

THE MARYLAND JUDICIAL COMMISSION

ON

PROFESSIONALISM

REVISED

FINAL REPORT

AND

RECOMMENDATIONS

The Honorable Lynne A. Battaglia
Chair

Norman L. Smith, Esq.
Reporter

May 30, 2007

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SUBCOMMITTEES

Standards of Professional Conduct, Including Identifying Indicia of Professionalism

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Professionalism Guidelines and Sanctions for Use by Judges

C. Daniel Saunders, Chair
The Hon. Richard D. Bennett
Prof. Abraham Dash
Robert L. Ferguson, Jr.
Robert J. Greenleaf
Master Cornelius Helfrich
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Discovery Abuse Issues, Including The Use of Discovery Masters

Dana O. Williams, Chair
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Linda Sorg Ostovitz
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Mentoring

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SUBCOMMITTEES

Update Existing Professionalism Course for New Admittees

Deborah L. Potter, Chair
Mark J. Davis
David W. Densford
William H. Jones
Michael F. O'Connor

Development of a Professionalism Course for Lawyers Who Exhibit Unprofessional Behavior

Norman L. Smith, Chair
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Defining the Unauthorized Practice of Law

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Note: Both this Revised Final Report and the initial Final Report dated May 31, 2006, with its Appendices, can be found on-line at <http://mdcourts.gov/professionalism/index.html>.

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REVISED EXECUTIVE SUMMARY

On April 25, 2002, in response to a recommendation by the Maryland State Bar Association that all licensed Maryland attorneys be required to complete a mandatory continuing legal education course on professionalism, Chief Judge Robert M. Bell of the Maryland Court of Appeals established the Maryland Judicial Task Force on Professionalism. The Task Force was composed of twenty-four Maryland lawyers: one from each Maryland jurisdiction and a lawyer reporter.

After an initial organizational meeting, the Task Force, led by Court of Appeals Judge Lynne A. Battaglia, embarked upon a state-wide “self study” of the concept of professionalism. This was accomplished through a series of town meetings held in each Maryland jurisdiction. The first meeting was held in September 2002 in Howard County, and the last in July 2003 in Cecil County. Chief Judge Bell was present at each meeting, along with Judge Battaglia, Task Force reporter Norman Smith, and Jacqueline Lee, Assistant to Judge Battaglia. Participants included many District, Circuit, and Appellate judges, as well as practicing lawyers.

The Task Force found a near unanimous perception that professionalism in our profession has declined over the years. In order to further professionalism as an important core value, the Task Force recommended that a Professionalism Commission be established and that the Commission, drawing on the findings of the Professionalism Task Force, identify indicia of professionalism, develop standards of professional conduct to be published to the bench and Bar, and study specific ways to improve professionalism throughout the State.

On November 10, 2003, the Maryland Court of Appeals adopted the Professionalism Task Force’s recommendation to establish a Professionalism Commission. Meeting for the first time in March 2004, the Professionalism Commission, through eight subcommittees, has acted upon the recommendations of the Professionalism Task Force. Judge Battaglia chairs the Commission and Norman Smith is the lawyer-reporter.

The Commission’s charge is to act on the findings of the Task Force: professionalism is more than ethics; there is a higher standard to be achieved by lawyers; specific indicia of professionalism must be identified. The Commission studied all facets of professional conduct and formulated methods to raise professionalism standards in the legal community. In considering courses of action, the Commission examined the work of other states in the area of professionalism and evaluated the effectiveness of their policies.

The Commission divided its members into eight subcommittees to focus on areas of concern that were identified by the Professionalism Task Force:

- Ø Standards and Ideals of Professionalism
- Ø Professionalism Guidelines and Sanctions for Use by Judges
- Ø Discovery Abuse
- Ø Mentoring
- Ø Update Existing Professionalism Course for New Admittees

- Ø Development of a Professionalism Course for Lawyers Who Exhibit Unprofessional Behavior
- Ø Defining the Unauthorized Practice of Law
- Ø The Judge's Role in the Bar and in the Community

The Subcommittee on Standards and Ideals of Professionalism examined the Rules of Professional Conduct in Maryland, the Model Rules, and Rules in other states. The Subcommittee also researched other states' professionalism guidelines and produced recommended Standards of Professionalism.

The Subcommittee on Professionalism Guidelines and Sanctions for Use by Judges determined that judges do not use existing tools effectively and do not have other necessary tools with which to sanction unprofessional behavior. To remedy the situation, the Subcommittee recommended specific changes to the Rules of Professional Conduct, the Maryland Rules of Procedure, and the Judicial Canons.

