

Implementation Plan for the Conference of Chief Justices'

National Action Plan on Lawyer Conduct and Professionalism



Adopted August 2, 2001 by the Conference of Chief Justices



Center for
Professional
Responsibility




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Section I. Introduction

A. Development of the Conference of Chief Justices' *A National Action Plan on Lawyer Conduct and Professionalism*

The court of highest jurisdiction in each state has the ultimate authority and responsibility for regulating the legal profession. This includes oversight of the creation, evaluation and maintenance of standards of conduct and professionalism for the legal community and the development and implementation of effective enforcement and public protection mechanisms.

In August 1996, the Conference of Chief Justices passed a resolution for a *National Study and Action Plan Regarding Lawyer Conduct and Professionalism*. In that resolution the Conference noted a significant decline in professionalism in the bar, and a consequent drop in the public's confidence in the profession and the justice system generally. The Conference noted that "there is the perception and frequently the reality that some members of the bar do not consistently adhere to principles of professionalism and thereby sometimes impede the effective administration of justice."¹ The Conference determined that a strong, coordinated effort by state supreme courts to enhance their oversight of the profession was needed.

In 1997, the American Bar Association Center for Professional Responsibility and the Conference of Chief Justices co-sponsored a successful two-day conference for state supreme court chief justices and their invited guests. This conference, entitled *Regulatory Authority Over the Legal Profession and the Judiciary: The Responsibility of State Supreme Courts*, was held in Rancho Bernardo, California. The conference was funded by a grant provided by the State Justice Institute. A copy of the program from that conference is attached to this Implementation Plan as Appendix A.

The interactive Rancho Bernardo program allowed the chief justices to address the decline in the public's perception of the legal profession. Programming provided the chief justices with a unique opportunity to discuss recommendations and initiatives relating to the exercise of the courts' regulatory authority over members of the bar and the justices' supervisory authority over the judiciary. To enhance the dialogue and provide the chief justices with the broadest possible spectrum of information, they were encouraged to bring one or two individuals from their respective jurisdictions who had integral roles in improving and implementing lawyer and judicial disciplinary mechanisms. These individuals included other state supreme court justices, appellate and trial court judges, court administrators, lawyer and judicial disciplinary counsel and bar officials.

The Rancho Bernardo conference meaningfully enhanced the involvement of the chief justices in the regulation of the legal profession by inspiring them to take action to

¹ *National Study and Action Plan Regarding Lawyer Conduct and Professionalism*, adopted by the Conference of Chief Justices, Nashville, Tennessee, at the Forty-eighth Annual Meeting, August 1, 1996.

improve the lawyer and judicial regulatory mechanisms in their jurisdictions, as well as to increase professionalism. That unique forum and the conference materials distributed to the participants provided a substantive basis for the formulation of the Conference of Chief Justices' January 1999 *A National Action Plan on Lawyer Conduct and Professionalism*. The National Action Plan and the report of the proceedings of the Rancho Bernardo conference were published and disseminated as a single volume in March 1999 to the chief justices, lawyer disciplinary agencies and state bar associations throughout the United States.

The National Action Plan sets forth programs, initiatives and recommendations designed to increase the efficacy of the state supreme courts' exercise of their inherent regulatory authority over the legal profession. The National Action Plan calls upon the state supreme courts to "take a leadership role in evaluating the contemporary needs of the legal community with respect to lawyer professionalism and coordinating the activities of the bench, the bar, and the law schools in meeting those needs."²

Also in the Spring of 1999, the ABA Center for Professional Responsibility published *The Lawyer Regulation Handbook*. This companion publication to the National Action Plan is a user-friendly reference that collects relevant ABA policy and presents samples of exemplary programs, rules and initiatives from around the country that can be employed to stimulate and generate advances in lawyer professionalism and regulation. The Table of Contents page from *The Lawyer Regulation Handbook* is attached as Appendix B.

B. The Need for Implementation of the National Action Plan

Since the publication of the National Action Plan, other efforts have been undertaken to address the public's declining perception of the justice system. The National Conference on Public Trust and Confidence in the Justice System was held in May 1999, in Washington, D.C. At that conference state supreme court justices, court managers, representatives of the federal judiciary, members of the bar, the public and the media discussed issues affecting public trust in the justice system. The program was sponsored by the Conference of Chief Justices, the American Bar Association, the Conference of State Court Administrators and the League of Women Voters, with support from the National Center for State Courts.

The issues affecting public trust and confidence discussed at that conference, as well as at two related symposia, were narrowed and ranked via electronic voting. Strategies to address these issues were proposed and discussed. These prioritized issues and strategies provided the substantive basis for the publication of the *National Conference on Public Trust and Confidence in the Justice System, National Action Plan: A Guide for State and National Organizations*. That publication contains, in addition to a discussion of the conference proceedings, its own implementation plan.

² *A National Action Plan on Lawyer Conduct and Professionalism*, adopted by the Conference of Chief Justices, January 21, 1999, Nashville, Tennessee.

Of note, poor customer relations with the public and the role, compensation and behavior of the bar in the justice system were ranked in the top ten “Top Priority National Agenda Issues” affecting public trust and confidence in the justice system.³ These issues are directly related to recommendations contained in the National Action Plan. For example, Recommendation E of the National Action Plan, Public Outreach, proposes ways for the courts and the bar to be proactive in providing the public with information about ethics and professionalism as well as the justice system. The remaining recommendations of the National Action Plan address lawyer behavior and regulation of that conduct. A copy of the black letter recommendations contained in the National Action Plan is attached as Appendix C.

In light of the issues raised during and since the publication of the National Action Plan, representatives of the ABA Center for Professional Responsibility and the Conference of Chief Justices felt that it was important to continue the valuable dialogue started at Rancho Bernardo – to actively evaluate efforts to implement the National Action Plan and assist the chief justices in maintaining their leadership role in the regulation of the legal profession. In November 1999, the Open Society Institute provided a generous grant to the ABA Center that allowed it to work with the Conference of Chief Justices, the National Center for State Courts and other interested organizations to coordinate this dialogue and assess the needs of all segments of the profession with respect to implementation of the National Action Plan.

The ABA Center developed this Implementation Plan to assist the chief justices in identifying and addressing those needs, and to ensure a sustained and coordinated implementation effort that will increase public confidence in the legal profession and in the justice system. Implementation of the National Action Plan will also strengthen judicial independence and public access to the regulatory process.

