

By SUSAN HUMISTON

## How do Minnesota's attorney discipline numbers compare?

**B**enchmarking is popular in business. I have found, however, that it is a challenge to benchmark attorney regulation systems given the differing approaches to attorney discipline and regulation among the states. Even though no two systems are identical, it is interesting to look at how different states approach attorney regulation, and to compare how many attorneys receive discipline in other jurisdictions. I picked two Midwestern states with similar attorney population sizes for purposes of this comparison, Wisconsin and Colorado. How did Minnesota compare in 2016?

### The numbers

Wisconsin has approximately 25,000 active lawyers, as does Minnesota. Colorado has 26,000. In 2016, Wisconsin received 2,029 grievances. Colorado received 3,559, and Minnesota received 1,216. Why such a big difference? More lawyers behaving badly in Colorado or Wisconsin? More whiny clients in those

states? The more likely explanation is that both Wisconsin and Colorado have central intake systems, something that Minnesota does not have. This means that telephone complaints and inquiries are treated as grievances or complaints in those states. In Minnesota, we only consider written complaints. In Colorado and Wisconsin, intake also looks beyond whether or not to investigate the complaint, but may involve referring consumers to other agencies,

referrals to fee arbitration or mediation, or attempts to resolve minor disputes directly between the parties.

In 2016, Wisconsin investigated 353 complaints, and Colorado investigated 331. Minnesota investigated 608. Obviously, Colorado and Wisconsin investigated fewer cases, and used other measures to resolve client grievances short of a full investigation. Minnesota tends to investigate more. This is not to say that nothing is done with cases that are not referred for investigation in other states. Colorado, in fact, has a process whereby they can dismiss a complaint with "educational language," as well as a process of entering into diversion agreements, which may include such things as requiring attendance at an "ethics school," fee arbitration, or referral to an attorney assistance program, like Lawyers Concerned for Lawyers. Similarly, Wisconsin has an alternative-to-discipline program that may involve fee arbitration, law office management assistance, evaluation and treatment for alcohol or substance abuse, ethics school, or required CLE courses.

Interestingly, although fewer investigations were conducted in Wisconsin and Colorado, Wisconsin publicly disciplined approximately the same number of attorneys as were publicly disciplined in Minnesota; Colorado publicly disciplined more attorneys than Minnesota. In 2016 in Wisconsin, 14 lawyers were publicly reprimanded, 26 were suspended for some period of time, and one lawyer was disbarred (or revoked, in Wisconsin's nomenclature) for a total of 41 lawyers publicly disciplined. In 2016 in Colorado, 11 attorneys were publicly censured, 29 were suspended, 14 were placed on probation, and 18 were disbarred, for a total of 72 attorneys disciplined. In contrast, in 2016 in Minnesota, 44 attorneys were publicly disciplined: six reprimanded, four reprimanded and placed on probation, 28 suspended, and six disbarred. Importantly, in all three states, the attorneys receiving public discipline were a very small set of the active attorney population.

An additional difference between the three regulatory systems lies in the number of private disciplines issued. In 2016, Colorado issued nine private admonitions but entered into 46 formal diversion agreements, in addition to the 42 diversion agreements entered into as part of the intake process. Wisconsin issued 28 private reprimands, but an additional 113 lawyers entered the "alternatives to discipline" program. In contrast, Minnesota issued 115 private admonitions (reserved for rule violations that are "isolated and non-serious") and entered into 17 private probations. Because the dispositions are private in the various states, it is difficult to compare them to Minnesota's admonitions, but the numbers of private actions other than dismissal appear very similar.

A couple of other differences of note: In Wisconsin, attorneys who are disciplined must pay the litigation expenses associated with prosecuting their case, including fees, which can be several thousand dollars. In Colorado, disciplined attorneys must pay costs, assessed after entry of judgment. In Minnesota, lawyers who receive public discipline are assessed a flat cost of \$900, plus disbursements, if any.

In Wisconsin, each attorney pays \$155 to fund the Wisconsin Office of Lawyer Regulation, Wisconsin's disciplinary office; in Minnesota, the Office of Lawyers Professional Responsibility receives \$122 from each active lawyer in Minnesota licensed more than three years. Attorneys in Colorado pay \$325 annually, but that amount includes all attorney regulation costs, not just discipline, making it the equivalent of Minnesota's annual registration fee of \$248.

### What does it all mean?

Different states approach attorney regulation differently, but the end result—the number of lawyers in Wisconsin, Minnesota and Colorado who engaged in serious misconduct warranting public discipline—did not vary too significantly, i.e., between 41-72 lawyers. Again, this is a very small set of



**SUSAN HUMISTON** is the director of the Office of Lawyers Professional Responsibility and Client Securities Board. She has more than 20 years of litigation experience, as well as a strong ethics and compliance background. Prior to her appointment, Susan worked in-house at a publicly traded company, and in private practice as a litigation attorney.

## Professional Responsibility

the active attorney population in each state. Minnesota attorneys also paid less to administer the state's attorney disciplinary system than Wisconsin or Colorado attorneys.

I am fascinated by the different ways in which states approach attorney regulation. While it can be difficult to truly benchmark different systems (the apples-to-oranges conundrum), there is a lot to be learned from considering how states approach the same problem—and beyond the statistics, how successful each state is in its primary regulatory objectives: maintaining public confidence in attorney self-regulation; addressing attorney misconduct; and preventing future misconduct.

Some of these issues, of course, take us beyond the discipline numbers alone. The Lawyers Professional Responsibility Board is about to commence strategic planning to ensure the Office of Lawyers Professional Responsibility is positioned to effectively meet its regulatory objectives in the years to come. Taking stock of how we compare to Midwestern states with similar attorney populations is a great starting place. ▲