

**REPORT
OF THE
CONNECTICUT BAR ASSOCIATION

TASK FORCE

ON

PROFESSIONALISM (CIVILITY)**

**Submitted to the

HOUSE OF DELEGATES

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**REPORT OF THE CBA TASK FORCE
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INTRODUCTION

In October, 1998, Connecticut Bar Association President Frank H. Finch, Jr. created the Task Force on Professionalism (Civility) and charged it with “explor[ing] ways of restoring civility to every part of our legal system and reaffirm[ing] our commitment to the Lawyers’ Principles of Professionalism,” which had been adopted by the CBA House of Delegates in June, 1994. *See* Exhibits 1 and 2. Appointments were made to the Task Force in December, and it commenced its work in January 1999. The Task Force is pleased to submit herewith the results of its efforts.

After thorough investigation and careful consideration of voluminous data, information and material on this subject, your Task Force has concluded that civility¹ at the bar has diminished in recent years and does, in fact, present an increasingly serious problem. That problem can and does adversely affect the public’s image of and respect for our profession; the quality of the professional life of lawyers and judges; and the dignity and efficiency of our legal system. As such, it cannot and must not be tolerated.

Because the current situation did not develop overnight, it will not, of course, be eliminated or cured in the short term. Moreover, there can be little doubt that the incivility observed in the practice of law today is to some extent the result or reflection of external

¹ The definition of this term, which was utilized by your Task Force in the course of its work and in the questionnaire it prepared and distributed, *see infra*, is the “treatment of all participants in all aspects of the practice of law with courtesy, dignity and decency.”

pressures imposed on practitioners (*e.g.*, increasing number of lawyers, more intensive competition, etc.). Nonetheless, your Task Force believes there are steps that can and should be taken now, which will eventually turn the tide of incivility and, over time, result in the recognition and adoption of a higher standard of professional behavior -- to the benefit of all in our legal system.

This conclusion -- and the recommendations made herein -- are the result of a seven month effort by your Task Force, during which it: (1) collected, studied and discussed many writings on this subject and the work products of similar task forces in other jurisdictions; (2) sought and considered the thoughts and comments of acknowledged experts in this field; and (3) most importantly, solicited and received the opinions, comments and suggestions from an extremely broad cross-section of the bar and the bench.

The discovery that so much had been published on the issue of incivility in the legal profession was a clear indication of the magnitude and widespread recognition of this problem and underscored the genuine need for a Task Force on this subject.² That initial impression was reinforced by the ABA's Standing Committee on Professionalism, which provided your Task Force with the reports of task forces or committees appointed in other states to address the question of professionalism, including the civility issue.³ Finally, any doubt that our state

² One of the earliest in-depth studies on this subject was the "Interim Report of the Committee on Civility of the Seventh Federal Judicial Circuit," Hon. Marvin E. Aspen, Chairman (1991) (the "Aspen Report"). It spawned many similar studies and learned writings on incivility in the legal profession. For the benefit of those who may wish to pursue this subject in greater detail, a partial bibliography of the source material accessed by your Task Force is attached at the end of this report.

³ At least five such undertakings resulted in permanent state commissions on professionalism; *i.e.*, Florida, Georgia, New Jersey, Ohio and Oregon.

had somehow escaped this unfortunate phenomenon was eliminated when your Task Force reached out for the reactions of our own bench and bar. Task Force members approached most CBA sections and committees, most county and regional bar associations, the Statewide Grievance Committee, the Office of the State's Attorney, the Attorney General's staff and the United States Attorney's office. Through the good offices of Judge Samuel H. Teller, Judge Robert C. Leuba, Chief Court Administrator of the state judicial department, and Chief Judge Alfred V. Covello of the United States District Court for the District of Connecticut, the perspective of the judiciary was solicited. The primary vehicle for collecting the comments, suggestions and opinions of the bench and bar was a detailed questionnaire designed by the Task Force to solicit the respondent's opinion on the nature and extent of the civility problem, its cause, its effect, and its possible solutions. *See* Exhibit 3.

Nearly 600 questionnaires were completed and returned (including 110 from judges), providing a wealth of information and data, which was analyzed and considered by your Task Force in the discharge of its obligations. A questionnaire form containing the percentage distribution of the answers of all respondents is attached as Exhibit 4.

