's previous experience with crime, likelihood of compensation, and general attitudes towards the criminal justice system (p. 3).

This study focused on the reporting habits of victims of crime in Australia. The findings supported previous American studies and also matched finding from future studies. The themes presented from this study can also be applied to the reporting of ethical misconduct. Victims need to feel confidence in the reporting procedure in that their complaint is taken seriously and will be properly investigated. Victims also need to feel that making a complaint will not result in some type of retaliation.

This study helps examine my question of whether attorneys are willing to report the ethical misconduct of a peer. Carcach (1997) found there was a difference between criminal incidents and victimization. Although this study focuses on Australian crime, the concepts could easily be applied to ethical misconduct. Carach's study also provides understanding towards the research question regarding what factors may influence the reporting of ethical misconduct.

Bryant and Williams (2000) studied alcohol and drug related violence and how that may influence non-reporting. Bryant and Williams cited several factors that may influence a victim's decision to report or not report a crime. These factors include the seriousness of the crime, the relationship between the victim and perpetrator, and lack of

confidence in the police (p. 2). The lack of confidence in police is further broke down into negative attitudes towards police such as fear or dislike, a belief that police could not have done anything, and a believe that police would not do anything (p. 2). Bryant and Williams found that alcohol and drug abuse by the perpetrators added additional factors that contributed to not reporting physical victimization. The most common reason was the perception that the incident was too trivial or unimportant, followed by the belief that the incident was considered a private matter and common behavior by the perpetrator especially when that person drank or used drugs (p. 4).

This article examined how drug and alcohol abuse by the perpetrator might influence reporting behavior of victims. The most common reason for not reporting was the trivialization of the substance abuse and subsequent victimization by the victim. Although this article studied criminal victimization and reporting it could also be used to help understand victims of attorney ethical misconduct. In small or close communities it would not be unusual for attorneys and clients to know each other. If an attorney has a substance abuse problem and the client victim knows about this, the victim may base the decision to report or not report ethical violations based on that factor. The most common reason stated by Bryant & Williams (2000) was the perception that the misconduct was too trivial to report (p. 4). The implication is that misconduct was the result of the substance abuse problem and because the outcome of the misconduct resulted in little harm reporting the incident is unnecessary.

This article helps address my research question of what factors may influence an attorney to report the ethical misconduct of a peer. Although Bryant & Williams (2000)

specifically focused on how substance abuse effects crime reporting, the same factors can be applied to reporting ethical misconduct. An attorney that has a substance abuse problem may want to stay out of the spotlight and thus would decline to report observed misconduct out of fear that his or her own personal issues could be examined.

Greenberg, Wilson, Buback, and Mills (1979) conducted an experimental study that examined how victim anger coupled with general advice given by a peer impact criminal reporting. The researchers staged a simulated theft in which the victims would find out who did it. The victims were advised by a peer to either “do something” or “do nothing” (p. 368). The researchers found that the associate’s advice along with the degree of anger of the victim were both important determinants of a decision to report the theft (p. 369). The advice given by the associate played an important role in reporting. Victims were more likely not to report if the advice was to “do nothing” (p. 369). Victims who were given the advice to “do something” had a wider range of reported activities. Because of the vagueness of the phrase “do something”, the actions of the victims ranged from reporting to the police, notifying company security, or confronting the perpetrator (p. 369). Feeling “hot”, or angry, also impacted the decision to report to police more than a “cold”, or calculating feelings (p. 370). This implies the more a victim thinks about the costs of reporting the less likely they are to report the crime.

This study focused on the emotional and social aspects of reporting criminal victimization. This study showed how important advice and guidance by a third party might be for the victim. The study also shows how strong emotions might impact decisions victims make. Although criminal victimization is different than victimization

of ethical misconduct, the concept of third party influence and emotions could still apply. If a person basis a decision though an internal cost-benefit analysis it is logical to assume that strong emotions might impact this decision making process. Advice might also impact this internal cost-benefit analysis by shifting focus to a specific cost or benefit.

The study by Greenberg, Wilson, Buback, and Mills (1979) relates to my research question by examining how peer interactions influence reporting. Although my focus is whether or not an attorney is willing to report the ethical misconduct of a peer, many similarities can be found. Relationships within any community can easily influence an individual's decisions. It can be common for an attorney, especially in a small or rural community, to work regularly interact with the same attorneys. These close relationships and peer interactions could influence the outcome of an attorney's decision to report ethical misconduct of those peers.

Coulter and Chez (1997) conducted a study focusing on victims of domestic violence and whether or not those victims support mandatory reporting. The study included a small sample size of women who are participating or have recently completed a support group program. The results of the study showed overwhelming support for mandatory reporting of domestic violence, especially by medical personnel (p. 354). The results are in contradiction to belief by victim advocates for abused women that mandatory reporting would give victims fear of safety and confidentiality (p. 350).

Although this study was limited by its small size and gender specificity, it still provides great insight towards victimization and reporting. There is a vast difference between domestic violence and ethical misconduct, yet the concerns of retaliation, breach

of confidentiality, and general safety remain the same. The study conducted by Coulter and Chez (1997) provides insight regarding general attitudes about mandatory reporting. It raises the question on whether or not mandatory reporting would be beneficial in cases of attorney ethical misconduct. Should direct observers of attorney ethical misconduct, such as opposing attorneys, paralegals, or judges be required to report observed or experienced ethical misconduct? Coulter and Chez's study implies the victims would be favorable to mandatory reporting

This study helps examine my question on whether attorneys are willing to report the ethical misconduct of their peers. Although Coulter and Chez (1997) examined mandatory reporting within domestic violence the study may provide insight towards reporting ethical misconduct of attorneys. Some jurisdictions have mandatory provisions in the attorney ethical codes. A further study could be directly applied towards attorney misconduct regarding its feasibility.

Akers and Kaukinen (2008) also studied reporting behaviors of domestic violence. Data was taken from the Canadian General Social Survey (p. 163). The results of the study showed that married women are less likely to report domestic violence because of their strong emotional and financial ties (p. 166). The study also showed women with children living in the home was more likely to report domestic violence (p. 166). The implication is that if a person depends on the perpetrator they are less likely to report victimization; whereas if a victim has another that depends on him or her, then they will report the victimization in order to protect the dependent.

The focus of this study was domestic violence and how close relationship might affect the decision to report victimization. Although domestic violence is very different from ethical misconduct the examination of intimate relationships is important. Attorneys, especially in smaller communities, often represent people they know well. This might include family, friends, neighbors, and social acquaintances. This poses the question on whether this categorization of legal clients would be willing to report attorney ethical misconduct because of the client's relationship with the attorney. The Akers and Kaukinen (2008) study implies that the answer depends on the nature of the intimate relationship.

This study helps address the question on whether attorneys are willing to report the ethical misconduct of a peer. Akers and Kaukinen (2008) focused on close relationships in reporting. An attorney may be less inclined to report the ethical misconduct of a peer he or she knows or has some type of professional relationship with. Would an attorney report a colleague and hold that person to the same standard as an attorney with no ties and is virtually a stranger?

The literature strongly suggests reporting criminal, and in our case ethical misconduct, promotes the apprehension of the perpetrators. Goldberg and Nold (2001) examined this concept from a different angle. They conducted a study that examines whether victim reporting deters criminal activity. The logic behind this study is that because apprehension of perpetrators largely depends on the victim reporting the incident then reporting should deter perpetrators (p. 424). Goldberg and Nold examined National Crime Panel victimization surveys and found that their hypothesis was supported (p.

429). The researchers found the probability of reporting theft deterred burglars and that individuals that were more likely to report victimization were less likely to become victimized (p. 429).

This study put an interesting spin on a commonly supported, reoccurring theme of criminal victimization and criminal apprehension. Even though this study was predictive in nature and had many variables, the concept of the importance of reporting misconduct can clearly be seen. A bully is probably not going to pick on a person that will likely turn them in to authorities. Goldberg and Nold (2001) support this concept with their research. A victim of attorney misconduct might protect himself or herself if there is a perception that they would not tolerate misconduct. Although this might seem logical, great care must be taken since this concept could easily be transformed into a situation where the victim is blamed for “allowing” the misconduct to occur.

Felson, Messner, and Hoskin (1999) also studied victim reporting of domestic violence. The researchers examined victims who had intimate relationships with the perpetrator as well as third party reporting of incidents. The researchers examined data from the National Crime Victimization Survey. The results of the study showed that social relationships had significant effects on third party reporting (p. 941). Third party observers believe minor conflicts between domestic partners are private matters that do not require police intervention (p. 942). It is also believed that third parties have limited knowledge of the domestic relationship and potential facts, which then affects their reporting (p. 942). The researchers also found that domestic relationships itself did not affect a victim’s decision to report an assault to the police (p. 942). Researchers did find

these results surprising and cautioned that a generalization should not be drawn from these results (p. 943). Felson, Messner and Hoskin theorized that the need for police protection may be greater with intimate relationships and thus if an assault is reported it is out of necessity (p. 943).

This study focused on assault within a domestic relationship. Although domestic abuse is very different from attorney ethical misconduct, lessons can be learned from the reporting habits shown in this study. Third party observers may be less likely to report because of the perception of the relationship between attorney and client. A third party, perhaps a friend or family member, may not report ethical misconduct because they believe the misconduct is minor or because they do not have all the facts. A client might choose to report in spite of the normal fears of retaliation because of the belief that the matter is serious enough to warrant a report or because urgency demands the victim report.

This study helps address the question on whether attorneys are willing to report the ethical misconduct of their peers. The study by Felson, Messner, and Hoskin (1999) focused on third party reporting habits. An attorney may often be a third-party witness to a misconduct violation. This study implies that if a violation is considered minor then the observing attorney may be less likely to report the misconduct.

Xie, Pogarsky, Lynch, and McDowall (2006) conducted a study of victim reporting and its relationship to past police involvement to prior victimization. The researchers examined survey data from the National Crime Victimization Survey. The results of the study showed that past police involvement with a victim increased the

likelihood of future reporting by that same victim (p. 490). The finding also showed the probability of victim reporting was unaffected by police investigation and whether an arrest was made (p. 495).

This study implies that a prior positive relationship with the police positively affects reporting behavior of victims of crime. Previous experience helps promote trust and confidence. The legal profession could also utilize this concept regarding the reporting of ethical misconduct. If the various State Bar Organizations promote or mandate peer reporting of observed ethical misconduct, having a prior relationship between the State Bar and attorneys might promote feelings of trust and confidence. These positive feelings by attorneys might then help promote honest reporting of ethical misconduct.

This article helps address the question on whether attorneys are willing to report the ethical misconduct of their peers and what factors contribute to the decision to report or not report the misconduct? Although this study focused on the reporting of criminal victimization, it may provide insight on reporting ethical misconduct. A strong, positive relationship with the State Bar may help an attorney make the decision to report the ethical misconduct of a peer.

Bickman (1976) conducted two studies based upon the theory that demeanor or attitude of the authority figure effects whether a person reports a crime, specifically shoplifting. The first study showed that a person is more likely to report shoplifting to a shop clerk that had a more pleasant personality less likely to report to an unpleasant or rude shop clerk (p. 79). The second study involved only one authority figure instead of

multiple clerks as in the first study. Random participants were treated unpleasantly or rudely. The results of the second study were that there was no difference in reporting shoplifting to an officer with a more pleasant personality. The study implied that the demeanor was not a factor in non-reporting of crimes but instead demeanor affects to whom the crime is reported (p. 81).

This study showed how the demeanor of authority figures might affect reporting of misconduct. What was interesting is that negative demeanor did not seem to deter reporting but instead affected who would receive the report. This concept becomes important for organizations and governmental entities that rely on community or peer reporting. The decision of an attorney that wishes to report a peer's ethical misconduct could be a difficult decision for an attorney to make. If a reporter is uneasy in reporting misconduct any excuse may be taken to delay or not report the misconduct.

This study helps answer the research question on whether attorneys are willing to report the ethical misconduct of their peers and what factors contribute to the decision to report or not report the misconduct? If the cost versus the benefit of reporting is fairly equal the slightest variable may theoretically influence the decision to report. If the organization or even individual staff member receiving the report appears to be unsupportive the reporter may decide it is not worth his or her effort. Attitude can also potentially give an impression to the reporting on how serious the organization takes the complaint. As stated earlier, perception can be a factor in decision making processes.

Literature Justification

The current literature used for this study included themes such as whistleblowing, peer reporting, victimization, victim reporting, crime reporting, and ethics.

A large portion of the whistleblowing literature was specifically applied to the business world and the field of economics. However, when the concept of whistleblowing is examined with other variable such as victimization, a more complete concept is formed. One of the primary reasons whistleblowers chose not to report misconduct is fear. Victims of crime also stated fear as a similar reason for not reporting crimes. Fear included both physical and psychological factors. Fear of retaliation of some form was a common reason for not reporting regardless of the profession or field of study. Both business and criminal reporters also failed to report because they do not want to become involved. These concepts can also apply towards ethical misconduct. The theme of victimization was more commonly associated with crime reporting. Even though there was a considerable difference between violent crime, whistleblowing, and ethical misconduct they all share common concerns. Some examples include fear of retribution, embarrassment, unwillingness to become involved, and lack of confidence in the system. All of these factors contribute to the internal cost-benefit theme each person might make when considering whether or not to report misconduct.

One of the key concepts of my study relates to peer reporting or whistleblowing. The definition of whistleblowing was very similar across several different articles, which implies the concept is generally accepted. Bruns, Jackson, and Zhang (2012) defined whistleblowing as “the reporting by employees of the observed misconduct of others” (p.

