

AMERICAN BAR ASSOCIATION
TORT TRIAL AND INSURANCE PRACTICE SECTION
COMMISSION ON THE AMERICAN JURY PROJECT

REPORT TO THE HOUSE OF DELEGATES

RESOLUTION

RESOLVED, That the American Bar Association commends the American Civil Trial Bar Roundtable for its undertaking the publication of *A White Paper on Increasing the Professionalism of American Lawyers*, and recommends that bar organizations and others study the existing efforts described in the White Paper and otherwise available to enhance their own efforts to improve professionalism.

REPORT

This resolution commends the efforts of the American Civil Trial Bar Roundtable to issue *A White Paper on Increasing the Professionalism of American Lawyers*, and recommends that bar organizations and others study the existing efforts described in the White Paper and otherwise available to enhance their own efforts to improve professionalism.

The White Paper highlights a number of strategies used by different bars and law-related groups that are utilized in the further education and promotion of lawyer professionalism. That White Paper constitutes the bulk of this report.

The American Bar Association is represented at the American Civil Trial Bar Roundtable by the American Bar Association (as a whole), the Section of Litigation, the Tort Trial and Insurance Practice Section, and the Commission on the American Jury Project. In addition, other national trial legal organizations that are members and have endorsed this White Paper include the American Association for Justice, American Board of Trial Advocates, Association of Defense Trial Attorneys, American Board of Professional Liability Attorneys, Academy of Trial Attorneys, DRI-The Voice of the Defense Bar, Federal Bar Association, Federation of Defense and Corporate Counsel, International Association of Defense Counsel, International Academy of Trial Lawyers, International Society of Barristers, and National Crime Victim Bar Association.

BACKGROUND

The Tort Trial and Insurance Practice Section has long promoted professionalism through the American Bar Association House of Delegates. In 1988, the House adopted Resolution 116A, sponsored by TIPS, which recommended state and local bar associations encourage members to accept as a guide for the individual conduct a lawyer's creed of professionalism. In 1991, the House adopted Resolution 104, sponsored by TIPS, recommending a discussion of professionalism by law school faculties.

The Tort Trial and Insurance Practice Section is represented in the American Civil Trial Bar Roundtable.

**AMERICAN CIVIL TRIAL BAR ROUNDTABLE
A WHITE PAPER ON INCREASING THE PROFESSIONALISM OF AMERICAN LAWYERS**

Collaborative Points of Agreement by the National Legal Associations Concerned with Trial
Practice and Known as the American Civil Trial Bar Roundtable *

I. INTRODUCTION

The American Civil Trial Bar Roundtable has been in existence since 1997. Sixteen significant bar or law-related organizations¹ comprise the Roundtable and represent civil trial lawyers and others with diverse viewpoints on the civil justice issues. Participants acknowledge lack of consensus on some issues, but express common belief in the importance of the civil trial system to the American justice system and the importance of a forum for the exchange of ideas.

The Roundtable occasionally issues White Papers on issues participating organizations find to be of significant importance to maintaining the American justice system, especially the civil trial system. The Roundtable issued a White Paper in 2000, revised in 2006 (hereinafter “2006 White Paper”), concerning the state of the civil justice system in the United States with recommendations for strengthening it.²

This White Paper builds on our earlier 2006 White Paper, which noted:

1. America’s civil justice system is the envy of other nations in both the developed and undeveloped world.
2. The civil justice system operates best when each party is on as level a playing field as possible with regard to trial resources and litigants are represented by qualified and competent counsel.

* The assistance in the preparation of this white paper of the Nelson Mullins Riley Scarborough Center on Professionalism and Dean Emeritus John E. Montgomery at the University of South Carolina School of Law are acknowledged.

¹ Members include the American Association for Justice (AAJ), the Academy of Rail Labor Attorneys, the American Bar Association (ABA), the American Bar Association Litigation Section, the American Bar Association American Jury Project, the American Bar Association Tort Trial and Insurance Practice Section (ABA TIPS), American Board of Trial Advocates (ABOTA), the American Board of Professional Liability Attorneys, the Association of Defense Trial Attorneys, the American Inns of Court, DRI-The Voice of the Defense Bar (DRI), the Federal Bar Association, the Federation of Defense and Corporate Counsel, the International Academy of Trial Lawyers, the International Association of Defense Counsel, the International Society of Barristers, and the National Crime Victim Bar Association.

² American Civil Trial Bar Roundtable, A White Paper Concerning an Overview of the Civil Justice System (2000, revised Sept. 9, 2006).

3. A sophisticated economic system like that in place in the United States needs a reliable judicial system rendering fair and impartial justice.³

The 2006 White Paper also observed:

. . . the legal system and . . . civil trial practice in particular have come under rather sharp attack. Lack of respect and confidence seems to have developed in the public's mind for . . . trial practice and trial practitioners of all types. Much of the criticism appears without justification but nevertheless has taken hold . . . the perception of lack of civility of lawyers toward one another leading to "win at any cost" tactics and hardball ultimatums have reduced the public's esteem of lawyers generally and trial practitioners in particular . . . Roundtable organizations and legal organizations of all types should encourage their members to persuade partners and associates to help in the effort to restore a sense of professionalism in younger colleagues through mentoring and other programs that stress fair and ethical treatment of opposing counsel.⁴

The 2006 Civil Justice System White Paper raised two broad themes on which this White Paper will build:

1. The civil justice system, properly functioning, ensures that rule of law principles, the foundation of a democratic society, apply to every dispute.
2. Unprofessional conduct of lawyers undermines both the efficient, effective operation of the civil justice system and the standing of the legal profession, especially trial practitioners, in the eyes of broader society.

This White Paper addresses an important, related topic, increasing the professionalism of lawyers. Lack of professionalism not only decreases public confidence in the American civil justice system and impairs its effective operation, but also undermines the legal profession itself. Finding ways to strengthen professionalism is essential.

II. PURPOSE

The purpose of this White Paper is to highlight strategies for strengthening the professionalism of lawyers by chronicling some of the extensive initiatives of courts, bars, legal organizations and law schools. In describing these efforts, this White Paper may provide inspiration for new efforts where similar or additional strategies could be considered. Reflecting the aspirational

³ *Id.* at 2.

⁴ *Id.* at 5.

nature of professionalism, existing efforts have focused primarily on education, not enforcement, with the hope that education about professionalism will cause lawyers to avoid unprofessional behavior. It is the Roundtable's position that more must be done to enhance the professionalism of our profession.

