A Professionalism Creed for Judges: Leading by Example

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Like it or not, judges are role models in our profession.
Judges cannot ask lawyers to accept a standard of
professional conduct to which they do not abide.¹

I. INTRODUCTION

Conspicuously absent from most of the discussion about legal
professionalism is an analysis of the need for more professionalism among the
judiciary—the lawyers who serve as judges. Speeches, articles, commissions,

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1. Marvin E. Aspen, The Search for Renewed Civility in Litigation, 28 VAL. U. L. REV. 513,
519 (1994). Marvin Aspen is a United States District Judge for the Northern District of Illinois,
Eastern Division, and he was the chair of the Civility Committee for the Seventh Federal Judicial
Circuit. Id. at 513-14 n.*. Judge Aspen’s statement directly responds to the enduring truth of
Mark Twain’s quote: “It’s noble to be good . . . and it’s nobler to teach others to be good, and
English jurist in the 1600s, observed the disjunction between what those in authority preach and
what they sometimes practice when he coined the phrase, “Preachers say Doe as I say, not as I
doe.” TABLE TALK OF JOHN SELDEN 107 (Frederick Pollock ed., 1927).
centers, and creeds on professionalism usually place a singular emphasis on lawyers. Although many of the most vocal proponents for professionalism are judges, their customary focus on lawyers' conduct misses the central need for judges to lead any serious effort to improve professionalism by example and not simply by words.

Bar leaders, judges, and commentators speak and write about the "crisis in professionalism," using images of "Rambo" lawyers. They call for more professionalism among lawyers as a way to improve the image of the legal profession, restore the practice of law to a golden age (that perhaps never existed), and improve the job satisfaction of lawyers and judges. The bromides they usually prescribe are professionalism creeds or codes aimed at


3. See Peter A. Joy, What We Talk About When We Talk About Professionalism: A Review of Lawyers’ Ideals/Lawyers’ Practices: Transformations in the Legal Profession, 7 GEO. J. LEGAL ETHICS 987 (1994). Professor Joy has commented:

Most [articles about professionalism] are devoid of any accurate sense of history of the legal profession, and a majority opine that things were better in the “good old days”—a time described by critics and even some supporters of the professionalism movement as “mythical,” “not always that good,” or perhaps a time that never was.

Id. at 989-90. Professor Deborah Rhode has observed:

Lawyers belong to a profession permanently in decline. Or so it appears from the chronic laments by critics within and outside the bar. . . . If ever there was a true fall from grace, then it must have occurred quite early in the profession’s history. Over two thousand years ago, Seneca observed attorneys acting as accessories to injustice, “smothered by their prosperity,” and Plato condemned lawyers’ “small and unrighteous” souls.


4. “Life for lawyers and judges would be smoother, more pleasant, because they would be less fractious in their dealings with one another.” Amy R. Mashburn, Professionalism as Class Ideology: Civility Codes and Bar Hierarchy, 28 VAL. U. L. REV. 657, 681 (1994).
lawyers' relationships and obligations to clients, opposing parties and their counsel, courts and other tribunals, the public, and the justice system. Rarely do these creeds or codes discuss judges' conduct or their duties to parties and their counsel, witnesses, court personnel, other judges, the public, and the justice system.

The ever-growing body of work on legal professionalism makes it clear that there is no single, universally accepted definition of professionalism. Most

5. See, e.g., Creeds of Professionalism reprinted in LAWYERS' MANUAL ON PROP'L CONDUCT §§ 01:401-01:403 (1988) [hereinafter Creeds of Professionalism] (listing different professionalism creeds or codes for lawyers with respect to their relationships with their clients, opposing parties and their counsel, and to the courts and other tribunals).


Others explain that the inability to define professionalism arises from the difficulty "to give precision to a social or occupational role that varies as a function of the setting within which it is performed, that is itself evolving, and that is perceived differently by different segments of society." EDGAR H. SCHEIN & DIANE W. KOMMERS, PROFESSIONAL EDUCATION 8 (1972). Professors Robert Nelson and David Trubek follow this sociological approach, and they define professionalism as "the set of norms, traditions, and practices that lawyers have constructed to establish and maintain their identities as professionals and their jurisdiction over legal work." Robert L. Nelson & David M. Trubek, New Problems and New Paradigms in Studies of the Legal Profession, in LAWYERS' IDEALS/LAWYERS' PRACTICES, supra, at 5. Nelson and Trubek continue that "professionalism should not be seen as a unitary or fixed set of values, but rather as an ongoing process that defines the normative orientation of lawyers." Id. at 26.

