

The National Action Plan on Lawyer Conduct:^{*} A Role for the Judge in Improving Professionalism in the Legal System

Paula L. Hannaford

For the past several years, professionalism and legal ethics have emerged as high priority items on the policy agendas of the legal community at virtually every level of organization.¹ The impetus for this attention stemmed from sources both internal and external to the justice system. Judges complained about an apparent increase in the number of lawyers who routinely missed filing deadlines, arrived late or even failed to appear at all for scheduled court hearings, and often were inadequately prepared to proceed.² Within the legal profession, increasing numbers of lawyers expressed dissatisfaction with the levels of incivility, and even outright hostility, that seemed to pervade much of contemporary legal practice. At the same time, public contempt with the legal profession seemed to grow over such issues as unresponsive business practices and high costs for substandard work, as well as mistrust of the profession's ability to police itself.

In response to these concerns, state and local bar organizations have led the way in the development of innovative programs to bolster professionalism and legal ethics by their respective members. These initiatives have employed a variety of approaches. Professionalism requirements have been intro-

duced in CLE curricula, including intensive "bridge-the-gap" and mentoring programs for newly admitted lawyers.³ Educational and lawyer support programs have been developed on such diverse topics as law office management, and substance abuse and mental health issues.⁴ A number of bar organizations have developed civility codes – statements of aspirational conduct to which lawyers pledge to comply.⁵ Disciplinary procedures have been streamlined to improve efficiency and alternatives to discipline created to address complaints that do not rise to the level of sanctionable misconduct. Among academicians, the topics of professionalism and legal ethics have become significant topics of scholarly interest and debate, generating numerous articles in prestigious law journals and several national conferences.⁶

A number of courts and individual judges have taken steps to deal with issues of lawyer professionalism and competence. In addition to court-instituted commissions, standards and other professionalism programs, some state appellate courts have declared incivility unacceptable⁷ and some trial judges have begun to closely regulate lawyer conduct in the courtroom. But many of these efforts have been relatively isolated

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Footnotes

1. Jerome J. Shestack made professionalism the focus of his term as president of the American Bar Association (1997-98), as have many state and local bar presidents and executive committees. See, e.g., Vic Lott, *Professional Ethics: Past and Present*, 59 ALA. LAWYER 278 (Sept. 1998) (remarks of 1998-99 Alabama State Bar President Vic Lott at his installation); D. Culver Smith III, *Meeting the Challenges: The Bar Looks at the Future*, 71 FLA. B.J. at 32 (May 1997) (report of the strategic planning committee of the Florida State Bar); D. Gibson Walton, *Privileges & Responsibilities – Professionalism*, 36 HOUSTON LAWYER, at 6 (Sept./Oct. 1998); Larry Feldman, Jr., *One on One with David Bienvenu: The New LSBA President Discusses Pro Bono, Professionalism, Projects and Plans*, 45 LA. B.J., at 13 (June 1997).
2. See, e.g., Catherine T. Clarke, *Missed Manners in Courtroom Decorum*, 50 MD. L. REV. 945 (1991).
3. See, e.g., Robert Van Wyck, *Professionalism Course Mandatory for All Attorneys*, 34 ARIZ. ATTY., at 14 (July 1998); Ted Simmons, *Professionalism Goes to School: State Bar of Arizona Professionalism Course*, 32 ARIZ. ATTY., at 14 (February 1996).
4. See, e.g., *Annual Report: Improving Professionalism*, 11 CBA RECORD, at 30 (May 1997) (describing professionalism initiatives of the Chicago Bar Association).
5. The Texas Lawyer's Creed is a frequent model for these types of civility codes. The full text of the Creed can be accessed at <http://www.txethics.org/creed.htm>.
6. E.g., W.M. Keck Foundation Forums on Teaching Legal Ethics sponsored by the Duke University School of Law, Durham, N.C., in March 1995, and the William & Mary School of Law, Williamsburg, Va., in March 1996 and March 1997.
7. See, e.g., *Paramount v. QVC*, 637 A.2d 34, 51 (Del. 1994); *Miller v. Bittner*, 985 F.2d 935, 941 (8th Cir. 1993); *Harding Univ. v. Consulting Servs. Group*, L.P. 1999 U.S. Dist. LEXIS 1593, *22 (N.D. Ill.); *Pacific Lining, Inc. v. Raging Waters, Inc.*, 231 Cal. App. 3d 1388 (2d App. Dist., Div. 7 1991). See also *U.S. v. West*, 21 F.3d 607, 611-12 (5th Cir. 1994) (dissent by J. Rhesa Hawkins Barksdale).