The Subcommittee on Discovery Abuse evaluated existing methods of resolving discovery disputes and addressing discovery abuse. After studying discovery problems in all jurisdictions, the Subcommittee made certain recommendations, including the use of special masters (lawyers or retired judges) to become involved in the process of promptly resolving discovery disputes.

The Subcommittee on Mentoring recommended exposure to professionalism concerns as early as possible, beginning at the law school level. The Subcommittee evaluated current mentoring programs in the State and noted that, while existing programs are in place, these programs are underutilized by new attorneys. The subcommittee recommended ways to increase awareness that such programs exist as well as to create opportunities for young attorneys to list their questions on professionalism and ethics and have them answered by competent attorneys. The Subcommittee also recommended that mentors be teamed up with new lawyers by means of a questionnaire handed out at the required professionalism course for new admittees.

The Subcommittee to Update the Existing Professionalism Course for New Admittees evaluated the current professionalism course for new admittees who pass the Bar and debated the effectiveness of postponing the course until attorneys have practiced for at least one year. Although there is much to be said for allowing attorneys to gain some experience before taking the course, the Subcommittee determined that the change is not workable at this time.

The Subcommittee on the Development of a Professionalism Course for Lawyers Who Exhibit Unprofessional Behavior examined fourteen other jurisdictions, as well as existing policies in Maryland, to determine a course of action that would work to correct the behavior of errant attorneys within the State. After identifying numerous problem areas with a comprehensive course, the Subcommittee recommended that a counseling program for lawyers offers a more workable solution.

The Subcommittee to Define the Unauthorized Practice of Law examined the scope of known occurrences of unauthorized practice of law (UPL) and the generally expressed concern that some in the real estate field, banking, accountancy, and other non-legal professions may be engaging in the unauthorized practice of law. After a study of treatment of these issues in other states and consultation with Bar Counsel of the Attorney Grievance Commission and attorneys from the Office of the Attorney General, the Subcommittee determined that it is neither necessary nor wise to change the statutory definition of the practice of law. The Subcommittee also cautioned that the profession risks the appearance of “turf protection” if aggressive enforcement is not perceived as protection of the public. The Subcommittee made other specific recommendations for monitoring the unauthorized practice of law and stimulating increased awareness and recourse for the public, the courts and members of the Bar, including public relations efforts, establishment of a clearing house for complaints, mechanisms for review of complaints and, where appropriate, prosecution of the unauthorized practice of law.

The Subcommittee on the Judges’ Role in the Bar and with the Community studied ways to integrate judges into the legal community while maintaining judicial integrity and independence. The Subcommittee determined that the age-old practice in which judges are isolated from practicing lawyers in the legal community is no longer a desired ideal. The Subcommittee examined the canons and rules for judges and evaluated activities currently permitted for judges, such as serving on boards, commissions, participating in Bar activities and teaching.

After submitting its original Report to the Court in June of 2006, members of the Commission set up town meetings inviting judges and practicing lawyers representing 24 jurisdictions to attend and to give feedback regarding the Report. Judge Battaglia explained at each meeting that, although the Report was filed with the Court of Appeals, it would not become final until the Commission considered the comments, criticisms, and proposed changes to the Report by members of the Bench and Bar throughout the State. Attached to this Report are the comments made by the attendees, broken down by Subcommittee subject matter, as well as the minutes of each of the 22 town hall meetings, which included attorneys from all of the 24 jurisdictions.

Specifically, the Subcommittees focused their reconsideration on the following suggestions, proffered during the Town Hall meetings:

- Revise the Standards of Professionalism into sharper, crisper, mandatory rubrics that a violation of the Standards might fairly be subject to sanctions; provide procedural due process guidelines to complement proposed sanctions for violations of the Standards; better define the words “repeated” and “egregious” in the language of the Sanctions;
- Specify the means and process for bringing discovery disputes to a speedy resolution; recommend that hearings not be required to resolve all discovery motions and, where necessary, that a hearing be held quickly;
- Consider again a Professionalism Course for experienced attorneys;

- Provide more specific recommendations regarding the proposed counseling program for errant attorneys at the County Bar Association level to include a procedure for referral to counseling and reconsider the confidentiality of records after counseling in order to identify repeat offenders;
- Encourage cooperation with Judge Greene’s Commission on pro se litigants;
- Consider the imposition of professionalism standards for judges and clarify the rules regarding participation of the judiciary in community organizations that raise donated funds, and
- Address the perception that the Report has a litigation orientation and bias.