A draft of this Implementation Plan was presented and discussed at the March 22-24, 2001 conference in Del Mar, California, entitled *The Role of the Court in Improving Lawyer Conduct and Professionalism: Initiating Action, Coordinating Efforts and Maintaining Momentum*. A copy of the conference program is attached as Appendix D. That conference was attended by justices from 35 jurisdictions and their invited guests.

Conference participants provided comments and suggestions that have been incorporated into this final Implementation Plan. On August 2, 2001, the Conference of Chief Justices adopted the Implementation Plan. A copy of the Conference of Chief Justices’ Resolution 15, adopting the Implementation Plan, is attached as Appendix E.

C. The Implementation Plan for the Conference of Chief Justices’ A National Action Plan on Lawyer Conduct and Professionalism

This Implementation Plan sets forth a proposed umbrella structure and process for implementation of all of the initiatives and recommendations contained in the Conference

³ *National Conference on Public Trust and Confidence in the Justice System, National Action Plan: A Guide for State and National Organizations*, February 1999, p. 16.

of Chief Justices' *A National Action Plan on Lawyer Conduct and Professionalism*. A separate, specific process for creating Professionalism Commissions is contained in the companion publication, *A Guide to Professionalism Commissions*, which was also presented and discussed at the March 2001 Del Mar conference. The Guide was published by the ABA Center for Professional Responsibility with part of the 1999 grant from the Open Society Institute.

The Implementation Plan is designed to facilitate strategic planning and serve as a national reference for state supreme courts and other entities and individuals involved in the implementation of the National Action Plan. Additionally, the Implementation Plan is intended to promote ongoing national and local dialogue about lawyer conduct and professionalism and their relationship to public confidence in the legal profession. It fosters vital information sharing about implementation activities. The Implementation Plan contains sections addressing the following areas:

- Development of resources;
- Development of an implementation infrastructure; and
- Creation of an electronic information sharing network.

The Implementation Plan proposes solutions to the coordination difficulties inherent in dealing with a variety of agencies and organizations that in the past may have had limited contact with each other. It is intended to provide a sense of direction and continuity and to help develop sustained collaborative relationships between the courts, the bar associations, disciplinary authorities, law schools and the public.

Section II. Development of Resources

A. The Role of the Court in Providing Funding/Resources for National Action Plan Initiatives

Section II of the Conference of Chief Justices' *A National Action Plan on Lawyer Conduct and Professionalism* contains recommendations for state courts to improve lawyer conduct and professionalism. For purposes of this Implementation Plan, the National Action Plan definition of professionalism applies. The National Action Plan defines professionalism as encompassing "not only civility among members of the bench and bar, but also competence, integrity, respect for the rule of law, participation in pro bono and community service, and conduct by members of the legal profession that exceeds the minimum ethical requirements." *A National Action Plan on Lawyer Conduct and Professionalism*, January 21, 1999, p. 18.

The National Action Plan recommendations are based upon the responses provided in 1998 to a survey on state professionalism initiatives coordinated by the Conference of Chief Justices, the National Center for State Courts and the American Bar Association Center for Professional Responsibility. The survey results were summarized in briefing papers prepared for the Conference of Chief Justices' Working Group on Lawyer Conduct and Professionalism. The briefing papers and the survey instruments are attached as Appendices to the National Action Plan.

If the National Action Plan is to be implemented successfully, the court and the bar will have to pay particular attention to funding and resources (including professional and volunteer staff) for the programs and initiatives described therein. The 1992 Report of the ABA Commission on Evaluation of Lawyer Disciplinary Enforcement (the McKay Commission), entitled *Lawyer Regulation for a New Century*, contains several recommendations relating to the state supreme courts' obligations to ensure adequate funding and resources for their lawyer disciplinary agencies. In particular, the McKay Report notes, "If regulation of the profession is to remain within the province of the judicial branch, the Court must act to insure that adequate funding is available.... The Commission recognizes that these and other recommendations in this report are going to be expensive."

The same is true with respect to the initiatives contained in the National Action Plan, many of which mirror those contained in the McKay Report. Implementation of the National Action Plan initiatives will require sustained funding and resources. State supreme courts, which bear the ultimate authority for the regulation of the profession, should ensure that these programs are adequately funded and staffed.

B. Standards and Sources of Funding/Resources

Different initiatives need different levels of funding/resources. Some programs, such as mentoring, may not require a large amount of money to operate, but do require significant volunteer efforts. Other programs, such as an effective lawyers' fund for client

protection, require considerable resources in terms of money. Lawyer disciplinary agencies require higher levels of funding and staffing.

In order to determine appropriate funding and resource levels for National Action Plan implementation, a self-evaluation is recommended and discussed in further detail in Section III. In addition, the court may wish to formulate standards that will be used to assess the need for resources and funding. With such standards, the court will be better able to determine if current funding and staffing for existing programs is sufficient, and whether resources are being used effectively. Creating standards in this area will assist in planning for the future stability and growth of newly instituted programs.

Sources of funding and resources for implementation of National Action Plan recommendations will vary. They will include:

- Lawyer licensing fees;
- Mandatory assessments for client protection funds and lawyer assistance programs;
- Bar associations dues;
- Grants;
- Reimbursement by disciplined attorneys of the costs of disciplinary enforcement;
- Volunteer efforts; and
- Contributions of equipment and technology.

Section III. Implementation Infrastructure

A. The Role of the Conference of Chief Justices

In order to provide guidance and oversight of the implementation effort at a national level, it is recommended that the Conference of Chief Justices create a National Action Plan Implementation Committee. This Committee would be responsible for sustaining the Conference of Chief Justices' efforts to promote and implement the National Action Plan recommendations. In this regard it is recommended that the Committee monitor implementation efforts in the states via the electronic information network described in Section IV, continue to study and evaluate the issues relating to lawyer conduct and professionalism and their impact on the public's perception of the profession, propose policies for adoption by the Conference, and lead the Conference's education and public relations efforts with respect to the National Action Plan, its implementation, and the courts' role in effectively regulating the profession. The Committee should report regularly to the Conference about implementation efforts, obstacles and successes.

