

THE MARYLAND JUDICIAL TASK FORCE

ON

PROFESSIONALISM

REPORT AND RECOMMENDATIONS

The Honorable Lynne A. Battaglia
Chairperson, designee

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Reporter

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EXECUTIVE SUMMARY

On April 25, 2002, in response to a recommendation by the Maryland State Bar Association that all licensed Maryland attorneys be required to complete a mandatory continuing legal education course on professionalism, Chief Judge Robert M. Bell of the Maryland Court of Appeals established the Maryland Judicial Task Force on Professionalism. The Task Force is composed of twenty-four Maryland lawyers, one from each Maryland jurisdiction, and a lawyer reporter.

After an initial organizational meeting, the Task Force, lead by Court of Appeals Judge Lynne A. Battaglia, embarked upon a state-wide “self study” of the concept of professionalism. This was accomplished through a series of town meetings held in each Maryland jurisdiction. The first meeting was held in September, 2002, in Howard County and the last in July, 2003, in Cecil County. Chief Judge Bell was present at each town meeting, along with Judge Battaglia, task force reporter Norman Smith, and Jacqueline Lee, assistant to Judge Battaglia. Along with local lawyers, many District, Circuit, and Appellate judges participated.

Chief Judge Bell greeted participants at each town meeting and explained the purpose of the Task Force -- to learn from lawyers about their perception of the state of professionalism among attorneys and to investigate the potential need for expansion of the professionalism course (mandatory for new bar admittees) to experienced attorneys. Judge Battaglia chaired each meeting and facilitated the discussion.

At each town meeting, attendees filled out questionnaires calculated to give the Task Force feedback on the subject of professionalism from the point of view of each individual participant. Although the questionnaires were anonymous, participants provided information about their jurisdiction of residence, and identified themselves by race, gender, and as an experienced or new attorney. After the questionnaires were completed, Judge Battaglia began each discussion by asking the group to define the concept and meaning of professionalism. Typically, participants identified professionalism with such traits as compliance with the Rules of Professional Conduct, civility, courtesy and respect for colleagues, trust among colleagues, competence as attorneys, dignity, punctuality, concern for client welfare, candor with the court, honesty, integrity, and fairness with both court and counsel.

To guide the discussions, Judge Battaglia asked the participants to keep in mind the indicia of professionalism identified, and by those standards, to contrast the state of professionalism in past years with today. In many jurisdictions, the group heard from lawyers with as many as fifty years experience at the bar. Without exception, these senior practitioners opined that professionalism has declined over the years. The decline is marked by rancorous discovery disputes; a loss of trust between lawyers (resulting in an increase in “defensive practices,” for instance, the perceived need to memorialize every discussion with a confirmatory letter); a breakdown of the traditional mentoring of new lawyers; an increase in the unauthorized practice of law; a lack of civility in and out of the courtroom; the failure

of courtroom attorneys to treat witnesses and each other with respect; and an increase in lawyer advertising.

In addition, town meeting participants noted a decline in the number of attorneys participating in bar-related activities, observing that when attorneys do not see one another in these settings, the need to get along declines. In this respect, it is worth noting that almost all attendees in rural jurisdictions felt that, among their colleagues, professionalism is at a high level. This was attributed to the fact that in small towns, judges and lawyers know and interact with one another, professionally and socially. In these jurisdictions, there is a near unanimous perception that out of town lawyers lack the courtesy and civility that local practitioners accord each other and the judges. In sum, most lawyers agreed that the smaller the bar and the greater involvement of the judges, the greater the civility and professionalism among its members.

Clients' unrealistic expectations were another identified contributor to unprofessional behavior. Clients often expect that lawyers will prosecute their cases with the same degree of animus toward opposing counsel that the litigants feel for one another. As a result, lawyers often identify too closely with their clients' causes, losing the ability to act as problem solvers. Many town meeting participants who were experienced lawyers recalled that in an earlier time, lawyers were able to differentiate between their respective clients' feelings and their own relationship with opposing counsel. As a result, many cases were worked out in the early stages, for the benefit of all.

Judges also came under criticism oftentimes for high-handed, arrogant behavior toward lawyers. By way of illustration, lawyers cited seemingly small matters such as scheduling a docket to begin at a certain time and then taking the bench an hour later. Participants also felt that some judges themselves fail to adhere to the highest levels of professionalism in the courtroom and to hold attorneys practicing before them to the same high standard. Many participants expressed frustration with the reluctance of local judges to sanction bad behavior. On the other hand, participating judges noted that the State's appellate courts often reverse the imposition of sanctions, signaling to them a distaste for this type of discipline.

At the conclusion of all town meetings, Judge Battaglia convened the entire Task Force to consider the results of the town meetings and to formulate recommendations to the Court of Appeals. The Task Force agreed that professionalism is an important core value that must be advanced throughout the legal process. Toward this end, the Task Force recommends that a Professionalism Commission be established and that the Commission, drawing on the findings of the Professionalism Task Force, identify indicia of professionalism and develop standards of professional conduct to be published to the bench and bar throughout the State.

The Task Force strongly believes that judges must foster the expectation that lawyers will behave appropriately in the litigation of both criminal and civil actions and in non-litigation contexts, and must take firm action against unprofessional conduct. Realizing that

the judiciary is reluctant to act on ill defined standards, the Task Force also recommends the development and formal definition of appropriate sanctions for adoption by the judicial conference.

Notably, the Task Force does not recommend a mandatory course in professionalism for all licensed Maryland attorneys. The Task Force does, however, recommend that the Commission, in conjunction with the MSBA, develop an appropriate professionalism course to be used as a referral tool for judges who identify unprofessional behavior.

The Task Force recognizes the natural tension between our duty as lawyers to zealously represent our clients and the emerging duty to act in a professional and civil manner in our representation. But, as one participant put it, zealous representation does not mean that one must become a zealot. The Task Force is convinced that effective representation of our clients is not only compatible with a high level of professionalism, but that our clients are best served by a professional, problem solving approach to the practice of law.

RECOMMENDATIONS

The major premise underpinning the following recommendations is that professionalism is an important core value that has been prioritized by the Chief Judge and the Court of Appeals of Maryland in the appointment of a Professionalism Task Force and now must be manifested throughout the litigation process and its institutions. Professionalism is a joint concern of the Bench and Bar, and it is imperative that the Chief Judge be a highly visible actor in the process.

Recommendation 1:

A Professionalism Commission should be established made up of the following members: a lawyer representative from each Maryland County and Baltimore City; representatives from all levels of the Maryland judiciary; the president of the Maryland State Bar Association or the president's designee; a representative from the Attorney Grievance Commission; a representative from the Rules Committee; a representative from the Judicial Disabilities Commission, and a representative from the University of Maryland and the University of Baltimore Law Schools.

Recommendation 2:

Judges on all levels must become effective role models by adhering to the highest levels of professionalism in the courtroom and community and by holding all attorneys practicing before them to the same high standard. Judges' active participation with the Bar and as involved members of their respective communities will foster a better public image for the legal profession and alleviate unnecessary isolation and tension between the Bench and Bar.

Recommendation 3:

Drawing on the findings of the Professionalism Task Force, the Professionalism Commission should, as its first task, identify indicia of professionalism and develop standards of professional

conduct to guide its work in the areas that it will explore and shall publish these standards to the Bench and Bar throughout the State.

Recommendation 4:

The Professionalism Commission shall develop professionalism guidelines and sanctions for adoption by the judiciary, reflecting the expectation that lawyers will behave appropriately in the litigation of both criminal and civil actions and in non-litigation contexts.

Recommendation 5:

The Professionalism Commission shall submit its findings and recommendations, for comment and suggestion, to the Rules Committee, the Maryland State Bar Association, the Attorney Grievance Commission, the Judicial Disabilities Commission, and to any other entities that the Professionalism Commission deems appropriate.

Recommendation 6:

To raise the level of professionalism in the litigation process, the Professionalism Commission should consider and promulgate recommendations to alleviate what lawyers throughout the state identified as a major problem: discovery abuse. In this regard, the Professionalism Task Force believes that previously issued Discovery Guidelines publication should be updated and reissued throughout the State to guide the Bench and Bar and to encourage consistency in the resolution of disputes.

Recommendation 7:

The Professionalism Task Force also recommends the appointment of Discovery Masters, perhaps from the ranks of retired judges or lawyers, to address discovery disputes and to recommend solutions on a real-time basis. Judges, statewide, should also encourage lawyers in each case,

especially cases in Circuit Court, to confer early in the litigation process, to develop a pre-trial schedule, and to expedite and manage the litigation process.

Recommendation 8:

The Professionalism Task Force believes that unprofessional behavior should be sanctioned formally or by informal intervention. Realizing that the judiciary is reluctant to act on ill defined standards, the Task Force recommends the development and formal definition of appropriate sanctions for adoption by the judicial conference.

Recommendation 9:

The Task Force does not recommend a mandatory course in professionalism for all licensed Maryland attorneys. The Task Force does, however, recommend that the Professionalism Commission, in conjunction with the MSBA, develop an appropriate professionalism course to be used as a referral tool for judges who identify unprofessional behavior.

Recommendation 12:

Attorneys attending town meetings in every jurisdiction identified a rise in the unauthorized practice of law as a contributor to the decline in professionalism. Therefore, the Task Force recommends that the Professionalism Commission work with the legislature and Attorney Grievance Commission to better define the unauthorized practice of law in order to better enforce sanctions against it.

Recommendation 13:

In each town meeting, attorneys identified a breakdown of the traditional mentoring of new lawyers as another contributor to the decline in professionalism. The Task Force feels that there are many mentoring programs available that have been underutilized, perhaps because they are not well

known. The Task force recommends that information about these programs be given wider dissemination and that participation in existing programs for mentoring of inexperienced lawyers be encouraged by the Bench and Bar.

INTRODUCTION

In 1996, the American Bar Association's (hereinafter "ABA") Conference of Chief Justices adopted a resolution calling for a study of lawyer professionalism.¹ The Conference encouraged each state's highest court to take a leadership role in evaluating the contemporary need of the legal community with respect to lawyer professionalism.² On April 25, 2002, in response to this mandate and to recommendations of the Maryland State Bar Association (hereinafter MSBA) for a mandatory course on professionalism for experienced attorneys, Chief Judge Robert M. Bell of the Court of Appeals of Maryland established the Maryland Judicial Task Force on Professionalism (hereinafter "Task Force") to study and advance professionalism in Maryland's legal community.³ The Task Force is composed of twenty-four Maryland lawyers, one from each county and one from Baltimore City. Each Task Force member was recommended by judges in his or her representative jurisdiction.

The Task Force's purpose was to explore perceptions of professionalism among Maryland lawyers through a "self study" of the concept, which was explored in a series of town hall meetings in each of Maryland's twenty-four jurisdictions. The goal of these town meetings was to develop a consensus about the meaning of professionalism. Specifically, the town hall meetings were set up

¹ CONFERENCE OF CHIEF JUSTICES' NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM REP. OF THE WORKING GROUP ON LAWYER CONDUCT AND PROFESSIONALISM 7. (1999).

² A draft of the ABA's National Action Plan on Lawyer Conduct and Professionalism began to circulate among legal and judicial organizations in 1998. This plan was finalized during 1999 and urged each state's highest court to take a leadership role in evaluating and meeting the following contemporary needs of the legal community:

- Establishing a Commission on Professionalism or other agency under the direct authority of the appellate court of the 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 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. *Id.*

³ Press Release, Sally W. Rankin and Maria Smiroldo, *Maryland Judiciary Creates Professionalism Task Force* (Apr 26, 2003), available at <http://www.courts.state.md.us/pr4-26-02b.html>.

to address “attorney concerns about ethics and professionalism”⁴ and to encourage attorneys throughout the State to participate in discussions regarding the current state of professionalism among Maryland lawyers and to suggest ways to address any perceived problems in this area. At each town hall meeting, attorneys were given anonymous questionnaires requesting demographic information and information regarding their personal experiences with professionalism.⁵ The last town hall meeting was held in July of 2003, and the Task Force met in September and October to develop recommendations for the final report presented to the Court of Appeals before a convocation of judges and lawyers on November 10, 2003.

⁴ Administrative Order Creating Professionalism Task Force, Court of Appeals of Maryland (Apr 25, 2002).

⁵ See App. B.