initiatives undertaken by charismatic and highly motivated trial and appellate judges. The more common level of involvement by the judiciary has been modest participation by individual judges on educational programs and planning boards. Institutional involvement has tended to consist of tacit judicial approval for professionalism activities in the form of enabling rules or procedures for bar-sponsored programs. That level of judicial involvement is likely to increase significantly, however, with the Conference of Chief Justices' unanimous adoption of its National Action Plan on Lawyer Conduct and Professionalism on January 21, 1999.

Content and Development of the National Action Plan

The CCJ National Action Plan, which culminates over two years of study and debate on these topics, is a blueprint for state supreme courts to provide appropriate leadership and support to bolster professional and ethical conduct by lawyers. A major impetus for the plan was growing recognition by CCJ that the perceived decline in lawyer professionalism was taking a tremendous toll not only on public trust in the legal profession, but also public confidence in the entire justice system. The CCJ came to realize that judicial efforts to improve public trust and confidence in the courts could not be achieved without simultaneously addressing public trust and confidence in the legal profession. And that would require more judicial leadership, coordination and daily involvement to achieve significant improvements in lawyer professionalism and ethical conduct.

In keeping with this broad view, the CCJ intentionally defined the term "professionalism" to encompass not only civility among members of the bench and bar, but also competence, integrity, respect for the rule of law, and participation in pro bono and community service. The plan contains thirty-one recommendations pertaining to judicial leadership, continuing legal education, law school education and bar admission, lawyer regulation, lawyer support programs, public outreach, in-court conduct, and interstate initiatives.

The National Action Plan was developed under the leadership of Delaware Chief Justice E. Norman Veasey as a study project of the CCJ Committee on Professionalism and Competence of the Bar. With technical assistance from the National Center for State Courts and the ABA Center for Professional Responsibility, and funding by the State Justice Institute,⁸ the committee appointed a thirty-member working group of trial and appellate judges, lawyers, and scholars to examine professionalism initiatives from across the country and to recommend successful programs and approaches for inclusion in the National Action Plan. For reasons of efficiency, the working group was organized into six subcommittees, which focused on programs and initiatives relevant to continuing legal education (CLE), lawyer support programs, lawyer discipline, public outreach, law school education and bar admissions, and litigation reform. The working group sur-

veyed judges and court staff, bar leadership, lawyer regulation staff, and law school deans to identify successful programs and areas that needed more attention, and to solicit the respondents' views about the appropriate role of state supreme courts in efforts to improve professionalism.

In a series of teleconferences in 1997 and 1998, the working group subcommittees considered the survey responses and prepared recommendations for the National Action Plan. The subcommittee chairs later met via teleconference to present the recommendations to the other subcommittees. This two-stage process helped ensure that the plan's recommendations were sufficiently comprehensive to address all of the issues in the study as well as internally consistent.

A draft of the plan was disseminated for public comment in August 1998. The reaction was overwhelmingly positive. Along with substantive comments, leaders of bar organizations and other law-related associations uniformly praised the comprehensiveness of the plan and its content, and welcomed the involvement of the judiciary in promoting professionalism in the legal community. After making some minor adjustments to the plan based on the comments received, the CCJ passed a resolution at its 1999 midyear meeting approving the plan and urging its members to present it to their respective courts for implementation.⁹

Recurring Themes of the National Action Plan

Underlying each of the plan's specific recommendations are three recurring themes. The first of these is that any appreciable improvement in lawyer conduct and professionalism will only be achieved through sustained commitment from and coordination by all segments of the legal community – the bench, the bar, and the law schools. As a result, much of the plan focuses on the need for state supreme courts to assume a greater leadership and coordination role in state and local professionalism initiatives.