From all of the foregoing, your Task Force has developed a series of recommendations designed to address and reduce the incivility now evident in our profession, which it sets forth below for your consideration and adoption.

Your Task Force wishes to express its great gratitude and appreciation to Past-President Frank H. Finch, Jr. for both his wisdom and foresight in recognizing the need for this Task Force and for the complete support he gave it throughout his tenure as CBA president.

In addition, Tim Hazen, Executive Director of the Connecticut Bar Association, brought to the process his keen insight into and vast experience with all aspects of the lawyers'

professional life and his genuine concern for its betterment. Without his assistance and expertise -- and that of his dedicated staff -- the Task Force could not have achieved its goal.

The Connecticut Judges' Association's representative, Judge Teller, not only provided the essential view of this problem from the bench, but also the perspective of a judge who has never forgotten what it was like to be a lawyer. His concern for the professional well being of the bar was evident -- and invaluable -- throughout the process.

Finally, the undersigned was extremely fortunate to have on this Task Force members of the bar who brought to bear their diverse and broad experience, uncompromised professional standards, and, most importantly, their devotion to our profession and corresponding desire to improve the environment in which it is pursued. We have been -- and always will be -- the fortunate beneficiary of their dedication to the legal profession.

Respectfully submitted,

Louis R. Pepe
Chairman

EXECUTIVE SUMMARY

Ninety-four percent of the 593 respondents to your Task Force's questionnaire considered lack of civility in lawyers' relations with each other to be a problem today. While a majority of respondents viewed the problem as "moderate," 37% considered it a "serious" or "very serious" problem. Incivility in the lawyers' relations with judges was perceived to be a problem by 70% of those answering. Moreover, 87% believe the incivility issue has worsened during their years of practice, and 90% believe incivility adversely affects the public image of our profession. Significantly, the perception of the seriousness of this problem is not affected by gender or years at the bar.

The perceived causes of the unfortunate situation are perhaps not surprising. Heading the list of these factors was the transition of the practice of law into more of a business than a profession (66% ranking that as a "significant" or "very significant contributing factor"), followed by the increase in the number of lawyers and the resulting decrease in collegiality among members of the bar (56%); increased intensity in the competition among lawyers for business (54%); client pressures, such as the demand to win at all costs (51%); and the pressure on judges to "move business" (42%). The emergence of a cruder, coarser society in general and the widespread lack of respect for lawyers in society were ranked as the least important factors, but still considered as "significant" or "very significant" by more than a third of all respondents.

Asked to identify the context in which members of the bench and bar most frequently encountered incivility, the respondents ranked depositions at the top, followed by negotiations and then state court motion practice, with family practice lawyers, litigators in general and personal injury lawyers -- in that order -- being the most serious offenders. (Exhibit 4.)

Against that background, your Task Force sets forth herein a number of recommendations, which fall generally into five categories: (1) mentoring and counseling; (2) education; (3) judicial involvement and bench/bar relationships; (4) heightened sensitivity; and (5) systemic changes. What follows is an overview of the recommendations in each of these groups (page references are to the following sections, where more detailed explanations and rationale are provided):

- **Mentoring and Counseling.** The dual approach of indoctrinating young lawyers with an acceptable code of behavior as a “preventive measure” and intervening with the “civility challenged” among us at the bar are of paramount importance to any program to reduce incivility in our profession (pp. 9 to 12).
- **Education.** An educational assault on incivility on two fronts is proposed. Law students must be taught that there is no room for incivility in the noble profession they are about to enter. Continuing legal education programs should also contain a component relating to proper professional conduct -- as a “refresher course” for practitioners (pp. 12 to 15).
- **Judicial Intervention and Bench/Bar Interaction.** Because incivility is most prevalent among litigators and in the litigation process, because an active role for the judiciary is deemed essential to correcting incivility, and because no attempt to improve this aspect of our profession can be successful without the enthusiastic support and involvement of such a significant component of our profession, we must look to our judges for their example, help and guidance. In addition, there must be an ongoing effort to share the mutual concern of the bench and bar on this topic through

increased bench/bar activities -- formal and informal, local and statewide. (pp. 15 to 18).