DISCUSSION

I. PROFESSIONALISM DEFINED

In 1986, the ABA noted that despite a rise in lawyers' observance of the rules of ethics governing their profession, their attention to professionalism was sharply declining:

Lawyers have tended to take the rules more seriously because of an increased fear of disciplinary prosecutions and malpractice suits. However, lawyers have also tended to look at nothing but the rules; if conduct meets the minimum standard, lawyers tend to ignore exhortations to set their standards at a higher level.⁶

The ABA also reported a crucial distinction: while the model rules of professional ethics reflects what is *minimally* expected of lawyers, "professionalism" encompasses what is more *broadly* expected of lawyers – both by the public and by the finest traditions of the legal profession itself.⁷

A. *General Distinction Between Ethics and Professionalism*

Chief Justice Clarke best explained the distinction between ethics and professionalism in an interview in May of 1990 as follows: "ethics is a minimum standard which is *required* of all lawyers while professionalism is a higher standard *expected* of all lawyers."⁸

"Ethics" is commonly interpreted to mean "the law of lawyering" – the rules by which lawyers must abide in order to remain in good standing before the Bar.⁹ While ethics tends to focus on misconduct – the negative dimensions of "lawyering" – professionalism focuses on helping, caring, protecting, counseling, and setting a good example.¹⁰ While ethical boundaries in client

⁶ ABA COMMISSION ON PROFESSIONALISM, *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism*, 112 F.R.D. 243, 259 (1986).

⁷ CHIEF JUSTICES' COMMISSION ON PROFESSIONALISM TO THE SUPREME COURT OF GEORGIA, § 1, at 1 (1996).

⁸ *Id.* at § 10, at 4.

⁹ *Id.*

¹⁰ *Id.*

relationships and prohibitions of wrongful actions by attorneys remain within the scope of the Maryland Rules of Professional Responsibility, professionalism addresses the aspirations of lawyers to civil and collegial behavior.¹¹

B. *The Meaning of Professionalism*

The word “profession” comes from the Latin “*professus*,” meaning to have affirmed publicly.¹² The term evolved to describe occupations such as law, medicine, and ministry, that required new entrants to take an oath professing their decision to the ideals and practices associated with a learned calling.¹³

The MSBA’s course on professionalism for new admittees to the Maryland Bar refers to the most common recitation by the late Dean Roscoe Pound of Harvard Law School on “professionalism:”

The term refers to a group ... pursuing a learned art as a common calling in the spirit of public service – no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of public service is the primary purpose.¹⁴

The 1996 Report of the Professionalism Committee of the ABA Section of Legal Education and Admissions to the Bar expands Pound’s definition and particularizes it for lawyers:

A professional lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good.¹⁵

¹¹ *Id.*

¹² *Id.*

¹³ CHIEF JUSTICES’ COMMISSION ON PROFESSIONALISM, *supra* note 7, at § 10, at 4 (citing DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY A PERVASIVE METHOD 4 (1994)).

¹⁴ MSBA PROFESSIONALISM PROGRAM FOR NEW ADMITTEES 11 (Fall 2002).

¹⁵ ABA PROFESSIONALISM COMMITTEE REP., TEACHING AND LEARNING PROFESSIONALISM 6 (1996).

Sandra Day O'Connor of the United States Supreme Court has defined "professionalism" as:

A commitment to develop one's skills to the fullest and to apply that responsibility to the problems at hand. Professionalism requires adherence to the highest ethical standards of conduct and a willingness to subordinate narrow self-interest in pursuit of a more fundamental goal of public service. Because of the tremendous power they wield in our system, lawyers must never forget that their duty to serve their clients fairly and skillfully takes priority over the personal accumulation of wealth. At the same time, lawyers must temper bold advocacy for their clients with a sense of responsibility to the larger legal system which strives, however imperfectly, to provide justice for all.¹⁶

Professionalism encompasses many values such as competence; civility; ethics; integrity; respect for the rule of law; respect for the legal profession; respect for other lawyers and the courts; the obligation to provide pro bono legal representation and community and public service, to work for improvement of the law and the legal system, and to assure access to that system.¹⁷

II. THE HISTORY OF LAWYER PROFESSIONALISM IN MARYLAND

A. *Early History*

As early as 1898, at the third annual meeting of the MSBA, Maryland attorneys pondered the importance of professionalism as was recorded in the "Preservation of Influence of Legal Profession."¹⁸ The MSBA recognized that lawyers extend their influence beyond the profession and throughout the community, projects, development, and assistance: "it is not alone from the Bench and at the Bar that our profession has achieved its prominence and influence."¹⁹

¹⁶ CHIEF JUSTICES' COMMISSION ON PROFESSIONALISM, *supra* note 7, at § 10, at 5.

¹⁷ *Id.* at § 4, at 5.

¹⁸ 3 MSBA ANN. REP. 45-70 (1898).

¹⁹ *Id.* at 49.

On August 27, 1908, the ABA originally adopted the *Canons of Ethics*, which were subsequently adopted by Maryland in 1922, as the *Maryland Canons of Ethics*.²⁰ In 1958, the ABA issued the *Model Code of Professional Responsibility*, which evolved from both *ABA Canons* and ethical considerations.²¹

Media coverage of lawyer participation in the Watergate scandal of the early 1970s focused public attention on unprofessional and unethical conduct by attorneys.²² Richard W. Bourne, a professor at the University of Baltimore School of Law since 1979, recalls “the post-Watergate surge in interest in professional responsibility arose in part out of a sense of shame; everyone was shocked when John Dean, on national television, was asked what the checkmarks were next to the names on a long list of White House officials and he replied simply, ‘they’re the lawyers who got indicted.’”²³ Bourne adds, “in part it was public relations; we needed to clean up the Bar’s image.”²⁴ In response to these concerns, Chief Justice Warren E. Burger addressed the Opening Session of the American Law Institute (“ALI”):

[I]t is curious that there has been no comparably definitive code of personal behavior to insure civility in courts. More serious perhaps is the lack of effective enforcement mechanisms of even basic standards of general acceptance... Judges have blamed Bar associations and Bar associations blamed judges and until recently law teachers have abstained. This area--the regulation of the legal profession--is one of the large pieces of unfinished business and the longer we wait to deal with it the more difficult the problem will become.²⁵

²⁰ See *Maryland Canons of Ethics* (1922).

²¹ JOINT CONFERENCE REP. ON PROFESSIONAL RESPONSIBILITY, 44 A.B.A.J. 1159, 1159 (1958).

²² Bill Wernz, *Professionalism Lite: Aspiring to Civility, Idealizing the Past*, BENCH AND BAR OF MN (Apr. 2001), available at <http://www2.mnbar.org/benchandbar/2001/aor01/essay.htm> (last visited Aug. 12, 2003).

²³ Email from Richard W. Bourne, Professor, University of Baltimore School of Law (July 29, 2003) (on file with author).

²⁴ *Id.*

²⁵ Warren E. Burger, *The Necessity for Civility*, 52 F.R.D. 211, 217 (1971).

On August 2, 1983, the ABA created the *Model Rules of Professional Conduct*.²⁶ Subsequently, the Maryland Select Committee to Study ABA Model Rules of Professional Conduct recommended the earliest version of the required Rules of Professional Conduct for Maryland. On January 1, 1987, it was adopted by the Court of Appeals.²⁷

B. Special Committee on Law Practice Quality

The lawyer professionalism effort in Maryland gathered momentum in late 1981, when, in response to concerns voiced by Chief Judge Robert C. Murphy and members of the Bar, the Special Committee on Law Practice Quality of the Maryland State Bar Association (hereinafter “Committee”) was created to study and report on solutions to problems in the legal profession.²⁸ The Committee gathered feedback about law practice quality from its members and considered several different alternatives, including a full peer review process among Maryland lawyers patterned after “A Model Peer Review System (1980),” the formal peer review recommended by the *American Law Institute* and the ABA. (hereinafter “ALI-ABA”).²⁹ The Committee concluded, however, that full peer review was unfeasible, because “the concepts of confidentiality, individuality, and virtuosity inherent in a law practice cannot tolerate,... intrusive and potentially disruptive formalized peer review.” The Committee decided, instead, upon a self-assessment program.³⁰

The self-assessment program began with the 1985 Committee-produced publication, “Law Practice Quality Guidelines, A Guidebook for Self-Assessment By Practicing Lawyers,” (hereinafter

²⁶ MODEL RULES OF PROF’L CONDUCT, *available at* <http://www.jenkinslaw.org/collection/researchguides/prorespons/aba.shtml>.

²⁷ MD LAWYER’S RULES OF PROF’L CONDUCT AND ATTY TRUST ACCOUNTS, *reprinted* in the MD RULES ANNOTATED 2 (amended Jan. 2002).

²⁸ MSBA SPECIAL COMMITTEE ON LAW PRACTICE QUALITY REP. 2 (1988).

²⁹ *Id.*

³⁰ MSBA SPECIAL COMMITTEE ON LAW PRACTICE QUALITY, LAW PRACTICE QUALITY GUIDELINES: A GUIDEBOOK FOR SELF-ASSESSMENT BY PRACTICING LAWYERS 8 (1985).

“Self-Assessment Guide”).³¹ The Self-Assessment Guide was published as a result of the concerted effort of the MSBA, several Maryland law firms, and ALI-ABA³² and was “designed to stimulate lawyers to think about, and create mechanisms for improving, the quality of their practice methods.”³³ These concepts evolved from four basic principles of design, responsibility, accountability, and efficiency.³⁴ General topics included: management, governance, and planning; the client; professional development; professional responsibility; professional relationships; work management and review; documentation; practice resources and systems; recruiting; work assignment; supervision; consultation; evaluation; compensation; and billing.³⁵

After having developed the Self-Assessment Guide, the Committee continued to explore concerns and apparent dissatisfaction within the profession,³⁶ and in 1986, James M. Kramon, the Committee’s chairman, authored *Lawyers Look at the Practice of Law: Some Disquieting Observations*.³⁷ Kramon’s article summarized the Committee’s findings that the practice of law had become inhospitable and unrewarding in recent years.³⁸ In addition, Kramon noted that the “general manner in which attorneys deal with one another, with the clients and with the courts and agencies was grossly unsatisfactory.”³⁹ According to Kramon, Committee discussions highlighted the “excessively adversarial dimension to the relationships among attorneys, the loss of trust in lawyers and the legal profession as responsible and honorable, and the general lack of manners and amenities

³¹ *Id.*

³² SPECIAL COMMITTEE ON LAW PRACTICE QUALITY, *supra* note 30, at 1.

³³ LAW PRACTICE QUALITY GUIDELINES, *supra* note 32, at 6.

³⁴ *Id.* at 9.

³⁵ *Id.*

³⁶ SPECIAL COMMITTEE ON LAW PRACTICE QUALITY, *supra* note 30, at 1.

³⁷ 19 MD. B.J. No. 11, at 7 (1986).

³⁸ *Id.*

³⁹ *Id.*

in dealings involving attorneys.”⁴⁰ Kramon suggested that the following conditions contributed to the problem: (i) lack of mentoring and training of young attorneys; (ii) over-specialization and segregation with the profession due to a necessary measure by lawyers given the areas of law that were expanding rapidly and extensively; (iii) increased focus on the business, rather than the profession of law; and (iv) excessive starting salaries and required billing hours for young attorneys, which do not result in greater value to the clients.⁴¹

Subsequently, the Committee decided to undertake a pilot research study through a professional survey of practicing lawyers in urban areas⁴² – the first of its kind anywhere in the country.⁴³ In December of 1987, the Committee retained the services of a psychological research firm, PsyCor, Inc., to perform a study, at a cost of \$43,000.⁴⁴ The study group comprised 207 lawyers from large, medium, and small-sized law firms in the Greater Baltimore metropolitan area.⁴⁵ Corporate and government lawyers were excluded from the survey.⁴⁶

The purpose of the study was to provide a “substantial qualitative and quantitative description of the current views that law associates and partners in Maryland’s major urban areas [had] regarding the present and future quality of their professional lives.”⁴⁷ The study covered three major phases, which consisted of:

- Explanatory work to delineate the issues to be addressed and to develop relevant hypotheses to be investigated;

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² SPECIAL COMMITTEE ON LAW PRACTICE QUALITY, *supra* note 30, at 2.

⁴³ J.B. Pierpoint, *Survey Reveals Widespread Discontent Among Area Lawyers*, BALT. BUS. J. 10 (Feb. 6, 1989).

⁴⁴ J.S. Bainbridge, Jr., *MSBA Survey Dissatisfaction?*, 22 MD. B.J. No. 2, at 28 (Mar/Apr 1989).

⁴⁵ PSYCOR, INC., PILOT RESEARCH STUDY OF HOW ATTORNEYS IN LAW FIRMS IN MARYLAND’S MAJOR URBAN AREAS VIEW THE QUALITY OF THEIR PROFESSIONAL LIVES AND ISSUES FACING THE PROFESSION 4 (1988).

⁴⁶ *Id.* at 3.

⁴⁷ *Id.* at 1.