9). Kaptein (2010) defined whistleblowing as the “disclosure of organization members of illegal, immoral, or illegitimate practices under the control of their employers to person or organization that may be able to effect action” (p. 515). Mansbach & Bachner (2009) defined whistleblowing as “the disclosure by a person working within an organization of acts, omissions, practices, or policies by persons within the organization that wrong or harm a third party with the intention of the disclosing a wrongdoing to an end and to prevent further such misbehavior” (p. 18). The definitions all share several key concepts. First the reporter was employed in some capacity by the organization that is perpetrating some type of misconduct. There is also some type of personal knowledge or observation regarding the employee’s organization and those observations are being reported to a third party.

To better understand attorney peer reporting of ethical misconduct I examined the literature of related issues, such as whistleblowing and victim reporting of criminal activity. In both whistleblowing and criminal victimization there were similar reasons why the observer or victim choose not to report the misconduct. One of the most common reasons was fear. Bruns, Jackson, and Zhang (2012) stated a peer-reporting system needs employees that are willing to report and cooperate with investigations but a reason often attributed to none reporting is a fear of retaliation (p. 9). Verschoor (2012) also stated a possible reason for why a person may choose not to report observed ethical misconduct is fear of retaliation and these types of retaliation range from physical harm, online harassment, harassment at work and at their home, hour or pay cut, and job shift or demotion (p. 14). In the study conducted by Cassematic and Wortley (2012), the

researchers found fear of reprisal contributes to the decision of observers to remain silent but if the observer decides to report the misconduct the fear of reprisal becomes a non-issue (p. 630). This implies that the initial barrier of fear may prevent the reporting but if that fear is overcome it no longer becomes an issue for the reporter. Green and Lating (2004) stated that the act of whistleblowing might result in some type of repercussion, which includes: the organization believing the whistleblower is not loyal or traitorous, damage to the reputation of both the organization and the whistleblower, physical abuse, blacklisting, premature termination, lawsuits, and a depletion of the whistleblower's personal assets (p. 221). Cornock (2011) listed three categories of reasoning for not reporting ethical misconduct, the first being fear of what will happen to whistleblowers as a consequence (p. 21). Kidd and Chayet (1984) examined criminal victimization and found three main factors that inhibit reports and fear was listed as the first one (p. 41). Carcach (1997) also examine victims of crimes and recognized that fear of reprisal or revenge as a factor for not reporting the misconduct (p. 3). In all of these studies there appears to be an aspect of fear that influences the decision to not report misconduct. Using a grounded theory that utilizes cost-benefit themes fear can be seen as a substantial cost in the decision making process.

Literature Review of Related Methods

For my study qualitative methodology is the optimal choice. A qualitative methodology allows for open-ended responses to inquiry. A qualitative methodology also allows for the study of topics or variables that may not easily be measured. Patton (2002) stated qualitative methods “facilitate study of issues in depth and detail” while

quantitative methods “require the use of standardized measures so that the varying perspectives and experiences can be fit into a limited number of predetermined responses” (p. 14).

There are several different design options with qualitative methodology; such as case studies, phenomenological studies, grounded theory studies, etc. Bowen (2006) stated that the qualitative research design that uses inductive analysis as a principal technique is grounded theory (p. 12). He further stated that this design needs continual interaction between data collection and analysis to produce a theory during the research process (p. 13). I believe this shows how flexible qualitative grounded theory can be. Bowen (2006) also explained that themes generate the grounded theory design and those themes emerge from the data during analysis (p. 13). That statement is particularly useful to my research study. I believe the responses from my inquiry will show a theme that cost versus benefit does influence reporting habits.

Ingham-Broomfield (2015) examined the use of qualitative methodology specifically within the medical field. Qualitative research is used to examine subjective experiences by using non-statistical methods of analysis and is associated with naturalistic inquiry that explores the complex experience of human beings (p. 35). The difference between qualitative methodology and quantitative methodology is that qualitative research explores a subjective pathway that helps to develop theory, whereas quantitative research is based on scientific method (p. 35). Qualitative designs do not use hypotheses but instead state an observational question to be explored which narrows down to a specific one sentence statement of the problem (p. 35).

This article helps explain the differences between qualitative and quantitative research methodologies. In my study, I wanted to “explain the complex experiences of human behavior” by having attorneys discuss their motivation for reporting ethical misconduct. Although I believe a pattern exists, those specific experiences are subjective to each attorney. A qualitative study helped best explore these experiences by allowing each subject to explore their own feelings and experiences.

Qualitative research methodology can be versatile. Glaser (2002) examined the use of the qualitative methodology design of ground theory to create general concepts of social patterns in research data (p. 1). Glaser stated that conceptualization is the core category of grounded theory and research that utilizes grounded theory can use its own concepts from the data (p. 2). According to Glaser grounded theory can be utilized with various methods such as experiment, survey, content analysis, and all qualitative methods (p. 2).

Due to the versatility of qualitative research and the grounded theory design, the researcher is able to explore their own concepts instead of relying on concepts created by other researchers. An example is that grounded theory design may utilize various tools seen in both qualitative and quantitative methodologies, such as surveys, experiments, etc. (Glaser, 2002). My research can examine themes taken from cost/benefit analysis, which is traditionally a quantitative design, and apply those themes to the peer reporting of attorney ethical misconduct as a qualitative grounded theory design. This allowed my study to have the flexibility of implementing open ended questions to variable that are not easily measured, specifically opinions and attitudes.

Qualitative designs focus on the natural behavior of people and their perceptions of the social world, which caused an increasing use of this methodology in social policy and health care studies (Lub, 2015, p. 1). One of the reasons for this trend is an acknowledgment of the limitations experiment based research has in social sciences (p. 1). Lub stated that one concern that has historically been associated with qualitative research is that of validity. Validity was defined as “the degree to which the indicators or variables of a research concept are made measurable, accurately represent that concept” (Lub, 2015, p. 2). Lub acknowledged there are many different opinions on how validity can be approach and that often the approach is determined by the philosophy of the research and of the nature of the research.

This article demonstrates how vast opinions range for a straight forward concept of methodological validity. However, I believe this article also shows the flexibility of qualitative design. Using a qualitative methodology to study the peer reporting habits of attorney ethical misconduct is only option since conducting an experiment on the topic would proof challenging and run the risk of facing numerous validity issues. Validity should be more easily obtained by using a qualitative study because of the specific nature of this research.

Moore (2010) examined the qualitative methodology of classic grounded theory and outlined changes she made to the methodology in order to better apply better apply to contemporary educational research. Moore (2010) explained that she encountered difficulties using the classical grounded theory as a methodology because of the “limited directions given to many aspects of the research process” (p. 42). In order to address

those limitations Moore applied changes to the classical design. Moore (2010) first adapted the literature review. Under the classic methodology the recommendation was to review general literature in the area of study, however Moore implemented a more focused initial literature review. Another area Moore (2010) altered is that of a pilot study. Under the classic methodology a pilot study is not mentioned or recommended, whereas Moore believed a pilot study is an important part of grounded theory (p. 46). Data analysis was also modified. Moore (2010) explained that under the classic approach data should be analyzed and compared constantly when in the gathering process, however Moore believed utilizing a staged approach would be more timely and efficient (p. 47).

The analysis and modification of the classic grounded theory by Moore (2010) helps demonstrate the flexibility this methodology has. I believe this shows that a modified form of this methodology can be utilized to help explain my research questions.

Parker, Chang, Corthell, Walsh, Brack, and Grubbs (2013) used the qualitative methodology of grounded theory to study peer reporting of problematic counseling students. In a grounded theory methodology the intent is to “move beyond description and to generate or discover a theory for a process or an action” (Creswell, 2013, p.83). The goal of the peer reporting study of counseling students was to “gain an interpretive understanding of the processes, contexts, conditions, phases, actions, and consequences of the reporting phenomenon” (Parker et. al, 2013, p. 113). The goal the researchers attempted to develop was how experiences and perceptions of student reporters influenced their decisions to report misconduct. Parker et al. (2013) found students were generally willing to report misconduct of their peers despite scarce, unknown, or

nonexistent peer reporting policies (p. 122). However the researchers also found that the reporters were often discouraged from future reporting if faculty took no actions or if they were encouraged to personally confront their peer.

The use of the ground theory methodology enabled the researchers to conduct a broad study, utilizing specific interview questions in order to find the data needed to accomplish the goal of better understanding student peer reporting.

Description of Methodology Literature

For my study I utilized a qualitative methodology of grounded theory, which borrowed themes seen from cost-benefit analysis. The reason this path was chosen was because a true cost-benefit analysis would be difficult to assign values to individual opinions based on perceived costs and benefits. The qualitative methodology should allow for greater flexibility in obtaining subjective answers. Moore (2010) showed that the qualitative methodology of grounded theory had the potential of flexibility by allowing the researcher to provide modifications to classic methodology. Parker, Chang, Corthell, Walsh, Brack, and Grubbs (2013) showed how grounded theory can be successfully used to study the topic of peer reporting of counseling students. This application should also be applicable to my topic of peer reporting of attorney ethical misconduct. The study by Bracke, Edwards, Metz, Noordhuizen, & Algers (2008) showed the challenges of assigning value in cost-benefit studies. Valuation is one of the main concerns that lead to my consideration of utilizing grounded theory.

The variables I used to conduct this literature review included: attorney/lawyer, ethics, ethical misconduct, whistleblowing, peer reporting, victimization, and crime

reporting. I also conducted searches on qualitative methodology, grounded theory, and cost-benefit analysis. All of the terms encompass different fields of study; ranging from public administration, criminal justice, sociology, and economics. However, one common theme that ties these fields of study together is that of personal decision. The decision to report a peer's ethical misconduct may potentially have long lasting effects on the reporter's career. The concerns given to reporting peers or reporting criminal victimization are similar among these different fields of study. It is logical that this pattern might extend to the field of law and help explain peer reporting habits of attorneys regarding ethical violations. The different theories and methodologies I examined also vary among the fields of study but still helps explain how individuals come to make the decisions they make and should be applicable to my specific area of study.

Chapter Summary

Peer reporting is very similar to whistleblowing in that an employee is reporting on the misconduct of another employee. The reasons individuals choose to whistleblow or abstain from whistleblowing are similar across various professions and fields of study. Victims who choose to report or abstain reporting their victimization also share common concerns for their rational. One of the most common reasons cited for not reporting is fear of retaliation (Bruns, Jackson, & Zhang, 2012; Cornock, 2011; Green & Latting, 2004; Kidd & Chayet, 1984; and Verschoor, 2012). Since fear is such a strong motivator there must be reasons that contribute to overcoming this fear so reporting might occur.

The concept of justice promotes reporting behavior (Victor, Trevino, & Shapiro, 1993). Goldberg and Nold (2001) compared reporting victimization to standing up to a bully. Whether it is an employee who whistleblows on the misconduct of his or her organization or a professional who peer-reports misconduct to his or her professional organization they both want to improve the organization in which they work. This sense of duty or responsibility to the public helps overcome the fear of retaliation.

The review of the literature has indicated that the main concern for individuals reporting victimization or misconduct is fear. Examples of fear include confidentiality, assigning blame to the reporter, identification and isolation of the reporter, and removal from the workplace (Cornock, 2011, p. 21). Fear of some type of retaliation was a common concern. Examples of specific retaliation included getting the cold shoulder from colleagues, exclusion from activities, verbal or physical abuse, denial of promotion or pay raises, demotion, or threat of or actual termination (Bannon, Ford & Meltzer, 2010, p. 57). Victims of crime commonly experience fear and anxiety about their safety and security, which results in the victim trying to avoid or minimize that fear by avoiding contacting the authorities because the victim does not want to face those fears (Kidd & Chayet, 1984, p. 41).

Although there appears to be similarities between whistleblowing, criminal victimization, and reporting of ethical misconduct it was unknown if those similarities might apply to attorney peer-reporting of ethical misconduct. Does the same barriers and motivations apply to attorney peer-reporting as they do to whistleblowers or crime victims? Each individual has personal limits in which he or she is willing to tolerate any

activity. It was unknown whether these limits are similar with attorneys that witnessed ethical misconduct. Does a professional's sense of justice overcome fear?

There was a gap in peer-reviewed literature regarding the reporting of ethical misconduct of attorneys. This study helped fill this gap by focusing on what motivations and concerns could affect an attorney's decision to report the ethical misconduct of a peer. There was extensive literature regarding whistleblowing and victims of crime reporting. However, there was little supporting literature for attorney peer-reporting. This study will help not only fill the literature gap for attorneys but also could help provide a basis for studies in peer reporting within other professions.

Many professions rely on self-governing of their members. This not only helps regulate the actions of a professional organization's members but also helps ensure quality control of its members. However, this only works if the professional organization has the authority to discipline its members and most importantly if they know about misconduct.

Attorney peer reporting is important because it helps maintain the integrity of the profession. The state bars are responsible for overseeing the integrity of the attorneys within its jurisdiction. Not only is this important for correcting or disciplining those attorneys that violate the code of ethics, but also it is important so that the Bar can establish educational programs that may help teach attorneys and prevent ethical misconduct. In chapter 3, I will describe the research method used for this study and describe how data will be collected and analyzed.

Chapter 3: Research Method

The purpose of this qualitative study was to understand the reasons attorneys choose or not choose to report the ethical misconduct of peer attorneys. The question I examined was whether licensed, practicing attorneys within the State of Michigan are willing to report other attorney ethical misconduct and what factors influenced the decision to report or not report the ethical misconduct? This study helped address potential ethical concerns that the profession may have, specifically peer reporting of ethical violations. If the proper authorities are aware of problems and concerns then it may be more likely steps could be taken to correct problems and address concerns, and prevent future ethical misconduct.

In this chapter I will describe the research methodology used for this study. I will begin by explaining why a qualitative methodology was used for this study and how I decided on a specific design. I will then explain my specific role as the researcher. This chapter will also describe my strategy for data collection, which includes sampling, and specific data collection procedure. Procedures for data analysis will also be discussed which includes how the study will be trustworthy. The final major section of this chapter will discuss ethical procedures applied to this study.