When the Town Meetings were completed, the Subcommittees met and reported their recommendations at two meetings of the Commission, one on January 10, 2007 and another on March 21, 2007. At the first of the two meetings, the Commission requested that the Subcommittee on Standards of Professionalism draft a Civility Code, separate from the Standards, the violation of which could be subject to sanctions. The Commission also asked that the Sanctions Subcommittee draft a comment to proposed new Rule 1-342. In addition, the Commission determined that the report of the Subcommittee on the Judges’ Role in the Community should address professionalism concerns regarding judges.

On March 21, 2007, the Commission considered and voted on draft language related to all of these changes, the final text of which was adopted on May 16, 2007. The revised language is now included in the Sections of the Report where it is applicable. The Commission also included in an Appendix the Judicial Professionalism Self-Assessment Tool, provided by the Judicial Administration Section Council of the Maryland State Bar Association, and drafted by the Honorable Robert C. Nalley of the Circuit Court for Charles County, and Masters Catherine T. Beck and Mary M. Kramer.

RECOMMENDATIONS

I. STANDARDS OF PROFESSIONALISM

The Commission recommends that the Court adopt the Standards of Professionalism as an Appendix to the Rules of Professional Conduct.

Standards of Professionalism

Professionalism is the combination of the core values of personal integrity, competency, civility, independence, and public service that distinguish lawyers as the caretakers of the rule of law.

Preamble

When we, as lawyers, are entrusted with the privilege of practicing law, we take a firm vow or oath to uphold the Constitution and laws of the United States. Lawyers enjoy a distinct position of trust and confidence which, concomitantly, carries the significant responsibility and obligation to be caretakers for the system of justice that is essential to the continuing existence of a civilized society. Each lawyer, therefore, as a custodian of the system of justice, must be conscious of this responsibility and exhibit traits that reflect a personal responsibility to recognize, honor and enhance the rule of law in this society. The standards and characteristics set forth below are representative of a value system that we must demand of ourselves as professionals in order to maintain and enhance the role of legal professionals as the protectors of the rule of law.

A. Ideals of Professionalism¹

As a lawyer, I will aspire to:

- Put fidelity to clients before self-interest.
- Model for others, and particularly for my clients, the respect due to those we call upon to resolve our disputes and the regard due to all participants in our dispute resolution processes.
- Avoid all forms of wrongful discrimination in all of my activities, including discrimination on the basis of race, religion, sex, age, handicap or national origin. Equality and fairness will be goals for me.
- Preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.

¹ Based upon the model from the State of Georgia.

- Make the law, the legal system, and other dispute resolution processes available to all.
- Practice law with a personal commitment to the rules governing our profession and to encourage others to do the same.
- Preserve the dignity and the integrity of our profession by my conduct. The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.
- Achieve the excellence of our craft, especially those that permit me to be the moral voice of clients to the public in advocacy while being the moral voice of the public to clients in counseling. Good lawyering should be a moral achievement for both the lawyer and the client.
- Practice law not as a business, but as a calling in the spirit of public service.

R	Responsibility
E	Excellence
S	Service
P	Promotion of fairness
E	Education
C	Civility/Courtesy
T	Trustworthiness

Responsibility and Trustworthiness (integrity, honesty, trust)

A lawyer should understand that:

1. Punctuality promotes the credibility of a lawyer. Tardiness and neglect denigrate the individual as well as the legal profession.
2. Personal integrity is essential to the honorable practice of law. Each lawyer should ensure that clients, opposing counsel, and the court can trust that the lawyer will keep all commitments and perform the tasks promised.
3. Honesty and candid communications promote credibility with the court, with opposing counsel and with clients.
4. External monetary pressures that may cloud professional judgment should be resisted.

Education and Excellence

A lawyer should:

1. Make constant efforts to expand his/her legal knowledge and to ensure familiarity with

changes in the law that affect a client's interests.

2. Willingly take on the responsibility of promoting the image of the legal profession by educating each client and the public regarding the principles underlying the justice system, and, as a practitioner of a learned art, by conveying to everyone the importance of professionalism.
3. Attend continuing legal education programs to demonstrate a commitment to keeping abreast of changes in the law.
4. As a senior lawyer, accept the role of mentor and teacher, whether through formal education programs or individual mentoring of newer attorneys.
5. Understand that mentoring includes the responsibility for setting a good example for another lawyer as well as an obligation to ensure that each mentee learns the principles enunciated in these standards and adheres to them in practice.