- In-depth-face-to-face interviews with a sample of lawyers carefully selected to represent the major categories of partners, senior associates, and junior associates, in large, medium-size, and small firms; and,
- Qualitative and quantitative analysis of the research results and preparation of a full interpretive report of the findings and their implications.⁴⁸

Twenty-one students from the University of Maryland School of Social Work and Community Planning conducted the 207 interviews, each of which lasted for approximately 75 minutes.⁴⁹ The study revealed that approximately one-half of those interviewed were “quite satisfied” with their professional lives, less than one-tenth were “completely satisfied,” and only one-third definitely wanted to remain in the practice of law for the rest of their careers.⁵⁰

Most all of the attorneys agreed that:

- The pressure to specialize was increasing;
- The practice of law was becoming less of a profession and more of a business;
- Partners and associates were becoming less loyal to their firms and moving to other firms quite readily;
- The public view of lawyers was becoming more unfavorable;
- Clients retained counsel more frequently on a project rather than on a continuing basis; and,
- New lawyers coming into law firms were paid excessive salaries.⁵¹

Furthermore, over one-half of the attorneys indicated that the increase in adversarial relationships between lawyers and the fact that the practice of law had become more of a business had a negative effect on their lives and careers.⁵² In fact, it was believed that many of the deteriorating relationships were the result of excessively adversarial encounters, a loss of trust in lawyers and the legal profession, and a general lack of good manners and amenities.⁵³

⁴⁸ *Id.*

⁴⁹ *Id.* at 8.

⁵⁰ *Id.* at 8-9.

⁵¹ PSYCOR, INC., *supra* note 45, at 9.

⁵² *Id.*

⁵³ MSBA COMMITTEE ON LAW PRACTICE QUALITY REP. AND RECOMMENDATIONS OF THE COLUMBIA CONFERENCE, THE QUALITY OF LAW PRACTICE IN THE 1990'S: A SEARCH FOR SOLUTIONS 3 (1989).

A majority of the interviewees believed that discrimination in the profession continued on the basis of race, gender, religion, disability, and national origin, both within law firms and in the courtroom.⁵⁴ Female attorneys, junior associates (of both sexes), and lawyers in smaller law firms were most conscious of discrimination.⁵⁵ Notably, of the 207 attorneys interviewed, 27% were female, while 7% were minorities.⁵⁶

Most of the interviewees worked at least 50 hours per week and many worked in excess of 60 hours on a regular basis.⁵⁷ Participating attorneys worked an average of 1800 billable hours per year, and over one-third reported working in excess of 2000 billable hours per year.⁵⁸ Most of the interviewees reported that their work-related stress had an adverse effect on their significant relationships, in that they were often:

- irritable, short-tempered, argumentative, and verbally abusive, or
- Detached, withdrawn, preoccupied, or distracted.⁵⁹

Other factors contributing to dissatisfaction in the legal profession were the advertising of legal services and the escalating numbers of legal malpractice claims.⁶⁰ Of the 207 lawyers interviewed, the experienced, senior lawyers were less satisfied with their lives than their younger counterparts.⁶¹ Overall, the major problems that the participants conveyed were: negative public image; high cost of legal services; personal stress – case overloads leaving no time for personal life; and the increasing attention of law firms to the business of law.⁶²

⁵⁴ PSYCOR, INC., *supra* note 47, at 10.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 11.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ PSYCOR, INC., *supra* note 47, at 13.

⁶¹ *Id.*

⁶² *Id.* at 11.

The Committee decided that the data from the report should be used as “a doorway into an intensive effort by the Bench and Bar to find and fix what may be broken in [the legal] profession and to build upon those things we find to be of value.”⁶³ On March 17th and 18th of 1989, a “Solutions Committee” Conference, composed of 85 Maryland attorneys and judges, convened to focus on five principles for resolving dissatisfaction with the profession.⁶⁴ Among the topics discussed by the Solutions Committee was the decline of lawyer professionalism.⁶⁵ Many of the conferees confirmed that the December 1988 pilot survey results reflected an increase in hostility between attorneys and between attorneys and clients.⁶⁶ Conferees observed that attorneys, whether negotiating or litigating, had abandoned the elementary rules of courteous behavior and resorted to the use of intimidation and abusive language, seeking to “win at all costs.”⁶⁷ The Solutions Committee agreed that this behavior needed to be addressed and eliminated,⁶⁸ and subsequently devised the following recommendations that were considered by the conferees:

- The MSBA should encourage the formulation of guidelines for professional courtesy, which should be widely disseminated. These guidelines should address personal dignity and professional integrity.
- The Judiciary, at the Circuit Court level, should be requested to establish meaningful status conferences at an early stage of litigation to hopefully resolve open disputes and encourage possible settlement. Further, the Court should limit discovery within the state system and explore implementing pre-trial orders and settlement conferences based on the federal system.
- The Court of Appeals should institute, and judges should more readily have access to sanctions for frivolous/excessive damage claims. The Judiciary should be encouraged to set and enforce standards of conduct, which include professional courtesy for trial lawyers.
- The damage clause should be eliminated from pleadings and a reasonable alternative

⁶³ Bainbridge, *supra* note 46, at 31 (quoting Roger W. Titus, former president, MSBA).

⁶⁴ COMMITTEE ON LAW PRACTICE QUALITY AND RECOMMENDATIONS OF THE COLUMBIA CONFERENCE, *supra* note 57, at 10.

⁶⁵ *Id.* at 13.

⁶⁶ *Id.*

⁶⁷ *Id.* at 14.

⁶⁸ *Id.*

should be fashioned.

- The public and private sectors should each establish an “ombudsman type” person to whom complaints registered against the legal profession regarding honesty, candor, fairness and courtesy may be heard. •
- A course on professional integrity and dignity should be taken in law school or within the first two years of practice.⁶⁹

Of these five recommendations, the Committee decided to implement three: (1) the establishment of a Professionalism Committee to address the instances of inappropriate conduct of attorneys and judges, (2) a professionalism course for new admittees to the Maryland Bar, and (3) the creation of courtesy guidelines for attorneys (which includes litigation and damage standards).⁷⁰

C. The Establishment and Contributions of the Professionalism Committee

A Professionalism Committee was established by the MSBA as a result of the Solutions Committee’s recommendations and is comprised of “seasoned and experienced” attorneys, tasked with addressing instances of inappropriate conduct of attorneys and judges.⁷¹ Several contributions by the Professionalism Committee have altered legal dynamics in Maryland

1. Creation of a Code of Civility

The formulation of courtesy guidelines came to fruition in May of 1997, when, in response to the Solutions Committee recommendations, encouragement of the ABA, and efforts by the MSBA Professionalism Committee, the MSBA Board of Governors approved a code of civility for both lawyers and judges.⁷² The resulting *Maryland Code of Civility* incorporated the ABA House of Delegates’ *Lawyer’s Creed of Professionalism*, and referred to the Dallas Bar Association’s *Guidelines of Professional Courtesy*, for particular instructions on lawyer behavior.⁷³ The *Maryland*

⁶⁹ *Id.*

⁷⁰ COMMITTEE ON LAW PRACTICE QUALITY AND RECOMMENDATIONS OF THE COLUMBIA CONFERENCE, *supra* note 57, at 14.

⁷¹ *Id.*

⁷² MSBA CODE OF CIVILITY, available at <http://www.msba.org/departments/commpubl/publications/code.htm>.

⁷³ *A Lawyer’s Creed of Professionalism*, ABA HOUSE OF DELEGATES 1 (Aug. 1988).

Code of Civility remains in effect; it is posted on the MSBA website and is printed in the preamble to the *Maryland Rules of Professional Conduct*.⁷⁴

2. Professionalism Course for New Admittees

A professionalism course, “designed for the novice attorney to develop suggestions for professional development,” was launched in May of 1992 in response to the Solutions Committee’s recommendations after the Court of Appeals adopted the course requirement for admission to the Bar.⁷⁵ In 1997, the Professionalism Committee, in conjunction with the 1997 Professionalism Task Force, devised the new-admittee professionalism course in Maryland.⁷⁶ At the end of the fourth quarter in 2002, over 18,000 Maryland attorneys had participated in the professionalism course.⁷⁷ The mandatory one-day course under Rule 11 encompasses the lawyer’s relationship to the client, the lawyer’s relationship to the court, the lawyer’s relationship to other lawyers, and the lawyer’s relationship to the law practice and to the community.⁷⁸ The course has been updated twice in the past decade, and remains a requirement for all new admittees to the Maryland Bar.

3. Continuing Efforts of the Professionalism Committee

Since the creation of the mandatory new admittee course, the Professionalism Committee has discussed recommending a mandatory course for experienced attorneys in Maryland to the Court of Appeals of Maryland.⁷⁹ On June 10, 1999, the Maryland State Bar Association Board of Governors approved and adopted the Professionalism Committee’s proposal for an experienced attorney course,

⁷⁴ MD LAWYER’S RULES, *supra* note 29.

⁷⁵ Janet Stidman Eveleth, *Professionalism Focus of Court Study*, MSBA (Dec. 20, 2002), available at http://www.msba.org/departments/compubl/press_ctr/articles/2002/12-20.html.

⁷⁶ MSBA COMMITTEE AND PROFESSIONALISM TASK FORCE REP. AND RECOMMENDATIONS, PROFESSIONALISM AND EFFECTIVE LAW PRACTICE MANAGEMENT 3 (1997).

⁷⁷ *Id.*

⁷⁸ MSBA STANDING COMMITTEE ON PROFESSIONALISM, PROFESSIONALISM FACULTY GUIDE: RULE 11 MANDATORY PROFESSIONALISM COURSE FOR NEW ADMITEES TO THE MARYLAND BAR 8 (2001).

⁷⁹ Janet Stidman Eveleth, *Professionalism - Still a Legal Tradition?*, 22 MD B. J. No. 11, at 6 (1988).

Professionalism and Ethics Course, to address issues related to competency, integrity, civility, independence, and public service.⁸⁰

On April 17, 2001, the Court of Appeals approved the concept of a mandatory course on professionalism and ethics for experienced lawyers and directed the Professionalism Committee to develop a strategy for implementation of the mandatory course.⁸⁵ Various judges expressed concern about the sanction provisions of the proposal and requested in-depth information about exemptions, administration, aspects of requiring the course, the availability of the course dates, compliance verification, and locations.⁸⁶ Discussions of these issues and questions regarding the problems being addressed led, in part, to the creation of the Task Force.

D. Efforts by Local Bar Associations

After the MSBA adopted the *Maryland Code of Civility*, several local Maryland Bars established codes of professionalism or creeds of civility that serve as a guide for attorneys as to how they should conduct themselves in the profession.⁸⁷ Of those local Bar associations that have not established separate codes, some use informal mechanisms such as recognition awards to encourage civility among members. For example, the Charles County Bar Association has not adopted a formal code, but every year one member is presented with a “good guy award” for exemplifying professionalism.⁸⁸

⁸⁰ MSBA STANDING COMMITTEE ON PROFESSIONALISM REP. AND CURRICULUM FOR THE PROFESSIONALISM COURSE FOR EXPERIENCED LAWYERS 2 (1999).

⁸⁵ MSBA STANDING COMMITTEE ON PROFESSIONALISM REP. ON PROFESSIONALISM AND ETHICS COURSE FOR EXPERIENCED LAWYERS 2 (2001).

⁸⁶ *Id.*

⁸⁷ See App. D. Out of Maryland’s 24 local Bar associations, only four established codes of civility for its members. The four largest counties in Maryland with civility codes are as follows: Baltimore City, Baltimore County, Montgomery County and Prince George’s County.

⁸⁸ Telephone interview with Danny Seidman, President, Charles County Bar Association (July 9, 2003).

E. *Judicial Encouragement of Professionalism*

Judges receive training in ethics and areas of professionalism through “New Judge Orientation” provided by the Judicial Institute of Maryland.⁸⁹ Although the orientation for judges does not include a specific course on professionalism, related professionalism issues are addressed in other courses such as Case Management, Courtroom Management, Judicial Demeanor, and Recognizing and Coping with stress.⁹⁰

With regard to lawyer professionalism in the courtroom, some judges set forth formal procedures to ensure adherence to professional ideals. For example, Howard County Circuit Judge Dennis M. Sweeney published *Guidelines for Lawyer Courtroom Conduct*,⁹¹ which set forth general guidelines for attorney conduct. Judge Sweeney writes:

[M]ost rules like these are simply what our mothers...would say a polite and well-raised man or woman should do. Since, given their other important responsibilities, our mothers (and yours) can not be in every courtroom in the State, I offer these “rules” for the guidance of practitioners and further debate and discussion.⁹²

F. *Efforts by Law Schools to Encourage Professionalism*

The State of Maryland has two law schools in which students are required to complete a course on professionalism: the University of Maryland School of Law, and the University of Baltimore School of Law. Although the ABA has never required a specific course on professionalism, it requires that a professionalism component be inserted into other studies in the curriculum.⁹³ Law school administrators debated whether to include aspects of professionalism in

⁸⁹ Telephone interview with Ellen DeChant, Program Director, Judicial Institute of Maryland (July 25, 2003).