Although there is little agreement about the definition of professionalism, the Stanley Commission did agree with Roscoe Pound's definition that a profession is a group "pursuing a learned art as a common calling in the spirit of public service—no less a public service because it may incidentally be a means of livelihood." STANLEY REPORT, supra, at 261 (quoting ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 5 (1953)). In addition to Pound's definition of a profession, the Stanley Commission adopted Commission member Professor Elliot Freidson's definition of a profession as:
commentators concerned about professionalism call for more civility, greater adherence to both the spirit and letter of ethical rules, and less commercialization of legal practice. These spheres—civility, ethics, and anti-commercialization—are the three dimensions of the professionalism debate. Judges play a role in two of these spheres—civility and ethics. Therefore, this Article will focus on judicial civility and ethics and will not discuss the anti-commercialization dimension of the professionalism debate.

An occupation whose members have special privileges, such as exclusive licensing, that are justified by the following assumptions:

1. That its practice requires substantial intellectual training and the use of complex judgments.
2. That since clients cannot adequately evaluate the quality of the service, they must trust those they consult.
3. That the client's trust presupposes that the practitioner's self-interest is overbalanced by devotion to serving both the client's interest and the public good, and
4. That the occupation is self-regulating—that is, organized in such a way as to assure the public and the courts that its members are competent, do not violate their client's trust, and transcend their own self-interest.

STANLEY REPORT, supra, at 261-62.

8. Some commentators note that the focus of the bench and bar on the decline in professional behavior is narrow and perhaps even escapist in that the professionalism debate usually focuses on the concerns of members of the legal profession and not on the concerns of clients and the general public. Such critiques emphasize that the most pressing issues facing the legal profession include the need for better enforcement of existing ethical standards, fewer delays in litigation, and ensuring the availability of affordable legal services for all the poor, working class, and middle class persons presently priced out of gaining access to the courts. See, e.g., Joy, supra note 3, at 1004-09 (contending that lawyer professionalism should be examined "in the context of what it means to clients and the public"); Mashburn, supra note 4, at 680-83 (noting that although the general public sees the provision of legal services to all as a clear priority, the legal profession's response has been inadequate to this perceived need).

9. Quite often commentators divide ethics into some of its constituent parts—such as competence, independence, duties to the justice system, and pro bono service—and therefore identify several attributes of legal professionalism. See, e.g., Frank X. Neuner, Jr., Professionalism: Charting a Different Course for the New Millennium, 73 TUL. L. REV. 2041, 2042 (1999) (stating that ethics, competence and independence, continuous learning, civility, duties to the judicial system, and pro bono service are all elements of professionalism); Jerome J. Shestack, Taking Professionalism Seriously, A.B.A.J., Aug. 1998, at 70 (stressing six criteria of professionalism: "ethics and integrity, competence combined with independence, meaningful continuing learning, civility, delegations to the justice system, and pro bono service"). However, these efforts still conform to the notion that almost all of what we talk about when we talk about professionalism falls under the broader categories of civility, ethics, and anti-commercialization.

10. Anti-commercialization rhetoric is a constant theme in the more than seven hundred articles and speeches by prominent members of the bar on the subject of professionalism from 1925 to 1969. See Solomon, supra note 7, at 152. The Stanley Commission looked at the period of 1960 to 1985, and again economic pressures on lawyers and the commercialization of the practice of law were identified as threats to professionalism. See STANLEY REPORT, supra note 7, at 254-61. In fact, the tension of commercialization versus professionalism was the starting point for the Commission's charge to "examine such matters as advertising and other forms of solicitation, fee structures, so-called commercialization, competence, and the duty of the lawyer
This Article proposes to expand the professionalism debate to include an explicit acknowledgment that no progress will be made in improving lawyer professionalism until there is a concerted effort to improve the professionalism of judges. This Article also suggests a few concrete steps the judiciary can take in both the civility and ethics dimensions to improve judicial professionalism, thereby improving the professionalism of the legal profession as a whole. Part I of this Article examines the most prominent professionalism issues and how these issues involve the judiciary. The analysis in Part II demonstrates that the lack of professionalism among judges is as problematic as the lack of professionalism among lawyers. In Part III, this Article then explores the genesis of the current professionalism movement and evaluates the few current attempts to address judicial professionalism. Part IV concludes the Article by outlining two proposals for judges to lead the professionalism movement by example. The first proposal calls for better monitoring of judges’ professionalism through the use of judicial performance evaluations. The second proposal recommends new, more specific recusal standards as one way of demonstrating judicial allegiance to meaningful ethical rules required by a heightened commitment to professionalism.