Service

A lawyer should:

1. Serve the public interest by clearly communicating with clients, opposing counsel, judges, and members of the public.
2. Give consideration to the impact on others when scheduling events. Reasonable requests for schedule changes should be accommodated if it does not impact the merits of the case.
3. Maintain an open dialogue with clients and opposing counsel.
4. Respond to all communications promptly, even if more time is needed to locate a complete answer. Delays in returning telephone calls may leave the impression that the call was unimportant or that the message was lost and leads to an elevation in tension and frustration and less effective communication.
5. Keep a client apprised of the status of important matters affecting the client and inform the client of the frequency with which information will be provided (some matters will require regular contact, while others will require only occasional communication).
6. Always explain a client's options or choices with sufficient detail to help the client make an informed decision.
7. Reflect a spirit of cooperation and compromise in all interactions with opposing counsel, parties, staff, and the court. This requires a reduction in the win/loss approach to issues and an increase in mediation and achieving success for all involved.

8. Accept the responsibility personally to ensure that justice is available to all citizens of this country and not only to those with financial means.

Promotion of fairness

A lawyer should:

1. Act fairly in all dealings as a means of promoting the system of justice established in this country.
2. Understand that an excess of zeal may undermine a client's cause and hamper the administration of justice. A lawyer can zealously advocate the client's cause in a manner that remains fair and civil.
3. Know that zeal requires only that the client's interests are paramount and therefore utilizes negotiation and compromise to achieve a beneficial outcome. Yelling, intimidating, and issuing ultimatums, and using an "all or nothing" approach amounts to nothing more than bullying, not zealous advocacy.
4. Seek to maintain sympathetic objectivity when advising a client so that the client receives a comprehensive view of the legal aspects of the situation presented to the lawyer.
5. Not allow any action or decision to be governed by a client's improper motive and challenge a client whose wishes are unethical or ill advised. This becomes especially important when deciding whether to consent to an extension of time requested by an opponent. The attorney makes that choice based on the effect, if any, on the outcome of the client's case and not based on the acrimony that may exist between the parties.
6. Negotiate in good faith in an effort to avoid litigation and suggest alternative dispute resolution when appropriate.
7. Use litigation tools to strengthen the client's case and avoid using litigation tactics in a manner solely to harass, intimidate, or overburden an opposing party.
8. Explicitly note any changes made to documents submitted for review by opposing counsel. Fairness is undermined by attempts to insert or delete language without notifying the other party or his attorney.

Civility and Courtesy

A lawyer should understand that:

1. Professionalism requires civility in all dealings, showing respect for differing points of view, and demonstrating empathy for others.

2. Courtesy does not reflect weakness, but promotes effective advocacy by ensuring that parties have the opportunity to participate in the process without personal attacks or intimidation.
3. Maintaining decorum in the courtroom is neither a relic of the past nor a sign of weakness, but is an essential component of the judicial process.
4. It is essential to prepare scrupulously for meetings and court appearances and show respect for the court, opposing counsel, and the parties through courteous behavior and respectful attire.
5. Courtesy and respect should be demonstrated in all contexts, not just with clients and colleagues, or in the courtroom, but with support staff and court personnel.
6. Hostility between clients should not become grounds for an attorney showing hostility or disrespect to a party, opposing counsel, or the court.
7. Patience enables a lawyer to exercise restraint in volatile situations and to diffuse anger rather than to elevate the tension and animosity between parties or attorneys.

B. Rules of Professionalism

1. A lawyer shall treat all persons with courtesy and respect and at all times abstain from rude, disruptive and disrespectful behavior, even when confronted with rude, disruptive, and disrespectful behavior.
2. A lawyer shall speak and write civilly and respectfully and without intentional distortion or falsehood in all communications with the court, public bodies and agencies, clients, and colleagues.
3. A lawyer shall refrain from manifesting bias or prejudice by words or conduct.
4. A lawyer shall be punctual and prepared for all court appearances and meetings, so that hearings, conferences, depositions, trials, and negotiations may commence on time.
5. A lawyer shall comply with schedules or deadlines set by the court. In non-litigation settings, a lawyer shall respond timely to inquiries from opposing counsel or negotiate a reasonable time in which to respond.
6. Agreement to a date for a meeting or conference represents a commitment that shall be honored, absent compelling circumstances. When compelled to cancel such a date, a lawyer shall notify all concerned as early as possible.
7. A lawyer shall show respect for the legal system through appearance, conduct, dress,

and manner.