⁹⁰ *Id.*

⁹¹ Dennis M. Sweeney, *Guidelines for Lawyer Courtroom Conduct* (1998)(on file with author).

⁹² *Id.*

⁹³ Telephone interview with Professor Abraham A. Dash, *supra* note 23.

every law school course, so that “Wills students would think about the problems that an estate lawyer would encounter, Torts students would consider the difficulties of litigators, etc,”⁹⁴ but instead, decided to devote a two-credit course towards professionalism separate from other course curriculum.⁹⁵

After the ABA adopted the *Canons of Ethics* in 1908, the University of Maryland School of Law required all its students to attend a related lecture.⁹⁶ In 1922, when Maryland adopted a state version of the ABA’s *Canons*, both law schools adapted the *Maryland Canons of Ethics* into their independent curriculums.⁹⁷ After 1958, both law schools adopted courses related to the ABA Model Code of Professional Responsibility.⁹⁸ The course increased from two credits to three during the 1980s, in part because of an increased awareness of the substance abuse problems affecting lawyers. Moreover, there was a sense that professionalism should have been taught through a problem-solving method within the law school curriculum.⁹⁹

Currently, the components of the professional responsibility course taught at the University of Maryland are:

the activities and responsibilities of the lawyer and the lawyer’s relationship with clients, the legal profession, the courts, and the public. The course treats the lawyer’s fiduciary duty to clients, the provision of adequate legal services, and the reconciliation of the lawyer’s obligation to clients, in and out of court, with the demands of the proper administration of justice and the public interest. The course, therefore, provides essential preparation for the practice of law.¹⁰⁰

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ JOINT CONFERENCE, *supra* note 22, at 1159.

⁹⁹ *Id.*

¹⁰⁰ The course is entitled “Legal Profession.” See *Course Handbook*, available at http://www.law.umaryland.edu/pdf_files/osa_course.pdf, at 68 (last visited June 30, 2003).

The University of Baltimore's course "Professional Responsibility," is described as:

[The] study of the ethics and law of lawyering, approaching attorney problems from multiple perspectives. Topics include: professionalism, the organization of the Bar, attorney discipline and disability, the delivery of legal services, the attorney client relationship, the duties of loyalty and confidentiality, fees, and various issues, including conflict of interest and substance abuse.¹⁰¹

Since the 1983 adoption of the *ABA Model Rules of Professional Conduct* and the 1987 adoption of the *Maryland Rules of Professional Conduct*, both law schools now focus their required professionalism courses on the most current ABA's Model Rules of Professional Conduct and Maryland Rules of Professional Conduct.¹⁰²

III. TASK FORCE FINDINGS

From September of 2002 to July of 2003, the Task Force conducted a series of 22 town hall meetings across the State of Maryland as a self-study of professionalism in the legal community. Twenty-two meetings were held throughout the State encompassing each county; Charles and St. Mary's counties held a joint meeting, as did Kent and Queen Anne's counties. The goal of the meetings was to stimulate dialogue about the meaning of professionalism and to explore what steps might be taken, if necessary, to enhance and/or better promote professionalism within the Maryland legal community.

Although each town hall meeting clearly demonstrated that practitioners in different locations across the State had opinions and experiences that were unique to their communities, certain themes

¹⁰¹ University of Baltimore School of Law Course Handbook, *available at* <http://www.law.ubalt.edu/courses/professional.html> (last visited June 30, 2003).

¹⁰² Telephone interview with Professor Abraham A. Dash, *supra* note 23.

emerged, regardless of the lawyers' geographic location. Perspectives of the participants on the subject of professionalism were clearly correlated to whether they practiced in an urban, suburban, or rural county, and the participant's years of experience.¹⁰³ This section sets forth the findings derived from the dialogue during the town hall meetings and the written responses to the questionnaires.

A. *The Town Hall Meetings*

All attorneys registered with the Client Protection Fund were sent letters inviting them to attend a town hall meeting in their respective counties to discuss the topic of professionalism. In addition, a separate letter was sent to all judges inviting them to attend and participate in the meeting in their jurisdiction. Many of the Administrative Judges, on their own initiative, penned a separate letter of invitation to members of the Bar in their individual jurisdictions encouraging participation at the town hall meeting. The Task Force's invitation also described its mission and the purpose of each meeting.¹⁰⁴ The letter targeted those issues to be discussed at the meeting, namely: (a) changes in the legal profession; (b) probable sources of decline in professionalism; (c) economic pressures of practicing law; (d) professional satisfaction and professional expectations; (e) the role of continuing ethical education in the profession; (f) whether to have a mandatory course(s) in professionalism for experienced attorneys; and (g) remedies for the problems identified.¹⁰⁵ In total, 1,239 of those invited attended one of the town hall meetings.

¹⁰³ The Maryland Department of Planning classifies the Maryland counties as follows: Urban: Anne Arundel, Baltimore City, Montgomery, Prince George's; Suburban: Baltimore County, Frederick, Carroll, Harford, Cecil, Queen Anne's, Calvert, Charles, St. Mary's, Howard; Rural: Allegany, Garrett, Washington, Kent, Talbot, Caroline, Dorchester, Wicomico, Somerset, and Worcester. Telephone interview with Jesse Ashe, Maryland Department of Planning (June 16, 2003).

¹⁰⁴ See Letter from the Honorable Lynne A. Battaglia, Court of Appeals of Maryland, to all attorneys registered with the client protection fund in Maryland (on file with author).

¹⁰⁵ *Id.*

At the beginning of each meeting, Chief Judge Robert M. Bell¹⁰⁶ welcomed all attendees, discussed the issue of professionalism, and provided a brief history of the events leading up to the self-study. Judge Lynne Battaglia of the Court of Appeals was responsible for facilitating the discussion at each meeting and did so by initially describing the Task Force's mission, which was to define and understand the concept of professionalism; to understand how this may differ from and expand upon the ethical requirements contained in the Maryland Rules of Professional Conduct; to learn about problems observed by the Bar pertaining to professional behavior; and to set goals for the improvement of professionalism of attorneys. After this brief introduction, attendees were asked to complete a voluntary and anonymous questionnaire to provide the Task Force with feedback on the subject of lawyer professionalism and what, if anything, should be done to enhance or promote professionalism in the future.¹⁰⁷

After the lawyers and judges had completed the questionnaire, Judge Battaglia posed a series of questions designed to elicit frank discussion among the attendees. The discussion involved definitions of professionalism, changes in the practice of law in general, and attorney professionalism in particular, over time, and what attempts, if any, should be made to increase the level of professionalism among Maryland lawyers. The Task Force Reporter, Norman Smith, Esq., took the minutes of each meeting.

At the conclusion of each meeting, Judge Battaglia acknowledged the local Task Force representative and thanked the attendees for participating and expressing their thoughts on the issue of professionalism. Attendees were told that they would be invited to attend the convocation at the

¹⁰⁶ Chief Judge Robert Bell attended all but one town hall meeting.

¹⁰⁷ See App. B.

Court of Appeals at which time the findings and recommendations of the Task Force would be presented.

1. Practitioner Perspectives on The Meaning of Professionalism

When asked to define professionalism, practitioners in the different geographic areas identified a number of similar qualities:

a. Urban Counties

Practitioners in urban counties most commonly identified the following attributes of professionalism: common courtesy to others; honesty; integrity; competence; a sustained level of excellence, an effort to bring respect to the profession; dedication to community service; commitment to pro bono work; being prepared for court; high ethical behavior; dignity; collegiality with other attorneys; respect for the Bench and Bar; compassion; objectivity; impartiality; tolerance of others; moral behavior; civil mindedness; mentoring; and respect for clients.

b. Suburban Counties

Practitioners in suburban counties most commonly identified the following attributes to define professionalism: dignity; preparedness; civility before the court; competence; civility; truthfulness; responsibility; dedication; ethics; courtesy; punctuality; honesty; fairness; compassion; zealous representation of the client; candor; cooperation among counsel; integrity; pro bono work; service to community; good manners; diligence; and treating one another with respect.

c. Rural Counties

Practitioners in rural counties most commonly identified the following attributes to define professionalism: competence; courtesy; integrity; honesty; fair-dealing; trust; professionalism as more than ethical behavior; professional responsibility as a standard to which attorneys should

strive; commitment to one's client; treatment of others in a civil and polite manner; adherence to high standards of competency; respect for the community and giving back to the community; self-regulation; credibility; skill in counseling client; being truthful and keeping one's word.

2. Practitioner Perspectives in Changes in the Legal Profession Over Time

During each town hall meeting, participants were asked to share their perspectives of how the profession had changed over time by comparing professionalism in the past to the present state of professionalism. As a result of the participant responses to these questions, several themes emerged, which gave a clear impression of the significant issues facing practitioners in each demographic category.

a. Urban Counties

In urban counties, the following themes regarding changes over time in the state of professionalism:

- Attorney Interaction: Years ago, the Bar was much smaller. There were fewer lawyers and the atmosphere was more collegial. All lawyers and judges knew each other personally and could rely upon their word. Today, a greater number of lawyers makes it difficult to know everyone. As a result, the camaraderie of the small Bar is gone and there is a lack of involvement in Bar association activities.
- Attorney Practices: In the past, cases were resolved civilly and without "cut throat" tactics. Lawyers communicated directly in managing a case and rarely had to follow up conversations with a confirmatory letter. Business was done on a handshake. Likewise, discovery was freely given and disputes were more likely to be worked out with a phone call between attorneys. There was also less emphasis on driving an opponent into the ground and "winning at all costs." Now lawyers often argue frivolous positions and file lawsuits immediately with no real effort to settle cases. In particular, discovery disputes are a real concern which often lead to negative and uncivil behavior.
- Diversity: At one time there were virtually no minority lawyers in the urban counties. Discrimination was widespread. There were fewer women and greater gender bias. Now, the Bar is much more diverse. Clients have also become more diverse.

- Economic Pressures: As a lawyer years ago, there were fewer monetary pressures. A lawyer could charge clients less, while maintaining a successful practice. There are too few clients for the number of lawyers in the market, which causes economic pressure in addition to higher competition.
- Technology: In the 1960s and 1970s, technology did not exist for the most part. Lawyers communicated verbally instead of through electronic communication. Because of technology, the pace of attorney practice has increased, leaving no time for face to face communication. Electronic communication allows more room for uncivil tendencies and less room for reflection. Technology is an additional expense which increases the pressure of operating a practice.
- Media/Advertising: Participants explained that lawyers used to be perceived in a positive light by the community. There was less advertising and colleagues gave referrals for potential clients. Today, television gives a skewed view of the profession and raises unrealistic expectations.
- Clients: Participants agreed that clients have unrealistic expectations. There was a time when the client identified a problem and lawyers pursued litigation as a last resort. In recent times, clients expect lawyers to use “rambo tactics” to win a case and want lawyers to litigate their case even if the case has no merit.
- The Judicial Process: Courts had more flexibility with scheduling in the past as there were fewer cases in the judicial system. It was easier to get a postponement. Judges would meet individually with attorneys in chambers to deliver criticisms or expectations. Judges were more accessible and provided mentoring to new attorneys. Today, the Bench is less tolerant of postponements. Judges are removed from the mainstream and appear more interested in moving the docket than dealing with each individual case. Now, there is alternative dispute resolution. In addition, there are too many pro se litigants, who do not understand the practice of law.

b. Suburban Counties

In suburban counties, the following themes appeared regarding changes over time in the state of professionalism:

- Attorney Interaction: Many years ago, the Bar was smaller, stronger and more collegial. All lawyers knew one another and there was more concern for fellow lawyers. There was also greater respect among lawyers and more social interaction. Attorneys would meet for lunch regularly and participate in Bar activities. Judges provided mentoring and were a part of the lawyer community. In addition, lawyers were able to call upon each other for advice. Litigation was handled by local counsel.

In recent times, the increase in Bar size has translated into a loss in camaraderie among attorneys. As a result, professionalism has suffered. There has also been a decline in participation in Bar related activities. Attorneys still seem to be more collegial and less formal in the smaller counties than in the larger counties. [It should be noted that not all attorneys in suburban areas thought that professionalism has declined.]