III. THE IMPORTANCE OF LAWYER PROFESSIONALISM TO THE AMERICAN CIVIL JUSTICE SYSTEM

There is no generally accepted definition of professionalism.⁵ While a precise definition remains elusive, broad agreement exists on professionalism's major components: competency, ethics, integrity, access to justice, respect for the rule of law, independent judgment, and civility are all generally accepted aspects of professionalism. Stated another way, professionalism encompasses the core values of the American legal profession and reflects the moral traditions of lawyering: the obligation to represent clients diligently, and the obligation to support the processes and institutions of the justice system.⁶

While the definition of professionalism is elusive, the effects of its absence are not. Despite the efforts of bars, courts, legal organizations, and law schools to improve professionalism, the common experience of the profession suggests that unprofessional conduct of lawyers remains unacceptably high.⁷

Lack of professionalism has a negative impact on the civil justice system, the legal profession, and even lawyers who cross acceptable behavioral lines. Ultimately, and of most significance, professionalism is of crucial importance to the rule of law and the civil justice system itself. Rule of law principles are universally agreed upon and include clear, publicized, fair laws, accountable government officials, access to justice provided by competent, honest, ethical attorneys and judges

⁵ See Neil Hamilton, Professionalism Clearly Defined, 18 PROFESSIONAL LAWYER 4 (2008), for a particularly

thoughtful approach. A few state codes have attempted a definition. The Oregon Bar Statement of Professionalism defines it as "the courage to care about and act for the benefit of our clients, our peers and the public good." See Oregon State Bar, Statement of Professionalism, available at http://www.orbar.org/_docs/forms/Prof-ord.pdf (last visited Aug. 6, 2013).

⁶ Virtually all professional codes and statements of professionalism reflect obligations both to clients and to the justice system. See *id.*

⁷ One survey of Illinois lawyers reported that 92% of responding attorneys experienced "strategic incivility" at some point in their careers and 98% believed that a "win at all costs" mentality contributed to unprofessional behavior. See SURVEY ON PROFESSIONALISM: A STUDY OF ILLINOIS LAWYERS 11 (Dec. 2007) [hereinafter SURVEY ON PROFESSIONALISM].

and an accessible, fair, impartial, efficient justice system, which resolves disputes based on legal principles and processes, not arbitrariness or the power or resources of any individual or entity.⁸ All of the accepted elements of professionalism, from civility to integrity to ethics, access to justice and independence, have a direct impact on respect for the rule of law and the strength of the civil justice system.

Lawyers play a central role in assuring that rule of law principles apply. Without exaggeration, in every proceeding, lawyers have the obligation, through diligently representing clients, to assure that rule of law principles govern the resolution of their clients' disputes. This is one of the pillars of a democratic society.

Unprofessional conduct, whether uncivil behavior, improper exercise of independent judgment to needlessly prolong discovery, or lack of integrity, imposes unnecessary delays and costs and can result in loss of public confidence in both the legal profession and the civil justice system itself.

Lawyers, by engaging in unprofessional conduct, are violating the profession's social contract with the public to maintain the framework of the justice system and placing the independence and self-governance privilege of the profession at risk.

Aside from these broader obligations of lawyers to the justice system, the public, and the profession itself, unprofessional conduct often undermines the lawyer's own self-interest as a member of a learned profession. Whatever the perceived, immediate benefit in any individual representation of uncivil conduct or "win at any cost" tactics, lawyers often ultimately suffer the considerable costs of their own unprofessional conduct. Loss of respect by other lawyers and judges, loss of referrals and even loss of clients are not insignificant consequences of unprofessional behavior.

IV. THE BACKGROUND OF CURRENT PROFESSIONALISM INITIATIVES

The roots of modern professionalism extend back two millennia to the Roman legal system. Advocates in that system were required to take an "oath of calumny," which obligated them to

⁸ For a general and representative expression of rule of law principles, see REPORT OF THE SECRETARY-GENERAL: THE RULE OF LAW AND TRANSITIONAL JUSTICE IN CONFLICT AND POST-CONFLICT SOCIETIES, UNITED NATIONS (2004); UNITED NATIONS RULE OF LAW, WHAT IS THE RULE OF LAW?, http://www.unrol.org/article.aspx?article_id=3 (last visited Aug. 6, 2013). John Adams included the principle in the Massachusetts constitution ("a government of laws and not men"). MASSACHUSETTS CONST., Part the First, art. XXX (1780).

exhibit proper conduct, integrity and fair dealing.⁹ Beginning in the thirteenth century, English lawyers had obligations similar to those expected of American lawyers today. Fair dealing, competency, loyalty, confidentiality, reasonable fees and public service all were obligations assumed by English advocates.¹⁰ Those obligations have continued in the modern era through the English Inns of Court.

In nineteenth century America, David Dudley Field, the author of the Field Code, included in his model statute, adopted by about 15 states, basic ethical obligations for lawyers.¹¹ Two law professors, David Hoffman of Maryland and George Sharswood of Pennsylvania, proposed what in effect were codes of lawyer conduct in their treatises. Hoffman referred to his as “resolutions,” which urged lawyers to demonstrate loyalty, competency, gentlemanly behavior, civility and respect.¹²

The twentieth century was marked by continued efforts to codify and make mandatory ethical standards, which themselves include some elements of professionalism.¹³

Modern efforts to improve the professionalism of lawyers extend back four decades. In the 1970’s Chief Justice Warren Burger, concerned about the state of the American legal profession, urged organized bars to take steps to increase professionalism. The ABA responded through the Stanley Commission Report, which urged a greater emphasis on lawyers’ public obligations to the profession and to society.¹⁴ At the state level, the Conference of Chief Justices approved a National

⁹ See generally JAMES A. BRUNDAGE, *THE MEDIEVAL ORIGINS OF THE LEGAL PROFESSION: CANONISTS, CIVILIANS, AND COURTS* (2008), which discusses the influence of the Roman legal system on medieval lawyers.

¹⁰ See Carol Rice Andrews, *Standards of Conduct for Lawyers: An 800-Year Evolution*, 57 SMU L. REV. 1385 (2004), for an exhaustive treatment of the historical development of lawyer conduct standards and the significant overlap of medieval English standards and modern lawyer conduct standards

¹¹ *Id.* at 1425. The Field Code specified duties to maintain confidentiality, to respect courts, not to mislead courts, to do justice, to abstain from offensive personality, to not unduly prejudice parties or witnesses, to not incite passion or greed in litigation and to take cases on behalf of the poor and oppressed.

¹² *Id.* at 1427–28.

¹³ Alabama enacted the first state bar code of ethics in 1887. It became a model for several state ethics codes and was the basis for the American Bar Association’s 1908 Canons of Ethics. Ethics codes, which do address some aspects of professionalism, are now in force in every state.

¹⁴ “. . . IN THE SPIRIT OF PUBLIC SERVICE: A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM (A.B.A. Commission on Professionalism 1986), available at http://www.americanbar.org/content/dam/aba/migrated/2011_build/professional_responsibility/stanley_commission_report.authcheckdam.pdf.

Action Plan on Lawyer Conduct and Professionalism that introduced the idea that professionalism is aspirational, encompassing broader standards than compliance with ethical rules:

Professionalism is a much broader concept than legal ethics—professionalism includes not only civility among members of the bench and bar, but also competency, 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. Ethics are what a lawyer *must* obey. Principles of professionalism are what a lawyer *should* live by in conducting his or her affairs.¹⁵

In 2008, the ABA Standing Committee on Professionalism reexamined professionalism and issued its own White Paper.¹⁶ It recommended steps to strengthen professionalism and, in doing so, promoting “. . . the fundamental traditions and core values of the legal profession . . . inculcating and enhancing professionalism among lawyers practicing in the 21st Century.”¹⁷

All these “foundational” reports and White Papers have contributed to broad initiatives from every part of the profession—courts, bars, legal organizations and law schools—to establish professionalism codes, creeds and oaths, continuing education and legal education programs and, increasingly, mentoring to improve the professionalism of American lawyers.