8. A lawyer shall neither intentionally ascribe to an adversary or opposing party a position he or she has not taken, nor create a “record” of events that in fact have not occurred.
9. A lawyer shall not engage in any improper conduct, intentionally bring disorder or disruption to a hearing, a courtroom, or to any other legal proceeding or transaction.
10. A lawyer shall advise his or her clients and witnesses of the proper conduct expected of them and endeavor to prevent clients and witnesses from creating disorder and disruption in court or any other setting.
11. A lawyer shall act and speak respectfully to all public officials, court personnel, parties, attorneys, and clients with an awareness that they are an integral part of the legal system. A lawyer shall avoid displays of temper toward public bodies, the court, court personnel, parties, attorneys, and clients in all settings.
12. A lawyer shall not seek extensions or continuances for the purpose of harassment or prolonging litigation.
13. A lawyer shall not unreasonably refuse to consent to a reasonable time extension requested by opposing counsel.
14. A lawyer shall not knowingly misrepresent, mischaracterize, misquote, or mis-cite facts or authorities in any written or oral communication in any context, nor rely on facts that are not properly a part of the information available to the parties or placed in a court record.
15. A lawyer shall not disparage the intelligence, ethics, morals, integrity, or personal behavior of opposing counsel in written submissions or oral representations, unless these matters are directly and necessarily in issue.
16. A lawyer shall not seek sanctions against or disqualification of another lawyer for any improper purpose.
17. A lawyer shall adhere to express promises and agreements, oral or written, and to all commitments reasonably implied by the circumstances.
18. When committing oral understandings to writing, a lawyer shall do so accurately and completely. A lawyer shall provide other counsel with a copy for review, and never include substantive matters upon which there has been no agreement, without explicitly advising other counsel. As drafts are exchanged, lawyers shall bring to the attention of other counsel changes from prior drafts.

19. When permitted or required by court rule or otherwise, a lawyer shall draft orders that accurately and completely reflect the court's ruling. A lawyer shall promptly prepare and submit proposed orders to other counsel and attempt to reconcile any differences before the proposed orders and any objections are presented to the court.
20. A lawyer shall not use or oppose discovery for the purpose of harassment or to burden and opponent with increased litigation expense. A lawyer shall not object to discovery or inappropriately assert a privilege for the purpose of withholding or delaying the disclosure of relevant and non-protected information.

II. PROFESSIONALISM GUIDELINES AND SANCTIONS FOR USE BY JUDGES

In order that judges are provided with uniform professionalism standards and sanctions, the Commission recommends that the Court adopt the following:

A. New Maryland Rule 1-342:

If the court finds that the conduct of any counsel violates the Standards of Professionalism, the Court may impose sanctions as the Court deems appropriate, including the assessment of a monetary civil penalty, a monetary award, or both.

B. A Comment to Rule 1-342:

Rule 1-342 provides the discretion to sanction attorneys who violate the Rules of Professionalism, which are reprinted in the appendix to these rules. Before imposing sanctions, the Court must adhere to procedural due process principles consistent with those required under Rule 1-341. The sanctions that a court may impose are in addition to the Court's contempt powers.

C. Rule 8.4 (h) to the Maryland Rule of Professional Conduct:

Rule 8.4. Misconduct.

It is professional misconduct to:

(h) Repeatedly or egregiously violate the Standards of Professionalism.

D. A Comment to Rule 8.4(h):

Rule 8.4 (h) recognizes professionalism as a core value of the legal profession. It is an essential component in fostering respect for and confidence in the legal process. The fundamental responsibilities of an attorney are set forth in the Standards of Professionalism, which are reprinted as an appendix to these Rules.

