

We Are Not Alone

By

Martin Cole, Director

Minnesota Office of Lawyers Professional Responsibility

Reprinted from *Bench & Bar of Minnesota* (November 2007)

When lawyers have an issue for which information is needed, there are usually numerous sources to which the attorney can turn. The substantive law or procedural rules may be available to research, colleagues or mentors to consult. The internet now offers a plethora of sites from which information also can be obtained—much of it accurate. If an ethical issue should arise, the Director's Office's advisory opinion service may be contacted.

A somewhat new and popular method of information exchange is the listserv (or list-server or email group), a sort of email discussion group on which questions, responses and comments can be posted by one member of the group and then distributed to all others. Responses usually can either be posted back to all members through the listserv monitor or sent directly to the person posting the inquiry. Postings on many listservs run the gamut from serious research issues to quasi-gossip. Prompt, common-sense answers from experienced, fellow practitioners may be the greatest benefit of such services. The MSBA operates several listservs, [FTN1](#) such as one for solo and small-firm lawyers.

Our Own Little Niche

Lawyers who practice extensively in the areas of professional responsibility, lawyer discipline, or law client protection admittedly are laboring in a niche area of the law. Those of us in the Director's Office, along with the attorneys who regularly represent respondents in lawyer-discipline proceedings or otherwise advise attorneys on professional responsibility issues, are a comparatively small group. Like many substantive areas of law, professional responsibility has become an increasingly difficult field for an attorney to "dabble" in successfully.

There is an ever-growing body of substantive law and literature for the area of professional responsibility, but there are relatively few sources of personal guidance for lawyers or for someone seeking to gain information about the field. To whom can attorneys who practice in the area turn for insight and guidance?

Within the field of professional responsibility and client protection there are several organizations that exist in part to serve those types of needs and to serve as a means of exchanging information with similarly situated attorneys on a national and even international level. The National Organization of Bar Counsel (NOBC) describes itself as an organization of legal professionals who enforce ethics rules that regulate the professional conduct of lawyers. Essentially, NOBC's members are the attorneys who work in

state (and Canadian provincial) disciplinary agencies. “Bar counsel” may seem an odd or outdated term these days, but it traces its roots to the fact that many states were mandatory-bar states in which the state bar association handled the lawyer discipline function—hence the attorneys representing the bar association were “bar counsel.” Although many states have disciplinary agencies that are part of the judicial branch under the authority of their state’s supreme court, as Minnesota does, in some states bar associations are still responsible for the lawyer-discipline function. “Disciplinary counsel” may be a better generic term today.

Groups similar to NOBC also exist for professionals in the lawyer ethics/regulation/client protection area: the National Client Protection Organization (NCPO) for client protection counsel (the Director’s Office provides staff services to Minnesota’s Client Security Board) and the Association of Professional Responsibility Lawyers (APRL). APRL is an organization open to all professionals in the field of professional responsibility, including law professors, malpractice litigators, and inhouse ethics counsel; it particularly serves the needs of lawyers who represent attorneys in disciplinary proceedings and who advise lawyers privately on such issues. Each of these organizations has a listserv where disciplinary counsel can seek information from fellow professionals. The American Bar Association Center for Professional Responsibility administers listservs for NOBC and the client protection field.

Counsel from Colleagues

In the lawyer-discipline area, when assessing a particular set of facts as to whether a rule violation has occurred, and if so what level of discipline is appropriate, we look first of course to any Minnesota decisions for guidance. The Minnesota Supreme Court does the same. But in some instances, there is no “precedent” on which to rely. It can be an effective research “short cut” to post a question on the listserv to other disciplinary counsel, seeking input on whether they’ve faced such a situation, how they proceeded, and whether there is any clear rule or case law on the issue. Westlaw-type research should find such cases too, but local disciplinary counsel will be more familiar with their own decisions and can provide additional insights as well, including practice pointers on the evidence needed to prove such an allegation or the types of arguments that might be used to counter such violations. I’m sure that respondents’ counsel make similar use of APRL’s listserv.

Groups such as the NOBC fulfill other purposes for their members as well. Many publish newsletters to their members with both news items about the organization and substantive articles submitted by members. *Bench & Bar of Minnesota* is in fact just such a publication for the MSBA. Several MSBA sections publish their own newsletter/magazine for their members as well. Almost all such groups maintain websites nowadays. NOBC’s website, for example, offers disciplinary case summaries from all jurisdictions to its members in a searchable format, and includes links to many, other related websites that deal with professional responsibility. The organization also sponsors two annual seminars in conjunction with the ABA annual and mid-winter meetings. These meetings offer continuing legal education programs as well as various committee reports and, of course, networking with your fellow bar counsel. Personally, I

always find it reinvigorating to get together with other lawyers who work in this area and care deeply about it. NOBC also recently sponsored a week-long NITA (National Institute of Trial Advocacy) course designed specifically for disciplinary counsel.

Outside of the area of professional responsibility, membership in groups such as the MSBA solo and small-firm group mentioned above can provide more than just a listserv exchange of information. It can also help substitute for the mentoring process that often occurs in larger firms or among attorneys who office near each other. Getting to know similarly situated attorneys through such a group, or through one of the many MSBA sections that serve lawyers in various areas of practice, can introduce lawyers—especially young lawyers or solo practitioners—to more experienced individuals upon whom they can call for advice about the practice of law and about life. In most groups, members are remarkably willing to share their experience if called upon.^{[FTN2](#)}

Perhaps the critical element to this discussion is that no one needs to or should completely “go it alone,” even if you are a solo practitioner and even if you lack a formal mentoring arrangement with someone. Becoming a member of some organization related to your practice, through the MSBA or some other entity, can only enhance your practice and provide you access to helpful information and colleagues. Even if all you do is create some new “cyber friends,” it may be well-worth the effort and cost.

NOTES

¹The MSBA website contains the following description of its listserv or email lists:

Welcome to one of the Internet’s most practical uses. Email discussion groups let you share questions and ideas with colleagues even when you can’t get together in person. They can help you get to know and stay in touch with lawyers whom you otherwise might never meet, or see only once a year.

Several lists are available, each dedicated to a different type of law or practice. Most of these lists have been created by individual MSBA sections, or in some cases by district bar associations, and only members of the relevant section or district association can join (or remain on the list). The list for members practicing in a smaller law firm or solo, named “solosmall,” is not limited to members of the General Practice, Solo and Small Firm Section. It is open to any MSBA member with an interest in practicing in that setting, even if he or she is currently in a larger firm.

MSBA currently hosts 20 interactive listservs. For the complete list of MSBA listservs and instructions for signing up see http://www2.mnbar.org/msba/programs/e-mail_lists.htm

² One word of caution in using listservs. When seeking information, attorneys need to remain aware that client confidentiality obligations apply. For example, an attorney need not disclose the entire detailed, and confidential, factual basis of the client’s life in order to ask a simple procedural question.