II. THE (UN)PROFESSIONALISM OF SOME JUDGES

Concern over public dissatisfaction with the legal profession is often cited as a principal reason to improve professionalism. The professionalism
to his or her client and to the courts before whom the lawyer practices.” Id. at 248. Early in its report, the Commission asked, “Has our profession abandoned principle for profit, professionalism for commercialism?” Id. at 251. Yet, the Commission did not fully examine the implications of business values dominating the practice of law, such as the pressures for higher billable hours, larger partnership shares and associate salaries, and a lesser commitment to pro bono work. Additionally, the Commission never looked at these issues from the perspectives of either clients or the general public.

Professor Dennis Curtis has examined some of these issues through research into the attitudes of law partners and associates. Professor Curtis found that “the economics of firm practice create a focus on the ‘bottom line’ leading to relaxation of ethical standards, requirements for increased billable hours, erosion of loyalty toward both associates and partners, impersonal workplace relationships, and a reduction of the time and effort that was once devoted to training associates to be competent lawyers.” Dennis Curtis, Can Law Schools and Big Law Firms Be Friends?, 74 S. CAL. L. REV. 65, 69 (2000).

It is beyond the scope of this Article to examine these and other matters of the commercialization dimension of the professionalism debate, except to note that commercialization primarily affects lawyers and not judges.

11. See, e.g., STANLEY REPORT, supra note 7, at 253-54 (detailing the public’s unhappiness with lawyers); Daicoff, supra note 2, at 1340-46 (discussing the decline in public opinion and the bar’s corresponding concern over professionalism); Tom R. Tyler, Citizen Discontent with Legal Procedures: A Social Science Perspective on Civil Procedure Reform, 45 AM. J. COMP. L. 871, 872 (1997) (discussing surveys demonstrating public dissatisfaction with lawyers, judges, and the justice system and stating “there is evidence of a public ‘crisis of confidence’ in the legal system”).

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movement focuses on instances of lawyers behaving uncivilly or unethically as concrete examples of unprofessionalism. Although most of the attention is directed at lawyers, public dissatisfaction with judges and instances of uncivil or unethical judicial behavior are equally disturbing.

A. Public Opinion of Judges and Judicial Integrity

In 1999, a national survey by the National Center for State Courts found that public trust and confidence in state courts lagged behind confidence ratings of other institutions, "including state governors and legislatures, police and the U.S. Supreme Court." The survey also found that 81% of respondents believed "politics influence judges in their decisions," 80% believed "wealthy persons receive better treatment from the courts than do others," and nearly 50% believed "minorities and persons who do not speak English receive worse treatment from the courts."

Similarly, separate surveys of fifteen state court systems demonstrate generally low confidence ratings. Among the separate surveys, only six to forty-two percent of the public have "a great deal of confidence" or are "extremely or very confident" in the courts, and as many as seventy-six percent responded that they are "slightly or not at all confident" in their state courts. Unfortunately, the surveys do not detail reasons for the lack of confidence in the courts beyond the general belief that those with wealth or political power or those who are in the racial majority receive better treatment from the courts. Political contributions to judges in the forty-two states in which judges are elected also fuel public concerns about the integrity of the judiciary.

12. James Podgers, Confidence Game: Bench, Bar Leaders Ponder Strategies to Raise Public Trust in the Courts, A.B.A. J., July 1999, at 86, 86. The national survey was based on 1,826 interviews conducted between January 13 and February 15, 1999. "The sample was weighted so the three groups were represented in the same proportion as in American society—12 percent black, 13 percent Hispanic, and 72 percent whites and others." Richard Carelli, Survey Sees Racial Divide in Citizens' Opinion of Courts, BOSTON GLOBE, May 15, 1999, at A9. According to the survey, only 23% of respondents said they trusted their local courts "a great deal" compared to 43% who trusted the local police and 46% who trusted the medical profession. Daniel C. Vock, Courts Rank Low with Public, Survey Finds, CHI. DAILY LAW BULL., Aug. 18, 2000, at 1.