Efforts of the profession to improve the professionalism of American lawyers are national in scope and comprehensive in content. A review of some professionalism initiatives follows.

V. PROFESSIONALISM INITIATIVES

1. State Court Professionalism Commissions

Professionalism commissions, usually established by state supreme courts, are active in 12 states. Most were established in the 1990s and early 2000s. Their common mission is to promote professionalism. Their activities include coordination with bars, courts and law schools, initiating

¹⁵ Paula L. Hannaford, A National Action Plan on Lawyer Conduct and Professionalism: A Role for the Judge in Improving Professionalism in the Legal System, COURT REVIEW 2 (Fall 1999) (adopted January 21, 1999, by the Conference of Chief Justices), available at <http://aja.ncsc.dni.us/courtrv/cr36-3/CR%2036-3%20Hannaford.pdf>.

¹⁶ RONALD C. MINKOFF, REVIVING A TRADITION OF SERVICE: REDEFINING LAWYER PROFESSIONALISM IN THE 21ST CENTURY (A.B.A. Standing Committee on Professionalism Report 2008), available at <http://www.americanbar.org/content/dam/aba/migrated/cpr/professionalism/century.authcheckdam.pdf>.

¹⁷ *Id.* at 1.

and sponsoring professionalism initiatives, improving access to justice and administering the justice system and providing guidance and assistance on professionalism initiatives.

Professionalism commissions have been very active in promoting professionalism and initiating professionalism initiatives. The commissions have well defined missions and responsibilities and, in most cases, permanent staff and budgets. Many professionalism initiatives in place today have their origins in these commissions. Statewide mentoring programs for new lawyers are a prime example.

While all commissions are very active, the work of these organizations in Georgia, North Carolina, Colorado, Illinois, Florida, Ohio, and Texas are illustrative of the kinds of professionalism initiatives which commissions have advocated. Development of MCLE programs emphasizing professionalism, mentoring, regular convocations for the bench, bar, and law schools and special professionalism programs and courses are typical examples.

2. State Bar Professionalism Committees

Twenty-six states have state bar professionalism committees.¹⁸ At least twelve states have ethics and professional responsibility committees that also address professionalism.¹⁹ Four states have both court commissions and professionalism committees with complimentary missions.²⁰ A number of states have ethics and professional responsibility committees, which do not separately address professionalism,²¹ although a few deal with both areas.²²

Like commissions, state bar professionalism committees generally have specific responsibilities for promoting professionalism. One of their major responsibilities has been developing professionalism standards for their states. Specific activities of these committees include:

¹⁸ For details, see Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law, <http://professionalism.law.sc.edu/> (last visited Aug. 7, 2013) and ABA Center on Professional Responsibility website.

¹⁹ For details, see Nelson Mullins Professionalism website, *supra* note 18.

²⁰ Florida, Georgia, Maryland, New York. The Florida Bar professionalism committee specifically supports that state's supreme court professionalism commission. See Keith W. Rizzardi, *Defining Professionalism: I Know It When I See It*, 79 FLA. BAR J. 38, n.3 (2005).

²¹ Twelve states have such bar committees. For details, see Nelson Mullins Professionalism website, *supra* note **Error! Bookmark not defined.**

²² Indiana and Maryland.

promoting professionalism to the profession and the public, sponsoring programs to increase ethical, professional conduct, and educating newly admitted members of the bar on professionalism.²³

3. Bar Professionalism Codes, Creeds, Principles and Standards

Almost two thirds of state bars, the District of Columbia, scores of local bars and many federal district courts have adopted professionalism standards.²⁴ While they generally cover all aspects of professionalism, civility is the most widely addressed topic. While language varies, most standards, codes, or creeds emphasize the core values of the profession: honesty, integrity, civility, and service. Those values are also affirmed by Roundtable organizations.

The accompanying charts included in the Appendix categorize these standards by topics covered. Appendix A summarizes by state the most common standards, the majority of which address civility. Appendix B includes standards on areas of professionalism other than civility.

4. Oaths

A significant number of states have some form of civility oath. In 12 states, the oaths are incorporated into the oath of admission prescribed by the state's supreme court and are included in a court rule.²⁵ In other states, civility language makes reference to rules of professional conduct

²³ In states without supreme court professionalism commissions, bar professionalism committees have responsibilities similar to commissions. In general, they have not been as involved as court commissions in mentoring and in sponsoring regular meetings of all parts of the profession on professionalism.

²⁴ There are well over one hundred different professionalism codes, guidelines, standards, and creeds. Some states have both codes and creeds. Guidelines and codes tend to focus more on specific types of conduct, creeds on the central values of the profession. See Rizzardi, *supra* note 20, for a discussion of Florida's guidelines, ideals, and creed.

²⁵ For typical language, see the South Carolina oath, which states "to opposing parties and their counsel, I pledge fairness, integrity and civility, not only in court, but also in all written and oral communications." See <http://www.judicial.state.sc.us/courtReg/displayRule.cfm?ruleID=402&subRuleID=&ruleType=APP> (last visited Aug. 28, 2013). The Alaska oath states, "I will be candid, fair and courteous before the court and other attorneys." See <http://www.courts.alaska.gov/bar.htm#5> (last visited Aug. 5, 2013).

which prohibits any action which interferes with the administration of justice.²⁶ The policies of the American Bar Association look upon civility as an aspirational goal.²⁷

5. Mandatory CLE Programs

Currently, 44 states have mandatory CLE requirements. Forty-three of the forty-four require some portion of hours (usually 1 or 2) be on ethics or professional responsibility.²⁸ Nineteen states allow either ethics or professionalism to fulfill that requirement.²⁹

6. Mentoring Programs

The majority of states have some form of mentoring program for newly admitted attorneys.³⁰ A number of these are mentor-match programs designed primarily to match new lawyers seeking mentors with experienced attorneys willing to serve in that capacity. Some mentor-match programs use software programs to facilitate the matching process. Unlike more formal programs with comprehensive guidelines and standards for the mentoring process, mentor-match programs are generally much less structured and leave the details of mentoring to the participants. These programs are extremely limited in scope and the number of new lawyers who participate is difficult to determine. Of much greater impact are the 13 voluntary and 8 mandatory mentoring programs, some of which operate on a statewide basis.³¹ Georgia pioneered mandatory mentoring for all newly admitted lawyers and its program is about a decade old. Ohio has an extremely successful

²⁶ Most states have disciplinary rules based on ABA Model Rules of Professional Conduct Rule 8.4(d), which provides it is professional misconduct for a lawyer to “engage in conduct that is prejudicial to the administration of justice.”

²⁷ Nothing in this White Paper should be read to imply that the ABA’s position that professionalism goals, including civility goals, are anything but aspirational and are not disciplinary rules of professional conduct the violation of which constitutes unethical behavior.

²⁸ Conversation with Mary Germack, Director, South Carolina Supreme Court Continuing Education Commission (Oct. 15, 2012).

²⁹ *Id.*

³⁰ A compilation and description of all state mentoring programs can be found at the websites in *supra* note 18. *See also* NALP FOUNDATION, THE STATE OF MENTORING IN THE LEGAL PROFESSION (2013).

³¹ Voluntary and mandatory programs handle the vast majority of new lawyers participating in statewide mentoring, probably exceeding 95%. Mentor-match programs have few participants. *See* NALP FOUNDATION, *supra* note 29.

voluntary program with a large percentage of those eligible participating.³² These programs have become models for other state programs. All these programs place significant emphasis on professionalism and the core values of the profession.

There are also a large number of local bar mentoring programs, which often mirror the structure of state programs. Texas has a particularly strong system of local bar-based mentoring programs in most of the state's largest metropolitan areas.³³ Further, some national legal organizations provide mentoring or otherwise participate in mentoring. The American Inns of Court Model Mentoring Program, available for use by local Inns, is an example.³⁴

Mentoring is rapidly growing in the legal profession. Many law firms, in addition to bars, have strong mentoring programs. A recently formed national organization, the National Legal Mentoring Consortium, with representatives from bars, courts, law schools, law firms, and corporations, is working to facilitate effective mentoring practices throughout the profession.³⁵

Most mentoring programs are regularly evaluated. Participants, both mentors and mentees, report the programs are highly effective in addressing problems of new lawyers.³⁶ These programs now provide mentoring to some 9,500 new lawyers each year, about 20 percent of all new lawyers annually admitted to practice.³⁷

³² According to Lori Keating, Secretary of the Ohio Supreme Court Professionalism Commission, about two-thirds of eligible lawyers in Ohio participate (Interview, Aug. 1, 2012).

³³ State Bar of Texas, Texas Bar Transition to Practice Program, http://www.texasbar.com/AM/Template.cfm?Section=Transition_to_Practice (last visited Aug. 7, 2013).

³⁴ See <http://home.innsofcourt.org> (last visited Aug. 7, 2013).

³⁵ See <http://www.legalmentoring.org> (last visited Aug. 6, 2013).

³⁶ Good examples are the evaluation processes established at the start of statewide mentoring in Georgia, Ohio, and South Carolina. These evaluations, conducted during every mentoring cycle, indicate that around 90% of participants find mentoring to be valuable in learning the proper way to practice, introducing new lawyers to the “culture” of law practice and in increasing satisfaction with practice.

³⁷ Derived from ABA statistical information on the number of lawyers admitted annually and from state bar and court statistics on the number of participants in statewide mentoring programs. For the most comprehensive information on mentoring, see NALP FOUNDATION, *supra* note 29.

7. Law Schools

A decade ago, few law schools placed any emphasis on professionalism. That has started to change with the publication of influential studies on legal education³⁸ and pressures from legal employers to graduate students better prepared for practice. While a strong focus on professionalism can be found at only a few law schools,³⁹ most law schools are incorporating professionalism in orientation programs, specific classes or clinics, lectures and other programs. A rapidly growing number of law schools have established mentoring programs,⁴⁰ special lectures on professionalism and awards. Schools in states with court professionalism commissions usually work with those commissions on professionalism initiatives.⁴¹

Law schools, while perhaps slower than the rest of the legal profession to make professionalism a priority, are making an increasingly important contribution. First, they serve as valuable “laboratories” in trying and evaluating new ways to introduce professionalism. With some 200

³⁸ See WILLIAM M. SULLIVAN, *EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW* (2007).

³⁹ A comprehensive assessment of professionalism programs in American law schools can be found in Alison D. Kehner & Mary Ann Robinson, *Mission: Impossible, Mission: Accomplished or Mission: Underway? A Survey and Analysis of Current Trends in Professionalism Education in American Law Schools*, 38 U. DAYTON L. REV. 57 (2012). A consortium of law schools making up the National Institute for the Teaching of Ethics and Professionalism (NIFTP) has a particularly strong focus on professionalism. Member Schools are: Georgia State (Headquarters school), Mercer, Fordham, Indianan-Bloomington, St. Thomas and the University of South Carolina. The Halloran Center at St. Thomas focuses on professional identity formation. The Nelson Mullins Riley Scarborough Professionalism Center at the University of South Carolina specializes in mentoring. All member schools have specialized and innovative courses emphasizing professionalism.

Also of note are programs at the University of Denver Sturm College of Law that have a strong professionalism focus. Educating Tomorrow’s Lawyers (ETL), which is an initiative of that school’s Institute for the Advancement of the American Legal System, collects information on law school courses that have a professionalism focus. See <http://educatingtomorrowlawyers.du.edu> (last visited Aug. 7, 2013).

⁴⁰ Of special note are the three-year mandatory mentoring programs for all students at St. Thomas Law School, the situational mentoring program at Cooley Law School and the combined legal profession class, mandatory mentoring and judicial observation program for the first year students at the University of South Carolina School of Law.

⁴¹ Most supreme court commissions have law school representatives. The Georgia, Ohio, and South Carolina commissions are representative examples.

ABA accredited law schools in the United States, the sheer number and diversity of their approaches to professionalism is indeed impressive. With time, some best practices to introducing professionalism to law students should emerge. Second, law schools are serving as important collectors and disseminators of information on professionalism initiatives both in legal education and in the profession.⁴² It is far easier than a decade ago to access information on professionalism in the profession because some law schools are regularly collecting the information.⁴³ This is an important addition to the ABA Center for Professional Responsibility's valuable website⁴⁴ and makes information sharing much easier. Finally, law schools are increasingly relying on lawyers, judges, and members of national legal organizations to lecture and participate in professionalism programs. This brings a measure of real world practice experience beyond the capabilities of most law schools.

8. National Legal Organizations

Many national legal organizations, especially Roundtable members, place significant emphasis on professionalism generally or on one of its major components. They have been leaders in the professionalism movement. As representative examples, the American Board of Trial Advocates has established a Code of Professionalism, Principles of Civility, Integrity and Professionalism and the educational publication "Civility Matters."⁴⁵ The Defense Research Institute supports excellence and fairness in the civil justice system.⁴⁶ DRI's Substance Law Committee on Professionalism and Ethics coordinates with the organization's other committees to make sure every DRI seminar has professionalism panels and supports work with law schools. The American Association for Justice promotes a fair and effective justice system and access to justice and has a Code of Conduct and Professionalism for its members.⁴⁷ The International Association of Defense Counsel supports enhanced skills and professionalism to serve clients, the civil justice system, and

⁴² See Educating Tomorrow's Lawyers website, *supra* note 39; Nelson Mullins Riley & Scarborough Center on Professionalism website, *supra* note **Error! Bookmark not defined.**

⁴³ In part this reflects the establishment of centers and initiatives at several law schools which regularly collect and disseminate information about professionalism generally and programs involving professionalism.

⁴⁴ See ABA Center for Professional Responsibility, *supra* note **Error! Bookmark not defined.**

⁴⁵ <https://www.abota.org/> (last visited Aug. 7, 2013).

⁴⁶ <http://www.dri.org/about> (last visited Aug. 7, 2013).

⁴⁷ <http://www.justice.org/cps/rde/xchg/justice/hs.xsl/418.htm> (last visited Aug. 7, 2013); <http://www.justice.org/ops/rde/xber/justice/conduct.pdf> (last visited Aug. 1, 2014).

society.⁴⁸ The International Academy of Trial Lawyers, with both plaintiff and defense members and prosecutors and civil defense attorneys, supports law reform, facilitates the administration of justice, promotes the rule of law internationally and elevated standards of integrity, honor, and courtesy in the legal profession.⁴⁹ The Federal Bar Association, serving the needs of the federal public and private practitioner and the judiciary, supports the sound administration of justice and professional and ethical practice in the federal bar.⁵⁰ The Federation of Insurance and Corporate Counsel is “dedicated to pursuing professionalism . . . and a course of balanced justice.”⁵¹ The Association of Defense Trial Attorneys, “. . . champions the jury trial system as being essential to an American system of jurisprudence.”⁵² The Association of Defense Counsel of Northern California “. . . promotes the administration of justice . . .” and enhancing “. . . the standards of civil defense practice.”⁵³ The American Inns of Court promotes professionalism, ethics, and integrity and has established a professionalism creed.⁵⁴ The American Bar Association, through its many committees, sections, and divisions, places significance on professionalism. The Torts and Insurance Practice Section, the Standing Committee on Professionalism, the Consortium on Professionalism Initiatives, the Young Lawyers Division, the Gambrell Professionalism Award, and the Rosner and Rosner Young Lawyers Professionalism Award are representative of the ABA’s work in the area of professionalism.⁵⁵

The commitment of these organizations is representative of the work and purposes of many others. Collectively, national legal organizations demonstrate impressive commitment to professionalism. Through programs for their members, educational initiatives such as ABOTA’s “Civility Matters,” these organizations provide significant support for a strong civil trial system.

⁴⁸ <http://www.iadclaw.org/about/association.aspx> (last visited Aug. 7, 2013).

⁴⁹ <http://www.iatl.net/i4a/pages/index.cfm?pageID=3511> (last visited Aug. 7, 2013).

⁵⁰ <http://www.fedbar.org/About-us/FBA-Mission.aspx> (last visited Aug. 19, 2013).

⁵¹ <http://www.thefederation.org/process.cfm?pageid=1> (last visited Aug. 19, 2013).

⁵² <http://www.adtalaw.com/shared/content/adtahistory.pdf> (last visited Aug. 19, 2013).

⁵³ <http://www.adcnc.org/about.asp> (last visited Aug 19, 2013).

⁵⁴ *See supra* note 34.

⁵⁵ Professionalism programs of the ABA can be accessed through its website. *See* <http://www.americanbar.org/aba.html> (last visited Aug. 7, 2013). One valuable recent ABA publication is *Essential Qualities of the Professional Lawyer* (Paul A. Haskins ed. 2013).

For the most part, the efforts of these organizations are focused on their members and not on outreach to the profession generally. A few, for example, the ABA, ABOTA and the American Inns of Court, have programs more broadly directed at the profession. Several are actively engaged in law reform efforts.⁵⁶

9. Bar, Bar Counsel and Disciplinary Office Initiatives

A significant number of state bars and disciplinary counsel offices conduct training, educational and rehabilitation programs with an emphasis on professionalism. They are far too numerous and diverse to categorize. The Texas Center for Legal Ethics, for example, offers numerous courses, which emphasize ethics and professionalism.⁵⁷ Its course, Guide to the Basics of Law Practice, includes both ethics and professionalism and is an excellent example.⁵⁸ Professionalism, especially civility, is also a common topic in many state “bridge the gap” programs for new lawyers. Disciplinary offices and bar counsel talk widely to lawyer groups and some states have “schools” for lawyers who have been warned or sanctioned for unprofessional conduct,⁵⁹ usually day-long remedial programs on specific topics.

10. Other Significant Judicial and Bar Initiatives

Courts in Florida and Utah have created, by court order, new mechanisms designed to address unprofessional conduct. The Colorado Bar has established a similar process. These are different approaches that bear watching.

The Utah Supreme Court has established a board of five counselors to “counsel and educate members of the Bar concerning the Court’s Standards of Professionalism and Civility.”⁶⁰ The purposes of the board are to counsel lawyers on professionalism issues in response to complaints by other lawyers and referrals from judges, to provide counseling upon request from lawyers about

⁵⁶ The ABA is a prime example.

⁵⁷ <http://www.legalethicstexas.com/courses/online-courses/Justice-James-A--Baker-Guide-to-the-basics-of--%281%29.aspx> (last visited Aug. 7, 2013).

⁵⁸ [http://www.legalethicstexas.com/Courses/Online-Courses/Justice-James-A-Baker-Guide-to-the-Basics-of--\(1\).aspx](http://www.legalethicstexas.com/Courses/Online-Courses/Justice-James-A-Baker-Guide-to-the-Basics-of--(1).aspx) (last visited Jul. 24, 2014); Conversation with Jonathan E. Smaby, Executive Director, Tex. Cntr. For Legal Ethics (Aug. 5, 2013).

⁵⁹ South Carolina is typical of many states which offer remedial courses through the office of the Supreme Court Disciplinary Counsel.

⁶⁰ The text of the Utah Supreme Court Standard Order No. 7, which was effective April 1, 2008, and revised in 2012, is at <http://www.utcourts.gov/resources/rules/urap/supctso.htm> (last visited Aug. 7, 2013)

their obligations under the standards, to provide CLE on the standards and to publish advice and information on the board's work. The board will respond to complaints, inquiries, and referrals from lawyers and judges, but not from the public. Complaints may be resolved by face-to-face meetings or by written advisory opinions, which may also be provided to the attorneys, supervisors, or employers.

In June 2013, the Florida Supreme Court issued an order establishing a Code for Resolving Professionalism Complaints, based on a proposal from the Supreme Court of Florida Professionalism Commission.⁶¹ The new Florida Code prohibits members of the Florida Bar from engaging in "unprofessional conduct," defined as "substantial or repeated violations of the Florida Bar Oath of Admission, the Florida Bar Creed of Professionalism, the Florida Bar Ideals and Goals of Professionalism, the Rules Regulating the Florida Bar and the decisions of the Florida Supreme Court."⁶²

The Code provides that complaints be directed either to the Attorney Consumer Assistance and Intake Program or a local district professionalism panel. If the complaint involves violation of a disciplinary rule, it will be handled by normal disciplinary procedures. If the complaint involves unprofessional conduct that does not constitute a disciplinary rule violation, it will be handled either by the attorney-intake process or a local district panel. Any person, including non-lawyers, may initiate a complaint. The Florida Bar may also initiate complaints on its own initiative.⁶³ Complaints may be resolved informally, such as by providing remedial guidance. There are also procedures for review by the Grievance Committee and a number of possible actions such as letters of advice and recommendations for diversion to a practice and professionalism enhancement program.⁶⁴

The Colorado Bar has established the Peer Professionalism Assistance Group, which offers assistance on professionalism issues. Judges and lawyers can refer attorneys to the group for such matters as lack of cooperation in scheduling, refusing to communicate, personal attacks and rude, contentious communications. Matters are addressed and resolved through mentoring, counseling, and other informal means. Complaints are addressed by single members or by panels.⁶⁵

⁶¹ See Supreme Court of Florida Code for Resolving Professionalism Complaints, *supra* note **Error! Bookmark not defined.**

⁶² *Id.* at 6.

⁶³ *Id.* at 8.

⁶⁴ *Id.* at 9.

⁶⁵ <http://www.cobar.org/index.cfm/ID20950> (last visited Aug 19, 2013).

The approaches of the Utah and Florida supreme courts and the Colorado Bar are attempts to enhance professionalism beyond the philosophy of education on professionalism followed universally by bars, courts, legal organizations, and law schools. For the first time, two courts and a state bar have established processes for raising professionalism complaints not involving separate violations of court or professional responsibility rules and having them resolved. The Utah and Colorado processes also allow for guidance, similar to obtaining ethics advisory opinions. By creating these newer procedures there will also be the opportunity to collect information on the number of unprofessional conduct cases arising in the three states, a metric so far, unavailable elsewhere.⁶⁶

11. The Use of Judicial Sanctions and Disciplinary Actions for Unprofessional Conduct

Judicial sanctions for unprofessional conduct are uncommon, except in limited circumstances involving particularly egregious conduct.⁶⁷ They are not appropriate for broad application. Professionalism is universally considered to be aspirational, a level of practice that every lawyer should aspire to achieve, not something mandated because of ethical requirements.⁶⁸ Many bar professionalism codes and standards specifically state that professionalism codes and standards are not to be used as the basis of disciplinary actions. Trial judges are also sometimes reluctant to take valuable court time to resolve disputes between lawyers that often have little to do with the merits of the case. In the words of the Supreme Court of Florida, “professionalism involves principles, character, critical and reflective judgment, along with an understanding of ourselves

⁶⁶ Both Utah and Colorado have some experience with their respective programs. Over the past few years, the Utah Professionalism Board has dealt with approximately 50 complaints. Most involved civility issues, both inadvertent and “tactical.” The Utah process has been particularly helpful for new lawyers unsure about how to deal with a particular situation. The Colorado program has experienced a comparable volume of complaints, again with most dealing with civility. Colorado has a much larger group (15 versus 5 in Utah) to deal with complaints and consequently, a group of panelists with more diverse practice experience. Both programs engage in outreach programs to educate lawyers about using the programs. (Interview with Robert Clark, Chair, Utah Supreme Court Professionalism Board, Aug. 18, 2013, and John Baker, Director, Colorado Mentoring Program and member, Colorado Bar Peer Professionalism Assistance Group, Aug. 19, 2013).

⁶⁷ The majority of cases involve discovery abuse. *See e.g.* – For egregious examples of sanctionable conduct in discovery, see *State v. Mumford*, 731 A.2d 831 (Del. Super. 1999) (repeated use of obscenities by client during deposition, which lawyer made no attempt to control); *Mullaney v. Aude*, 730 A.2d 759 (Md. Ct. Spec. App. 1999) (male lawyer addressed female opposing counsel as “bimbo” and “babe” during deposition). See Eric D. Miller, *Lawyers Gone Wild: Are Depositions Still a “Civil Procedure,”* 42 CONN. L. REV. 1527 (2010), for a comprehensive discussion.

⁶⁸ *See* Hannaford, *supra* note **Error! Bookmark not defined.**

and others working in and under stressful circumstances.”⁶⁹ Establishing clear standards on which sanctions for unprofessional conduct could be based, in the areas of reflective judgment or self-understanding, for example, is not feasible and could raise free speech and due process concerns. Accordingly, initiatives to strengthen professionalism in its broad scope have focused on educating lawyers about the various aspects of professionalism and its importance to the profession.

Judicial sanctions are not a broadly applicable or effective means to improve professionalism beyond their current use for clearly egregious behavior. Professionalism is not a lawyering trait amenable to clear standards enforceable by sanctions.⁷⁰ Further, expanded use of sanctions cuts against the fundamental aspirational basis of professionalism.

There are however, limited areas where disciplinary actions for very specific types of unprofessional conduct have been based on court rules. Civility, an important part of professionalism, is part of the oath of admission in several states and falls within some court rules.⁷¹ Based on court rules requiring civility and on administration of the justice system, several

⁶⁹ See *supra* note **Error! Bookmark not defined.**, at 2.

⁷⁰ For example, in *PNS Stores, INC. v. Rivera*, 379 S.W. 3d 267-77 (Tex. 2012), the Supreme Court of Texas stated the Lawyer’s Creed was intended to encourage lawyers to be mindful that abusive tactics—ranging from hostility to obstructionism—do not serve justice. *Id.* at 276. The court continued that the Lawyer’s Creed serves as an important reminder that the conduct of lawyers “should be characterized at all times by honesty, candor, and fairness.” *Id.* (citing the Lawyer’s Creed) However, the court also stated that the Lawyer’s Creed is aspirational. *Id.* “It does not create new duties and obligations enforceable by the courts beyond those existing as a result of (1) the courts’ inherent powers and (2) the rules already in existence.” *Id.* at 276-77”

⁷¹ South Carolina had three significant disciplinary cases involving violation of its civility oath in 2011 alone. See *In re White III*, 707 S.E.2d 411 (S.C. 2011) (sanctions for letter suggesting opposing counsel had “no brains” and questioning if “he has a soul”; argument he was acting on client wishes rejected); *In re Anonymous Member of South Carolina Bar*, 709 S.E.2d 633 (S.C. 2011) (derogatory remarks in email to opposing counsel suggesting counsel’s daughter involved with drugs, which had no relation to legal matter at issue); *In re Lovelace*, 716 S.E.2d 919 (S.C. 2011) (attorney threatened and slapped a witness during deposition). The first recorded South Carolina case sanctioning a lawyer for uncivil conduct was decided in 1850. See *The State v. B.F. Hunt*, 355 S.C. L. (4 Strob.) 322, 1850 WL 2817 (1850). See also *In re Abbott*, 925 A.2d 482 (Del. 2007) (violation of attorney oath by accusing another lawyer of fabrication; civility not incorporated in court rule); *cf.* *Peters v. Pine Meadow Ranch Home Ass’n*, 151 P.3d 962 (Utah 2007) (uncivil language in brief). Michigan has no oath but has sanctioned lawyers for incivility through its professional responsibility rules. *Grievance Adm’r v. Fiezer*, 719 N.W.2d 123 (Mich. 2006). For a review of civility cases involving written documents, see Judith D. Fischer, *Incivility in Lawyers Writing: Judicial Handling of Rambo Run Amok*, 50 WASHBURN L.J. 365 (2011). A very useful discussion of civility cases is Donald A. Winder, *Enforcing Civility in an Uncivilized World* (unpublished paper, available from the author, at Winder and Counsel PC, Salt Lake City Utah, updated July 17, 2013).

states have imposed disciplinary sanctions such as public reprimands or suspensions for egregious uncivil conduct.⁷²

VI. OBSERVATIONS ON CURRENT INITIATIVES TO STRENGTHEN PROFESSIONALISM

Efforts to strengthen the professionalism of American lawyers through broad education efforts are truly impressive. Virtually the entire legal profession has implemented a broad range of professionalism initiatives. Chief Justice Warren Burger's call to improve professionalism has been embraced by the profession.

Two critical questions remain: have these initiatives been effective in increasing the professionalism of practicing attorneys and what more can and should be done?

Insight into those questions comes from the Supreme Court of Florida's rule creating a structure for resolving professionalism complaints, a rule adopted after Florida already had a professionalism code, a professionalism creed and a civility oath in place. The Court observed, "Although it is impossible to determine with scientific certainty the true or exact status of professionalism today, the passive academic approach to such problems has probably had a positive impact toward improving professionalism or at least maintaining the status quo by preventing a further decline . . ." ⁷³ This observation of the Florida Supreme Court is worth elaboration because it is probably representative of reactions to professionalism initiatives across the profession.

First, since professionalism is considered to be aspirational, the overriding strategy behind professionalism initiatives has been educational. Standards, codes, CLE programs, lectures and articles, the core of most professionalism initiatives, all are aimed at informing lawyers of the various aspects of professionalism and proper responses to specific practice situations. Less frequently, some states have adopted oaths and make reference to central professional values. Remedial measures such as disciplinary actions have been used only in limited circumstances where court rules prohibit certain kinds of unprofessional conduct, for example, incivility.

Second, despite the comprehensiveness of professionalism education initiatives, there has been no real measurement of their effect. No doubt, all these educational efforts have had some success in improving professionalism but the extent of the improvement is uncertain. The common experience of many in the profession and a few surveys suggest that unprofessional conduct

⁷² *Id.*

⁷³ See Supreme Court of Florida Code for Resolving Professionalism Complaints, *supra* note **Error! Bookmark not defined.**, at 2.

remains at unacceptably high levels.⁷⁴ It is hard to say whether some, any or all the professionalism initiatives have had major impact because of insufficient data collection. As a profession, we have been responsible for adopting a broad range of initiatives designed to strengthen professionalism but have not followed up with measuring their effectiveness.

Third, most professionalism initiatives do not explicitly state a central purpose or focus on why professionalism is important. Some also do not set out the central values of the profession such as integrity, civility, ethics and a commitment to service. This is in contrast to the values often referred to in the missions of many national legal organizations.⁷⁵ That one of the most important purposes of professionalism is to support the rule of law and the civil justice system also is rarely referenced in most initiatives. As a consequence, lawyers are not reminded sufficiently of the core values of the profession or the importance of professionalism to the operation of the justice system.

Finally, of all the professionalism initiatives in place, mentoring is the one approach that clearly makes a positive difference. States with both mandatory and voluntary statewide programs such as Georgia, South Carolina, Utah, and Ohio have conducted extensive evaluations of their programs. They have found that mentoring works well in introducing lawyers to the important values of the profession, helps them develop proper habits and increases their satisfaction with practice.⁷⁶

At one level, mentoring is an educational process, usually in one-on-one or small group settings. As such, it is consistent with the broad education strategy of professionalism initiatives generally. Yet mentoring is different because it relies on close interpersonal contact and building a relationship of trust with another experienced, professional lawyer. This process is effective in conveying the importance of professionalism and establishing a norm of professional conduct.⁷⁷

The central goal in the profession's commitment to increase professionalism should be to instill a norm of professional conduct in lawyers. The Conference of Chief Justices approved a National Action Plan that stated as much over two decades ago.⁷⁸ Current initiatives, while laudatory in

⁷⁴ See SURVEY ON PROFESSIONALISM, *supra* note **Error! Bookmark not defined.**. An early study on the frequency of unprofessional conduct is Wayne D. Brazil, *Views from the Front Lines*, 1980 AM. B. FOUND. RES. J. 217 (1980).

⁷⁵ See *supra* notes 45-56 and accompanying text.

⁷⁶ See *supra* note 36.

⁷⁷ See NALP FOUNDATION, *supra* note 29, at 127.

⁷⁸ See Hannaford, *supra* note **Error! Bookmark not defined.**

both scope and content, do work, but only to a point. There remain a group of lawyers, unknown in size but probably significant, for whom professionalism is not a practice norm or at least not an important factor in how they practice. Nor is it likely that current initiatives will persuade them otherwise.

Establishing a more broadly accepted professionalism norm requires both an understanding of existing behavior and barriers to changing unprofessional conduct. For some lawyers, lack of professionalism may be attributable to lack of knowledge about the importance of professionalism or what it requires in a particular practice setting. For this group, the current education approach should work. There are, however, other barriers to change that are more difficult to overcome. Some lawyers may respond unprofessionally because of their belief that these clients expect “hardball” tactics. Addressing this may be not so much a lawyer education issue but a client education issue. Lawyers should educate their clients about what is professional in a representation and exercise their independent judgment about how to address their client’s needs.⁷⁹ Both national legal organizations and bars should urge lawyers to better educate their clients on the importance of civility and consider adding a client education component to professionalism codes and creeds. This could specifically address the assertions of many lawyers that they are only doing what their clients demand. Finally, there are lawyers who believe “win at any cost” tactics benefit them financially or produce better results for their clients, no matter what the costs to others or to the civil trial system itself. For them, unprofessional conduct is perhaps nothing more than a strategy of winning embraced in the notion of zealous advocacy. Of course, it is not. Such lawyers, in effect, are treating the civil justice system as a “free good” allowing the use of any “legal” or “ethical” tactic without regard to the costs or consequences to others or to the civil trial system itself. They are certainly not fulfilling their professional obligations to the justice system.

The challenge here is to strengthen the professionalism of the great majority of American lawyers who already practice with professionalism and pursue a more effective strategy to change the behaviors of the group who do not. How ideas, innovations and values become norms that are widely adopted has been exhaustively studied. It is well established that the ideas and innovations of small groups become the norms of the great majority through a process social scientists refer to

⁷⁹ Some state bar professionalism codes and creeds actually suggest this. *See*, for example, the Arizona Lawyer’s Creed, which instructs attorneys to inform clients of the importance of civility (“I will advise my client that civility and courtesy are not equated with weakness.”), *available at* <http://www.azbar.org/membership/admissions/lawyer’screedofprofessionalism> (last visited Aug. 22, 2013). *See also* Denis T. Rice, *Incivility In Litigation: Causes and Possible Cures* 10 (unpublished paper prepared for ABA Tort Trial and Insurance Practice Session 2013 Annual Meeting, Aug. 13, 2013, San Francisco, CA) (“A lawyer should educate his or her client to appreciate that incivility will not benefit the client’s interest. Not only do hardball battles over discovery drive up the fees, but it rarely improves the client’s litigation posture. The client should understand that credibility with counsel and the court is a highly valuable asset”).

as diffusion.⁸⁰ Education can introduce an idea broadly but people are far more likely to actually adopt it and make it a norm when others they know and trust embrace the idea and provide personal evidence of its importance. Peer-to-peer communication and the influence of peer networks are crucial to the process. This process is known to work in professional groups like physicians in the adoption of new practice standards.⁸¹ The process of diffusion is also remarkably similar to what goes on in a mentoring environment where an experienced professional who practices with professionalism as a norm transmits an approach to practice based on the central values of the profession. Related to this is the common observation that lawyers are less likely to act improperly to other lawyers they know and handle matters with repeatedly. It is far easier to be uncivil to a lawyer whom one is unlikely to see again. The growth of the profession and handling of more matters through exchange of paper and email has reduced personal contact and the opportunity for the diffusion process to have as great an effect.⁸²

This is to suggest that if we as a profession want to strengthen professionalism further and reach lawyers who do not see or are indifferent to its importance, we must think beyond the current education strategy. To be sure, the education strategy common in the professionalism movement works and must be continued. It should, however, be more focused and tied more directly to the importance of professionalism to the rule of law and the effective operation of the civil justice system. The professionalism panels created by the Florida and Utah supreme courts and the Colorado Bar represent approaches to professionalism that go beyond education and bear monitoring.

Mentoring offers significant promise in furthering professionalism. It does require individual commitment to the intensive task of transmitting to others appropriate practice norms. Yet thousands of lawyers are already engaged in state, local, firm and law school mentoring programs around the country. A broader commitment to mentoring in the profession would certainly be in keeping with other professionalism obligations such as service to the profession. Increasing transmittal of the importance of professionalism both to individual lawyers, and even to clients, has the potential beyond current initiatives to strengthen professionalism and could reach a broader audience than education initiatives alone. Obviously, mentoring can have the greatest long-term benefit if it is focused on new lawyers.

⁸⁰ The standard work is EVERETT M. ROGERS, *DIFFUSION OF INNOVATIONS* (5th ed. 2003). There are more than 6,000 research studies and field tests of this process.

⁸¹ See Soumerai et al., *Effect of local medical opinion leaders on quality of care for acute myocardial infarction: A randomized controlled trial*, 279 J. AM. MED. ASS'N 1358 (1998).

⁸² For a discussion, see Rice, *supra* note 78, at 2–3.

Finally, the whole area of professionalism suffers from a lack of hard information on the frequency and types of unprofessional conduct occurring. Ways to bridge this information gap are clearly important.

VII. POINTS OF AGREEMENT AND RECOMMENDATIONS

Professionalism of lawyers is essential to the effective operation of the civil justice system, which in turn is crucial to the rule of law and a democratic society. Strengthening the civil justice system has long been a priority of the American Civil Trial Bar Roundtable. The following recommendations to strengthen professionalism will contribute to a strong civil trial system, which operates with fairness, effectiveness, and efficiency:

1. The professionalism movement so far has concentrated on educating lawyers about the various aspects of professionalism. It needs more focus. Current professionalism education initiatives could be more effective if they have a central focus on supporting rule of law principles, the civil justice system, and the core values of the profession: honesty, integrity, civility, and service. Also, a new emphasis on lawyers educating their clients should be part of professionalism efforts. This, coupled with other efforts to better educate clients on the importance of civility, which should be acknowledged as an aspect of a lawyer's professionalism responsibilities, could improve professionalism.
2. Civility oaths have been adopted in several states. These oaths serve not only as a useful reminder of the type of conduct expected of members of a learned profession, but aid lawyers in understanding the limits of appropriate conduct. Efforts to adopt civility oaths should be encouraged in those states which have not yet adopted them.
3. New approaches, such as those undertaken by the Florida and Utah supreme courts and the Colorado Bar to establish boards to resolve professionalism complaints informally, should be monitored for whatever lessons about improving professionalism may be ascertained from their experiences.
4. Mentoring can take many forms and is rapidly increasing in the legal profession. It is demonstrably effective in transmitting the "culture" of a professional approach to law practice. It also is known to be one of the most effective ways in establishing new behavioral norms where education alone won't succeed. Mentoring can be most effective in impressing on new lawyers the importance of professionalism. Its increased use in the legal profession should be strongly encouraged and supported.
5. Supreme court professionalism commissions have been the most active organizations in the profession in dealing with professionalism by bringing together all stakeholders. They operate in only about 25% of the states. Their creation in every state should be encouraged.

6. Hard information on the frequency of unprofessional conduct, either nationally or in individual states, is difficult to obtain and not routinely collected. Nor have the effectiveness of individual initiatives such as professionalism codes been evaluated. The only exception here is mentoring which is evaluated in most states on an ongoing basis. More comprehensive gathering of data on professionalism and the effectiveness of various initiatives should be encouraged. As a part of this process, the Civil Trial Bar Roundtable supports the development of a “professionalism directory” for each state. This directory would be a qualitative state-by-state measure of the breadth of each state’s professionalism efforts. Possibilities for inclusion are the existence of supreme court commissions, bar committees, professionalism standards, civility oaths, bar and disciplinary counsel programs, mentoring, CLE programs on professionalism, access to justice initiatives, working with law schools and data gathering. This is not an inclusive list. The Roundtable supports such an effort and is willing to participate in a meaningful way in its development.
7. The Civil Trial Bar Roundtable, through local groups of its national organizations, encourages active involvement with as many law schools as possible. The experience of individuals in member organizations could be invaluable in assisting law schools to strengthen their professionalism programs. This is a time of declining enrollments and tight resources for law schools. They could benefit from the active participation of Roundtable organizations and their members in increasing the professionalism and skills of law students.

EXECUTIVE SUMMARY

In this resolution, the American Bar Association commends the American Civil Trial Bar Roundtable for undertaking the publication of *A White Paper on Increasing the Professionalism of American Lawyers*, and recommends that bar organizations and others study the existing efforts described in the White Paper and otherwise available to enhance their own efforts to improve professionalism. Throughout the nation a wide variety of professionalism efforts are under way that have a central focus on supporting rule of law principles, the civil justice system, and core values of the profession, including honesty, integrity, civility, and service, as outlined in the 2014 White Paper produced by the American Civil Trial Bar Roundtable. Despite these various efforts, there is a strong sense that professionalism is in decline within the legal profession.

This resolution uses the commendable effort of the Roundtable as an opportunity to call attention to the need to enhance professionalism and study efforts throughout the country in order to encourage efforts to strengthen the professionalism of lawyers.

The report surveys a number of approaches adopted throughout the nation so that others may study these efforts and consider approaches that could contribute to a strong civil trial system, which operates with fairness, effectiveness, and efficiency.