

## I. Background: The Derivation of the Professionalism Commissions

Although the existing professionalism commissions came about in various ways and their missions are defined somewhat differently, generally speaking they were established in response to two insights. The first is that, as the bar has become larger, more spread out geographically, more diverse, and more highly specialized, traditional informal mechanisms have become inadequate in and of themselves to educate lawyers about professional expectations and to encourage lawyers to strive to achieve the highest professional ideals. It has therefore become increasingly important for the legal profession, collectively and more formally than in the past, to promote professional values widely among practitioners and future practitioners. The second insight is that, although existing entities in each state - in particular, state and local bar associations, law schools and the courts - currently make important contributions to promoting lawyer professionalism, this important objective can be further and materially advanced by a new entity - namely, a professionalism commission - which undertakes the task of promoting lawyer professionalism as its principal mission.

The founders of the existing commissions typically undertook serious study before reaching these conclusions, organizing and establishing a commission, and defining its mission. Considerable groundwork was necessary for a variety of reasons. Thought needed to be given to the questions of how to successfully establish and finance a professionalism commission and how to bring together existing institutions and individual practitioners to support it. Thought also needed to be given to the structure of the commission and to the question of what activities it would undertake. Among the considerations that have shaped the organization and mission of professionalism commissions are: the nature of law practice in the state and the extent to which law practice varies between rural and urban areas or between other geographical sections of the state; whether the state has an integrated bar (as in Alabama, Florida, Georgia, New Mexico, Oregon, South Carolina and Texas) or a voluntary bar (as in Hawaii, Illinois, Maryland, New Jersey, New York, North Carolina and Ohio); the nature of the activities and resources already in place to promote lawyer professionalism; and the nature of the relationship, and extent of cooperation, among the bar, the judiciary, and the legal academic community.

*Alabama. No information available.*

*Florida.* In Florida, the state bar association established a task force in 1989 to study the apparent decline in professionalism among lawyers in the state. The task force's work led to the creation of The Florida Bar's Standing Committee on Professionalism. The success of the Committee's work was, in turn, the impetus for the creation of a permanent organization to oversee daily operations of the committee. Thereafter, The Florida Bar's Center on Professionalism and the Supreme Court of Florida's Commission on Professionalism were established to work together to promote professionalism throughout the state. The collaborators began with a "vision," a "mission," and a prescribed "path." The vision was "[t]o realize a just legal system and a legal profession warranting the trust of society;" the mission was "[t]o promote the fundamental ideals and values of the justice system and the legal profession, and to instill those ideals in all those persons serving and seeking to serve in the system;" and the path toward that objective was "[t]o

identify the problems that have frustrated the achievement of the ideals of the system of justice and the legal profession; to suggest solutions; and to develop methods to improve our professional behavior through leadership, education and allocation of resources."

*Georgia.* In Georgia, the Chief Justice's Commission on Professionalism was established by the Supreme Court, whose judges had previously written extensively on the subject of professionalism. The court order, dated February 1, 1989, described the impetus for its creation as the "recognition of the need for emphasis upon and encouragement of professionalism in the law practice." In part because of concerns about frequent changes in state bar leadership, the Commission was created separately from the bar and is, essentially, an agency of the Supreme Court. Its mission is "to support and encourage lawyers to exercise the highest levels of professional integrity in their relationships with their clients, other lawyers, the courts, and the public and to fulfill their obligations to improve the law and the legal system and to ensure access to that system." Toward this end, the Commission calls lawyers to three tasks: to recognize that lawyers exist "to act as problem solvers performing their service on behalf of the client while adhering at all times to the public interest," [t]o utilize their special training and natural talents in positions of leadership for societal betterment," and "[t]o adhere to the proposition that a social conscience and devotion to the public interest stand as essential elements of lawyer professionalism."

*Hawaii.* The Commission was established on March 14, 2005 by an Order of the Hawaii Supreme Court. Establishment of the Commission was recommended by the Hawaii Supreme Court's Committee to Formulate Strategies for Implementing the Conference of Chief Justice's National Action Plan on Lawyer Conduct and Professionalism.

*Illinois.* On November 19, 2001, the Illinois Supreme Court issued an order establishing the Special Supreme Court Committee on Professionalism. The Committee was created in response to the growing perception of lawyers' diminishing regard for the core values of the profession. Concerns about the lack of civility, the decline of the public understanding and appreciation of the legal system generally, and of judges and lawyers, motivated the activities of the Committee. Through a variety of formal and informal mechanisms including town hall meetings, symposia, surveys and the collection of anecdotal evidence, observers expressed substantial and growing concern about the decline of professionalism amongst the members of the bar. In 1999 the Conference of Chief Justices had recommended that each state establish a Commission on Professionalism or similar agency under the direct authority of the appellate court of highest jurisdiction. With the support and leadership of the Chief Justice, the Illinois Supreme Court adopted the recommendations of their Special Committee on Professionalism and in December 2005 created the Illinois Supreme Court Commission on Professionalism.

*Maryland.* 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, the Chief Judge of the Maryland Court of Appeals established the Maryland Judicial Task Force on Professionalism. The Task Force was composed of twenty-four Maryland lawyers: one from each Maryland jurisdiction and a lawyer reporter. After an initial organizational meeting, the Task Force

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 Task Force found a near unanimous perception that professionalism in the legal profession had declined over the years. In order to further professionalism as an important core value, the Task Force recommended that a Professionalism Commission be established and that the Commission, drawing on the findings of the Professionalism Task Force, identify indicia of professionalism, develop standards of professional conduct to be published to the bench and Bar, and study specific ways to improve professionalism throughout the State. On November 10, 2003, the Maryland Court of Appeals adopted the Professionalism Task Force’s recommendation to establish a Professionalism Commission.

*New Jersey.* In New Jersey, the State Bar Association was the driving force behind the Commission. It initially appointed a Professionalism Committee that studied lawyer professionalism during 1992 and 1993. The Committee recommended that a commission be established as a joint undertaking of the New Jersey State Bar Association, the judiciary, and the state's three law schools. The State Bar and the deans of the law schools issued a joint letter to the Supreme Court asking for its support, and in 1995, the Supreme Court agreed to the creation of the New Jersey Commission on Professionalism in the Law. Its goal is to promote and encourage professionalism within New Jersey's legal community through education and other efforts. The objectives of the New Jersey Commission are reflected in the *Principles of Professionalism for Lawyers and Judges* that it developed. The Principles, which focus on the goals of professionalism and civility, address lawyers' relations with clients, other counsel, and the courts. The preamble recognizes that:

Adherence to standards of professional responsibility, along with a broad respect for the law, is a hallmark of an enlightened and effective system of justice. The conduct of lawyers and judges should be characterized at all times by professional integrity and personal courtesy in the fullest sense of those terms. Both are indispensable ingredients in the practice of law, and in the orderly administration of justice by our courts.

While acknowledging that the Principles "are aspirational in nature and are designed to assist and encourage judges and lawyers to meet their professional obligations," the preamble "encourage[s] all judges and lawyers to make a commitment to these Principles, and to conduct themselves in a manner that preserves the dignity and honor of the judiciary and the legal profession."

*New Mexico.* The New Mexico Commission was established by order of the Supreme Court on May 2, 2000.

*New York.* The New York State Judicial Institute on Professionalism in the Law was established by an administrative court order of the Chief Judge of the Court of Appeals (the state's highest court) in March, 1999. This was the product of four years of study and planning, beginning in 1995, when the Chief Judge appointed the Committee on the Profession to examine the issue of professionalism in New York. The Committee issued a host of recommendations among which was the establishment of a professionalism institute in New York State. To propose how to implement various recommendations,

including this one, the Chief Justice then appointed a Task Force on Attorney Professionalism and Conduct. Its subcommittee intensively studied the question of what role a professionalism institute could best serve and how it could best be organized and funded. Among other things, the subcommittee polled state and local bar association presidents and law school deans and gathered material from the then-existing professionalism commissions of other states. Its ultimate recommendations were adopted by the Chief Judge, who appointed the new Institute's members.

The administrative order creating the New York Institute lists the following five purposes: "to promote the awareness of and adherence to professional values and ethical behavior by lawyers in the State of New York; to encourage and support the organized bar, law schools, and other institutions of the legal profession in efforts to undertake effective programs, individually and in concert, for the promotion of such awareness; to promote scholarship regarding, and practical attention to, emerging issues in the practice of law that may present issues of professionalism or legal ethics; to promote public understanding of matters relating to the role of law, and to professionalism, ethics and discipline in the legal profession; [and] to facilitate cooperation among practitioners, bar associations, law schools, courts, civic and lay organizations and others in addressing matters of professionalism, ethics and public understanding in the legal profession." To date, the institute has concentrated on studying how the changes in the legal profession - e.g., the increase in the number of lawyers, lawyer diversity, and international practice - have affected the level of attorney professionalism. As the Institute Chair, Louis Craco, has explained, "If you wait for crisis and then put together some blue ribbon commission, you are both too late and insufficient . . . The notion was that since these changes are not going away and these pressures are not going away and the need for legitimate understanding of what professionalism means and implies is not going away, there ought to be an institute . . . that is not going away."<sup>4</sup>

*North Carolina.* In North Carolina, the Chief Justice of the North Carolina Supreme Court and the officers of the North Carolina State Bar were the driving forces behind the Chief Justice's Commission on Professionalism, which was founded in 1998. The Commission was created after study of the organization and programs of already-established professionalism entities around the country. Its mission is embodied in its lawyer's professionalism creed:

To my clients, I offer competence, faithfulness, diligence, and good judgment. I will strive to represent you, as I would want to be represented and to be worthy of your trust.

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

To the courts, and other tribunals, and to those who assist them, I offer respect, truthfulness, and courtesy. I will strive to do honor to the search for justice.

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<sup>4</sup> John Caher, *Call for Bridge From Academia to Practice*, N.Y.L.J., Nov. 15, 2000.

To the profession, I offer assistance. I will strive to keep our profession a high calling in the spirit of *pro bono* and public service.

To the public and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.<sup>5</sup>

*Ohio.* In 1989, the Chief Justice of the Supreme Court of Ohio created a Committee to Study Creeds of Professionalism, which met throughout 1989 and 1990. Among other things, the Committee recommended the formation of a permanent Commission that would serve an oversight function and that would make recommendations to the Supreme Court about lawyer professionalism. In 1992, the Supreme Court adopted Rule XV for the Government of the Bar of Ohio, which created the Supreme Court of Ohio Commission on Professionalism. The Commission was directed to address the Court's concern that lawyers were increasingly overemphasizing commercialism in the practice of law and giving insufficient importance to the tradition of law as a learned profession to be conducted with dignity, integrity and honor and as a high calling dedicated to the service of clients and the public good. This trend, the Court believed, was reflected in lawyers' emphasis on financial rewards, a diminishing of courtesy and civility among lawyers in their dealings with each other, a reduction in respect for the judiciary and the system of justice and a lessening of regard for others and commitment to the public good.

*Oregon.* The Oregon Supreme Court/Oregon State Bar Joint Commission on Professionalism was established in 1994 by order of the Oregon Supreme Court. The purpose of the Commission is "to promote among lawyers and judges principles of professionalism, including civility and commitment to the elimination of discrimination within the judicial system to ensure that it equitably, effectively, and efficiently serves the people of Oregon." The Commission's efforts focus on education through CLE panel discussions, articles in the Oregon State Bar Bulletin, and outreach to law schools.

The Oregon Commission has had limited activity. The Professionalism Committee of the Multnomah Bar Association, which serves the metropolitan region of Portland, has been the leader in promoting professionalism initiatives throughout the state of Oregon. Although not a statewide Commission as such, it provides an excellent example of what a large bar within a state can accomplish. The original driving force behind the creation of the Committee in 1987 was the then-president of the Multnomah Bar Association. The Committee's objectives are reflected in the bar's Professionalism statement: "Professionalism goes beyond observance of the legal profession's ethical rules and serves the best interests of clients and the public in general; it fosters respect and trust among lawyers and between lawyers and the public, promotes the efficient resolution of disputes, and makes the practice of law more enjoyable and satisfying."

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<sup>5</sup> The Lawyer's Professionalism Creed of the North Carolina Chief Justice's Commission on Professionalism is modeled after The Lawyer's Creed of the state of Georgia.

*South Carolina.* On November 22, 2000, the Supreme Court of South Carolina, in response to a recommendation by the Board of Governors of the South Carolina Bar, created the Chief Justice's Commission on the Profession. The Court adopted Rule 420, which stated that the Chief Justice's Commission was created in recognition of the need for the emphasis upon and encouragement of professionalism in the practice of law.

*Texas.* In Texas, the Texas Bar Foundation began in 1983 to consider a major project for improvement of the litigation system. Thereafter both the Bar Foundation and the Texas Supreme Court appointed task forces on Legal Ethics and Professionalism. They were mandated to look at a number of projects, including a lawyers' creed of professionalism, and "a Texas Center for Legal Ethics and Professionalism." The Texas Supreme Court and Court of Criminal Appeals then jointly promulgated The Texas Lawyers' Creed of Professionalism in November 1987, and the Texas Bar Foundation established the Texas Center for Legal Ethics and Professionalism a month later in order to promote and embody the values of the Creed and ethics, professionalism, and civility generally. Three former Chief Justices of the Texas Supreme Court were the incorporators and the founding group from the Bar Foundation became the original Board of Trustees, who wrote bylaws and created an advisory council. The Texas Center is a nonpartisan, non-profit independent corporation that is now loosely affiliated for logistical purposes with the integrated bar. Its mission is to enhance professionalism, ethics and civility among lawyers by using all available resources to focus the attention of lawyers, law students, the judiciary, and the public on excellence in the profession and the adherence by the profession to high ethical standards.