13. Podgers, supra note 12, at 86.


15. Forty-two states elect some or all of their judges. See A.B.A., REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYERS' POLITICAL CONTRIBUTIONS, CONTRIBUTIONS TO JUDGES AND JUDICIAL CANDIDATES, Part Two, 7 (1998). Seventeen states have retention elections for judges at some level—Alaska, Arizona, California, Colorado, Florida, Indiana, Iowa, Kansas, Maryland, Missouri, Nebraska, New York, Oklahoma, South Dakota, Tennessee, Utah, and Wyoming. Id. at 5 n.4. Three states elect judges in contestable, partisan elections and then utilize retention elections—Illinois, New Mexico, and Pennsylvania. Id.
ABA House of Delegates created a special Task Force on Lawyers' Political Contributions due to concerns about judicial "independence, the integrity of the courts, and the public's trust in the judicial process" arising from lawyers and parties appearing before judges whom they support with substantial political contributions. The ABA Task Force Report noted concerns about both the "appearance and, to the extent they may exist, realities of potential impropriety." Although the legislative and executive branches also depend on campaign contributions, judicial contributions are more problematic because judges, unlike other elected officials, are required to be impartial and not to represent the interests of any particular groups or political parties.

Empirical evidence demonstrates public concern over the appearance of judicial impropriety arising out of political contributions to judges. In Louisiana, where judges are elected, 91% of those surveyed in a public opinion poll commissioned by the Louisiana Supreme Court agreed that "people with political connections are treated differently"—that is, more favorably. In the same survey, 82% said "poor and wealthy are not treated alike," 80% stated that "judges are too influenced by politics," and 59% said that "whites and minorities are not treated alike." In a similar national survey sponsored by the

Seventeen states have contestable, non-partisan elections for judges at some level—Arizona, California, Florida, Georgia, Idaho, Indiana, Kentucky, Minnesota, Mississippi, Montana, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Washington, and Wisconsin. (June)

Two states, Michigan and Ohio, select judicial candidates in party primaries or conventions, and the judges usually run as partisans but appear on a non-partisan ballot. (Id. at 6 & n.8). Finally, fourteen states use contestable, partisan elections for judges at some level—Alabama, Arkansas, Illinois, Indiana, Kansas, Louisiana, Missouri, New Mexico, New York, North Carolina, Pennsylvania, Tennessee, Texas, and West Virginia. (Id. at 7 n.9). Studies from the American Judicature Society and the National Center for State Courts indicate:

Of the nation’s 1,243 state appellate judges, 81.9% stand for election of some type and 47.9% face contestable elections: 423 (34%) face retention-only, 174 (14%) face contestable non-partisan elections, and 421 (33.9%) face contestable partisan elections.

Of the nation’s 8,489 state judges in trial courts of general jurisdiction, 86.9% stand for election of some type and 77.3% face contestable elections: 818 (9.6%) face retention-only, 2,891(34.1%) face contestable non-partisan elections and 3,669 (43.2%) face contestable partisan elections.

Id. at 3 n.1 (citing studies from the American Judicature Society and the National Center for State Courts).

16. Id. at 3-4.
17. Id. at 4.
18. Univ. of New Orleans Survey Research Ctr., Citizen Evaluation of the Louisiana Courts: A Report to the Louisiana Supreme Court, Volume I, The Survey (June 16, 1998) at http://www.uno.edu/~poli/suprem98.htm. The Survey Center surveyed a random sample of Louisiana adults, and the "survey yielded 1208 respondents, 43% (515) of whom had some experience with the Louisiana court system in the past five years. . . . The final cross-sectional sample consisted of 52% females and 28% blacks with 24% in the median, 35-44, age category. These 1208 respondents are the basis for conclusions reached concerning the 'general public' or the 'cross-section.'” Id.
19. Id. at 11-20.
National Center for State Courts, "75% of those polled agreed that elected judges are influenced by having to raise campaign funds." The Louisiana and national surveys demonstrate the public's concern that elected judges consider and favor the interests of their campaign contributors when deciding cases.

Empirical evidence also supports the possibility of impermissible influences on elected judges. A recent survey supervised by the Texas Supreme Court and State Bar found that nearly half of the state's judges responding agreed that campaign contributions have a "fairly" or "very" significant influence on courtroom decisions. In addition, 79% of the lawyers and 69% of the court personnel participating in the Texas survey said that campaign contributions influence judges' decisions.

