

**REPORT OF THE
SUPREME COURT'S
ADVISORY
COMMITTEE
ON
PROFESSIONALISM
JUNE 2003**

REPORT OF THE SUPREME COURT'S ADVISORY COMMITTEE
ON PROFESSIONALISM

June 2003

I. Executive Summary

The Supreme Court's Advisory Committee on Professionalism has been asked by the court to explore ways to increase professionalism and civility in the practice of law. Recommendations made in this report focus upon adoption of a code of professionalism standards and enforcement of those standards through education, moral suasion (peer pressure) and support, and judicial intervention. The Committee recommends as follows:

1. The Utah Supreme Court should adopt Utah Standards of Professionalism and Civility.
2. The Utah Supreme Court should urge judges to encourage lawyers in their courtrooms to adhere to the standards. A professionalism effort will not be successful without strong judicial support. Judges should make it clear that civility enhances the effectiveness of counsel and that lack of civility and professionalism has the opposite effect and could damage the client's case.
3. The Bar should offer at least twelve CLE hours per year on professionalism topics and attendance at these events should count towards satisfaction of the three-hour ethics requirement per reporting period.
4. The Judiciary should implement, on a trial basis, a part-time discovery commissioner in the Third Judicial District.
5. The Utah Supreme Court should make its Advisory Committee on Professionalism a permanent entity with a rotating membership appointed from the Bench and Bar.
6. The Committee on Professionalism should maintain a web page as a means of disseminating information and attracting support. At the time of bar membership renewal, or on a regular basis, all lawyers in Utah should be invited to take a pledge to adhere to the standards and to add their names to the list maintained on the website of those lawyers who have so pledged. At the commencement of any case, the lawyers can determine from the website whether the opponent is on the list. If not, the lawyer should write a letter stating that he or she will adhere to the standards and invite opposing counsel to do the same. If one or more of the attorneys have not signed up as of the time of the first appearance, the judge should encourage them to do so and explain the benefits of civility in his or her court.

7. The Committee on Professionalism should develop a network of liaisons representing private law firms, county bar associations, and other legal entities or organizations to address civility complaints, disseminate information, and bolster the professionalism initiative.

In March of 2001, then Chief Justice Richard Howe and several Utah lawyers attended a conference in Del Mar, California, sponsored by the American Bar Association's Center for Professional Responsibility and by the Conference of Chief Justices (CCJ). The conference was designed to encourage the Chief Justices in each of the fifty states to implement an action plan on lawyer professionalism.

Following the conference, Chief Justice Howe asked several lawyers to informally survey practicing lawyers as to whether they felt there was a problem with professionalism in Utah. The feedback reported to Chief Justice Howe was that nearly all practitioners surveyed felt there was a significant problem.

II. Creation of the Committee

In 1996, the CCJ adopted a resolution calling for a study of lawyer professionalism and the development of a National Action Plan to assist state supreme courts in providing leadership and support for professionalism initiatives. In January of 1999, the CCJ promulgated a National Action Plan that described the responsibilities of the bench, the bar, and the law schools in promoting lawyer ethics and professionalism and included specific recommendations in the areas of professionalism, lawyer competence, lawyer regulation, and public outreach efforts. In 2001, the CCJ issued a National Implementation Plan for its National Action Plan. Copies of both of these Plans are included in the Appendix to this report.

On October 1, 2001, in response to the CCJ's National Action Plan and feedback from Bar leadership and Utah attorneys, the Utah Supreme Court (the "Court") voted to create an advisory committee on professionalism in the practice of the law and appointed Justice Matthew Durrant to chair the Committee. The Court appointed the following judges, law professors, and attorneys to serve on the Committee: Judge Gregory Orme, Judge Kay Lindsay, Judge Ann Boyden, Judge Jerry Jensen, Robert Clark, Professor Thomas Lee, Professor Susan Poulter, Billy Walker, Frank Carney, Jeff Vincent, Lowry Snow, Gus Chin, Suzanne Marychild, Don Winder, Royal Hansen, Nate Alder, Scott Daniels, Ruth Lybbert, Matty Branch, and Fran Wikstrom.

At the first Committee meeting, held on January 15, 2002, Justice Durrant advised that the Court was increasingly concerned about the erosion of civility and professionalism in the practice of law, and that it wanted the Committee to examine the nature and extent of the civility problem within the state and to make recommendations as to how professionalism might be enhanced.

III. Methods

Since the first meeting, twelve two-hour Committee meetings have been held, as well as numerous subcommittee meetings. At its meeting in May 2002, the Committee met with Beryl Crowley, Executive Director of the Texas Center for Legal Ethics and Professionalism. Ms. Crowley advised as to what other state bars and jurisdictions in the country were doing to promote civility. She also provided detailed information about the development of the Texas Lawyer's Creed and the four-hour professionalism course offered through the Texas Center for Legal Ethics and Professionalism.

At its first meeting, Committee members echoed the Court's view regarding the loss of civility in the legal profession. Committee members' initial reactions to the issue included the following:

- Specific rather than general enumerated principles of civility are needed.
- Lawyers need to explain to clients that lawyers are more effective advocates when they are civil. Judges should reinforce this in the presence of clients as appropriate.
- The public needs to understand the risks of demanding that lawyers employ a "mad dog" approach.
- Judges need to get involved in addressing incivility that occurs inside and outside of the courtroom.
- Judges should make lawyers who act uncivilly feel uncomfortable and aware that their conduct is hurting both their reputation and their clients' cases.
- There should be real consequences for and disincentives to uncivil behavior.
- We need to enlist those among the profession who exemplify civility to assist in promoting it.

After several meetings, the Committee voted to form three subcommittees; one charged with developing a code of civility to define expectations; another to explore educational approaches to the civility problem; and a third to spearhead the drafting of a report to the Court.

IV. Relationship Between Ethics and Professionalism

The committee explored whether "ethics" differed from "professionalism." Ultimately, the Committee concluded that, for members of the legal profession, there is no rigid boundary between the two concepts. Ethics and Professionalism, as disciplines, are both concerned with a lawyer's obligations to his or her clients, to fellow attorneys, and to the justice system. A truly ethical attorney will invariably be professional in his or her dealings with others. By the same token, an attorney who is a consummate professional will necessarily observe the highest ethical standards.

V. What Other Jurisdictions Are Doing

Professionalism commissions are presently in place in New York, South Carolina, North Carolina, Texas, Georgia, New Jersey, Ohio, and Florida, and at least fourteen other states are involved in some sort of professionalism study or initiative. Many jurisdictions have addressed civility by developing professional codes. The ABA Standing Committee on Professionalism indicates that there are over one hundred such codes from state and local bar associations, courts, state professionalism commissions, ABA entities, and other groups.

During its meeting with Beryl Crowley, Executive Director of the Texas Center for Legal Ethics and Professionalism, the Committee learned about the Texas Center's development of a four-hour professionalism course that the Texas Supreme Court requires every lawyer licensed in Texas to take within twelve months of licensing. Ms. Crowley advised that between 2,500 to 3,000 lawyers take the course every year. Texas also has an aspirational Lawyer's Creed, which each attorney is required to sign and abide by.

VI. Professionalism/Civility Presentations

Since the creation of the Committee, various members have prepared and participated in presentations aimed either at promoting civility in the practice of law or educating members of the bench and bar as to the work of the Committee. The following is a list of those presentations and presenters:

May 23, 2002	New Lawyer's CLE Sharp Practices Workshop (Justice Matthew Durrant and Frank Carney)
June 14, 2002	Annual New Lawyer MCLE – first hour of 8-hour session was devoted to civility presentation (Justice Matthew Durrant and Frank Carney)
June 26, 2002	Utah State Bar annual meeting, Sun Valley – breakout session on professionalism (Judge Greg Orme)
September, 2002	Civility panel discussion at Utah Trial Lawyer's Seminar (Ruth Lybbert, Nate Alder, Frank Carney, Scott Daniels)
September 11, 2002	Professionalism presentation at Annual Judicial Conference (Justice Matthew Durrant, Don Winder, Frank Carney, Rob Clark, Scott Daniels, and Matty Branch)

- September 20, 2002 Civility presentation at University of Utah College of Law CLE series (Justice Matthew Durrant)
- October 2, 2002 Civility presentation at Utah State Bar leadership workshop (Frank Carney, Don Winder)
- October 18, 2002 Civility and Professionalism presentation at BYU J. Reuben Clark Law School CLE program (Rob Clark)
- November 1, 2002 Civility presentation at New Lawyer MCLE seminar (Justice Matthew Durrant)
- December 13, 2002 Professionalism presentation at ethics seminar sponsored by Lawyers Helping Lawyers (Judge Greg Orme and Don Winder)
- January 15, 2003 Civility presentation at Utah State Bar Ethics School (Justice Matthew Durrant)
- May 6, 2003 Civility presentation at Utah Municipal Attorneys Association Annual Meeting (Don Winder)
- May 30, 2003 Professionalism presentation before Weber County Bar Association (Frank Carney)
- June 13, 2003 Civility Presentation at the New Lawyer MCLE Seminar (Justice Matthew Durrant)

Future presentations:

- July 19, 2003 Plenary session concerning recommendations of Professionalism Committee during Utah State Bar Annual Meeting in Sun Valley (Justice Matthew Durrant)
- November 7, 2003 Professionalism Seminar presented by various members of the Committee

VII. Committee Recommendations

A. Utah Standards of Professionalism and Civility

Early in the Committee's deliberations, it became apparent that many jurisdictions have hoped to increase civility in the legal profession by promulgating codes

of civility. In 1992, the Seventh Federal Judicial Circuit issued its “Proposed Standards for Professional Conduct.” Those standards have become a model for other courts and bar associations. The Civility Code Subcommittee reviewed the Seventh Circuit’s “Standards,” relied primarily upon the American Board of Trial Advocates (“ABOTA”) Principles of Civility, and also reviewed The Florida Bar Trial Lawyers Section Guidelines for Professional Conduct, The Texas Lawyer’s Creed, the Civility and Professional Guidelines for the Central District of California, the ABA Guidelines for Conduct, Lawyer’s Duties to Other Counsel, the San Diego County Bar Association’s “Civil Litigation Code of Conduct,” the American College of Trial Lawyers’ Codes of Pretrial and Trial Conduct, the Federal Bar Association Standards for Civility in Professional Conduct, and the American Inns of Court Professional Creed. Copies of these documents may be found in the Appendix to this report. Following this review process, the subcommittee spent many hours creating and refining the unique set of standards stated below.

The Committee was mindful of not adding rules governing attorney conduct simply for the sake of adding rules. Additionally, the Committee is not so naive as to believe that the Court’s formalization of a code of civility will, by itself, halt the decline in civility among Utah lawyers. It does sincerely believe, however, that adoption of a code will provide guidance to new lawyers and a reminder for experienced ones of the higher standard of behavior expected of all lawyers. After lengthy deliberations, the Committee unanimously agreed upon the following Preamble and twenty Standards. The Committee recommends that the Court approve and promulgate these Standards.

Utah Standards of Professionalism and Civility
Preamble

A lawyer’s conduct should be characterized at all times by personal courtesy and professional integrity in the fullest sense of those terms. In fulfilling a duty to represent a client vigorously as lawyers, we must be mindful of our obligations to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner. We must remain committed to the rule of law as the foundation for a just and peaceful society.

Conduct that may be characterized as uncivil, abrasive, abusive, hostile, or obstructive impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct tends to delay and often to deny justice.

Lawyers should exhibit courtesy, candor and cooperation in dealing with the public and participating in the legal system. The following standards are

designed to encourage lawyers to meet their obligations to each other, to litigants and to the system of justice, and thereby achieve the twin goals of civility and professionalism, both of which are hallmarks of a learned profession dedicated to public service.

We expect judges and lawyers will make mutual and firm commitments to these standards. Adherence is expected as part of a commitment by all participants to improve the administration of justice throughout this State. We further expect lawyers to educate their clients regarding these standards and judges to reinforce this whenever clients are present in the courtroom by making it clear that such tactics may hurt the client's case.

Although for ease of usage the term "court" is used throughout, these standards should be followed by all judges and lawyers in all interactions with each other and in any proceedings in this State. Copies may be made available to clients to reinforce our obligation to maintain and foster these standards. Nothing in these standards supersedes or detracts from existing disciplinary codes or standards of conduct.

Annotation: See generally Preamble to Standards for Professional Conduct Within the Seventh Federal Judicial Circuit ("7th Cir. Standards"); Preamble to American College of Trial Lawyers Code of Pretrial Conduct ("ACTL Pretrial Code"); Preamble to Federal Bar Association Standards for Civility in Professional Conduct ("FBA Standards"); American Inns of Court Professional Creed. All Annotations may be found on the Committee's web site at www.utprofcomm.org.

Lawyers' Duties

1. Lawyers shall advance the legitimate interests of their clients, without reflecting any ill-will that clients may have for their adversaries, even if called upon to do so by another. Instead, lawyers shall treat all other counsel, parties, judges, witnesses, and other participants in all proceedings in a courteous and dignified manner.

Annotation: American Board of Trial Advocates Principles of Civility ("ABOTA Principles"), No. 1; see also ACTL Pretrial Code, Std. 4(a); Participant's Manual for the Professionalism Course, State Bar of Arizona, February 1999, Professionalism Principle X ("Arizona Professionalism"); ABA Section of Litigation, Guidelines for Conduct, Lawyers' Duties to Other Counsel ("ABA Guidelines"), No. 2; FBA Standards, No. 2.

2. Lawyers shall advise their clients that civility, courtesy, and fair dealing are expected. They are tools for effective advocacy and not signs of weakness. Clients have no right to demand that lawyers abuse anyone or engage in any

offensive or improper conduct.

Annotation: Civility and Professionalism Guidelines for the Central District of California (“Central Dist. Cal.”), No. A. 3; The Texas Lawyer’s Creed, a Mandate for Professionalism, promulgated by the Supreme Court of Texas (“Texas Creed”), No. II. 6; FBA Standards, Nos. 3 & 13.

3. Lawyers shall not, without an adequate factual basis, attribute to other counsel or the court improper motives, purpose, or conduct. Lawyers should avoid hostile, demeaning, or humiliating words in written and oral communications with adversaries. Neither written submissions nor oral presentations should disparage the integrity, intelligence, morals, ethics, or personal behavior of an adversary unless such matters are directly relevant under controlling substantive law.

Annotation: ABOTA Principles, No. 3; ACTL Pretrial Code, Stds. 3(b) & 4(b); American College of Trial Lawyers Code of Trial Conduct (“ACTL Trial Code”), Std. 13(d) (1994); see also Texas Creed No. III. 10; 7th Cir. Standards, Lawyers’ Duties to Other Counsel, No. 4; FBA Standards, Nos. 5, 24 & 25.

4. Lawyers shall never knowingly attribute to other counsel a position or claim that counsel has not taken or seek to create such an unjustified inference or otherwise seek to create a “record” that has not occurred.

Annotation: ABOTA Principles, No. 28; ACTL Pretrial Code, Std. 4(c); see also ABA Standards, No. 29.

5. Lawyers shall not lightly seek sanctions and will never seek sanctions against or disqualification of another lawyer for any improper purpose.

Annotation: See Civil Litigation Code of Conduct, San Diego County Bar Association (“San Diego Bar”), No. III. 13; Texas Creed, No. III. 19; FBA Standards, No. 23.

6. Lawyers shall adhere to their express promises and agreements, oral or written, and to all commitments reasonably implied by the circumstances or by local custom.

Annotation: ABOTA Principles, No. 5; ACTL Pretrial Code, Std. 4(e); ACTL Trial Code, Std. 13(b); see also Central Dist. Cal., B.1.a; The Florida Bar Trial Lawyers Section, Guidelines for Professional Conduct (“Fla. Guidelines”), No. D.5; FBA Standards, No. 48.

7. When committing oral understandings to writing, lawyers shall do so accurately and completely. They shall provide other counsel a copy for review, and never include substantive matters upon which there has been no agreement, without explicitly advising other counsel. As drafts are exchanged, lawyers shall bring to the attention of other counsel changes from prior drafts.

Annotation: ABOTA Principles, No. 6; Central Dist. Cal., B.1.b.; cf. Texas Creed, No. III. 4; Aspirational Statement on Professionalism, entered by Order of Supreme Court of Georgia, October 9, 1992, (“Georgia Aspirational”), No. 5; FBA Standards, Nos. 49 & 50.

8. When permitted or required by court rule or otherwise, lawyers shall draft orders that accurately and completely reflect the court’s ruling. Lawyers shall promptly prepare and submit proposed orders to other counsel and attempt to reconcile any differences before the proposed orders and any objections are presented to the court.

Annotation: See ABA Guidelines, No. 28; ABOTA Principles, No. 27; see generally CJA Rule 4-504.

9. Lawyers shall not hold out the potential of settlement for the purpose of foreclosing discovery, delaying trial, or obtaining other unfair advantage, and lawyers shall timely respond to any offer of settlement or inform opposing counsel that a response has not been authorized by the client.

Annotation: ABOTA Principles, No. 7.

10. Lawyers shall make good faith efforts to resolve by stipulation undisputed relevant matters, particularly when it is obvious such matters can be proven, unless there is a sound advocacy basis for not doing so.

Annotation: ABOTA Principles, No. 8; ABA Standards, No. 9; see ACTL Code, Stds. 6(b) & 9(i); FBA Standards, No. 15.

11. Lawyers shall avoid impermissible *ex parte* communications on any substantive matter and on any matter that could reasonably be perceived as a substantive matter.

Annotation: ACTL Pretrial Code, Std. 8(a); San Diego Bar, No. II. 8; compare Utah Supreme Court Rules of Professional Practice, 3.5(c), with Utah Canon 3(B)(7), Code of Judicial Conduct; FBA Standards, No. 33.

12. Lawyers shall not send the court or its staff correspondence between counsel, unless such correspondence is relevant to an issue currently pending before the court and the proper evidentiary foundations are met or as such correspondence is specifically invited by the court.

Annotation: Cf. ABOTA Principles, No. 29; Texas Creed, No. III. 13.

13. Lawyers shall not knowingly file or serve motions, pleadings or other papers at a time calculated to unfairly limit other counsel's opportunity to respond or to take other unfair advantage of an opponent, or in a manner intended to take advantage of another lawyer's unavailability.

Annotation: ABOTA Principles, No. 12; ACTL Pretrial Code, Std. 2(c); see also Georgia Aspirational, No. 1; FBA Standards, No. 8.

14. Lawyers shall advise their clients that they reserve the right to determine whether to grant accommodations to other counsel in all matters not directly affecting the merits of the cause or prejudicing the client's rights, such as extensions of time, continuances, adjournments, and admissions of facts. Lawyers shall agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect their clients' legitimate rights. Lawyers shall never request an extension of time solely for the purpose of delay or to obtain a tactical advantage.

Annotation: See ABOTA Principles, Nos. 13 & 17; ACTL Pretrial Code, Stds. 1(c); ACTL Trial Code, Std. 13(a); Texas Creed No. II. 10; FBA Standards, No. 10.

15. Lawyers shall endeavor to consult with other counsel so that depositions, hearings, and conferences are scheduled at mutually convenient times. Lawyers shall never request a scheduling change for tactical or unfair purpose. If a scheduling change becomes necessary, lawyers shall notify other counsel and the court immediately. If other counsel requires a scheduling change, lawyers shall cooperate in making any reasonable adjustments.

Annotation: See generally ABOTA Principles, Nos. 13-16; ACTL Pretrial Code, Std. 1; FBA Standards, Nos. 9, 11, 30, 31 & 32.

16. Lawyers shall not cause the entry of a default without first notifying other counsel whose identity is known, unless their clients' legitimate rights could be adversely affected.

Annotation: ABOTA Principles, No. 18; ACTL Pretrial Code, Std. 13(b); see also ABA Guidelines, No. 18; Texas Creed, No. III. 11.

17. Lawyers shall not use or oppose discovery for the purpose of harassment or to burden an opponent with increased litigation expense. Lawyers shall not object to discovery or inappropriately assert a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected information.

Annotation: See generally Utah Supreme Court Rules of Professional Practice, 4.4; Utah Rules of Civil Procedure 11, 26 & 37; FBA Standards, Nos. 14, 17 & 19.

18. During depositions lawyers shall not attempt to obstruct the interrogator or object to questions unless reasonably intended to preserve an objection or protect a privilege for resolution by the court. “Speaking objections” designed to coach a witness are impermissible. During depositions or conferences, lawyers shall engage only in conduct that would be appropriate in the presence of a judge.

Annotation: See Fla. Guidelines, No. E.9; FBA Standards, No. 16.

19. In responding to document requests and interrogatories, lawyers shall not interpret them in an artificially restrictive manner so as to avoid disclosure of relevant and non-protected documents or information, nor shall they produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.

Annotations for 17 - 19: See generally ABOTA Principles, Nos. 19-26; ACTL Pretrial Code, Stds. 5(a), 5(c) & 5(e)(5); FBA Standards, Nos. 18 & 20.

20. Lawyers shall not authorize or encourage their clients or anyone under their direction or supervision to engage in conduct proscribed by these Standards.

Annotation: ABOTA Principles, No. 2; see also Texas Creed, No. III. 9.

The question of enforcement of these Standards is a difficult one. Committee members considered enforcement mechanisms such as an ombudsman, peer review panels, censure in the *Bar Journal*, or required “corrective interviews” with a judge. Ultimately, the Committee felt such enforcement methods were probably prohibitive due to expense, time commitment, and due process concerns. Also, Committee research did not reveal any state that had an enforceable rather than aspirational code. Therefore, at this

time, the Committee recommends promulgation of the Standards on an aspirational basis. Nevertheless, the Committee believes that the Standards should operate as behavioral norms for the profession and that the Court should urge all state court judges to strongly encourage lawyers practicing before them to adhere to the Standards or risk the consequences.

B. Educational Approaches

1. Continuing Legal Education (CLE) – Professionalism Courses

Presently, new lawyers in Utah must attend one mandatory three-hour ethics session during their first year of mandatory CLE. New lawyers must also take ten hours of new-lawyer approved CLE. All other lawyers are required to attend 27 approved CLE hours in each two-year reporting period, three of which hours must be qualified ethics credits. The Committee recommends that professionalism courses qualify for ethics credits.

The Committee discussed the merits of having a CLE requirement for professionalism, separate from ethics. Some Committee members expressed concern that professionalism courses would hold little attraction for many lawyers over “pure” ethics classes of a more practical bent. Ultimately, the Committee decided not to initially recommend additional mandatory hours for professionalism credits. Instead, the Committee recommends that attendance at professionalism courses coming under the general ethics category be monitored to see how many attorneys are attending these courses.

The Committee makes the following CLE recommendations to the Court:

The first hour of new lawyers’ mandatory CLE session should be dedicated to remarks on professionalism by a member of the judiciary. The tenor of their remarks should be positive and inspirational.

At all CLE presentations, specific guidelines should be emphasized rather than generalized comments or “war stories.” Guidelines should be based on the Utah Standards of Professionalism and Civility. Lectures should include instruction on specifics. For example, extensions should be routinely allowed absent harm to the client or depositions should always be coordinated in advance of formal notice.

Professionalism courses should count toward satisfaction of the “ethics” requirement of 3.0 hours per reporting period. Attendance at “pure” professionalism seminars should be monitored for a two-year period to determine whether professionalism courses are being ignored. If they are,

the issue of mandatory professionalism CLE should be revisited.

The Bar should offer at least twelve available CLE hours per year on professionalism topics. A member of the Committee should be designated to monitor professionalism CLE and to encourage specialty bars and sections to sponsor professionalism topics.

2. Law School Education

As part of its deliberations, the Committee investigated whether concepts of professionalism are taught at the two local law schools. The Committee learned that professionalism was not a separate area of study, but that concepts of professionalism were generally incorporated in many law school classes. Courses on professional responsibility incorporate some professionalism topics, but the focus is on learning ethical rules. The Committee makes the following recommendations to the Court related to professionalism education in law schools:

Representatives of both local law schools should be members of the Committee. This will ensure that professionalism is addressed in the curriculum.

The law school representatives on the Committee should inquire of their respective faculties as to how professionalism might best be taught to students and report to the Committee within six months.

3. Judicial Education

The Committee also explored judicial education as to professionalism. It was generally agreed that any of the professionalism initiatives recommended by the Committee have limited chance of success absent judicial support and involvement. The Committee feels strongly that the call for judicial involvement must come from the members of the Court. The Committee makes the following two recommendations as to judicial education to the Court:

The Committee asks the Court to urge those entities responsible for judicial education to regularly offer presentations which focus on how Utah judges can promote professionalism and civility amongst the Bar.

Although the Committee does not recommend that judicial professionalism issues be addressed by the Committee at the present time, it believes that this is an important area for future attention.

C. Discovery Commissioner

Based upon personal observations and experiences, members believe more unprofessionalism occurs in the discovery process than in any other aspect of legal practice. The Committee recommends that a paid, part-time Discovery Commissioner be implemented as a pilot program in the Third Judicial District. Any judge in the Third District presented with a discovery dispute would have the option of referring the matter to the Discovery Commissioner for detailed investigation and recommendation of sanctions or other relief. The Committee envisions the commissioner taking an aggressive approach as to chronic offenders and, in some measure, liberating judges from dealing with discovery disputes, which they see as unpleasant and unrewarding tasks.

The Rules of Practice for the Eighth Judicial District Court for the State of Nevada (Clark County) require that all discovery disputes be first heard and a recommendation made by a Discovery Commissioner. This procedure has been in place since the late 1980's in Las Vegas, to apparently good reviews. Anecdotal information indicates that discovery disputes have lessened with the availability of a judicial officer tasked with handling discovery issues on short notice. The Clark County Discovery Commissioner publishes his opinions on-line in order to reduce the likelihood of disputes on issues that are recurrent, such as objections to document production on work-product grounds, and to promote uniformity in the resolution of such disputes. Examples of several of the Clark County Discovery Commissioner's on-line opinions are included in the appendix to this report.

D. Law Firm/County Bar Association Involvement in Professionalism Efforts

The Committee believes that law firms throughout the state could be involved in the professionalism initiative. As a first step in promoting involvement, Justice Durant, as a chair of the Committee, has sent letters to senior attorneys at approximately twenty sizeable Salt Lake City law firms as well as to the president of each county bar association advising as to the professionalism initiative and the proposed Utah Standards of Professionalism and Civility, and asking the firm or association to designate a liaison to the Committee.

Recommendations as to the law firm and/or county bar association involvement in the professionalism initiative include the following:

1. Liaisons will be requested to ask each member of their firm or association to commit to the Utah standards of professionalism and civility.
2. Liaisons will also be responsible for addressing concerns over particular lawyers in their firms on an ongoing basis.
3. A luncheon meeting will be held with the Court, select members of the Committee and the Liaisons to discuss the goals of the professionalism initiative and to generate active participation.
4. The Liaisons will lead orientations at their respective firms or association meetings. Members of the Committee will attend such orientations to provide information about the professionalism initiative. The primary purpose of such orientations would be to instill ownership of the professionalism initiative in as many groups of lawyers as possible.

E. Professionalism Award

The Committee recommends that the Bar institute a professionalism award to be periodically bestowed on a Utah attorney who consistently behaves as a consummate professional. The award should be separate and distinct from the awards presented at the Mid-year and Annual meetings, with the honoree being lauded in the Bar Journal.

F. Professionalism Web Page

Soon after the Committee's first few meetings, Frank Carney sought the assistance of the Utah State Bar to set up a web page to support the work of the Committee. The web page is now operational, with an address of www.utprofcomm.org. The Committee is indebted to the Bar, and specifically to Lincoln Mead of the Bar staff, for making the web page a reality.

Currently, the web page contains information about the formation of the Committee, the names of the Committee members, the minutes of Committee meetings and links to a variety of publications developed by professionalism commissions across the country. Copies of some of the web page materials are included in the Appendix to this report. The web page has also been designed to include a private section available only to Committee members via a password for Committee business, resources, and communication and as a means to maintain the Committee's institutional memory.

The Committee recommends to the Court that the web page be maintained as a means of disseminating material concerning professionalism to the bar and

the public as well as to attract new supporters to the cause. Should the Court endorse the recommendations contained in this report, the web page would eventually include this report, the Standards of Professionalism and Civility, a list of those attorneys who have pledged adherence to the standards, CLE professionalism offerings, and law firm liaison information.

G. Supreme Court's Advisory Committee on Professionalism

The Committee recommends to the Court that it make the Committee a permanent entity, with a rotating membership periodically appointed from the membership of the bench and bar. A permanent entity would facilitate the implementation of ideas concerning professionalism on an ongoing, long-term basis.

VIII. Conclusion

The Committee urges the Court to review this report and to authorize it to be published for comment in the Bar Journal and on the Bar's and Courts' web pages. Comments as to the proposed standards recommendations should be directed to the Court. After expiration of the comment period, and the Court's review of the comments received, the Committee requests that the Court consider the recommendations individually and take action to accept, reject or modify each of them. If the Court chooses to designate the Committee as an on-going entity, the Court could then direct the Committee to take the steps necessary to implement any other recommendations as may be approved.