It is recommended that the Committee consist of no more than nine chief justices from jurisdictions of varying size and lawyer populations. Suggested liaisons to the Committee include representatives from the National Organization of Bar Counsel, the National Association of Bar Executives, the National Conference of Bar Presidents, the American Inns of Court, the ABA Center for Professional Responsibility, the ABA Section of Legal Education and Admissions to the Bar, the National Client Protection Organization and the Association of American Law Schools. The Committee should meet regularly at convenient times, such as in conjunction with the meetings of the Conference or by telephone and e-mail.

B. Creation of State Action Plan Implementation Entities

Implementation efforts at the state level could be accomplished by having each state supreme court establish an implementation standing committee or commission. A standing committee or commission is the recommended form of entity, as opposed to a task force, because implementation efforts will be ongoing. Institutionalizing the implementation efforts under the aegis of the court promotes the ability to engage in consistent implementation efforts over a long period of time. It is important that the court structure the implementation entity based upon its evaluation of available resources, statewide politics and other relevant factors. This court-appointed entity would be committed to assisting the court with implementation of the National Action Plan recommendations. Centralizing the implementation efforts in this manner will expedite the process and avoid duplication of efforts. It will also formalize the collaborative effort and ensure that all of the involved agencies, organizations and individuals have current information. The implementation entity should report directly to the court.

It is suggested that the court create a new entity instead of delegating the National Action Plan implementation mission to an existing one. The National Action Plan contains a diverse array of recommendations. It is unlikely that an existing entity will have the

comprehensive expertise suggested below. Additionally, it is important that the entity's focus on the National Action Plan not be diluted. It is unlikely that an existing entity charged with assisting the court in National Action Plan implementation, in addition to its existing functions, will be able to devote the time and resources to the project that a separate entity could. However, each state supreme court has existing obligations and commitments that might prohibit it from creating and funding a new entity.

If a state supreme court determines that it is necessary to delegate National Action Plan implementation to an existing entity or entities, it is suggested that the court utilize the state's professionalism commission, a committee or commission on public trust and confidence in the justice system, or a similar entity. Delegation of the National Action Plan implementation effort to one or more existing entities may require the dedication of increased funding and resources to that entity or entities. Additional funds and resources would likely be needed so that completion of the entity's original mission is not affected and sufficient resources are available to devote to accomplishing the National Action Plan initiatives. For those states with smaller lawyer populations and/or more limited available resources and funding, the supreme court might explore creating a regional implementation entity with other states.

Membership on the state implementation entity should include representatives from the state bar association, local and special interest bar associations, the disciplinary agency, the client protection fund, lower courts, the state's professionalism commission, law schools, the American Inns of Court, the public and other relevant entities. In terms of public members, the court should consider appointing members from groups such as the League of Women Voters, the American Association of Retired People or other civic and advocacy groups. It is recommended that at least one member of the court act as liaison to this group. The court appointed implementation entity, and its subcommittees, should meet as often as necessary to perform the duties described below in a timely manner.

The implementation entity should engage in strategic planning to implement the National Action Plan initiatives. A six-step process is suggested. The court, with input from this entity, should determine appropriate time guidelines for accomplishing each of these steps.

This recommended six-step process consists of:

- Identifying and prioritizing implementation goals;
- Developing initial strategies to implement National Action Plan initiatives as prioritized;
- Identifying barriers to implementation;
- Identifying action steps to overcome these barriers;
- Implementing National Action Plan recommendations as prioritized; and

- Evaluating and revising the process as necessary.

1. Identifying and Prioritizing Implementation Goals

It is important to note at the outset of the six-step process that most jurisdictions already have in place a number of National Action Plan recommendations. The process of identifying and prioritizing implementation goals should include a self-evaluation to see where the state stands in terms of implementation of these initiatives. The American Bar Association Center for Professional Responsibility has published the results of several national surveys that will assist any size jurisdiction with its self-evaluation. These include the results of the *National Action Plan Implementation Survey*, the annual *ABA Survey on Lawyer Discipline Systems* and the *ABA Survey on Lawyers' Funds for Client Protection*. If necessary, the implementation entity should develop its own survey to supplement that information. Any self-evaluation should include an assessment of available and potential resources for program initiatives, and issues relating to staffing. The implementation entity should work to ensure timely completion of the self-evaluation process.

The implementation entity may wish to conduct open hearings to determine issues relating to implementation of the National Action Plan recommendations and the public's perception of the profession. This would allow the court, through its delegated representatives, to educate the public and the bar about the National Action Plan while gathering information necessary to its implementation.

Implementation goals should be specific, measurable, attainable, relevant and trackable (S.M.A.R.T.). The following are examples of implementation goals:

- Increasing professionalism programming and educational initiatives for lawyers;
- Increasing the efficiency of the lawyer disciplinary system;
- Increasing public participation in the lawyer disciplinary system;
- Providing a stable funding source for the client protection fund;
- Developing an effective method of communication between the court, the bar and the law schools; and
- Achieving consistent sanctions for unprofessional litigation tactics.

After identifying issues and implementation goals the implementation entity should prioritize them. This will focus implementation efforts and assist in expediting the development and prioritization of strategies to implement National Action Plan recommendations. The priority given to any given National Action Plan initiative will

depend on several factors, including the intensity of public and/or professional demand, financing, resources and whether the initiative is controversial.

2. Developing Initial Strategies to Implement National Action Plan Initiatives as Prioritized

An implementation strategy consists of the actions that need to be taken to implement a given National Action Plan recommendation. The information gathered during the self-assessment described above will be used to develop these strategies. The development of initial strategies to implement the National Action Plan should include consideration of the nature of the particular recommendations to be implemented, financing, facilities, personnel and technology. The implementation entity may decide that more than one implementation strategy is required for any one particular recommendation. If this is the case, the implementation entity should consider prioritizing its strategies.

The following examples of implementation strategies relate to the implementation goals described above:

- Creating a professionalism commission;
- Establishing a central intake office to screen complaints to the disciplinary agency;
- Purchasing and installing caseload tracking software;
- Appointing public members to the disciplinary board or increasing public representation on the board, and soliciting public opinion about the disciplinary process through surveys and public hearings;
- Having the supreme court require lawyers to pay an assessment to the client protection fund and require fund administrators to conduct regular actuarial studies to ensure appropriate funding levels in the future;
- Ensuring that the court, bar and law schools have members and/or liaisons on each others' committees relating to lawyer conduct and professionalism; and
- Encouraging state judicial educators to include programming relating to the need for consistent sanctions for unprofessional litigation tactics.