- **Heightened Sensitivity.** Recognition by the Bar Association of those, who, by their work on behalf of the bar and by their high standards of professionalism, better the environment in which we pursue our profession, will have a subtle, but real, effect on civility in the practice of law. Conversely, exposing unacceptable and unprofessional conduct to the scrutiny of one's peers -- while admittedly more difficult to do properly -- will produce a similar result and should be undertaken in an appropriate manner and forum. (pp. 18 to 19).
- **Systemic Changes.** In the view of your Task Force, the manner in which our civil and criminal court systems are structured, managed and administered creates frustration and imposes pressures that cause otherwise professional practitioners to manifest uncivil behavior in their dealings with judges, clients and other lawyers. Perhaps the most difficult of the causes of incivility to correct, these systemic problems must nonetheless be addressed through additional resources and increased personnel levels for the judiciary, rule and procedural changes, and enhanced sensitivity among judges and staff. (pp. 19 to 21).

Finally -- and most importantly -- the implementation and maintenance of these recommendations, if adopted, will require substantial effort over time. With the discharge of your Task Force upon the submittal of this report, a permanent committee -- charged with the implementation of these recommendations and others yet to be identified for the enhancement of civility and, indeed, for all aspects of professionalism -- is absolutely essential. Such a committee would be the cornerstone of any attempt to increase the standards of civility and

professionalism. Accordingly, your Task Force strongly recommends the creation of a Connecticut Bar Association Committee on Professionalism.

DISCUSSION

The foregoing Executive Summary, while convenient, can be misleading in its simplicity. The deterioration of civility among the members of a profession dedicated to preserving the legal order that is part of the fabric of society is obviously a complex problem that does not lend itself to objective measurement or absolute answers. Reasonable men and women, including those on your Task Force, can and do differ as to the causes and effects of the phenomenon, as well as to its most likely solutions. On one point, however, your Task Force members were unanimous: Incivility at our bar has sadly increased in recent years, so as to become a problem of sufficient proportions to warrant the attention and effort of the organized bar. From that starting point, extensive discussion and debate ensued and there emerged the recommendations summarized above and set forth in greater detail below, with no attempt to prioritize.

One preliminary point must be made: Obviously, the foundation of any program to enhance civility in our profession is a statement of the expectations we have with respect to the behavior of our colleagues. While it may be argued that such matters were (or should have been) taught at a much earlier stage, both the literature in this field and our own experience suggest the adoption and promulgation of a code of behavior as both appropriate and necessary. Your Task Force agrees with the prevailing view that such a code should be aspirational only and should not give rise to punitive actions; instead, such a code would stand as a simple reminder that there are boundaries that should not be crossed in the zealous representation of a client's interests. Because the Lawyers' Principles of Professionalism address issues beyond civility, they are not

intended to -- and do not -- promulgate a complete code of civility. Your Task Force recommends that the first task of the proposed Committee on Professionalism be the adoption of a code of civil behavior, which would be more than what a lawyer or judge is *required* to do. It would set forth what he or she is *expected* to do in the pursuit of our profession. The following recommendations are intended to enhance widespread compliance with that code.

I. Mentoring

This response to the incivility problem ranked highest on the list of proposed solutions, with mentoring programs for young lawyers considered likely to be a “very effective” or “effective” solution by 57% of the questionnaire respondents. The question then becomes how to effectively implement such a program, and your Task Force concluded that should be accomplished in two ways.

First, law firms are uniquely situated to provide such mentoring to their associates. Some may have designated mentors in place to guide young lawyers in the complexities and intricacies of their chosen area of concentration and in the practice of law in general. To the extent that such mentoring does not include guidance and instruction on civility in dealings with judges, courtroom personnel, clients and fellow counsel -- as well as the appropriate response to uncivil behavior in the various forms and contexts it is likely to be encountered -- it can and should be expanded to do so. Professional development programs conducted by law firms for their associates and young partners should contain a component on professional civility. Guest speakers on this topic -- from the proposed CBA Committee on Professionalism (the “Professionalism Committee”) or from the law schools -- may be invited to the firms.

Of course, the law firm’s mentoring obligation does not begin or end with formal training. For even more effective in such matters is the example set by the more senior members

of the firm. Indeed, it is unlikely that anything could have a greater impact than the admonishment from a revered senior partner that certain uncivil behavior observed by him or her was simply unacceptable in that firm. In sum, the law firm has a very significant role to play in reversing the tide of incivility, and it must be encouraged and urged to assume that obligation in a meaningful way.