Improving and fostering professionalism in the legal profession requires the cooperative efforts of the Bar, the Judiciary, and the law schools. We can no longer simply talk about the loss of civility among the members of our profession, lack of respect for the judiciary – and for our legal system, and the excessive commercialization of legal practice. We must act. The recommendations made in this report are respectfully offered as a starting point.

REPORT OF THE
SUPREME COURTS
ADVISORY COMMITTEE
ON PROFESSIONALISM
APPENDIX OF MATERIALS

JUNE 2003

PART I:

A National Action Plan on Lawyer Conduct and
Professionalism

A Report of the Working Group on Lawyer Conduct and
Professionalism

Adopted by the Conference of Chief Justices January 21, 1999

EXECUTIVE SUMMARY

In response to concerns about a perceived decline in lawyer professionalism and its effect on public confidence in the legal profession and the justice system, the Conference of Chief Justices (CCJ) adopted Resolution VII at its 1996 Annual Meeting. This resolution called for a study of lawyer professionalism and the development of a National Action Plan to assist state appellate courts of highest jurisdiction in providing leadership and support for professionalism initiatives. With funding by the State Justice Institute and support from the National Center for State Courts (NCSC) and the American Bar Association Center for Professional Responsibility ("Center"), the CCJ Committee on Professionalism and Lawyer Competence ("Committee") carried out the resolution.

Under the direction of the Committee, the NCSC and the Center surveyed state courts, bar associations and other legal organizations, and ABA accredited law schools concerning professionalism and legal ethics programs in each state and solicited their opinions about the support that such programs need from state supreme courts. Summaries of the responses were provided to a Working Group of 30 judges and lawyers who made recommendations about specific initiatives that should be included in the National Action Plan. In August 1998, a draft of the National Action Plan was distributed to a wide variety of legal and judicial organizations and made available from the NCSC website for public review and comment. Based on comments received, the Working Group finalized the National Action Plan for submission to the CCJ for consideration at its 1999 Midyear Meeting.

The report consists of three sections. Section I contains a detailed description of the institutional and individual responsibilities of the bench, the bar, and the law schools in promoting lawyer ethics and professionalism. In the course of conducting the study, the Working Group recognized that different components of the legal community influence lawyer professionalism in unique ways. A sustained commitment and coordinated effort by all of them is needed to effect any meaningful change in the level of professionalism demonstrated by the legal community.

Section II contains the specific recommendations of the National Action Plan. The recommendations are organized in the familiar black letter and commentary format and address seven specific topics of lawyer ethics and professionalism: (A) Professionalism, Leadership and Coordination; (B) Improving Lawyer Competence; (C) Law School Education and Bar Admission; (D) Effective Lawyer Regulation; (E) Public Outreach Efforts; (F) Lawyer Professionalism in Court; and (G) Interstate Cooperation. The specific recommendations of the National Action Plan are:

A. Professionalism, Leadership, and Coordination

The appellate court of highest jurisdiction in each state should take a leadership role in evaluating the contemporary needs of the legal community with respect to lawyer professionalism and coordinating the activities of the bench, the bar, and the law schools in meeting those needs. Specific efforts should include:

- **Establishing a Commission on Professionalism or other agency under the direct authority of the appellate court of highest jurisdiction;**
- **Ensuring that judicial and legal education makes reference to broader social issues and their impact on professionalism and legal ethics;**

- Increasing the dialogue among the law schools, the courts and the practicing bar through periodic meetings; and
- Correlating the needs of the legal profession – bench, bar, and law schools – to identify issues, assess trends and set a coherent and coordinated direction for the profession.

B. Improving Lawyer Competence

1. Continuing Legal Education (CLE)

Each state's appellate court of highest jurisdiction should encourage and support the development and implementation of a high-quality, comprehensive CLE program including substantive programs on professionalism and competence. An effective CLE program is one that:

- Requires lawyer participation in continuing legal education programs;
- Requires that a certain portion of the CLE focus on ethics and professionalism;
- Requires that all lawyers take the mandated professionalism course for new admittees;
- Monitors and enforces compliance with meaningful CLE requirements;
- Encourages innovative CLE in a variety of practice areas;
- Encourages cost-effective CLE formats;
- Encourages the integration of ethics and professionalism components in all CLE curricula;
- Encourages CLE components on legal practice and office management skills, including office management technology; and
- Teaches methods to prevent and avoid malpractice and unethical or unprofessional conduct and the consequences of failing to prevent and avoid such conduct.

2. Law Office Management

State bar programs should support efforts to improve law office efficiency.

Effective support includes:

- Establishing a law office management assistance program;
- Providing assistance with daily law office routines; and
- Providing monitoring services for lawyers referred from the disciplinary system.

3. Assistance with Ethics Questions

Lawyers should be provided with programs to assist in the compliance of ethical rules of conduct. State bar programs should:

- Establish an Ethics Hotline;
- Provide access to advisory opinions on the Web or a compact disc (CD); and

- **Publish annotated volumes of professional conduct.**

4. Assistance to lawyers with mental health or substance abuse problems

Lawyers need a forum to confront their mental health and substance abuse problems. State bar programs should:

- **Create a Lawyer Assistance Program (LAP) if one does not exist;**
- **Fund the LAP through mandatory registration fees;**
- **Provide confidentiality for LAP programs;**
- **Establish intervention systems for disabilities and impairments other than substance abuse or expand existing LAPs to cover non-chemical dependency impairments;**
- **Provide monitoring services for lawyers referred from the disciplinary system; and**
- **Provide career counseling for lawyers in transition.**

5. Lawyers Entering Practice for the First Time – Transitional Education

Judicial leadership should support the development and implementation of programs that address the practical needs of lawyers immediately after admission to the bar. Effective programs for newly admitted lawyers:

- **Mandate a course for new admittees that covers the fundamentals of law practice;**
- **Emphasize professionalism;**
- **Increase emphasis on developing post-graduation skills; and**
- **Ensure the availability of CLE in office skills for different office settings.**

6. Mentoring

Judicial leadership should promote mentoring programs for both new and established lawyers. Effective programs:

- **Establish mentoring opportunities for new admittees;**
- **Establish mentoring opportunities for solo and small firm practitioners;**
- **Provide directories of lawyers who can respond to questions in different practice areas;**
- **Provide networking opportunities for solo and small firm lawyers; and**
- **Provide technology for exchange of information.**

C. Law School Education and Bar Admission

1. Law School Curriculum

In preparing law students for legal practice, law schools should provide students with the fundamental principles of professionalism and basic skills for legal practice.

2. Bar Examination

The subject areas tested on the examination for admittance to the state bar should reflect a focus on fundamental competence by new lawyers.

3. Character and Fitness Evaluation

Law schools should assist bar admissions agencies by providing complete and accurate information about the character and fitness of law students who apply for bar admission.

4. Bar Admission Procedures

Bar admissions procedures should be designed to reveal instances of poor character and fitness. If appropriate, bar applicants may be admitted on a conditional basis.

D. Effective Lawyer Regulation

1. Complaint Handling

Information about the state's system of regulation should be easily accessible and presented to lawyers and the public in an understandable format. The disciplinary agency, or central intake office if separate, should review complaints expeditiously. Matters that do not fall under the jurisdiction of the disciplinary agency or do not state facts that, if true, would constitute a violation of the rules of professional conduct should be promptly referred to a more appropriate mechanism for resolution. Complainants should be kept informed about the status of complaints at all stages of proceedings, including explanations about substantive decisions made concerning the complaint.

2. Assistance to lawyers with ethics problems or "minor" misconduct (e.g., acts of lesser misconduct that do not warrant the imposition of a disciplinary sanction)

The state's system of lawyer regulation should include procedures for referring matters involving lesser misconduct to an appropriate remedial program. Such procedures may include:

- Required participation in a law office management program;**
- Required participation in a lawyer assistance program;**
- Enrollment in an "ethics school" or other mandatory CLE; and**
- Participation in a fee arbitration or mediation program.**

3. Disciplinary Sanctions

The range of disciplinary sanctions should be sufficiently broad to address the relative severity of lawyer misconduct, including conduct unrelated to the lawyer's legal practice. Disciplinary agencies should use available national standards to

ensure interstate consistency of disciplinary sanctions. All public sanction should be reported to the National Lawyer Regulatory Databank of the American Bar Association.

4. Lawyers' Funds for Client Protection

The state's system of lawyer regulation should include a Lawyers' Fund for Client Protection to shield legal consumers from economic losses resulting from an attorney's misappropriation of law client and escrow money in the practice of law. Rules or policies of the appellate court of highest jurisdiction should:

- **Provide for a statewide client protection fund;**
- **Require that the fund substantially reimburse losses resulting from dishonest conduct in the practice of law;**
- **Finance the fund through a mandatory assessment on lawyers;**
- **Designate the fund's assets to constitute a trust;**
- **Appoint a board of trustees, composed of lawyers and lay persons, to administer the fund; and**
- **Require the board of trustees to publicize the fund's existence and activities.**

5. Other Public Protection Measures

The state's system of lawyer regulation should include other appropriate measures of public protection. Such measures that the Court should enact include:

- **Mandating financial recordkeeping, trust account maintenance and overdraft notification;**
- **Establish a system of random audits of trust accounts;**
- **Requiring lawyers who seek court appointments to carry malpractice insurance;**
- **Collect annual information on lawyers' trust accounts;**
- **Studying the possibility of recertification;**
- **Providing for interim suspension for threat of harm; and**
- **Establishing a 30-day no contact rule.**

6. Efficiency of the Disciplinary System

The state system of lawyer regulation should operate effectively and efficiently. The Court should enact procedures for improving the system's efficiency, including:

- **Providing for discretionary rather than automatic review of hearing committee or board decisions by the Court;**
- **Providing for discipline on consent;**
- **Requiring respondents to disciplinary investigations to be reasonably cooperative with investigatory procedures;**
- **Establishing time standards for case processing;**
- **Periodically reviewing the system to increase efficiency where necessary;**

- **Eliminating duplicative review in the procedures for determining whether to file formal charges;**
- **Authorizing disciplinary counsel to dismiss complaints summarily or after investigation with limited right of complainants to seek review;**
- **Using professional disciplinary counsel and staff for investigation and prosecution and volunteers on boards and hearing committees;**
- **Providing appropriate training for all involved; and**
- **Incorporating disciplinary experiences in CLE curricula.**

7. Public Accountability

The public should have access to information about the system of lawyer regulation including procedures, aggregate data concerning its operations, and lawyers' disciplinary records. Laypersons should be included on disciplinary hearing panels and boards. Other measures to ensure public accountability of the disciplinary agency include:

- **Making written opinions available in all cases;**
- **Making formal disciplinary hearings open to the public;**
- **Collecting and making available information on lawyers' malpractice insurance; and**
- **Speaking about the disciplinary system at public gatherings.**

E. Public Outreach Efforts

1. Public Education

Judges, lawyers and bar programs should provide more public understanding of lawyer professionalism and ethics by developing and implementing public education programs. Effective public education programs should:

- **Emphasize lawyer professionalism in court communications with the public;**
- **Provide a "Public Liaison" office or officer to serve in a clearinghouse function;**
- **Distribute public education materials in places commonly accessible to the public;**
- **Include public speaking on the topic of professionalism on the agenda for bar association speaking bureaus;**
- **Encourage a more active role between educational institutions and organizations and the justice system; and**
- **Educate the legislative and executive branches of government about issues related to the legal profession and the justice system.**

2. Public Participation

The participation of the public should be supported in all levels of court and bar institutional policy-making by judges, lawyers, and bar programs. Judges, lawyers, and bar programs should:

- Publicize the nomination and appointment process for public representatives on court and bar committees;
- Once appointed, provide lay members access to the tools necessary for effective participation; and
- Provide adequate funding on an ongoing basis.

3. Public Access to the Justice System

Judges, lawyers, and bar programs should encourage public access to the justice system through the coordination of pro bono programs. Effective coordination of pro bono programs should:

- Encourage judicial support and participation in lawyer recruitment efforts for pro bono programs;
- Provide institutional support within the court system for lawyer pro bono service;
- Establish an "Emeritus Lawyer" pro bono program;
- Provide institutional and in-kind support for the coordination of pro bono programs; and
- Explore funding alternatives to support pro bono programs.

4. Public Opinion

To gauge public opinion about the legal profession and the level of professionalism demonstrated by lawyers, the court and the bar should create regular opportunities for the public to voice complaints and make suggestions about judicial/legal institutions.

5. Practice Development, Marketing and Advertising

The judiciary, the organized bar and the law schools should work together to develop standards of professionalism in attorney marketing, practice development, solicitation and advertising. Such standards should:

- Recognize the need for lawyers to acquire clients and the benefit to the public of having truthful information about the availability of lawyers;
- Emphasize the ethical requirements for lawyer advertising and client solicitations;
- Emphasize the need to be truthful and not misleading; and
- Encourage lawyers to employ advertising and other marketing methods that enhance respect for the profession, the justice system and the participants in that system.

F. Lawyer Professionalism in Court

1. Alternative Dispute Resolution Programs

If appropriate for the resolution of a pending case, judges and lawyers should encourage clients to participate in Alternative Dispute Resolution (ADR) programs. An effective ADR program should:

- **Ensure that court-annexed ADR programs provide appropriate education for lawyers about different types of ADR (e.g., mediation, arbitration);**
- **Establish standards of ethics and professional conduct for ADR professionals;**
- **Require lawyers and parties to engage the services of ADR professionals who adhere to established standards of ethics and professional conduct;**
- **Encourage trial judges to implement and enforce compliance with ADR orders; and**
- **Educate clients and the public about the availability and desirability of ADR mechanisms.**

2. Abusive or Unprofessional Litigation Tactics

To prevent unprofessional or abusive litigation tactics in the courtroom, the court and judges should:

- **Encourage consistent enforcement of procedural and evidentiary rules;**
- **Encourage procedural consistency between local jurisdictions within states;**
- **Adopt court rules that promote lawyer cooperation in resolving disputes over frivolous filings, discovery, and other pretrial matters;**
- **Encourage judicial referrals to the disciplinary system;**
- **Educate trial judges about the necessary relationship between judicial involvement in pretrial management and effective enforcement of pretrial orders;**
- **Encourage increased judicial supervision of pretrial case management activities; and**
- **Establish clear expectations about lawyer conduct at the very first opportunity.**

3. High Profile Cases

In high profile cases, lawyers should refrain from public comment that might compromise the rights of litigants or distort public perception about the justice system.

G. Interstate Cooperation

The appellate courts of highest jurisdiction should cooperate to ensure consistency among jurisdictions concerning lawyer regulation and professionalism and to pool resources as appropriate to fulfill their responsibilities. Specific efforts of interstate cooperation include:

- **Continued reporting of public sanctions to ABA National Regulatory Data Bank;**
- **Using the Westlaw Private File of the ABA National Regulatory Data Bank;**

- **Inquiring on the state's annual registration statement about licensure and public discipline in other jurisdictions;**
- **Providing reciprocal recognition of CLE;**
- **Establishing regional professionalism programs and efforts;**
- **Recognizing and implementing the International Standard Lawyer Numbering System created by Martindale-Hubble and the American Bar Association to improve reciprocal disciplinary enforcement; and**
- **Providing information about bar admission and admission on motion (including reciprocity) on the bar's website.**

Section III contains the briefing papers that were prepared for the Working Group based on the survey responses from the national study. There are eight briefing papers in all: (1) Professionalism; (2) Educational Initiatives; (3) Public Outreach; (4) Litigation Reform; (5) Bar Admission; (6) Lawyer Support; (7) Disciplinary Enforcement; and (8) Law School Education.

INTRODUCTION

The vast majority of lawyers in this country are competent professionals. They are conscientious advocates of their clients' interests, honest in their representations to courts and to opposing counsel, civil to their legal colleagues, and generous contributors of their time and expertise to their communities. In short, they conduct themselves according to the highest dictates of the legal profession. Nevertheless, the unprofessional and unethical conduct of a small, but highly visible, proportion of lawyers taints the image of the entire legal community and fuels the perception that lawyer professionalism has declined precipitously in recent decades. The implications of this behavior for the American justice system are extremely serious in that the behavior contributes to decreased public confidence in legal and judicial institutions as well as heightened stress and decreased professional satisfaction for those lawyers who endeavor to practice in a professional manner.

In response to these concerns, the Conference of Chief Justices (CCJ) adopted a resolution at its 1996 Annual Meeting calling for a study of lawyer professionalism and the development of a National Action Plan to assist state appellate courts of highest jurisdiction to reverse this trend. With funding by the State Justice Institute, the National Center for State Courts (NCSC) in cooperation with the American Bar Association Center for Professional Responsibility undertook a national study to examine state professionalism initiatives. This report is the culmination of these coordinated efforts.

Successful efforts to improve lawyer conduct and enhance professionalism cannot be accomplished unilaterally. The objective of such efforts is a change in the very culture of the legal profession. Not only is it important to correct the behavior of lawyers who fail to live up to professional norms, it is critical that those lawyers who do conduct themselves professionally once again become the most visible members of the legal community. Success requires a sustained commitment from all segments of the bench, the bar, and the academy. Each plays a different role, both institutionally and individually, in their contributions to these efforts. Section I of this report describes these roles in detail.

Section II of this report consists of specific recommendations for state courts to improve lawyer conduct and enhance professionalism. These recommendations are based on the responses to the survey on professionalism initiatives conducted in the fall of 1997. The types of initiatives that have proven effective in the various jurisdictions cover a broad spectrum of ideas. Many of the recommendations concern programs that are not new, but were cited by a number of jurisdictions as being particularly effective in addressing lawyer conduct. These recommendations address all of the areas of professionalism that were identified by survey respondents in the national study. In addition, these recommendations recognize that judges must lead by example in demonstrating civility and other characteristics of professionalism. An effective system of lawyer regulation is a necessary base for any efforts to enhance lawyer professionalism. The obverse applies as well – enhancing lawyer professionalism should aid the goals of effective lawyer regulation. This report recognizes that each state's appellate court of highest jurisdiction has ultimate authority and responsibility for ensuring that that base is sufficient to protect the public from lawyer misconduct of every degree – major and minor.

Professionalism is a much broader concept than legal ethics. For the purposes of this report, professionalism includes not only civility among members of the bench and bar, but also competence, integrity, respect for the rule of law, participation in pro bono and community service, and conduct by members of the legal profession that exceeds the minimum ethical

requirements. Ethics rules are what a lawyer must obey. Principles of professionalism are what a lawyer should live by in conducting his or her affairs. Unlike disciplinary rules that can be implemented and enforced, professionalism is a personal characteristic. The bench and the bar can create an environment in which professionalism can flourish, and these recommendations are intended to assist in that endeavor. But it is the responsibility of individual judges and lawyers to demonstrate this characteristic in the performance of their professional and personal activities.

Section III of the National Action Plan consists of a series of briefing papers that were prepared for the CCJ Working Group on Lawyer Conduct and Professionalism. These briefing papers summarize the state responses to the CCJ Survey on Lawyer Professionalism Initiatives. They are included for illustration purposes to provide additional information about various programs that states have enacted to enhance lawyer professionalism.

SECTION I: INSTITUTIONAL AND INDIVIDUAL ROLES

Institutional Role of the Court

The promotion of professionalism should be a fundamental goal of the state judiciary and all agencies accountable to the Court.* To realize this objective, the Court should ensure that the institutional structure of the judiciary includes all of the necessary components for the sound and effective regulation of the profession. A hallmark of the Court's institutional support for professionalism should be an administrative mechanism (e.g., Commission on Professionalism), the sole objective of which is to promote professionalism in the legal profession and the judiciary.

This mechanism can take many forms including that of an independent agency or a formal commission. Regardless of its structural form, it should have several distinguishing characteristics. It should be instituted as a permanent, rather than ad hoc, component of the judicial infrastructure. It should report directly to the Court and should be endowed with sufficient authority to carry out its designated responsibilities.

Its existence as an independent vehicle serves an important symbolic function – analogous to a cabinet position in the executive branch of government. It demonstrates the importance that the Court places on promoting professionalism in the legal profession and the judiciary. Equally as important as its symbolic value, this mechanism serves both in a leadership and a coordination capacity in regard to the agencies and organizations within the legal community that promote professionalism. Institutionalizing this function also promotes the ability to engage in consistent efforts to improve professionalism over a long period of time, thus avoiding exclusive dependence on the drive and charisma of a few individuals to accomplish this objective.

The creation of this mechanism should supplement and enhance, not supplant, the Court's existing system of lawyer regulation. Disciplinary agencies, lawyer support programs, continuing legal education boards, bar admissions boards, and other judicial agencies and bar programs are necessary for promoting professionalism within the legal community. The Court is responsible for providing these agencies and programs with funding, resources, staff, and procedural and administrative rules and policies necessary to function effectively.

Professionalism programs and initiatives are not only the province of formal judicial agencies and the unified bar, but also are undertaken by voluntary bar associations, law schools, and other public or private organizations that are not directly accountable to the Court. The Court should not preempt, usurp, or undermine these efforts, but should ensure that they do not contradict official Court policy or circumvent the Court's regulatory authority. Regular meetings among the Court, the bar (both unified and voluntary associations), bar admissions authorities, lawyer disciplinary agencies, law schools, pro bono programs and relevant public or private organizations are necessary, both to coordinate professionalism initiatives and to avoid duplicative efforts. The Court should take the lead in arranging these meetings.

The Court should also provide strong support and guidance for these efforts, including the promulgation of court rules that promote competence and professionalism by judges, lawyers, and law students. One example of such court rules is the development of student

* Unless otherwise noted, the term 'Court' as used in this report refers to the appellate court of highest jurisdiction in every state.

practice rules for law school clinical programs that help law students develop practical legal skills. Procedural rules should encourage cooperation among opposing counsel and parties, and between the court and lawyers, in the fair and efficient resolution of their legal disputes.

Although the definition of professionalism has remained fairly stable, the specific context in which professional conduct is demonstrated can change with the social, political, technological, and economic climate of contemporary society. The Court should periodically assess the status of professionalism in the legal and judicial community to identify emerging problems and ensure that such problems are addressed appropriately. Judicial and legal education curricula should incorporate ethics and professionalism, including analyses of emerging problems and potential solutions.

As part of its assessment of the status of professionalism, the Court should provide appropriate opportunities for the public to participate in the development of or comment on policies governing the legal profession and the administration of justice. Public input is valuable both for self-evaluation purposes and for promoting public confidence in the justice system. These opportunities should not be provided in a vacuum, however, but should accompany educational efforts to inform the public about the role of the courts, the legal profession, and the justice system generally. The public also should be given information about specific public service initiatives undertaken voluntarily by individual lawyers and bar groups as well as programs designed to protect the public from unethical or unprofessional conduct by judges and lawyers.

Individual Role of Judges

Institutional support alone is insufficient to reverse the decline in professionalism and restore the legal profession to good standing in the eyes of the public. Every member of the bench, from the chief justice to the magistrates, has a personal responsibility to contribute to efforts to improve lawyer conduct and enhance professionalism. Because of their visibility within the legal community and in the larger community, judges are uniquely positioned to affect the level of professionalism in their respective jurisdictions.

Leadership by example has always been one of the most effective tools for changing society. Judges are natural role models for lawyers; lawyers look to judges for cues about how to conduct themselves both in and out of court. Judges who treat others with respect and courtesy, and insist that people appearing before them do likewise, experience far fewer problems with unprofessional behavior from lawyers than judges who contend that it is not their job to make lawyers adhere to ethical or professional norms. Judges should exemplify appropriate judicial demeanor in both their personal behavior and their professional interactions with judicial colleagues, lawyers, litigants, witnesses, jurors, and the public. Only those who conduct themselves in a professional manner will have the credibility and respect to insist that others do the same.

It is far easier to maintain an acceptable level of professionalism by lawyers if the judge's expectations about appropriate behavior are made clear to the lawyers and litigants at the very beginning of their relationship, before problems develop. Judges should take the earliest opportunity to explain to lawyers that professionalism and ethical conduct are mandatory for practicing in their courts. Some judges include provisions to that effect in pretrial orders. Others give the lawyers a copy of one of the lawyer's creeds (e.g., Texas Lawyer's Creed; Delaware *pro*

hac vice rules) and require the lawyers to certify that they have read it, understand it, and agree to abide by its tenets. In smaller jurisdictions, it may only be necessary to set these parameters on first meeting with a lawyer who has not previously practiced in that court. In larger jurisdictions, where the number of judges and lawyers makes it more difficult to establish the personal ties that encourage professionalism, judges may elect to establish these expectations with the lawyers at the commencement of every suit, regardless of whether the lawyers have practiced before that judge or not. Whichever technique is employed, there should be no question that the judge will not tolerate any unprofessional conduct.

Once the judge's expectations have been made clear, he or she should enforce them consistently. Generally, an oral admonition and concrete suggestions for behavior modification are sufficient to remind lawyers of their responsibilities. Repeated lapses, however, should be met with progressively more severe sanctions. Instances of lawyer misconduct should be referred to the disciplinary agency where warranted.

Judicial leadership in promoting professionalism should extend beyond the confines of individual courtrooms. Lack of professionalism and the need to cure it extend beyond litigation. It infects all aspects of law practice including transactional, government, public sector, non-profit, and in-house corporate and other organizational practices. Judges have numerous opportunities to educate and inspire current and prospective lawyers, as well as the general public, about the importance of professionalism in contemporary legal practice. Local and regional bar organizations welcome the participation of judges as speakers at conferences, as faculty at CLE classes and other educational events, as promoters for pro bono and community service programs, and as committee members on planning and policy development task forces on professionalism.

Law students also benefit from exposure to positive judicial role models. Judges should emphasize professionalism in all of their contacts with law students – as judges in moot court or other competitions, as adjunct faculty or invited speakers for classes, or as advisors to various law school organizations. Appellate judges should endeavor to visit each of the law schools in their respective jurisdictions at least once per year. Trial judges may be able to volunteer their time at local law schools on a more frequent and consistent basis.

Judges should also become involved with education efforts and activities that inform the public about professionalism, legal ethics, and the justice system. Community organizations, including philanthropic, educational, business and social organizations, offer many opportunities for judges to educate the public about the legitimate expectations that citizens may have of lawyers, judges and court staff. Similarly, public schools are grateful for individuals who are willing to teach students about the justice system from personal knowledge and experience. Rules of judicial conduct prohibit judges from commenting on specific cases pending or likely to be brought in their courts, but nothing prohibits judges from engaging in the types of public education activities described above. Judicial participation in such activities is one of the most effective means for providing the public with accurate information about the justice system.

Institutional Role of the Bar

The institutional bar is responsible for promoting professionalism in the legal community, educating lawyers about their ethical and professional obligations, and preventing instances of minor misconduct or unprofessional behavior from developing into more serious problems. A

multifaceted approach is needed to fulfill these responsibilities. The bar should develop, implement, and administer – in coordination and cooperation with the courts and with local and specialty bar organizations – programs to promote lawyer professionalism and to enhance public confidence in the legal profession. At a minimum, the bar should establish and administer a system for responding to repeated instances of unprofessional conduct that do not rise to the level of sanctionable misconduct. It should support lawyers who need specialized assistance (e.g., in regard to substance abuse, mental health, or law office management assistance). And it should develop and administer programs for resolving disputes between lawyers and clients.

Education about ethics and professionalism is also an important function of the institutional bar. In addition to ensuring that CLE curricula include appropriate segments about lawyer professionalism and ethics, the bar should provide mentoring programs and "bridge-the-gap" CLE for new lawyers. It also should provide individual assistance to lawyers who have questions about their ethical or professional responsibilities in specific circumstances. The scope of such assistance should be broad enough to address both practical and civic aspects of lawyer ethics and professionalism, such as advertising, law office management, and pro bono and community service.

Finally, the bar and the courts should provide avenues for two-way communication with the public. They should employ various methods of educating the public about the legal profession, ethics and professionalism, and the justice system, and inform them about specific programs to protect the public, assist consumers of legal services, or provide services for those unable to afford them. They should invite public participation or provide some opportunity for public comment on bar programs related to lawyer ethics and professionalism. Inasmuch as the leaders of the institutional bar serve as role models for other lawyers and the public, their professional demeanor and personal behavior should exemplify the highest standards of ethics and professionalism.

Individual Role of Lawyers

Professionalism ultimately is a personal, not an institutional, characteristic. Lawyers either demonstrate this characteristic or they do not. No disciplinary system can enforce professionalism and no amount of exhortation by judges and bar leaders can instill it where it does not already exist. The vast majority of lawyers possess this characteristic to some degree or another. But far too many have allowed their sense of professionalism to become dormant. The institutional framework of the legal community can create a climate in which professionalism can flourish, but individual lawyers must be the ones to cultivate this characteristic in themselves.

Each lawyer has an individual responsibility to be professional, to support the efforts of the Court, the bar and the law schools to provide opportunities for other lawyers to do likewise. Not only should they demonstrate professionalism themselves, they should ensure that their nonlawyer staff fully understand the concept and obligations of professionalism and act accordingly. They should not tolerate unethical or unprofessional conduct by their fellow lawyers. They should exemplify the ideal of the lawyer-statesman – that is, a professional who devotes his or her judgment and expertise to serving the public good, particularly through participation in pro bono and community service activities. Finally, they should endeavor to

educate the public about professionalism by example, through concrete discussions with clients, and by participation in public education programs.

