

Nonlawyer Involvement In The Disciplinary System

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"The fox guarding the henhouse." "A good-old-boys club." "Whitewash." "The brethren protect their own."

If you work in the lawyer discipline field long enough, you will hear all of these phrases, plus some more colorful expressions, used by complainants to describe their sense of trepidation in submitting a complaint to our self-regulated profession. Why should the average person with a complaint about a lawyer feel any confidence that a disciplinary system established and operated by lawyers will give them a fair hearing?

We would like to think that we are all capable of objectively analyzing facts presented to us and impartially applying the law to those facts. However, the fact that all lawyers share the common life experiences of getting through law school and trying to make a living practicing law, experiences not shared by the public at large, inevitably results in a difference in perception. There is no getting around it. Lawyers will, in fact, look at any given set of facts differently than nonlawyers.

In recognition of this, the Minnesota lawyer discipline system has long encouraged nonlawyer participation. Minnesota's use of nonlawyers in the disciplinary system dates back to at least 1971 with the adoption of the Rules on Lawyers Professional Responsibility (RLPR).

Rule 3, RLPR, as initially adopted, required three of the then 18-member Lawyers Board to be nonlawyers. In 1976, the RLPR was amended to require 20 percent of the District Ethics Committees be made up of nonlawyers. Currently, Rule 4, RLPR, requires that nine of the 23 members of the Lawyers Board be nonlawyers and Rule 3, RLPR, still requires that at least 20 percent of the local District Ethics Committees be made up of nonlawyers.

In 1993, the Dreher Committee, a committee charged with evaluating the lawyer disciplinary system in Minnesota, recognized the value of nonlawyer participation in the Minnesota disciplinary system and found that "It is critical that the court and the MSBA recruit the best qualified people, both non-lawyer, public spirited citizens and lawyers as board members."

This system has worked well over the years. At both the state and local levels we have been able to draw upon the Minnesota tradition of community involvement to recruit nonlawyers to serve on the District Ethics Committees and Lawyers Board for no compensation other than the satisfaction of public service. This is no mean feat when you consider what is involved.

At the local level these nonlawyers are required to do the initial investigation of complaints referred to the District Ethics Committees. Not only is this a substantial commitment of time and effort on their part, it requires their involvement with lawyers and complainants who may be dismissive of them because they are not lawyers. It requires them to deal with lawyers, respondents and other committee members in a field that gives the advantage to the lawyer. It requires them to learn the meaning of strange Latin phrases and other obscure legal subtleties.

At the state level, nonlawyer members of the Lawyers Board are required to participate in the formulation of policy and to sit as judges in reviewing disposition appeals and probable cause determinations.

By and large, the nonlawyer participants do all of this very well. In the process they provide the local committees and the Director's Office with valuable perspective.

We rely heavily on the nonlawyer participants in the disciplinary system to bring us back to earth when we wander too far from the concerns of the participants in the legal system. They also provide a valuable tool for promoting public confidence in the disciplinary system. Their efforts are deserving of the gratitude of us all.