- Attorney Practices: In the past, attorney practice was slower and more civil. Usually a handshake could settle an issue. There was no need for confirmatory letters because attorneys would honor their word. An attorney's word was his/her bond. Participants agreed that most disputes were handled by calling opposing counsel instead of filing pleadings. Lawyers thought more of solving the client's problems than simply winning cases. Likewise, disputes were worked out informally. There were fewer rules of procedure and no formal discovery. Each attorney also had a broader range of expertise and handled a wide variety of legal matters. Now, the legal profession has changed to a business. Everything must be documented and in writing. Discovery disputes are overwhelming, and yet there is no real effort to resolve discovery disputes among lawyers, without the intervention of a judge. In general, lawyers are better educated, but lack professional intervention.
- Diversity: The Bar lacked race and gender diversity earlier in the legal profession. The Bar was primarily white and male. The "good old days" were only good for those that fit this description.
- Economic Pressures: The law has evolved from a profession to a business. Economic pressures are greater due to billable hours and a diminishing client base. Attorneys are experiencing economic pressure to spend fewer hours on projects and keep nonbillable hours to a minimum. Because attorneys must work to maintain a successful practice there is little time for family or social activities.
- Outside Counsel: Locally, problems are worked out among the attorneys. Unprofessional conduct is mostly a problem with out-of-county lawyers. Outside practitioners have no stake in the community. Participants opined that the larger firms produce "rude" attorneys. Out-of-county lawyers will not call opposing counsel. Rather, they engage in confirmatory letters, requiring local lawyers to take extra time to answer.
- Technology: Participants agreed that technology has a negative impact upon the practice. Demands for an immediate response hurts the quality of work. Technology makes law practice hectic and less professional. Clients and lawyers alike want immediate responses.

- Media/Advertising: In the past, lawyers were not permitted to solicit clients. Today, lawyer advertising is liberally displayed on billboards, television, via direct mailings and in the Yellow Pages. This fosters a negative public image. Television programs raise unrealistic client expectations and advance an unrealistic image of lawyers.
- The Judicial Process: Today, there is a lack of civility within the courtroom. Judges and lawyers are routinely late for court. The efficiency of the judicial process is undermined because there is no observed courtroom decorum. Because of the large number of cases before the Bench, the overcrowded docket does not allow for many postponements.
- Pro Se Litigants: Participants agreed that litigation is often difficult when it involves a pro se litigant. There are too many non-lawyers trying to handle their own cases. Pro se litigants think they do not need attorneys. An attorney's work is undervalued because of the increasing number of pro se litigants. Participants also complained that judges are more lenient with pro se litigants with regard to procedural issues, deadlines, and courtroom decorum.
- Client issues: Lawyers were more respected within the community in the past. Lawyers did not pursue frivolous claims. Now, practice is more client-directed. Clients today have unrealistic expectations and demand lawyers that engage in unprofessional conduct to win their cases.

c. Rural Counties

In rural counties, the following themes appeared regarding changes over time in the state of professionalism:

- Lawyer interaction: In earlier years, the Bar was smaller and less formal. Lawyers met informally and formed friendships that promoted a greater sense of collegiality. Local Bar associations sponsored many activities, such as lunches, dinners, and seminars. Today, there is less camaraderie in the profession. Lawyers do not attempt to foster interpersonal relationships with each other and there is no willingness for lawyers to interact socially. However, participants strongly agreed that there remains a sense of community and collegiality among the smaller Bars. People live in rural areas because they want a certain quality of life. Some rural participants expressed the view that professionalism is better today than it was in the past because there are more rules in place.
- Lawyer practices: In the past, lawyers would openly discuss cases and assess the strengths and weaknesses of a case in order to settle quickly. Disputes were settled privately and most attorneys handled discovery in a courteous manner. Discovery

disputes were rare and motions for sanctions were never filed. Attorneys worked out their disputes with a phone conversation. The practice has changed over time. Now, attorneys must have a confirmatory letter for everything. A motion to dismiss on any technicality is expected. Discovery is viewed as a weapon and disputes are overwhelming. However, participants noted that discovery is not as formal in smaller counties in comparison to discovery in larger counties.

- Diversity: In the past, there was little diversity. The Bar was white-male dominated. Over time, the legal community in rural areas has become more diversified.
- Mentoring: 20-30 years ago, the experienced attorneys helped mentor newer attorneys. Today, it is difficult to provide mentoring because of the high demands of practicing law. Generally, however, lawyers can ask other colleagues for help when needed. Lawyers in the rural counties tend to be active in the community.
- Economic pressures: Participants agreed that the profession used to be more pleasurable, less demanding and slower paced. In some rural counties, lawyers did not focus on billing time and there were not as many sole practitioners. Most attorneys worked for banks or real estate companies. In some rural counties, all attorneys were sole practitioners and practiced in a wide range of areas. All participants agreed that now, attorneys face greater economic pressures. Lawyers are competing for a diminishing client base. As a result, lawyers are becoming increasingly uncivil and more competitive with one another. There was also the sentiment that while lawyers today are better trained in lawyering skills, they are less dedicated to the profession.
- Outside Counsel: Most problems today stem from out-of-county lawyers who do not understand local practice and congeniality. Out-of-county attorneys are less civil toward the local attorneys. Civility is more present among the local attorneys because they know each other. There was a time when no outside lawyer would handle a case without the assistance of local counsel. There is a sense that many clients seek out of town counsel because the local lawyers get along almost “too well.” There remains, however, a high degree of trust among local attorneys.
- Technology: Participants agreed that technology is a problem particularly for small firms and sole practitioners because technology is expensive and constantly evolving. The pace of practice makes it difficult to pause and resolve matters in a civil way. The legal profession should rely less on technology and more on human interaction.
- Media/Advertising: Media and advertising portray the legal profession as one wrought with unprofessional behavior. Because of this, clients expect their lawyers to “win at all costs.” Clients often have unrealistic expectations based upon the

media's skewed misrepresentation of the litigation process. There was a time when lawyers were respected as leaders in the community. Public perception of attorneys has declined due to negative media and advertising. Clients seek out lawyers to produce a specific result. As such, the attorney's role as a counselor is undervalued.

3. Practitioner Perspectives on How to Improve Professionalism

Participants of the town hall meetings discussed what, if anything, the Court of Appeals should do to improve the state of professionalism. Several themes emerged from those discussions.

a. Urban Counties

Some of the opinions expressed by practitioners in urban counties on how to improve professionalism are as follows:

- Sanctions: Judges should use their sanction authority to enforce the rules. The Court should enforce Rule 1-341¹⁰⁸ in particular, and sanction those attorneys who act in bad faith. In addition, Judges should set the tone for professionalism and civility and stop rewarding rude behavior. A forum should be established to publish names of all disbarred lawyers and/or those who are sanctioned.
- Dispute Resolution: The Court should establish a forum to resolve attorney problems outside of the courtroom. The Court should encourage mediation, especially for discovery disputes. Judges should be more involved in discovery disputes through telephone conferences among the attorneys and the court.
- Mentoring: The Court should promote mentoring programs. Each new attorney should be assigned a mentor. New lawyers need training on how to evaluate cases and clients more carefully, and to weed out frivolous suits. In addition, the Court should impress upon lawyers the importance of an earned reputation.
- Localized Approach to Professionalism: Avoid a "one size fits all" approach. Problems of unprofessional behavior must be handled on a local level.
- Limit Technology: Limit the impact of technology on the profession by not requiring attorneys to file documents electronically.
- Professionalism Course: Urban participants were divided over whether the Court should institute a course for experienced attorneys. Two-thirds of members in the urban community expressed a need to have the professionalism course, while one-

¹⁰⁸ MD. RULE 1-341.

third of the community conveyed the sentiment that one cannot teach civility. Other urban participants did not address this issue.

b. Suburban Counties

Some of the opinions expressed by practitioners in suburban counties on how to improve professionalism are as follows:

- Self-regulation: Lawyers should self-regulate and report breaches. The Court should establish a committee to field complaints and reach informal resolutions.
- Judicial leadership: Judges must set boundaries and lead by example. The Bench has a responsibility to maintain professionalism in their courtrooms.
- Sanctions: The Court of Appeals should empower local judges to sanction lawyers. The Court should also enforce Rule 1-341¹⁰⁹ and sanction those attorneys who act in bad faith. In the courtroom and during discovery, judges should not tolerate unprofessional behavior, and should sanction those attorneys who behave as such.
- Standardized discovery: The Court should publish standardized guidelines on discovery. The Bench must supervise and enforce the guidelines.
- Rules for Pro se litigants: The rules that apply to attorneys should consistently apply to pro se litigants.
- Professionalism Course: A mandatory professionalism course is not the solution to remedy unprofessional behavior. There was a general sentiment among participants that a mandatory course would be ineffective because professionalism cannot be taught. If there is a course on civility, then it should be taught in the law schools. Participants also noted that the smaller the Bar, the less the need for a mandatory professionalism course.

c. Rural Counties

Some of the opinions expressed by practitioners in rural counties on how to improve professionalism are as follows:

- Mentoring: The Court should establish a mentoring program for new attorneys.

¹⁰⁹ *Supra*, note 108.

- Dispute resolution: Mediation is important because most clients cannot afford to pay litigation costs. The Court should take a pragmatic approach to dispute resolution.
- Sanctions: Bad behavior should be sanctioned. The Court of Appeals should target specific types of bad behavior. Courts should enforce sanctions against attorneys who abuse the discovery process.
- Litigation: Litigation has unique problems and perhaps there should be a focus on professionalism within the litigation area.
- Localized Approach to Professionalism: The Court of Appeals should not apply a “one size fits all approach.” The Court should promote professionalism on a local level.
- Discovery: The Court should establish a uniform system for discovery. Judges should take responsibility for resolving discovery disputes and should be clear about what is expected.
- Professionalism Course: Many participants voiced reservations about having a professionalism course due to the time constraints of practicing law. Some believe there are too many rules and mandatory courses, which place a heavy burden on practitioners. Participants agreed, however, that something should be done to foster professionalism. There is a general sentiment that the professionalism course for new admittees does not help to promote professionalism. Civility should be addressed by law schools.

B. Questionnaire Responses

In each of the Town Hall meetings, a questionnaire was given to all participants. The participants completed their questionnaires anonymously. The questionnaire asked for the participant’s age, gender, race, the area of the law in which they practiced, and their years in practice.

In addition to demographic information, the questionnaire asked for each participant’s perspective on seven distinct areas relating to professionalism. Topics ranged from apparent symptoms of decline in professionalism to whether a Professionalism Commission should be established and, if so, what its objectives should be. The questionnaires also provided a perspective on the participant’s individual measurements of success and what disappointments they had

encountered in their profession. The information and responses were collected, collated, and analyzed for this report.

1. Common Themes Among All Practitioners

Through the questionnaire responses,¹¹⁰ certain themes were unique to respondents in urban, suburban and rural counties. But several themes emerged as statewide topics of concern in the area of attorney professionalism:

a. Public Image¹¹¹

Participants repeatedly indicated that a bad public image of lawyers is one of the most evident reflections of a decline in the profession. A negative public image consistently ranked in the top three symptoms of decline among all groups. Participants also expressed their concern for lawyers' public image by citing respect accorded to the profession by the public as one of the least realized expectations. Representative concerns included: public contempt for attorneys; lack of respect from the public; and lawyers not caring about their own image.

b. Economic Pressures of Practicing Law¹¹²

Participants overwhelmingly cited increased economic pressures in modern practice as another prevalent symptom of professionalism decline in the community. Participants indicated that the economic pressures of responding to increased billable hour requirements and billing clients on a "time spent" basis contribute to the decline of professionalism. Likewise, participants in each group expressed frustration with having to spend an excessive amount of time running a business rather than practicing law. Participants also expressed strong discontent over the expectation of long

¹¹⁰ See App. C, figure 1.1 (providing an overall tabulation of participant's responses to the questionnaire).

¹¹¹ See App. C, figure 1.2.

¹¹² See App. C, figure 1.3.

hours and the sacrifice of quality of life for fulfillment of financial goals. When asked what changes in the profession should be fostered, participants chose “face the issues of economic pressures” as an important possibility.

In addition, participants did not identify financial security as a realized expectation of legal practice during their careers. In fact, participants ranked financial security as one of the least realized expectations. In particular, minorities among all demographics cited financial security next to last as a realized expectation and expressed disappointment in the lack of financial reward in the law practice. Finally, participants from all groups expressed a desire to develop ways to deal with the economics of practicing law.

c. Responses Regarding the Satisfaction Derived from Practicing Law¹¹³

In general, participants expressed a unique pride in and satisfaction with the practice of law and their responsibility for the welfare of their clients, other lawyers, and their staff. Nearly three fourths of all participants cited the social utility of practicing law (i.e. helping people and society) as an expectation that they have fully realized. Females were most satisfied with this aspect of practicing law, ranking social utility second among realized expectations. Likewise, a majority of participants expressed definite satisfaction with the intellectual challenges of their work, as well as camaraderie with their colleagues as an expectation that was realized during their careers. Also among top choices of realized expectations was the opportunity for career advancement and growth. However, two concerns that all participants expressed was the lack of recognition of one’s accomplishment, and equality of opportunity (lack of discrimination and sexual harassment), both of which ranked in the bottom four as realized expectations.

¹¹³ See App. C, figure 1.4.

d. Commission Objectives¹¹⁴

There were several objectives common among all counties that appeared to be of significant concern regarding the establishment of a professionalism commission and its proposed objectives.

- Establishment of a Professionalism Commission: Participants were asked whether there should be a Professionalism Commission and if so, what issues should it address. Most participants did not respond to the first component of the question asking about the establishment of a commission. In total, 153 participants (15%) actually responded to the question. Those participants who answered the question, did so in three different ways: (1) 106 participants (10%) who answered the question indicated that they did not want a commission; (2) 38 participants (.4%) who responded to the question answered no to a commission, but listed objectives to address related to professionalism; and (3) 747 (73%) of those who answered the question responded by only listing the objectives. Only 9 participants (less than 1%) out of all demographic groups specifically said “yes” to the establishment of a commission. Participants were also asked what changes they would like to see fostered in the profession. Among the choices was the proposal to establish a Professionalism Commission. Participants among all demographic groups ranked the establishment of a commission in the lower third of choices.
- Establishment of a Professionalism Course for Experienced Attorneys: The participants were given the opportunity to rank their choices of proposed objectives, should a commission be established. A majority of participants indicated that some

¹¹⁴ See App. C, figure 1.5.

type of professional program should be developed as the first priority for the proposed commission. Males, females and minorities among all demographic groups also ranked this objective in the top three. Although participants wanted to establish some form of program to encourage professionalism among experienced attorneys, they did not highly rank a professionalism course for experienced attorneys as an objective to accomplish. In fact, this objective ranked second to last by participants in all demographic groups .

- Keep the Bench Involved in the Conversation: Involving the Bench and emphasizing judicial professionalism ranked high as top objectives to be addressed should a commission be established. Many participants focused on the need to address issues with the Bench by ranking this objective in the top three among urban, suburban and rural counties.

2. Urban Practitioner Questionnaire Themes

Participants who practiced in urban areas expressed concerns unique to them through their questionnaire responses. As a result, several themes emerged relating their views on professionalism in counties categorized as urban. Attorneys participating in the town hall meetings in Anne Arundel, Baltimore City, Montgomery and Prince George’s county are classified as urban participants.¹¹⁵

a. Demographic Breakdown of Urban Participants¹¹⁶

- 365 (29%) of all participants who attended a town hall meeting worked in urban counties.

¹¹⁵ Telephone interview with. Jesse Ashe, *supra* note 104.

¹¹⁶ See App. C, figure 1.

- 266 (73%) of all urban participants who attended a meeting answered the questionnaire.
- 162 (61%) urban participants who answered the questionnaire were male.
- 104 (39%) urban participants who answered the questionnaire were female.
- 67 (25%) urban participants who answered the questionnaire were members of a minority group.
- 203 (76%) urban participants who answered the questionnaire were over age 37 and had more than 5 years of experience.
- 20 (8%) urban participants who answered the questionnaire were under age 37 and had less than 5 years of experience.

b. Incivility Among Lawyers in Urban Counties¹¹⁷

In urban areas, participants noted a clear presence of incivility in the legal profession. Participants in urban areas ranked incivility as a prevalent symptom of professionalism decline. Notably, this behavior was more commonly reported by females and minority group members than by males, who ranked incivility lower as a symptom of decline. Furthermore, rude and biased behavior by opposing counsel or the court ranked third by participants practicing in urban counties as a symptom of decline in the legal profession. In particular, females and minorities cited rude and biased behavior by opposing counsel or the court among their top three symptoms of decline. Likewise, with regard to participants realized expectations in the practice of law, civility and mutual respect in the profession ranked fourth to last. All urban participants emphasized that contentiousness and “rambo tactics” were not good for the client. Cutting across all demographic

¹¹⁷ See App. C, figure 2.

groups in urban counties, incivility was the most commonly cited disappointment in the practice of law. Representative comments include:

- Uncivil behavior by opposing counsel and judges.
- Lawyers not returning phone calls and rudeness.
- Judges yelling at attorneys.
- Unprofessional conduct by lawyers.

As a result of the perceived civility problem, many urban participants wanted to see an increase in the profession's awareness of unprofessional conduct.

c. Urban Responses Relating to Diversity in the Profession¹¹⁸

Though minorities represented only a small portion of urban participants responding to the questionnaire, those participants expressed major concerns about diversity in the profession. Minorities in urban counties consistently ranked diversity issues at the top of their concerns. When answering questions related to measurements of success and commission objectives, minorities ranked diversity issues first. By contrast, females practicing in urban counties ranked issues of diversity in the bottom three measurements of success, and ranked almost last a focus on diversity as a proposed commission objective. Both minority and female urban participants, however, indicated that equality of opportunity (lack of discrimination and gender bias) were not realized expectations during their practice of law. Diversity did not appear to be a strong focus for female urban participants with regard to the multiple choice ranking questions. However, when given the opportunity to express their greatest disappointments in essay form, concerns regarding diversity

¹¹⁸ See App. C, figure 2.1.

were more prevalent among female urban participants. Common responses to the issues of diversity included:

- No support for female Bar members.
- Patronizing behavior toward female attorneys.
- Exclusion from the “good ole’ boy’s network.”

Likewise, minority urban participants cited instances of discrimination and exclusionary tactics by certain members of the community as common disappointments in the legal profession.

The majority of participants in urban counties did not share the same sentiments about issues of diversity. However, it should be noted that minority and female participants in urban counties accounted for only 25% and 39%, respectively. In general, participants indicated that diversity was not a strong measurement of success. Only one-fifth of all urban participants ranked diversity as a measurement. Likewise, when choosing what issues should be addressed, a focus on diversity ranked last in overall responses to this question. However, urban participants overall did agree that equal opportunity (lack of discrimination and sexual harassment) was not a realized expectation in the legal profession.

d. Provide a mechanism for mediation¹¹⁹

To handle the increase in discovery disputes, nearly one-half of all urban participants indicated that a local mechanism for mediating disputes (e.g. discovery disputes) between lawyers would be helpful.¹²⁰ In particular, a significant number of female and minority urban participants agreed that a mediation mechanism should be fostered. Each demographic group ranked this change to foster within their respective top three choices. In addition, urban participants wanted to see an

¹¹⁹ See App. C, figure 2.2.

¹²⁰ The questionnaire did not indicate what type of mechanism should be used to mediate disputes.

increased interest in problem solving and “Alternative Dispute Resolution” (ADR). Nearly one-half of all urban participants ranked problem solving and ADR as a measurement of success.

e. Mentoring¹²¹

“Increase interest in mentoring” ranked high as a measurement of success among urban participants. In addition, many participants in urban counties felt that increasing the availability or number of apprenticeships for newer lawyers would be a desirable change to foster in the profession. Focusing on mentoring was also a commonly cited objective among all demographic groups in urban counties. Urban participants’ concern about mentoring was evident in their response to their greatest disappointments in the law practice. Representative responses included:

- Lack of mentoring for new attorneys.
- New attorneys not having as many opportunities to learn and teach.
- Lack of mentoring from the Bench.

3. Suburban Practitioner Questionnaire Themes

Practitioners in suburban counties indicated similar trends in professionalism as those in urban counties. However, their responses demonstrated that suburban practitioners face some of their own unique problems regarding professionalism. Those who participated in the town hall meetings in Baltimore, Calvert, Carroll, Charles, Frederick, Harford, Howard, and St. Mary’s county are classified as suburban participants.¹²²

a. Demographic Breakdown of Suburban Practitioners¹²³

¹²¹ See App. C, figure 2.3.

¹²² Telephone interview with Jesse Ashe, *supra* note 104.

¹²³ See App. C, figure 1.

- 580 (47%) of all participants who attended a town hall meeting worked in suburban counties.
- 493 (85%) of all suburban participants who attended a meeting, answered the questionnaire.
- 320 (65%) suburban participants who answered the questionnaire were male.
- 171 (35%) suburban participants who answered the questionnaire were female.
- 20 (4%) suburban participants who answered the questionnaire were members of a minority group.
- 362 (73%) suburban participants who answered the questionnaire were over age 37 and had less than 5 years of experience.
- 56 (11%) suburban participants who answered the questionnaire were under age 37 and had more than 5 years of experience.

b. Incivility in the Community¹²⁴

Suburban practitioners cited increasing incivility among lawyers as one of the top three symptoms of decline in the legal profession. All suburban participants agreed that civility is a problem. The surveys gave the participants an opportunity to indicate which changes in the profession they would like to see fostered in the future. One change to foster indicated above all others by suburban participants directly addressed the incivility issue. Over one-half of all suburban participants emphasized their view that contentiousness and “rambo” tactics were good for neither the client nor the profession. Likewise, two-thirds of women indicated that they would like to see fewer “rambo” tactics employed in the profession, and over one-half of minority group participants

¹²⁴ See App. C, figure 3.

agreed that contentiousness is not beneficial to the client or the profession as a whole. Many participants also wanted to see an increased awareness of unprofessional conduct as a change to foster. Also commonly cited by participants as disappointments in legal practice were:

- Rudeness and incivility being more important than solving problems;
- A decline of civility between lawyers;
- Attorneys unprofessional conduct in the courtroom; and
- Increasingly contentious behavior by attorneys.

c. Loss of Community Within the Bar¹²⁵

Suburban participants reported a general presence of symptoms of decline in professionalism in their communities. According to those surveyed, the decline was evidenced by diminution in the sense of community experienced by suburban lawyers. One-third of all suburban participants cited a loss of a sense of community as a symptom of decline in professionalism. Minority group members felt this shift more than any other group, ranking loss of community as the number one symptom of decline. While most participants were of the opinion that camaraderie with colleagues was a realized expectation, loss of community and lack of mentoring for new lawyers was commonly cited as a disappointment in suburban counties. Unique to suburban practitioners was a specific concern about the increasing number of lawyers in the Bar.

d. Balance Between Home and Work¹²⁶

Although suburban practitioners cited overwhelming satisfaction with the intellectual challenge of their work, intellectual satisfaction appears to have its price. Not everyone was content

¹²⁵ See App. C, figure 3.1.

¹²⁶ See App. C, figure 3.2.

with their ability to balance home life or outside interests with the time demands of the profession. Overall, more than three fourths of those surveyed felt that their work was intellectually challenging.

On the other hand, fewer than half of participants reported that they were able to achieve a balance of career and outside interests (e.g. home, family, social, or spiritual activities). Participants' satisfaction in the balance they have achieved is clearly correlated to gender. A large number of men reported that their expectations of balance between their personal and their professional life was realized. In stark contrast, only one-third of females reported satisfaction with the balance in their lives. Among females, a commonly cited disappointment was the lack of time to complete work-related tasks and spending time with family.

e. Diversity and Discrimination¹²⁷

Suburban participants showed similar patterns about their views on diversity and discrimination as those of urban participants. Diversity in the profession was a high priority for minority participants. Addressing issues related to diversity consistently ranked first among minorities when answering questions of measurements of success and commission objectives. Again, issues of diversity ranked in the bottom three measurements of success and commission objectives for females in urban and suburban counties. However, females had some complaints about discrimination. When allowed to express their greatest disappointments in essay form, female suburban participants presented clear concerns regarding discrimination. Representative responses included:

- The persistence of gender bias in the profession;
- Females are still treated differently than men inside and outside of court; and

¹²⁷ See App. C, figure 3.3.

- Exclusion from the “good ole’ boy’s network.”

These common disappointments were evidence that discrimination and diversity were overriding concerns of female participants. Minorities also cited as disappointments instances of discrimination and exclusionary tactics by certain members of the community. In addition, both minorities and females cited equality of opportunity (lack of discrimination and gender bias) last as a realized expectation.

Most participants in suburban counties did not share the same sentiments about issues of diversity and discrimination as were specifically noted by females and minorities. In general, participants indicated that diversity was not a strong measurement of success and less than half of all participants in suburban counties ranked diversity as such. Likewise, when choosing what objectives should be accomplished by the proposed committee, a focus on diversity ranked last in overall responses to this question. However, participants also agreed that lack of discrimination and sexual harassment) was not a realized expectation in the legal profession.

4. Rural Practitioner Questionnaire Themes

Although the attendance at rural meetings was numerically smaller than that of urban or suburban meetings, participants in rural counties had the highest ratio of town hall meeting attendance to the number of participants invited. Rural participants also had the highest rate of return of the questionnaires handed out during the town hall meetings. Eleven meetings were held in counties classified as rural, including: Allegheny, Caroline, Cecil, Dorchester, Garrett, Kent, Queen Anne’s, Somerset, Talbot, Washington, Wicomico, and Worcester.¹²⁸

a. Demographic Breakdown of Rural Participants¹²⁹

¹²⁸ Telephone interview with Jesse Ashe, *supra* note 104.

¹²⁹ See App. C, figure 1.