The escalating costs of judicial elections have led some to charge that large contributors, such as chambers of commerce or plaintiffs' lawyers, are "buying justice." In a report entitled "Payola Justice," Texans for Public Justice, a citizen's group, contended that the largest contributors to successful judicial candidates receive more favorable treatment from the courts because campaign contributions influence judges' decisions. The citizen's group reached this conclusion after analyzing the Texas Supreme Court's decisions and correlating the decisions with the largest contributors' interests in the judicial campaigns. Of course, this type of analysis does not say anything about the underlying relative merits of the parties' positions. Yet, in 1987, when plaintiffs' lawyers made most of the contributions to justices, the Texas Supreme Court ruled in favor of plaintiffs in 67% of the cases. In 1998, when businesses, insurance companies, and doctors made most of the contributions to justices, defendants

20. Tony Mauro, Judges Shouldn't Have to Please Voters, USA TODAY, Oct. 18, 2000, at 17A. See also supra note 12.

21. State Bar of Tex. & Tex. Office of Court Admin., The Courts and the Legal Profession in Texas—The Insider's Perspective: A Survey of Judges, Court Personnel, and Attorneys at http://www.courts.state.tx.us/publicinfo/index.htm (last visited Feb. 23, 2001). Written "questionnaires were mailed to samples of 2,127 Texas judges, 2,198 court personnel, and 2,487 Texas attorneys in the fall of 1998. The response rates for the surveys were: 51 percent for Texas judges; 43 percent for Texas court personnel; and, 42 percent for Texas attorneys." Id.

22. See id. at 5.

23. See, e.g., Doug Bandow, Buying Justice: Plaintiffs' Lawyers Reap Huge Dividends by Investing in Judges and Politicians, KNIGHT RIDDER/TRIB., Dec. 16, 1999 (discussing affect of campaign contributions on judges decisionmaking); Editorial, Campaign Contributions Corrupt Judicial Races, USA TODAY, Sept. 1, 2000, at 16A ("[S]pecial interests are dying to buy judicial seats for their favored philosophy.").


25. See 60 Minutes: Justice for Sale: Whether There's a Connection Between Campaign Contributions to Texas Supreme Court Justices and the Outcomes of Cases (CBS television broadcast, Nov. 1, 1998).
won 69% of the cases, and insurance companies won approximately 90% of the time.  

1. The Inadequacy of Existing Judicial Disqualification Standards

Except for an Alabama law, judicial ethics rules and legal standards in the United States do not clearly require elected judges to recuse or disqualify themselves from hearing matters when major contributors to their election campaigns appear as parties or lawyers.

26. See id.

27. See id.

28. In an effort to address the appearance of impropriety of judges presiding over cases involving campaign contributors, Alabama adopted legislation, effective in 1996, granting parties the right to require recusal when the judges or justices assigned to their cases have received significant campaign contributions from the opposing parties or their lawyers. See Ex parte Kenneth D. McLeod, Sr., Family Ltd. P'ship XV, 725 So. 2d 271, 274 (Ala. 1998) (commenting on the reasons for the new recusal statute). The Alabama law provides, in pertinent part:

If the action is assigned to a justice or judge of an appellate court who has received more than four thousand dollars ($4,000) based on the information set forth in any one certificate of disclosure, or to a circuit judge who has received more than two thousand dollars ($2,000) then, within 14 days after all parties have filed a certificate of disclosure, any party who has filed a certificate of disclosure setting out an amount ... below the limit applicable to the justice or judge, or an amount above the applicable limit but less than that of any opposing party, shall file a written notice requiring recusal of the justice or judge or else such party shall be deemed to have waived such right to a recusal.

**ALA. CODE § 12-24-2(c) (Supp. 2000).** The section of the Alabama law on the legislative intent of this statute states:

The Legislature intends by this chapter to require the recusal of a justice or judge from hearing a case in which there may be an appearance of impropriety because as a candidate the justice or judge received a substantial contribution from a party to the case, including attorneys for the party ... This legislation in no way intends to suggest that any sitting justice or judge of this state would be less than fair and impartial in any case.

**ALA. CODE § 12-24-1 (Supp. 2000).**

Although the express intent of the Alabama legislation is to remove the appearance of impropriety through a recusal process, the fact that a lawyer must request recusal still places the lawyer in the uncomfortable position of suggesting that the justice or judge may not be fair or impartial. This burden on the lawyer may be too great because the lawyer may fear reprisals from the same justice or judge in future matters in which the lawyer will not be able to require recusal. A better solution is automatic recusal whenever a justice or judge presides over a case involving a major contributor. See infra notes 139-47 and accompanying text.