Those who practice alone or in very small firms may not, however, have the benefit of such training or even the guidance of more senior lawyers, and this is a void that must be filled by the organized bar. In 1997, the CBA's Young Lawyers Section published a "Mentor Directory," which listed, by area of practice, (*e.g.*, administrative law, ADR, banking, etc.) those members of the bar who were willing to provide guidance and advice to young lawyers in various practice areas. While at first consideration it might seem appropriate to build on that very worthwhile endeavor by adding a category for civility and other professional advice, further reflection makes it clear that approach is not likely to be effective. For while a lawyer may be quite willing to acknowledge his shortcomings in a particular area of the law, no such self-evaluation is likely with respect to behavior.

In short, civility mentoring must be actively disseminated. While members of the proposed Professionalism Committee can and should provide such mentoring, the delivery system may be difficult to develop. Your Task Force recommends that the proposed Professionalism Committee work with existing CBA committees and sections and perhaps even with other professional organizations concerned with this issue, such as the Inns of Court, to facilitate the mentoring that is so essential to the enhancement of civility in our profession.

II. Counseling

Counseling of the attorney who demonstrates a pattern and practice of uncivil behavior presents a different problem. As suggested above, the uncivil lawyer is unlikely to acknowledge his or her deficiencies in this regard -- much less reach out for assistance. When the offender practices in a firm setting, then the same senior lawyers who provide mentoring on a preventive basis can undertake counseling for remedial purposes. But what of the uncivil attorney not fortunate enough to have such a support system? Unchecked by the disapproval of his or her colleagues, his or her unacceptable manner of interaction with other lawyers and with judges is likely to ever worsen. Your Task Force believes that a standing subcommittee of the Professionalism Committee could receive and act on complaints about such an offender, with the response being carefully crafted to suit the alleged offense.

For example, in 1997, New Jersey's Commission of Professionalism formalized such a counseling effort through an order of its Supreme Court, which vests in the county bar associations the right to establish professionalism counseling programs designed "to offer educational counseling and other advice to lawyers whose conduct falls short of accepted levels

of professional behavior ...” An incident reported to the committee is screened to determine whether it merits a discussion with a committee member, and, if so, the intervention can be as little as a telephone call or meeting, or it may involve seeking the assistance of a judge, a suggestion of professional counseling, or referral to other bar programs providing assistance to lawyers in such areas as alcohol or drug abuse, lawyer-to-lawyer disputes, or law practice management. The program has enjoyed widespread publicity and apparent initial success.

The state bar in Arizona has a Peer Review Program, and Texas maintains a Professional Enhancement Program. Both are run by bar associations with mandatory membership and, to some degree, related to those states’ disciplinary systems; *i.e.*, Arizona’s peer review matters are referrals from bar counsel following the dismissal of ethics complaints, and Texas’ program permits ethics complaints to be put on hold while a lawyer is referred to a substance abuse program or the like.

The CBA Professionalism Committee can draw upon these programs in developing its own intervention plan.⁴ Most professionals want the respect and camaraderie of their peers and are likely to modify behavior which jeopardizes that -- if only that message can be appropriately delivered.

III. Law School Education

Education of law students on the importance of practicing and promoting civil behavior in the profession to which they aspire has been recognized as an effective method of dealing with

⁴ For example, uncivil conduct will often be the basis for a grievance, but that behavior, however egregious, may not constitute a violation of the Rules of Professional Conduct. In such a case, the Statewide Grievance Committee could, upon dismissal, refer the matter to the CBA Professionalism Committee.

this issue in other studies⁵ and by our own questionnaire respondents (32.2%). Given the early commitment of the deans of area law schools to the charge and objective of this Task Force, it is expected that a proposal for inclusion of such training in the law school curriculum would be well received.

Whether that topic should be included as a component of existing courses on professional responsibility, trial practice, and the like, or whether it should be approached on some other basis, is best left to the expertise of the faculties and administrations of those institutions. Suffice it to say that the truism, “the earlier, the better,” most certainly applies to training of professional behavior, and no effort should be spared to make this a permanent part of the law school curriculum.⁶ To that end, the proposed CBA Professionalism Committee should stand ready to provide adjunct faculty or guest speakers from the bar to facilitate such teaching.