Institutional Role of Law Schools

Law school is, for most lawyers, the first exposure to the rigorous requirements of legal ethics and professionalism. All law schools currently offer courses in legal ethics to supplement the traditional curricula of substantive law. While these courses are a necessary knowledge base for new lawyers, they are insufficient alone to prepare law students for competent legal practice. The primary objective of law school should be broader than providing students with a solid intellectual underpinning and sufficient knowledge to pass a bar examination. It must be to prepare students to practice law. To do this, law schools must provide students with an appreciation for the broader concept of professionalism. A sufficient grounding in basic legal practice and office management skills such as legal research and drafting techniques, trust accounting methods, and tickler systems should be included in the basic law school curricula. Simulated law practice, clinical and pro bono programs, and internships offer invaluable opportunities to apply legal knowledge and skills under the direct supervision of experienced law faculty. These course offerings should be a staple of all law school curricula and, if not required for all law students, should be strongly encouraged for all students contemplating admission to the bar. To be sure, many law schools aspire to these goals, but these criteria of a legal education must become the norm.

During the three years that most students are enrolled, the opportunity that law schools have to assess the character and integrity of prospective bar applicants is generally superior to that of bar admissions reviewers. Law schools should provide bar admissions agencies with complete and accurate information about students' character, including instances of non-academic misconduct. If students demonstrate through their performance in law school that they would find it difficult to comply with the basic requirements of legal ethics, law schools should counsel them to pursue a career that does not require admission to the bar.

Increasingly, new lawyers enter legal practice with substantial debt as a result of their law school education. The financial strain that this creates prompts some new lawyers to engage in risk-taking behavior such as accepting a larger and more complex caseload than competent practice would ordinarily permit. Although many of the expenses associated with law school are not directly controllable by the institutions themselves, the law schools should counsel students about debt management techniques. They should also establish financial assistance or scholarship funds for qualified students as well as loan forgiveness programs for students to pursue careers in less lucrative public or not-for-profit legal practice.

Preparing students to practice law is a significant undertaking and cannot be accomplished by the law schools alone. Law schools should not isolate themselves from the local legal community, but rather should invite the courts and the bar to participate in the education of law students. They should actively solicit judges and lawyers to supervise and mentor law students, provide opportunities for students to observe and participate in legal practice, and offer to share their practical expertise in the classroom. A much closer partnership between the courts, the bar, and the law schools would enhance the ability of all three institutions to improve lawyer professionalism and increase public confidence in the legal profession.

Individual Role of Law School Faculty

Just as the individual responsibilities of judges and lawyers differ from those of their respective institutions, so do the responsibilities of law school faculty differ from those of the law schools. Although the subjects of legal ethics and professionalism have attained significant status as topics of academic study, they cannot and should not be segregated from other academic subjects in the same way that torts can be segregated from contracts or criminal procedure. Rather, they are integral to all academic subjects and faculty should incorporate discussions about these topics and emphasize their importance in all academic classes.

In doing so, law faculty should always be mindful of their own status as role models. Law students who are consistently exposed to faculty who disparage legal practice and courts will assume these views themselves and translate them into disrespect and unprofessional conduct toward their legal colleagues and judges. Even when critiquing particular judicial opinions or legal practices, faculty should instill in their students respect for the justice system and for the individuals who work in it.

networking system, lawyers are able to present comments and questions on legal issues to other members of the legal community. The American Inns of Court is a national organization with local chapters that often serves a mentoring role for new lawyers. Other programs provide opportunities for mentoring relationships to develop. In South Carolina, the Courthouse Keys program introduces new lawyers to judges and the courtroom. In Connecticut a solo and small firm networking breakfast is held monthly. Directories of CLE speakers, law professors, qualified lawyers, and other experts can also be provided for lawyers who are in need of substantive advice. In addition, electronic mail and list-servs on the Internet facilitate the exchange of information (ethical rules of conduct still apply). Although there may be no face-to-face contact in Internet usage, these services can be an invaluable method of accessing expert assistance.

C. Law School Education and Bar Admission

1. Law School Curriculum

In preparing law students for legal practice, law schools should provide students with the fundamental principles of professionalism and basic skills for legal practice.

Comment

Most lawyers get their first introduction to the basic concepts of legal ethics and professionalism during law school, but few students fully appreciate their importance or receive a sufficient grounding in practical legal skills for competent legal practice before being admitted to the profession. In addition to providing law students with substantive legal knowledge, law schools should ensure that students understand the importance of professionalism and have an adequate grasp of basic legal skills. Ethics and professionalism courses that include simulations of "real life" ethical and professional issues better prepare students for legal practice than

traditional textbook approaches to this topic.* Such curricula should clarify the distinction between professionalism and overzealous advocacy and teach students about the real-life consequences of unprofessional and unethical conduct.

Graduating law students should have acquired mastery of the basic tools of legal practice including office management skills (e.g., computer and other communication and research technology, trust accounting requirements, caseload and calendaring techniques). Clinical courses, pro bono programs, and internships often give students an opportunity to develop practical skills, but law schools should also provide formal and systemic exposure to these fundamentals of legal practice. Practical information about malpractice insurance, bond or other surety mechanisms, and other routine aspects of legal practice should be included.

2. *Bar Examination*

The subject areas tested on the examination for admittance to the state bar should reflect a focus on fundamental competence by new lawyers.

Comment

State bar examinations traditionally test bar applicants' knowledge of substantive legal principles, but rarely require more than a superficial demonstration of the applicants' understanding of legal ethics, professionalism, or basic practical skills.** Thus, they fail to provide an effective measure of basic competence of new lawyers. The format of the bar examination should be modified to increase the emphasis on the applicants' knowledge of applied practical skills, including office management skills. Performance testing methods should be used to evaluate applicants' writing, research, and organizational skills. An essay question format is preferred over a multiple choice format for testing ethics and professional responsibility. Essay questions should incorporate issues related to legal ethics and professionalism, including the consequences of unprofessional, unethical, and incompetent practice habits.

A passing score on the bar examination should be an indicator of basic competency to practice law. Scoring of the bar examination should be consistent within the jurisdiction. To the extent that interstate coordination is practical, the scoring should be consistent with neighboring jurisdictions.

3. *Character and Fitness Evaluation*

Law schools should assist bar admissions agencies by providing complete and accurate information about the character and fitness of law students who apply for bar admission.

* The Keck Foundation (California) has funded the development and evaluation of simulation curricula in legal ethics and professionalism classes in law schools.

** The Multistate Professional Responsibility Examination (MPRE), required by many states for admission to the bar, tests the bar applicant's substantive knowledge of the rules of professional and judicial conduct. It does not require applicants to demonstrate their commitment to professional values or even to engage in extended analysis of questions that are legally uncertain under the professional codes.

Comment

The vast majority of lawyers obtain their legal education by completing formal studies at a law school approved in that jurisdiction.* Consequently, the opportunity that law school administration and faculty have to evaluate the character and fitness of law students is superior to that of bar admissions officials. Specific information concerning the character and fitness of each applicant – particularly that concerning instances of student misconduct – is generally more helpful to the bar admissions agency than a blanket certification from the dean that a student has the requisite character and fitness to practice law. The CCJ survey of law school deans found, for example, a wide variance in the scope of information provided by law schools in response to inquiries about student character and fitness certification for bar applicants. The ABA Character and Fitness Working Group has developed a model uniform questionnaire to be used by bar examiners in inquiries about law student character and fitness.

Because law school is the gateway to legal practice for most lawyers, law schools have an obligation to advise students of the character and fitness qualifications required for bar admittance and to inform bar admissions committees if law students show signs that they may lack the requisite character and fitness to practice law. Although law schools should ensure that any screening and certification procedures are sensitive to students' civil rights, both the legal community and the students themselves have legitimate expectations of candor from the law schools about the character and fitness qualifications of the students they graduate. Consistent with these concerns, the application for law school should include questions related to character and fitness. Students whose responses indicate questionable character should be advised before they have made a significant financial investment in their legal education that their background may prevent them from being admitted to the bar.** The law school application should include a blanket waiver permitting the school to provide any information pertaining to the student's character and fitness to bar admissions agencies.

4. *Bar Admission Procedures*

Bar admissions procedures should be designed to reveal instances of poor character and fitness. If appropriate, bar applicants may be admitted on a conditional basis.

Persons with a demonstrated history of dishonesty, violence or neglect of important matters are likely to be poor candidates for admission to the legal profession. The bar admissions procedures should be designed to uncover such a history, if it exists. At a minimum, bar admission agencies should conduct a criminal background check of all applicants, inquire about disciplinary complaints or unprofessional conduct in other jurisdictions where the applicant may be admitted, require that applicants provide certified documentation or information that can be independently verified, and require applicants to provide fingerprints. Verified disclosure that spousal or child support orders are in compliance, that taxes have been paid, and that personal financial obligations are being met also may be required.

* A few states still permit lawyers to apply for admission to the bar and take the bar examination after completing a formal apprenticeship program in lieu of completing formal study at an approved law school.

** A two-track curricula may be appropriate for law schools that graduate a substantial number of students who pursue non-legal practice careers.

The application may inquire about substance abuse or mental health conditions that might affect the applicant's ability to practice in a competent and professional manner. Evidence that steps have been taken to address such problems (e.g., professional treatment or counseling) should weigh in the applicant's favor, although admission contingent on the applicant's compliance with certain requirements, such as continued treatment or participation in a peer review or mentoring program, may be used as appropriate.

Finally, the applicant should be required to sign an affidavit attesting that he or she has read the Rules of Professional Conduct and all pertinent rules concerning trust accounts. All information provided by the bar applicant should be reviewed by bar admissions personnel. Although many states rely on lawyer volunteers for this purpose, professional staff who have the time and expertise to conduct a thorough review are preferable.

D. Effective Lawyer Regulation

1. *Complaint Handling*

Information about the state's system of lawyer regulation should be easily accessible and presented to lawyers and the public in an understandable format. The disciplinary agency, or central intake office if separate, should review complaints expeditiously. Matters that do not fall under the jurisdiction of the disciplinary agency or do not state facts that, if true, would constitute a violation of the rules of professional conduct should be promptly referred to a more appropriate mechanism for resolution. Complainants should be kept informed about the status of complaints at all stages of proceedings, including explanations about substantive decisions made concerning the complaint.

Comment

Persons who wish to file a complaint about a lawyer should be able to do so quickly and without being subject to complex filing requirements. The state's system of lawyer regulation should be accessible by a toll-free number and informational brochures about the disciplinary system should be distributed in places accessible to both lawyers and the public, including the bar's and disciplinary agency's Internet website. Potential complainants should be able to discuss their complaint with an intake lawyer from the lawyer regulation agency to determine whether their problem should be addressed by the disciplinary agency or by another method of dispute resolution (e.g., fee arbitration, mediation). A public liaison or ombudsman also may be appropriate for this role. The disciplinary agency and central intake office, if separate, should have sufficient funding to permit complaints to be resolved promptly and appropriately.

Complaints involving matters not subject to the jurisdiction of the disciplinary agency or facts that, if true, would not constitute a violation of the rules of professional conduct (e.g., fee disputes or other lawyer-client communication problems) should be referred to an appropriate method of dispute resolution (e.g., fee arbitration, mediation). Complainants should be treated courteously at all times and should be provided with

Briefing Paper on Survey of Bar Admissions

General Overview

There were thirty-two jurisdictions that responded to the Bar Admission section of the Conference of Chief Justices, Professionalism and Lawyer Competence Committee survey. The most significant result was that the vast majority of the responding jurisdictions stated that in the past five years there had not been any significant changes in their law school curricula regarding professionalism.

Law School Curricula

Twenty-two of the responding thirty-two jurisdictions stated there had not been any significant changes in the law school curricula in their jurisdiction in the past five years. Two jurisdictions stated they have increased the number of courses being offered in law practice management and in practice skills. One jurisdiction reported that their law schools do not even offer a course in law practice management.

Two jurisdictions reported they have been very successful in implementing pilot mentoring projects where practicing lawyers are paired with law students to teach the students necessary practice skills.

One jurisdiction reported that their Supreme Court has adopted a Code of Civility and that study of the code has become part of the law school curricula.

Finally, one jurisdiction opined that law schools are graduating too many persons. The lack of jobs and fierce competition has created a number of problems including lawyers handling cases they are not competent to handle.

Bar Examination

Eleven of the thirty-two responding jurisdictions stated there had not been any significant changes in their bar examination process in the past five years.

Three jurisdictions reported they now require successful completion of the Multi-state Professional Responsibility Exam (MPRE) as part of the examination process. Three jurisdictions stated they have increased the pass/fail level of the MPRE. Two of the jurisdictions will now require an 80 as a passing score and two jurisdictions will require an 85. One jurisdiction will now allow applicants to substitute a grade of "C" or better in a Professional Responsibility course for the taking of the MPRE. One jurisdiction reported they will no longer allow applicants to substitute a Professional Responsibility course for the successful completion of the MPRE.

Three jurisdictions stated they have added topics to be tested on the written bar examination. One jurisdiction has added Family Law and Conflicts of Laws and a second has added Professional Responsibility and Unfair or Deceptive Practices. One jurisdiction reported they have eliminated certain topics to be tested: tax, bankruptcy, insurance and domestic relations. Two jurisdictions

stated they have increased the passing score for their bar exams. One jurisdiction indicated that it reduced its passing score to that of its original passing score.

Nine jurisdictions reported that they have adopted, or are considering adopting, the Multi-state Performance Test as part of their bar examination. Another jurisdiction stated they have added two performance test items to their exam and one jurisdiction reported they are considering adopting the Multi-state Essay Examination (MEE) developed by the National Conference of Bar Examiners. Finally, one jurisdiction has changed the format of their bar exam from all essay to a combination essay, multiple choice and performance test.

Four jurisdictions have developed continuing education programs for recent admittees. One jurisdiction requires newly admitted lawyers to take a 3-day bridge-the-gap course. Another jurisdiction requires 30 hours of practice skills and values and a third requires lawyers to take a course on fundamentals of law practice. One jurisdiction reported they now have a mentor program for new admittees which lasts two years.

After three years of research and discussion among bar leaders and judges in Vermont, Maine and New Hampshire, the Tri-State Task Force on Bar Admissions voted to recommend that courts consider adopting a new process for the admission to the practice of law in those three states. The central concept of the plan is to replace the traditional bar exam with a comprehensive educational program designed to improve lawyer competence through in-depth skills training and evaluation. The Task Force recommended the establishment of a Tri-State Commission on Bar Admissions to formulate and administer a four-year pilot program.

Character and Fitness

Thirteen of the thirty-two responding jurisdictions stated there had not been any significant changes in their character and fitness process in the past five years.

Several jurisdictions reported changes in their character and fitness procedures which were implemented to make the screening of applications more thorough. One jurisdiction reported they now have a fingerprinting requirement for applicants and that they make inquiries of any other jurisdiction where the applicant is licensed to practice law.

Two jurisdictions stated they now begin the character and fitness process at the time a potential applicant applies to law school and one of those jurisdictions reported they are working with the law schools to have character and fitness questions placed on the law school application form. One jurisdiction proposes for its law students to register during their first year of law school to effectuate a more thorough background check and allow the Board and the applicants to work on character and fitness matters well before the time for bar admission. One jurisdiction reported it had changed its application to comply with the Americans with Disabilities Act.

Six jurisdictions reported they have adopted or are considering the conditional admission of applicants with a history of substance abuse. The conditional admission would allow the monitoring of the conduct of those lawyers. One jurisdiction stated they are not considering conditional admission.

Two jurisdictions stated they are now searching for any outstanding child/spousal support orders that have been entered against an applicant and whether the applicant has been complying with the order.

One jurisdiction adopted a list of essential eligibility requirements for the practice of law that its state supreme court has adopted into the admissions rule. And another jurisdiction amended its attorney oath of office to include a civility provision.

One jurisdiction reported they have increased the use of outside counsel to investigate and assist at character and fitness hearings. Another jurisdiction stated that their rules have been changed to allow for the exchange of information between the Board of Bar Examiners and the Disciplinary Board. One jurisdiction reported their rules have been changed to provide that an applicant convicted of a felony is deemed to lack moral character and fitness.

A jurisdiction stated their Board of Bar Examiners revised and renamed as “Letters of Professional Guidance” letters to be sent to a bar applicant when his or her past conduct suggests difficulties in the areas of candor, fiscal responsibility, traffic violations or chemical abuse, yet the conduct does not rise to the level to warrant further proceedings at the time of the application.

Finally, one jurisdiction suggested that character and fitness officials should use the NCIC to check on every applicant’s criminal background and that all lawyers should be required to purchase malpractice insurance.

Coordination

Twelve of the thirty-two responding jurisdictions stated there had not been any significant changes in the efforts between the bar association and the law schools to foster professionalism during the past five years.

Six jurisdictions reported that a member of the Board of Bar Examiners now speaks to the incoming class of their law schools about professionalism and the character and fitness application process. Three jurisdictions stated they now conduct meetings between the court, leaders of the bar and law school deans to coordinate professionalism initiatives.

One jurisdiction reported that its State Bar Board and State Bar Association have sponsored a half-day professionalism seminar on the day of the bar admission ceremony. In one jurisdiction, members of the State Board of Bar Examiners have been active in leadership roles in the State Bar Section on the Education of Lawyers (which is working with the State Bar Committee on Professionalism) to increase law student awareness of professionalism issues and to foster an emphasis on professionalism during law school.

One jurisdiction reported that their “student practice rule” has been revamped with an eye towards enhancing the practical skills of law school graduates. Another jurisdiction reported that its bar association had developed a series of six four-hour workshops focusing on professionalism and law practice management and the workshops were open to third year law students.

One jurisdiction suggested the area of increased student loan debt is ripe for review with respect to whether it affects lawyer professionalism and, if so, which education, mentoring, or loan forgiveness programs would be worthwhile. Another jurisdiction suggested that there needs to be greater coordination among the law schools, the board of bar examiners and the disciplinary board to make the admission process more efficient and credible. One jurisdiction reports that its state bar now works more closely with law schools. These efforts have increased the efficiency of the state bar's character and fitness process and has resulted in a significant decrease in the time necessary to complete a character and fitness investigation.

Briefing Paper on Survey of Law School Deans

The Conference of Chief Justices, with funding by the State Justice Institute, conducted a survey in October 1997 of its membership to investigate state initiatives to bolster attorney competence and professionalism. The specific areas of interest were Professionalism, Litigation Reform, Public Outreach, Lawyer Support, Disciplinary Enforcement, Bar Admission, and Educational Initiatives. To supplement this investigation, surveys on law school education were sent to the deans of all ABA-accredited law schools. Thirty-one deans have responded to the Law School Dean section of the survey. The following is a summary of the responses.

Role of the Appellate Court of the Highest Jurisdiction

Twenty-one law school deans indicated that the appropriate role of a state's highest court in promoting professionalism among law students is to encourage cooperative efforts. The court can encourage programs that bridge the gap for newly admitted attorneys to practice and also take a prominent role in promoting professionalism in conclaves of the academy, the bench, and the bar. The Courts can even encourage faculty members of law schools to seriously consider the concerns of the bar and the court in classroom discussions. Eight deans opined that the court can set a leadership example for law students because judges can set a high moral and ethical tone. These courts should ensure that meaningful disciplinary systems are in place, including fair, rigorous enforcement of the ethical standards. Courts can also set and communicate standards, for example, to ensure that mentors are good role models for law students.

Eleven deans commented that the state supreme court justices should participate in law school events. Many law school students present symposiums on various topics, hold trials and Moot Court programs, and other various informal and formal discussions in which the justices could actively participate. The involvement of justices in these programs has a greater impact on law students because of the realism involved in having a judge actively participate in student-run activities.

Seven law school deans indicated that the Court should only be able to make curriculum suggestions, with the law school as the primary entity to develop law school curricula. Three deans commented that the Court should assist in the development of curricula for mandatory professional responsibility courses. One dean opined that the Court should support schools in obtaining greater resources for expensive "skills" courses.

Thirteen deans indicated that the Court should establish requirements for bar admission. Respondents indicated that specific requirements should be kept to a minimum and that course requirements should include a required professional responsibility course. Respondents also suggested that an excessive number of bar examination topics may discourage students from taking clinical courses, which are an effective way to learn professionalism. Three deans indicated that the Court could assist in the development of a proposal to require new bar admittees to take a professionalism course. One dean encouraged professionalism orientation programs at the beginning of law school.

Character and Fitness Certification Criteria

Eight deans reported that school certification for the character and fitness evaluation for bar admission is based on state criteria. Respondents reported that the responsibility of dean certification is taken very seriously and the criteria used are included in the dean's certification form.

Eighteen deans indicated that student applications to the bar are reviewed to determine if students have had any arrests, convictions, or academic dismissals. Respondents indicated that copies of information involving the conviction of a law student in honor code violations could only be sent if the student signs a release. Others opined that all information in the student files should be available to the bar examiners. Respondents check for financial responsibility and good conduct. The highest recommendations go to students who exceed minimal standards for achievement and who demonstrate leadership skills. Essentially, deans can certify if no violations are recorded in a student's record, and the faculty and/or administration raise no character issues. Deans can also certify where no violations of the honor code and no misconduct in the school admissions process have taken place.

Three deans believed that a school should not certify character, but only the school's institutional knowledge of a student. Respondents further believed that it should be the bar's responsibility to determine the character and fitness of a bar applicant. For those candidates who may have difficulty, respondents suggested that they should seek character and fitness review prior to law school entrance. Two deans reported that character is an essential aspect of the *law school* admission process.

Four deans indicated that there are no specific criteria used in the evaluation of the character and fitness of a bar applicant.

Role of Law Schools in Teaching Practical Skills

Sixteen deans stated that the broad role in teaching practical legal skills is through live-client clinics and simulation courses. In accord with the ABA MacCrate Report view of legal education, the bench and bar should provide classes in office management to students. Respondents noted that office management classes should not be required, but should be offered to law students, especially in schools where students tend to go into solo or small firm practice.

Four deans opined that practical skills should be part of the student's complete legal education and integrated into all courses. Six deans indicated that a variety of offerings should be available, but noted that these courses do not fit well in the academic curriculum.

Three deans suggested that each law school needs to work with the bar to assess the needs of the student body in offering practical skills. To aid newly admitted attorneys to the bar, one dean suggested law school cooperative efforts with the bar on bridge the gap programs.

One dean stated that the teaching of practical skills is the role of the legal profession.

Promotion of Professionalism in Law Schools

The most common method of promoting professionalism reported was through a professionalism course (18 deans). Twelve respondents encouraged professors to integrate ethics into substantive courses, and then have students evaluate the effectiveness of the integration. Respondents also noted the use of guest lecturers during first year courses to promote a high level of sensitivity to ethical issues. Nine deans reported that opportunities are being provided for law students to learn practice skills.

Seven deans commented that law school course offerings served to promote professionalism. Respondents indicated that several electives were available, including new upper level courses. New classes in “skills” curriculum are also offered, as well as new lawyer skills courses for all students in their first and second years of law school.

Seven respondents reported using mentoring programs and mandatory pro bono programs to stress the obligation of law students to the unrepresented. Four deans reported that professionalism is covered in the orientation program for first year law students. One dean noted its use of a bulletin board devoted to ethics and professional responsibility.

Five deans noted the leadership and model roles of law school faculty. Respondents indicated the start of a professorship in Professional Responsibility.

Bar Admission Changes

One respondent recommended standardized entry level course requirements for the bar exam. Other suggestions included that bar examiners be more open to bar applicants and share model answers; that the bar examination should be evaluated for a correlation between success on the test and success in practice; and that the exam be evaluated for racial, ethnic and gender bias.

Four deans suggested that the bar examination should be eliminated altogether. In place of the bar examinations, respondents suggested mandatory course requirements, the use of resources to assist students in the transition from school to practice, the use of resources for bridge the gap or apprenticeship programs, and even bar admission only for graduates of accredited schools.

Two respondents indicated that the use of multiple choice examinations in the Professional Responsibility examination is not an appropriate way to test students on ethics. One dean suggested that the Multi-State Professional Responsibility Examination should be extended to include a practical component that requires students to apply their knowledge.

To better the character and fitness evaluations of the bar, one dean recommended that more uniformity take place in character and fitness questions across the states. Another dean suggested a requirement for a full character and fitness report.

Because Bridge-the-Gap programs seem to be helpful, six states suggested that a post examination occur six to nine months after graduation. Respondents indicated the importance of a focus on office management and professional responsibility. One respondent opined that supervised

work should be required for a substantial period of time prior to the issuance of an unrestricted license.

Fourteen deans opined that no changes to the bar admission process should be made because of state variation.

Recommended Changes in the Character and Fitness Screening Process

Sixteen respondents opined that there should be no changes to the character and fitness screening process, but stressed the need of a better way to deal with problems after a license is issued.

In terms of determination of character and fitness of an applicant, suggestions included the use of conditional admission, the withholding of admission based on character, providing comparable reviews as guidelines to candidates for character and fitness, informing students about criteria during their first year of law school.

Recommendations offered for changes in the character and fitness process included more procedural protections for candidates, making the process less intrusive on the candidate, shortening the process, increasing resources for Character and Fitness Committees to do thorough investigations, eliminating duplication, allowing the candidate to visit with a lawyer to discuss professionalism, measuring psychological stability of candidates, asking more specific questions, allowing for more uniformity among the states, requiring certification that the applicant is not delinquent in the payment of student loans.

Three deans suggested that the role of law schools should not be for the certification of the fitness of a candidate, but only to provide information for the bar to make a determination. Other recommendations were to require all applicants to obtain a Dean's Certification from each undergraduate or graduate school attended and from any licensing agency with which the applicant has been associated; to interview deans on all candidates; and perhaps to add a question that permits the law school to speak to issues of good citizenship in the law school community and to report incidents of questionable conduct or lack of professionalism that do not rise to the level of a disciplinary action.

General Comments

Nine deans commented that schools should continue to develop clinical programs to teach practical lawyering skills. Students should be presented with an array of choices, be able to work with practicing lawyers, and learn professionalism in the context of, and through, experience. Four respondents recommended that professionalism activities of the law schools be supported with funds from the state bar and courts.

Generally, suggestions included increasing the teaching of practical legal skills in traditional courses, increasing course offerings in the area of professionalism and competence, increasing the screening of law school applicants, stricter enforcement of character and fitness requirements, broadening the Inns of Court program, involving local practitioners in the education process,

encouraging bar members to support law school activities designed to improve competence and professionalism, mentoring, mandatory pro bono services to educate law students that law is a profession, replicating good programs, annual reporting from the law school to the Court, socializing entering students to the expectations of the profession (service to clients, civic responsibility, high ethical standards, high standards for work), reviewing the recommendations of the Character and Fitness Working Group of the ABA Standing Committee on Lawyer Competence.

Programs to Promote Competence and Professionalism

The most common recommendation of suggested programs to be implemented by the bench and bar was the encouragement of the profession and court to change their approach to lawyers who engage in unethical behavior, who are incompetent, or who demonstrate inadequate professional courtesy (5 deans). Other programs included adequate funding for the lawyer disciplinary system, and an efficient process to investigate, address and take action on attorney competence and professionalism. Two states suggested that the Court become more active in disciplining lawyer competence.

For professional education, eight deans recommended that professionalism be incorporated into mandatory CLE, including practical legal skills and knowledge. One of the eight states suggested a mandatory amount of hours of professionalism. Six respondents favored that mandatory CLE should be required and continued in their states. Two respondents noted the possible role of the bar in educating members about substance abuse, stress management, office management, and the impact of poor communication.

Civility was also suggested. The court and bar could establish a code of professionalism that includes sanctions; promote opportunities for dialogue with lawyers; survey attorneys about such matters as courtesy in deposition taking or refusal to grant extensions; provide professionalism counseling; and promote opportunities for lawyers to speak with each other about civility. The court and bar can also find ways to address escalating aggressiveness in the practice, deal with the fact that what students face when they begin practice often undermines what they've learned in law school, set expectations, and place a greater emphasis on professional identity.

The court and bar can require professionalism and/or Bridge-the-Gap courses for new admittees to the bar after graduation. Other suggestions for post-graduates included a residency or internship in cooperation with the academy and profession, with no mandatory apprenticeships.

Eight respondents recommended mentoring programs. Mentoring programs can be certified for CLE credit and can be very beneficial for new solo practitioners.

The bench and bar can assist law schools in convincing universities and legislatures that teaching professionalism is labor-intensive, and that schools need greater resources and smaller student bodies. Simulated hearings for students can expedite understanding and the learning of professionalism.

Suggestions for the bar examination and certification included meaningful certification of lawyer specialists, a test for all lawyers on ethics, and the elimination of multiple choice exams.

IMPLEMENTATION PLAN
CONFERENCE OF CHIEF JUSTICES'
A NATIONAL ACTION PLAN ON
LAWYER CONDUCT AND PROFESSIONALISM

Adopted August 2, 2001 by the Conference of Chief Justices

Section I. Introduction

A. Development of the Conference of Chief Justices' *A National Action Plan on Lawyer Conduct and Professionalism*

The court of highest jurisdiction in each state has the ultimate authority and responsibility for regulating the legal profession. This includes oversight of the creation, evaluation and maintenance of standards of conduct and professionalism for the legal community and the development and implementation of effective enforcement and public protection mechanisms.