E. An addition to Judicial Canon 3:

(3) *A judge shall require order and decorum in proceedings and shall report egregious or repeated violations of the Standards of Professionalism to the Attorney Grievance Commission.*

III. DISCOVERY ABUSE

To address problems stemming from discovery abuse and unprofessional conduct during discovery, the Commission recommends:

- A. The Maryland State Bar Association revise and expand the *Maryland Discovery Guidelines* to address the concerns reflected in this Report and submit the revised Guidelines to the Rules Committee and to the Court.
- B. The Maryland Judiciary web site be expanded to include discovery opinions from trial courts, in the same manner that the site now publishes opinions from the trial courts in the business and technology case management system.
- C. The Rules Committee expand and annotate the standard discovery forms now found in the Appendix to the Maryland Rules and add a comment that the standard forms are presumptively proper.
- D. The Conference of Circuit Court Judges formulate a uniform discovery protocol designed to ensure that discovery is completed and disputes resolved in a timely fashion, and that the protocol include:
 - 1. At the request of either party in a case, the Court may schedule a discovery conference within 30 days of the filing of an answer. The conference may result in a discovery plan and scheduling order.
 - 2. In Anne Arundel County, Baltimore City, Baltimore County, Montgomery County, and Prince George's County the Administrative Judge appoint a specific judge (consideration to be given to use of retired judges) to handle all discovery disputes and that the discovery judge have authority to assign a discovery master, as necessary, for first-level dispute resolution.
 - 3. In all other counties the Administrative Judge appoint a standing discovery master or assign, as necessary, a special discovery master to the specific case.
- E. Changes in the Maryland Rules to accomplish the following:
 - 1. Facilitate the process for bringing discovery disputes before the Court, including shortening the deadline for filing responses to motions seeking relief in such disputes.

2. After the deadline for a response to motions for discovery relief has passed, provide for prompt referral to the designated judge or discovery master for resolution.
3. Provide procedures for the judge's prompt resolution of exceptions to the discovery master's recommendations.
4. Add to the Rule or Comment that, in resolving discovery disputes, a discovery master or judge may take into consideration any violations of Maryland Discovery Guidelines.

IV. MENTORING

In order to encourage mentoring of new lawyers to promote the ideals of professionalism, the Commission recommends:

- A. The Maryland State Bar Association mentoring program should be revamped so that new admittees who desire mentoring will be assigned a specific mentor.
- B. New admittees may sign up for mentoring at the Professionalism Course held semi-annually.
- C. The Young Lawyers Section of the Maryland State Bar Association should match the mentors and mentees.
- D. A Judicial Experience Program should be established to promote the goals of professionalism.
 1. Students at the two Maryland law schools who enter the Program will attend court with members of the Maryland Judiciary - ALJs, masters, and judges- and learn from the mentor/judge what is expected of a professional.
 2. Students who enter the Judicial Experience Program will do so on a voluntary basis and commit to a 40-hour program.
 3. The Judicial Experience Program will be open to all second and third-year law students at the two Maryland law schools.

V. NEW ADMITTEE COURSE ON PROFESSIONALISM

After reviewing the presentation, timing and substance of the Maryland Professionalism Course for New Bar Admittees, the Commission makes the following recommendations:

- A. The existing timeline for the Professionalism Course should be maintained, although the Commission recognizes that taking the course within one year of admittance to the Bar would allow new attorneys to bring some of their first-hand experience to the course, thus making the course more useful.
- B. The Maryland Professionalism Course should include mentoring initiatives, which could be viewed as the first step in mentoring new attorneys. The Maryland State Bar Association mentoring list should be made available at the course so that the new admittees would have a contact from the start.
- C. The Standards of Professionalism should be incorporated and explained as an integral part of the course.
- D. The course should be made more relevant to attendees by using “breakout” sessions so that material can be directed appropriately to each lawyer’s intended area of practice. Instructors at these sections should represent those specific areas of practice.
- E. To further engage attendees and encourage thought and recognition of the day’s discussions, a writing requirement should be added to round out the course activities. Possible topics include: “What will you do to promote professionalism?” or, “What action will you take in your daily practice to promote professionalism?”
- F. The video vignettes, if used, should be updated.
- G. More emphasis should be placed on the real concerns of legal malpractice and client complaints by including speakers from the Attorney Grievance Commission and representatives from legal liability insurance providers.
- H. The pervasive problem of discovery abuse warrants a discussion in the New Admittee Course. Participants should be encouraged to read *Discovery Problems and Their Solutions*, by the Hon. Paul W. Grimm with Paul Mark Sandler.