Other implementation strategies include:

- Enacting a new rule on reciprocal disciplinary enforcement;
- Ensuring appropriate reporting of lawyer misconduct to disciplinary authorities by judges;

- Increasing bar association dues or lawyer registration fees to support implementation efforts;
- Having judges speak to community groups about the regulation of the profession and the justice system; and
- Increasing educational programming for judges in the areas of administration and management.

3. Identifying Barriers to Implementation

After strategies to implement the National Action Plan programs have been determined, the implementation entity should identify internal and external barriers to effectuating those strategies. In many respects, the internal barriers may be more difficult to overcome than the external barriers because they are more abstract in nature. Some examples of internal barriers are:

- A lack of trust among the actors because of differing agendas or lack of familiarity with one another's operating procedures;
- Isolation of the court from the public;
- Existing obligations of the court, the bar and/or the law schools;
- Judges' perceptions of themselves as the deciders of cases, not as administrators of the justice system;
- Loss of interest by the court, the bar and law schools;
- Conflicting perceptions of the role of law schools by the courts, the bar and the law schools themselves;
- Fluctuating levels of willingness by the courts to take responsibility for the consequences of change;
- Differing definitions of success utilized by the courts, the bar and law schools;
- Cynicism within the legal profession; and
- Unrealistic expectations by the public regarding lawyers and the justice system.

External barriers will more likely involve issues relating to funding or authority. For example, the court may wish to hire a public information officer, but the legislature is reluctant to provide funding for the position. This type of external barrier was also raised at the National Conference on Public Trust and Confidence in the Judicial System with regard to its own National Action Plan to build public trust and confidence in the courts.

Examples of other external barriers are:

- The perception by other agencies necessary to the implementation process that the state implementation entity may usurp, preempt or undermine their existing power and authority, including that of state disciplinary agencies and state and local bar organizations;
- Competition for available funds between different programs;
- The failure of bar leadership to fully support the court's efforts to effectuate change;
- The failure of the court to fully support the bar's efforts to effectuate change;
- Election cycles that change the composition and priorities of the court;
- Media-generated misperceptions about the profession;
- Economic pressures associated with the practice of law that diminish lawyers' abilities to do pro bono work and focus on professionalism; and
- The cost of a law school education.

4. Identifying Action Steps to Overcome Barriers

Next, the implementation entity should develop strategies to overcome the identified barriers. For example, ensuring that the implementation entity created by the court has the diverse membership described in Section B may be one way to help overcome the lack of trust among the actors necessary to successful implementation. The court could also take steps to assure other entities that the implementation entity's authority will not preempt or undermine the existing power and authority of individual entities or agencies. Completing this process should allow the implementation entity to finalize its strategies for implementation.

5. Implementing National Action Plan Recommendations as Prioritized

Once strategies are finalized, the implementation entity can seek to implement the National Action Plan initiatives according to its priorities. The implementation entity should draft a report setting forth its recommendations (steps 1 through 4 above) to the court. In order to sustain momentum, it is recommended that the court take immediate action upon these recommendations, which may include enacting new rules and procedures. In order to assist the court, the report should contain proposed drafts of any new rules of procedures. The court should determine how best to proceed with the recommendations contained in the report. For example, it may refer drafts of proposed rules to its rules committee. Additionally, the court may wish to hold public hearings regarding the contents of any proposed rules and procedures.

It is recommended that any directives by the court to implement National Action Plan programs contain specific time guidelines for achieving implementation. The court should provide the implementation entity with sufficient authority to monitor and report to the court about implementation of the National Action Plan initiatives. As noted above, this authority should not preempt, usurp or undermine the power and authority of the disciplinary agency, other entities such as professionalism commissions, or bar associations over their programs.

6. Evaluating and Revising the Process as Necessary

The purpose of implementing the National Action Plan is to improve lawyer conduct and professionalism and the public's perception of the profession. The Conference of Chief Justice's National Action Plan Implementation Committee should work with the state implementation entities to determine the best way in which to measure changes in lawyer conduct and the public's perception of the profession. Measurable results will not occur immediately. The National Action Plan's success in improving lawyer conduct and professionalism, and consequently enhancing the public's perception of the profession should, however, be documented from the outset and publicized.

To achieve the goals of the National Action Plan, the implementation strategies determined by the implementation entity and approved by the court have to be successfully deployed. As a result, the initial evaluation of the process by the state implementation entity might focus on the success of the first five-steps described above. It may be that unanticipated barriers have emerged and need to be addressed. The court's priorities may have changed. A change in the political landscape might dictate the need to adjust the plan of action devised by the entity for a particular recommendation. It is recommended that each state's supreme court consider setting a time for this evaluation to take place.

After the evaluation, the state implementation entity and the court can determine what, if any, revisions to the implementation process are necessary. On a national level, the evaluation process may result in amendments to the National Action Plan or a change in the level of involvement of the Conference of Chief Justices.

Section IV. Creating and Maintaining an Electronic Information Network

Available technology should enable the Conference of Chief Justices and the state implementation entities to easily collect information about and monitor implementation efforts. As a result, it is recommended that the Conference of Chief Justices, with staff assistance from the National Center for State Courts and the ABA Center for Professional Responsibility, create a web site devoted to implementation of the National Action Plan. Each state supreme court could direct its implementation entity to create a National Action Plan implementation web site that would be linked to the central Conference of Chief Justices' site. Linking the sites in this manner will allow the Conference of Chief Justices, through its Implementation Committee, to monitor implementation efforts in the states. The Conference's web site could be maintained on the National Center for State Court's web server.

The central National Action Plan web site should provide a listserv for Conference members to communicate about implementation of the National Action Plan. The central site should also have a listserv that will allow the state entities to easily communicate with each other. This second listserv will also serve as a forum for on-line discussions that could include members of the Conference's National Action Plan Implementation Committee.

It is also recommended that the Conference's site contain an on-line database of National Action Plan implementation activities. Each state's individual site should also contain such a database, and information from the state site can be imported into the central database. The central and state databases should be structured so that parts are viewable by the public and other parts are only viewable by designated users. The database should be searchable, providing easy access to the Conference, state task force members and the public. It is recommended that each database contain implementation status reports for each activity.

Members of the Conference's National Action Plan Implementation Committee and the state counterparts should determine how to expand and modify the web sites and whether additional links should be added. For example, the American Bar Association Center for Professional Responsibility maintains a professionalism web site that contains current information on professionalism initiatives around the country. That site can be accessed at www.abanet.org/cpr/professionalism. The Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law has also developed a professionalism web site. One of the goals of that web site, which is located at <http://professionalism.law.sc.edu>, is to provide quick access to materials and other resources related to professionalism.

Section V. Conclusion

A strong, coordinated effort by state supreme courts to implement the recommendations contained in the National Action Plan should increase professionalism and ethical conduct among lawyers and enhance the public's perception of the profession. The work of improving lawyer behavior by increasing professionalism, strengthening lawyer regulation and building public trust must be sustained over time. Although the bulk of the work will occur at the state and local levels, the ongoing support and involvement of the Conference of Chief Justices is a necessary component of success. This Implementation Plan provides the Conference and the state supreme courts with the framework they need to ensure successful implementation of the National Action Plan recommendations.

APPENDIX A: Conference Program

Regulatory Authority Over the Legal Profession and the Judiciary: The Responsibility of State Supreme Courts

MARCH 14, 1997

REGULATION OF THE PROFESSION

- 8:30 am - 8:45 am **Welcome**
- Jerome J. Shestack, President Elect, American Bar Association
- 8:45 am - 9:15 am **The Role of State Supreme Courts in Addressing Professionalism**
- Hon. E. Norman Veasey, Chief Justice, Supreme Court of Delaware
- 9:15 am - 10:30 am **Preventive Measures: Protecting the Public By Assisting Lawyers**
- This panel and group discussion will address efforts by supreme courts to increase protection of clients through remedial measures, professionalism training and educational initiatives.
- Hon. Stanley Feldman, Supreme Court of Arizona
Karen Betzner, Senior Executive for Professional Competence, Standards and Certification, State Bar of California
Hon. Craig Wright, former Justice, Supreme Court of Ohio
- 10:30 am - 10:45 am **Break**
- 10:45 am - 12:00 am **Making the System More Responsive**
- This panel and group discussion will feature the establishment of programs/mechanisms by supreme courts to respond to complaints about lawyers where the alleged conduct does not generally fall within the purview of the disciplinary system.
- W. Scott Welch, III, Past President, Mississippi State Bar
Hal Lieberman, Chief Disciplinary Counsel, First Department, New York
Hon. Burley B. Mitchell, Jr., Chief Justice, North Carolina Supreme Court
- 12:00 pm - 1:15 pm **Lunch**

1:15 pm - 2:15 pm **Open Sesame**

This panel will review efforts to increase public perception and participation in the lawyer regulatory process by having a more open disciplinary process and by incorporating non-lawyer participation into the entire regulatory system.

Hon. Gerald Kogan, Chief Justice, Supreme Court of Florida
Mary T. Robinson, Administrator, Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois
Hon. Daniel J. O'Hern, Supreme Court of New Jersey

2:30 pm. -4:00 pm **Keeping Hold of the Reins**

This panel will discuss the need for the courts to maintain an active role in preserving the highest standards of professionalism by ensuring the existence of an effective and comprehensive lawyer regulatory system.

Hon. Michael D. Zimmerman, Chief Justice, Supreme Court of Utah
Raymond R. Trombadore, Chair, ABA Standing Committee on Professional Discipline
M. Susan Kudla, Chair, Grievance Committee of the Supreme Court of Colorado

4:00 pm- 4:15 pm **Conclusion**

Hon. E. Norman Veasey, Chief Justice, Delaware Supreme Court

MARCH 15, 1997

**SUPERVISORY AUTHORITY OVER
THE JUDICIARY**

8:30 am - 10:00 am **Current Issues in Judicial Discipline and Conduct**

This panel will discuss current decisions in judicial ethics and discipline. The panel will also review recent changes incorporated into judicial codes of conduct and proposed modifications.

Hon. Vivi Dilweg, Circuit Court, Green Bay, Wisconsin
Professor Jeffrey M. Shaman, DePaul University College of Law
Joanne Pelton Pitulla, Associate Ethics Counsel, American Bar Association

Issues in Judicial Disciplinary Enforcement: The ABA Model Rules for Judicial Disciplinary Enforcement

This program will focus on various concerns of the public and the judiciary about the effectiveness and fairness of judicial disciplinary systems by using the new videotape on the Model Rules produced by the National Judicial College with a grant from the State Justice Institute. Discussion will also focus on the role of state supreme courts and judicial conduct organizations in ensuring effective and fair judicial regulatory systems.

10:15 am - 11:45 am Part I. - The Investigative Process

Hon. Bernardo P. Velasco, Chair, Arizona Commission on Judicial Conduct

Charles R. Garten, Judicial Disciplinary Counsel, West Virginia

Linda D Donnelly, Disciplinary Counsel, Supreme Court of Colorado

11:45 pm - 1:15 pm Lunch

Speaker: N. Lee Cooper, President, American Bar Association

Judicial Independence

1:15 pm - 2:45 pm Part II. - Formal Charges and the Hearing Process

Hon. Ernest A. Finney, Chief Justice, Supreme Court of South Carolina

Hon. Vivi Dilweg, Circuit Court, Green Bay, Wisconsin

James C. Alexander, Executive Director, Wisconsin Judicial Commission

Cynthia M. Jacob, President, New Jersey Bar Association

2:45 pm - 3:15 pm Conclusion

Hon. Shirley S. Abrahamson, Chief Justice, Wisconsin Supreme Court

Hon. E. Norman Veasey, Chief Justice, Delaware Supreme Court

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APPENDIX C: National Action Plan, black letter recommendations

A. Professionalism, Leadership, and Coordination

The appellate court of highest jurisdiction in each state should take a leadership role in evaluating the contemporary needs of the legal community with respect to lawyer professionalism and coordinating the activities of the bench, the bar, and the law schools in meeting those needs. Specific efforts should include:

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

B. Improving Lawyer Competence

1. Continuing Legal Education (CLE)

Each state's appellate court of highest jurisdiction should encourage and support the development and implementation of a high-quality, comprehensive CLE program including substantive programs on professionalism and competence. An effective CLE program is one that:

- **Requires lawyer participation in continuing legal education programs;**
- **Requires that a certain portion of the CLE focus on ethics and professionalism;**
- **Requires that all lawyers take the mandated professionalism course for new admittees;**
- **Monitors and enforces compliance with meaningful CLE requirements;**
- **Encourages innovative CLE in a variety of practice areas;**
- **Encourages cost-effective CLE formats;**
- **Encourages the integration of ethics and professionalism components in all CLE curricula;**
- **Encourages CLE components on legal practice and office management skills, including office management technology; and**
- **Teaches methods to prevent and avoid malpractice and unethical or unprofessional conduct and the consequences of failing to prevent and avoid such conduct.**

2. Law Office Management

State bar programs should support efforts to improve law office efficiency. Effective support includes:

- **Establishing a law office management assistance program;**
- **Providing assistance with daily law office routines; and**
- **Providing monitoring services for lawyers referred from the disciplinary system.**

3. Assistance with Ethics Questions

Lawyers should be provided with programs to assist in the compliance of ethical rules of conduct. State bar programs should:

- **Establish an Ethics Hotline;**
- **Provide access to advisory opinions on the Web or a compact disc (CD); and**
- **Publish annotated volumes of professional conduct.**

4. Assistance to lawyers with mental health or substance abuse problems

Lawyers need a forum to confront their mental health and substance abuse problems. State bar programs should:

- **Create a Lawyer Assistance Program (LAP) if one does not exist;**
- **Fund the LAP through mandatory registration fees;**
- **Provide confidentiality for LAP programs;**
- **Establish intervention systems for disabilities and impairments other than substance abuse or expand existing LAPs to cover non-chemical dependency impairments;**
- **Provide monitoring services for lawyers referred from the disciplinary system; and**
- **Provide career counseling for lawyers in transition.**

5. Lawyers Entering Practice for the First Time – Transitional Education

Judicial leadership should support the development and implementation of programs that address the practical needs of lawyers immediately after admission to the bar. Effective programs for newly admitted lawyers:

- **Mandate a course for new admittees that covers the fundamentals of law practice;**
- **Emphasize professionalism;**
- **Increase emphasis on developing post-graduation skills; and**
- **Ensure the availability of CLE in office skills for different office settings.**

6. Mentoring

Judicial leadership should promote mentoring programs for both new and established lawyers. Effective programs:

- **Establish mentoring opportunities for new admittees;**
- **Establish mentoring opportunities for solo and small firm practitioners;**
- **Provide directories of lawyers who can respond to questions in different practice areas;**
- **Provide networking opportunities for solo and small firm lawyers; and**
- **Provide technology for exchange of information.**

C. Law School Education and Bar Admission

1. Law School Curriculum

In preparing law students for legal practice, law schools should provide students with the fundamental principles of professionalism and basic skills for legal practice.

2. Bar Examination

The subject areas tested on the examination for admittance to the state bar should reflect a focus on fundamental competence by new lawyers.

3. Character and Fitness Evaluation

Law schools should assist bar admissions agencies by providing complete and accurate information about the character and fitness of law students who apply for bar admission.

4. Bar Admission Procedures

Bar admissions procedures should be designed to reveal instances of poor character and fitness. If appropriate, bar applicants may be admitted on a conditional basis.

D. Effective Lawyer Regulation

1. Complaint Handling

Information about the state's system of regulation should be easily accessible and presented to lawyers and the public in an understandable format. The disciplinary agency, or central intake office if separate, should review complaints expeditiously. Matters that do not fall under the jurisdiction of the disciplinary agency or do not state facts that, if true, would constitute a violation of the rules of professional conduct should be promptly referred to a more appropriate mechanism for resolution. Complainants should be kept informed about the status of complaints at

all stages of proceedings, including explanations about substantive decisions made concerning the complaint.

2. Assistance to lawyers with ethics problems or "minor" misconduct (e.g., acts of lesser misconduct that do not warrant the imposition of a disciplinary sanction)

The state's system of lawyer regulation should include procedures for referring matters involving lesser misconduct to an appropriate remedial program. Such procedures may include:

- **Required participation in a law office management program;**
- **Required participation in a lawyer assistance program;**
- **Enrollment in an "ethics school" or other mandatory CLE; and**
- **Participation in a fee arbitration or mediation program.**

3. Disciplinary Sanctions

The range of disciplinary sanctions should be sufficiently broad to address the relative severity of lawyer misconduct, including conduct unrelated to the lawyer's legal practice. Disciplinary agencies should use available national standards to ensure interstate consistency of disciplinary sanctions. All public sanction should be reported to the National Lawyer Regulatory Data Bank of the American Bar Association.

4. Lawyers' Funds for Client Protection

The state's system of lawyer regulation should include a Lawyers' Fund for Client Protection to shield legal consumers from economic losses resulting from an attorney's misappropriation of law client and escrow money in the practice of law. Rules or policies of the appellate court of highest jurisdiction should:

- **Provide for a statewide client protection fund;**
- **Require that the fund substantially reimburse losses resulting from dishonest conduct in the practice of law;**
- **Finance the fund through a mandatory assessment on lawyers;**
- **Designate the fund's assets to constitute a trust;**
- **Appoint a board of trustees, composed of lawyers and lay persons, to administer the fund; and**
- **Require the board of trustees to publicize the fund's existence and activities.**

5. Other Public Protection Measures

The state's system of lawyer regulation should include other appropriate measures of public protection. Such measures that the Court should enact include:

- **Mandating financial recordkeeping, trust account maintenance and overdraft notification;**
- **Establish a system of random audits of trust accounts;**
- **Requiring lawyers who seek court appointments to carry malpractice insurance;**
- **Collect annual information on lawyers' trust accounts;**
- **Studying the possibility of recertification;**
- **Providing for interim suspension for threat of harm; and**
- **Establishing a 30-day no contact rule.**

6. Efficiency of the Disciplinary System

The state system of lawyer regulation should operate effectively and efficiently. The Court should enact procedures for improving the system's efficiency, including:

- **Providing for discretionary rather than automatic review of hearing committee or board decisions by the Court;**
- **Providing for discipline on consent;**
- **Requiring respondents to disciplinary investigations to be reasonably cooperative with investigatory procedures;**
- **Establishing time standards for case processing;**
- **Periodically reviewing the system to increase efficiency where necessary;**
- **Eliminating duplicative review in the procedures for determining whether to file formal charges;**
- **Authorizing disciplinary counsel to dismiss complaints summarily or after investigation with limited right of complainants to seek review;**
- **Using professional disciplinary counsel and staff for investigation and prosecution and volunteers on boards and hearing committees;**
- **Providing appropriate training for all involved; and**
- **Incorporating disciplinary experiences in CLE curricula.**

7. Public Accountability

The public should have access to information about the system of lawyer regulation including procedures, aggregate data concerning its operations, and lawyers' disciplinary records. Laypersons should be included on disciplinary hearing panels and boards. Other measures to ensure public accountability of the disciplinary agency include:

- **Making written opinions available in all cases;**
- **Making formal disciplinary hearings open to the public;**
- **Collecting and making available information on lawyers' malpractice insurance; and**
- **Speaking about the disciplinary system at public gatherings.**

E. Public Outreach Efforts

1. Public Education

Judges, lawyers and bar programs should provide more public understanding of lawyer professionalism and ethics by developing and implementing public education programs. Effective public education programs should:

- **Emphasize lawyer professionalism in court communications with the public;**
- **Provide a "Public Liaison" office or officer to serve in a clearinghouse function;**
- **Distribute public education materials in places commonly accessible to the public;**
- **Include public speaking on the topic of professionalism on the agenda for bar association speaking bureaus;**
- **Encourage a more active role between educational institutions and organizations and the justice system; and**
- **Educate the legislative and executive branches of government about issues related to the legal profession and the justice system.**

2. Public Participation

The participation of the public should be supported in all levels of court and bar institutional policy-making by judges, lawyers, and bar programs. Judges, lawyers, and bar programs should:

- **Publicize the nomination and appointment process for public representatives on court and bar committees;**
- **Once appointed, provide lay members access to the tools necessary for effective participation; and**
- **Provide adequate funding on an ongoing basis.**

3. Public Access to the Justice System

Judges, lawyers, and bar programs should encourage public access to the justice system through the coordination of pro bono programs. Effective coordination of pro bono programs should:

- **Encourage judicial support and participation in lawyer recruitment efforts for pro bono programs;**
- **Provide institutional support within the court system for lawyer pro bono service;**
- **Establish an "Emeritus Lawyer" pro bono program;**
- **Provide institutional and in-kind support for the coordination of pro bono programs; and**

- Explore funding alternatives to support pro bono programs.

4. Public Opinion

To gauge public opinion about the legal profession and the level of professionalism demonstrated by lawyers, the court and the bar should create regular opportunities for the public to voice complaints and make suggestions about judicial/legal institutions.

5. Practice Development, Marketing and Advertising

The judiciary, the organized bar and the law schools should work together to develop standards of professionalism in attorney marketing, practice development, solicitation and advertising. Such standards should:

- Recognize the need for lawyers to acquire clients and the benefit to the public of having truthful information about the availability of lawyers;
- Emphasize the ethical requirements for lawyer advertising and client solicitations;
- Emphasize the need to be truthful and not misleading; and
- Encourage lawyers to employ advertising and other marketing methods that enhance respect for the profession, the justice system and the participants in that system.

F. Lawyer Professionalism in Court

1. Alternative Dispute Resolution Programs

If appropriate for the resolution of a pending case, judges and lawyers should encourage clients to participate in Alternative Dispute Resolution (ADR) programs. An effective ADR program should:

- Ensure that court-annexed ADR programs provide appropriate education for lawyers about different types of ADR (e.g., mediation, arbitration);
- Establish standards of ethics and professional conduct for ADR professionals;
- Require lawyers and parties to engage the services of ADR professionals who adhere to established standards of ethics and professional conduct;
- Encourage trial judges to implement and enforce compliance with ADR orders; and
- Educate clients and the public about the availability and desirability of ADR mechanisms.

2. Abusive or Unprofessional Litigation Tactics

To prevent unprofessional or abusive litigation tactics in the courtroom, the court and judges should:

- **Encourage consistent enforcement of procedural and evidentiary rules;**
- **Encourage procedural consistency between local jurisdictions within states;**
- **Adopt court rules that promote lawyer cooperation in resolving disputes over frivolous filings, discovery, and other pretrial matters;**
- **Encourage judicial referrals to the disciplinary system;**
- **Educate trial judges about the necessary relationship between judicial involvement in pretrial management and effective enforcement of pretrial orders;**
- **Encourage increased judicial supervision of pretrial case management activities; and**
- **Establish clear expectations about lawyer conduct at the very first opportunity.**

3. High Profile Cases

In high profile cases, lawyers should refrain from public comment that might compromise the rights of litigants or distort public perception about the justice system.

G. Interstate Cooperation

The appellate courts of highest jurisdiction should cooperate to ensure consistency among jurisdictions concerning lawyer regulation and professionalism and to pool resources as appropriate to fulfill their responsibilities. Specific efforts of interstate cooperation include:

- **Continued reporting of public sanctions to ABA National Regulatory Data Bank;**
- **Using the Westlaw Private File of the ABA National Regulatory Data Bank;**
- **Inquiring on the state's annual registration statement about licensure and public discipline in other jurisdictions;**
- **Providing reciprocal recognition of CLE;**
- **Establishing regional professionalism programs and efforts;**
- **Recognizing and implementing the International Standard Lawyer Numbering System created by Martindale-Hubble and the American Bar Association to improve reciprocal disciplinary enforcement; and**
- **Providing information about bar admission and admission on motion (including reciprocity) on the bar's website.**

APPENDIX D: Conference Program

The Role of the Court in Improving Lawyer Conduct and Professionalism: Initiating Action, Coordinating Efforts, and Maintaining Momentum

March 22 - 24, 2001
L'Auberge Del Mar, Del Mar, California

Friday, March 23, 2001

8:30 - 8:50 am Welcome and Introduction

Raymond R. Trombadore, *Co-chair, Conference Planning Committee*

Karen J. Mathis, *Chair, American Bar Association House of Delegates*

8:50 - 9:15 am Keynote Address—Presenting the Draft Implementation Plan for the Conference of Chief Justices *A National Action Plan on Lawyer Conduct and Professionalism*

The Honorable Randy J. Holland, *Justice, Supreme Court of Delaware*

**9:15 - 10:30 am Implementation of the National Action Plan:
The Role of the Court in Regulating the Profession**

This panel will focus on what the state supreme courts have done, and can do, to meet and exceed the challenges set forth in the National Action Plan. The discussion will address what can and should be done to motivate the chief justices to take significant and sustained action in initiating and implementing the recommendations in the National Action Plan relating to lawyer discipline.

Moderator

The Honorable E. Norman Veasey, *Chief Justice, Supreme Court of Delaware*

The Honorable Shirley S. Abrahamson, *Chief Justice, Supreme Court of Wisconsin*

Mary T. Robinson, *Administrator, Illinois Attorney Registration and Disciplinary Commission*

Barry R. Vickrey, *Dean, University of South Dakota School of Law*

Pamela J. White, *Incoming President, Maryland Bar Association*

10:45 - 12:00 pm Initiating Action, Coordinating Efforts and Maintaining Momentum: The Role of the Court in Promoting Professionalism

This interactive discussion will focus attendees on how to enhance court activism in implementing Action Plan initiatives that supplement and enhance the disciplinary system. These initiatives address aspects of lawyer conduct encompassed by the concept of professionalism. The Guide to Creating

Professionalism Commissions will be used as a framework for discussing possible courses of action for the future.

Moderator

The Honorable Barbara K. Howe, *ABA Standing Committee on Professional Discipline*

Louis A. Craco, *Chair, New York State Judicial Institution on Professionalism in the Law*

The Honorable Gerald W. VandeWalle, *Chief Justice, Supreme Court of North Dakota*

Sally E. Winkler, *Executive Director, State Bar of Georgia Chief Justice's Commission on Professionalism*

12:00 - 1:00 pm Lunch

1:15 - 2:45 pm Breakout—The Draft Implementation Plan

Participants will break into pre-assigned groups to discuss the Draft Implementation Plan. The facilitators will guide the discussion.

Facilitators

John T. Berry, *Executive Director, Michigan State Bar*

The Honorable Craig T. Enoch, *Justice, Supreme Court of Texas*

Paula J. Frederick, *ABA Standing Committee on Professional Discipline*

Richard A. Soden, *Immediate Past Chair, ABA Standing Committee on Bar Activities and Services*

William I. Weston, *Associate Dean, Florida Coastal School of Law*

Reporters

Michael J. Flaherty, *President, Association of Professional Responsibility Lawyers*

Allan J. Joseph, *Treasurer-elect Nominee, American Bar Association*

T. Richard Kennedy, *Immediate Past Chair, ABA Standing Committee on Professional Discipline*

The Honorable Rebecca Love Kourlis, *Justice, Supreme Court of Colorado*

Timothy W. Bouch, *ABA Standing Committee on Professional Discipline*

2:45 - 3:00 pm Refreshment Break

3:00 - 4:30 pm Report on Breakout Discussions

Burnele V. Powell, *Dean, University of Missouri-Kansas City School of Law*

The Honorable E. Norman Veasey, *Chief Justice, Supreme Court of Delaware*

Saturday, March 24, 2001

8:30 - 9:45 am Multijurisdictional Practice and Interstate Cooperation

This interactive panel will address the court's role in regulating multijurisdictional practice. Discussion will focus on the need for the courts to assert leadership and take action in the form of local and regional coordination relating to bar admissions, interstate practice and reciprocal discipline.

Moderator

Diane C. Yu, *ABA Commission on Multijurisdictional Practice*

Barry Althoff, *Chief Disciplinary Counsel, Washington State Bar Association*

The Honorable Ming W. Chin, *Justice, Supreme Court of California*

Erica Moeser, *President, National Conference of Bar Examiners*

Lucian T. Pera, *ABA Commission on Evaluation of the Rules of Professional Conduct ("Ethics 2000")*

9:45 - 11:15 am Breakout—Interstate Cooperation

Assigned groups will discuss the role of state supreme courts with respect to the regulation of multijurisdictional practice.

11:15 - 11:30 am Refreshment Break

11:30 - 12:30 pm Report on Breakout

Burnele V. Powell, *Dean, University of Missouri-Kansas City School of Law*

The Honorable E. Norman Veasey, *Chief Justice, Supreme Court of Delaware*

12:30 - 1:30 pm Lunch and Conclusion

The Honorable E. Norman Veasey, *Chief Justice, Supreme Court of Delaware*

APPENDIX E: Conference of Chief Justices' Resolution 15

**Conference of Chief Justices
Resolution 15**

**Adoption of an Implementation Plan for the National Action Plan
on Lawyer Conduct and Professionalism of the
Conference of Chief Justices**

WHEREAS, on January 21, 1999, the Conference of Chief Justices adopted *The National Action Plan on Lawyer Conduct and Professionalism* (National Action Plan) and disseminated the same to chief justices, lawyer disciplinary agencies and state bar associations throughout the United States for their consideration; and

WHEREAS, in March 2001, the Conference and the ABA Center for Professional Responsibility held a conference sponsored by the Open Society Institute for state supreme court chief justices and their invited guests entitled, *The Role of the Court in Improving Lawyer Conduct and Professionalism: Initiating Action, Coordinating Efforts and Maintaining Momentum*, where a draft implementation plan for the National Action Plan was presented and discussed; and

WHEREAS, at the March 2001 conference, attendees provided comments and suggestions for incorporation into a final Implementation Plan for the National Action Plan to be presented to the Conference; and

WHEREAS, the Committee on Professionalism and Competence of the Bar of the Conference has approved and submitted a final draft of the proposed Implementation Plan to the Conference for consideration at its August 2001 meeting;

NOW, THEREFORE, BE IT RESOLVED that:

- The Conference hereby approves the Implementation Plan for the National Action Plan.
- The Conference commends the ABA Center for Professional Responsibility, the March 2001 Conference Planning Committee, the conference attendees and all those who contributed to the preparation of the Implementation Plan.
- The Conference expresses its gratitude to the Open Society Institute for sponsoring the March 2001 conference.
- The Conference urges its members to present the Implementation Plan to their respective courts for use as feasible and appropriate in their respective jurisdictions.

Adopted as proposed by the Professionalism and Competence of the Bar Committee of the Conference of Chief Justices in Seattle, Washington, at the 53rd Annual Meeting on August 2, 2001.