In August 1996, the Conference of Chief Justices passed a resolution for a *National Study and Action Plan Regarding Lawyer Conduct and Professionalism*. In that resolution the Conference noted a significant decline in professionalism in the bar, and a consequent drop in the public's confidence in the profession and the justice system generally. The Conference noted that "there is the perception and frequently the reality that some members of the bar do not consistently adhere to principles of professionalism and thereby sometimes impede the effective administration of justice."¹ The Conference determined that a strong, coordinated effort by state supreme courts to enhance their oversight of the profession was needed.

In 1997, the American Bar Association Center for Professional Responsibility and the Conference of Chief Justices co-sponsored a successful two-day conference for state supreme court chief justices and their invited guests. This conference, entitled *Regulatory Authority Over the Legal Profession and the Judiciary: The Responsibility of State Supreme Courts*, was held in Rancho Bernardo, California. The conference was funded by a grant provided by the State Justice Institute. A copy of the program from that conference is attached to this Implementation Plan as Appendix A.

The interactive Rancho Bernardo program allowed the chief justices to address the decline in the public's perception of the legal profession. Programming provided the chief justices with a unique opportunity to discuss recommendations and initiatives relating to the exercise of the courts' regulatory authority over members of the bar and the justices' supervisory authority over the judiciary. To enhance the dialogue and provide the chief justices with the broadest possible spectrum of information, they were encouraged to bring one or two individuals from their respective jurisdictions who had integral roles in improving and implementing lawyer and judicial disciplinary mechanisms. These individuals included other state supreme court justices, appellate and trial court judges, court administrators, lawyer and judicial disciplinary counsel and bar officials.

The Rancho Bernardo conference meaningfully enhanced the involvement of the chief justices in the regulation of the legal profession by inspiring them to take action to

¹ *National Study and Action Plan Regarding Lawyer Conduct and Professionalism*, adopted by the Conference of Chief Justices, Nashville, Tennessee, at the Forty-eighth Annual Meeting, August 1, 1996.

improve the lawyer and judicial regulatory mechanisms in their jurisdictions, as well as to increase professionalism. That unique forum and the conference materials distributed to the participants provided a substantive basis for the formulation of the Conference of Chief Justices' January 1999 *A National Action Plan on Lawyer Conduct and Professionalism*. The National Action Plan and the report of the proceedings of the Rancho Bernardo conference were published and disseminated as a single volume in March 1999 to the chief justices, lawyer disciplinary agencies and state bar associations throughout the United States.

The National Action Plan sets forth programs, initiatives and recommendations designed to increase the efficacy of the state supreme courts' exercise of their inherent regulatory authority over the legal profession. The National Action Plan calls upon the state supreme courts to "take a leadership role in evaluating the contemporary needs of the legal community with respect to lawyer professionalism and coordinating the activities of the bench, the bar, and the law schools in meeting those needs."²

Also in the Spring of 1999, the ABA Center for Professional Responsibility published *The Lawyer Regulation Handbook*. This companion publication to the National Action Plan is a user-friendly reference that collects relevant ABA policy and presents samples of exemplary programs, rules and initiatives from around the country that can be employed to stimulate and generate advances in lawyer professionalism and regulation. The Table of Contents page from *The Lawyer Regulation Handbook* is attached as Appendix B.

B. The Need for Implementation of the National Action Plan

Since the publication of the National Action Plan, other efforts have been undertaken to address the public's declining perception of the justice system. The National Conference on Public Trust and Confidence in the Justice System was held in May 1999, in Washington, D.C. At that conference state supreme court justices, court managers, representatives of the federal judiciary, members of the bar, the public and the media discussed issues affecting public trust in the justice system. The program was sponsored by the Conference of Chief Justices, the American Bar Association, the Conference of State Court Administrators and the League of Women Voters, with support from the National Center for State Courts.

The issues affecting public trust and confidence discussed at that conference, as well as at two related symposia, were narrowed and ranked via electronic voting. Strategies to address these issues were proposed and discussed. These prioritized issues and strategies provided the substantive basis for the publication of the *National Conference on Public Trust and Confidence in the Justice System, National Action Plan: A Guide for State and National Organizations*. That publication contains, in addition to a discussion of the conference proceedings, its own implementation plan.

² *A National Action Plan on Lawyer Conduct and Professionalism*, adopted by the Conference of Chief Justices, January 21, 1999, Nashville, Tennessee.

Of note, poor customer relations with the public and the role, compensation and behavior of the bar in the justice system were ranked in the top ten “Top Priority National Agenda Issues” affecting public trust and confidence in the justice system.³ These issues are directly related to recommendations contained in the National Action Plan. For example, Recommendation E of the National Action Plan, Public Outreach, proposes ways for the courts and the bar to be proactive in providing the public with information about ethics and professionalism as well as the justice system. The remaining recommendations of the National Action Plan address lawyer behavior and regulation of that conduct. A copy of the black letter recommendations contained in the National Action Plan is attached as Appendix C.

In light of the issues raised during and since the publication of the National Action Plan, representatives of the ABA Center for Professional Responsibility and the Conference of Chief Justices felt that it was important to continue the valuable dialogue started at Rancho Bernardo – to actively evaluate efforts to implement the National Action Plan and assist the chief justices in maintaining their leadership role in the regulation of the legal profession. In November 1999, the Open Society Institute provided a generous grant to the ABA Center that allowed it to work with the Conference of Chief Justices, the National Center for State Courts and other interested organizations to coordinate this dialogue and assess the needs of all segments of the profession with respect to implementation of the National Action Plan.

The ABA Center developed this Implementation Plan to assist the chief justices in identifying and addressing those needs, and to ensure a sustained and coordinated implementation effort that will increase public confidence in the legal profession and in the justice system. Implementation of the National Action Plan will also strengthen judicial independence and public access to the regulatory process.

A draft of this Implementation Plan was presented and discussed at the March 22-24, 2001 conference in Del Mar, California, entitled *The Role of the Court in Improving Lawyer Conduct and Professionalism: Initiating Action, Coordinating Efforts and Maintaining Momentum*. A copy of the conference program is attached as Appendix D. That conference was attended by justices from 35 jurisdictions and their invited guests.

Conference participants provided comments and suggestions that have been incorporated into this final Implementation Plan. On August 2, 2001, the Conference of Chief Justices adopted the Implementation Plan. A copy of the Conference of Chief Justices’ Resolution 15, adopting the Implementation Plan, is attached as Appendix E.

C. The Implementation Plan for the Conference of Chief Justices’ A National Action Plan on Lawyer Conduct and Professionalism

This Implementation Plan sets forth a proposed umbrella structure and process for implementation of all of the initiatives and recommendations contained in the Conference

³ *National Conference on Public Trust and Confidence in the Justice System, National Action Plan: A Guide for State and National Organizations*, February 1999, p. 16.

of Chief Justices' *A National Action Plan on Lawyer Conduct and Professionalism*. A separate, specific process for creating Professionalism Commissions is contained in the companion publication, *A Guide to Professionalism Commissions*, which was also presented and discussed at the March 2001 Del Mar conference. The Guide was published by the ABA Center for Professional Responsibility with part of the 1999 grant from the Open Society Institute.

The Implementation Plan is designed to facilitate strategic planning and serve as a national reference for state supreme courts and other entities and individuals involved in the implementation of the National Action Plan. Additionally, the Implementation Plan is intended to promote ongoing national and local dialogue about lawyer conduct and professionalism and their relationship to public confidence in the legal profession. It fosters vital information sharing about implementation activities. The Implementation Plan contains sections addressing the following areas:

- Development of resources;
- Development of an implementation infrastructure; and
- Creation of an electronic information sharing network.

The Implementation Plan proposes solutions to the coordination difficulties inherent in dealing with a variety of agencies and organizations that in the past may have had limited contact with each other. It is intended to provide a sense of direction and continuity and to help develop sustained collaborative relationships between the courts, the bar associations, disciplinary authorities, law schools and the public.

Section II. Development of Resources

A. The Role of the Court in Providing Funding/Resources for National Action Plan Initiatives

Section II of the Conference of Chief Justices' *A National Action Plan on Lawyer Conduct and Professionalism* contains recommendations for state courts to improve lawyer conduct and professionalism. For purposes of this Implementation Plan, the National Action Plan definition of professionalism applies. The National Action Plan defines professionalism as encompassing "not only civility among members of the bench and bar, but also competence, integrity, respect for the rule of law, participation in pro bono and community service, and conduct by members of the legal profession that exceeds the minimum ethical requirements." *A National Action Plan on Lawyer Conduct and Professionalism*, January 21, 1999, p. 18.

The National Action Plan recommendations are based upon the responses provided in 1998 to a survey on state professionalism initiatives coordinated by the Conference of Chief Justices, the National Center for State Courts and the American Bar Association Center for Professional Responsibility. The survey results were summarized in briefing papers prepared for the Conference of Chief Justices' Working Group on Lawyer Conduct and Professionalism. The briefing papers and the survey instruments are attached as Appendices to the National Action Plan.

If the National Action Plan is to be implemented successfully, the court and the bar will have to pay particular attention to funding and resources (including professional and volunteer staff) for the programs and initiatives described therein. The 1992 Report of the ABA Commission on Evaluation of Lawyer Disciplinary Enforcement (the McKay Commission), entitled *Lawyer Regulation for a New Century*, contains several recommendations relating to the state supreme courts' obligations to ensure adequate funding and resources for their lawyer disciplinary agencies. In particular, the McKay Report notes, "If regulation of the profession is to remain within the province of the judicial branch, the Court must act to insure that adequate funding is available.... The Commission recognizes that these and other recommendations in this report are going to be expensive."

The same is true with respect to the initiatives contained in the National Action Plan, many of which mirror those contained in the McKay Report. Implementation of the National Action Plan initiatives will require sustained funding and resources. State supreme courts, which bear the ultimate authority for the regulation of the profession, should ensure that these programs are adequately funded and staffed.

B. Standards and Sources of Funding/Resources

Different initiatives need different levels of funding/resources. Some programs, such as mentoring, may not require a large amount of money to operate, but do require significant volunteer efforts. Other programs, such as an effective lawyers' fund for client

protection, require considerable resources in terms of money. Lawyer disciplinary agencies require higher levels of funding and staffing.

In order to determine appropriate funding and resource levels for National Action Plan implementation, a self-evaluation is recommended and discussed in further detail in Section III. In addition, the court may wish to formulate standards that will be used to assess the need for resources and funding. With such standards, the court will be better able to determine if current funding and staffing for existing programs is sufficient, and whether resources are being used effectively. Creating standards in this area will assist in planning for the future stability and growth of newly instituted programs.

Sources of funding and resources for implementation of National Action Plan recommendations will vary. They will include:

- Lawyer licensing fees;
- Mandatory assessments for client protection funds and lawyer assistance programs;
- Bar associations dues;
- Grants;
- Reimbursement by disciplined attorneys of the costs of disciplinary enforcement;
- Volunteer efforts; and
- Contributions of equipment and technology.

Section III. Implementation Infrastructure

A. The Role of the Conference of Chief Justices

In order to provide guidance and oversight of the implementation effort at a national level, it is recommended that the Conference of Chief Justices create a National Action Plan Implementation Committee. This Committee would be responsible for sustaining the Conference of Chief Justices' efforts to promote and implement the National Action Plan recommendations. In this regard it is recommended that the Committee monitor implementation efforts in the states via the electronic information network described in Section IV, continue to study and evaluate the issues relating to lawyer conduct and professionalism and their impact on the public's perception of the profession, propose policies for adoption by the Conference, and lead the Conference's education and public relations efforts with respect to the National Action Plan, its implementation, and the courts' role in effectively regulating the profession. The Committee should report regularly to the Conference about implementation efforts, obstacles and successes.

It is recommended that the Committee consist of no more than nine chief justices from jurisdictions of varying size and lawyer populations. Suggested liaisons to the Committee include representatives from the National Organization of Bar Counsel, the National Association of Bar Executives, the National Conference of Bar Presidents, the American Inns of Court, the ABA Center for Professional Responsibility, the ABA Section of Legal Education and Admissions to the Bar, the National Client Protection Organization and the Association of American Law Schools. The Committee should meet regularly at convenient times, such as in conjunction with the meetings of the Conference or by telephone and e-mail.

B. Creation of State Action Plan Implementation Entities

Implementation efforts at the state level could be accomplished by having each state supreme court establish an implementation standing committee or commission. A standing committee or commission is the recommended form of entity, as opposed to a task force, because implementation efforts will be ongoing. Institutionalizing the implementation efforts under the aegis of the court promotes the ability to engage in consistent implementation efforts over a long period of time. It is important that the court structure the implementation entity based upon its evaluation of available resources, statewide politics and other relevant factors. This court-appointed entity would be committed to assisting the court with implementation of the National Action Plan recommendations. Centralizing the implementation efforts in this manner will expedite the process and avoid duplication of efforts. It will also formalize the collaborative effort and ensure that all of the involved agencies, organizations and individuals have current information. The implementation entity should report directly to the court.

It is suggested that the court create a new entity instead of delegating the National Action Plan implementation mission to an existing one. The National Action Plan contains a diverse array of recommendations. It is unlikely that an existing entity will have the

comprehensive expertise suggested below. Additionally, it is important that the entity's focus on the National Action Plan not be diluted. It is unlikely that an existing entity charged with assisting the court in National Action Plan implementation, in addition to its existing functions, will be able to devote the time and resources to the project that a separate entity could. However, each state supreme court has existing obligations and commitments that might prohibit it from creating and funding a new entity.

If a state supreme court determines that it is necessary to delegate National Action Plan implementation to an existing entity or entities, it is suggested that the court utilize the state's professionalism commission, a committee or commission on public trust and confidence in the justice system, or a similar entity. Delegation of the National Action Plan implementation effort to one or more existing entities may require the dedication of increased funding and resources to that entity or entities. Additional funds and resources would likely be needed so that completion of the entity's original mission is not affected and sufficient resources are available to devote to accomplishing the National Action Plan initiatives. For those states with smaller lawyer populations and/or more limited available resources and funding, the supreme court might explore creating a regional implementation entity with other states.

Membership on the state implementation entity should include representatives from the state bar association, local and special interest bar associations, the disciplinary agency, the client protection fund, lower courts, the state's professionalism commission, law schools, the American Inns of Court, the public and other relevant entities. In terms of public members, the court should consider appointing members from groups such as the League of Women Voters, the American Association of Retired People or other civic and advocacy groups. It is recommended that at least one member of the court act as liaison to this group. The court appointed implementation entity, and its subcommittees, should meet as often as necessary to perform the duties described below in a timely manner.

The implementation entity should engage in strategic planning to implement the National Action Plan initiatives. A six-step process is suggested. The court, with input from this entity, should determine appropriate time guidelines for accomplishing each of these steps.

This recommended six-step process consists of:

- Identifying and prioritizing implementation goals;
- Developing initial strategies to implement National Action Plan initiatives as prioritized;
- Identifying barriers to implementation;
- Identifying action steps to overcome these barriers;
- Implementing National Action Plan recommendations as prioritized; and

- Evaluating and revising the process as necessary.

1. Identifying and Prioritizing Implementation Goals

It is important to note at the outset of the six-step process that most jurisdictions already have in place a number of National Action Plan recommendations. The process of identifying and prioritizing implementation goals should include a self-evaluation to see where the state stands in terms of implementation of these initiatives. The American Bar Association Center for Professional Responsibility has published the results of several national surveys that will assist any size jurisdiction with its self-evaluation. These include the results of the *National Action Plan Implementation Survey*, the annual *ABA Survey on Lawyer Discipline Systems* and the *ABA Survey on Lawyers' Funds for Client Protection*. If necessary, the implementation entity should develop its own survey to supplement that information. Any self-evaluation should include an assessment of available and potential resources for program initiatives, and issues relating to staffing. The implementation entity should work to ensure timely completion of the self-evaluation process.

The implementation entity may wish to conduct open hearings to determine issues relating to implementation of the National Action Plan recommendations and the public's perception of the profession. This would allow the court, through its delegated representatives, to educate the public and the bar about the National Action Plan while gathering information necessary to its implementation.

Implementation goals should be specific, measurable, attainable, relevant and trackable (S.M.A.R.T.). The following are examples of implementation goals:

- Increasing professionalism programming and educational initiatives for lawyers;
- Increasing the efficiency of the lawyer disciplinary system;
- Increasing public participation in the lawyer disciplinary system;
- Providing a stable funding source for the client protection fund;
- Developing an effective method of communication between the court, the bar and the law schools; and
- Achieving consistent sanctions for unprofessional litigation tactics.

After identifying issues and implementation goals the implementation entity should prioritize them. This will focus implementation efforts and assist in expediting the development and prioritization of strategies to implement National Action Plan recommendations. The priority given to any given National Action Plan initiative will

depend on several factors, including the intensity of public and/or professional demand, financing, resources and whether the initiative is controversial.

2. Developing Initial Strategies to Implement National Action Plan Initiatives as Prioritized

An implementation strategy consists of the actions that need to be taken to implement a given National Action Plan recommendation. The information gathered during the self-assessment described above will be used to develop these strategies. The development of initial strategies to implement the National Action Plan should include consideration of the nature of the particular recommendations to be implemented, financing, facilities, personnel and technology. The implementation entity may decide that more than one implementation strategy is required for any one particular recommendation. If this is the case, the implementation entity should consider prioritizing its strategies.

The following examples of implementation strategies relate to the implementation goals described above:

- Creating a professionalism commission;
- Establishing a central intake office to screen complaints to the disciplinary agency;
- Purchasing and installing caseload tracking software;
- Appointing public members to the disciplinary board or increasing public representation on the board, and soliciting public opinion about the disciplinary process through surveys and public hearings;
- Having the supreme court require lawyers to pay an assessment to the client protection fund and require fund administrators to conduct regular actuarial studies to ensure appropriate funding levels in the future;
- Ensuring that the court, bar and law schools have members and/or liaisons on each others' committees relating to lawyer conduct and professionalism; and
- Encouraging state judicial educators to include programming relating to the need for consistent sanctions for unprofessional litigation tactics.

Other implementation strategies include:

- Enacting a new rule on reciprocal disciplinary enforcement;
- Ensuring appropriate reporting of lawyer misconduct to disciplinary authorities by judges;

- Increasing bar association dues or lawyer registration fees to support implementation efforts;
- Having judges speak to community groups about the regulation of the profession and the justice system; and
- Increasing educational programming for judges in the areas of administration and management.

3. Identifying Barriers to Implementation

After strategies to implement the National Action Plan programs have been determined, the implementation entity should identify internal and external barriers to effectuating those strategies. In many respects, the internal barriers may be more difficult to overcome than the external barriers because they are more abstract in nature. Some examples of internal barriers are:

- A lack of trust among the actors because of differing agendas or lack of familiarity with one another's operating procedures;
- Isolation of the court from the public;
- Existing obligations of the court, the bar and/or the law schools;
- Judges' perceptions of themselves as the deciders of cases, not as administrators of the justice system;
- Loss of interest by the court, the bar and law schools;
- Conflicting perceptions of the role of law schools by the courts, the bar and the law schools themselves;
- Fluctuating levels of willingness by the courts to take responsibility for the consequences of change;
- Differing definitions of success utilized by the courts, the bar and law schools;
- Cynicism within the legal profession; and
- Unrealistic expectations by the public regarding lawyers and the justice system.

External barriers will more likely involve issues relating to funding or authority. For example, the court may wish to hire a public information officer, but the legislature is reluctant to provide funding for the position. This type of external barrier was also raised at the National Conference on Public Trust and Confidence in the Judicial System with regard to its own National Action Plan to build public trust and confidence in the courts.

Examples of other external barriers are:

- The perception by other agencies necessary to the implementation process that the state implementation entity may usurp, preempt or undermine their existing power and authority, including that of state disciplinary agencies and state and local bar organizations;
- Competition for available funds between different programs;
- The failure of bar leadership to fully support the court's efforts to effectuate change;
- The failure of the court to fully support the bar's efforts to effectuate change;
- Election cycles that change the composition and priorities of the court;
- Media-generated misperceptions about the profession;
- Economic pressures associated with the practice of law that diminish lawyers' abilities to do pro bono work and focus on professionalism; and
- The cost of a law school education.

4. Identifying Action Steps to Overcome Barriers

Next, the implementation entity should develop strategies to overcome the identified barriers. For example, ensuring that the implementation entity created by the court has the diverse membership described in Section B may be one way to help overcome the lack of trust among the actors necessary to successful implementation. The court could also take steps to assure other entities that the implementation entity's authority will not preempt or undermine the existing power and authority of individual entities or agencies. Completing this process should allow the implementation entity to finalize its strategies for implementation.

5. Implementing National Action Plan Recommendations as Prioritized

Once strategies are finalized, the implementation entity can seek to implement the National Action Plan initiatives according to its priorities. The implementation entity should draft a report setting forth its recommendations (steps 1 through 4 above) to the court. In order to sustain momentum, it is recommended that the court take immediate action upon these recommendations, which may include enacting new rules and procedures. In order to assist the court, the report should contain proposed drafts of any new rules of procedures. The court should determine how best to proceed with the recommendations contained in the report. For example, it may refer drafts of proposed rules to its rules committee. Additionally, the court may wish to hold public hearings regarding the contents of any proposed rules and procedures.

It is recommended that any directives by the court to implement National Action Plan programs contain specific time guidelines for achieving implementation. The court should provide the implementation entity with sufficient authority to monitor and report to the court about implementation of the National Action Plan initiatives. As noted above, this authority should not preempt, usurp or undermine the power and authority of the disciplinary agency, other entities such as professionalism commissions, or bar associations over their programs.

6. Evaluating and Revising the Process as Necessary

The purpose of implementing the National Action Plan is to improve lawyer conduct and professionalism and the public's perception of the profession. The Conference of Chief Justice's National Action Plan Implementation Committee should work with the state implementation entities to determine the best way in which to measure changes in lawyer conduct and the public's perception of the profession. Measurable results will not occur immediately. The National Action Plan's success in improving lawyer conduct and professionalism, and consequently enhancing the public's perception of the profession should, however, be documented from the outset and publicized.

To achieve the goals of the National Action Plan, the implementation strategies determined by the implementation entity and approved by the court have to be successfully deployed. As a result, the initial evaluation of the process by the state implementation entity might focus on the success of the first five-steps described above. It may be that unanticipated barriers have emerged and need to be addressed. The court's priorities may have changed. A change in the political landscape might dictate the need to adjust the plan of action devised by the entity for a particular recommendation. It is recommended that each state's supreme court consider setting a time for this evaluation to take place.

After the evaluation, the state implementation entity and the court can determine what, if any, revisions to the implementation process are necessary. On a national level, the evaluation process may result in amendments to the National Action Plan or a change in the level of involvement of the Conference of Chief Justices.

Section IV. Creating and Maintaining an Electronic Information Network

Available technology should enable the Conference of Chief Justices and the state implementation entities to easily collect information about and monitor implementation efforts. As a result, it is recommended that the Conference of Chief Justices, with staff assistance from the National Center for State Courts and the ABA Center for Professional Responsibility, create a web site devoted to implementation of the National Action Plan. Each state supreme court could direct its implementation entity to create a National Action Plan implementation web site that would be linked to the central Conference of Chief Justices' site. Linking the sites in this manner will allow the Conference of Chief Justices, through its Implementation Committee, to monitor implementation efforts in the states. The Conference's web site could be maintained on the National Center for State Court's web server.

The central National Action Plan web site should provide a listserv for Conference members to communicate about implementation of the National Action Plan. The central site should also have a listserv that will allow the state entities to easily communicate with each other. This second listserv will also serve as a forum for on-line discussions that could include members of the Conference's National Action Plan Implementation Committee.

It is also recommended that the Conference's site contain an on-line database of National Action Plan implementation activities. Each state's individual site should also contain such a database, and information from the state site can be imported into the central database. The central and state databases should be structured so that parts are viewable by the public and other parts are only viewable by designated users. The database should be searchable, providing easy access to the Conference, state task force members and the public. It is recommended that each database contain implementation status reports for each activity.

Members of the Conference's National Action Plan Implementation Committee and the state counterparts should determine how to expand and modify the web sites and whether additional links should be added. For example, the American Bar Association Center for Professional Responsibility maintains a professionalism web site that contains current information on professionalism initiatives around the country. That site can be accessed at www.abanet.org/cpr/professionalism. The Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law has also developed a professionalism web site. One of the goals of that web site, which is located at <http://professionalism.law.sc.edu>, is to provide quick access to materials and other resources related to professionalism.

Section V. Conclusion

A strong, coordinated effort by state supreme courts to implement the recommendations contained in the National Action Plan should increase professionalism and ethical conduct among lawyers and enhance the public's perception of the profession. The work of improving lawyer behavior by increasing professionalism, strengthening lawyer regulation and building public trust must be sustained over time. Although the bulk of the work will occur at the state and local levels, the ongoing support and involvement of the Conference of Chief Justices is a necessary component of success. This Implementation Plan provides the Conference and the state supreme courts with the framework they need to ensure successful implementation of the National Action Plan recommendations.

APPENDIX A: Conference Program

Regulatory Authority Over the Legal Profession and the Judiciary: The Responsibility of State Supreme Courts

MARCH 14, 1997

REGULATION OF THE PROFESSION

- 8:30 am - 8:45 am **Welcome**
- Jerome J. Shestack, President Elect, American Bar Association
- 8:45 am - 9:15 am **The Role of State Supreme Courts in Addressing Professionalism**
- Hon. E. Norman Veasey, Chief Justice, Supreme Court of Delaware
- 9:15 am - 10:30 am **Preventive Measures: Protecting the Public By Assisting Lawyers**
- This panel and group discussion will address efforts by supreme courts to increase protection of clients through remedial measures, professionalism training and educational initiatives.
- Hon. Stanley Feldman, Supreme Court of Arizona
Karen Betzner, Senior Executive for Professional Competence, Standards and Certification, State Bar of California
Hon. Craig Wright, former Justice, Supreme Court of Ohio
- 10:30 am - 10:45 am **Break**
- 10:45 am - 12:00 am **Making the System More Responsive**
- This panel and group discussion will feature the establishment of programs/mechanisms by supreme courts to respond to complaints about lawyers where the alleged conduct does not generally fall within the purview of the disciplinary system.
- W. Scott Welch, III, Past President, Mississippi State Bar
Hal Lieberman, Chief Disciplinary Counsel, First Department, New York
Hon. Burley B. Mitchell, Jr., Chief Justice, North Carolina Supreme Court
- 12:00 pm - 1:15 pm **Lunch**

1:15 pm - 2:15 pm **Open Sesame**

This panel will review efforts to increase public perception and participation in the lawyer regulatory process by having a more open disciplinary process and by incorporating non-lawyer participation into the entire regulatory system.

Hon. Gerald Kogan, Chief Justice, Supreme Court of Florida
Mary T. Robinson, Administrator, Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois
Hon. Daniel J. O'Hern, Supreme Court of New Jersey

2:30 pm. -4:00 pm **Keeping Hold of the Reins**

This panel will discuss the need for the courts to maintain an active role in preserving the highest standards of professionalism by ensuring the existence of an effective and comprehensive lawyer regulatory system.

Hon. Michael D. Zimmerman, Chief Justice, Supreme Court of Utah
Raymond R. Trombadore, Chair, ABA Standing Committee on Professional Discipline
M. Susan Kudla, Chair, Grievance Committee of the Supreme Court of Colorado

4:00 pm- 4:15 pm **Conclusion**

Hon. E. Norman Veasey, Chief Justice, Delaware Supreme Court

MARCH 15, 1997

**SUPERVISORY AUTHORITY OVER
THE JUDICIARY**

8:30 am - 10:00 am **Current Issues in Judicial Discipline and Conduct**

This panel will discuss current decisions in judicial ethics and discipline. The panel will also review recent changes incorporated into judicial codes of conduct and proposed modifications.

Hon. Vivi Dilweg, Circuit Court, Green Bay, Wisconsin
Professor Jeffrey M. Shaman, DePaul University College of Law
Joanne Pelton Pitulla, Associate Ethics Counsel, American Bar Association

Issues in Judicial Disciplinary Enforcement: The ABA Model Rules for Judicial Disciplinary Enforcement

This program will focus on various concerns of the public and the judiciary about the effectiveness and fairness of judicial disciplinary systems by using the new videotape on the Model Rules produced by the National Judicial College with a grant from the State Justice Institute. Discussion will also focus on the role of state supreme courts and judicial conduct organizations in ensuring effective and fair judicial regulatory systems.

10:15 am - 11:45 am Part I. - The Investigative Process

Hon. Bernardo P. Velasco, Chair, Arizona Commission on Judicial Conduct

Charles R. Garten, Judicial Disciplinary Counsel, West Virginia

Linda D Donnelly, Disciplinary Counsel, Supreme Court of Colorado

11:45 pm - 1:15 pm Lunch

Speaker: N. Lee Cooper, President, American Bar Association
Judicial Independence

1:15 pm - 2:45 pm Part II. - Formal Charges and the Hearing Process

Hon. Ernest A. Finney, Chief Justice, Supreme Court of South Carolina

Hon. Vivi Dilweg, Circuit Court, Green Bay, Wisconsin

James C. Alexander, Executive Director, Wisconsin Judicial Commission

Cynthia M. Jacob, President, New Jersey Bar Association

2:45 pm - 3:15 pm Conclusion

Hon. Shirley S. Abrahamson, Chief Justice, Wisconsin Supreme Court

Hon. E. Norman Veasey, Chief Justice, Delaware Supreme Court

APPENDIX B: *The Lawyer Regulation Handbook*, Table of Contents

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APPENDIX C: National Action Plan, black letter recommendations

A. Professionalism, Leadership, and Coordination

The appellate court of highest jurisdiction in each state should take a leadership role in evaluating the contemporary needs of the legal community with respect to lawyer professionalism and coordinating the activities of the bench, the bar, and the law schools in meeting those needs. Specific efforts should include:

- **Establishing a Commission on Professionalism or other agency under the direct authority of the appellate court of highest jurisdiction;**
- **Ensuring that judicial and legal education makes reference to broader social issues and their impact on professionalism and legal ethics;**
- **Increasing the dialogue among the law schools, the courts and the practicing bar through periodic meetings; and**
- **Correlating the needs of the legal profession – bench, bar, and law schools – to identify issues, assess trends and set a coherent and coordinated direction for the profession.**

B. Improving Lawyer Competence

1. Continuing Legal Education (CLE)

Each state's appellate court of highest jurisdiction should encourage and support the development and implementation of a high-quality, comprehensive CLE program including substantive programs on professionalism and competence. An effective CLE program is one that:

- **Requires lawyer participation in continuing legal education programs;**
- **Requires that a certain portion of the CLE focus on ethics and professionalism;**
- **Requires that all lawyers take the mandated professionalism course for new admittees;**
- **Monitors and enforces compliance with meaningful CLE requirements;**
- **Encourages innovative CLE in a variety of practice areas;**
- **Encourages cost-effective CLE formats;**
- **Encourages the integration of ethics and professionalism components in all CLE curricula;**
- **Encourages CLE components on legal practice and office management skills, including office management technology; and**
- **Teaches methods to prevent and avoid malpractice and unethical or unprofessional conduct and the consequences of failing to prevent and avoid such conduct.**

2. Law Office Management

State bar programs should support efforts to improve law office efficiency. Effective support includes:

- **Establishing a law office management assistance program;**
- **Providing assistance with daily law office routines; and**
- **Providing monitoring services for lawyers referred from the disciplinary system.**

3. Assistance with Ethics Questions

Lawyers should be provided with programs to assist in the compliance of ethical rules of conduct. State bar programs should:

- **Establish an Ethics Hotline;**
- **Provide access to advisory opinions on the Web or a compact disc (CD); and**
- **Publish annotated volumes of professional conduct.**

4. Assistance to lawyers with mental health or substance abuse problems

Lawyers need a forum to confront their mental health and substance abuse problems. State bar programs should:

- **Create a Lawyer Assistance Program (LAP) if one does not exist;**
- **Fund the LAP through mandatory registration fees;**
- **Provide confidentiality for LAP programs;**
- **Establish intervention systems for disabilities and impairments other than substance abuse or expand existing LAPs to cover non-chemical dependency impairments;**
- **Provide monitoring services for lawyers referred from the disciplinary system; and**
- **Provide career counseling for lawyers in transition.**

5. Lawyers Entering Practice for the First Time – Transitional Education

Judicial leadership should support the development and implementation of programs that address the practical needs of lawyers immediately after admission to the bar. Effective programs for newly admitted lawyers:

- **Mandate a course for new admittees that covers the fundamentals of law practice;**
- **Emphasize professionalism;**
- **Increase emphasis on developing post-graduation skills; and**
- **Ensure the availability of CLE in office skills for different office settings.**

6. Mentoring

Judicial leadership should promote mentoring programs for both new and established lawyers. Effective programs:

- **Establish mentoring opportunities for new admittees;**
- **Establish mentoring opportunities for solo and small firm practitioners;**
- **Provide directories of lawyers who can respond to questions in different practice areas;**
- **Provide networking opportunities for solo and small firm lawyers; and**
- **Provide technology for exchange of information.**

C. Law School Education and Bar Admission

1. Law School Curriculum

In preparing law students for legal practice, law schools should provide students with the fundamental principles of professionalism and basic skills for legal practice.

2. Bar Examination

The subject areas tested on the examination for admittance to the state bar should reflect a focus on fundamental competence by new lawyers.

3. Character and Fitness Evaluation

Law schools should assist bar admissions agencies by providing complete and accurate information about the character and fitness of law students who apply for bar admission.

4. Bar Admission Procedures

Bar admissions procedures should be designed to reveal instances of poor character and fitness. If appropriate, bar applicants may be admitted on a conditional basis.

D. Effective Lawyer Regulation

1. Complaint Handling

Information about the state's system of regulation should be easily accessible and presented to lawyers and the public in an understandable format. The disciplinary agency, or central intake office if separate, should review complaints expeditiously. Matters that do not fall under the jurisdiction of the disciplinary agency or do not state facts that, if true, would constitute a violation of the rules of professional conduct should be promptly referred to a more appropriate mechanism for resolution. Complainants should be kept informed about the status of complaints at

all stages of proceedings, including explanations about substantive decisions made concerning the complaint.

2. Assistance to lawyers with ethics problems or "minor" misconduct (e.g., acts of lesser misconduct that do not warrant the imposition of a disciplinary sanction)

The state's system of lawyer regulation should include procedures for referring matters involving lesser misconduct to an appropriate remedial program. Such procedures may include:

- Required participation in a law office management program;**
- Required participation in a lawyer assistance program;**
- Enrollment in an "ethics school" or other mandatory CLE; and**
- Participation in a fee arbitration or mediation program.**

3. Disciplinary Sanctions

The range of disciplinary sanctions should be sufficiently broad to address the relative severity of lawyer misconduct, including conduct unrelated to the lawyer's legal practice. Disciplinary agencies should use available national standards to ensure interstate consistency of disciplinary sanctions. All public sanction should be reported to the National Lawyer Regulatory Data Bank of the American Bar Association.

4. Lawyers' Funds for Client Protection

The state's system of lawyer regulation should include a Lawyers' Fund for Client Protection to shield legal consumers from economic losses resulting from an attorney's misappropriation of law client and escrow money in the practice of law. Rules or policies of the appellate court of highest jurisdiction should:

- Provide for a statewide client protection fund;**
- Require that the fund substantially reimburse losses resulting from dishonest conduct in the practice of law;**
- Finance the fund through a mandatory assessment on lawyers;**
- Designate the fund's assets to constitute a trust;**
- Appoint a board of trustees, composed of lawyers and lay persons, to administer the fund; and**
- Require the board of trustees to publicize the fund's existence and activities.**

5. Other Public Protection Measures

The state's system of lawyer regulation should include other appropriate measures of public protection. Such measures that the Court should enact include:

- Mandating financial recordkeeping, trust account maintenance and overdraft notification;
- Establish a system of random audits of trust accounts;
- Requiring lawyers who seek court appointments to carry malpractice insurance;
- Collect annual information on lawyers' trust accounts;
- Studying the possibility of recertification;
- Providing for interim suspension for threat of harm; and
- Establishing a 30-day no contact rule.

6. Efficiency of the Disciplinary System

The state system of lawyer regulation should operate effectively and efficiently. The Court should enact procedures for improving the system's efficiency, including:

- Providing for discretionary rather than automatic review of hearing committee or board decisions by the Court;
- Providing for discipline on consent;
- Requiring respondents to disciplinary investigations to be reasonably cooperative with investigatory procedures;
- Establishing time standards for case processing;
- Periodically reviewing the system to increase efficiency where necessary;
- Eliminating duplicative review in the procedures for determining whether to file formal charges;
- Authorizing disciplinary counsel to dismiss complaints summarily or after investigation with limited right of complainants to seek review;
- Using professional disciplinary counsel and staff for investigation and prosecution and volunteers on boards and hearing committees;
- Providing appropriate training for all involved; and
- Incorporating disciplinary experiences in CLE curricula.

7. Public Accountability

The public should have access to information about the system of lawyer regulation including procedures, aggregate data concerning its operations, and lawyers' disciplinary records. Laypersons should be included on disciplinary hearing panels and boards. Other measures to ensure public accountability of the disciplinary agency include:

- Making written opinions available in all cases;
- Making formal disciplinary hearings open to the public;
- Collecting and making available information on lawyers' malpractice insurance; and
- Speaking about the disciplinary system at public gatherings.

E. Public Outreach Efforts

1. Public Education

Judges, lawyers and bar programs should provide more public understanding of lawyer professionalism and ethics by developing and implementing public education programs. Effective public education programs should:

- **Emphasize lawyer professionalism in court communications with the public;**
- **Provide a "Public Liaison" office or officer to serve in a clearinghouse function;**
- **Distribute public education materials in places commonly accessible to the public;**
- **Include public speaking on the topic of professionalism on the agenda for bar association speaking bureaus;**
- **Encourage a more active role between educational institutions and organizations and the justice system; and**
- **Educate the legislative and executive branches of government about issues related to the legal profession and the justice system.**

2. Public Participation

The participation of the public should be supported in all levels of court and bar institutional policy-making by judges, lawyers, and bar programs. Judges, lawyers, and bar programs should:

- **Publicize the nomination and appointment process for public representatives on court and bar committees;**
- **Once appointed, provide lay members access to the tools necessary for effective participation; and**
- **Provide adequate funding on an ongoing basis.**

3. Public Access to the Justice System

Judges, lawyers, and bar programs should encourage public access to the justice system through the coordination of pro bono programs. Effective coordination of pro bono programs should:

- **Encourage judicial support and participation in lawyer recruitment efforts for pro bono programs;**
- **Provide institutional support within the court system for lawyer pro bono service;**
- **Establish an "Emeritus Lawyer" pro bono program;**
- **Provide institutional and in-kind support for the coordination of pro bono programs; and**

- Explore funding alternatives to support pro bono programs.

4. Public Opinion

To gauge public opinion about the legal profession and the level of professionalism demonstrated by lawyers, the court and the bar should create regular opportunities for the public to voice complaints and make suggestions about judicial/legal institutions.

5. Practice Development, Marketing and Advertising

The judiciary, the organized bar and the law schools should work together to develop standards of professionalism in attorney marketing, practice development, solicitation and advertising. Such standards should:

- Recognize the need for lawyers to acquire clients and the benefit to the public of having truthful information about the availability of lawyers;
- Emphasize the ethical requirements for lawyer advertising and client solicitations;
- Emphasize the need to be truthful and not misleading; and
- Encourage lawyers to employ advertising and other marketing methods that enhance respect for the profession, the justice system and the participants in that system.

F. Lawyer Professionalism in Court

1. Alternative Dispute Resolution Programs

If appropriate for the resolution of a pending case, judges and lawyers should encourage clients to participate in Alternative Dispute Resolution (ADR) programs. An effective ADR program should:

- Ensure that court-annexed ADR programs provide appropriate education for lawyers about different types of ADR (e.g., mediation, arbitration);
- Establish standards of ethics and professional conduct for ADR professionals;
- Require lawyers and parties to engage the services of ADR professionals who adhere to established standards of ethics and professional conduct;
- Encourage trial judges to implement and enforce compliance with ADR orders; and
- Educate clients and the public about the availability and desirability of ADR mechanisms.

2. Abusive or Unprofessional Litigation Tactics

To prevent unprofessional or abusive litigation tactics in the courtroom, the court and judges should:

- **Encourage consistent enforcement of procedural and evidentiary rules;**
- **Encourage procedural consistency between local jurisdictions within states;**
- **Adopt court rules that promote lawyer cooperation in resolving disputes over frivolous filings, discovery, and other pretrial matters;**
- **Encourage judicial referrals to the disciplinary system;**
- **Educate trial judges about the necessary relationship between judicial involvement in pretrial management and effective enforcement of pretrial orders;**
- **Encourage increased judicial supervision of pretrial case management activities; and**
- **Establish clear expectations about lawyer conduct at the very first opportunity.**

3. High Profile Cases

In high profile cases, lawyers should refrain from public comment that might compromise the rights of litigants or distort public perception about the justice system.

G. Interstate Cooperation

The appellate courts of highest jurisdiction should cooperate to ensure consistency among jurisdictions concerning lawyer regulation and professionalism and to pool resources as appropriate to fulfill their responsibilities. Specific efforts of interstate cooperation include:

- **Continued reporting of public sanctions to ABA National Regulatory Data Bank;**
- **Using the Westlaw Private File of the ABA National Regulatory Data Bank;**
- **Inquiring on the state's annual registration statement about licensure and public discipline in other jurisdictions;**
- **Providing reciprocal recognition of CLE;**
- **Establishing regional professionalism programs and efforts;**
- **Recognizing and implementing the International Standard Lawyer Numbering System created by Martindale-Hubble and the American Bar Association to improve reciprocal disciplinary enforcement; and**
- **Providing information about bar admission and admission on motion (including reciprocity) on the bar's website.**

APPENDIX D: Conference Program

The Role of the Court in Improving Lawyer Conduct and Professionalism: Initiating Action, Coordinating Efforts, and Maintaining Momentum

March 22 - 24, 2001
L'Auberge Del Mar, Del Mar, California

Friday, March 23, 2001

8:30 - 8:50 am Welcome and Introduction

Raymond R. Trombadore, *Co-chair, Conference Planning Committee*

Karen J. Mathis, *Chair, American Bar Association House of Delegates*

8:50 - 9:15 am Keynote Address—Presenting the Draft Implementation Plan for the Conference of Chief Justices *A National Action Plan on Lawyer Conduct and Professionalism*

The Honorable Randy J. Holland, *Justice, Supreme Court of Delaware*

**9:15 - 10:30 am Implementation of the National Action Plan:
The Role of the Court in Regulating the Profession**

This panel will focus on what the state supreme courts have done, and can do, to meet and exceed the challenges set forth in the National Action Plan. The discussion will address what can and should be done to motivate the chief justices to take significant and sustained action in initiating and implementing the recommendations in the National Action Plan relating to lawyer discipline.

Moderator

The Honorable E. Norman Veasey, *Chief Justice, Supreme Court of Delaware*

The Honorable Shirley S. Abrahamson, *Chief Justice, Supreme Court of Wisconsin*

Mary T. Robinson, *Administrator, Illinois Attorney Registration and Disciplinary Commission*

Barry R. Vickrey, *Dean, University of South Dakota School of Law*

Pamela J. White, *Incoming President, Maryland Bar Association*

10:45 - 12:00 pm Initiating Action, Coordinating Efforts and Maintaining Momentum: The Role of the Court in Promoting Professionalism

This interactive discussion will focus attendees on how to enhance court activism in implementing Action Plan initiatives that supplement and enhance the disciplinary system. These initiatives address aspects of lawyer conduct encompassed by the concept of professionalism. The Guide to Creating

Professionalism Commissions will be used as a framework for discussing possible courses of action for the future.

Moderator

The Honorable Barbara K. Howe, *ABA Standing Committee on Professional Discipline*

Louis A. Craco, *Chair, New York State Judicial Institution on Professionalism in the Law*

The Honorable Gerald W. VandeWalle, *Chief Justice, Supreme Court of North Dakota*

Sally E. Winkler, *Executive Director, State Bar of Georgia Chief Justice's Commission on Professionalism*

12:00 - 1:00 pm Lunch

1:15 - 2:45 pm Breakout—The Draft Implementation Plan

Participants will break into pre-assigned groups to discuss the Draft Implementation Plan. The facilitators will guide the discussion.

Facilitators

John T. Berry, *Executive Director, Michigan State Bar*

The Honorable Craig T. Enoch, *Justice, Supreme Court of Texas*

Paula J. Frederick, *ABA Standing Committee on Professional Discipline*

Richard A. Soden, *Immediate Past Chair, ABA Standing Committee on Bar Activities and Services*

William I. Weston, *Associate Dean, Florida Coastal School of Law*

Reporters

Michael J. Flaherty, *President, Association of Professional Responsibility Lawyers*

Allan J. Joseph, *Treasurer-elect Nominee, American Bar Association*

T. Richard Kennedy, *Immediate Past Chair, ABA Standing Committee on Professional Discipline*

The Honorable Rebecca Love Kourlis, *Justice, Supreme Court of Colorado*

Timothy W. Bouch, *ABA Standing Committee on Professional Discipline*

2:45 - 3:00 pm Refreshment Break

3:00 - 4:30 pm Report on Breakout Discussions

Burnele V. Powell, *Dean, University of Missouri-Kansas City School of Law*

The Honorable E. Norman Veasey, *Chief Justice, Supreme Court of Delaware*

Saturday, March 24, 2001

8:30 - 9:45 am Multijurisdictional Practice and Interstate Cooperation

This interactive panel will address the court's role in regulating multijurisdictional practice. Discussion will focus on the need for the courts to assert leadership and take action in the form of local and regional coordination relating to bar admissions, interstate practice and reciprocal discipline.

Moderator

Diane C. Yu, *ABA Commission on Multijurisdictional Practice*

Barry Althoff, *Chief Disciplinary Counsel, Washington State Bar Association*

The Honorable Ming W. Chin, *Justice, Supreme Court of California*

Erica Moeser, *President, National Conference of Bar Examiners*

Lucian T. Pera, *ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000")*

9:45 - 11:15 am Breakout—Interstate Cooperation

Assigned groups will discuss the role of state supreme courts with respect to the regulation of multijurisdictional practice.

11:15 - 11:30 am Refreshment Break

11:30 - 12:30 pm Report on Breakout

Burnele V. Powell, *Dean, University of Missouri-Kansas City School of Law*

The Honorable E. Norman Veasey, *Chief Justice, Supreme Court of Delaware*

12:30 - 1:30 pm Lunch and Conclusion

The Honorable E. Norman Veasey, *Chief Justice, Supreme Court of Delaware*

AMERICAN BOARD OF TRIAL ADVOCATES

PRINCIPLES OF CIVILITY, INTEGRITY AND PROFESSIONALISM

[Preamble](#) | [Principles](#) | [Conduct in Court](#) | [Judges' Conduct](#)

Preamble

These Principles supplement the precepts set forth in ABOTA's Code of Professionalism and are a guide to the proper conduct of litigation. Civility, integrity, and professionalism, are the hallmarks of our learned calling, dedicated to the administration of justice for all. Counsel adhering to these principles will further the truth seeking process, so that disputes will be resolved in a just, dignified, courteous and efficient manner.

These Principles are not intended to inhibit vigorous advocacy or detract from an attorney's duty to represent a client's cause with faithful dedication to the best of counsel's ability. Rather, they are intended to discourage conduct which demeans, hampers and obstructs our system of justice.

These Principles apply to both attorneys and judges. They have mutual obligations to one another to enhance and preserve the dignity and integrity of our system of justice. As lawyers must practice these Principles when appearing in court, it is not presumptuous of them to expect judges to observe them in kind. The Principles as to the conduct of judges set forth herein are derived from judiciary codes and standards.

These Principles are not intended to be a basis for imposing sanctions, penalties or liability, nor can they supersede or detract from the professional, ethical or disciplinary codes of conduct adopted by regulatory bodies.

Principles of Civility, Integrity and Professionalism

As a member of the American Board of Trial Advocates, I will adhere to the following Principles:

1. Advance the legitimate interests of my clients, but not reflect any ill-will they may have for their adversaries, even if called upon to do so, by offensive conduct, disparaging personal remarks or acrimony, but treat all other counsel, parties and witnesses in a courteous manner.
2. Never encourage or knowingly authorize a person under my direction or supervision to engage in conduct proscribed by these principles.
3. Never, without good cause, attribute to other counsel bad motives or improprieties.
4. Never seek court sanctions unless fully justified by the circumstances and necessary to protect a client's legitimate interests and then only after a good faith effort informally to resolve the issue with counsel.
5. Adhere to all express promises and agreements, whether oral or written and, in good faith, to all commitments implied by the circumstances or local custom.
6. When called upon to do so, commit oral understandings to writing accurately and completely, provide other counsel a copy for review and never include matters upon which there has been no agreement, without explicitly advising other counsel.
7. Timely confer with other counsel to explore settlement possibilities and never falsely hold out the potential of settlement for the purpose of foreclosing discovery or delay of trial.
8. Stipulate to undisputed relevant matters when it is obvious they can be proven and, where there is no good faith basis for not doing so.
9. Never initiate communication with a judge without the knowledge or presence of opposing counsel concerning a matter at issue before the court.
10. Never use any form of discovery scheduling as a means of harassment.
11. Make good faith efforts to resolve disputes concerning pleadings and discovery.
12. Never file or serve motions or pleadings at a time calculated to unfairly limit opposing counsel's opportunity to respond.
13. Never request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.
14. Consult other counsel on scheduling matters in a good faith effort to avoid conflicts.
15. When calendar conflicts occur, accommodate counsel by rescheduling dates for hearings, depositions, meetings and other events.
16. When hearings, depositions, meetings or other events are to be canceled or postponed, notify as early as possible other counsel, the court or other persons, as appropriate, so as to avoid unnecessary inconvenience, wasted time and expense, and to enable the court to use previously reserved time for other matters.
17. Agree to reasonable requests for extension of time and waiver of procedural formalities when doing so will not adversely affect my client's legitimate rights.
18. Never cause the entry of a default or dismissal without first notifying opposing counsel, unless material prejudice has been suffered by my client.
19. Never take depositions for the purpose of harassment or to burden an opponent with increased litigation expenses.

20. During a deposition, never engage in conduct which would not be appropriate in the presence of a judge.
21. During a deposition, never obstruct the interrogator or object to questions unless reasonably necessary to preserve an objection or privilege for resolution by the court.
22. During depositions, ask only those questions reasonably necessary for the prosecution or defense of an action.
23. Draft document production requests and interrogatories limited to those reasonably necessary for the prosecution or defense of an action, and never design them to place an undue burden or expense on a party.
24. Make reasonable responses to document requests and interrogatories and not interpret them in an artificially restrictive manner so as to avoid disclosure of relevant and non-privileged documents.
25. Never produce documents in a manner designed to obscure their source, create confusion, or hide the existence of particular documents.
26. Base discovery objections on a good faith belief in their merit, and not for the purpose of withholding or delaying the disclosure of relevant and non-privileged information.
27. When called upon, draft orders reflecting a court's ruling accurately and completely, submit them to other counsel and attempt to reconcile any differences before presenting them to the court.
28. During argument, never attribute to other counsel a position or claim that he has not taken, or seek to create such an unjustified inference.
29. Unless specifically permitted or invited, never send to the court copies of correspondence between counsel.

When In Court I Will:

1. Always uphold the dignity of the court and never be disrespectful.
2. Never publicly criticize a judge for his rulings or a jury for its verdict. Criticism should be reserved for appellate court briefs.
3. Be punctual and prepared for all court appearance and, if unavoidably delayed, notify the court and counsel as soon as possible.
4. Never engage in conduct that brings disorder or disruption in the courtroom.
5. Advise clients and witnesses of the proper courtroom conduct expected and required.
6. Never misrepresent or misquote facts or authorities.
7. Verify the availability of clients and witnesses, if possible, before dates for hearings or trials are scheduled, or immediately thereafter, and promptly notify the court and counsel if their attendance cannot be assured.
8. Be respectful and courteous to court marshals or bailiffs, clerks, reporters, secretaries and law clerks.

Conduct Expected of Judges:

A lawyer is entitled to expect judges to observe the following Principles:

1. Be courteous and respectful to lawyers, parties, witnesses, and court personnel.
2. Control courtroom decorum and proceedings, so as to ensure that all litigation is conducted in a civil and efficient manner.
3. Abstain from hostile, demeaning or humiliating language in written opinions or oral communications with lawyers, parties or witnesses.
4. Be punctual in convening all hearings and conferences and, if unavoidably delayed, notify counsel, if possible.
5. Be considerate of time schedules of lawyers, parties and witnesses in setting dates for hearings, meetings and conferences. Avoid, when possible, scheduling matters for a time which conflicts with counsel's required appearance before another judge.
6. Make all reasonable efforts to decide promptly matters under submission.
7. Give issues in controversy deliberate, impartial and studied analysis before rendering a decision.
8. Be considerate of the time constraints and pressures imposed on lawyers by the demands of litigation practice, while endeavoring to resolve disputes efficiently.
9. Be mindful that a lawyer has a right and duty properly to present a case fully, make a complete record, and argue the facts and law vigorously.
10. Never impugn the integrity or professionalism of a lawyer based solely on the clients or causes he represents.
11. Require court personnel to be respectful and courteous towards lawyers, parties and witnesses.
12. Abstain from adopting procedures that needlessly increase litigation time and expense.
13. Promptly bring to counsel's attention uncivil conduct on the part of clients, witnesses or counsel.

Trial Lawyers Section of The Florida Bar Guidelines for Professional Conduct

FORWARD

In 1993 the Executive Council of the Trial Lawyers Section of the Florida Bar (which represents over 6,000 trial lawyers in Florida) formed a professionalism committee to prepare practical guidelines for professional conduct for trial lawyers. After reviewing the numerous aspirational and model guidelines from both Florida and around the country, the professionalism committee determined that, with minor modifications, the guidelines which had been prepared by the Hillsborough County Bar Association were the best model for the entire state. Therefore, in 1994, at the request of the professionalism committee, the Executive Council of the Trial Lawyers Section unanimously approved the Guidelines For Professional Conduct. The Trial Lawyers Section sought the endorsement of the Guidelines from the Florida Conference of Circuit Judges, and at its meeting held in September 1995, the Conference approved the Guidelines. In so doing, the Conference wishes to make clear that the Guidelines do not have the force of law and that trial judges will still have the right and obligation to consider issues raised by the Guidelines on a case by case basis. Nevertheless, both the Trial Lawyers Section and the Florida Conference of Circuit Judges hope that publication and widespread dissemination of these Guidelines will give direction to both lawyers and judges as to how lawyers should conduct themselves in all phases of trial practice. The adoption of the Guidelines by the Trial Lawyers Section is also intended to express support for trial judges who require that lawyers conduct themselves professionally.

For most lawyers, these Guidelines will simply reflect their current practice. However, it is hoped that the widespread dissemination and implementation of these Guidelines will result in an overall increase in the level of professionalism in trial practice in Florida.

PREAMBLE

The effective administration of justice requires the interaction of many professionals and disciplines, but none is more critical than the role of the lawyer. In fulfilling that role, a lawyer performs many tasks, few of which are easy, most of which are exacting. In the final analysis, a lawyer's duty is always to the client. But in striving to fulfill that duty, a lawyer must be ever conscious of his or her broader duty to the judicial system that serves both attorney and client. To the judiciary, a lawyer owes candor, diligence and utmost respect. To the administration of justice, a lawyer unquestionably owes the fundamental duties of personal dignity and professional integrity. Coupled with those duties, however, is a lawyer's duty of courtesy and cooperation with fellow professionals for the efficient administration of our system of justice and the respect of the public it serves.

In furtherance of these fundamental concepts, in recognition that they must be applied in a manner consistent with the interests of one's client and the Rules of Professional Conduct, and in keeping with the long tradition of professionalism among and between members of the Trial Lawyers Section of The Florida Bar, the following Guidelines for Professional Conduct are hereby adopted. Although

we do not expect every lawyer will agree with every guideline, these standards reflect our best effort at encouraging decency and courtesy in our professional lives without intruding unreasonably on each lawyer's choice of style or tactics.

A. SCHEDULING, CONTINUANCES, AND EXTENSIONS OF TIME.

SCHEDULING AND CONTINUANCES

- 1.** Attorneys are encouraged to communicate with opposing counsel prior to scheduling depositions, hearing and other proceedings, in order to schedule them at times that are mutually convenient for all interested persons. Alternatively, if an attorney does not communicate with opposing counsel prior to scheduling a deposition or hearing, the attorney should be willing to reschedule that deposition or hearing if the time selected is inconvenient for opposing counsel.
- 2.** Upon receiving an inquiry concerning a proposed time for a hearing, deposition, meeting, or other proceeding, a lawyer should promptly agree to the proposal or offer a counter suggestion that is as close in time as is reasonably possible.
- 3.** A lawyer should call potential scheduling conflicts or problems to the attention of those affected, including the court or tribunal, as soon as they become apparent to the lawyer.
- 4.** Attorneys should cooperate with each other when conflicts and calendar changes are necessary and requested.
- 5.** Counsel should never request a calendar change or misrepresent a conflict in order to obtain an advantage or delay. However, in the practice of law, emergencies affecting our families or our professional commitments will arise which create conflicts and make requests inevitable. We should be cooperative with each other whenever possible in agreeing to calendar changes, and should make such request of other counsel only when absolutely necessary.
- 6.** Attorneys should endeavor to provide opposing counsel, parties, witnesses, and other affected persons, sufficient notice of depositions, hearing and other proceedings, except upon agreement of counsel, in an emergency, or in other circumstances compelling more expedited scheduling.
- 7.** When scheduling hearings and other adjudicative proceedings, a lawyer should request an amount of time that is truly calculated to permit full and fair presentation of the matter to be adjudicated and to permit equal response by the lawyer's adversary.

EXTENSIONS

8. A lawyer should accede to all reasonable requests for scheduling, rescheduling, cancellations, extensions, and postponements that do not prejudice the client's opportunity for full, fair and prompt consideration and adjudication of the client's claim or defense.

9. First requests for reasonable extensions of time to respond to litigation deadlines, whether relating to pleadings, discovery or motions, should ordinarily be granted between counsel as a matter of courtesy unless time is of the essence.

10. After a first extension, any additional requests for time should be dealt with by balancing the need for expedition against the deference one should ordinarily give to an opponent's schedule of professional and personal engagements, the reasonableness of the length of extension requested, the opponent's willingness to grant reciprocal extensions, the time actually needed for the task, and whether it is likely a court would grant the extension if asked to do so.

11. A lawyer should advise clients against the strategy of granting no time extensions for the sake of appearing "tough".

12. A lawyer should not seek extensions or continuances or refuse to grant them for the purpose of harassment or prolonging litigation.

13. A lawyer should not attach to extensions unfair and extraneous conditions. A lawyer is entitled to impose conditions such as preserving the right to seek reciprocal scheduling concessions. However a lawyer should not, by granting extensions, seek to preclude an opponent's substantive rights, such as his or her right to move against a complaint.

14. A lawyer should not request rescheduling, cancellations, extensions, or postponements without legitimate reasons and never solely for the purpose of delay or obtaining unfair advantage.

B. SERVICE OF PAPERS

1. The timing and manner of service should not be used to the disadvantage of the party receiving the papers.

2. Papers and memoranda of law should not be served at court appearances without advance notice to opposing counsel and should not be served so close to a court appearance so as to inhibit the ability of opposing counsel to prepare for that appearance or to respond to the papers.

3. Papers should not be served in order to take advantage of an opponent's known absence from the office or at a time or in a manner designed to inconvenience an adversary, such as late on Friday afternoon or the day preceding a secular or religious holiday.

4. Service should be made personally or by courtesy copy facsimile transmission when it is likely that service by mail, even when allowed, will prejudice the opposing party.

C. WRITTEN SUBMISSIONS TO A COURT, INCLUDING BRIEFS, MEMORANDA, AFFIDAVITS AND DECLARATIONS.

1. Written briefs or memoranda of points of authorizes should not rely on facts that are not properly part of the record. A litigant may, however, present historical, economic or sociological data if such data appear in or are derived from generally available sources but only if these would be subject to judicial notice and if sufficient backup data and its sources are presented contemporaneously.

2. Neither written submissions nor oral presentations should disparage the intelligence, ethics, morals, integrity or personal behavior of one's adversaries, unless such things are directly and necessarily in issue.

D. COMMUNICATION WITH ADVERSARIES.

1. Counsel should at all times be civil and courteous in communicating with adversaries, whether in writing or orally.

2. Letters should not be written to ascribe to one's adversary a position he or she has not taken or to create "a record" of events that have not occurred.

3. Letters intended only to make a record should be used sparingly and only when thought to be necessary under all the circumstances.

4. Unless specifically permitted or invited by the court, letters between counsel should not be sent to judges.

5. A lawyer should adhere strictly to all express promises to and agreements with opposing counsel, whether oral or in writing, and should adhere in good faith to all agreements implied by the circumstances or by local custom.

6. During the course of representing a client, a lawyer should not communicate on the subject of the representation with a party known to be represented by a lawyer in that matter without the prior consent of the lawyer representing such other party unless authorized by law to do so.

E. DEPOSITIONS.

- 1.** Depositions should be taken only when actually needed to ascertain facts or information or to perpetuate testimony. They should never be used as a means of harassment or to generate expense.
- 2.** In scheduling depositions, reasonable consideration should be given to accommodating schedules of opposing counsel and of the deponent, where it is possible to do so without prejudicing the client's rights.
- 3.** In scheduling depositions upon oral examination, a lawyer should allow enough time to permit the conclusion of the deposition, including examination by all parties, without adjournment.
- 4.** When a deposition is noticed by another party in the reasonably near future, counsel should ordinarily not notice another deposition for an earlier date without the agreement of opposing counsel.
- 5.** Counsel should not attempt to delay a deposition for dilatory purposes but only if necessary to meet real scheduling problems.
- 6.** Counsel should not inquire into a deponent's personal affairs or question a deponent's integrity where such inquiry is irrelevant to the subject matter of the deposition.
- 7.** Counsel should refrain from repetitive or argumentative questions or those asked solely for purposes of harassment. Counsel should not conduct questioning in a manner intended to harass the witness, such as by repeating questions after they have been answered, by raising the questioner's voice or by appearing angry at the witness.
- 8.** Counsel defending a deposition should limit objections to those that are well founded and permitted by the Rules of Civil Procedure or applicable case law. Counsel should bear in mind that most objections are preserved and need be interposed only when the form of a question is defective or privileged information is sought. When objecting to the form of a question, counsel should simply state "I object to the form of the question." The grounds should not be stated unless asked for by the examining attorney. When the grounds are then stated they should be stated succinctly and only what is necessary to state the grounds should be stated.
- 9.** While a question is pending, counsel should not, through objections or otherwise, coach the deponent or suggest answers. Should any lawyer do so, the courts are urged to take stern action to put a stop to such practices and to serve as a deterrent to others.
- 10.** Counsel should not direct a deponent to refuse to answer questions unless they seek privileged information.
- 11.** Counsel for all parties should refrain from self-serving speeches during depositions.
- 12.** Counsel should not engage in any conduct during a deposition that would not be allowed in the presence of a judicial officer.

F. DOCUMENT DEMANDS.

- 1.** Demands for production of documents should be limited to documents actually and reasonably believed to be needed for the prosecution or defense of an action and not made to harass or embarrass a party or witness or to impose an inordinate burden or expense in responding.
- 2.** Demands for document production should not be so broad as to encompass documents clearly not relevant to the subject matter of the case. If a document request is objectionable only in part, the documents responsive to the unobjectionable portion should be produced in a timely manner.
- 3.** In responding to document demands, counsel should not strain to interpret the request in an artificially restrictive manner in order to avoid disclosure.
- 4.** Documents should be withheld on the grounds of privilege only where appropriate. Where documents are withheld, the withholding party should immediately provide a list of the privileged documents showing the date, author and general description and a statement of the basis for withholding the document.
- 5.** Counsel should not produce documents in a disorganized or unintelligible fashion, or in a way calculated to hide or obscure the existence of particular documents.
- 6.** Document production should not be delayed to prevent opposing counsel from inspecting documents prior to scheduled depositions or for any other tactical reason.

G. INTERROGATORIES.

- 1.** Interrogatories should be used sparingly and never to harass or impose undue burden or expense on adversaries.
- 2.** Interrogatories should not be read by the recipient in an artificial manner designed to assure that answers are not truly responsive.
- 3.** Objections to interrogatories should be based on a good faith belief in their merit and not be made for the purpose of withholding relevant information. If an interrogatory is objectionable only in part, the unobjectionable portion should be answered.
- 4.** A lawyer should never use discovery for the purpose of harassing or improperly burdening an adversary or causing the adversary to incur unnecessary expense.

H. MOTION PRACTICE.

1. Before setting a motion for hearing, counsel should make a reasonable effort to resolve the issue.
2. A lawyer should not force his or her adversary to make a motion and then not oppose it.
3. Following a hearing, the attorney charged with preparing the proposed order should prepare it promptly, generally no later than the following business day, unless it should immediately be submitted to the court. Attorneys should promptly provide, either orally or in writing, proposed orders to opposing counsel for approval prior to submitting them to the court. Opposing counsel should then promptly communicate any objections and at that time, the drafting attorney should immediately submit a copy of the proposed order to the court and advise the court as to whether or not it has been approved by opposing counsel. The order must fairly and adequately represent the ruling of the court.

I. DEALING WITH NON-PARTY WITNESSES.

1. Counsel should not issue subpoenas to non-party witnesses except in connection with their appearance at a hearing, trial or deposition or to obtain necessary documents in the possession of a non-party witness.
2. Deposition subpoenas should be accompanied by notices of deposition with copies to all counsel.
3. Where counsel obtains documents pursuant to a deposition subpoena, copies of the documents should be made available as soon as possible to the adversary at his or her expense even if the deposition is canceled or adjourned.

J. EX PARTE COMMUNICATIONS WITH THE COURT AND OTHERS.

1. A lawyer should avoid ex parte communication on the substance of a pending case with a judge before whom such case is pending.
2. Even where applicable laws or rules permit an ex parte application or communication to the court, before making such an application or communication, a lawyer should make diligent efforts to notify the opposing party or a lawyer known to represent or likely to represent the opposing party and should make reasonable efforts to accommodate the schedule of such lawyer to permit the opposing party to be represented on the application. A lawyer should make such an application or communication (including an application to shorten an otherwise applicable time period) only where there is a bona fide emergency such that the lawyer's client will be seriously prejudiced if the application or communication is made on regular notice.

3. Attorneys should notify opposing counsel of all oral or written communications with the court or other tribunal, except those involving only scheduling matters. Counsel should always notify opposing counsel of dates and times obtained from the court for future hearings on the same day that the hearing date is obtained from the court. Copies of any submissions to the court (such as correspondence, memoranda of law, case law, etc.) should simultaneously be provided to opposing counsel by substantially the same method of delivery by which they are provided to the court. For example, if a memorandum of law is hand-delivered to the court, at the same time a copy should be hand-delivered or faxed to opposing counsel. If asked by the court to prepare an order, counsel should furnish a copy of the order, and any transmitted letter, to opposing counsel at the time the material is submitted to the court.

4. A lawyer should be courteous and may be cordial to a judge but should never show marked attention or unusual informality to a judge, uncalled for by their personal relations. A judge should be referred to by surname in court. A lawyer should avoid anything calculated to gain, or having the appearance of gaining, special personal consideration or favor from a judge.

K. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION.

1. Except where there are strong and overriding issues of principle, an attorney should raise and explore the issue of settlement in every case as soon as enough is known about the case to make settlement discussions meaningful.

2. Counsel should not falsely hold out the possibility of settlement as a means for adjourning discovery or delaying trial.

3. In every case, counsel should consider whether the client's interest could be adequately served and the controversy more expeditiously and economically disposed of by arbitration, mediation or other forms of alternative dispute resolution.

L. PRE-TRIAL CONFERENCE.

1. A lawyer should carefully read the order setting trial and complete the pre-trial conference statement in full to the extent it can be agreed to by the parties.

2. A lawyer should be familiar with the evidence in the case.

3. A lawyer should be sure discovery is completed or address the need for additional discovery with opposing counsel well in advance of the pre-trial conference. All counsel should use due diligence in preparing the case for trial and should file a motion for continuance of the pre-trial conference or of the trial only if counsel has been unable to complete preparations in spite of diligent efforts.

4. A lawyer should evaluate the case and have a figure in mind at which the case could reasonably settle with authorization from the client to do so.
5. A lawyer should determine if the court needs to, and agrees to, hear any motions at the pre-trial.
6. The attorney who will try the case must appear at the pre-trial conference, unless excused by the court.
7. A lawyer should not ask for a continuance unless the client agrees and signs the motion.

M. TRIAL CONDUCT AND COURTROOM DECORUM.

1. A lawyer should always deal with parties, counsel, witnesses, jurors or prospective jurors, court personnel and the judge with courtesy and civility and avoid undignified or discourteous conduct which is degrading to the court.
2. Be punctual and prepared for any court appearance.
3. Stand as court is opened, recessed or adjourned; when the jury enters or retires from the courtroom; and when addressing, or being addressed by, the court.
4. Examination of jurors and witnesses should be conducted from a suitable distance. A lawyer should not crowd or lean over the witness or jury and during interrogation should avoid blocking opposing counsel's view of the witness.
5. Counsel should address all public remarks to the court, not to opposing counsel.
6. A lawyer should avoid disparaging personal remarks or acrimony toward opposing counsel.
7. Counsel should refer to all adult persons, including witnesses, other counsel, and the parties by their surnames and not by their first or given names.
8. Only one attorney for each party shall examine, or cross examine each witness. The attorney stating objections, if any, during direct examination, shall be the attorney recognized for cross examination.
9. Counsel should request permission before approaching the bench. Any documents counsel wish to have the court examine should be handed to the clerk.
10. Have the clerk pre-mark the potential exhibits.
11. Any paper or exhibit not previously marked for identification should first be handed to the clerk to be marked before it is tendered to a witness for examination. Any exhibit offered in evidence should, at the time of such offer, be handed to opposing counsel.

- 12.** In making objections, counsel should state only the legal grounds for the objection and should withhold all further comment or argument unless elaboration is requested by the court.
- 13.** Generally, in examining a witness, counsel shall not repeat or echo the answer given by the witness.
- 14.** Offers of, or request for, a stipulation should be made privately, not within the hearing of the jury, unless the offeror knows or has reason to believe the opposing lawyer will accept it.
- 15.** In opening statements and in arguments to the jury, counsel shall not express personal knowledge or opinion concerning any matter in issue.
- 16.** Counsel shall admonish all persons at counsel table that gestures, facial expressions, audible comments, or the like, as manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.
- 17.** During trials and evidentiary hearings the lawyers should mutually agree to disclose the identities, and duration of witnesses anticipated to be called that day and the following day, including depositions to be read, and should cooperate in sharing with opposing counsel all visual-aid equipment.
- 18.** A lawyer should not mark on or alter exhibits, charts, graphs, and diagrams without opposing counsel's permission or leave of court.
- 19.** A lawyer should abstain from conduct calculated to detract or divert the fact-finder's attention from the relevant facts or otherwise cause it to reach a decision on an impermissible basis.
- 20.** A lawyer's word should be his or her bond. The lawyer should not knowingly misstate, distort, or improperly exaggerate any fact or opinion and should not improperly permit the lawyer's silence or inaction to mislead anyone.
- 21.** A charge of impropriety by one lawyer against another in the course of litigation should never be made except when relevant to the issues of the case.
- 22.** A lawyer should not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of his testimony or the outcome of the case. A lawyer, however, may advance, guarantee or acquiesce in the payment of:
- (a)** expenses reasonably incurred by a witness in attending or testifying;
 - (b)** reasonable compensation to a witness for his lost time in attending or testifying;
 - (c)** a reasonable fee for the professional services of an expert witness.
- 23.** In appearing in his or her professional capacity before a tribunal, a lawyer should not:

(a) state or allude to any matter that he or she has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence;

(b) ask any question that he or she has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person;

(c) assert one's personal knowledge of the facts in issue, except when testifying as a witness;

(d) assert one's personal opinion as to the justness of a cause, as to the credibility of a witness, as to the culpability of a civil litigant, or as to the guilt or innocence of an accused; but may argue, on the lawyer's analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

24. A question should not be interrupted by an objection unless the question is patently objectionable or there is reasonable ground to believe that matter is being included which cannot properly be disclosed to the jury.

25. A lawyer should address objections, requests and observations to the court and not engage in undignified or discourteous conduct which is degrading to court procedure.

26. Where a judge has already made a ruling in regard to the inadmissibility of certain evidence, a lawyer should not seek to circumvent the effect of that ruling and get the evidence before the jury by repeated questions relating to the evidence in question, although he is at liberty to make a record for later proceedings of his ground for urging the admissibility of the evidence in question. This does not preclude the evidence being properly admitted through other means.

27. A lawyer should not attempt to get before the jury evidence which is improper.

28. A lawyer should scrupulously abstain from all acts, comments and attitudes calculated to curry favor with any juror, by fawning, flattery, actual or pretended solicitude for the juror's comfort or convenience or the like.

29. A lawyer should never attempt to place before a tribunal, or jury, evidence known to be clearly inadmissible, nor make any remarks or statements which are intended to improperly influence the outcome of any case.

30. A lawyer should accede to reasonable requests for waivers of procedural formalities when the client's legitimate interests are not adversely affected.

31. Attorneys should not knowingly misstate, misrepresent or distort any fact or legal authority to the court or to opposing counsel and shall not mislead by inaction or silence. Further, if this occurs unintentionally and is later discovered, it should immediately be disclosed or otherwise corrected.

THE TEXAS LAWYER'S CREED

A Mandate for Professionalism

Promulgated by The Supreme Court of Texas and the Court of Criminal Appeals November 7, 1989

I am a lawyer; I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that Professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this Creed for no other reason than it is right.

I. OUR LEGAL SYSTEM

A lawyer owes to the administration of justice personal dignity, integrity, and independence. A lawyer should always adhere to the highest principles of professionalism.

1. I am passionately proud of my profession. Therefore, "My word is my bond."
2. I am responsible to assure that all persons have access to competent representation regardless of wealth or position in life.
3. I commit myself to an adequate and effective pro bono program.
4. I am obligated to educate my clients, the public, and other lawyers regarding the spirit and letter of this Creed.
5. I will always be conscious of my duty to the judicial system.

II. LAWYER TO CLIENT

A lawyer owes to a client allegiance, learning, skill, and industry. A lawyer shall employ all appropriate means to protect and advance the client's legitimate rights, claims, and objectives. A lawyer shall not be deterred by any real or imagined fear of judicial disfavor or public unpopularity, nor be influenced by mere self-interest.

1. I will advise my client of the contents of this Creed when undertaking representation.
2. I will endeavor to achieve my client's lawful objectives in legal transactions and in litigation as quickly and economically as possible.
3. I will be loyal and committed to my client's lawful objectives, but I will not permit that loyalty and commitment to interfere with my duty to provide objective and independent advice.
4. I will advise my client that civility and courtesy are expected and are not a sign of weakness.
5. I will advise my client of proper and expected behavior.
6. I will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that I abuse anyone or indulge in any offensive conduct.
7. I will advise my client that we will not pursue conduct which is intended primarily to harass or drain the financial resources of the opposing party.
8. I will advise my client that we will not pursue tactics which are intended primarily for delay.
9. I will advise my client that we will not pursue any course of action which is without merit.
10. I will advise my client that I reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect my client's lawful objectives. A client has no right to instruct me to refuse reasonable requests made by other counsel.
11. I will advise my client regarding the availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.

III. LAWYER TO LAWYER

A lawyer owes to opposing counsel, in the conduct of legal transactions and the pursuit of litigation, courtesy, candor, cooperation, and scrupulous observance of all agreements and mutual understandings. Ill feelings between clients shall not influence a lawyer's conduct, attitude, or demeanor toward opposing counsel. A lawyer shall not engage in unprofessional conduct in retaliation against other unprofessional conduct.

1. I will be courteous, civil, and prompt in oral and written communications.
2. I will not quarrel over matters of form or style, but I will concentrate on matters of substance.
3. I will identify for other counsel or parties all changes I have made in documents submitted for review.
4. I will attempt to prepare documents which correctly reflect the agreement of the parties. I will not include provisions which have not been agreed upon or omit provisions which are necessary to reflect the agreement of the parties.
5. I will notify opposing counsel, and, if appropriate, the Court or other persons, as soon as practicable, when hearings, depositions, meetings, conferences or closings are cancelled.

6. I will agree to reasonable requests for extensions of time and for waiver of procedural formalities, provided legitimate objectives of my client will not be adversely affected.
7. I will not serve motions or pleadings in any manner that unfairly limits another party's opportunity to respond.
8. I will attempt to resolve by agreement my objections to matters contained in pleadings and discovery requests and responses.
9. I can disagree without being disagreeable. I recognize that effective representation does not require antagonistic or obnoxious behavior. I will neither encourage nor knowingly permit my client or anyone under my control to do anything which would be unethical or improper if done by me.
10. I will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety. I will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses. I will not be influenced by any ill feeling between clients. I will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel.
11. I will not take advantage, by causing any default or dismissal to be rendered, when I know the identity of an opposing counsel, without first inquiring about that counsel's intention to proceed.
12. I will promptly submit orders to the Court. I will deliver copies to opposing counsel before or contemporaneously with submission to the court. I will promptly approve the form of orders which accurately reflect the substance of the rulings of the Court.
13. I will not attempt to gain an unfair advantage by sending the Court or its staff correspondence or copies of correspondence.
14. I will not arbitrarily schedule a deposition, Court appearance, or hearing until a good faith effort has been made to schedule it by agreement.
15. I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.
16. I will refrain from excessive and abusive discovery.
17. I will comply with all reasonable discovery requests. I will not resist discovery requests which are not objectionable. I will not make objections nor give instructions to a witness for the purpose of delaying or obstructing the discovery process. I will encourage witnesses to respond to all deposition questions which are reasonably understandable. I will neither encourage nor permit my witness to quibble about words where their meaning is reasonably clear.
18. I will not seek Court intervention to obtain discovery which is clearly improper and not discoverable.
19. I will not seek sanctions or disqualification unless it is necessary for protection of my client's lawful objectives or is fully justified by the circumstances.

IV. LAWYER AND JUDGE

Lawyers and judges owe each other respect, diligence, candor, punctuality, and protection against unjust and improper criticism and attack. Lawyers and judges are equally responsible to protect the dignity and independence of the Court and the profession.

1. I will always recognize that the position of judge is the symbol of both the judicial system and administration of justice. I will refrain from conduct that degrades this symbol.
2. I will conduct myself in court in a professional manner and demonstrate my respect for the Court and the law.
3. I will treat counsel, opposing parties, witnesses, the Court, and members of the Court staff with courtesy and civility and will not manifest by words or conduct bias or prejudice based on race, color, national origin, religion, disability, age, sex, or sexual orientation.
4. I will be punctual.
5. I will not engage in any conduct which offends the dignity and decorum of proceedings.
6. I will not knowingly misrepresent, mischaracterize, misquote or miscite facts or authorities to gain an advantage.
7. I will respect the rulings of the Court.
8. I will give the issues in controversy deliberate, impartial and studied analysis and consideration.
9. I will be considerate of the time constraints and pressures imposed upon the Court, Court staff and counsel in efforts to administer justice and resolve disputes.

Order of the Supreme Court of Texas and the Court of Criminal Appeals

The conduct of a lawyer should be characterized at all times by honesty, candor, and fairness. In fulfilling his or her primary duty to a client, a lawyer must be ever mindful of the profession's broader duty to the legal system.

The Supreme Court of Texas and the Court of Criminal Appeals are committed to eliminating a practice in our State by a minority of lawyers of abusive tactics which have surfaced in many parts of our country. We believe such tactics are a disservice to our citizens, harmful to clients, and demeaning to our profession.

The abusive tactics range from lack of civility to outright hostility and obstructionism. Such behavior does not serve justice but tends to delay and often deny justice. The lawyers who use abusive tactics, instead of being part of the solution, have become part of the problem.

The desire for respect and confidence by lawyers from the public should provide the members of our profession with the necessary incentive to attain the highest degree of ethical and professional conduct. These rules are primarily aspirational. Compliance with the

rules depends primarily upon understanding and voluntary compliance, secondarily upon reenforcement by peer pressure and public opinion, and finally when necessary by enforcement by the courts through their inherent powers and rules already in existence.

These standards are not a set of rules that lawyers can use and abuse to incite ancillary litigation or arguments over whether or not they have been observed.

We must always be mindful that the practice of law is a profession. As members of a learned art we pursue a common calling in the spirit of public service. We have a proud tradition. Throughout the history of our nation, the members of our citizenry have looked to the ranks of our profession for leadership and guidance. Let us now as a profession each rededicate ourselves to practice law so we can restore public confidence in our profession, faithfully serve our clients, and fulfill our responsibility to the legal system.

The Supreme Court of Texas and the Court of Criminal Appeals hereby promulgate and adopt "**The Texas Lawyer's Creed -- A Mandate for Professionalism**" described above.

In Chambers, this 7th day of November, 1989.

The Supreme Court of Texas

Thomas R. Phillips, Chief Justice
Franklin S. Spears, Justice
C. L. Ray, Justice
Raul A. Gonzalez, Justice
Oscar H. Mauzy, Justice
Eugene A. Cook, Justice
Jack Hightower, Justice
Nathan L. Hecht, Justice
Lloyd A. Doggett, Justice

The Court of Criminal Appeals

Michael J. McCormick, Presiding Judge
W. C. Davis, Judge
Sam Houston Clinton, Judge
Marvin O. Teague, Judge
Chuck Miller, Judge
Charles F. (Chuck) Campbell, Judge
Bill White, Judge
M. P. Duncan, III, Judge
David A. Berchermann, Jr., Judge

Civility and Professional Guidelines for the Central District of California

Preamble

In its purest form, law is simply a societal mechanism for achieving justice. As officers of the court, judges and lawyers have a duty to use the law for this purpose, for the good of the people. Even though "justice" is a lofty goal, one which is not always reached, when an individual becomes a member of the legal profession, he or she is bound to strive towards this end.

Unfortunately, many do not perceive that achieving justice is the function of law in society today. Among members of the public and lawyers themselves, there is a growing sense that lawyers regard their livelihood as a business, rather than a profession. Viewed in this manner, the lawyer may define his or her ultimate goal as "winning" any given case, by whatever means possible, at any cost, with little sense of whether justice is being served. This attitude manifests itself in an array of obstinate discovery tactics, refusals to accommodate the reasonable requests of opposing counsel re: dates, times, and places; and other needless, time-consuming conflicts between and among adversaries. This type of behavior tends to increase costs of litigation and often leads to the denial of justice.

The Central District recognizes that, while the majority of lawyers do not behave in the above described manner, in recent years there has been a discernible erosion of **civility** and professionalism in our courts. This disturbing trend may have severe consequences if we do not act to reverse its course. Incivil behavior does not constitute effective advocacy; rather, it serves to increase litigation costs and fails to advance the client's lawful interests. Perhaps just as importantly, this type of behavior causes the public to lose faith in the legal profession and its ability to benefit society. For these reasons, we find that **civility** and professionalism among advocates, between lawyer and client, and between bench and bar are essential to the administration of justice.

The following guidelines are designed to encourage us, the members of the bench and bar, to act towards each other, our clients, and the public with the dignity and **civility** that our profession demands. In formulating these guidelines, we have borrowed heavily from the efforts of others who have written similar codes for this same purpose. The Los Angeles County Bar Association Litigation Guidelines, guidelines issued by other county bar associations within the Central District, the Standards for Professional Conduct within the Seventh Federal Judicial Circuit, and the Texas Lawyer's Creed all provide excellent models for professional behavior in the law.

We expect that judges and lawyers will voluntarily adhere to these standards as part of a mutual commitment to the elevation of the level of practice in our courts. These guidelines shall not be used as a basis for litigation or for sanctions or penalties.

Nothing in these guidelines supersedes or modifies the existing Local Rules of the Central District, nor do they alter existing standards of conduct wherein lawyer negligence may be determined and/or examined.

A. Guidelines

1. We will practice our profession with a continuing awareness that our role is to advance the legitimate interests of our clients. We will endeavor to achieve our clients' lawful objectives in legal transactions and in litigation as quickly and economically as possible.
2. We will be loyal and committed to our clients' lawful objectives, but we will not permit that loyalty and commitment to interfere with our duty to provide objective and independent advice.
3. We will advise our clients that **civility** and courtesy are expected and are not a sign of weakness.
4. We will treat adverse parties and witnesses with fairness and due consideration. A client has no right to demand that we act in an abusive manner or indulge in any offensive conduct.

5. We will advise our clients that we will not pursue conduct that is intended primarily to harass or drain the financial resources of the opposing party.
6. We will advise our clients that we reserve the right to determine whether to grant accommodations to opposing counsel in all matters that do not adversely affect our clients' lawful objectives. Clients have no right to instruct us to refuse reasonable requests made by other counsel.
7. We will advise our clients regarding availability of mediation, arbitration, and other alternative methods of resolving and settling disputes.
8. We will advise our clients of the contents of this creed when undertaking representation.

B. Lawyer's Duties to Other Counsel

1. Communications with Adversaries

1. We will adhere to all express promises and to agreements with other counsel, whether oral or in writing, and will adhere in good faith to all agreements implied by the circumstances or local Customs.
2. When we reach an oral understanding on a proposed agreement or a stipulation and decide to commit it to writing, the drafter will endeavor in good faith to state the oral understanding accurately and completely. The drafter will provide the other counsel with the opportunity to review the writing. As drafts are exchanged due consideration. A client has no right to demand that we act in an abusive manner or indulge in any offensive conduct.
3. We will not write letters for the purpose of ascribing to opposing counsel a position he or she has not taken, or to create "a record" of events that have not occurred. Letters intended only to make a record should be used sparingly and only when thought to be necessary under all of the circumstances. Unless specifically permitted or invited by the court, letters between counsel should not be sent to judges.

2. Scheduling

1. We will consult other counsel regarding scheduling matters in a good faith effort to avoid scheduling conflicts.
2. We will endeavor to accommodate previously scheduled dates for hearings, depositions, meetings, conferences, vacations, seminars, or other functions that produce good faith calendar conflicts on the part of other counsel, where it is possible to do so without prejudicing the client's rights. If we have been given an accommodation because of a calendar conflict, we will notify those who have accommodated us as soon as the conflict has been removed.
3. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences are to be canceled or postponed. Early notice avoids unnecessary travel and expense of counsel and may enable the court to use the previously reserved time for other matters.
4. Unless time is of the essence, as a matter of courtesy we will grant first requests for reasonable extensions of time to respond to litigation deadlines. After a first extension, any additional requests for time will be considered by balancing the need for expedition against the deference one should ordinarily give to an opponent's schedule of personal and professional engagements, the reasonableness of the length of extension requested, the

opponent's willingness to grant reciprocal extensions, the time actually needed for the task, and whether it is likely a court would grant the extension if asked to do so.

5. We will not request an extension of time solely for the purpose of unjustified delay or to obtain a tactical advantage.
6. We will not attach to extensions unfair and extraneous conditions. We may impose conditions for the purpose of preserving rights that an extension might jeopardize, or for receiving reciprocal scheduling concessions. We will not, by granting extensions, seek to preclude an opponent's substantive rights, such as his or her right to move against a complaint.

3. Service of Papers

1. We will not time the filing or service of motions or pleadings in any way that unfairly limits another party's opportunity to respond.
2. We will not serve papers sufficiently close to a court appearance so as to inhibit the ability of opposing counsel to prepare for that appearance or, where permitted by law, to respond to the papers.
3. We will not serve papers in order to take advantage of an opponent's known absence from the office or at a time or in a manner designed to inconvenience an adversary, such as late on Friday afternoon or the day preceding a secular or religious holiday.
4. When it is likely that service by mail, even when allowed, will prejudice the opposing party, we will effect service personally or by facsimile transmission.

4. Depositions

1. We will take depositions only when actually needed to ascertain facts or information or to perpetuate testimony. We will not take depositions for the purpose of harassment or to increase litigation expense.
2. We will not engage in any conduct during a deposition that would be inappropriate in the presence of a judge.
3. During depositions we will ask only those questions we reasonably believe are necessary for the prosecution or defense of an action. We will not inquire into a deponent's personal affairs or question a deponent's integrity where such inquiry is irrelevant to the subject matter of the deposition. We will refrain from repetitive or argumentative questions or those asked solely for purposes of harassment.
4. When defending a deposition, we will limit objections to those that are well founded and necessary to protect our client's interests. We recognize that most objections are preserved and need be interposed only when the form of a question is defective or privileged information is sought.
5. When a question is pending, we will not, through objections or otherwise, coach the deponent or suggest answers.
6. We will not direct a deponent to refuse to answer questions unless they seek privileged information or are manifestly irrelevant or calculated to harass.

7. When we obtain documents pursuant to a deposition subpoena, we will make copies of the documents available to opposing counsel at his or her expense, even if the deposition is canceled or adjourned.

5. Document Demands

1. We will carefully craft document production requests so they are limited to those documents we reasonably believe are necessary for the prosecution or defense of an action. We will not design production requests to harass or embarrass a party or witness or to impose an undue burden or expense in responding.
2. We will respond to document requests in a timely and reasonable manner and not strain to interpret the request in an artificially restrictive manner to avoid disclosure of relevant and non privileged documents.
3. We will withhold documents on the grounds of privilege only where it is appropriate to do so.
4. We will not produce documents in a disorganized or unintelligible manner, or in a way designed to hide or obscure the existence of particular documents.
5. We will not delay document production to prevent opposing counsel from inspecting documents prior to scheduled depositions or for any other tactical reason.

6. Interrogatories

1. We will carefully craft interrogatories so that they are limited to those matters we reasonably believe are necessary for the prosecution or defense of an action, and we will not design them to harass or place an undue burden or expense on a party.
2. We will respond to interrogatories in a timely and reasonable manner and will not strain to interpret them in an artificially restrictive manner to avoid disclosure of relevant and non privileged information.
3. We will base our interrogatory objections on a good faith belief in their merit and not for the purpose of withholding or delaying the disclosure of relevant information if an interrogatory is objectionable in part, we will answer the unobjectionable part.

7. Settlement and Alternative Dispute Resolution

1. Except where there are strong and overriding issues of principle, we will raise and explore the issue of settlement in every case as soon as enough is known about the case to make settlement discussion meaningful.
2. We will not falsely hold out the possibility of settlement as a means for adjourning discovery or delaying trial.
3. In every case, we will consider whether the client's interest could be adequately served and the controversy more expeditiously and economically disposed of by arbitration, mediation, or other forms of alternative dispute resolution.

8. Written Submissions to a Court, Including Briefs, Memoranda, Affidavits, Declarations, and Proposed Orders

1. Before filing a motion with the court, we will engage in more than a mere pro forma discussion of its purpose in an effort to resolve the issue with opposing counsel.

2. We will not force our adversary to make a motion and then not oppose it.
 3. In submitting briefs or memoranda of points and authorities to the court, we will not rely on facts that are not properly part of the record. We may present historical, economic, or sociological data, if such data appears in or is derived from generally available sources.
 4. In civil actions, we will stipulate to relevant matters if they are undisputed and if no good faith advocacy basis exists for not stipulating.
 5. Unless directly and necessarily in issue, we will not disparage the intelligence, morals, integrity, or personal behavior of our adversaries before the court, either in written submissions or oral presentations.
 6. We will not, absent good cause, attribute bad motives or improper conduct to other counsel or bring the profession into disrepute by unfounded accusations of impropriety.
 7. We will not move for court sanctions against opposing counsel without first conducting a reasonable investigation and unless fully justified by the circumstances and necessary to protect our client's lawful interests.
 8. We will not cause any default or dismissal to be entered without first notifying opposing counsel, when we know his or her identity.
 9. When a draft order is to be prepared by counsel to reflect a court ruling, we will draft an order that accurately and completely reflects the court's ruling. We will promptly prepare and submit a proposed order to other counsel and attempt to reconcile any differences before the draft order is presented to the court.
9. **Ex Parte Communications With the Court**
1. We will avoid ex parte communication on the substance of a pending case with a judge (or his or her law clerk) before whom such case is pending.
 2. Even where applicable laws or rules permit an ex parte application or communication to the court, before making such an application or communication we will make diligent efforts to notify the opposing party or his or her attorney. We will make reasonable.

C. Lawyers' Duties to the Court

1. We will speak and write civilly and respectfully in all communications with the court.
2. We will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time; if delayed, we will notify the court and counsel, if possible.
3. We will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.
4. We will not engage in any conduct that brings disorder or disruption to the courtroom. We will advise our clients and witnesses appearing in court of the proper conduct expected and required there and, to the best of our ability, prevent our clients and witnesses from creating disorder or disruption.
5. We will not write letters to the court in connection with a pending action, unless invited or permitted by the court.

6. Before dates for hearing or trials are set, or if that is not feasible, immediately after such date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.
7. We will act and speak civilly to court marshals, court clerks, court reporters, secretaries, and law clerks with an awareness that they, too, are an integral part of the judicial system.

D. Judges' Duties to Others

1. We will be courteous, respectful, and civil to the attorneys, parties, and witnesses who appear before us. Furthermore, we will use our authority to ensure that all of the attorneys, parties, and witnesses appearing in our courtrooms conduct themselves in a civil manner.
2. We will do our best to ensure that court personnel act civilly toward attorneys, parties and witnesses.
3. We will not employ abusive, demeaning, or humiliating language in opinions or in written or oral communications with attorneys, parties, or witnesses.
4. We will be punctual in convening all hearings, meetings, and conferences.
5. We will make reasonable efforts to decide promptly all matters presented to us for decision.
6. While endeavoring to resolve disputes efficiently, we will be aware of the time constraints and pressures imposed on attorneys by the exigencies of litigation practice.
7. Above all, we will remember that the court is the servant of the people, and we will approach our duties in this fashion.

**CIVIL LITIGATION CODE OF CONDUCT
SAN DIEGO COUNTY BAR ASSOCIATION**

I

GENERAL

1. Lawyers shall at all times comply with all rules of the California Rules of Professional Conduct.
2. Lawyers should honor their commitments.
3. Lawyers should uphold the integrity of our system of justice.
4. Lawyers should not compromise their integrity for the sake of a client, case or cause.
5. Lawyers should conduct themselves in a professional manner.
6. Lawyers should be guided by a fundamental sense of fair play in all professional dealings.

II

DUTIES OWED IN PROCEEDINGS BEFORE THE COURT

1. Lawyers should be courteous and respectful to the court.
2. Lawyers should be candid with the court.
3. Lawyers and clients appearing in court should dress neatly and appropriately.
4. Lawyers should be on time.
5. Lawyers should be prepared for all court appearances.
6. Lawyers should attempt to resolve, by agreement, differences regarding procedural and discovery matters.
7. Lawyers should discourage and decline to participate in litigation that is without merit or is designed primarily to harass or drain the financial resources of the opposing party.
8. Lawyers should avoid any communications, direct or indirect, about a pending case with a judge unless the opposing party or lawyer is present or unless permitted by court rules or otherwise authorized by law.

9. Lawyers should refrain from impugning the integrity of the judicial system, its proceedings, or its members.

III

DUTIES OWED TO MEMBERS OF THE BAR

1. Lawyers must remember that conflicts with opposing counsel are professional and not personal -- vigorous advocacy is not inconsistent with professional courtesy.

2. Lawyers should treat adverse witnesses and litigants with fairness and due consideration.

3. Lawyers should not be influenced by ill feelings or anger between clients in their conduct, attitude or demeanor toward opposing counsel.

4. Lawyers should conduct themselves in discovery proceedings in the same manner as they would if a judicial officer were present.

5. Lawyers should not use discovery to harass the opposition or for any improper purpose.

6. Lawyers should not intentionally make any misrepresentation to an opponent.

7. Lawyers should not arbitrarily or unreasonably withhold consent to a just and reasonable request for cooperation or accommodation.

8. Lawyers should not attribute to an opponent a position not clearly taken by the opponent.

9. Letters intended to make a record should be scrupulously accurate.

10. Lawyers should not propose stipulations in the presence of the trier of fact unless previously agreed to by the opponent.

11. Lawyers should ordinarily not interrupt an opponent's legal argument.

12. Lawyers in court should address opposing lawyers through the court.

13. Lawyers should not seek sanctions against or disqualification of another lawyer to obtain a tactical advantage or for any other improper purpose.

14. Lawyers should conduct themselves so that they may conclude each case with a handshake with the opposing lawyer.

LITIGATION COST CONTAINMENT GUIDELINES

1. Avoid unnecessary motion practice. Consider submitting to opposing counsel a proposed responsive pleading with a letter in lieu of a motion setting forth any objections you may have to the adversary's pleadings which you would normally raise by motion. Determine if your objections can be resolved by mutual agreement as reserved until trial.
2. Seek early agreement of counsel for a voluntary exchange of information without the paper chase of motions.
3. Courts and attorneys should be encouraged to use telephone conferences to resolve matters which cannot be handled by mutual agreement.
4. Depositions: a. Set depositions by mutual agreement with the aid of legal secretaries or assistants. Avoid the paper chase and time waste of noticing depositions at arbitrarily selected times. b. Depositions should be to the point. A little preplanning can save time. Encourage associates taking depositions to set reasonable time constraints on depositions. c. consider electronic recording of depositions in certain cases, particularly in depositions that are not critical. d. Consider telephone depositions where appropriate for witnesses for discovery or perpetuation, particularly where the cost of producing the party or witness is excessive. Consider also the use of telephone testimony at trial. Many courts have current capability or equipment may be temporarily installed. "Live" telephone testimony can be effective and is much less expensive than video deposition testimony.
5. Multi-party or potential multi-party cases. a. Consider limiting the use of cross-claims and third-party actions by using alternative procedures e.g. (1) stipulate to division of responsibility in the event of plaintiff's judgement (2) coordinate defense without prejudice and stipulate that trial judge can decide indemnity and contribution issues, if necessary, based upon evidence submitted during primary trial and any additional evidence submitted by defendants or third party defendant. b. In multi-party cases attorneys should organize and coordinate discovery, research and the use of experts for the purpose of eliminating unnecessary trial preparation and costs.
6. Early evaluation by counsel is important. Frequently a face-to-face conference between counsel even prior to filing the lawsuit, with an exchange of necessary information, can accomplish more than motions and deposition. Where appropriate, consider interviews of plaintiff, defendant, or witnesses in lieu of depositions. In liability cases, early settlement conferences (which need not necessarily involve the court) can keep costs down.
7. Try to agree on discovery plans with opposing counsel so that the parties will be able to know at an early stage whether the case is one to be tried or settled. Avoid the last minute flurry of discovery.
8. Seek court sanctions for discovery abuses if personal communication between counsel fails to resolve the problem. Seek protective orders where appropriate to shorten discovery procedures.
9. Avoid setovers whenever possible. If you know you are going to need a setover promptly notify the court and parties. Do not wait until the last minute. Verify the availability of witnesses and counsel immediately upon receipt of a trial date and immediately notify all parties if setovers are

anticipated. A friendly, periodic check of adverse counsel's availability for trial is helpful and wise, especially in complex cases.

10. Create an office research bank and index it carefully. The same is true with jury instructions and unusual pleadings.

11. Consider the use of paralegals or law clerks when appropriate but limit the number of and the time allowed for associates, clerks and paralegals to complete assignments. Unrestricted use of assistants frequently increases the cost of legal services for both services.

12. Ask expert witnesses to be cost-effective and agree on fees in advance.

13. Consider voluntary, non-binding arbitration, in appropriate cases before experienced trial lawyers to be chosen by the parties; or, as an alternative, in those cases in which arbitration would otherwise be required or available consider utilization (by stipulation) of less crowded dockets in the District Courts where a jury trial would be available.

Code of Trial Conduct

1994 Revision



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INTRODUCTION

The American College of Trial Lawyers first approved a Code of Trial Conduct in 1956. It has since been adopted by many federal and state courts in our country, and by other professional organizations. Following a two-year study by its Legal Ethics Committee, which took into consideration intervening developments, the Board of Regents of the College enacted the revised version of the Code that follows this introduction.

I hope that the Code will receive careful and conscientious consideration by every lawyer who engages in trial work. It sets forth the duties owed by trial lawyers to their clients, to opposing counsel, to the courts, and to the administration of justice. As pointed out, the Code expresses only minimum standards.

Both as Chief Justice, and as an Honorary Fellow of the College, I take pleasure in commending the Code to the trial bar and judiciary of our nation.

William H. Rehnquist,
Chief Justice of the United States

July 1994

CODE OF TRIAL CONDUCT OF THE AMERICAN COLLEGE OF TRIAL LAWYERS

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CODE OF TRIAL CONDUCT

PREAMBLE

Lawyers who engage in trial work have a specific responsibility to strive for prompt, efficient, ethical, fair and just disposition of litigation. The American College of Trial Lawyers, because of its particular concern for the improvement of litigation proceedings and trial conduct of counsel, presents this Code of Trial Conduct for trial lawyers, not to supplant, but to supplement and stress certain portions of the rules of professional conduct in each jurisdiction. Generally speaking, the purposes and objectives of this Code are embodied in the following considerations:

To a client, a lawyer owes undivided allegiance, the utmost application of his or her learning, skill and industry, and the employment of all appropriate legal means within the law to protect and enforce legitimate interests. In the discharge of this duty, a lawyer should not be deterred by any real or fancied fear of judicial disfavor, or public unpopularity, nor should a lawyer be influenced directly or indirectly by any considerations of self-interest.

To opposing counsel, a lawyer owes the duty of courtesy, candor in the pursuit of the truth, cooperation in all respects not inconsistent with the client's interests and scrupulous observance of all mutual understandings.

To the office of judge, a lawyer owes respect, diligence, candor and punctuality, the maintenance of the dignity and independence of the judiciary, and protection against unjust and improper criticism and attack, and the judge, to render effective such conduct, has reciprocal responsibilities to uphold and protect the dignity and independence of the lawyer who is also an officer of the court.

To the administration of justice, a lawyer owes the maintenance of professional dignity and independence. A lawyer should abide by these tenets and conform to the highest principles of professional rectitude irrespective of the desires of the client or others.

This Code expresses only minimum standards and should be construed liberally in favor of its fundamental purpose, consonant with the fiduciary status of the trial lawyer, and so that it shall govern all situations whether or not specifically mentioned herein.

1. EMPLOYMENT IN CIVIL CASES

It is the right of a lawyer to accept employment in any civil case unless such employment is likely to result in violation of the rules of professional conduct or other law. The lawyer should decline to prosecute a cause or assert a defense obviously devoid of merit, or which is intended merely to inflict harassment or injury, or to procure an unmerited settlement, or in which the lawyer or the lawyer's firm or associates have conflicting interests. Otherwise it is the lawyer's right and duty to take all proper action and steps to preserve and protect the legal merits of the client's position and claims and he or she should not decline employment in any case because of the unpopularity of the client's cause or position.

2. CONTINUANCE OF EMPLOYMENT IN AND CONDUCT OF CIVIL CASES

After acceptance of employment a lawyer, unless discharged, should diligently pursue the matter to an expeditious conclusion. Subject to the rules of the tribunal, a lawyer may withdraw at any time with the consent of the client but if the client's

consent cannot be obtained then the lawyer should obtain the approval of the tribunal to withdraw. A lawyer should withdraw from any litigation for reasons which would require refusing employment under paragraph 1 of this Code, or when differing or conflicting interests with the client arise or if continued representation of the client will involve participation in client conduct which the lawyer reasonably believes is criminal or fraudulent, and the lawyer may withdraw if continuing representation of the client will involve participation in client conduct which has as its objective a goal which the lawyer considers repugnant or imprudent. The lawyer shall take reasonable and practicable steps to protect the client's interests from the consequences of withdrawal, such as giving reasonable notice to the client, allowing time for employment of other counsel, conveying to the client papers and property to which the client is entitled and refunding any advance fee which has not been earned. When the lawyer withdraws he or she should render a prompt accounting of all the client's funds and other property in the lawyer's possession.

3. COURT APPOINTMENTS AND EMPLOYMENT IN CRIMINAL CASES

A lawyer should not seek to avoid appointment by a tribunal to represent a person except for good cause. Nor should a lawyer decline to undertake the defense of a person accused of a crime merely because of either the lawyer's personal or the community's opinion as to the guilt of the accused or the unpopularity of the accused's position, because every person accused of a crime has a right to a fair trial, including persons whose conduct, reputation or alleged violations may be the subject of public unpopularity or clamor. This places a duty of service on the legal profession and, even though a lawyer is not bound to accept particular employment, requests for services in criminal cases should not lightly be declined or refused merely on the basis of the lawyer's opinion concerning the guilt of the accused, or his or her repugnance to the crime charged or to the accused.

4. PROBONO PUBLICO

A lawyer should render public interest legal service personally and by supporting organizations that provide services to persons of limited means.

5. CONTINUANCE OF EMPLOYMENT IN AND CONDUCT OF CRIMINAL CASES

(a) Having accepted employment in a criminal case, a lawyer's duty, regardless of his or her personal opinion as to the guilt of the accused, is to invoke the basic rule that the crime must be proved beyond a reasonable doubt by competent evidence. The lawyer should raise all valid defenses and, in case of conviction, should present all proper grounds for probation, or in mitigation of punishment. A confidential disclosure of guilt alone does not require a withdrawal from the case, but the lawyer should never offer testimony which the lawyer knows to be false.

(b) The crime charged should not be attributed to another identifiable person unless evidence introduced or inferences warranted therefrom raise at least a reasonable suspicion of such person's probable guilt.

(c) The prosecutor's primary duty is not to convict, but to see that justice is done. A public prosecutor or other government lawyer should not institute or cause to be instituted criminal charges when he or she knows or it is obvious that the charges are not supported by probable cause, and shall make timely disclosure to counsel for the defendant, or to the defendant if the defendant has no counsel, of the existence of evidence, known to the prosecutor or other government lawyers or

agencies, that tends to negate the guilt of the accused, mitigate the degree of the offense, or reduce the punishment.

6. CONFIDENTIALITY OF INFORMATION

(a) It is the duty of a lawyer to preserve his or her client's confidences and secrets and this duty outlasts the lawyer's employment. The obligation to represent the client with undivided fidelity and not to divulge the client's confidences or secrets forbids also the subsequent acceptance of employment from others in matters adversely affecting any interests of the former client and concerning which he or she has acquired confidential information, unless the consent of all concerned is obtained.

(b) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (c).

(c) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

- (1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm;
- or
- (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

7. DIFFERING INTERESTS-CONFLICTS

(a) "Differing interests" include every interest that will adversely affect the judgment or the loyalty of the lawyer to a client, whether it be a conflicting, inconsistent, diverse or other interest.

(b) A lawyer should not represent clients with differing interests, nor should a lawyer represent a client in a matter as to which the client's interests are materially adverse to the interests of a former client whom the lawyer represented in the same or a substantially related matter, unless the clients involved consent after consultation.

(c) A lawyer should not accept or continue multiple employment if the exercise of the lawyer's independent professional judgment in behalf of a client will be or is likely to be adversely affected by representation of another client, except that a lawyer may represent multiple clients with respect to the same matter if

- (1) it is obvious that the lawyer can adequately represent the interests of each client;
- (2) the lawyer reasonably believes that the matter can be resolved on terms compatible with the clients' best interests, that each client will be able to make adequately informed decisions in the matter and that there is little risk of material prejudice to the interests of any of the clients if the contemplated resolution is unsuccessful;
- (3) the lawyer consults with each client concerning the implications of the common representation, including the advantages and risks involved,

- and the effect on the attorney-client privilege, and obtains each client's consent to the common representation; and
- (4) the lawyer reasonably believes that the common representation can be undertaken impartially and without improper effect on other responsibilities the lawyer has to any of the clients.

(d) If a lawyer is required to decline employment or to withdraw from employment under this rule, no partner or associate of the lawyer or the lawyer's firm should accept or continue such employment.

(e) When a lawyer has left one firm and joined another, the lawyer and the lawyer's new firm are disqualified from representing a client in a matter adverse to a client of the former firm if the lawyer acquired confidential information material to the matter while with the former firm.

(f) When a lawyer has terminated an association with a firm, the lawyer's former firm is not prohibited from thereafter representing a client with interests materially adverse to those of a client represented by the departed lawyer and not currently represented by the firm, unless:

- (1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and
- (2) any lawyer remaining in the firm has confidential information material to the matter.

(g) The affected client may waive any conflict arising under subparagraphs (e) and (f) (1) and (2) next above.

(h) Generally judges, arbitrators, or other adjudicative officers should not seek employment with parties or attorneys with matters pending before them, and a former judge, arbitrator, or other adjudicative officer should not represent any person in connection with a matter in which the judge or arbitrator formerly participated personally and substantially as a judge or arbitrator.

8. PROFESSIONAL COLLEAGUES AND CONFLICTS OF OPINION

(a) A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client. Either the original counsel or additional counsel may decline association as colleagues if it is objectionable to either, but if the lawyer first retained is relieved, another may come into the case.

(b) When lawyers jointly associated in a cause cannot agree as to any matter vital to the interests of a client, the conflict of opinion should be frankly stated to the client for final determination. The client's decision should be accepted unless the nature of the difference makes it impracticable or inappropriate for the lawyer whose judgement has been overruled to cooperate effectively; in this event it is the lawyer's duty to ask to be relieved.

(c) Efforts, direct or indirect, in any way to interfere with the professional employment of another lawyer are improper. However, a lawyer should not decline to pursue a claim against another lawyer on a client's behalf merely because the prospective defendant is a member of the same profession.

9. FEES

No division of fees for legal services is proper except with other lawyers.

Division of legal fees among lawyers not in the same firm is proper only if

(a) The division complies with, and is permitted by, the applicable law or rules governing the lawyer's conduct; and

(b) The client is informed in writing and does not object to the participation of all the lawyers involved; and

(c) The total fee charged is reasonable and, unless the additional lawyer adds value to the representation, not more than the client would have been charged if such division of legal fees had not occurred.

10. RELATIONS WITH CLIENTS

(a) A lawyer should not purchase or otherwise acquire a proprietary interest in the cause of action or subject matter of the litigation the lawyer is conducting for a client, except that the lawyer may acquire a lien granted by law to secure the lawyer's fee or expenses and contract with a client for a reasonable contingent fee in those civil cases in which a contingent fee is permitted.

(b) While representing a client in connection with contemplated or pending litigation, a lawyer should not advance or guarantee financial assistance to the client, except that the lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence the repayment of which may be contingent on the outcome of the matter.

(c) A lawyer representing an indigent client may pay the court costs and litigation expenses on behalf of such client.

(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

- (e) (1) A lawyer who represents two or more clients should not make or participate in the making of an aggregate settlement of the claims of or against his clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlement, of the total amount of the settlement and of the participation of each client in the settlement.
- (2) A lawyer who represents two or more criminal defendants should not participate in an aggregated plea agreement as to guilty pleas unless each defendant is informed about the existence and nature of all the pleas being offered and the participation of each defendant in each plea agreement and each defendant consents to such an aggregated plea agreement.

11. UPHOLDING THE HONOR OF THE PROFESSION

(a) It is the duty of every lawyer to protect the Bar against the admission to the profession of persons who are unfit because of morals, character, education or traits of character. A lawyer should affirmatively assist courts and other appropriate bodies in promulgating, enforcing and improving the requirements for admission to the Bar.

(b) Lawyers should strive at all times to uphold the honor and dignity of the profession and to improve the administration of justice, including the method of selection and retention of judges.

(c) Every lawyer has the duty to protest by all proper means the appointment or election to the bench of persons whom the lawyer believes are not fully qualified by character, temperament, ability and experience. If the lawyer is unable to reach a considered and informed judgment about the person's qualifications for appointment or election to the bench, the lawyer must then refrain from writing, speaking or taking any other action in favor of or in opposition to that individual's appointment or election to the bench.

(d) A lawyer cannot knowingly condone perjury or subornation of perjury before any tribunal. A lawyer should report such perjury or subornation of perjury to the tribunal in which such conduct occurred.

(e) Subject only to applicable law governing disclosure of confidential information between lawyer and client, a lawyer having information that another lawyer has violated the applicable disciplinary rules must report such wrongful conduct to the appropriate professional disciplinary authority.

12. LAWYER AS A WITNESS

(a) A lawyer should not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

- (1) the testimony relates to an uncontested issue;
- (2) the testimony relates to the nature and value of legal services rendered in the case; or
- (3) disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so because subject to a conflict of interest prohibited by Rule 1.7 or Rule 1.9 of the ABA Model Rules of Professional Responsibility.

(c) A lawyer should never conduct or engage in experiments involving any use of the lawyer's own person or body except to illustrate in argument what has been previously admitted in evidence.

13. RELATIONS WITH OPPOSING COUNSEL

(a) The lawyer, and not the client, has the sole discretion to determine the accommodations to be granted opposing counsel in all matters not directly affecting the merits of the cause or prejudicing the client's rights, such as extensions of time, continuances, adjournments, and admission of facts. Consequently, the lawyer need not accede to a client's demand that the lawyer act in a discourteous or uncooperative manner toward opposing counsel.

(b) A lawyer should adhere strictly to all express promises to, and agreements with, opposing counsel, whether oral or in writing, and should adhere in good faith to all agreements implied by the circumstances or by local custom. When a lawyer knows the identity of a lawyer representing an opposing party, the lawyer should not take advantage of the opposing lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer's intention to proceed.

(c) A lawyer should not participate in offering or making an agreement in which a restriction on a lawyer's right to practice is part of the settlement of a controversy between private parties.

(d) A lawyer should avoid disparaging personal remarks or acrimony toward opposing counsel, and should remain wholly uninfluenced by any ill feeling between the respective clients. The lawyer should abstain from any allusion to personal peculiarities and idiosyncrasies of opposing counsel,

(e) A charge of impropriety by one lawyer against another in the course of litigation should never be made except when relevant to the issues of the case; provided, however, that if the impropriety amounts to a violation of applicable disciplinary rules, the lawyer should report such wrongful conduct to the appropriate professional disciplinary authority. *See* paragraph 11(e) hereof.

14. RELATIONS WITH WITNESSES

(a) A lawyer should thoroughly investigate and marshal the facts. Subject to the provisions of paragraph 15 hereof and to constitutional requirements in criminal matters, a lawyer may properly interview any person, because a witness does not "belong" to any party. A lawyer should avoid any suggestion calculated to induce any witness to suppress evidence or deviate from the truth. However, a lawyer may tell any witness that he or she does not have any duty to submit to an interview or to answer questions propounded by opposing counsel unless required to do so by judicial or legal process.

(b) A lawyer should not suppress any evidence that the lawyer or the client has a legal obligation to reveal or produce. A lawyer should not advise or cause a person to secrete himself or herself or to leave the jurisdiction of a tribunal for the purpose of becoming unavailable as a witness. However, except when legally required, it is not a lawyer's duty to disclose any evidence or the identity of any witness.

(c) A lawyer should not pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witnesses' testimony or the outcome of the case. A lawyer, however, may advance, guarantee or acquiesce in the payment of

- (1) expenses reasonably incurred by a witness in attending or testifying;
- (2) reasonable compensation to a witness for the witness's loss of time in attending or testifying;
- (3) a reasonable fee for the professional services of an expert witness.

(d) A lawyer may advertise for witnesses to a particular event or transaction but not for witnesses to testify to a particular version thereof.

(e) A lawyer should never be unfair or abusive or inconsiderate to adverse witnesses or opposing litigants, or ask any question intended not legitimately to impeach but only to insult or degrade the witness. A lawyer should never yield in these matters to contrary suggestions or demands of the client or allow any malevolence or prejudices of the client to influence the lawyer's action.