- 294 (24%) of all participants who attended a town hall meeting worked in rural counties.
- 267 (91%) of all rural participants who attended a meeting, answered the questionnaire.
- 202 (76%) rural participants who answered the questionnaire were male.
- 65 (24%) rural participants who answered the questionnaire were female.
- 5 (2%) rural participants who answered the questionnaire were members of a minority group.
- 206 (77%) rural participants who answered the questionnaire were over age 37 and had more than 5 years of experience.
- 26 (10%) rural participants who answered the questionnaire were under age 37 and had less than 5 years of experience.

b. Incivility Among Attorneys Practicing in Rural Counties¹³⁰

The most striking theme that emerged from the responses of rural practitioners was their overall feeling that their communities do not have a significant problem with professionalism. Only one-fourth of participants ranked incivility as a symptom of decline in the profession, as compared to higher rates of incivility cited by participants in urban and suburban counties. Rude and biased behavior by opposing counsel also ranked low overall by participants. In particular, female participants did not express strong concerns related to incivility as a symptom of decline. That is not to say that rural practitioners did not express concerns about trends in the profession or worries about other aspects of their careers. When asked what changes to foster in the profession, a large

¹³⁰ See App. C, figure 4.

majority of participants wanted to emphasize that contentiousness and “rambo tactics” are not good for the profession, by ranking this third as a change to foster. Finally, about one-third of all rural participants wanted to see an increase in awareness about unprofessional conduct.

c. Balancing Work and Family Life¹³¹

In rural counties, the difficulty of balancing home life with the increasing demands of the profession was evident. Less than half of all rural participants reported that they were able to achieve balance of career and outside interests (e.g. home, family, social, spiritual activities or community service). This also correlates to participants ranking the development of valuable community services as a measurement of success. Similar to suburban counties, being satisfied with balancing work and home life differed among male and female participants. Almost one-half of men reported that their expectations of balance between their personal and professional life was a realized expectation while only one-third of females expressed content with balancing their lives at home and work. Like females in suburban counties, rural women in the profession commonly cited as a disappointment the lack of time to complete work-related tasks and to spend with family.

d. Loss of Community Among the Bar¹³²

According to those surveyed, a loss of a sense of community among the legal community ranked second as a symptom of decline in the profession. All demographic groups ranked this symptom in the their top three choices. All rural participants agreed that an increase in the specialization of practice by many lawyers did not isolate members of the Bar.

¹³¹ See App. C, figure 4.1.

¹³² See App. C, figure 4.2.

Most participants also agreed that camaraderie with colleagues was a realized expectation. Although, when asked to list their greatest disappointments, many participants cited loss of community, a lack of mentoring for new lawyers, and no integration of the Bar.

e. Mentoring¹³³

The first priority suggested by rural participants as an issue to be addressed was to focus on mentoring. No other geographic group rated this priority in the top three. Demonstrating an increased interest in mentoring among the Bar also ranked high as a measurement of success for participants in rural counties. In addition, many participants in rural counties indicated that increasing the availability or number of apprenticeships for newer lawyers would be a desirable change in the profession to foster. In particular, minorities wanted to see apprenticeships fostered with over half of those surveyed ranking this change. Likewise, males and females also highly ranked apprenticeships as a change to foster. When asked about greatest disappointments many participants expressed concern about the lack of mentoring by the more experienced attorneys.

IV. NATIONAL PROFESSIONALISM UNDERTAKINGS

A. *National Symptoms of Lawyer Professionalism Decline*

Recent national efforts toward a comprehensive commitment to lawyer professionalism began in the late 1980s and early 1990s when public respect for lawyers was reportedly in crisis.¹³⁴ The ABA Commission on Evaluation of Professional Standards, having produced the Model Rules of Professional Conduct, and having attempted to prevent legal malpractice, created a Commission

¹³³ See App. C, figure 4.3.

¹³⁴ ABA PROFESSIONALISM COMMITTEE REP., TEACHING AND LEARNING PROFESSIONALISM 2-3, n. 5-7 (1996).

on Professionalism in 1985.¹³⁵ Specifically, the Commission examined and reported on issues of advertising and other forms of solicitation, fee structures, commercialization of the profession, competence, and the duty of the lawyer to the client and the court.¹³⁶ The Commission presented a report entitled, *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism* in August 1986.¹³⁷

Within a decade, in 1994, only 17% of Americans gave lawyers high ratings for honesty and ethical standards as compared to 27% in 1985.¹³⁸ A Seventh Circuit study conducted in 1991 revealed that 42% of lawyers and 45% of judges in that jurisdiction believe that civility is a profession-wide problem.¹³⁹ A 1996 survey of the District of Columbia Bar Association reported that 69% of attorneys identified civility as a problem.¹⁴⁰ In August of 1996, the ABA initiated the *National Study and Action Plan On Lawyer Conduct and Professionalism*, to respond to the decline in public confidence in the profession and the justice system in general.¹⁴¹ The National Action Plan noted:

[T]he Bar had become larger, more spread out geographically, more diverse, and more highly specialized, traditional informal mechanisms had become inadequate in and of themselves to educate lawyers about professional expectations and to encourage lawyers to

¹³⁵ Leonard W. Schroeter, *The Jurisprudence of Ethics: Should Legal Professionalism be in Accordance with Public Justice?*, WASH. ST. ACCESS TO JUSTICE 13, available at <http://www.wsba.org/atj/committees/jurisprudence/jurisethics.html> (last visited Aug. 12, 2003).

¹³⁶ *Id.*

¹³⁷ ABA COMMISSION ON PROFESSIONALISM, *supra* note 6.

¹³⁸ Allen K. Harris, *The Professionalism Crisis - The "z" Words and Other Rambo Tactics: The Conference of Chief Justices' Solution*, 53 S.C. L. REV. 549, 544 (2002).

¹³⁹ Sandra Day O'Connor, *Professionalism*, 76 WASH. U. L.Q. 5, 15 (Spring 1998) (citing the SEVENTH FEDERAL JUD. CIR. COMMITTEE ON CIVILITY INTERIM REPORT 9 (1991)).

¹⁴⁰ Sandra Day O'Connor, *Professionalism*, *supra* note 39, at 16 (citing the DC TASK FORCE ON CIVILITY IN THE PROFESSION FINAL REP. 10 (1996)).

¹⁴¹ CONFERENCE OF CHIEF JUSTICES' NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM: INITIATING ACTION, COORDINATING EFFORTS AND MAINTAINING MOMENTUM 1 (2001).

strive to achieve the highest professionalism ideals.¹⁴²

The National Action Plan urged the highest court in each state to undertake a professionalism study and improve lawyer conduct.¹⁴³ Implementation of the National Action Plan was encouraged by the ABA through two reports.¹⁴⁴ In addition to the National Action Plan, other efforts were undertaken to address the public's declining perception of lawyer professionalism. From the *National Conference on Public Trust and Confidence in the Justice System*, poor relations with the public and the Bar's role, compensation, and behavior ranked in the top ten of "Top Priority National Agenda Issues" affecting public trust and confidence in the justice system.¹⁴⁵ The Conference also focused on lawyer behavior and regulations of conduct.¹⁴⁶

Bar associations in each state began to focus on creating individual task forces on professionalism to understand the symptoms of decline, if any, within their legal communities. For example, the State Bar Association of Utah noted that there were three most often cited factors for the decline in professionalism: (i) the competitive demands of increasing commercialism; (ii) reflection of corresponding movements in general societal ethics and culture; and (iii) the current structure and organization of the legal profession.¹⁴⁷

Other state Bar associations explored similar declines in professionalism. Virginia conducted a study similar to that of Maryland, with town meetings and surveys.¹⁴⁸ Approximately 86% of

¹⁴² ABA STANDING COMMITTEE ON PROFESSIONALISM, A GUIDE TO PROFESSIONALISM COMMISSIONS 1, 9 (2001), available at http://www.aba.net.org/cpr/scop_commission_guide.html.

¹⁴³ CONFERENCE OF CHIEF JUSTICE'S NATIONAL ACTION PLAN ON LAWYER CONDUCT AND PROFESSIONALISM, *supra* note 1, at 2.

¹⁴⁴ See *supra* notes 141-42.

¹⁴⁵ NATIONAL CONFERENCE ON PUBLIC TRUST AND CONFIDENCE IN THE JUSTICE SYSTEM, NATIONAL ACTION PLAN: A GUIDE FOR STATE AND NATIONAL ORGANIZATIONS 16 (1999).

¹⁴⁶ *Id.*

¹⁴⁷ Jeffrey M. Vincent, *Aspirational Morality: The Ideals of Professionalism – Part II*, UTAH B.J. 12 (2002), available at http://www.utahbarjournal.com/html/april_2002_0.html (last visited Jul. 29, 2003).

¹⁴⁸ Thomas E. Spahn, *Professionalism & Civility: Lawyer Behavior in State and Federal Courts: Is There a Difference?*, 26 VA. B. ASSOC. ELEC. J. No. 6, at 117 (2000) at <http://www.vba.org/journal/sept00.htm3>.

Virginia's lawyers indicated that there is a serious problem with the professionalism and courtesy of Virginia lawyers and a majority indicated that the problem had grown worse over the years.¹⁴⁹ There was a notable distinction between the responses gleaned from the urban and rural regions regarding the decline in professionalism over the years.¹⁵⁰ Overall, Virginia lawyers ranked judges as being moderately responsible for the decline in professionalism while a majority cited lawyers as significantly responsible.¹⁵¹ When questioned whether the increasing problems in professionalism and civility were attributable to a "few bad apples," or a widespread problem, the lawyers overwhelmingly indicated the increase was due to a widespread problem.¹⁵²

The California State Bar Board of Governors noted that the win-at-all costs mentality had made the profession seem less honorable to both practitioners and the public.¹⁵³ In Florida, many lawyers that were surveyed by the Bar association about professionalism decline reported that there was "a 'substantial minority' of lawyers that were money grabbing; too clever, tricky, sneaky, and not trustworthy; who had little regard for the truth or fairness, willing to distort, manipulate, and conceal to win; arrogant, condescending, abusive; they were also pompous and obnoxious."¹⁵⁴

B. Resolutions to Lawyer Professionalism Decline

Many state Bar associations initiated professionalism committees or task forces through the guidance of the 2001 National Action Plan reports. Task forces conducted questionnaires and town hall meetings to gain insight into the extent of lawyer professionalism decline.¹⁵⁵ The following are

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ David Fetterman, *State Bar Board of Governors Calls for Higher Standards of 'Professionalism and Civility to be Promoted*, METROPOLITAN NEWS ENTERPRISE (Jan. 28, 1997).

¹⁵⁴ FL. B. ASSOC., *History of the Florida Commission on Professionalism*, at <http://www/fla.bar.com> (last visited Aug. 10, 2003).

¹⁵⁵ A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 16.

representative of many of the initiatives from the state and local Bars to address the decline in professionalism in the legal community.¹⁵⁶

1. Studies

Several states conducted studies to determine professionalism issues confronting attorneys.¹⁵⁷ The studies focused on monitoring professionalism, in accordance with historical projects reflecting the changing views of professionalism.¹⁵⁸ For example, the Joint Bar/Bench Task Force on Professionalism and Civility recently reported survey findings and a plan to evaluate the level of legal professionalism in Colorado.¹⁵⁹ In the study, “professionalism observers” (“POs”) were assigned to courtrooms to observe attorneys presenting motions and conducting trials.¹⁶⁰ Each PO completed a checklist for every attorney and judge participating in the proceedings.¹⁶¹ Depositions, mediation and arbitration sessions were also observed.¹⁶²

In Nebraska, a task force created by the Nebraska Bar Association studied whether state CLE requirements for lawyers and judges should be mandatory.¹⁶³ The Task Force sent out surveys to judges, in which a majority of judges indicated a strong support for the concept of a mandatory CLE in Nebraska.¹⁶⁴ Over half of the general legal population, however, felt that a mandatory CLE

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 5.

¹⁵⁸ *Id.*

¹⁵⁹ Craig Eley, *Alert: Civility Monitors Recommended: New Rule Would Have Retired Attorneys Evaluate Legal Profession*, DENV. B. ASSOC., THE DOCKET 1 (Apr. 2002).

¹⁶⁰ Participants sat in the spectator section of the courtroom to remain as unobtrusive as possible. *Id.* at 6.

¹⁶¹ A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 6.

¹⁶² *Id.*

¹⁶³ Jane L. Schoenike, *Recent Member Survey Shows Lack of Support for Mandatory Continuing Legal Education*, THE NEB. LAWYER 19 (Mar. 2001).

¹⁶⁴ *Id.*

requirement was not necessary.¹⁶⁵ Additionally, most lawyers and judges in Nebraska felt that the current level of ethics and professionalism was adequate.¹⁶⁶

The New York State Judicial Institute on Professionalism in the Law appointed a working group that studied “core values,” and examined barriers faced by lawyers seeking to enter the profession, lawyers seeking mobility within the profession, and clients seeking affordable legal assistance.¹⁶⁷ Moreover, the Institute also assessed the current professionalism disciplinary system, suggested possible alternatives and recommendations for the improvement of lawyers’ image through education or publicity.¹⁶⁸ Other states such as North Carolina, Florida, Texas and Georgia, have undertaken projects that identify varying views of professionalism among members of their respective state Bar associations.¹⁶⁹ The resources included videotaped interviews with pre-eminent lawyers and judges regarding their views on professionalism and the practice of law.¹⁷⁰

2. Convocations

Some state Bar associations initiated periodic convocations that bring together representatives from the practicing Bar, the judiciary, and law schools to discuss issues of professionalism.¹⁷¹ Wisconsin attorneys addressed civility through discussion groups from various segments of the Bar,¹⁷² and have, in the past, included law students in such convocations.¹⁷³ Since 1988, Georgia’s Commission on Professionalism has conducted statewide convocations on

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 4.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.* at 16.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 11.

¹⁷² WISCONSIN STATE BAR COMMISSION ON LEGAL EDUCATION REP. 7 (1996).

¹⁷³ *Id.* at 8 (referring to the SEVENTH FEDERAL JUD. CIR. COMMITTEE ON CIVILITY FINAL REP. (1992)).

professionalism to address the concerns of professionalism, and to define the ideals of professionalism.¹⁷⁴

The New Jersey Bar Association has an annual symposium that focuses on professionalism, in addition to an outreach program that meets with individuals and groups from throughout the legal community, including federal and state judges, and managing partners from major law firms, to discuss pertinent concerns of professionalism.¹⁷⁵

The New York State Judicial Institute on Professionalism in the Law, has held convocations designed to explore the transition from law school to legal practice and the roles that law schools and legal employers play in shaping the professional values of new lawyers.¹⁷⁶ The convocations brought together leaders of the practicing Bar and select representatives of the State's law schools to examine the profile of students accepted into law school, the socialization of law students in the profession, and law students graduating and stating employment.¹⁷⁷ These convocations included breakout sessions in which groups of lawyers, judges, and academics discussed how to improve the relationship between the practicing Bar and the academy.¹⁷⁸

3. Town Hall Meetings

Town hall meetings are another forum, similar to convocations, to bring together lawyers, judges, law professors and deans, and members of the public to discuss matters of professionalism.¹⁷⁹

¹⁷⁴ A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 11.

¹⁷⁵ NEW JERSEY COMMISSION ON PROFESSIONALISM, *at*

http://www.nsba.com.commission_on_prof/index.cfm?fuseaction=njcop (last visited July 24, 2003).

¹⁷⁶ A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 11.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.*

The Georgia State Bar Association conducted two successful town hall meetings in which approximately 2,000 lawyers and judges participated from across the State.¹⁸⁰ The first meeting, conducted from 1992 to 1994, covered twelve communities and focused on “Attorney Concerns about Ethics and Professionalism.”¹⁸¹ The recommendations from these town hall meetings led to the establishment of two programs in the state: law school orientation on professionalism, in addition to the existing professionalism curriculum, and the law practice management program.¹⁸²

The second survey in Georgia, conducted from 1994 - 1996, revolved around “Professionalism in Client Relations.”¹⁸³ In these town hall meetings, clients and members of the community were invited to participate in order to better explore client concerns about representation, client relationships with lawyers, public access to the justice system, public perceptions of the justice system, and effective communication between clients and lawyers.¹⁸⁴ Recommendations from these meetings helped create the Consumer Assistance Program, whose purpose is to resolve non-disciplinary complaints through conciliation, negotiation, and education.¹⁸⁵ Additionally, the Committee on the Standards of the Profession was created in order to investigate the Bar’s responsibility to train new lawyers in competent and professional client representation.¹⁸⁶

4. New Admittees Courses

Several state Bar associations and organized professionalism committees focus on the development of courses for lawyers newly admitted to the state Bars and law students. The Georgia

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 12 .

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

Bar Association has a new-admittee professionalism course, “Professionalism in Client Relations,” that stemmed from the recommendations of a 1996 report.¹⁸⁷

The Georgia State Bar Association also developed “Orientations on Professionalism” for law schools in the state, which received the ABA/Information America Client Relations Project Award in 1994.¹⁸⁸ The programs are presented to law students on behalf of the law schools, the organized Bar, the practicing Bar, and the judiciary.¹⁸⁹ One aspect of the program is a series of hypothetical questions focusing solely on professionalism in the law school experience to re-enforce the notion that lawyer professionalism begins with their experiences as law students.¹⁹⁰ While many of these programs are directed at first year students, the Georgia State Bar Association also created professionalism programs for second and third year law students to expand the professionalism programs.¹⁹¹

Law schools in Florida conduct an orientation on professionalism program that consists of judge participants, breakout groups of students and lawyers, and a reception where the students can mingle with faculty, judges, and lawyers to discuss some of the issues addressed in the program.¹⁹² In addition, every year the Florida State Bar Standing Committee on Professionalism, in conjunction with the Supreme Court of Florida’s Commission on Professionalism, sponsors a law student essay contest on professionalism.¹⁹³

5. Professionalism Awards

¹⁸⁷ *Id.* at 13.

¹⁸⁸ A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 13.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ FL. B. ASSOC., *supra* note 155, at 5.

Several state Bar associations sponsor annual professionalism awards that are given to lawyers who best exemplify the standards of professionalism.¹⁹⁴ The Washington State Bar Association sponsors the “Random Acts of Professionalism Program,” where attorneys and judges honors those in the profession who have conducted themselves in a highly professional manner and exemplify the state’s *Creed of Professionalism*.¹⁹⁵ The New Jersey Bar Association presents a “Professional Lawyer of the Year Award” to deserving lawyers across the state.¹⁹⁶ The Center of Professionalism in Texas, in conjunction with the local Bar associations, presents an award at local Bar events for lawyers that are admired by the local Bar and believed to be exemplars of professionalism.¹⁹⁷

6. Ethics and Professionalism Hotlines

The Washington State Bar Association initiated a hotline where lawyers may call and speak with professional responsibility counsel to discuss their individual situations for clarification of ethical and professional issues.¹⁹⁸ Most lawyers seek help for issues such as avoiding client conflicts, problems caused by termination of a lawyer’s services, transference of client files, lawyer advertising, maintaining client confidences and secrets, and handling trust accounts.¹⁹⁹

7. Mentoring Programs

Many state Bar associations, subcommittees and commissions on professionalism focus on mentoring programs to help alleviate some of the problems with lawyer professionalism. These

¹⁹⁴ *Id.*

¹⁹⁵ *Professionalism Committee News of the Wash. St. B. Assoc.*, available at <http://www.wsba.org/lawyers/groups/professionalism/default.htm> (last visited Apr 24, 2003).

¹⁹⁶ NEW JERSEY COMMISSION ON PROFESSIONALISM, *supra* note 175.

¹⁹⁷ A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 13.

¹⁹⁸ WASH. STATE B. ASSOC. ETHICS/PROFESSIONAL RESPONSIBILITY PROGRAM, available at <http://wsba.org/lawyers/ethics/default1.htm> (last visited Aug. 10, 2003).

¹⁹⁹ *Id.*

mentoring programs are administered by the state Bar associations, local Bar associations, or subcommittees thereof, and are intended for new attorneys and/or law students to help smooth the transition from law school to legal practice.²⁰⁰ Through mentoring, new lawyers and law students learn about different practice areas and the profession in general. Mentors serve to provide new lawyers and law students with character references, answers for questions they may face in their work or studies, and a role model for their professional development.²⁰¹ Mentoring programs serve as a good contact between experienced attorneys and novice attorneys, who may have little professional experience or direction on their job. For example, Georgia's Commission on Professionalism oversees a law student mentoring program that puts lawyers and law students together for the duration of their law school careers.²⁰² The Commission hosts an orientation program for mentors, provides materials for the program, plans events to bring together mentors and students, and also serves as a resource for questions and suggestions from both mentors and law students.²⁰³ Recently, Georgia's Commission has also initiated a program for new attorneys during their first two years after admission to practice.²⁰⁴

8. Conciliation Programs

Many state and local Bar associations have facilitated programs that serve as a forum for addressing lawyers' complaints about the conduct of other lawyers without forcing the parties to go through formal disciplinary procedures.²⁰⁵ Additionally, the Seventh Federal Circuit recommends lawyers of those respective states to participate in civility, professionalism, and/or mentoring

²⁰⁰ A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 14.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

programs in the professional legal associations and Bar associations as well as participation in one of the American Inns of Court.²⁰⁶

9. Publications and Websites

The judiciaries in some states, state Bar associations, and state professionalism commissions and committees have prepared a variety of materials concerning important issues of professionalism and have distributed them directly to the legal community or by way of published articles in Bar journals.²⁰⁷ In addition, articles focused on professionalism and civility may be found in various law journal and law review articles.²⁰⁸ Moreover, the ABA has prepared a list of selected biographies on professionalism and civility that is posted on their public website.²⁰⁹

Several websites are dedicated to professionalism - one of the most notable being the Nelson Mullins Riley, and Scarborough Center on Professionalism at the University of South Carolina School of Law.²¹⁰ Several state Bar associations such as those of Washington, New Jersey, New Mexico, Tennessee, Florida, Texas, Georgia, Wisconsin and others, have professionalism issues, publications and committees/commissions on the website of their state and local Bars.

C. State-By-State Requirements Managing Lawyer Professional Conduct²¹¹

Attorney law practice requirements differ by state and are regulated by the Bar of each state. These specific requirements may include a law school professional responsibility course; incorporation of professional responsibility on the state Bar exam, a passing score on the Multistate

²⁰⁶ SEVENTH FEDERAL JUD. CIR. COMMITTEE ON CIVILITY, *supra* note 139, at 12.

²⁰⁷ A GUIDE TO PROFESSIONALISM COMMISSIONS, *supra* note 142, at 15.

²⁰⁸ *See* App. F.

²⁰⁹ Christine Godsil Cooper, *Selected Biography: Professionalism and Civility*, at <http://www.bna.combooks/abana/annual/98/T43AM98.doc> (last visited Aug. 10, 2003).

²¹⁰ Nelson Mullins Riley and Scarborough Center on Professionalism, University of South Carolina School of Law, *Resources to Improve the Competence and Conduct of the Legal Profession*, at <http://www.professionalism.law.sc.edu/initiatives.cfm> (last visited Aug. 10, 2003).

²¹¹ *See* App. C, figure 5.

Bar Exam; a proscribed minimum passing score on the Multistate Professional Responsibility Exam; Continuing Legal Education (CLE) requirements; and CLE requirements on professionalism and/or civility. Additionally, many states have issued reports on professionalism and have institutionalized codes of professionalism at the state and local Bar level.

Bar examiners in all fifty states require that each Bar applicant fulfill a professional responsibility course.²¹² Professional responsibility and/or ethics is tested on the Bar exam twenty-six states.²¹³ Moreover, the Multistate Bar Exam is a required component of the Bar exam in every state with the exception of Louisiana and Wisconsin.²¹⁴ In addition to the Bar exam requirements and law school curriculum, all but three states require the Multistate Professional Responsibility Exam.²¹⁵ The three states that do not require the Multistate Professional Responsibility Exam are Maryland, Washington, and Wisconsin.²¹⁶

In an effort to increase lawyer professionalism and civility, several state Bar associations and judiciaries have initiated task forces, commissions, committees and reports to study and develop this issue. There are twenty-three states that have produced professionalism reports created by the task forces, commission, committees, etc.²¹⁷ Moreover, professionalism codes have been established by state Bar associations in all but four states.²¹⁸

²¹² ABA, at <http://www.abanet.org/legaled/miscellaneous/faqs.html> (last visited Aug. 10, 2003); *see also* App. C, figure 5.

²¹³ *Alabama State Bar Admissions Office List of Bar Exam Requirements by State* (2003), at <http://www.mbe.pli.edu/statebars/> (last visited Aug. 10, 2003); *see also* App. C, figure 5.

²¹⁴ *Multistate Examination Use*, at <http://www.ncbex.org/tests/use.htm> (last visited Aug. 10, 2003); *see also* App. C, figure 5.

²¹⁵ *Id.* at App. C, figure 5.

²¹⁶ *Id.*

²¹⁷ CENTER FOR PROFESSIONAL RESPONSIBILITY: PROFESSIONALISM REP., at <http://www.abanet.org.cpr.profreports.html> (last visited Aug. 10, 2003); *see also* App. C, figure 5.

²¹⁸ ABA, available at <http://www.abanet.org>, (last updated Dec 3, 2002); *see also* App. C, figure 5.