

By MARTIN COLE

Keeping Up With the Neighbors

Each month, a fairly large volume of mail crosses my desk. Even with the Director's Office's excellent staff processing the majority of new complaints, district ethics committee reports, case-related correspondence, complainant appeals, etc., there is still no shortage of documents and information crossing my desk. Thus, sometimes I almost miss reviewing a particularly interesting and useful item.

Fortunately, this past month I did not miss one particular item: the annual Report of the Wisconsin Lawyer Regulation System for 2009-10 (through October 1). Wisconsin, like Minnesota and most other jurisdictions, files and makes public an annual report of their activities.¹ To me at least, annual reports always make interesting reading. And, although terminology and accounting methods can vary from state to state, making some comparisons difficult, certain basic information can be compared and often can be enlightening.

By the Numbers

The report indicates that the number of attorneys in Wisconsin is 23,827. States vary in how they count or report the number of lawyers in their jurisdiction: some include only actively licensed (*i.e.*, fee-paying) attorneys, some include inactive and retired lawyers, etc. For 2011 budgeting purposes, the Lawyers Board listed 28,050 active attorneys in Minnesota. Most comparative studies will group jurisdictions by their lawyer populations. Thus, whatever the precise number may be in each of the two states, Minnesota and Wisconsin appear to be fairly comparable in the size of their respective bars, which allows for further comparison.

Wisconsin assesses the largest group of its active lawyers \$155 per year in support of lawyer discipline and lists a total budget of \$3.024 million this year. In Minnesota, by comparison, \$122 per year of the lawyer registration fee levied on the majority of lawyers is allocated to the Office of Lawyers Professional Responsibility (OLPR).² Minnesota's annual budget for the current fiscal year is \$3.104

million. Wisconsin employs fewer full-time attorneys in their Office of Lawyer Regulation than does the Director's Office in Minnesota. On the other hand, Wisconsin employs far more investigators than Minnesota does paralegals. Wisconsin also has a group of outside retained counsel who assist the Wisconsin Office of Lawyer Regulation in contested matters.

The number of complaints received annually is an area where Minnesota and Wisconsin are more difficult to compare. Within their framework, Wisconsin

reported 2,307 inquiries and grievances last year. Wisconsin has what is known as the Central Intake system, where all inquiries and grievances concerning lawyer conduct initially are received. This includes telephone inquiries. Central Intake's options include closing the matter or forwarding the matter to the disciplinary agency for investigation, but it also may direct matters to a discipline diversion program that Wisconsin operates or attempt to reconcile minor disputes directly. These last options are not employed in Minnesota and many of the inquiries for which these tools are used in Wisconsin likely would be counted as complaints in Minnesota.

Minnesota received 1,206 complaints in 2009 (the last full year's

total available). We remain on course for a total of close to 1,400 this year. As indicated, the total number of complaints is a statistic that is difficult to compare or contrast between these two systems. One possibility is to compare the number of matters investigated in each state. If the Minnesota complaints that were dismissed without investigation are subtracted, the number of matters investigated last year was 656. Wisconsin reports that 18 percent of its inquiries and grievances, or 415, were referred by Central Intake for formal investigation. As noted above, after acknowledging that some of the matters that Wisconsin either treated as disputes for resolution or as matters appropriate for diversion would be considered complaints in Minnesota, it seems that the "real" numbers of investigable matters are not particularly dissimilar. Wisconsin, seemingly by being more selective in choosing which matters merit full investigation, produces results that indicate a higher percentage of investigated files result in some level of discipline in Wisconsin than in Minnesota. Minnesota seems to err on the side of investigating more files, which results in more matters being dismissed after investigation.

At the close of its year, Wisconsin reported that there were 981 matters pending, which included 542 formal investigations. Wisconsin noted that 313 matters were more than one year old. Minnesota's numbers were 572 open files at the



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close of 2009, with 139 of them having been open for more than one year. Wisconsin reported that its numbers reflected a significant increase over the previous years' totals. With complaints in Minnesota still being received at a pace that annualizes to over 1,400 in the current year, Minnesota's number of open files and year-old files may increase this year as well, also perhaps significantly.

A couple of final numbers may be gleaned from the Wisconsin annual report. Forty-six attorneys were publicly disciplined in Wisconsin during its reporting year, six were disbarred (reported as revocations in Wisconsin), 18 were suspended and 22 reprimanded. Minnesota reported 38 public discipline decisions: five disbarments, 23 suspensions and ten reprimands (four of which included a period of probation as well). Finally, Wisconsin operates a trust account overdraft notification program similar to that in Minnesota. Wisconsin reported receiving 76 overdraft notices during its reporting year; Minnesota received 81 in 2009, a closely similar result.

What Does It Mean?

Many similarities; certain differences. How much do they matter? Does it matter that in their last reporting year Wisconsin had more open files, more public discipline decisions, fewer overdrafts, etc.? It matters for several reasons, both financially and philosophically.

Financially, it is important for Minnesota lawyers to be informed whether the discipline system supported by their lawyer registration fees is doing its work cost-effectively. Thus, comparison with a neighboring jurisdiction's disciplinary system is useful, especially one in which many Minnesota lawyers also are members. While it is not always easy to gauge whether different systems are performing similar tasks at a similar cost, it is useful to attempt such a comparison. Minnesota's and Wisconsin's situations and lawyer discipline systems are sufficiently similar to, at a minimum, extrapolate that the \$122 per year most lawyers in Minnesota pay towards their discipline system is not unreasonable, nor is the statistical performance of

Minnesota's system unusual.

More philosophically, comparisons with other jurisdictions can help the Minnesota Supreme Court, the Lawyers Board, and the Minnesota bar determine whether to recommend or implement programs that are not currently used here, such as Wisconsin's Central Intake process.³ For example, our supreme court's 2008 Advisory Committee to Review the Lawyer Discipline System surveyed procedures in other jurisdictions before recommending changes to the probable cause hearing procedure used in Minnesota.⁴

The advisory committee recommended continued periodic review of Minnesota's lawyer discipline system. An integral part of any such review is not only how satisfied we are with our own current processes, but how we stack up against other states and national trends. ▲

Notes

¹ Minnesota's most recent annual report was filed in July 2010, and can be found on the Lawyers Board website at <http://lprb.mncourts.gov/AboutUs/Documents/2010%20Annual%20Report.pdf>. Wisconsin's can be found at: www.wicourts.gov/about/organization/offices/docs/olr0910fiscal.pdf

² There are four primary categories for the Minnesota lawyer registration fee: lawyers licensed over three years, who pay the \$122 per year towards lawyer discipline; inactive lawyers (\$83); lawyers licensed one to three years (\$26); and new lawyers (\$18). Rule 2, Minnesota Rules on Lawyer Registration.

³ See Cole, "What We Don't Do," *Bench & Bar of Minnesota*, November 2006. <http://lprb.mncourts.gov/articles/Articles/What%20We%20Don%27t%20Do.pdf>

⁴ Rule 9(a), Minnesota Rules on Lawyers Professional Responsibility. See Cole, "Supreme Court Advisory Committee Report," *Bench & Bar of Minnesota*, July 2008. <http://lprb.mncourts.gov/articles/Articles/Supreme%20Court%20Advisory%20Committee%20Report.pdf>