VI. COUNSELING FOR LAWYERS DEMONSTRATING REPEATED UNPROFESSIONAL BEHAVIOR

To address the problem posed by lawyers who repeatedly exhibit unprofessional behavior, the Commission recommends:

- A. The Court of Appeals should implement a program to provide counseling for experienced attorneys who exhibit unprofessional conduct. The program should include the following elements:

1. Local Bar associations throughout the State should form professionalism committees, comprised of experienced and well-respected local lawyers and judges who will receive complaints from the bench and Bar concerning unprofessional behavior by attorneys that do not rise to the level of a violation of the Rules of Professional Conduct.
 2. Each local Bar association should establish its own procedures for the processing of complaints. Complaints deemed serious should become the subject of counseling by a panel of attorneys and at least one judge from the professionalism committee.
- B. No lawyer should be required to participate in counseling, which should be educational and mentoring in nature. No record of counseling should be kept by attorney name, but a statistical record should be kept and submitted annually to the Professionalism Commission concerning the number of attorneys counseled, whether the counseling effected change on the part of the attorney, and other feedback.
 - C. Members of the local Bar association professionalism committees should be highly regarded and experienced members of the Bar with reputations for competence, integrity and civility. Judges, both sitting and retired, are encouraged to participate and should exhibit the same qualities.

VII. UNAUTHORIZED PRACTICE OF LAW

To address professionalism concerns arising from the unauthorized practice of law, the Commission recommends:

- A. No changes (additions or deletions) should be made to the current statutory definition of the practice of law.
- B. Mechanisms and procedures should be established by which the alleged unauthorized practice of law is monitored and, if found, prosecuted.
- C. The Professionalism Commission, if ongoing, should have an Unauthorized Practice of Law Committee to act as a clearinghouse for complaints concerning the unauthorized practice of law and to monitor the unauthorized practice of law.
- D. The Maryland State Bar Association and possibly local and specialty Bar associations should be encouraged to develop means to refer unauthorized practice of law complainants to the appropriate resource and possibly, if necessary, to fund any enforcement proceedings.
- E. The Maryland State Bar Association should maintain the committee on unauthorized practice of law, however named. The committee should be

patterned after the Association's Ethics Committee to provide a resource to lawyers and their clients who are seeking advice on whether specific practices constitute the unauthorized practice of law.

- F. The Attorney Grievance Commission and the Office of the Attorney General should coordinate efforts to review and cross-refer any complaints for the purpose of determining which of their offices are best suited to deal with a particular complaint.
- G. The Office of the Attorney General should, in the appropriate case(s), be asked to provide formal opinions on whether specific practices constitute the unauthorized practice of law.
- H. The Professionalism Commission should encourage the Attorney Grievance Commission and/or the Office of the Attorney General to pursue a test case or cases in areas of repeated concern.
- I. The Judiciary, the Bar and the public should be educated about the value of legal representation, the practice of law, and the problems arising from the unauthorized practice of law. Judges and lawyers should be made aware that victims of the unauthorized practice of law can be referred to the Attorney Grievance Commission or the Office of the Attorney General for investigation.
- J. The Attorney Grievance Commission and the Office of the Attorney General should report the nature of all investigated allegations of the unauthorized practice of law and any outcome to the Court of Appeals and the Maryland State Bar Association.

VIII. ROLE OF THE JUDGE WITH THE BAR AND IN THE COMMUNITY

In order to clarify and increase the participation of judges within the Bar and in the community, the Commission recommends:

- A. A Rule change or a comment to Maryland Rule 16-813 and Canon 4 making more explicit the intent of the Court and the Commission that judges be encouraged to engage in greater interaction among the bench, the Bar and the community.
- B. Additional training for judges regarding recusal rules, and updating of sitting judges on any recusal rule changes.
- C. Continued inclusion of professionalism in all judicial training sessions.
- D. A system by which to obtain advisory opinions from the Judicial Ethics Committee and a polling of the Judiciary on the adequacy of the present system.

- E. Judges be encouraged to write and provide for advance review of any proposed public speech by the Court Information Office.
- F. All judges receive a hard copy of each Judicial Ethics report.
- G. Investigative Counsel to the Maryland Judicial Disabilities Commission write a column in “Justice Matters.”

IX. CONTINUATION OF THE PROFESSIONALISM COMMISSION

The Commission recommends that the Professionalism Commission be continued with its mission defined in an Administrative Order of the Chief Judge fashioned after the draft Order provided, with funding derived from an annual assessment imposed on each attorney admitted to practice in Maryland.

**ADDENDUM TO THE REVISED FINAL REPORT RECOMMENDATIONS
STANDARDS OF PROFESSIONALISM
July 18, 2007**

Add Item 8 under **Civility and Courtesy**:

8. The Standards of Professionalism are to be observed in all manner of communication. A lawyer should resist the impulse to respond uncivilly to electronic communications in the same manner as he or she would resist such impulses in other forms of communication.

