

**REPORT OF THE TASK
FORCE ON
PROFESSIONALISM**

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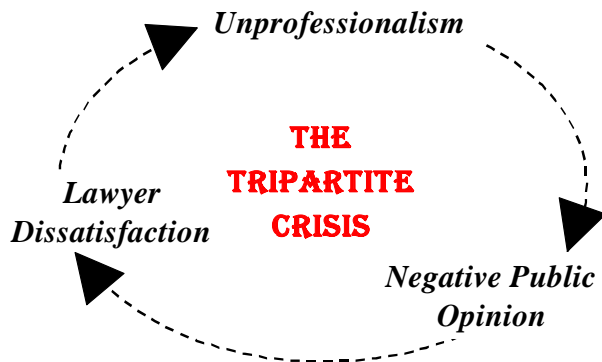
REPORT OF THE TASK FORCE ON PROFESSIONALISM

The Problem

In a January 2002 survey commissioned by the Litigation Section of the American Bar Association, fifty-nine percent (59%) of the public respondents believed that most lawyers are knowledgeable about the law and are interested in serving their clients. But thirty-four percent (34%) of the respondents stated that lawyers deserve the bad reputation they have.

Interviewees complained that lawyers misrepresent their qualifications, over promise, fail to make full disclosure about fees, charge too much, take too long to resolve matters, and fail to communicate timely with their clients. They also claimed that lawyers do a poor job of self-policing, and regarded the Bar not as a protector of the public but as a club to protect lawyers. Only nineteen percent (19%) of all respondents were extremely or very confident in lawyers.

The phrase “tripartite crisis” has been applied as the umbrella term for these widely publicized problems with professionalism, public opinion, and lawyer dissatisfaction.¹ These problems are interdependent and can create a damaging cycle. As professionalism declines, the public opinion of lawyers declines. When public opinion declines and commercial pressures increase, lawyers become increasingly dissatisfied. In turn, maladaptive coping mechanisms for this dissatisfaction can lead to social isolation, alcoholism, drug abuse and a catalog of bad behaviors. These behaviors are likely to cause professionalism to deteriorate even further, exacerbating an already negative public



perception of lawyers.

¹ Susan Daicoff, ASKING LEOPARDS TO CHANGE THEIR SPOTS: SHOULD LAWYERS CHANGE: A CRITIQUE OF SOLUTIONS TO PROBLEMS WITH PROFESSIONALISM BY REFERENCE TO EMPIRICALLY-DERIVED ATTORNEY PERSONALITY ATTRIBUTES, 11 Geo. J. Legal Ethics 547, 549 (1998)

The ABA survey results point to what might be termed the “external” attributes of unprofessional conduct. Many of us within the profession see another side of unprofessional conduct that includes name-calling, profanity, discrimination, bias, harassment and general incivility. Some of this misconduct is clearly forbidden by our ethical rules - the Arizona Rules of Professional Conduct. However, much of this conduct is difficult to define and regulate through formal rules. Such conduct has been broadly characterized as unprofessional behavior.

The National Center for State Courts’ Conference of Chief Justices, comprised of the highest ranking judges from each state, describes the principles of professionalism as broader than the prevailing rules of legal ethics and reflecting such fundamental values as "civility, ... competence, integrity, respect for the rule of law, participation in pro bono and community service, and conduct by members of the legal profession that exceeds the minimum ethical requirements."²

In that spirit, the State Bar of Arizona was one of the first in the nation to mandate a required course in "professionalism." Every lawyer in the state has now completed the professionalism course and we should recognize that as a major achievement. Yet, as many recent studies have documented, a single-day course is no panacea. Far too many lawyers continue to behave unprofessionally.³

WORK OF THE TASK FORCE

The Task Force on Professionalism was appointed by Former State Bar President Pam Treadwell-Rubin and consists of judges, lawyers and lay persons from throughout the state. The Task Force has been meeting regularly as a group and in various subcommittees since November, 2003.

The Task Force divided its mission into three parts. The first was to establish a working definition of "professionalism." The second was to address the causes of unprofessional behavior. The third was to make practical recommendations designed to promote professional behavior and decrease unprofessional behavior among the lawyers practicing in Arizona.

DEFINITION OF PROFESSIONALISM

The Task Force defines "professionalism" as follows:

² Conf Chief Justices, *A National Action Plan on Lawyer Conduct and Professionalism 2* (1999), available at www.ncsc.dni.us/CCJ/NATLPLAN/. (hereafter ACTION PLAN.)

³ Id., see also, for example, Subha Dhanaraj, MAKING LAWYERS GOOD PEOPLE: POSSIBILITY OR PIPE DREAM?, 28 Fordham Urb. L.J. 2037 (2001); Susan Daicoff, ASKING LEOPARDS TO CHANGE THEIR SPOTS: SHOULD LAWYERS CHANGE: A CRITIQUE OF SOLUTIONS TO PROBLEMS WITH PROFESSIONALISM BY REFERENCE TO EMPIRICALLY-DERIVED ATTORNEY PERSONALITY ATTRIBUTES, 11 Geo. J. Legal Ethics 547, 549 (1998); Rob Atkinson, A DISSENTER'S COMMENTARY ON THE PROFESSIONALISM CRUSADE, 74 Tex. L. Rev. 259, 271-75; Sean P. Ravenel, THE CONTAGION OF EXAMPLE Attacking the Root of the Problem in Lawyer Professionalism, 49-DEC Fed. Law. 31 (2002).

Professionalism requires lawyers to act at all times with honesty, integrity, courtesy, and respect, and to render excellent service to their clients and communities."

We have chosen a definition of professionalism that applies to lawyers both on and off the job because the public sees us as lawyers at all times, not just in court or in our offices.⁴ Integrity, courtesy and respect are not qualities that lawyers should feel free to jettison whenever they are away from work. They are qualities that constitute what used to be understood as "character". At the same time, the Task Force understands that the concepts of integrity, courtesy and respect are somewhat subjective and thus difficult to enforce the same way we enforce the Rules of Professional Conduct. In many ways, therefore, our definition of professional is aspirational. Nevertheless, we believe that our recommendations can have influence the behavior of lawyers for the better.

CAUSES OF PROFESSIONAL CONDUCT

The Task Force believes that sound suggestions for dealing with unprofessional conduct require some understanding of the reasons why lawyers behave badly. We did not undertake a scientific study. Nor did we wish to offer excuses. Accordingly, the Task Force explored those conditions that contribute to unprofessional behavior in hopes of identifying areas where progress can be made. In our view, the causes of unprofessional behavior fall into three categories – personal, systemic, and cultural. The categories have fluid boundaries -- many of the factors are interrelated and could easily appear in more than one category.

Personal Causes:

1. Personality.

Generally speaking, lawyers are competitive creatures. Many have big egos and strong personalities. We often think we can resolve problems whether we can or not and, as a result, often bite off more than we can chew. This, in turn can lead to heightened stress that can adversely affect our behavior. Other lawyers suffer from a sense of insecurity that makes it difficult for them to ask for help when it is needed. Others simply may not know they need help, seeing nothing wrong with their offensive conduct.

Sole practitioners and lawyers in small firms are particularly susceptible to a kind of isolation that can only add to stress and pressure. Even lawyers in larger firms may be afraid to ask for help. But both isolation and a reluctance to ask for help when one is under pressure are a prescription for stress and bad behavior.

⁴ The Task Force strongly urges the State Bar to include within its disciplinary and professionalism reach those lawyers who work in this state and are identified as lawyers but are not members of the Bar. Examples include in-house counsel, federal lawyers and law professors who are not licensed in Arizona.

2. Client and Business Pressure.

Personality aside, many lawyers find themselves in a very competitive environment and under constant pressure from clients or others to take on more work. In this climate, it can be difficult to turn down work. Sometimes, lawyers take on extra work just to make ends meet; sometimes we are under pressure from our supervisors or partners to produce more; sometimes the motive may simply be the ambition to get rich. In any case, the pressure and stress can increase dramatically the more we extend ourselves beyond our personal limits.

3. Overload, Time Management, and Poor Relational Skills.

Many lawyers have too much work and relatively few are blessed with the very best time-management skills. Moreover, few law school courses touch on matters of office and time management. Consequently, too many lawyers find themselves performing a frantic juggling act that adds to their stress and can foster poor behavior.

Many lawyers also lack the relational skills needed to deal well with clients. It is all too easy to forget that law is a service industry. Listening, demonstrating an understanding of our clients' needs and wants, and devoting personal attention to a client are not the strongest skills of many lawyers. As a result, complaints about not returning phone calls and insensitive treatment of clients are rampant.

4. Poor Coping Skills.

Our work makes extraordinary demands on our family and personal lives. And our family problems can spill over into our practice. It is no accident that isolation and substance abuse are high among lawyers.

5. Self-Defense.

Sometimes, bad behavior begets bad behavior. When another lawyer [or client or witness] is being uncivil, it can be difficult not to give back what you get.

Systemic causes:

5. Muddled, Unclear or Uncertain Expectations about Professional Conduct.

Just what is "professional" is often a subjective matter. Unlike the Rules of Professional Conduct, there are no "rules" for "professional behavior." The Rules do not even address "unprofessional" behavior. Many Task Force members have the sense that lawyers are trained more to recognize what the Rules require or forbid than on how to achieve the attributes of professionalism.

For example, A Lawyer's Creed of Professionalism and the Oath of Admission have far less visibility than the Rules of Professional Conduct. There is no direct link between the lawyer's oath and creed and respect and civility. Indeed, we have done a

poor job of communicating to ourselves that it is in our profession's own best interests to create a work environment in which we treat each other with respect.

Many task force members believe that we have created an image for ourselves that undermines professionalism. Lawyer advertising and the media generally contribute to the stereotype of lawyers as aggressive and insensitive. One Arizona attorney Yellow Pages advertisement characterizes the lawyer as "Ferocious". Another Arizona attorney ran a telephone book ad that read: "Our Practice Includes Returning Your Calls Promptly".

As the images of the hostile lawyer become legitimized, our clients too often expect us to match the stereotype. They may pressure us to behave unprofessionally. It is difficult not to be affected just as the child with a bad reputation behaves the way people expect the child to behave.

Negative images may also be one reason why the profession has had a hard time soliciting public input relating to unprofessionalism. The public simply expects that we will ignore their comments.

6. Inherent Reluctance to Tackle or Challenge Unprofessional Behavior.

Lawyers and judges are often reluctant to challenge unprofessional behavior. Practitioners rarely report "unprofessional" as opposed to "unethical" conduct. Some have a fear of "tattling." Indeed, they rarely confront bad behavior in any way. Similarly, judges are hesitant to confront a lawyer in open court and some feel they cannot confront a lawyer "ex parte."

7. Absence of Sanctions for Unprofessional Behavior.

Because there are no "rules" regarding unprofessional behavior and because there is a lack of challenge, the State Bar finds it difficult to sanction such behavior. Although recent efforts to enforce Rule 41(g) of the Rules of the Arizona Supreme Court⁵ dealing with "offensive personality" have shown some promise, the Task Force believes that the lack of boundaries and sanctions actually encourages bad behavior by reinforcing the reluctance to challenge unprofessional behavior.

8. Insufficient Training in Law School and Little or No Guidance for Inexperienced Lawyers.

Professionalism is not an innate virtue. Inexperienced lawyers need to learn how to be professional. Outside of clinical programs, law schools do little to integrate "professionalism" into the curriculum. And after graduation, there is little guidance for lawyers as they begin practice. The lack of a model for professional behavior allows

⁵ Ariz.R.S.Ct 41 (g) requires lawyers "To abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the justice of the cause with which he is charged."

"bad" habits to proliferate. Poor preparation, poor mentoring and inadequate training leave young lawyers little reason to doubt that bad behavior pays.

9. Competing Objectives.

Without a culture of and commitment to professionalism, competing objectives take over. Professionalism may lose out to making partner or attaining rainmaker status or qualifying for a bonus or capital share. Lawyers also fear malpractice liability if they do not pursue every possible avenue to achieving client goals, regardless of the merit.

6. The Nature of the Lawyering.

The very nature of lawyering poses two challenges to professional conduct. First, much of what lawyers do is subject to challenge by another lawyer or party. There is nearly always an "opposing" party - either in court or across the table. The never ending adversarial nature of what we do takes a toll on our ability to act professionally. Second, lawyers are rarely called upon to speak from their own point of view. We present our clients' points of view -- whether or not, they are consistent with our own. This can create internal conflicts and undermine our sense integrity.

10. Resources.

When we recognize that unprofessional behavior needs to be confronted, we fail to utilize the existing State Bar peer review system. The peer review system can be effective in confronting bad behavior in a productive way. However, it will not accomplish much if it is not used. The professionalism course does too little to identify and reinforce good behavior. The course needs to be redesigned to avoid the impression that it is about "them" and not about "me." The same may be said about current MCLE programs.

Cultural Causes:

1. Little or No Support System.

Small firms or solo practitioners have relatively limited access to training and mentoring arrangements. Large law firms do not always teach or mentor professionalism and may even instill bad habits through inattention or poor modeling. The State Bar has had difficulty promoting professional conduct through its Professionalism Course, peer review process and CLE programs.

2. Lack of Celebration.

Praising and rewarding examples of professionalism are an extremely under utilized way to promote good behaviors. There needs to be more recognition for lawyers who exemplify professionalism in their practice.

3. Wider Social Forces Have Diminished Civility and Courtesy.

It may well be the case that civility, respect and courtesy are on the decline in society at large. If so, lawyers are not immune and must work to restore a sense of professional community to counter this cultural development. The lack of community both inside and outside the profession makes mutual respect more difficult to attain.

SOLUTIONS:

The solutions to the problem of unprofessional conduct must start with the law schools and carry on through the lawyer's entire practice life and even into retirement. Once we graduate from law school we are "lawyers" and that label will rarely be ignored. Even a disbarred lawyer is still referred to as a lawyer. The same is true for a retired lawyer or an inactive lawyer. Consequently, solutions should be designed with the lawyer's entire career cycle in mind. In addition, the Task Force believes that all solutions must recognize and address the fundamental question of how professional behavior can not only enhance the quality of our lives and contribute to the administration of justice but also make us more successful lawyers.

The Task Force recommendations are broken down into three areas: law schools; the State Bar; and the judiciary. Each institution has a responsibility and without each no long term solutions can be realized.

Law School:

Law schools play a critical role in developing a culture of professionalism. The law school experience sets the tone for all new lawyers. What is learned in law school, both in and out of the classroom, is the foundation from which new lawyers begin their careers and stays with them for years to come.

The Task Force strongly encourages both state law schools to re-commit to an educational program which supports and nurtures the values of honesty, integrity, courtesy and respect and which embodies the qualities of excellent service to clients and to the greater community. The Task Force urges both law schools to develop classroom and co-curricular activities which focus not only on the values of professionalism but also on the root causes of unprofessional behavior -- which causes may be impacting law students before they ever set foot on campus.

With those goals in mind, the Task Force recommends that both state law schools re-examine their own professionalism programs and activities. The Task Force further recommends that each school issue a written report to the State Bar outlining the specifics of its commitment to professionalism. This report should include a description of what has been done in the past, a thorough look at current activities, and a statement of strategies that are contemplated for the future.

In making this recommendation, the Task Force recognizes the need for academic freedom and creativity. Each school and each faculty member has distinctive strengths and faces distinctive constraints. Thus, we do not recommend any particular approach to

professionalism education but encourage a collaborative effort between both schools and their faculties. The report of the law schools should be submitted to the State Bar not later than October 1, 2005.

In addition, we strongly urge both law schools to involve the practicing law community in creating and implementing their professionalism program. Both academics and law students can benefit immensely from contact with and the expertise of practitioners, judges, paralegals, legal support personnel, court personnel, the State Bar and even disbarred lawyers. Involving practitioners will expose law students to the insights and experience of quality professionals. In addition, it will foster mentoring and will help law students build connections and develop a sense of community with the world they are about to enter.

The State Bar of Arizona:

The Bar has many good programs to further professionalism including Peer Review and Member Assistance. Some programs require less change than others. All programs need better publicity and utilization.

1. Peer Review.

Fortification of Services Provided by Peer Review

Peer Review currently relies on volunteer members of the State Bar to address complaints about unprofessional behavior that do not rise to the level of a violation of the Rules of Professional Conduct. Members of the Peer Review Committee contact respondents after the Bar receives a complaint about a lawyer's behavior. Participation in the program is voluntary. This means that the committee member contacts the respondent and identifies the concern. The respondent can choose not to discuss the matter. If the respondent declines to participate, the matter is closed. Committee members do not currently have the authority to require a lawyer to participate in any diversion programs, such as attending another professionalism course, participating in an anger management program, or accepting a practice monitor.

Peer Review is almost 15 years old and was designed to provide an informal mechanism to address concerns about incivility. The program averages less than two dozen referrals each year. The program may receive so few referrals because lawyers (and judges) are not aware of its existence and because potential complainants suspect the voluntary program will have little impact on the respondents.

The Task Force believes that Peer Review can be a tool for addressing unprofessional conduct if the program is given more authority. We offer several recommendations for enhancing the options available through Peer Review. These recommendations reflect the Task Force's views of the causes of unprofessional behavior.

2. Intake of Professionalism Referrals.

(a) *Sources of Referrals*

Referrals for unprofessional behavior will be sent to the State Bar offices in Phoenix and may be written, electronic, or by phone. The complainant must be identified -- the Bar will not accept anonymous referrals. Referrals may come directly from lawyers, judges, or the public, or from the Attorney/Consumer Assistance Program of the State Bar. A referral will be logged in to the State Bar database as a professionalism inquiry but will not be listed as an open discipline investigation. Preferably the database will include a separate field for professionalism referrals, similar to the existing category for "Peer Review"

(b) *Basis for Referral (as opposed to going to Discipline)*

The referral must allege that a lawyer engaged in unprofessional behavior in violation of the Supreme Court's definition of professionalism. Such allegations will only be considered for referral to Peer Review if the conduct as alleged initially does not appear to be a violation of the Rules of Professional Conduct.

(c) *Role of Staff Counsel*

All proposed referrals to Peer Review shall be reviewed by State Bar staff counsel. Counsel shall consider the following factors when deciding whether to refer to Peer Review: 1) the nature of the alleged unprofessional conduct; 2) whether the potential respondent is currently in formal disciplinary proceedings; and 3) whether the respondent has received prior referrals to Peer Review. If the respondent has received fewer than three prior referrals to Peer Review, the matter may be assigned to a Peer Review volunteer. If there have been prior referrals, the matter shall be assigned to the same Committee member who communicated with the respondent on the prior referrals. Staff Counsel also may communicate directly with the referred lawyer, if Staff Counsel believes that the conduct in question can be addressed by a phone call.

Although one instance of unprofessional conduct may not subject the lawyer to discipline, multiple instances may. Consequently, if the respondent has received three or more referrals for unprofessional behavior, the matter will be transferred to the Lawyer Regulation Department for investigation of possible ethical violations. Staff Counsel may consult with the Chief Bar Counsel regarding disposition of Peer Review referrals.

(d) *Assignment of Volunteer*

Staff counsel shall assign referrals to Peer Review volunteers on a rotating basis, but shall first confirm that the Peer Review volunteer can review the matter within 72 hours of referral. As noted above, repeat respondents will be assigned to the same Peer Review volunteer who handled the prior referrals. Volunteers must check for conflicts of interest before accepting a referral and must adhere to the time guidelines for processing referrals.

3. Initial Meeting with Peer Review Volunteer

(a) *There must be an initial meeting*

The Peer Review volunteer assigned to a referral shall contact both the complainant and the respondent within 72 hours of assignment. The volunteer will then schedule a face-to-face meeting with the respondent, which may or may not include the complainant. The Task Force believes that at least one face-to-face meeting between the volunteer and the respondent is crucial to encourage a candid discussion of the concerns raised in the referral and to reach a positive resolution.

(b) *Role of complainant*

As with disciplinary proceedings, complainants are not parties to the Peer Review process but the volunteer assigned to a referral shall keep the complainant apprised of the status of the matter and the volunteer's recommended disposition. The complainant will be contacted by the volunteer to discuss the recommendations and to provide guidance to the complainant, if that individual is a lawyer or judge, regarding how unprofessional behavior may be addressed in the future. The complainant should receive a copy of the respondent's written response regarding disposition of the matter and may be provided an opportunity to reply to the respondent's response. Arizona Supreme Court Rule 52 should be amended to reference Peer Review complainants.

(c) *Training*

All Peer Review members should go through a comprehensive training to explain the changes in the Peer Review process and the new options available to them. This training should include specific guidelines on confidentiality, timeliness of processing, the complainant's role, the conduct of the respondent meeting, and disposition options.

(d) *What if the Respondent declines to meet with the volunteer?*

Arizona Supreme Court Rules 47(j), regarding a lawyer's failure to provide information to the Bar, should be amended to reference Peer Review referrals and the obligation of lawyers to participate in discussions with the Peer Review Volunteer. Also, Rule 48 needs a new clause to establish the official role of Peer Review as a Bar program to address professionalism issues. Presently participation in Peer Review is voluntary; the respondent lawyer may decline to speak with the Committee volunteer and the matter is then closed. The rules should be amended to state that respondents must participate in the meeting with the Committee volunteer or else the conduct alleged will be deemed admitted.

The Supreme Court Rules should expressly state that a respondent in a Peer Review referral shall have the opportunity to meet with a Peer Review volunteer and to submit a written statement and documents in support of the respondent's position. The Rules also should authorize the Peer Review volunteer to refer a matter to the Lawyer Regulation Department of the State Bar for further review if the respondent declines to participate in the Peer Review process.

4. Peer Review Volunteer Recommendation After Initial Meeting

Once the Peer Review volunteer and the respondent complete their face-to-face meeting, the volunteer must complete a written report, with recommendations for disposition, within thirty days of the meeting. A copy of the report shall be sent to both the complainant and the respondent. The report shall set forth the nature of the complainant's concerns, the respondent's position, and any additional facts obtained by the volunteer that are relevant to the volunteer's recommended disposition of the matter. The report shall then recommend, and explain the reasoning for recommending, one of the following dispositions:

(a) *Close the matter*

Upon the recommendation of the volunteer, a Peer Review referral will be closed after the initial meeting, if the volunteer determines that the referral either had no merit or the respondent has adequately addressed the unprofessional behavior by, for example, sending a letter of apology to the complainant or meeting with or calling the complainant to acknowledge that the behavior was unprofessional.

(b) *Recommend Further Action*

The Peer Review volunteer may suggest additional training, mentoring, or courses for the respondent lawyer in order to enhance the lawyer's professionalism. Any such suggestions are merely that -- suggestions. The respondent will not be required to comply with the recommendations but the report will be kept as part of the Peer Review referral file. These suggestions may include accepting a Peer "mentor" attending a new professionalism enhancement course, attending anger management or other stress-management programs, or utilizing the Member Assistance Program.

5. Member Assistance Program

The number of lawyers with substance abuse, gambling or other addictive or debilitating problems will always be higher than the profession can or should tolerate. Identifying and helping lawyers with problems is of vital importance to us because failing to address these problems can cause great damage to our clients, to third parties, to the lawyer and to the profession. Lawyers may intuitively know or recognize certain health or practice problems, but intuition alone is not sufficient. To that end, part of the professionalism course should teach lawyers to recognize the symptoms of addictive behaviors.

In addition, more public members should be enlisted to assist with the Member Assistance Program which is designed to assist lawyers with such problems. These public members need not be mental health professionals, but to the extent possible we should encourage mental health experts to participate. MAP also should be authorized to conduct interventions. MAP staff should be encouraged to work with public agencies and law firms of all sizes in presenting information programs regarding the dangers of and treatment for addictive behavior.

The current process for placing a Bar member on medical disability should be reviewed. Ideally, those lawyers who willingly commit to treatment regardless of whether they volunteered or were recommended of treatment should be medically suspended for no longer than necessary to complete treatment provided that the lawyer abides by the terms and conditions of a Bar approved aftercare program.

6. LOMAP

Law office management referrals frequently have professionalism components. The LOMAP staff should work closely with Peer Review and Lawyer Regulation to develop methods of screening for and addressing professionalism problems.

7. Other programs

Other Actions by the Bar and Board of Governors:

(1) One of the things that makes the quest for professionalism so difficult is that we do not all agree on what professionalism entails. We have adopted a definition, but the term may still mean different things to many people. The Bar needs to do is adopt the definition, develop standards which elaborate on the definition, publish the standards, and promote compliance with them. This will require the Supreme Court approval and judiciary support.

(2) There is strong sentiment that increasing professionalism in the Bar cannot and should not be fostered solely by punitive means. Educational programs contribute. However, the Bar must do more to reward professional conduct. The BOG should give an annual award to the lawyer whose conduct best exemplifies professionalism. The Arizona Attorney should publish vignettes describing notable examples. The Supreme Court should give a professionalism award and public agencies employing lawyers as well as private law firms should do the same.

(3) The BOG should establish a standing committee on Professionalism. This Committee should work with the Peer Review Panel; conduct a survey of judges and lawyers and solicit solutions; and provide input into CLE programs to ensure that they include professionalism topics.

(i) The committee should produce a 15 minute video on professionalism to be shown at all Bar sponsored CLE programs and it should encourage private CLE providers to do the same. The committee should also assist in the development of more interesting professionalism related CLE programs.

(ii) The committee should develop and publish a pamphlet for lawyers to give to their clients that advises them

about the requirements of professionalism in an effort to shape client expectations for lawyers.

(4) The Arizona Attorney should report professionalism conduct determined to have violated the Rules of Professional Conduct.

(5) The Professionalism Course should be revised to make it more interesting and should provide information on how to respond to unprofessional conduct and on what to report to the Bar. The course should be mandated every five years. Because some professionalism problems tend to show up at particular stages in a lawyer's career, classes should be comprised of lawyers with similar years of experience: 0 to 5 years; 6 to 10 years; 11 to 20 years; and 21 or more.

(6) The State Bar President should have an on-line luncheon chat each year on the subject of professionalism.

(7) Staff Bar Counsel should work with the standing committee to ensure that recurring forms of unprofessional conduct are brought to the committee's attention.

(8) The Bar needs to educate the public about the importance it attaches to lawyer professionalism and the measures the Bar takes to promote it. Such education can be promoted through the Bar's web site, its publications, community programs or any method calculated to reach the public.

(9) The following committees should be brought under the aegis of the Professionalism Committee: Peer Review, Mentor and Member Assistance. To effectively address problems of unprofessional conduct, a focused, coordinated approach is essential.

(10) The State Bar should reinstitute the Bar Admissions Ceremony. If we are going to create a culture of professionalism, we ought to celebrate the values associated with professionalism at the very moment we mark as the beginning of a new lawyer's career. There may be no better opportunity to associate professionalism with a sense of pride in the legal community than at the special event when a new person enters the profession.

(11) The Bar should produce programs concerning legal services for public radio and television.

(12) The Bar should sponsor more free legal advice days for the public.

(13) The Bar should establish a mentoring program with a goal of providing a mentor to all new attorneys.

The Judiciary

The judiciary plays a key role in promoting professionalism in the Bar and thereby improving the administration of justice. The responsibility of the judiciary is twofold.

First, judges must set an example for attorneys and litigants of professional and dignified behavior. Attorneys and litigants take their cues from the judge on what is acceptable and appropriate behavior. Unprofessional behavior by judges undermines the judicial process by signaling those appearing before the Court that unprofessional conduct is allowable.

Second, judges are in a unique position to stop or discourage unprofessional conduct when it occurs in their presence or brought to their attention. Over the years, too few judges have involved themselves in issues of professionalism. But now, more than ever, Judges cannot stay on the sidelines. Judges owe a responsibility to the Bar and to the integrity of the judicial process to address professionalism by setting a good example and by addressing bad behavior when it occurs.

Because this will be a departure for some judges, training must be offered and should include some programs in which judges and lawyers participate together. The training should also be sufficiently uniform to ensure that there is a consistent expectation of professionalism in all Courts of the State.

A judge's response to unprofessional behavior should be appropriate and measured. Options available to the Judge include:

- (1) Meeting with an offending attorney in chambers to discuss the unprofessional conduct.⁶
- (2) Meeting with both attorneys and articulating the expected standard of conduct or noting any observed deviations. Stating a standard for behavior is particularly important before unprofessional conduct starts.
- (3) Sending a letter to the offending attorney.
- (4) Contacting the offending attorney's supervisor if one exists
- (5) Filing a peer review or ethics complaint with the State Bar.
- (6) Agreeing to settle feuds or personality conflicts between attorneys.

Finally, there must be a realization that judges and the Bar are jointly responsible for the reputations of the legal profession. We should set a high standard of professional

⁶ If this task force report is approved a rule change will be submitted which modifies the existing prohibition on ex parte comments to permit communications related to unprofessional behavior.

conduct and then work together to assure we meet high standards. If we do, our working environment will be better and reputation will take care of itself. Judges cannot assume others will bear these burdens. The Supreme Court should communicate its desire for judges to act in the face of unprofessional conduct and should provide leadership in designing appropriate training programs.

CONCLUSION

The problem of unprofessional conduct pulls at the heel of our profession. It endangers lawyers' relationships with the courts and the public, and it breeds negative attitudes about our profession. It prevents us from moving forward with alacrity.

The causes of unprofessional behavior are some of the very things that lawyers have thought they needed to succeed: competitiveness, zeal, long hours. Yet, these same causes and other factors can negatively impact our professional and community lives. Moreover, we are always lawyers. Stated differently, we are never off duty.

So how do we tackle the problem? Fortunately, more and more lawyers are committed to addressing problems of unprofessional conduct and to better understanding how professional behavior can lead both to professional success and to an improved quality of life. With that commitment in mind, this report makes numerous recommendations which will require further work to bring to fruition. It is the hope of the Task Force that the Board of Governors will endorse the report, the proposed changes to Rules 53(c), 31(a)(2) and 41(g), and begin the implementation of the recommendations offered.