

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.