IV. Continuing Legal Education

Several “write-in” comments added to the questionnaire suggested that civility, like morality, cannot be legislated -- or taught. Even if there be some element of truth to that position, it cannot be allowed to deter the effort to reduce incivility in the practice of law. The real problem is not so much the effectiveness of educational efforts directed at civility and

⁵ Law school training was the most frequently cited recommendation by lawyers and jurists as a possible solution to civility problems in the study conducted for the Aspen Report, and it was the third highest recommendation in your Task Force’s survey.

⁶ The ABA supports “the view endorsed by many legal educators that there is a need for law schools to teach and the bar to embrace ‘pervasive professionalism.’” *See* “Promoting Professionalism: ABA Programs, Plans and Strategies” at p. 34 (1998).

professionalism, as it is the ability to reach those who most require such courses.⁷ Your Task Force is convinced that the most serious transgressors of acceptable standards of professional behavior simply do not perceive themselves in that manner -- certainly not to the extent that they would willingly seek out remedial education designed to correct their behavior. CLE programs devoted solely to issues of civility and professionalism are, therefore, unlikely to draw those who would most benefit and, instead, are likely to enjoy an audience of lawyers and judges who already share a genuine concern for improving civility at the bench and bar, with the panelists and sponsors then “preaching to the choir.”

A more effective approach might be the inclusion of a civility or professionalism component in other programs in various areas of the law and the practice. For example, if a seminar is offered on new developments in the bankruptcy code, then at least one segment of that program should be devoted to civility and professionalism; *e.g.*, a presentation by a bankruptcy judge on his expectations regarding lawyers’ behavior in appearances before him. Similarly, a seminar by the trial bar in the preparation, examination and cross-examination of expert witnesses could include a session on discovery issues regarding experts and, most significantly, the wastefulness of harassing or abusive discovery tactics. A course on pre-trial preparation should include instruction on the absolute unacceptability of disruptive, offensive and uncivil tactics employed by some in depositions, as well as the means of responding professionally and effectively to such tactics.

⁷ Of course, this problem is more manageable in those jurisdictions with mandatory CLE. For example, the Supreme Court Rules for the Government of the Bar of Ohio were recently amended to include in the mandatory requirement of 24 hours of CLE every two years at least “sixty minutes of instruction related to professionalism.”

As the questionnaire responses and the literature in this field made clear, incivility unfortunately infects virtually all aspects of our professional lives, and so an educational campaign against such behavior should pervade all our professional educational efforts.

V. The Judiciary's Role

Any notion that the incivility problem could be successfully addressed without the full cooperation and active involvement of the judiciary was eliminated by at least two findings of your Task Force. First, a review of this same undertaking in other jurisdictions revealed that the most successful programs were those that were driven from “the top down,” *i.e.*, by involvement of that state’s high court. The importance attached by all to the issue of professional civility is undeniably enhanced by high-level judicial involvement.⁸ Second, as if sensing this intuitively, fully 97% of the questionnaire respondents agreed that “judges can and should play an active role in enhancing and maintaining civility at the bar.” Your Task Force recommends that the state court and federal court judges be encouraged to play that role in several ways.

First, of course, the impact of the example judges set in their courtrooms cannot be overestimated. When high levels of judicial temperament and civility are the hallmark of a judge’s dealing with counsel, it is exceedingly difficult for the attorneys not to reciprocate. Conversely, a judge lacking in civility and courtesy is likely to provoke from those appearing before him confrontational and hostile reactions. By demanding and expecting nothing less than the highest standards of professionalism in all proceedings before him or her, a judge can have a disproportionate effect on the bar’s overall civility. And judicial recognition of professional and

⁸ See Clarke, “The Judiciary as the Guardian of Professionalism,” proceedings of ABA Symposium on Teaching and Learning Professionalism (1996).

civil behavior and admonishment of uncivil or unprofessional behavior -- in a decision or in open court -- will heighten the bar's sensitivity to this issue.⁹

The judge's management of cases outside the courtroom can similarly elevate the level of civility. While hardly a judge's favorite task, intervention in discovery disputes -- and discovery stonewalling -- can frequently avoid uncivil clashes altogether, or at least defuse those that have been ongoing. Some judges, recognizing this, will order that certain depositions, which are expected to be particularly contentious, be conducted in the courthouse, so that immediate judicial resolution of disputes can occur on the spot. The fact that in such situations the feared confrontations almost never arise at all is strong evidence of the effectiveness of judicial oversight.

While many narrative responses to the questionnaire suggested the only truly effective response to incivility is the more liberal imposition of sanctions, there is a very real risk that such an approach will inflame an already tense situation and invite counter-motions for sanctions and escalation of other hostilities, resulting in further deterioration in relationships among attorneys.¹⁰ Most judges realize this, use sanctions sparingly and only for the most egregious offenses, and rely instead on more subtle methods to purge incivility from the litigation process. Your Task Force agrees with and supports that approach.¹¹

⁹ There are any number of creative ways in which a judge can affect the level of civility in litigation. During a panel discussion with federal judges at the last Annual Meeting of the CBA, one judge described her policy of talking with jurors after a verdict to obtain their impression of the attorneys. Whenever a juror makes known his unhappiness with overly contentious and uncivil lawyering he or she observed during a trial, that judge does not then hesitate to make known those comments to the offending attorney.

¹⁰ See, e.g., remarks of Connecticut Supreme Court Justice David W. Boden to the Hartford County Bar Association's Bench/Bar Leadership Conference on March 12, 1993, reprinted in the *Connecticut Lawyer*, April 1993.

¹¹ By the same token, it must be noted that 96.4% of the questionnaire respondents agreed "completely" or "somewhat" with the proposition that incivility "usually increases the cost of the depositions, trial, ... etc." If that belief is supported by empirical evidence, as seems likely, then judges must be sensitive to the economic impact of uncivil behavior in proceedings in or outside their courtrooms and require the wrongdoer to bear that burden.

VI. Bench/Bar Interaction

The bench can perhaps make its most significant contribution to the elevation of civility and professionalism at the bar by regularly sharing with practitioners their expectations, preferences, dislikes, personal case management procedures, etc., *and*, at the same time, hearing the concerns, frustrations and expectations of the bar. Such a colloquy can only result in more harmonious interaction between judge and lawyer and among the lawyers themselves and can and should take place regularly in informal settings and at least periodically on a more formal basis.

The bench/bar committees of the various county and regional bar associations are the obvious vehicles for bringing about such informal meetings, but there are other ways also. One Task Force member related his experience with “brown bag lunches” held somewhat regularly in one judicial district courthouse and attended by judges and lawyers, at which just such discussions take place -- with a most salutary result.

The Bench/Bar Leadership Conference conducted by the Hartford County Bar Association in 1993 should serve as a model for more formal opportunities for the bench and bar to address this and related issues on a periodic basis. That symposium, which enjoyed the full and enthusiastic participation and support of judges assigned to the Hartford courthouses and consisted of lectures and workshops, was exceedingly well received.¹² While conducting such a forum on a yearly basis would be impractical -- and probably unproductive -- its replication every three to five years would appear appropriate.

Finally, regular judicial participation in panel discussions at the Annual Meeting of the CBA will prove invaluable. By addressing both substantive issues of concern to bench and bar,

¹² See, John Bonee, “Civility at Bench and Bar,” 67 Conn. Bar Jour. 415 (1993).

as well as issues of professionalism and civility, such “mini-symposia” will advance the bench/bar interaction so essential to maintaining respect for each other and our system of justice.¹³

VII. Peer Recognition

Your Task Force believes that the struggle against incivility in our profession must be ongoing (hence, the recommendation for a permanent Professionalism Committee) and must be pursued on many fronts. An important element of that effort is keeping the importance of civility in the forefront of our professional lives.

One effective way of accomplishing that goal is with an annual award by the CBA to a judge or lawyer who has, by his or her actions, elevated the standards of professionalism in general and civility in particular. If such recognition were deemed to be duplicative of any of the existing awards (*e.g.*, the John Eldred Shields Memorial Distinguished Professional Services Award), then the “elevation of standards of civility in the profession” should be added as one of the criteria for an existing award. The objective, in either case, is to make the bench and bar aware that their colleagues value the efforts of those who would better our professional lives.

VIII. Publicity and Exposure

Your Task Force believes there is another, more creative method of maintaining the bar’s sensitivity to the civility issue. This effort would involve a regular column in the *Connecticut Lawyer* or *Connecticut Law Tribune*, which would solicit letters from the bench and bar,

¹³ The CBA Federal Practice Section is to be commended for presenting just such a session at the CBA’s recent Annual Meeting, which addressed the impact of the proposed changes to the federal rules of civil procedure

describing encounters with uncivil behavior and seeking comment or advice from the column's editors. A corollary of such a column might be an addition to the CBA's web site that invites judges and lawyers to post their experiences with uncivil or unprofessional conduct, so that others could respond on-line.

Much as the regular synopsis of decisions of the Statewide Grievance Committee in the *Connecticut Lawyer* serves as a constant reminder of our obligation to avoid transgressions of the ethics rules, such a published feature and on-line interaction devoted to civility in the profession would, it is hoped, meet the same objective. Your Task Force hopes and believes the CBA will be receptive to the implementation of these proposals.

IX. Systemic Changes

There can be no doubt that ours is an extremely stressful profession. Among the many factors insidiously at work today to increase those stress levels is the pressure imposed by the operation and structure of our civil and criminal justice systems, notwithstanding recent advances made in our courts in case management procedures. The tension between the court's obligation to efficiently "move business" and the lawyer's own difficult scheduling conflicts; the unrealistically low limits imposed on the resources allocated to our court system; the motion and pleading practice rules and systems that are vulnerable to abuse by those who seek delay; the insensitivity of some judges and prosecutors to the demands the law practice imposes, especially in an environment where competition is ever-increasing; and discovery rules and procedures that can result in gross abuse absent swift and firm judicial intervention, all combine to subject the practitioner to extraordinary pressures that cannot help but produce, on occasion, less than civil behavior in his or her dealings with clients, opposing counsel, the judge or prosecutor.

and the issue of civility in the litigation process, with the Chief Judge and two Magistrate Judges providing their

Increased interaction between the bench and bar, as proposed in Section VI above, will most certainly result in the alleviation of some of the problems. Informal discussions between lawyers and judges, in which each group seeks to understand and appreciate the concerns the other has regarding the operation of our judicial system and in which there occurs a sharing of ideas and proposed solutions, will produce changes for the better. But that dialogue must take place frequently, for our judicial system cannot operate effectively if the two essential segments of our profession are isolated from each other -- or worse yet -- perceive each other as adversaries.

Your Task Force believes, however, that the bar's efforts in this area must go farther. It recommends that a standing subcommittee of the Professionalism Committee be appointed and charged with monitoring this problem and proposing improvement on an on-going basis. That subcommittee would be in regular contact with the State of Connecticut Chief Court Administrator and the Chief Judge of the District Court. It would be responsible for proposing Practice Book amendments to the Rules Committee and speaking in favor of, or in opposition to, proposed changes to the rules. It would be supportive of lobbying and other efforts to ensure adequate resources for our court system and appropriate compensation levels for its judges.

This subcommittee of the Professionalism Committee would, in fact, act as both an ombudsman and watchdog with respect to the court system that so directly and significantly affects our everyday professional lives.

X. Permanent Committee on Professionalism

As indicated at the outset, the ultimate conclusion reached by your Task Force is that its efforts over these past months can only be considered the beginning of a solution, which, to be

thoughts and suggestions on both topics.

effective, will require an ongoing effort by our bar association. Incivility has unfortunately taken root in our profession, and *ad hoc* efforts -- however well intended -- will not purge it. Only an organized effort within a structured framework permanently in place will succeed in elevating our standards of professional behavior and then maintaining them at those higher levels. That will be the charge of the Connecticut Bar Association Committee on Professionalism, the immediate creation of which your Task Force recommends.

The proposed name of the committee is significant. Civility, the focus of your Task Force, is but one element of the broader theme of professionalism,¹⁴ which must include such matters as professional ethics, *pro bono* work, quality of professional life, client relations, public image, legal education, skill and competence training, responsibility as an officer of the court, and economic and other trends and developments. All of these are critical to our professional well being and perhaps addressed, to a greater or lesser extent, by one or more existing sections or committees of the Connecticut Bar Association. But the time has come to follow the lead of other jurisdictions and establish a committee to oversee, manage and promote all aspects of professionalism in the law -- if for no other reason than the fact that two thirds of our questionnaire respondents expressed their alarm and concern that the practice of law today is much more a business than a profession. In so doing, not only did they identify that phenomenon as the leading contributor to incivility in the profession, but on a more subtle level, they were expressing a concern we all silently harbor; *i.e.*, we are losing something very precious in the transformation from a profession to a business, and we must not let it continue. The restoration and maintenance of high levels of civility would, of course, be a primary objective of the proposed Professionalism Committee, but it would also do much more. Its creation would, in

¹⁴ See, Proceedings of ABA Symposium on Teaching and Learning Professionalism (1996).

fact, satisfy the second part of your Task Force's charge -- the reaffirmation of "our commitment to the Lawyers' Principles of Professionalism," which go beyond the issue of civility.

There are several models that might be followed in structuring the CBA Committee on Professionalism:

- The American Bar Association Standing Committee on Professionalism has the broad directive to: "(1) encourage, recommend and provide assistance to ABA entities in the development and coordination of professionalism initiatives; (2) encourage and provide assistance to state and local bar associations, law schools, the judiciary and all members of the legal community in their efforts to improve lawyer professionalism; (3) educate members of the legal profession and the public about professionalism issues; and (4) elevate and report on trends and developments affecting lawyer professionalism and suggest and implement initiatives to address them."
- By state bar rule, Georgia created the Chief Justice's Commission on Professionalism to "identify, enunciate and encourage adherence to non-mandatory standards of professional conduct ... [which] involve aspirations higher than those required by the Code of Professional Conduct." Its members include the Chief Justice of the Georgia Supreme Court, the Chief Judge of the Court of Appeals, one superior court judge, two law school faculty members, two non-lawyers, and four members of the bar. Its powers and duties include the presentation of a yearly "Convocation on Professionalism," the examination of ways of making the system of justice more accessible to the public; and the promulgation of recommendations to the Supreme

Court and the state bar “concerning additional means by which professionalism can be enhanced.”

- The New Jersey Commission on Professionalism in the Law is a cooperative venture of the New Jersey State Bar Association and the state’s three law schools in the goal of helping to “improve the legal profession, and the state judiciary, through the establishment of programs and initiatives that focus on the professional responsibilities of lawyers and judges.” Its members also include judges from all three court levels, non-lawyers, law school deans and practitioners. It has developed a Professionalism Counseling Program, introduced professionalism concepts into introductory practice courses for new lawyers, and conducted an annual Symposium on Professionalism that brings together bar leaders, judges and faculty members.
- A Florida Bar Association Task Force, created in 1989 to study the “course of decline in professionalism among lawyers in Florida,” led to the creation of a Standing Committee on Professionalism to implement the Task Force’s recommendations. It has established a Professionalism Award, conducted professionalism seminars, provided speakers to law schools, local bar associations and other organizations, and created a series of video-taped interviews with pre-eminent lawyers and judges regarding their views on professionalism and the practice of law. The Florida Standing Committee works closely with the Supreme Court of Florida’s Commission on Professionalism and the Florida Bar’s Center for Professionalism, which is funded by the bar’s general fund and is intended to “raise the professional aspirations of all the lawyers in the state and ensure that the practice of law remains a high calling.”

While the structure of some of the aforescribed might be more appropriate for an “integrated” bar, your Task Force has studied their charters and reports and believes the programs they have successfully implemented would serve well as guides to the proposed CBA Professionalism Committee.

CONCLUSION

Most lawyers and judges conduct themselves in a professional and civil manner in the pursuit of their profession. Most lawyers have no difficulty reconciling the obligation of civility with their duty to zealously advocate their clients’ interests, and most judges find civil treatment of lawyers and litigants completely consistent with the need to maintain firm control and efficient management of their courtrooms.

Unfortunately, however, there is a minority, apparently increasing in size and visibility, that fails to recognize that civility is not only compatible with -- but actually facilitates the proper performance of -- our professional duties. This growing incivility in our legal profession is tearing at its very fabric, and it cannot, therefore, be allowed to continue unabated.

To address this problem, your Task Force has sought to understand its origins and causes and has identified and recommended herein several measures, which, in the opinion of your Task Force, would begin to reverse the tide of incivility so inimical to our honorable profession. We therefore ask the Connecticut Bar Association’s House of Delegates to adopt and implement each of those recommendations.

Your Task Force wishes to express its appreciation for the opportunity to have served our bar association in this manner.

Respectfully submitted,

Louis R. Pepe
Chairman