Institutionalizing Leadership and Coordination

The National Action Plan specifically recommends that the state supreme courts establish a commission or other permanent body that is directly accountable to the court.¹⁰ This organization is intended to provide an avenue for the courts to be apprised of the nature and scope of professionalism programs within their respective jurisdictions and a forum through which the bench, the bar, and the law school communities can share information and coordinate their activities. By

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8. SJI Grant No. SJI-97-N-243.

9. Conference of Chief Justices Resolution XIII (National Action Plan on Lawyer Conduct and Professionalism), adopted Jan. 21,

1999 (Washington, DC).

10. NATIONAL ACTION PLAN at 3.

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institutionalizing these functions, the courts can also engage in long-term and consistent efforts to improve professionalism without relying exclusively on the drive and charisma of a few individuals to accomplish these objectives.¹¹

The Distinction Between Institutional and Individual Responsibilities

The second theme is that professionalism is a personal characteristic that, ideally, every judge and lawyer should demonstrate.¹² Institutionally, however, the bench and bar have an obligation to ensure that the infrastructure of the legal community provides an environment in which professionalism can flourish.¹³ This distinction between the individual responsibilities of judges, lawyers and law school faculty and the institutional responsibilities of the bench, the bar and law schools is one that is frequently glossed over in contemporary discussions of professionalism.

Critics of professionalism programs are quick to point out that many of the tenets of professionalism are aspirational in nature and should not be enforced through coercive measures.¹⁴ At best, social institutions should only establish minimally acceptable standards and sanction those individuals who fail to live up to those standards. These critics are, in large part, correct. But they also overlook a key point: that social institutions can adjust the minimally acceptable standards (up or down) and that these adjustments can have a significant impact both on individual conduct and on societal attitudes concerning that conduct. This holds as true for professional norms within the legal community as it does, for example, for societal attitudes about drunk drivers.

A significant factor in the ultimate success or failure to affect such a change in the culture of the legal profession is the willingness of the legal community, again by all its segments, to allocate the resources necessary to effectuate these changes. All of the recommendations in the National Action Plan make it clear that the bench, the bar, and the law schools will have to put their money where their mouths are if they really intend to make a difference in the level of professionalism demonstrated by the legal community.

At a minimum, this means that each state's system of lawyer regulation must have the necessary staff and expertise to

enforce the state's ethical rules. Moreover, those enforcement mechanisms should consist of more than just punitive sanctions for lawyers who engage in misconduct. They should also include remedial alternatives to discipline for lawyers who engage in "minor misconduct,"¹⁵ preventive measures in the form of continuing legal education and mentoring programs,¹⁶ and creating rules and procedures that facilitate, rather than undermine, the ability of lawyers to comply with professional norms.¹⁷ The expectations of the public can also be brought to bear as a positive force in these efforts by increasing the level of public participation, and thus public accountability, in the state's professionalism and lawyer regulation programs.¹⁸

Judicial Responsibilities: Modeling Professionalism and Enforcing Appropriate Standards

Establishing the institutional infrastructure necessary to encourage a culture of professionalism and ethical conduct is, of course, only half the equation. Individually, judges, lawyers, and law school faculty must be willing and able to demonstrate the personal characteristics of professionalism in their daily activities and to insist that others do likewise. This is the third recurring theme of the National Action Plan and the one that ultimately will have the most impact on the bench. In effect, the National Action Plan places two responsibilities in the hands of judges.

The first responsibility is to be an exemplar of professionalism to the legal community. As the National Action Plan explains, "judges are the natural role models for lawyers; lawyers look to judges for cues about how to conduct themselves both in and out of court."¹⁹ Appropriate judicial demeanor extends beyond mere civility to the lawyers who appear in court, but also to interactions with judicial colleagues, court staff, litigants, jurors, witnesses, and the public. Only those judges who conduct themselves in a professional manner will have the credibility and respect to insist that others do likewise, which is the second responsibility of individual judges.

Judges who insist that lawyers treat others (e.g., opposing counsel, witnesses, clients) with the same respect and courtesy that they expect for themselves typically experience far fewer problems with unprofessional behavior than judges who contend that it is not their job to make lawyers adhere to ethical or professional norms. Yet many judges are reluctant to exert any more control over the lawyers who appear before them than is necessary to maintain order in the courtroom. In some cases, this reluctance is a consequence of heavy judicial workloads; few judges have the luxury to give substantial amounts of time and attention to the conduct of lawyers outside the scope of the courtroom. Political considerations also play a

11. *Id.*

12. See generally *id.* at 3-8.

13. *Id.*

14. See, e.g., Robert Atkinson, *A Dissenter's Commentary on the Professionalism Crusade*, 74 TEX. L. REV. 259, 275-76 (1995); Amy R. Mashburn, *Professionalism as Class Ideology: Civility Codes and Bar Hierarchy*, 28 VAL. U. L. REV. 657, 683-89 (1994); James E.

Molitero, *Lawyers' Creeds and Moral Seismography*, 32 WAKE FOREST L. REV. 781 (1997).

15. NATIONAL ACTION PLAN at 19-20.

16. *Id.* at 10-11, 13-15.

17. *Id.* at 29-32.

18. *Id.* at 23, 26.

19. *Id.* at 4.

part in some jurisdictions where an unwritten policy of non-interference with each other's domain serves as a form of turf protection between the bench and the bar.

In spite of these considerations, the National Action Plan urges judges to overcome their reluctance to concern themselves with the level of professionalism in their respective legal communities. Instead, they are encouraged to set an example of appropriate conduct, to make their expectations about behavior clear to the lawyers who practice before them, and to enforce those expectations fairly and consistently. The National Action Plan offers some concrete suggestions on how judges might do so:

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.²⁰

Nothing acts as a deterrent to unprofessional conduct by lawyers quite as effectively as the watchful supervision of the trial judge. The National Action Plan endorses active judicial involvement in the pretrial management of cases. Early and direct judicial availability in discovery disputes, consistent and even-handed enforcement of existing court rules and pretrial orders, and the imposition of appropriate sanctions are cited as particularly useful tools for encouraging professional conduct by lawyers.²¹ Close supervision over pretrial matters also places judges in a position to ensure that orders are followed, to inquire why deadlines may not be met, and to investigate whether delays occur because of legitimate or illegitimate reasons.²²

Clear expectations and adequate pretrial supervision

notwithstanding, some lawyers need to be reminded occasionally. Generally, an oral admonition and concrete suggestions for behavior modification are sufficient, but repeated lapses should be met with progressively more severe sanctions including the imposition of fines, use of the court's contempt powers, and, if warranted, referral to the lawyer disciplinary agency.²³

Taking on these responsibilities will undoubtedly add to judges' already copious workload, and the drafters of the National Action Plan recognized this reality. A proactive approach to pretrial management was recommended, however, because it was believed that, in the long run, the whole justice system would be better served if lawyer professionalism and ethical conduct were elevated to a higher priority.²⁴ To the extent that it would ease the ability of the trial bench to adopt a more active role in pretrial management, the National Action Plan also recommends that appellate judges support these efforts in their decisions unless those efforts were clearly an abuse of discretion.²⁵

Judges in Glass Houses

The primary focus of the National Action Plan is on lawyer professionalism and ethical conduct and the steps that state supreme courts should take to raise the professional standards in which the legal community practices. The plan was not intended as a blueprint for regulating the professionalism and ethical conduct of judges, but the notion that judges should adhere to standards that are at least as high as those imposed on lawyers is certainly implied throughout the document. And many of the same recommendations concerning lawyer discipline, lawyer support and continuing education programs, and public outreach could easily be extended to the bench.