Add Number 21 to **B. Rules of Professionalism**:

21. A lawyer shall observe these Rules of Professionalism in all manner of communication, including being vigilant to recognize and resist impulses to respond uncivilly to electronic communications.

IN THE COURT OF APPEALS OF MARYLAND
ADMINISTRATIVE ORDER CONTINUING PROFESSIONALISM COMMISSION

WHEREAS, Throughout the 1990s, members of the Maryland Bench and Bar had become increasingly aware of issues and repercussions of unprofessional behavior by lawyers, which spurred adoption of civility codes and, since 1992, a mandatory course in professionalism for all new admittees to the Maryland Bar; and

WHEREAS, The Conference of Chief Justices in 1996 adopted a resolution which called for a study of lawyer professionalism and encouraged the appellate court of highest jurisdiction in each state 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 and Bar by establishing a Commission on Professionalism; and

WHEREAS, By Order dated April 25, 2002, a Professionalism Task Force was established to study the concept of professionalism within the Maryland bench and Bar and to identify the qualities of, and a consensus as to, professionalism; and

WHEREAS, The Task Force completed its work and, among other proposals, recommended the establishment of a Professionalism Commission; and

WHEREAS, On November 10, 2003, the Court of Appeals adopted the recommendation to establish a Professionalism Commission which occurred on February 17, 2004; and

WHEREAS, The Professionalism Commission, over a two-year period, explored the recommendations of the Professionalism Task Force and on May 10, 2006 adopted its first report.

NOW, THEREFORE, I, Robert M. Bell, Chief Judge of the Court of Appeals and administrative head of the Judicial Branch, pursuant to the authority conferred by Article IV, § 18 of the Constitution, do hereby order this ___ day of _____, 2007, effective immediately:

1. Creation. The Court Commission on Professionalism shall continue for a period of _____ years.
2. Members.
 - a. Commission. The Commission shall consist of the following members:
 - i. The Chief Judge of the Court of Appeals or a designee of the Chief Judge, as the Chair;
 - ii. The Chief Judge of the Court of Special Appeals or a designee of the Chief Judge;
 - iii. The Chair of the Conference of Circuit Judges or a designee of the Chair;
 - iv. The Chief Judge of the District Court or a designee of the Chief Judge;
 - v. A judge from the United States District Court for Maryland, designated by that Court;

- vi. The Dean of each of the accredited law schools in Maryland or a designee of the Dean;
- vii. A lawyer representative from each Maryland County and Baltimore City, appointed by the Chief Judge of the Court of Appeals;
- viii. The president of the Maryland State Bar Association, Inc. or the president's designee;
- ix. A representative from the Attorney Grievance Commission, appointed by the Chief Judge of the Court of Appeals;
- x. A representative from the Standing Committee on Rules of Practice and Procedure, appointed by the Chief Judge of the Court of Appeals;
- xi. A representative from the Judicial Disabilities Commission, appointed by the Chief Judge of the Court of Appeals; and
- xii. A reporter, appointed by the Chief Judge of the Court of Appeals.

b. Advisors. To the extent provided in the Judiciary's budget or other source of funds, the Commission may invite others to provide advice to, or otherwise participate in, the Commission's work, through invitations to the public for, appointment to subcommittees or assignment of specific tasks such as statistical and academic research.

c. Compensation. The members and advisors are not entitled to compensation but, to the extent provided in the Judiciary's budget, may be reimbursed for expenses in connection with travel related to the work of the Commission.

3. Meetings.

a. Scheduling. The Commission shall meet at the call of the Chair.

b. Quorum. A majority of the authorized membership of the Commission shall constitute a quorum for the transaction of business.

4. Forums.

a. Purposes. The primary tasks of the Commission are to explore, as well as monitor, the implementation of the professionalism policies adopted by the Court of Appeals, examine ways to promote professionalism among Maryland lawyers, and provide sustained attention and assistance to the task of ensuring that the practice of law remains a high calling that is focused on serving clients and promoting the public good.

b. Mission. The mission of the Commission is to support and encourage members of the Judiciary to exhibit the highest levels of professionalism and to support and encourage lawyers to exercise the highest levels of professional integrity in their relationships with their clients, other lawyers, the courts, and the public to fulfill their obligations to improve the law and the legal system and to ensure access to that system.

c. Duties. To carry out its purposes, the Commission shall:

