

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.

Appended to the report is Resolution VII adopted by the CCJ on August 1, 1996 and copies of the survey instruments that were sent to the courts, various legal organizations, and the deans of ABA accredited law schools.