Judges who fail to adhere to appropriate standards of behavior are, fortunately, few and far between. But they do exist and their inappropriate conduct – or more to the point, the willingness of their judicial colleagues to overlook or tolerate that conduct – sends a very mixed message to lawyers about the importance of professionalism to a successful career or public respect.

For obvious reasons, lawyers are not generally in a position to hold judges accountable for their conduct. That accountability can only come from within the judicial community itself. Unless and until the bench is prepared to hold itself to the same (or higher) standards than those expected of the bar, its credibility as a role model for lawyers will be suspect.

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20. *Id.* at 5.

21. *Id.* at 31-32.

22. *Id.*

23. *Id.*

24. *Id.* at 32.

25. *Id.*

Conclusion

The success of the National Action Plan depends on the ability of the state supreme courts to implement its recommendations in their respective jurisdictions. And because so many of the plan's recommendations involve the active involvement and cooperation of the trial and appellate benches, many of the state supreme courts will be seeking their assistance in those implementation efforts. Unquestionably, many of the recommendations call for greater judicial involvement in lawyer professionalism and ethical programs, but the past few decades have made it abundantly clear that public perceptions of judges and of the whole justice system cannot be easily separated from its perceptions of the legal community. If the justice system is to continue to be a credible institution in our democratic system of government, this National Action Plan is an endeavor worthy of judicial support.



Paula L. Hannaford is a staff attorney and Senior Research Analyst for the Research Division of the National Center for State Courts. Her areas of expertise include jury system management and trial procedure; legal and judicial ethics and discipline; state-federal jurisdiction; and probate court procedure. In addition to authoring multiple articles on these and other subjects, she has contributed to several NCSC

publications including the books Jury Trial Innovations and Managing Notorious Cases. She received her J.D. degree from William & Mary Law School, and also has a M.P.P. degree from the Thomas Jefferson Program in Public Policy at the College of William and Mary.

For More Information about the National Action Plan on Lawyer Conduct and Professionalism

The full report, which runs 96 pages with appendices, can be downloaded from the National Center for State Courts Web site at <http://www.ncsc.dni.us/CCJ/Natlplan.htm>.

Section I of the report provides an overview of the problem, along with a discussion of the institutional role of the courts, the bar and the law schools and the individual roles of judges, lawyers and educators. Section II provides recommendations (reprinted at pages 41 to 44 of this issue) and detailed comments regarding each recommendation. Section III contains briefing papers that led to the recommendations, covering the areas of professionalism, educational initiatives, public outreach initiatives, litigation reform initiatives, bar admissions, lawyer support programs, and disciplinary enforcement. These briefing papers report the responses of thirty-three state chief justices to a survey seeking information about programs presently in use throughout the country.

For those who are not savvy travelers on the information superhighway, a copy of the report can be obtained by contacting Paula L. Hannaford, National Center for State Courts, 300 Newport Avenue, Williamsburg, Virginia 23185. She can be reached by e-mail at phanaford@ncsc.dni.us.

The National Action Plan on Lawyer Conduct and Professionalism*

Section II: Recommendations

(Comments sections omitted)

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 Continuing Legal Education (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 for failure 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:

* Adopted by the Conference of Chief Justices, January 21, 1999.

- Create a Lawyer Assistance Program (LAP) if one does not exist;
- Fund LAP through mandatory registration fees;
- Provide confidentiality for LAP programs;
- Expand existing LAPs to cover non-chemical dependency impairments;
- Establish intervention systems for disabilities and impairments other than substance abuse;
- 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 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.

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 sanctions 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;
- Establishing a system of random audits of trust accounts;
- Requiring lawyers who seek court appointments to carry malpractice insurance;
- Collecting 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 bar should create regular opportunities for the public to voice complaints and make suggestions about judicial/legal institutions.

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 the use of 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 Databank;
- 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-Hubbell 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.

