Statement of the ABA Standing Committee on Professionalism

A Duty to Act:
The Court Funding Crisis and a Lawyer’s Professional Identity

The existence of a fair and functional justice system, open to all, is inextricably bound up with every lawyer’s professional identity. As it threatens the very foundations of American justice, the pervasive court funding crisis tears at the core of what it is to “be” a lawyer in our society – that sense of who we are, as public-minded legal professionals.

Certainly any number of potentially dire consequences should move members of the bar to stand as one against the fiscal dismantling of our courts, among them: Worsening inequality in the treatment of “haves” and “have-nots” within our legal system; waning overall access to trial courts (still the main engine of American justice); the loss of diversionary court resources that reduce recidivism and help restore people to lawful, productive lives; and economic inefficiencies caused by slow and ineffective court processes. As ABA President Wm. T. (Bill) Robinson III has urgently pointed out, if left unchecked the erosion of the justice infrastructure surely endangers American democracy itself.

Further motivation wouldn’t seem necessary, but this additional reason to care about our courts’ fate should strike home for every lawyer: The courts crisis places a pillar of our professional existence at risk. To be a professional lawyer is to actively serve the public’s interest in maintaining a just society. To remain silent as the edifice of American justice starts to crumble is to be something other than a true lawyer, at least in the professional sense of the word.

Academics, judges, practitioners and bar leaders have given much thought to what constitutes “professional identity” among lawyers, and have arrived at varying definitions as part of the broader professionalism inquiry. All prescriptions for how we should self-identify as lawyers, however, rest on the bedrock of service to the justice system.

Lawyer as Public Citizen

The lawyer’s duty as a public citizen devoted to justice is found, and not by accident, in the opening sentence of the Preamble to the Model Rules of Professional Conduct. It states, “[1] A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.”¹ (Emphasis added.)

¹ MODEL RULES OF PROF’L CONDUCT Preamble 1 (2011).
Law professors examining notions of professional identity have consistently identified commitment to the justice system as one indispensable element of that identity. As one recent example, Professor David Thompson, Director of the Lawyering Process Program at the University of Denver, Sturm College of Law, has defined professional identity among lawyers as “one’s own decisions about [professional] behaviors...as well as a sense of duty as an officer of the court and responsibility as part of a system in our society that is engaged in upholding the rule of law.”

In foundational authority on point, Dean Roscoe Pound’s well-traveled definition of professionalism places a primary emphasis on public service. “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.”

In its report, Teaching and Learning Professionalism, the Professionalism Committee of the ABA Section of Legal Education and Admissions to the Bar took Dean Pound’s definition a step further. “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.”

The late ABA President Jerome Shestack, a professionalism pioneer who energized the modern movement, wrote of six elements “that are the essence” of that definition, among them: “Obligations to the rule of law and the justice system.”

That the courts of this nation and the great justice machine they represent are under siege is not in question. The National Center for State Courts found that 42 states reduced funding for their judiciaries in 2011. A Center survey determined that 34 states had eliminated court staff and 23 had cut hours.

The notion that personal commitment to preservation of the justice system is integral to our very identity as lawyers is driven home by the professionalism

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creeds and codes of many of our state supreme courts and state bars. Consider a few representative examples:

Georgia:

From *The Lawyer’s Creed*

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.*” ⁶ (Emphasis added.)

From the *Aspirational Statement on Professionalism*

(d) *To preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good. (e) To make the law, the legal system, and other dispute resolution processes available to all.*” ⁷ (Emphasis added.)

Ohio:

From *Professional Ideals for Ohio Lawyers and Judges*, Introduction

Professionalism requires lawyers and judges to remain mindful that their *primary obligations are to the institutions of law and the betterment of society, rather than to the interests of their clients or themselves.*” ⁸ (Emphasis added.)

From *A Lawyer’s Creed*

To the public and our system of justice, I offer service. *I shall devote some of my time and skills to community, governmental and other activities that promote the common good. I shall strive to improve the law and our legal system and to make the law and our legal system available to all.*” ⁹ (Emphasis added.)

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⁷ *Id*.
⁸ Supreme Court of Ohio, Professional Ideals for Ohio Lawyers and Judges 6 (1997).
⁹ *Id.* at i.
The Canadian perspective on a lawyer’s public duties is similar:

From Remarks of the Chief Justice of Ontario

Professionalism is . . . the guiding light to lawyers in meeting their obligations to the public they serve, in defending the rule of law, and in upholding their duties and responsibilities to clients and to the court. Stated differently, being a lawyer, being a professional, means committing oneself to the fair administration of justice and to doing one’s part in facilitating true access to justice.\(^\text{10}\)

**For the Professional Lawyer, Support of the Court System Is Not Discretionary.**

All roads thus deliver us to the same conclusion. If we identify ourselves as lawyers, support of the justice system at a time of great distress is not discretionary. The need to respond, in and for the public interest, is part of our professional DNA, and informs our professional duty.

That duty-driven connection has been self-evident to bar leadership. This year, in a closely coordinated effort, the ABA and state and local bars have indeed stood as one, converging on Washington, D.C., and state capitals to make the critical case for adequate funding of our courts. The ABA Task Force on Preservation of the Justice System has eloquently and starkly framed the issue, and for those holding the public purse strings there can be no doubt of the widespread damage inflicted by inadequate court resources.

As those who self-identify as legal professionals, even as we acknowledge the important, essential advocacy of the organized bar on the courts crisis, we might ask ourselves what we have done individually, as public citizens, to support our system of “justice for all” in its hour of need. Our answer to that question may serve as answer to the larger one:

Are you a lawyer?

\(^{10}\) Chief Justice Warren K. Winkler, Remarks at the Law Society of Upper Canada’s Call to the Bar Ceremony (June 5, 2010).