This study works under the basic assumption that ethical misconduct not only damages the reputation of individual lawyers but also damages the perception of the entire profession. Since the legal profession relies on internal monitoring and regulation, I believe the best way to address the problem of ethical misconduct is to better understand what motivates other attorneys to report their peer's ethical misconduct and

what may prevent reporting. Creswell (2009) stated that qualitative research “is a means for understanding the meaning individuals or groups ascribe to a social or human problem” (p. 4). I believe the reasoning an attorney has for reporting or refraining to report ethical misconduct is subjective to that individual’s beliefs, morals, experiences, and perceptions. For this reason, it would be difficult or impossible to measure responses in a quantitative manner. The logical design for examining this topic must be from a qualitative perspective.

The research must guide the methodology used for any study. Because of this important concept it was vital to use a method that could assist in the development of a theory that could help attorneys and various state and local bar organizations identify and address issues or concerns regarding the peer reporting of attorney ethical misconduct. Grounded theory is a research method that results in the generation of a theory directly from data by producing a hypothesis that explains the relationship between concept concepts or behavior, which forms the theory (Charmaz, 2014). I believe attorneys weigh perceived costs of reporting a peer against perceived benefits of reporting a fellow attorney’s ethical misconduct.

According to Creswell (2007) a qualitative researcher is the key instrument in collecting data through examining documents, observing behavior, and interviewing participants and may use instruments with open-ended questions typically not developed by other researchers (Creswell, 2007, p. 45). Creswell (2012) also stated that grounded theory is also used when you want to study some process (Creswell, 2012, p. 423). I believe the best grounded theory design for my study is that of the constructivist design.

The focus in this design typically is on the meaning as prescribed by the participants (Creswell, 2012, p. 429). This design focuses on the “views, values, beliefs, feelings, assumptions, and ideologies of individuals rather than gathering facts and describing acts” (Creswell, 2012, p. 423). As the researcher, I believe it is my duty to objectively explore this subject and report the findings in a concise and accurate manner.

The setting and sample I used for this study was Michigan licensed attorneys that are in good standing and are actively practicing law within the state. I used an open-ended questionnaire that was distributed to the attorneys registered with the state bar association. I sent out questionnaires to a sampling of attorneys taken from the membership listing who were within the state.

I also utilized an online survey tool that was accommodating to open-ended questionnaires. By utilizing online tools participants were able to answer the questions at their convenience. Online data would also help minimize expense as well as help in speed and accuracy of data collection. I also allowed answers to be mailed to me in case there are participants do not feel comfortable using online tools.

Data analysis was conducted by first entering the responses into a qualitative research program such as NVivo or an equivalent program. I then developed coding based on the responses. Code is defined as “a word or short phrase that symbolically assigns a summative, salient, essence-capturing, or evocative attribute for a portion of language-based or visual data” (Saldana, 2013, p. 3). This helped assist in identifying themes and patterns, which in turn will help provide the answers to my research questions.

In order to insure accuracy the issue of trustworthiness, or validation needs to be addressed. Cresswell (2009) stated that qualitative validity means “the researcher checks for accuracy of the findings by employing certain procedures” (p. 190). The strategies Cresswell (2013) identified include: peer review or debriefing; prolonged engagement and persistent observation; triangulation; clarification of researcher bias; external audits; rich descriptions regarding transferability; and member checking (pp. 250-252). Cresswell (2013) recommended that in qualitative research that two of the above-mentioned strategies be utilized. My study was peer reviewed as required by the dissertation process. I also attempted to clearly identify any potential bias. Finally, I utilized coding software to ensure the accuracy of the interpretation of the data received.

In order to protect the participant’s rights, I created a cover letter that will accompany the questionnaire. The letter concisely explained the purpose of the research and provided assurances to the participants. One of the main assurances that was important for a project regarding reporting ethical misconduct is that of anonymity. The participants must feel secure that their answers are anonymous and are only being used for purposes research.

The results of questionnaire will be presented in chapter four of this dissertation and the analysis with discussion shall be presented in chapter five. Appendixes will be included so that the exact questions may be viewed. This will help provide transparency and validity to the study.

Research Design Derived Logically from the Problem Statement

The question I examined was whether licensed, practicing attorneys within the State of Michigan are willing to report other attorney's ethical misconduct and what factors influenced the decision to report? Specifically, why does an attorney choose to report or not report a peer's ethical misconduct? Does an attorney weigh perceived costs against perceived benefits when making this decision? If so what are those perceived costs and benefits? Previous studies in related fields such as whistleblowing and criminal victimization share common reasoning for reporting and not reporting misconduct. Do these common themes also apply to peer reporting of ethical misconduct and does those themes relate to the possible cost versus benefit?

The central concept of my research was that of peer reporting of attorney ethical misconduct. Peer reporting has been defined as occurring "when group members go outside their group to report a member's misconduct" (Trevino and Victor, 1992, p. 39). A closely related concept is that of whistleblowing. Near and Miceli (1985) define whistle-blowing as "the disclosure by organizational members (former or current) of illegal, immoral, or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action" (p. 4).

Qualitative research is defined as a means for exploring and understanding the meaning individuals or groups ascribe to a social or human problem (Creswell, 2009). Creswell (2013) also stated that there is no agreed upon structure for how to design a qualitative study (p.49). Qualitative research tends to be more open ended. An open-ended study allows a researcher to explore a topic or a question that there is no known

answer. For my study reasons for reporting or not reporting a peer attorney's ethical misconduct is likely to be based on individual perceptions, opinions, and beliefs. These concepts are not easily known because they may be different depending on the individual answering the question. The flexible design along with the open-ended questions shows the strengths of using qualitative design for this particular topic of study. I do not believe a quantitative research design would be effective for this study. I believe the data and its analysis may be too dependent on interpretation. It would also be very difficult to establish a measurable point for comparison and analysis.

The "grounded theory" approach would be the best approach for this study. Creswell (2013) stated, "the intent of grounded theory is to move beyond description and to generate or discover a theory for a process or an action" (p.83). In this study I want to establish a theory that an attorney who knows of a peer attorney's ethical misconduct or violation chooses to report or not report that misconduct to the proper authorities based on perceived costs and benefits of reporting their peers. The literature shows consistency in whistleblowing cases that perceived motivations and fears influence the reporting process. I will attempt to frame this issue to reflect whether attorney reporters consider costs and benefits of reporting a peer attorney. I believe a new theory explaining attorney peer reporting of ethical misconduct would be appropriate.

One option I considered was that of a phenomenological approach. A phenomenological study describes the "common meaning for several individuals of their lived experiences of a concept or a phenomenon" (Creswell, 2013, p.76). The purpose would be to explore what the experience of reporting a peer had on the attorney and

specifically how they experienced it (Creswell, 2013). Under this methodology the focus would be on the group experience instead of specific, individual experiences. The study would look for common or shared experiences that resulted from the phenomenon of ethical misconduct. However I believe this approach would not be successful because each individual may experience different circumstances and scenarios as well as each person may have different perceived costs and benefits of their decision to report a peer's misconduct.

Another option I seriously considered was that of a narrative design. A narrative approach involves collecting stories from individuals that tell of their experiences in a chronological order (Creswell, 2013). In my study I would have interviewed individuals regarding their experiences and decision making process. I would focus on their personal feelings and reasons why they did or did not report the incident. One problem I had with this approach is that it becomes more personal if a face-to-face interview is conducted. My intention is to make this as anonymous as possible in order to promote better participation and candid answers. There is a perceived stigma in reporting misconduct and my approach would assist in minimizing that stigma. Also a new approach is needed in order to utilize themes found in cost-benefit analysis in a qualitative approach.

For this study I used the qualitative method of research. Qualitative research can be used to study individuals and groups and find solutions to their social problems (Creswell, 2009). This design provided data that I interpreted based on the attorney's answers. A quantitative design would not be as effective because I believe a qualitative design will provide a better understanding of the peer reporting habits of attorneys that

have knowledge of other attorney's ethical misconduct. I want to further explore whether an attorney who decides to report or not report another attorney's ethical misconduct weighs perceived benefits against costs of reporting. The data has the potential to be highly subjective, based on the subject's beliefs or perceptions. The interpretive nature of a qualitative design will assist in the discovery of the themes likely to be presented in the data. A quantitative design would be difficult to utilize because of the challenges in assigning value to various beliefs and opinions.

Role of the Researcher

As an observer, it is my role to accurately describe and record answers given by the attorneys that choose to answer the questionnaire for this study. My specific roles included preparing and presenting the questionnaire, interpreting the results, and presenting the findings with accuracy and neutrality.

My role as the research during the data collection procedure was to ensure that the data was obtained legitimately and ethically. I believe an accurate collection procedure helped promote confidence in the subjects as well as validity in the study. All data was sent directly to me either through electronic means such as email or online survey tools or through the mail. This provided a clear chain of custody and eliminated data being lost or contaminated. It was also my responsibility as the researcher to maintain the security of the data once it is collected. Digital data was backed up on multiple memory cards. The memory cards, along with any hard copies of questionnaires mailed to me, was stored in locked, fire-proof safe for the required amount of time recommended by the University. After the required amount of time has elapsed the data will be destroyed.

As a researcher I do not have any relationships involving power over potential relationships. However, there is a potential that I may have a personal or professional relationship with participants. My study targeted attorneys that are licensed in good standing within the state of Michigan. I am also an attorney that is licensed in good standing within Michigan. I do not believe this should be an issue since the questionnaires will all be anonymous.

Since I am an attorney in good standing within the state of Michigan I must acknowledge the potential for researcher biases. As a professional I strive to help promote integrity in the practice of law. This desire was a strong motivation for designing this study. However, I believe any biases can be easily managed and separated from the study. First of all, I am not practicing law at this time and I am currently dedicated towards education. I have never witnessed, been a party to, or a victim of attorney ethical misconduct. Finally, the data I seek to obtain is only for the purposes of education and potential professional development. No one person, firm, or case scenario was being targeted.

Setting and Sample

My strategy for collecting data was to keep it as anonymous as possible. The reason for this approach was because of the sensitivity of the subject. I believe ethical misconduct has the potential to scare away potential research participants, especially if a colleague or the participant was involved. The subject of whistleblowing or reporting can carry negative stigmas. The research participants must feel safe in their participation. An online survey tool allowed me to collect data without the participants having to see

another person. It also allowed them to participate in privacy. For those that wished to mail a copy of the questionnaire to me the instructions made it clear no return address or identifying markings were to be included for their own confidentiality.

In order to make my study practical I had to specify a reasonably obtainable population. The population I studied was licensed, practicing attorneys in good standing with the state bar located in the state of Michigan. Since the subject of my study is the peer reporting habits of attorney ethical misconduct, it was only logical to require being an attorney a requirement for the study. However, merely being an attorney is not specific enough. A person can have a law degree and thus be an attorney but may have different primary profession such as judges, professors, politicians, etc. Ethical issues in education or in politics would be a different study in my opinion. Having the requirement of practicing attorney eliminated this confusion and prevented the inclusion of ethical issues in other fields of study. In a similar manner having the requirement of the subject being a licensed attorney ensured that the subjects in the prescribed jurisdiction and were practicing. This requirement eliminated students and individuals not under the authority of the State Bar. It was possible that an individual is licensed but not practicing, however, the before mentioned practicing requirement helped address this issue. I also included the requirement that the population of the study was in good standing with the State Bar. This ensured the subject is not under investigation or being disciplined by the State Bar for violations, including ethical violations. I believe this helped minimize prejudiced responses and promote accuracy. The final requirement was that of being in the state of Michigan. This study could easily be replicated in any state

but Michigan was used simply because that was where I was located at the time of the study.

Creswell (2013) recommended in grounded theory studies that a sample size should include 20 to 30 individuals to develop a well saturated theory (p. 157). However, Creswell went on to state that the number may be much larger if so desired (Creswell, 2013). According to the Michigan Bar Association as of 2016 there were 35,042 active members within the state (State Bar of Michigan, 2016). I selected participant from different geological within the state. It should be noted that I used a questionnaire design whereas the recommendations from Creswell regarding sample size was for an interview design. Patton (2002) stated “there are no rules for sample size in qualitative inquiry” (p. 244). Patton further stated that sample size depends on “what you want to know, the purpose of the inquire, what’s at stake, what will be useful, what will have credibility, and what can be done with available time and resources” (Patton, 2002, p. 244). Most of the studies referenced in the literature review utilized interview procedures. It is my intention to construct the questionnaire as an interview but on paper. The reason for this approach was due to time restraint issues I anticipate for the participants. Although I believe the statements by Patton showed I do not need a set number of participants, I believe using the guidelines for interview sampling recommended by Creswell was appropriate.

The recommended sample size in grounded theory studies is approximately 20 to 30 but may be larger if so desired (Creswell, 2013). My intention was to attempt to include as many participants as possible but aim for a minimum of 20. From the

beginning of the study I was concerned about the prospect of low participant turnout. The reason I believed it may be low was due to the subject of the study. There is often a sense of loyalty and comradely within a profession and a study regarding the reporting habits of a colleague may have detract participants. Another concern I had for participation was that attorneys highly value their time and a participant may not want to complete the questionnaire. I hoped that by using a questionnaire instead of an interview the attorneys were more open to participating in this study.

In order to focus my study, the participation requirements was narrowed to only include licensed, practicing attorneys in good standing located within the state of Michigan. This requirement was clearly stated in the accompanying cover letter with the questionnaire. I also included questions at the beginning of the questionnaire that were aimed at specifically inquiring about the participation requirements. Any questionnaires received that indicated the participant's answers do not fit the eligibility criteria was excluded from the study. This helped ensure accuracy and validity with the study.

The characteristics of the selected sample had similarities due to the requirements for participation. All of the participants had a law degree and were likely to be living within the state of Michigan. However, I expected several differences as well. The age of the group ranged from the middle twenties on up. Gender was fairly even. Level of experience also varied but also related to age.

I utilized a purposeful random sampling of attorneys from the 35,042 members listed on the official membership publication list. Patton (2002) stated that "random sampling, even of small samples, will substantially increase the credibility of the results"

(p. 240). Patton further explained that the “purpose of small random samples is credibility, not representativeness” (Patton, 2002, p. 241). I sent out a correspondence with information about the study along with information on how to participate. A sampling was sent out every week until I received the recommended minimal response of twenty participants.

Data Collection Procedure

Although interviews are the primary method of data collection in a qualitative grounded theory study the use of documents as a data source can also be acceptable (Charmaz, 2014). Charmaz (2014) stated that elicited documents “involve research participants in producing the data” and examples of elicited documents used are internet based or mailed surveys containing open-ended questions (p. 47). I believed this approach best served my study because of the desire of the respondents to have unanimity and because of the flexibility regarding time.

The questionnaire I used was constructed by visualizing what may have been said during a live interview. The questions focused on the attorney’s personal knowledge of observed ethical misconduct of a peer attorney and whether or not that misconduct was reported to the State Bar. I then focused on how the participant made that decision and why it was made.

I believe using written instrument was the best course for collecting data for this study. Charmaz (2014) allows for the use of elicited documents for data collection in grounded theory studies. The personal opinions and responses to the questionnaire should be sufficient as a data source. If an attorney witnessed an ethical violation but did

not report that violation, there would likely be no other record of the misconduct. If the violation was reported and the State Bar acted, there still may be little record because of confidentiality. The Bar does published outcomes of ethical complaints that result in disciplinary action, however that is potentially only a small amount of observed ethical misconduct. It is my belief that the best way to gather additional information regarding reportable ethical misconduct is through an anonymous collection method.

The use of a questionnaire for my study is appropriate for several reasons. Charmaz (2014) allows for the use of elicited documents for data collection in grounded theory studies. A questionnaire is one example of an elicited document. A concern I had about using another instrument such as an interview was that participation may have been even lower than it was due to time restraints. A professional who makes several hundred dollars an hour may not wish to spend time participating in an interview. A questionnaire allowed for an attorney to participate during any free time. I also believe answers were more forthcoming with an open-ended questionnaire than with a face-to-face interview due to the sensitive nature of ethics questions.

There were several validation strategies that I utilized when developing the questionnaire. One of the recommended validation strategies is that of peer review or debriefing, which provides an external check on the research process (Creswell, 2013). Another way to ensure accuracy in the instrument is to repeat key questions but word the questions in a different way. I used the standard interview protocols for questioning participants and put those questions into a written format. I hoped this encouraged the participants to answer freely.

The population that was studied were attorneys practicing law in Michigan. Although there were no major contextual or cultural issues I was aware of, one should note that the population is considered as a profession. There is often a tendency for members in a similar profession to protect one another. It is also human nature to not want to see a friend or colleague get in trouble, especially over what may be perceived as a misunderstanding. I attempted to make it clear in both the questionnaire and the accompanying cover letter that the responses were for research purposes only and were not a part of an investigation.

Charmaz (2014) stated that a questionnaire is an example of an elicited document and elicited documents are allowed to use for data collection in grounded theory studies.

Gillham (2011) stated that advantages for using questionnaires include:

“low cost in time and money, easy to get information from a lot of people quickly, respondents can complete when it suits them, less pressure for an immediate response to a question, respondent’s anonymity, lack of interview bias, standardization of questions, and can provide suggestive data for testing an hypothesis” (pp. 5-8).

Several of the advantages stated by Gillham directly apply to my study, especially the need for anonymity, the ability to participate at the respondent’s free time, and less pressure to answer. I believe these issues helped the respondent answer in a more accurate manor and provided greater validity to the data.

There are currently no similar questionnaires or instruments that could have been used for this study. I believe this is due to the nature of the study. Most of the qualitative studies researched for my study utilized an interview technique, whereas a majority of the quantitative studies researched for my study utilized a survey technique. A good example

of a topic similar to my study was a study performed by Victor, Trevino, and Shapiro (1992). Their study focused on peer reporting of unethical behavior within a business setting. However, a study performed by Nitsch, Baetz, and Hughes (2005) conducted a study in business ethics by utilizing a survey. Although those previously stated studies provide valuable information relating to my study, the instruments used would not work for my study. Boynton and Greenhalgh (2004) stated that if there is no “off the peg” questionnaire available the researcher will have to construct his or her own questionnaire (p.1313). I believed the best way to approach this for my study was to follow the interview protocol and develop an appropriate interview and put those questions into a written questionnaire format.

Cresswell (2009) stated that qualitative validity means “the researcher checks for accuracy of the findings by employing certain procedures” (p. 190). These procedures include: peer review or debriefing; prolonged engagement and persistent observation; triangulation; clarification of researcher bias; external audits; rich descriptions regarding transferability; and member checking (Cresswell, 2013, pp. 250-252). For the instrument I have provided a copy of the questions for peer review. I also attempted to triangulate the questions by repeating or rewording questions in order to gauge answer reliability and consistency. Finally, I utilized coding software to ensure the accuracy of the interpretation of the data received.

The collection procedure for my data had two possible approaches. Each research question was included on a single questionnaire. For those participants that wanted to utilize on-line access to the instrument, a link to Survey Monkey was provided so that the

participant could answer the questionnaire at his or her convenience. For those individuals that wished to participate by filling out a paper survey I provided a return address. Those responses were collected only by myself.

A participant may exit the study by either completing the questionnaire or by declining to participate in the study. Since anonymity was an important aspect of my study it would have been impossible to provide a specific debriefing. Instead, I plan on discussing in the cover letter the purpose of the study. I also clearly stated that the participants would be anonymous.

I did not have any follow up procedures. The participants were anonymous so follow-ups would be impossible.

Data Analysis

The first type of data I examined was in regards to the research question on whether or not an attorney are willing to report a peer attorney's ethical misconduct. This first question was fairly simple and the data was straight forward regarding the answer to this question. The questionnaire contained a blunt question directly addressing this question. The ultimate outcome was based on open-ended questions the participants answered. Answers that contain a degree of uncertainty such as "maybe" or "depends" were interpreted as a "yes" since the ultimate question was if an attorney is willing to report, and the implication is that under certain conditions they would report.

The second research question was more challenging and complicated. The second research question was what influenced the decision to report or not report the peer ethical misconduct. The questionnaire was designed to allow for open-ended questions so that

the participants could better explain their reasoning. I had to interpret the answers to determine key themes. The qualitative research software NVivo helped assist me in finding themes to answer this question.

Saldana (2013) defined coding as “a word or short phrase that symbolically assigns a summative, salient, essence-capturing or evocative attribute for a portion of language based or visual data” (p. 3). Saldana stated that often one might begin with preliminary codes during a preliminary stage of analysis, which then evolves to a potentially different final code (p. 21).

A common coding method often used in almost all qualitative studies is Attribute Coding (Saldana, 2013). Examples of attribute coding include: age, gender, ethnicity, etc. The primary type of coding I intend to use is that of Descriptive Coding. Descriptive Coding provides a word or short phrase that describes the data. Another useful coding method is Subcoding. Subcoding occurs once preliminary general codes are established. Subcoding takes the general descriptive code and breaks that down into additional categories. The data collected was identified by its contents. All of the data came from multiple primary sources, specifically a single questionnaire collected from several participants.

For this study I used the computer assisted qualitative data analysis software NVivo. I believe this program was adequate in assisting me in coding and analyzing the data. I personally entered the data manually. The data I collected was the answers to the questionnaire and came from an electronic source, specifically survey monkey, and from mailed responses.

Disconfirming cases are examples that don't fit the emerging pattern (Patton, 2002). These types of cases are valuable in telling a specific story that may not fit within the normal pattern. In this study there were no disconfirming cases. However, any discrepant case would have been examined to determine whether the response could have been caused by an error or if it was indeed telling a specific story. The topic itself tended to be very objective so it was possible specific patterns may not be as evident as in other studies. Care was taken to examine the questionnaires for answers that were seemingly not within the scope of this study.

Trustworthiness

Cresswell (2013) identified several strategies to assist in determining trustworthiness. These strategies include: peer review or debriefing; prolonged engagement and persistent observation; triangulation; clarification of researcher bias; external audits; rich descriptions regarding transferability; and member checking (pp. 250-252). Cresswell recommended that in qualitative research at least two of the above-mentioned strategies be utilized. My study was peer reviewed as required by the dissertation process. I also attempted to clearly identify any potential bias. I also utilized coding software to ensure the accuracy of the interpretation of the data received.

Although my study focused on attorneys located within the state of Michigan, I designed the study so that it could be easily replicated in a different state or even on a national level. Every state regulates the licensing of attorneys and makes those attorneys answerable to that State's Bar. All of the states have an ethical code of conduct based off the American Bar Associations Model Rules of Professional Conduct (ABA, 2015). It is

also a requirement for every law student to take an ethics class based on the ABA Model Rules of Professional Conduct. These concepts make ethics and the peer reporting of ethical misconduct an issue regardless of the State where the attorney is located. It is possible for each state to use the same criteria established in this study and duplicate it for their particular state. If data could be obtained from all fifty states then a national comparison could be achieved.

Dependability refers to the stability or consistency of the inquiry *processes* used over time (Williams, 2011). According to Williams (2011) to check the dependability of a qualitative study, “one looks to see if the researcher has been careless or made mistakes in conceptualizing the study, collecting the data, interpreting the findings and reporting results”. One of the primary techniques to establish dependability is to utilize a *dependability audit*. A dependability audit is when an independent auditor reviews the activities of the researcher to see how well the techniques for meeting the credibility and transferability standards have been followed. This may be achieved by examining notes recorded in an audit trail in field notes, archives, or reports (Williams, 2011). In my study all records such questionnaires, communications, and research activity was retained and included with the final study.

Confirmability is the *quality of the results* produced by an inquiry in terms of how well they are supported by those who are involved in the study and by events that are independent of the inquirer (Williams, 2011). Confirmability can be strengthened by finding references to literature and findings by other researchers. A confirmability audit is often done at the same time as the dependability audit. The audit helps determine if the

data and interpretations made by the inquirer are supported by material thus becomes more likely to be accepted by readers (Williams, 2011). Just as with the confirmability audit I kept all records such questionnaires, communications, and research activity and included it with the final study. The literature review also helped with dependability. Although little research has been conducted on attorney peer reporting, there is a strong relation to whistleblowing.

Intercoder reliability is an indicator of measurement consistency and helps determine whether two coders are consistent in evaluation (COI, 2016). I was the only researcher working on this study so I believe there is no need for an intercoder reliability test. However, there are several different methods used to assess intercoder reliability, which include: Percent agreement, Cohen's Kappa, and Krippendorff's Alpha (COI, 2016). I anticipate most of my coding will be nominal in nature. Cohen's Kappa is a popular method for estimating reliability for nominal data (COI, 2016) and thus if intercoder reliability would have been needed for my study I would have likely use this method.

Ethical Procedures

The ability to study other humans helps all people develop a better understanding of our individual selves as well as our culture as a whole. However, as with any job or activity, it can become easy to become involved in the task or the outcome. If this happens a researcher may forget that the participants or subjects are real people and instead think of them as a subject or a number. History has numerous examples of unethical research that caused or could have caused unnecessary physical or psychological harm to subjects. In order to protect both the subjects and the researcher

policies and procedures are implemented to ensure that the subjects and researchers are protected. Under the Code of Federal Regulations, the government requires that the evaluation of research applications that involve human subjects take into consideration the risk to subjects, the adequacy of protections against risk, potential benefits of the research to subjects and others, and the importance of the knowledge to be gained (45 CFR 46). Walden University also has a specific application procedure that each student needs to comply with in order to conduct research. Ethical research is not only crucial for protecting the safety and rights of the participants but also it helps by the research itself because the participants should not feel threatened or forced to participate or answer in any way.

Since my study collected data from volunteer participants, Institutional Review Board approval was required. I submitted a completed application to the IRB so that I could collect data. I include any relevant documents such as sample cover letters, disclosures, and a copy of the proposal to the IRB. I was granted permission to proceed.

One of the primary concerns stated is related whistleblower literature is a fear by the reporters of some type of retribution. Endangering a participant's reputation, safety, or future employment is a serious ethical concern that I, as the researcher, have considered for this study. If a participant has some type of fear or concern it would not only be unethical to proceed but also the results could be affected. The primary method to counteract this concern is to assure the participants that the questionnaire was anonymous. This was clearly stated within the cover letter as well as at the beginning of

the questionnaire. The questionnaire itself had no identifying factors to tie it to any participant.

The ethical concerns and treatment of all participants is one of the highest priorities in this study. This is not only important ethically but also is important to ensure accurate data. Anonymity is vital in assuring participants that no questionnaire could be traced back to any participant. If any questionnaire had any identifying factors, such as an individual name, firm name, Bar identification number, etc. that questionnaire would have been immediately destroyed.

There were no concerns regarding a refusal to participate from the study. Any individual could have easily choose not to participate by either submitting a blank questionnaire or by simply not responding or completing the questionnaire. Withdrawal from the study would have been impossible due to the fact that the questionnaires were anonymous.

The data that was collected in my study came exclusively from the questionnaire that was distributed to licensed, practicing attorneys in good standing, located within the State of Michigan. All data was anonymous and confidential. The primary concern participants have regarding whistleblowing or reporting activity is a fear of retaliation. I wanted to minimize this concern by assuring the participants that the data collecting was strictly anonymous and cannot be traced to any participant.

Confidentiality was a primary concern for my study. As a result, the treatment of data and protecting the rights of the participants was crucial. Any digital data I received was placed in a flash drive and secured with a retrieval password. The flash drive is

physically stored in a locked, fireproof safe for the University's required period of time for data storage. Once the storage period is expired, the flash drive will be erased and destroyed.

Physical copies of the questionnaires returned through the mail are sealed in a clearly marked envelope, locked and stored in a fireproof safe for the required storage period. Once the storage period is expired the physical documents will be securely shredded and disposed. All other documents and correspondences will be stored securely and disposed of in a similar fashion as the questionnaires.

Since I am a member of the Michigan Bar I acknowledge the potential for bias and conflict of interest. However, I do not believe my status as a licensed attorney in good standing within the state of Michigan will affect my study. I do not hold any position with the State Bar other than being a licensed attorney. I do not have any more influence in ethical discipline than any other attorney within the state. I also am not currently practicing law.

No exploratory study was done for my study. My study required anonymity for the participants in order to protect the participants and offer them a sense of comfort and security. A pilot study may have jeopardized the spontaneous answers needed for accuracy and reliability. The questions created were based off potential verbal interview questions.

Chapter Summary

The results of this study will be discussed in chapter 4. A copy of the questionnaire, cover letter, and all relevant correspondences and documents are included in the appendix of the dissertation.

My study used a qualitative methodology with a grounded theory design. The grounded theory will focus on the factors that may influence the peer reporting of attorney ethical misconduct. Although this study is not a cost-benefit study, I utilized themes from cost-benefit analysis to help support this grounded theory study.

I choose qualitative methodology because it best supported the open and subjective nature of this study. I predicted the reasoning for an attorney to report or not report a peer's ethical misconduct will vary depending on the attitudes, experiences, and beliefs of the reporter. These factors may possibly vary from one reporter to another. However, I believe that reporting patterns of attorneys will follow the general patterns shown in most whistleblowing literature and those decisions can further be explained by looking at perceived costs versus perceived benefits of the reporter to report or not report.

I believe the attorneys in my study were more likely to participate in the study if the questionnaire was anonymous. The literature showed that the main reason general whistleblowers did not report misconduct was due to a fear of some type of retaliation. In my study I believe this to be a substantial cost to the participant reporter and so I hope to have removed this concern. I also believe the anonymity helped provide greater accuracy in the actual response recorded in the questionnaire. These reasons also influenced my decision to use a questionnaire instead of an interview. I believe that

attorneys are more likely to participate in a questionnaire instead of an interview because of time restraints. An open-ended qualitative questionnaire that focuses on peer reporting and the costs and benefits of reporting helped directly answer my research questions.

In the next chapter I shall discuss the results of my research. I collected and analyzed the data taken from a sample of licensed practicing attorneys located in the State of Michigan. The sole source of data came from a questionnaire I prepared according to the qualitative principals previously discussed. I hope to determine whether attorneys are willing to report the ethical misconduct of their peer attorneys and what influenced the decision to report their peer. My theory was that attorneys base their decision to report on perceived costs and benefits of reporting.

Chapter 4: Results

The purpose of this qualitative study was to understand the process that attorneys experience regarding peer reporting of fellow attorney ethical misconduct and why those reporting attorneys decide to report their peer's violation to the State Bar. The question I examined was whether licensed, practicing attorneys within the State of Michigan are willing to report other attorney ethical misconduct and what factors influenced the decision to report or not report the ethical misconduct?

For this study I utilized a purposeful random sampling of attorneys listed within the Michigan Attorney Roster published by the State Bar of Michigan. I selected a random name from each letter of the alphabet. Fifty samplings were sent out each week, primarily through email, until I received my goal of twenty valid responses. This procedure did not change from my initial planning for this study.

Background

The setting I used for this study was Michigan licensed attorneys that are in good standing and are actively practicing law within the state. I utilized an open-ended questionnaire that was distributed to a sample of the attorneys registered with the state bar association.

The demographics I examined were licensed, practicing attorneys in good standing located in the state of Michigan. The purpose of my study was to examine the peer reporting habits of attorney ethical misconduct thus it was essential to begin by limiting the study to attorneys. However, a person can have a law degree but not be a practicing attorney. To counter this possibility an additional requirement regarding being

a practicing attorney in good standing was added. Final, the requirement of being located in the state of Michigan was a logical way to narrow the study to a manageable size.

A majority of the data was collected by utilizing Survey Monkey on-line. I also offered a hard copy of the questionnaire for those who may feel more comfortable utilizing a non-electronic option. Two responses were collected by direct mailing to me. Responses from both Survey Monkey and the paper responses were then entered into NVivo.

I took the responses from the questionnaires and entered them into NVivo. I then created codes within the program to correlate with the questions. The software assisted in recognizing patterns within the responses which helped established common themes. These common themes included a sense of obligation or duty to report the wrong doing, preventing harm to the clients and fear of retaliation or fear of being mistaken.

According to Cresswell (2013) a qualitative research study should contain at least two trustworthiness strategies. These trustworthiness strategies include: peer review or debriefing; prolonged engagement and persistent observation; triangulation; clarification of researcher bias; external audits; rich descriptions regarding transferability; and member checking (pp. 250-252). I have clearly disclosed any personal biases, specifically that I am a licensed attorney in good standing in Michigan. Also, the questions contain triangulation elements in that key concepts were repeated in different questions. Finally, the questions and this entire study has been under a strict peer review, as required by the dissertation process.

The results of this study seemed consistent with the findings found in the literature review regarding whistleblowing suggesting similarities between the fields of study. The majority of respondents in my study indicated a willingness to report a peer attorney's ethical misconduct. The main reason for reporting a peer's ethical misconduct is that of duty or obligation. The main reason given for not reporting a peer's ethical misconduct is fear, ranging from fear of being wrong to a fear of retaliation. The respondents did not appear to weigh perceived costs against the perceived benefits of reporting peer misconduct.

Setting

I am not aware of any personal or organizational conditions that may have influenced participants or their experiences at the time of the study or of any conditions that may have influenced the interpretation of the results of the study. Many of the respondents witnessed or have been affected by ethical misconduct. I believe those experiences may have influenced the individuals to participate in the study but I do not believe those potential experiences should have affected the participants' observations. I also do not believe those experiences should affect the interpretation of the results of those observations. This is evident in that the responses and reasoning given by the respondents that had potential influences are similar with both the responses given by other respondents as well as responses and reasoning found in the literature.

Demographics

The demographics of the participants and characteristics relevant to this study was essential in the research design. The question I examined was whether licensed,

practicing attorneys within the State of Michigan are willing to report other attorney ethical misconduct and what factors influenced the decision to report or not report the ethical misconduct? In order to answer this question, I needed to focus on specific demographics and characteristics of potential respondents. This study focused on attorneys thus the first major demographic I needed was to have respondents be an attorney. Characteristics such as practicing helps insure that the respondent is actively participating within the profession. The characteristic of being located in the state of Michigan was simply a narrowing factor to help maintain the practicality of the study. A nationwide study could be conducted but for purposes of a dissertation study I believe focusing on one state makes the study much more manageable.

Data Collection

The data collection for my study included twenty qualifying participants, which was the minimum approved by the IRB. Twenty-two responses were collected, however two of those collected responses did not meet the required qualifications established for this study and thus were not included in the analysis. The reason those two responses were excluded was that the respondents indicated they did not practice law in the state of Michigan, which was one of the qualifying factors for this study.

Fifty questionnaires were sent out once a week over a period of three months resulting in six-hundred total questionnaires distributed. Out of this number I received twenty-two responses. The first two hundred and fifty questionnaires were mailed via the post office to potential participants with only two responses. I then began to send out the

questionnaire and supporting documents through email which provided a better response rate.

Data was recorded once the minimum number of respondents were received. I took the data that was presented in Survey Monkey, as well as the two written responses received, and entered into a Word document for each participant. I then imported those Word document files into the analysis computer program NVivo.

Findings of the Interviews

The questionnaire was designed to directly address the research question regarding whether or not a licensed, practicing attorney, located within the state of Michigan, was willing to report a fellow peer attorney's ethical misconduct and what factors influence this decision. The first several questions determined eligibility for this study. The next series of questions addressed whether or not the respondent have ever witnessed attorney ethical misconduct. Finally, the questionnaire asks if the respondent would report the ethical misconduct and why or why would they not report the misconduct. The questionnaire also separately asked the same questions regarding a partner.

Respondent #1 qualified for the study and stated he or she had one year of experience. The respondent reported not witnessing or previously reporting an ethical misconduct violation. The respondent reported "integrity" as the primary reason for reporting and uncertainty as a reason for not reporting potential misconduct.

Respondent #2 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the

state of Michigan. This respondent reported he or she has not witnessed any attorney ethical violations nor had to report an attorney ethical violation. The respondent further stated that he or she would be willing to report attorneys and law partners for ethical misconduct. The respondent reported that the reason why he or she would report ethical misconduct is because of the importance of accountability and integrity. The reason given for a reason why they may not report an ethical violation is that he or she may be uncertain about whether or not the perceived violation rose to the level of misconduct.

Respondent #3 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. The respondent stated having 42 years of experience. This respondent reported he or she had witnessed many examples of attorney ethical violations, specifically attorneys handling cases they are not competent. The respondent stated he or she had reported an ethics violation to the Bar but did not indicate what was the specific violation. The respondent stated that a reason why he or she would report ethical misconduct of a peer attorney or a partner is because he or she is “obligated to do so”. A reason given by the respondent for not reporting ethical misconduct is if he or she “did not directly witness the behavior”.

Respondent #5 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. He or she stated having 24 years of experience. This respondent reported he or she has not witnessed any attorney ethical violations nor had to report an attorney ethical violation. The respondent further stated that he or she would be willing

to report attorneys and law partners for ethical misconduct. The respondent reported that the reason why he or she would report ethical misconduct of a peer attorney or a partner is because of “the harm to the client”. The respondent stated a reason for not reporting attorney ethical misconduct is “if there was no harm to the client and a commitment to improve”.

Respondent #6 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. He or she stated having 42 years of experience. This respondent reported he or she has not witnessed any attorney ethical violations nor had to report an attorney ethical violation. This respondent answered “I would correct issue internally” to the questions regarding whether or not he or she would report an ethics violation to the Bar if the perpetrator was a law partner. This respondent stated the reason for reporting any attorney’s ethical misconduct is if it is “illegal activity”. A reason given for not reporting an ethical violation was that the “attorney may just need to be educated on what (he or she) did wrong”.

Respondent #7 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. He or she stated having 22 years of experience. This respondent reported he or she has not witnessed any attorney ethical violations nor had to report an attorney ethical violation. The respondent declined to answer the remaining questions regarding reasons for reporting and not reporting ethical misconduct.

Respondent #8 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. He or she stated having 25 years of experience. The respondent stated he or she had witnessed attorney ethical misconduct and gave detail on his or her personal experience. The respondent did not report the violation to the State Bar but instead made objection during a case and requested the judge impose sanctions. The motion was denied. The respondent further stated that he or she would be willing to report attorneys and law partners for ethical misconduct. The respondent reported that the reason why he or she would report ethical misconduct of a law partner is because of “fielty to the profession’s ethical obligations both allow the system to work and set our profession apart.” Another reason the respondent would report a law partner is because “any bad act that is tolerated would reflect poorly on the entire firm”. The respondent stated the reason for reporting a peer attorney’s ethical misconduct was “our system only works effectively when the rules are followed. Every practicing attorney has a duty and obligation to operate within the guidelines”. The respondent stated the reason for not reporting an ethics violation to the Bar would be if the perpetrator was confronted and given an opportunity to correct the matter.

Respondent #9 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. He or she stated having 23 years of experience. The respondent indicated he or she had witnessed an attorney ethical violation, specifically the retention of client funds and neglecting case files. The respondent stated the violation was

reported to the State Bar and the reason for reporting the violation was because that attorney “was hurting clients and taking their money”. The respondent stated that he or she should would report a law partner or a peer attorney and the reason why that action would be taken is same as previously stated. An additional reason given for reporting ethical misconduct was “stealing client funds”. The answer given towards why he or she would not report ethical misconduct was “Offensive personality, depending on the nature and severity”.

Respondent #10 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. He or she stated having 16.5 years of experience. This respondent reported he or she has not witnessed any attorney ethical violations nor had to report an attorney ethical violation. The respondent further stated that he or she would be willing to report attorneys and law partners for ethical misconduct. The respondent reported that the reason why he or she would report ethical misconduct is “if there was a sexual relationship between the attorney and the client; if there was misappropriation of client funds; if there was negligence in handling a case; if there was negligence in communicating with a client”. The respondent answered “N/A” to the question regarding any reasons why he or she would not report ethical misconduct.

Respondent #11 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. He or she stated having 30 years of experience. This respondent reported he or she has not witnessed any attorney ethical violations nor had to report an

attorney ethical violation. The respondent further stated that he or she would be willing to report attorneys and law partners for ethical misconduct. The respondent answered the reason why he or she would report a law partner is that not reporting the partner “would in of itself be a violation”. The respondent stated that the reason why he or she would report ethical misconduct of a peer attorney is “Misappropriation of a client’s funds not yet earned; knowingly used perjured testimony”.

Respondent #12 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. He or she stated having 33 years of experience. The respondent reported he or she had witnessed an attorney ethical misconduct. The respondent stated ethical misconduct “happens all the time consisting of minor violation” such as “engaging in conflicts without waivers and being discourteous to others”. The respondent also reported witnessing more serious violations such as “encouraging perjury, and engaging in self-servicing conduct seriously harmful to the clients”. The respondent reported he or she had reported misconduct on many different occasions. The reason given for why the misconduct was reported was to make the violators accountable. The responded reported that that if a partner violated ethical he or she would have the partner cease and correct the misconduct and would report if the behavior continued. The reason given for reporting a partner was if the respondent believed the violation was serious or showed a pattern of conduct. The reason given by the respondent for not reporting an ethical violation is if the violation was not serious or the violator took “immediate remedial action”.

Respondent #14 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. The respondent stated having 2 years of experience. This respondent reported he or she has not witnessed any attorney ethical violations nor had to report an attorney ethical violation. The respondent further stated that he or she would be willing to report attorneys and law partners for ethical misconduct. The respondent reported that the reason why he or she would report ethical misconduct is to punish the violating attorney. The reason given for not reporting ethical misconduct is if the respondent believed “it was a one-time occurrence and will be fixed”.

Respondent #15 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. The respondent stated having 21 years of experience. The respondent reported not personally witnessing ethical misconduct but have heard stories and complaints from clients regarding other attorneys. The respondent stated he or she would report a peer attorney or a partner. The respondent would confront the partner and “encourage the partner to come clean” and if not would report the partner. The respondent stated the reasons for reporting a peer attorney’s ethical misconduct are because: “Justice required fair play by attorneys; Unethical attorneys hurt the practices of ethical attorneys; and a failure of ethics hurts our clients in the long run”. The respondent reported that the reason why he or she may not report ethical misconduct is if “the attorney took the steps necessary to undo what they have done”.

Respondent #16 qualified for the study by positively answering the qualifying questions, specifically whether she was a licensed, practicing attorney within the state of Michigan. The respondent stated having 5 years of experience. The respondent reported being a victim of ethical misconduct, specifically sexual harassment by male attorneys. The respondent stated the misconduct was not reported because it was “either in person or over the phone” so there was no proof. The respondent stated she would report a partner because she feels personal responsibility to ensure proper conduct within their law firm. The respondent further stated she would report a peer attorney’s ethical misconduct if it “hurt or disadvantaged another person”. The respondent stated the reason for not reporting ethical misconduct, specifically her own sexual harassment was “because I am a young female attorney and I know that if I reported it the older, well-established male attorneys would deny it and would do everything in their power to ruin me professionally”.

Respondent #17 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. He or she stated having 12 years of experience. This respondent reported he or she has not witnessed any attorney ethical violations nor had to report an attorney ethical violation. The respondent further stated that he or she would be willing to report attorneys and law partners for ethical misconduct. The reason given for reporting a law partner is because it is their responsibility to do so. The reason given for reporting a peer attorney’s ethical misconduct is to “protect the clients; and ensure the

integrity of the profession”. The reason stated for not reporting ethical misconduct is “fear of being mistaken or wrong”.

Respondent #18 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. The respondent stated having 6 years of experience. This respondent reported he or she has not witnessed any attorney ethical violations nor had to report an attorney ethical violation. The respondent further stated that he or she would be willing to report attorneys and law partners for ethical misconduct. The reason the respondent stated for reporting a law partner or peer attorney was because it is their “legal and ethical obligation to report any lawyer”.

Respondent #19 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. The respondent stated having 4 years, 9 months of experience. This respondent reported he or she had witnessed an ethical violation, specifically an attorney and a judge having an ex parte communication. The respondent did not report the misconduct because of fear the report would be held against her. The reason given by the respondent for reporting misconduct is because the “misconduct or issues will keep occurring without (the perpetrators) being held responsible”. An additional reason given for not reporting misconduct is fear of “backlash on his or her practice and reputation”.

Respondent #20 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. The respondent stated having 22 years of experience. This respondent

reported he or she has not witnessed any attorney ethical violations nor had to report an attorney ethical violation. The respondent further stated that he or she would be willing to report attorneys and law partners for ethical misconduct. The respondent stated the reason he or she would report a law partner is because it is his or her duty to do so. The respondent stated the reasons for reporting a peer attorney are “misusing client’s funds, and committing or suborning perjury”. The reason given for not reporting ethical misconduct given was “if the individual would rectify the situation and would not harm the client or threaten the justice system”.

Respondent #21 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. The respondent stated having 30 years of experience. This respondent reported witnessing attorney ethical misconduct, specifically the giving and receiving of a gift to a judicial clerk. The respondent further stated that he or she would be willing to report attorneys and law partners for ethical misconduct. The reason given for reporting a partner and peer attorney was “standards”. The reason given for not reporting ethical misconduct was “If it was not significant.”

Respondent #22 qualified for the study by positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. The respondent stated having 8 years of experience. This respondent reported he or she has not witnessed any attorney ethical violations nor had to report an attorney ethical violation. The respondent further stated that he or she would be willing to report attorneys and law partners for ethical misconduct. The reason given for

reporting was that he or she “is bound to comply with the Michigan Model Rules of Professional Conduct and misconduct may result in harm to other persons or property”. The reason given for not reporting misconduct was “if for some reason prohibited by the model rules”.

Results

Twenty-two participants responded to the questionnaire. Two of those twenty-two participants were disqualified for the study by not positively answering the qualifying questions, specifically whether he or she was a licensed, practicing attorney within the state of Michigan. As a result, those two non-qualifying responses were not included in the data analysis.

Data Analysis

All of the responses were collected and examined to determine which qualified for the study. The next step I took was to create general codes for those qualifying responses. When I designed the questionnaire, each question answered a specific aspect of the research questions. The questions become the general coding because each question in the questionnaire represented a theme. Each respondent’s answers were entered into the codes derived directly from the questionnaire. This sorting assisted in comparing the answers provided by the respondents and assisted in developing more specific themes and patterns.

Specific codes naturally developed from the questions given in my questionnaire. Each question stated in the questionnaire I used as an initial generalized code. My goal from the questionnaire was to answer the research questions posed for this study.

Ultimately, three codes developed to specifically answer this study's research question. Those codes were: reason to report an attorney that is a partner, reason to report any peer attorney, and reason not to report an attorney's ethical misconduct. Once those specific codes were established, the answers naturally fell within their assigned codes. When the responses were placed in their assigned codes, I examined the actual answers and then summarized those answers. Themes and patterns developed from those answers. These common themes included a sense of obligation or duty to report the wrong doing, preventing harm to the clients and fear of retaliation or fear of being mistaken. The importance of these emerging patterns and themes is that they consistently address this study's research question.

Discrepant case sampling is a sampling method that aims to elaborate, modify, or refine a theory (LeCompte & Preissle, 1993). Out of the twenty-two samples collected, two of the responses did not qualify for this study. The reason those cases did not qualify was because the respondents indicated they did not practice law in the state of Michigan. Although the rest of the responses would have contributed to this study, I decided to exclude those cases. The discrepant cases could be used if the study was expanded, however for the scope of this doctoral study I felt it was best to not include those two cases in the analysis.

Evidence and Trustworthiness

One of the primary methods used in this study to help implement credibility was to ask a crucial question in different ways. In this study a question was asked whether the respondent would report a law partner. Another question was asked whether the

respondent would report any attorney. Another example followed suit in a similar way except phrased in the negative. For example, I asked why the respondent may not report a peer attorney. Another question was then asked on why the respondent may not report a law partner. Although these questions appear different and adds data regarding preference of a partner over a peer attorney, the questions support each other's credibility by asking "why" in a different manner. In almost all of the responses the answers were similar between the two. Only in one sample was preference was given to the partner over the entire law profession.

I believe my study has great transferability potential for other future projects. My doctoral study exclusively focuses on active, practicing attorneys within the State of Michigan. This study could easily be implemented for any state and ultimately be implemented on the federal level. The questionnaire was general enough that no adjustments needed to be made to ensure transferability.

According to Williams (2011) to check the dependability of a qualitative study, "one looks to see if the researcher has been careless or made mistakes in conceptualizing the study, collecting the data, interpreting the findings and reporting results". This may be achieved by examining notes recorded in an audit trail in field notes, archives, or reports (Williams, 2011). In my study all records such questionnaires, communications, and research activity will be retained and included with the final study. All of the data collected from the questionnaires has been saved and can be available for examination at any time

Confirmability is the *quality of the results* produced by an inquiry in terms of how well they are supported by those who are involved in the study and by events that are independent of the inquirer (Williams, 2011). Confirmability can be achieved by finding references to literature and findings by other researchers. Although there was little research found regarding attorney peer reporting, I found many articles and research regarding the closely related topic of whistleblowing. The results of my study seem are similar to the studies and articles discussed in the literature review of this dissertation.

Summary

The first research question I examined was whether licensed, practicing attorneys located within the state of Michigan are willing to report a peer's ethical misconduct. Out of the twenty qualified responses all of them indicated willingness to report a peer attorney, and eighteen of the respondents indicated willingness to report a law partner.

The second research I examine was what factors influence the decision to report or not report a peer attorney's ethical misconduct. The most common answer given for reporting peer misconduct was "obligation" and "duty". The next common answer given for reporting misconduct was "harm to clients". The most common reasons given for not reporting a peer's misconduct related to fear. This fear was divided into rationales such as fear of retaliation and fear of being wrong. The next common answer given for not reporting a peer's ethical misconduct is the misconduct was "not serious" and could be corrected, or that there was "no harm to clients".

In this doctoral study, I sought to answer the question on whether licensed, practicing attorneys in the state of Michigan were willing to report the ethical misconduct

of a peer attorney; and what influenced the decision to report or not report the ethical misconduct. In order to answer these questions, I collected completed questionnaires that were distributed to attorneys. I analyzed and compared the completed questionnaires and found that a large majority of the participants were willing to report a peer attorney's ethical misconduct. I also found that there were consistent reasons for why the respondents would report and why they would not report the ethical misconduct of a peer attorney. The primary reasons given for reporting ethical misconduct of a peer attorney is a sense of obligation or duty to report the wrong doing. There were also several references to preventing harm to the clients. The primary reason given for why the respondent might not report a peer attorney's ethical misconduct is fear. This fear comes in many forms such as a fear of being wrong or a fear of possible retaliation. The reasons for both reporting and not reporting were consistent with reasons found in the literature review on the topic of general whistleblowing.

In the final stage of this doctoral study I shall interpret the data collected in more detail. I believe the consistency with the data helps support the validity of the study and helps answer the research questions posed. How do we interpret this data and where we go from here are important questions I will explore in the next chapter.

Chapter 5: Discussion, Conclusions, and Recommendations

The nature of this study is a qualitative methodology utilizing a grounded theory design. The purpose of this qualitative study is to understand the reasons attorneys choose or not choose to report the ethical misconduct of peer attorneys. The reason I conducted this study is to help us better understand the potential ethical concerns that the legal profession may have and how the legal profession may deal with those concerns. If there is better awareness of these concerns then it may be more likely steps could be taken to correct problems and address concerns, and prevent future ethical misconduct.

The questions I examined was whether licensed, practicing attorneys within the State of Michigan were willing to report other attorneys' ethical misconduct and what factors influenced the decision to report or not report the ethical misconduct? I sent out a questionnaire designed to answer the research questions to licensed, Michigan attorneys. The respondents provided their answers by either mailing a completed questionnaire back to me or by answering online through the website Survey Monkey. Once I received the necessary amount of responses needed for significance, I examines the responses and began coding and comparing for common themes. These common themes included a sense of obligation or duty to report the wrong doing, preventing harm to the clients and fear of retaliation or fear of being mistaken.

I found that a large majority of the participants were willing to report a peer attorney's ethical misconduct and that there were consistent reasons for the reporting of the ethical misconduct. The primary reasons given for reporting ethical misconduct of a peer attorney is a sense of obligation, or duty, to report the wrong doing. There were also

several references to preventing harm to the clients. The primary reason given for why the respondent might not report a peer attorney's ethical misconduct is fear. This fear comes in many forms such as a fear of being wrong or a fear of possible retaliation. The reasons for both reporting and not reporting were consistent with reasons found in the literature review on the topic of general whistleblowing.

The Interpretations of the Findings

The first research question I examined was whether licensed, practicing attorneys located within the state of Michigan are willing to report a peer's ethical misconduct. Out of the twenty responses all of them indicated willingness to report a peer attorney, and eighteen of the respondents indicated willingness to report a law partner.

Several questions in the questionnaire address this first research question. One of the questions asked the respondents if he or she has ever filed an ethics complaint against another attorney. There is direct evidence to support an answer to the first research question if a respondent answered in the affirmative to this question. However, a negative response to this question in the questionnaire only indicates there was no filing of an ethical complaint. The possible reasons may range from unwillingness to report to the respondent never having a reason to file a complaint. Additional questions needed to be asked within the questionnaire in order to fill this gap. I asked if the respondent would be willing to report a law partner's ethical misconduct. As a hypothetical question this helps further fill that gap; however, a negative response may only reflect the fact that the respondent would only report non-partners. Another question asked was whether or not the respondent witnessed or was a party to another attorney's ethical misconduct and

if so what action did the respondent take. This question was worded slightly different than other others in order to both promote reliability to the questions as well as help fill gaps in the questionnaire.

The analysis of the answers given to address my first research question confirm and extend the knowledge in the discipline. The respondents indicated that they were all willing to report a peer attorney's ethical misconduct and all but two of them indicated they would report a partner. Peer reporting is very similar to whistleblowing because it reflects when on employee, or in this case a professional, reports the misconduct of another employee or professional. The concept of justice promotes reporting behavior (Victor, Trevino, & Shapiro, 1993) and Goldberg and Nold (2001) compared reporting victimization to standing up to a bully. A common reason given for why the respondents would report is a sense of duty or responsibility. This also matched the reasons given in the literature.

I believe whether an attorney chose to report or not report ethical misconduct depends on the perceived benefits or costs. The theoretical frameworks for this study utilized perceived costs and benefits and applied these beliefs to qualitative grounded theory methodology. Tolsma, Blaauw, and Grotenhuis, (2012) used a version of the cost-benefit model and applied it to the process of crime reporting. Several questions in the questionnaire focused on why the respondent chose to report or not report the misconduct. The data collected clearly showed that the answer to my first research question regarding whether or not attorneys are willing to report a peer's ethical misconduct is yes, they are willing to report the misconduct.

The second research question I examined was what factors influenced the decision to report a peer's ethical misconduct? I found there were consistent reasons for why the respondents would and would not report the ethical misconduct of a peer attorney. The most common answer given for reporting peer misconduct was "obligation" and "duty" followed by a concern for "harm to clients". The most common reasons given for not reporting a peer's misconduct related to fear. Fear ranged from a fear of retaliation to a personal fear of being wrong. The next common answer given for not reporting a peer's ethical misconduct is a feeling by the observer that the misconduct was "not serious" and could be corrected, or that there was "no harm to clients".

Several questions were asked in the questionnaire which helped add to the validity of the responses. Just as with the first research question specific questions were asked directly in order to address the second research question. Questions were also asked in different ways in order to gather a comprehensive response. Respondents were asked separately why would he or she report a partner and a peer attorney. The respondents were then asked for reasons why he or she would not report a partner and a peer attorney. The responses were consistent throughout the responses.

The reasons for both reporting and not reporting were also consistent with reasons found in the literature review on the topic of general whistleblowing. One of the most common reasons cited for not reporting is fear of retaliation (Bruns, Jackson, & Zhang, 2012; Cornock, 2011; Green & Latting, 2004; Kidd & Chayet, 1984; and Verschoor, 2012). The concept of justice promotes reporting behavior (Victor, Trevino, & Shapiro,

1993). The responses given regarding “obligation, duty, preventing harm to clients” all closely relate to the concept of justice.

The findings showed that the respondents did not weigh perceived costs against perceived benefits in making the decision to report peer misconduct. Although concerns were given for reporting peer misconduct, the respondents overwhelmingly indicated they would report peer misconduct.

Limitations

I stated earlier that a concern I had regarding limitations to trustworthiness was the potential of a lower participation rate. To receive the recommend number of twenty participants I had to send out an approximate five hundred invitations to participate. I stated before that a concern may be that due to the low response rate the answers received may be skewed and not accurately reflect the true opinions for this topic. However, I am convinced that is not the case for this study. The participants’ answers were consistent with each other as well as the answers were consistent with expectations based upon the literature review.

Another limitation was that my study focused only on attorneys practicing in the state of Michigan. This was a necessary decision by this researcher in order to limit my scope of research and to make this doctoral study more manageable.

Recommendations

My recommendation for further research is to expand this study to include other states and to compile a national study based upon the individual state studies. The process I used could easily be followed and applied in a different state. This would not

only help identify or eliminate possible regional bias, but also help identify additional issues or concerns raised by the result of further research. Having a compilation of data from multiple states could not only help in direct comparisons between different states but also may provide evidence of national trends. This would not only strengthen research conducted in individual states but could eventually lead to international comparisons.

I was unable to find any research or literature that directly addressed my research questions. In my opinion, my study provides only a first step in fully examining the question of peer attorney reporting of ethical misconduct. Organizations such as the American Bar Association, individual state bar associations, and county bar associations may benefit from the results of further research. If the various bar associations can be made aware of the trends reported by its members then those organizations can take steps to educate and assist its members.

The best way to disseminate the results to members of various bar organizations may include publication in bar journals, periodicals, or magazines published or supported by the bar associations. Additionally, many states require continuing educations for licensed members. Bar associations could provide educational lectures, programs, and materials based on this topic.

Implications for Social Change

I believe this doctoral study has strong potential to positively contribute to social change in the legal profession. In my personal observations and experience the legal profession has a strong sense of competition. Many attorneys see each case as either a

victory or a defeat. I believe this competition could lead to ethical misconduct.

Awareness of ethical misconduct may be the first step in implementing positive social change. When an organization can identify a potential problem, it may then take steps to educate its members.

Positive social change can not only influence the legal community as a whole but also can influence individual attorneys. The only way an organization can self-govern is if the individuals personally take an interest and participate. Peer reporting is a crucial step in this process. If members are not reporting because of some factor, such as fear, then an analysis of that phenomenon may be vital in overcoming that fear. If an individual feels they are not alone in the reporting process and that their concerns are not unique, that individual may be a more active participant in the process. Knowledge can help alleviate some of that fear and thus help empower witnesses or victims of ethical misconduct come forward.

Positive social change may also be experience by society in general. Attorneys and the legal profession are often viewed negatively by the public. If the public has confidence that the legal profession takes ethical misconduct seriously and is actively pursuing rules enforcement, education, and prevention then society as a whole may view the legal profession in a more positive light. A more positive view of legal system and its officers can help promote confidence in that system and help show that our rule of law not only affects a select few but everyone.

I believe open and free communication is essential to promote positive social change. This doctoral study utilized a qualitative methodology. The tool I used was an

open-ended questionnaire so that the participants in this study could communicate anonymously, without fear of any retribution or any other negative perceptions. In my opinion, an open dialogue with free-flowing information is the first step in positive social change. Future studies that duplicate this doctoral study could further expand this dialogue and thus further promote positive social change. The more a person, or in this case the legal community, is exposed to an uncomfortable subject the more they may be willing to openly talk about that subject. If the community and its members are willing to talk about ethical misconduct, then that community can address problems and take appropriate steps to address the problem and promote positive social change.

Positive social change cannot occur without effort and dedication. Awareness is only the first step in enacting positive social change. I recommend the various bar associations take a more active role in supporting peer reporting of attorney ethical misconduct. Enforcement of the rules can only be implemented if the enforcers know about a violation. However, enforcement should be the final step in this process. Prevention and education should be the primary focus. Many jurisdictions require continuing education with a portion of that education in ethics. I recommend additional education be provided specifically focused on peer reporting aspect.

Reflection of the Researcher

As an attorney, we are taught early in law school to examine any issue from many different perspectives. This method not only helps a person take any side of any particular issue but also helps the attorney gain a complete understanding of an issue. We were taught that understanding the strengths and weaknesses of the opposite view point

will help strengthen your side of that same subject. Upon reflecting on my experiences as a researcher, I found this law school mantra also applies to the research process.

As an attorney I found myself not wanting to believe other attorneys would purposely violate ethical norms. Even though I would read about attorney disciplinary actions in the state bar publications this concept still seemed isolated. This preconceived notion was quickly dispelled once I started this study. I believe these preconceptions may also apply to other attorneys. This is why identifying a problem is often the most difficult step in problem solving.

The final reflection I have regarding the research process is how challenging it can be to vocalize the issues, concerns, and conclusions discovered from the process. Every person who participated in this study had their own story to tell. My challenge was to compile all of these experiences and share the common themes. These many different stories converged to tell a single, overall story that I believe we can learn from.

Conclusion

Attorney misconduct harms its victims, the justice system, and the reputation of the entire profession. The bar associations and its members maintain their integrity by enforcing model rules of professional conduct. However, enforcement depends on the legal community appropriately reporting observed misconduct. A problem can only be addressed and corrected if it is known. This study gives me hope by showing the legal community is willing to report a peer's ethical misconduct even though they may be afraid to report the misconduct for various reasons. The public should have confidence in

the legal profession and in the justice system because the legal community is dedicated to the integrity of its profession.

References

- Akers, C., & Kaukinen, C. (2009). The police reporting behavior of intimate partner violence victims. *Journal of Family Violence, 24*(3), 159-171.
- Averdijk, M. & Elffers, H. (2012). *The discrepancy between survey-based victim accounts and police reports revisited*. . May 2012, vol. 18 no. 2 91-107.
- Arnold, B. L., & Hagan, J. (1992). Careers of misconduct: The structure of prosecuted professional deviance among lawyers. *American Sociological Review, 57*(6), 771.
- Bannon, S., Ford, K., & Meltzer, L. (2010). How to Instill a Strong Ethical Culture. *CPA Journal, 80*(7), 56-58.
- Bickman, L. (1976). Attitude Toward an Authority and the Reporting of a Crime. *Sociometry, 39*(1), 76-82.
- Bjørkelo, B., & Macko, M. (2012). The stigma of reporting wrongdoing at work: When doing right is perceived as wrong. *Polish Psychological Bulletin, 43*(2), 70.
doi:<http://dx.doi.org/10.2478/v10059-012-0008-3>
- Bruns, S. M., Jackson, C., & Zhang, Y. (2012). Designing an effective peer-reporting system. *Management Accounting Quarterly, 13*(2), 8-13.
- Bush, S.S., Connell, M.A., & Denney, R.L. (2012). *Ethical Practice in Forensic Psychology: A systematic model for Decision Making*. Washington, DC, US. American Psychological Association.
- Buse, L., Siminica, M., & Cîrciumaru, D. (2008). Cost-benefit analysis - economic tool used to aid decision-making regarding the distribution of public funds. *European Research Studies, 11*(4), 19-30.

- Bryant, M., & Williams, P. (2000). Alcohol and Other Drug-Related Violence and Non-Reporting. *Trends & Issues In Crime & Criminal Justice*, (171), 1-6.
- Campbell, E. A., & Marcum, T. M. (2010). The Consequences of Unethical and Unprofessional Conduct. *Michigan Academician*, 40(1), 23-38.
- Campbell, J., & Moore, R. (2011). Self-perceptions of stalking victimization and impacts on victim reporting. *Police Practice & Research*, 12(6), 506-517.
doi:10.1080/15614263.2011.607668
- Carcach, C. (1997). Reporting Crime to the Police. *Trends & Issues In Crime & Criminal Justice*, (68), 1-6.
- Cassematis, P. G., & Wortley, R. (2013). Prediction of whistleblowing or non-reporting observation: The role of personal and situational factors. *Journal of Business Ethics*, 117(3), 615-634.
- Code of Federal Regulation (45 CFR 46), Retrieved from:
<http://www.hhs.gov/ohrp/regulations-and-policy/regulations/45-cfr-46/>
- College of Information. 2016. Intercoder Reliability. Retrieved from:
<http://iralab.unt.edu/intercoder-reliability>
- Cooke, J. S. (2007). Judicial Ethics Education In The Federal Courts. *Justice System Journal*, 28(3), 385-IX.
- Cornock, M. (2011). Whistleblowing: a legal commentary. *Nursing Children & Young People*, 23(8), 20-21.
- Coulter, M. L., & Chez, R. A. (1997). Domestic Violence Victims Support Mandatory Reporting: For Others. *Journal Of Family Violence*, 12(3), 349-356.

- Creswell, J. W. (2013). *Qualitative inquiry and research design: Choosing among five approaches* (3rd ed.). Thousand Oaks, CA: Sage Publications, Inc.
- Creswell, J. W. (2012). *Educational research: Planning, conducting, and evaluating quantitative and qualitative research* (4th ed.). Upper Saddle River, NJ: Pearson.
- DeBray Jr., T. R. (2009). No One Likes A Tattletale: Why Alabama Should No Longer Force Attorneys To Report The Professional Misconduct Of Other Attorneys. *Journal Of The Legal Profession*, Vol. 34, 181-195.
- de Graaf, G. (2010). A report on reporting: Why peers report integrity and law violations in public organizations. *Public Administration Review*, 70(5), 767-779,667.
- Greenbaum, A. F. (2003). The attorney's duty to report professional misconduct: A roadmap for reform. *The Georgetown Journal of Legal Ethics*, 16(2), 259-333
- Delk, Kayla L, JD,B.S.N., R.N. (2013). Whistleblowing--is it really worth the consequences? *Workplace Health & Safety*, 61(2), 61-4.
doi:<http://dx.doi.org/10.3928/21650799-20130129-03>
- Dreze, J. and Stern, N., (1987), *Handbook of Public Economics*, vol. II, edited by A.J. Auerbach and M Feldstein, Elsevier Science Publishers B.V., North-Holland
- Felson, R. B., Messner, S. F., & Hoskin, A. (1999). The victim-offender relationship and calling the police in assaults. *Criminology*, 37(4), 931-947.
- Ford, D. G. (2010). The ethical duties and prohibitions affecting the decision of an attorney to blow the whistle on an organization client. *Mustang Journal Of Law & Legal Studies*, (1), 44-51.

- Fraedrich, J., Thorne, D. M., & Ferrell, O. C. (1994). Assessing the application of cognitive moral development theory to business ethics. *Journal of Business Ethics, 13*(10), 829.
- Fredin, A. J. (2011). The effects of anticipated regret on the whistleblowing decision. *Ethics & Behavior, 21*(5), 404.
- Frisch, M. S. (2007). Zealousness run amok. *The Georgetown Journal of Legal Ethics, 20*(4), 1035-1056.
- Gillham, B. (2007). *Developing a Questionnaire, 2nd Edition*. Continuum International Publishing Group. London, Great Britain
- Goldberg, I., & Nold, F. C. (1980). Does reporting deter burglars? An empirical analysis of risk and return in crime. *Review Of Economics & Statistics, 62*(3), 424.
- Gottfredson, M. R., & Hindelang, M. J. (1979). A Study Of The Behavior Of Law. *American Sociological Review, 44*(1), 3-18.
- Goudriaan, H., Lynch, J. P., & Nieuwbeerta, P. (2004). Reporting to the police in western nations: a theoretical analysis of the effects of social context. *Justice Quarterly : JQ, 21*(4), 933-969.
- Goudriaan, H. (2006). Reporting crime: *Effects of social context on the decision of victims to notify the police*. (Doctoral dissertation). Veenendaal: Universal Press
- Greenberg, M. S., Wilson, C. E., Ruback, R., & Mills, M. K. (1979). Social and Emotional Determinants of Victim Crime Reporting. *Social Psychology Quarterly, 42*(4), 364-372.

- Greene, A. D., & Latting, J. K. (2004). Whistle-blowing as a form of advocacy: Guidelines for the practitioner and organization. *Social Work, 49*(2), 219-30.
- Griffin, L. (2005). Watch out for whistleblowers. *The Journal of Law, Medicine & Ethics, 33*(1), 160-162.
- Hunt, E. H., & Bullis, R. K. (1991). Applying the principles of gestalt theory to teaching ethics. *Journal of Business Ethics, 10*(5), 341.
- Jackall, R. (2007). Whistleblowing & its quandaries. *The Georgetown Journal of Legal Ethics, 20*(4), 1133-1136.
- Janet P., N., & Marcia P., M. (n.d). Whistle-blowing: Myth and reality. *Journal Of Management, 22*(A Special Issue of the Journal of Management), 507-526.
doi:10.1016/S0149-2063(96)90034-3
- Joly, Y., & Nycum, G. (2007). Currents in contemporary ethics. *The Journal of Law, Medicine & Ethics, 35*(4), 734-738.
- Kaptein, M., Huberts, L., Avelino, S., & Lasthuizen, K. (2005). Demonstrating Ethical Leadership by Measuring Ethics. *Public Integrity, 7*(4), 299-311.
- Kaptein, M. (2011). From inaction to external whistleblowing: The influence of the ethical culture of organizations on employee responses to observed wrongdoing. *Journal of Business Ethics, 98*(3), 513-530. doi:http://dx.doi.org/10.1007/s10551-010-0591-1
- Kidd, R. F., & Chayet, E. F. (1984). Why Do Victims Fail to Report? The Psychology of Criminal Victimization. *Journal Of Social Issues, 40*(1), 39-50.

- Kirkland, K. (2007). Confessions of a whistleblower: A law professor's reflections on the experience of reporting a colleague. *The Georgetown Journal of Legal Ethics*, 20(4), 1105-1131.
- Kline, A. (2006). On complicity theory. *Science And Engineering Ethics*, 12(2), 257-264.
- LeCompte, M. & Preissle, J. (1993). *Ethnography and Qualitative Design in Educational Research*. (2nd Ed). San Diego: Academic Press
- Livermore, M. and Revesz, M. (June 20, 2012). Three Stages In The Use Of Cost-Benefit Analysis As A Tool For Evaluating U.S. Regulatory Policy. *Max Weber Lecture Series*.
- Long, A. B. (2009). Whistleblowing attorneys and ethical infrastructures. *Maryland Law Review*, 68(4), 786.
- Longan, P. (2011). Legal Ethics. *Mercer Law Review*, 63(1), 217-249.
- Lord, V. B., & Bjerregaard, B. E. (2003). Ethics courses: Their impact on the values and ethical decisions of criminal justice students¹. *Journal of Criminal Justice Education*, 14(2), 191-211.
- Louis, W. R., Taylor, D. M., & Tyson, N. (2004). Cost-benefit analyses for your group and yourself: the rationality of decision-making in conflict. *International Journal of Conflict Management*, 15(2), 110-143,209-210.
- Loyens, K. (2013). Why police officers and labour inspectors (do not) blow the whistle. *Policing*, 36(1), 27-50. doi:<http://dx.doi.org/10.1108/13639511311302461>
- Loyens, K. (2013). Towards a custom-made whistleblowing policy. using grid-group cultural theory to match policy measures to different styles of peer reporting.

Journal of Business Ethics, 114(2), 239-249.

doi:<http://dx.doi.org/10.1007/s10551-012-1344-0>

Maher, K. (2005, 02). Duty calls. *ABA Journal*, 91, 28.

Mansbach, A., & Bachner, Y. G. (2009). Self-Reported Likelihood of Whistleblowing by Social Work Students. *Social Work Education*, 28(1), 18-28.

doi:10.1080/02615470701770792

McGowan, D. (2007). Politics, office politics, and legal ethics: A case study in the strategy of judgment. *The Georgetown Journal of Legal Ethics*, 20(4), 1057-1104.

Miceli, M. P., Near, J. P., & C. R. (1991). Who blows the whistle and why. *Industrial & Labor Relations Review*, 45(1), 113-130.

Miceli, M. P., Near, J. P., & Dworkin, T. (2009). A word to the wise : how managers and policy-makers can encourage employees to report wrongdoing. *Journal Of Business Ethics : JOBE*, 86(3), 379-396.

Miceli, M. P., & Near, J. P. (1988). Individual And Situational Correlates Of Whistle-Blowing. *Personnel Psychology*, 41(2), 267-281.

Michigan Rules of Professional Conduct (2014). Grand Rapids, MI. Michigan Legal Publishing Ltd.

Miller, G.E. (2008). Leading in the mainstream: ethical realism and continuing education. *Continuing Higher Education Review*, vol. 72, 144-150.

Model Rules of Professional Conduct (2015). Chicago, IL. American Bar Association Publishing.

- Moore, L., & McAuliffe, E. (2012). To report or not to report? why some nurses are reluctant to whistleblow. *Clinical Governance, 17*(4), 332-342.
doi:<http://dx.doi.org/10.1108/14777271211273215>
- Nitsch, D., Baetz, M., & Hughes, J.C. (2005). Why code of conduct violations go unreported: A conceptual framework to guide intervention and future research. *Journal of Business Ethics, 57*(4), 327-341.
- Nofziger, S., & Stein, R. E. (2006). To tell or not to tell: Lifestyle impacts on whether adolescents tell about violent victimization. *Violence and Victims, 21*(3), 371-82.
- Oldham, L. M., & Whitley, C. M. (2002). The catch-22 of model rule 8.3. *The Georgetown Journal of Legal Ethics, 15*(4), 881-894.
- Ott, N. A., & Newton, H. F. (2003). A current look at model rule 8.3: How is it used and what are courts doing about it? *The Georgetown Journal of Legal Ethics, 16*(4), 747-766.
- Parker, L. K., Chang, C. Y., Corthell, K. K., Walsh, M. E., Brack, G., & Grubbs, N. K. (2014). A Grounded Theory of Counseling Students Who Report Problematic Peers. *Counselor Education & Supervision, 53*(2), 111-125. doi:10.1002/j.1556-6978.2014.00052.x
- Patton, M. Q. (2002). *Qualitative research and evaluation methods* (3rd ed.). Thousand Oaks, CA: Sage Publications, Inc.
- Plinio, A. J., Young, J. M., & Lavery, L. M. (2010). The state of ethics in our society: A clear call for action. *International Journal of Disclosure and Governance, 7*(3), 172-197. doi:<http://dx.doi.org/10.1057/jdgd.2010.11>

- Pollock, J. M. (2016). *Ethical dilemmas and decisions in criminal justice 9e*. Belmont, CA: Wadsworth Cengage Learning
- Posick, C. (2013). Victimization and Reporting to the Police: The Role of Negative Emotionality. *Psychology Of Violence*, doi:10.1037/a0031770
- Posner, E. A. (2001). Controlling agencies with cost-benefit analysis: A positive political theory perspective. *The University of Chicago Law Review*, 68(4), 1137-1199.
- Raniga, S., Hider, P., Spriggs, D., & Ardagh, M. (2005). Attitudes of hospital medical practitioners to the mandatory reporting of professional misconduct. *The New Zealand Medical Journal (Online)*, 118(1227), U1781.
- Rebbit, D. (2013). The Dissenting Voice. *Professional Safety*, 58(4), 58-61.
- Reid, J. (2013). Speaking up: A professional imperative. *The Journal of Perioperative Practice*, 23(5), 114-8.
- Simon, T. R., Kresnow, M., & Bossarte, R. M. (2008). Self-Reports of Violent Victimization Among U.S. Adults. *Violence & Victims*, 23(6), 711-726.
- Sims, R.L., & Keenan, J.P. (1998). Predictors of external whistleblowing: Organizational and intrapersonal variables. *Journal of Business Ethics*, 17.4, 411-421.
- Stansbury, J., & Victor, B. (2009). Whistle-Blowing Among Young Employees: A Life-Course Perspective. *Journal Of Business Ethics*, 85(3), 281-299.
doi:10.1007/s10551-008-9770-8
- State Bar of Michigan (2016). Michigan Lawyer Distribution by Counties and Cities.
Retrieved from: www.michbar.org.

- Stegall, K. (2012). Recent Ethics Opinions And Cases Of Significance. *Journal Of The Legal Profession*, 37(1), 139-145.
- Stewart, M. G., & Mueller, J. (2014). Cost-benefit analysis of airport security: Are airports too safe?. *Journal Of Air Transport Management*, 19.
doi:10.1016/j.jairtraman.2013.11.003
- Sunstein, C. R. (2014). The real world of cost-benefit analysis: thirty-six questions (and almost as many answers). *Columbia Law Review*, 114(1), 167-211.
- Taylor, E. Z., & Curtis, M. B. (2010). An examination of the layers of workplace influences in ethical judgments: Whistleblowing likelihood and perseverance in public accounting. *Journal of Business Ethics*, 93(1), 21-37.
doi:http://dx.doi.org/10.1007/s10551-009-0179-9.
- Thompson, K. (2012). Risks and Rewards of Blowing the Whistle. *Phi Kappa Phi Forum*, 92(3), 24.
- Thompson, M., Sitterle, D., Clay, G., & Kingree, J. (2007). Reasons for Not Reporting Victimization to the Police: Do They Vary for Physical and Sexual Incidents?. *Journal Of American College Health*, 55(5), 277-282.
- Tittle, C. (2004). Refining control balance theory. *Theoretical Criminology*, 8., 395-428.
- Tolsma, J., Blaauw, J., & te Grotenhuis, M. (2012). When do people report crime to the police? Results from a factorial survey design in the Netherlands, 2010. *Journal Of Experimental Criminology*, 8(2), 117-134. doi:10.1007/s11292-011-9138-4.
- Trevino, L. K., & Victor, B. (1992). Peer reporting of unethical behavior: A social context perspective. *Academy of Management Journal*, 35(1), 38.

- Trochim, William M.K. (2006) Research Methods Knowledge Base.
- Verschoor, C. C. (2013). Ethical Behavior Differs Among Generations. *Strategic Finance*, 95(8), 11-14.
- Verschoor, C. C. (2012). Retaliation for Whistleblowing is on the Rise. *Strategic Finance*, 94(5), 13-69.
- Victor, B., Trevino, L. K., & Shapiro, D. L. (1993). Peer reporting of unethical behavior: The influence of justice evaluations and social context factors. *Journal of Business Ethics*, 12(4), 253.
- Victor, B., Trevino, L. K., & Shapiro, D. L. (1993). Peer reporting of unethical behavior: The influence of justice evaluations and social context factors. *Journal of Business Ethics*, 12(4), 253.
- Williams, D. (2011). Qualitative Inquiry in Daily Life. Retrieved from:
<https://qualitativeinquirydailylife.wordpress.com/>
- Winter, R. (2011). The principled legal firm: Insights into the professional ideals and ethical values of partners and lawyers. *Journal of Business Ethics*, 98(2), 297-306.
doi:<http://dx.doi.org/10.1007/s10551-010-0550-x>
- Xie, M., Pogarsky, G., Lynch, J. P., & McDowall, D. (2006). Prior police contact and subsequent victim reporting: Results from the NCVS. *Justice Quarterly : JQ*, 23(4), 481-501.
- Yeargain, J. W., & Kessler, L. L. (2010). Organizational hostility toward whistleblowers. *Journal of Legal, Ethical and Regulatory Issues*, 13(1), 87-92.

- Zavala, E. (2010). Deviant lifestyles and the reporting of physical victimization to police. *Journal of Family Violence, 25*(1), 23-31. doi:<http://dx.doi.org/10.1007/s10896-009-9266-z>
- Zerbe, R. (2004). Should moral sentiments be incorporated into benefit-cost analysis? An example of long-term discounting. *Policy Sciences, 37*(3/4), 305-318. doi:[10.1007/s11077-005-5750-3](http://dx.doi.org/10.1007/s11077-005-5750-3)
- Zhuang, J., Thomas, S., & Miller, D. L. (2005). Examining culture's effect on whistleblowing and peer reporting. *Business and Society, 44*(4), 462-486.

Appendix A

Cover letter

June 12, 2017

My name is _____ and I am a doctorate student at Walden University. For my dissertation, I am examining the peer reporting of attorney ethical misconduct. Because you are a member of the Michigan Bar I am inviting you to participate in this research study by completing the attached questionnaire.

The following questionnaire will require approximately ten minutes to complete. There is no compensation for responding nor is there any known risk. In order to ensure that all information will remain confidential, please do not include your name. No personal information of any kind will be collected. Copies of the study will be provided to Walden University.

If you choose to participate in this project, please answer all questions as honestly as possible and return the completed questionnaires promptly. You may either participate on line via survey monkey at [link to questionnaire] or you may mail your responses directly to me.

Participation is strictly voluntary and you may refuse to participate at any time. Thank you for your time and consideration.

Respectfully,

Appendix B

Questionnaire

1. Are you an attorney with a law license in good standing?
2. Are you licensed to practice law in the state of Michigan?
3. Do you actively practice law in the state of Michigan?
4. How long have you practiced law?
5. Have you ever witnessed an attorney violate the Model Rules of Professional Conduct?
 - a. If yes, what was the nature of the ethical violation?
 - b. If yes how serious in your opinion was the ethical violation?
6. If you witnessed or was a party to a peer attorney's ethical misconduct what action did you take? (please be specific)
7. Why did you take that action? (please be specific)
8. Have you ever filed an ethics complaint against another attorney?
 - a. If yes then briefly describe what was the nature of the complaint?
 - b. What were the specific motivations for you to file that complaint?
9. Would you report an ethics violation to the Bar if the perpetrator was a law partner?
 - a. If yes then please specifically state why you would report your partner.
 - b. If no then please specifically state why you would not report your partner.
10. Please list any reasons on why you would report any attorney's ethical misconduct.

11. Please list any reasons on why you might not report any attorney's ethical misconduct.