15. COMMUNICATING WITH ONE OF ADVERSE INTEREST

During the course of representation of a client, a lawyer should not:

- (a) Communicate about the subject of the representation with a party the lawyer

knows to be represented by another lawyer in that matter, unless the lawyer has the prior consent of the lawyer representing such other party or is authorized by law to do so. Opposing parties themselves may communicate directly with each other without the consent of their Lawyers, and a lawyer may encourage the client to do so, although the lawyer may not use the client as a surrogate to engage in misconduct.

(b) In case of an organization represented by a lawyer in the matter, the lawyer should not communicate concerning the matter with persons presently having a managerial responsibility on behalf of the organization, or with any person whose act or omission in connection with the matter may be imputed to the organization for purposes of civil or criminal liability, or whose statement may constitute an admission on the part of the organization. Unless otherwise provided by law, this rule does not prohibit communications with former employees of the organization, but during such communications the lawyer should be careful not to cause the former employee to violate the privilege attaching to attorney-client communications.

(c) In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that he or she is disinterested, but should identify the lawyer's client. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

16. RELATIONS WITH THE JUDICIARY

(a) A lawyer should be courteous and may be cordial to a judge but should never show marked attention or unusual hospitality to a judge, uncalled for by their personal relations. A lawyer should avoid anything calculated to gain or having the appearance of gaining special personal consideration or favor from a judge.

(b) Subject to the foregoing and to the provisions of paragraph 23 hereof, a lawyer should defend or cause to be defended judges who are subjected to unwarranted and slanderous attacks, for public confidence in our judicial system is undermined by such statements concerning the character or conduct of judges. It is the obligation of lawyers, who are also officers of the court, to correct misstatements and false impressions, especially where the judge is restrained from defending himself or herself.

17. COURTROOM DECORUM

(a) A lawyer should conduct himself or herself so as to preserve the right to a fair trial, which is one of the most basic of all constitutional guarantees. This right underlies and conditions all other legal rights, constitutional or otherwise. In administering justice, trial lawyers should assist the courts in the performance of two difficult tasks: discovering where the truth lies between conflicting versions of the facts, and applying to the facts as found, the relevant legal principles. These tasks are demanding and cannot be performed in a disorderly environment. Unless order is maintained in the courtroom and disruption prevented, reason cannot prevail and constitutional rights to liberty, freedom and equality under law cannot be protected. The dignity, decorum and courtesy which have traditionally characterized the courts of civilized nations are not empty formalities. They are essential to an atmosphere in which justice can be done.

(b) During the trial, a lawyer should always display a courteous, dignified and respectful attitude toward the judge presiding, not for the sake of the judge's person, but for the maintenance of respect for and confidence in the judicial office. The

judge, to render effective such conduct, has reciprocal responsibilities of courtesy to and respect for the lawyer who is also an officer of the court. A lawyer should vigorously present all proper arguments against rulings or court demeanor the lawyer deems erroneous or prejudicial, and see to it that a complete and accurate case record is made. In this regard, the lawyer should not be deterred by any fear of judicial displeasure or punishment.

(c) In advocacy before a court or other tribunal, a lawyer has the professional obligation to represent every client courageously, vigorously, diligently and with all the skill and knowledge the lawyer possesses. It is both the right and duty of the lawyer to present the client's cause fully and properly, to insist on an opportunity to do so and to see to it that a complete accurate case record is made without being deterred by any fear of judicial displeasure or punishment. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of the attorney does not permit, much less does it demand of a lawyer for any client, violation of law or any manner of fraud or chicanery. The lawyer must obey his or her conscience and not that of the client.

(d) In performing these duties, a lawyer should conduct himself or herself according to law and the standards of professional conduct as defined in codes, rules and canons of the legal profession and in such a way as to avoid disorder or disruption in the courtroom. A lawyer should advise the client appearing in the courtroom of the kind of behavior expected and required of the client there, and prevent the client, so far as lies within the lawyer's power, from creating disorder or disruption in the courtroom.

18. TRIAL CONDUCT

(a) In appearing in a professional capacity before a tribunal, a lawyer should not:

- (1) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (2) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;
- (3) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;
- (4) in pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;
- (5) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or
- (6) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (i) the person is a relative or an employee or other agent of a client; and
 - (ii) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.
- (7) fail to comply with known local customs of courtesy or practice of the

bar or a particular tribunal without giving to opposing counsel timely notice of the lawyer's intent not to comply;

- (8) engage in undignified or discourteous conduct which is degrading to a tribunal.

(b) A lawyer shall not in an adversary proceeding communicate ex parte with a judge or other official before whom the proceeding is pending except as permitted by law.

(c) A question should not be interrupted by an objection unless the question is then patently objectionable or there is reasonable ground to believe that matter is being included which cannot properly be disclosed to the jury.

(d) A lawyer should not engage in acrimonious conversations or exchanges involving personalities with opposing counsel. Objections, requests and observations should be addressed to the court. A lawyer should not engage in undignified or discourteous conduct which is degrading to a court procedure.

(e) Where a court has already made a ruling in regard to the inadmissibility of certain evidence, a lawyer should not seek to circumvent the effect of that ruling and get the evidence before the jury by repeated questions relating to the evidence in question, although a lawyer is at liberty to make a record for later proceedings of the basis for urging the admissibility of the evidence in question.

(f) Examination of jurors and of witnesses should be conducted from the counsel table or from some other suitable distance except when handling documentary or physical evidence, or when a hearing impairment or other disability requires that the lawyer take a different position.

(g) A lawyer should not attempt to get before the jury evidence which is improper. In all cases in which a lawyer has any doubt about the propriety of any disclosures to the jury, a request should be made for leave to approach the bench and obtain a ruling out of the jury's hearing, either by propounding the question and obtaining a ruling or by making an offer of proof.

(h) A lawyer should arise when addressing or being addressed by the judge except when making brief objections or incidental comments. A lawyer should be attired in a proper and dignified manner in the courtroom, and abstain from any apparel or ornament calculated to call attention to himself or herself.

19. RELATIONS WITH JURORS

(a) Before the trial of a case, a lawyer connected therewith should not communicate with or cause another to communicate with anyone the lawyer knows to be a member of the venire from which the jury will be selected for the trial of the case.

(b) Before the jury is sworn to try the cause, a lawyer may investigate the prospective jurors to ascertain any basis for challenge, provided there is no communication with them, direct or indirect, or with any member of their families. But a lawyer should not conduct or cause, by financial support or otherwise, another to conduct a vexatious or harassing investigation of either a venireman or a juror.

(c) A lawyer should disclose to the judge and opposing counsel any information of which the lawyer is aware that a juror or a prospective juror has or may have any interest, direct or indirect, in the outcome of the case, or is acquainted or connected in any manner with any lawyer in the case or any partner or associate or employee of

the lawyer, or with any litigant, or with any person who has appeared or is expected to appear as a witness, unless the judge and opposing counsel have previously been made aware thereof by voir dire examination or otherwise.

(d) During the trial of a case a lawyer connected therewith should not communicate with or cause another to communicate with any member of the jury, and a lawyer who is not connected therewith should not communicate with or cause another to communicate with a juror concerning the case.

(e) The foregoing rules do not prohibit a lawyer from communicating with veniremen or jurors in the course of official proceedings.

(f) Subject to any limitations imposed by law, it is the lawyer's right, after the jury has been discharged, to interview the jurors to determine whether their verdict is subject to any legal challenge. After discharge of the jury from further consideration of a case with which the lawyer was connected, the lawyer should not ask questions or make comments to a member of that jury that are calculated merely to harass or embarrass the juror or to influence the juror's actions in future jury service.

(g) All restrictions imposed herein upon a lawyer should also apply to communications with or investigation of members of a family of a venireman or a juror.

(h) A lawyer should reveal promptly to the court improper conduct by a venireman or a juror or by another toward a venireman or a juror or a member of the juror's family of which the lawyer has knowledge.

(i) A lawyer should scrupulously abstain from all acts, comments and attitudes calculated to curry favor with any juror, such as fawning, flattery, actual or pretended solicitude for the juror's comfort or convenience or the like.

20. DILIGENCE AND PUNCTUALITY

(a) Every effort consistent with the legitimate interests of the client should be made to expedite litigation and to avoid unnecessary delays, and no dilatory tactics should be employed for the purpose of harassing an adversary or of exerting economic pressure on an adversary or to procure more fees.

(b) A lawyer should be punctual in fulfilling all professional commitments, including all court appearances and, whenever possible, should give prompt notice to the court and to all other counsel in the case of any circumstances requiring his tardiness or absence.

(c) A lawyer should make every reasonable effort to prepare thoroughly prior to any court appearance.

(d) A lawyer should comply with all court rules and see to it that all documents required to be filed are filed promptly. A lawyer should, in civil cases, stipulate in advance with opposing counsel to all non-controverted facts; should give opposing counsel, on reasonable request, an opportunity in advance to inspect all non-impeaching evidence of which the law permits inspection; and, in general, should do everything possible to avoid delays and to expedite the trial.

(e) A lawyer should promptly inform the court of any settlement, whether partial or entire, with any party, or the discontinuance of any issue.

21. COMPETENCE

A lawyer shall provide competent representation to a client. Competent repre-

sentation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. A lawyer should never attempt to handle a legal matter without preparation adequate in the circumstances nor neglect a legal matter entrusted to him or her. Similarly, if a lawyer knows or should know that he or she is not competent to handle a legal matter, the lawyer should not attempt to do so without associating with a lawyer who is competent to handle it.

22. HONESTY, CANDOR AND FAIRNESS

(a) The conduct of a lawyer before the court and with other lawyers should at all times be characterized by honesty, candor and fairness.

(b) A lawyer should never knowingly misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, or the language of a decision or a textbook. A lawyer should not in argument assert as a fact that which has not been proved, or, in those jurisdictions in which a side has the opening and closing arguments, mislead an opponent by concealing or withholding positions in an opening argument upon which the lawyer's side then intends to rely.

(c) In presenting a matter to a tribunal a lawyer should not cite authorities known to have been vacated or overruled or cite a statute that has been repealed without making a full disclosure to the tribunal and counsel, and the lawyer should disclose legal authority in the controlling jurisdiction known to be directly adverse to the position of the client and which is not disclosed by opposing counsel, and, the identities of the clients the lawyer represents and, when required by court rule, of the persons who employed him or her.

(d) A lawyer should be extraordinarily careful to be fair, accurate and comprehensive in all ex parte presentations and in drawing or otherwise procuring affidavits.

(e) A lawyer should never attempt to place before a tribunal, jury, or public evidence which the lawyer knows is clearly inadmissible, nor should the lawyer make any remarks or statements which are intended improperly to influence the outcome of any case.

(f) A lawyer should not propose a stipulation in the jury's presence unless the lawyer knows or has reason to believe the opposing lawyer will accept it.

(g) A lawyer should never file a pleading or any other document known to be false in whole or in part.

(h) A lawyer should not disregard or circumvent or advise a client to disregard or circumvent a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but a lawyer may take appropriate steps in good faith to test the validity of such rule or ruling.

(i) A lawyer who receives information clearly establishing that the client has, in the course of the representation, perpetrated a fraud upon a tribunal, should promptly call upon the client to rectify the same, and if the client refuses or is unable to do so, the lawyer should reveal the fraud to the affected tribunal. If a lawyer receives information clearly establishing that a person other than the client perpetrated a fraud upon a tribunal, the lawyer should promptly reveal the fraud to the tribunal.

23. PUBLICITY REGARDING PENDING LITIGATION

Because a lawyer should try the case in court and not in the newspapers or

through other media, a lawyer should not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding.

24. THE TRIAL LAWYER'S DUTY IN SUMMARY

No client, corporate or individual, however powerful, nor any cause, civil or political, however important, is entitled to receive, nor should any lawyer render, any service or advice encouraging or inviting disrespect of the law, whose ministers we are, or of the judicial office, which we are bound to uphold. Much less should a lawyer sanction or invite corruption of any person or persons exercising a public office or private trust, nor should a lawyer condone in any way deception or betrayal of the public. When indulging in any such improper conduct, the lawyer invites stern and just condemnation. Correspondingly, a lawyer advances the honor of the profession and the best interests of the client when he or she encourages an honest and proper respect for the law, its institutions and ministers. Above all, a lawyer will find the highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest person and as a patriotic and loyal citizen.

25. SCOPE OF THE CODE OF TRIAL CONDUCT

This Code of Trial Conduct is intended to provide guidance for a lawyer's professional conduct except insofar as the applicable law, code or rules of professional conduct in a particular jurisdiction require or permit otherwise. It is a guide for trial lawyers and should not give rise to a cause of action, create a presumption that a legal duty has been breached, or form the basis for disciplinary proceedings not called for under the applicable disciplinary rules.

American Inns of Court Professional Creed

Whereas, the Rule of Law is essential to preserving and protecting the rights and liberties of a free people; and

Whereas, throughout history, lawyers and judges have preserved, protected and defended the Rule of Law in order to ensure justice for all; and

Whereas, preservation and promulgation of the highest standards of excellence in professionalism, ethics, civility, and legal skills are essential to achieving justice under the Rule of Law;

Now therefore, as a member of an American Inn of Court, I hereby adopt this professional creed with a pledge to honor its principles and practices:

- I will treat the practice of law as a learned profession and will uphold the standards of the profession with dignity, civility and courtesy.
- I will value my integrity above all. My word is my bond.
- I will develop my practice with dignity and will be mindful in my communications with the public that what is constitutionally permissible may not be professionally appropriate.
- I will serve as an officer of the court, encouraging respect for the law in all that I do and avoiding abuse or misuse of the law, its procedures, its participants and its processes.
- I will represent the interests of my client with vigor and will seek the most expeditious and least costly solutions to problems, resolving disputes through negotiation whenever possible.
- I will work continuously to attain the highest level of knowledge and skill in the areas of the law in which I practice.
- I will contribute time and resources to public service, charitable activities and pro bono work.
- I will work to make the legal system more accessible, responsive and effective.
- I will honor the requirements, the spirit and the intent of the applicable rules or codes of professional conduct for my jurisdiction, and will encourage others to do the same.

FEDERAL BAR ASSOCIATION PROFESSIONAL ETHICS COMMITTEE

**STANDARDS FOR
CIVILITY IN PROFESSIONAL CONDUCT¹**

PREAMBLE

Civility in professional conduct is the responsibility of every lawyer practicing in the federal system. While lawyers have an obligation to represent clients zealously, we must also be mindful of our obligations to the administration of justice. Incivility to opposing counsel, adverse parties, judges inclusive of Article I, III and the administrative judiciary, courts and agency personnel, and other participants in the legal process demeans the legal profession, undermines the administration of justice, and diminishes respect for both the legal process and the results of our system of justice.

Our judicial system is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner and designed to be perceived as producing fair and just results. We must be careful to avoid actions or statements which undermine the system or the public's confidence in it.

The organized bar and the judiciary, in partnership with each other, have a responsibility to promote civility in the practice of law and the administration of justice. Uncivil conduct of lawyers or judges impedes the fundamental goal of resolving disputes rationally, peacefully, and efficiently. Such conduct may delay or deny justice and diminish the respect for law, which is a cornerstone of our society and our profession.

Civility and professionalism are hallmarks of a learned profession dedicated to public service. These standards are designed to encourage us, as lawyers and judges, to meet our obligations of civility and professionalism, to each other, to litigants, and to the system of justice. The goal is to ensure that lawyers and judges will conduct themselves at all times, in both litigated and nonlitigated matters, with personal courtesy and professionalism in the fullest sense of those terms.

While these standards are voluntary and shall not be used as a basis for litigation or sanctions, we expect that lawyers and judges in the federal system will make a commitment to adhere to these standards in all aspects of their dealings with one another and with other participants in the legal process.

Finally, we believe these standards should be incorporated as an integral component of the teaching of professionalism to law students and practicing lawyers alike. We therefore believe that it is important for law schools to incorporate these standards in their curricula and for lawyers in the federal sector, law firms, government agencies, and other legal institutions in our country to teach and promote these standards as part of their continuing legal education programs.

PRINCIPLES OF GENERAL APPLICABILITY:

LAWYERS' DUTIES TO OTHER COUNSEL, PARTIES AND THE JUDICIARY

General Principles:

1. In carrying out our professional responsibilities, we will treat all participants in the legal process, including counsel and their staff, parties, witnesses, judges, court personnel, and administrative agency staff, in a civil, professional, and courteous manner, at all times and in all communications, whether oral or written. We will refrain from acting upon or manifesting racial, gender, or other bias or prejudice toward any participant in the legal process. We will treat all participants in the legal process with respect.
2. Except within the bounds of fair argument in pleadings or in formal proceedings, we will not reflect in our conduct, attitude, or demeanor our clients' ill feelings, if any, toward other participants in the legal process.
3. We will not, even if called upon by a client to do so, engage in offensive conduct directed toward other participants in the legal process, nor will we abuse other such participants in the legal process. Except within the bounds of fair argument in pleadings or in formal proceedings, we will abstain from directing disparaging personal remarks or acrimony toward such participants and treat adverse witnesses and parties with fair consideration. We will encourage our clients to act civilly and respectfully to all participants in the legal process.
4. We will not encourage or authorize any person under our control to engage in conduct that would be inappropriate under these standards if we were to engage in such conduct.
5. We will not bring the profession into disrepute by making unfounded accusations of impropriety or making ad hominem attacks on counsel, and, absent good cause, we will not attribute bad motives or improper conduct to other counsel.
6. While we owe our highest loyalty to our clients, we will discharge that obligation in the framework of the federal judicial system in which we apply our learning, skill, and industry in accordance with professional norms. In this context, we will strive for orderly, efficient, ethical, fair, and just disposition of litigation as well as disputed matters that are not, or are not yet, the subject of litigation, and for the efficient, ethical, and fair negotiation and consummation of business transactions.
7. The foregoing General Principles apply to all aspects of the federal legal proceedings, both in the presence and outside the presence of a court or tribunal.

Scheduling Matters:

8. We will endeavor to schedule dates for trials, hearings, depositions, meetings, negotiations, conferences, vacations, seminars, and other functions to avoid creating calendar conflicts for other participants in the legal process, provided our clients' interests will not be adversely affected.

9. We will notify other counsel and, if appropriate, the court or other persons, at the earliest possible time when hearings, depositions, meetings, or conferences need to be canceled or postponed. Early notice avoids unnecessary travel and expense and may enable the court and the other participants in the legal process to use the previously reserved time for other matters.

10. We will agree to reasonable requests for extensions of time and for waiver of procedural formalities provided our clients' interests will not be adversely affected.

11. We will not request an extension of time for the purpose of unjustified delay.

PRINCIPLES PARTICULARLY APPLICABLE TO LITIGATION

Procedural Agreements:

12. We will confer with opposing counsel about procedural issues that arise during the course of litigation, such as requests for extensions of time, discovery matters, pre-trial matters, and the scheduling of meetings, depositions, hearings, and trial. We will seek to resolve by agreement such procedural issues that do not require court order. For those that do, we will seek to reach agreement with opposing counsel before presenting the matter to the court.

13. We accept primary responsibility, after consultation with the client, for making decisions about procedural agreements. We will explain to our clients that cooperation between counsel in such matters is the professional norm and may be in the client's interest. We will explain the nature of the matter at issue in any such proposed agreements and explain how such agreements do not compromise the client's interests.

Discovery:

14. We will not use any form of discovery or discovery scheduling for harassment, unjustified delay, to increase litigation expenses, or any other improper purpose.

15. We will make good faith efforts to resolve by agreement any disputes with respect to matters contained in pleadings and discovery requests and objections.

16. We will not engage in any conduct during a deposition that would not be appropriate if a judge were present. Accordingly, we will not obstruct questioning during a deposition or object to deposition questions, unless permitted by the applicable rules to preserve an objection or privilege, and we will ask only those questions we reasonably believe are appropriate in discovery under the applicable rules.

17. We will carefully craft document production requests so they are limited to those documents we reasonably believe are appropriate under the applicable rules. We will not design production requests for the purpose of placing an undue burden or expense on a party.

18. We will respond to document requests reasonably and in accordance with what the applicable rules require. We will not interpret the request in an artificially restrictive manner to avoid disclosure

of relevant and non-privileged documents. We will not produce documents in a manner designed to hide or obscure the existence of particular documents.

19. We will carefully craft interrogatories so they are limited to those matters we reasonably believe are appropriate under the applicable rules, and we will not design them for the purpose of placing an undue burden or expense on a party.

20. We will respond to interrogatories reasonably and in accordance with what the applicable rules require. We will not interpret interrogatories in an artificially restrictive manner to avoid disclosure of relevant and non-privileged information.

21. We will base our discovery objections on a good faith belief in their merit. We will not object solely for the purpose of withholding or delaying the disclosure of properly discoverable information.

22. During discovery, we will not engage in acrimonious conversations or exchanges with opposing counsel, parties, or witnesses. We will advise our clients to conduct themselves in accordance with these provisions. We will not engage in undignified or discourteous conduct which degrades the legal proceeding.

Sanctions:

23. We will not seek court sanctions or disqualification of counsel unless reasonably justified by the circumstances after conducting a reasonable investigation, which includes attempting to confer with opposing counsel.

Lawyers' Duties to the Court:

24. We recognize that the public's perception of our system of justice is influenced by the relationship between lawyers and judges, and that judges perform a symbolic role. At the same time, lawyers have the right and, at times, the duty to be critical of judges and their rulings. Thus, in all communications with the court, we will speak and write civilly. In expressing criticism of the court to an administrative tribunal, we shall use language that is respectful of courts or tribunals, the system of justice, and the symbolism that these represent.

25. We will not engage in conduct that offends the dignity and decorum of judicial or administrative proceedings, brings disorder or disruption to the courtroom or tribunal, or undermines the image of the legal profession.

26. We will advise clients and witnesses to act civilly and respectfully toward the court, educate them about proper courtroom decorum, and, to the best of our ability, prevent them from creating disorder or disruption in the courtroom.

27. We will not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities and will immediately make any clarifications and corrections as these become known to us.

28. We will not degrade the intelligence, ethics, morals, integrity, or personal behavior of others, unless such matters are legitimately at issue in the proceeding.

29. We will act and speak civilly and respectfully to the judge's staff, the courtroom and tribunal staff, and other court or tribunal personnel with an awareness that they, too, are an integral part of the judicial system. We will also advise clients and witnesses to act civilly and respectfully toward these participants in the legal process.

30. We recognize that judicial resources are scarce, that court dockets are crowded, and that justice is undermined when cases are delayed and/or disputes remain unresolved. Therefore, we will be considerate of the time constraints and pressures on the court and court staff inherent in their efforts to administer justice.

31. We recognize that tardiness and neglect show disrespect to the court and the judicial system. Therefore, we will be punctual and prepared for all court appearances so that all hearings, conferences, and trials may commence on time and proceed efficiently. We will also educate clients and witnesses concerning the need to be punctual and prepared. If delayed, we will promptly notify the court and counsel, if at all possible.

32. Before dates for hearings or trials are set, or, if that is not feasible, immediately after such a date has been set, we will attempt to verify the availability of necessary participants and witnesses so we can promptly notify the court of any likely problems.

33. We will avoid *ex parte* communications with the court or tribunal, including the judge's staff, on pending matters, in person (whether in social, professional, or other contexts), by telephone, and in letters and other forms of written communication, unless such communications relate solely to scheduling or other non-substantive administrative matters, or are made with the consent of all parties, or are otherwise expressly authorized by law or court rule.

Judges' Duties to Lawyers:

34. We will be courteous, respectful, and civil to lawyers, parties, agency personnel, and witnesses. We will maintain control of the proceedings, recognizing that judges have both the obligation and the authority to ensure that judicial proceedings are conducted with dignity, decorum, and courtesy.

35. We will not employ hostile, demeaning, or humiliating words in opinions or in written or oral communications with lawyers, parties, or witnesses.

36. We will be punctual in convening hearings, meetings, and conferences; if delayed, we will notify counsel as promptly as possible.

37. In scheduling hearings, meetings, and conferences, we will be considerate of time schedules of lawyers, parties, and witnesses and of other courts and tribunals. We will inform counsel promptly of any rescheduling, postponement, or cancellation of hearings, meetings, or conferences.

38. While endeavoring to resolve disputes efficiently, we will be considerate of the time constraints and pressures imposed on lawyers by the exigencies of litigation practice. We will make all reasonable efforts promptly to decide matters presented to us for decision.

39. We recognize that a lawyer has a right and duty to present a cause fully and properly, and that a litigant has a right to a fair and impartial hearing. Within the practical limits of time, we will allow lawyers to present proper arguments, to make a complete and accurate record, and to present a case free from unreasonable or unnecessary judicial interruption.

40. We will not impugn the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents.

41. We will do our best to ensure that court personnel act civilly toward lawyers, parties, and witnesses.

42. At an appropriate time and in an appropriate manner, we will bring to a lawyer's attention conduct which we observe that is inconsistent with these standards.

Judges' Duties to Each Other:

43. We will treat other judges with courtesy and respect.

44. In written opinions and oral remarks, we will refrain from personally attacking, disparaging, or demeaning other judges.

45. We will endeavor to work cooperatively with other judges with respect to the availability of lawyers, witnesses, parties, and court resources.

PRINCIPLES PARTICULARLY APPLICABLE TO REPRESENTATIONS INVOLVING BUSINESS TRANSACTIONS AND OTHER NEGOTIATIONS

46. We will not knowingly misrepresent or mischaracterize facts or authorities or affirmatively mislead another party or its counsel in negotiations and will immediately make any clarifications and corrections as these become known to us.

47. We will not engage in personal vilification or other abusive or discourteous conduct in negotiations. We will not engage in acrimonious exchanges with opposing counsel or parties at the negotiating table. We will encourage our clients to conduct themselves in accordance with these principles.

48. We will honor all understandings with, and commitments we have made to, other attorneys. We will stand by proposals we have made in negotiations unless newly received information or unforeseen circumstances provide a good faith basis for rescinding them, and we will encourage our clients to conduct themselves in accordance with this principle.

49. We will not make changes to written documents under negotiation in a manner calculated to cause the opposing party or counsel to overlook or fail to appreciate the changes. We will clearly and accurately identify for other counsel and parties all changes that we have made in documents submitted to us for review.

50. In memorializing oral agreements the parties have reached, we will do so without making changes in substance and will strive in good faith to state the oral understandings accurately and completely. In drafting proposed agreements based on letters of intent, we will strive to draft documents that fairly reflect the agreements of the parties.

1 Adapted with the consent of the D.C. Bar from their standards published in 1996.

2 References herein to "court" include agency tribunals.

Associates Capital Services v. Ponderosa Lawn Service, Discovery Commissioner Opinion #4 (March, 1989)

TIMELY DISCOVERY FINDINGS

This is a classic example of discovery failure. In a simple collection case the Plaintiff propounded interrogatories to the Defendant, requesting information concerning the Defendant's claims that the goods sold were defective and questioning other affirmative defenses. The interrogatories were served on September 21, 1988, and, when counsel for the Plaintiff had received no response by December, a letter was sent to defense counsel on December 16, 1988, requesting the answers by December 30, 1988, or a Motion to Compel would be brought. Counsel for the Plaintiff heard nothing from the Defendant until December 29, 1988, when a phone call from defense counsel advised that counsel may be withdrawing from the case and requesting no further action on the Motion to Compel until such motion was filed. When no Motion to Withdraw had been served upon the Plaintiff, a Motion To Compel was served on Defendant January 6, 1988, and set for hearing before the Discovery Commissioner on January 24, 1989. On January 23, 1989, the Answers to the Interrogatories were served upon the Plaintiff and Defendant did not appear at the hearing on January 24, 1989.

Discovery in a civil case must not wait upon the necessity of filing a Motion to Compel such discovery, thereby wasting the time and energy of diligent counsel, as well as the time of the Court. Complying with a discovery request at the last possible moment makes a mockery of the procedure and will not be tolerated. Sanctions will become increasingly severe for counsel who ignore the rules.

IT IS HEREBY RECOMMENDED Defendant pay to Plaintiff the sum of \$250.00 in sanctions for failure to comply with the rules of discovery. Said sanction must be paid on or before February 17, 1989.

Professionalism Committee
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ADVISORY COMMITTEE ON PROFESSIONALISM

UTAH SUPREME COURT ADVISORY COMMITTEE ON PROFESSIONALISM

The Utah Supreme Court Advisory Commission on Professionalism was formed in 2002 in accordance with the Implementation Plan of the Conference of Chief Justices' National Action Plan

on Lawyer Conduct and Professionalism.

Chaired by Justice Matthew Durrant, its mission is to oversee the creation, evaluation, and maintenance of standards of conduct and professionalism for our legal community and to assist in the development of and implementation of effective enforcement mechanisms.

To learn more about the committee and its purpose please send an e-mail to postmaster@utahbar.org

UTAH SUPREME COURT'S ADVISORY COMMITTEE ON PROFESSIONALISM

Professionalism Committee
Public Documents
Members Section
Committee Members

Members Section

Meeting Schedule:

- September 18 (Matheson Courthouse)
- October 15 (Utah Law & Justice Center)
- November 19 (Matheson Courthouse)
- December 18 (Utah Law & Justice Center)



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UTAH SUPREME COURT’S ADVISORY COMMITTEE ON PROFESSIONALISM

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