29. There are only two instances when a party has an enforceable constitutional right to an impartial judge. In the first instance, the judge or decision maker has a direct, pecuniary interest in the outcome of the matter. See, e.g., Ward v. Vill. of Monroeville, 409 U.S. 57, 60 (1972); Tumey v. Ohio, 273 U.S. 510, 522-23 (1927). In the second, the judge has been the target of criticism or some form of abuse by a party appearing before the judge. See, e.g., Taylor v. Hayes, 418 U.S. 488, 501-03 (1974); Mayberry v. Pennsylvania, 400 U.S. 455, 465-66 (1971).
Appellate and state supreme courts rarely require trial judges or appellate judges to step down when contributors appear before them, even though most commentators argue that existing judicial ethics rules which require a fair and impartial judge should lead to recusal.\textsuperscript{30} Attempts to disqualify judges have failed, for example, when a single lawyer donated 21\% of the campaign funds to a judge presiding over a case,\textsuperscript{31} a lawyer donated $10,000 to a trial judge’s re-election campaign a few days after the judge received a case assignment involving the lawyer,\textsuperscript{32} and a lawyer handling a case before a state supreme court donated $248,000 to the justices hearing his case.\textsuperscript{33}

2. \textit{Efforts to Reform Judicial Selection Processes}

Professor Roy Schotland identifies the “increasing politicization of judicial elections” as the “greatest current threat to judicial independence.”\textsuperscript{34} He notes that after nearly one hundred years of efforts to eliminate judicial elections, the vast majority of state court judges continue to face elections of some type.\textsuperscript{35} Campaigns are increasingly expensive, and quite often judicial candidates run on such strong anti-crime campaigns that the candidates’ campaign statements raise questions about their ability, if elected, to preside fairly over criminal cases.\textsuperscript{36}

Three United States Supreme Court Justices have noted that elected judges who apply the law fairly to criminal defendants—especially in capital crimes—are sometimes unable to do so due to political pressures: “Indeed, the scholarly opinion is just as unanimous that a campaign contribution should require a judge to recuse as the courts are agreed that recusal is unnecessary.”\textsuperscript{37} John Copeland Nagle, \textit{The Recusal Alternative to Campaign Finance Legislation}, 37 HARV. J. ON LEGIS. 69, 88 (2000) (citing several authors who argue that existing ethical rules require elected judges to recuse themselves). Courts typically reason that it would be “impractical” to require a judge to recuse herself from cases involving contributors, or the courts “deny that a reasonable observer would view a judge as biased when deciding a case involving a campaign contributor.”\textsuperscript{38}

Id.; \textit{see also} Breakstone v. MacKenzie, 561 So. 2d 1164, 1168 n.6 (Fla. Dist. Ct. App. 1989) (listing articles criticizing decisions permitting judges to preside over cases involving campaign contributors); Stuart Banner, \textit{Note, Disqualifying Elected Judges from Cases Involving Campaign Contributors}, 40 STAN. L. REV. 449, 483-89 (1988) (reviewing current ethical rules and advocating clearer ethical rules to require disqualification of judges in cases involving significant campaign contributors).

\textsuperscript{30} "Indeed, the scholarly opinion is just as unanimous that a campaign contribution should require a judge to recuse as the courts are agreed that recusal is unnecessary." John Copeland Nagle, \textit{The Recusal Alternative to Campaign Finance Legislation}, 37 HARV. J. ON LEGIS. 69, 88 (2000) (citing several authors who argue that existing ethical rules require elected judges to recuse themselves). Courts typically reason that it would be "impractical" to require a judge to recuse herself from cases involving contributors, or the courts "deny that a reasonable observer would view a judge as biased when deciding a case involving a campaign contributor." Id.; \textit{see also} Breakstone v. MacKenzie, 561 So. 2d 1164, 1168 n.6 (Fla. Dist. Ct. App. 1989) (listing articles criticizing decisions permitting judges to preside over cases involving campaign contributors); Stuart Banner, \textit{Note, Disqualifying Elected Judges from Cases Involving Campaign Contributors}, 40 STAN. L. REV. 449, 483-89 (1988) (reviewing current ethical rules and advocating clearer ethical rules to require disqualification of judges in cases involving significant campaign contributors).


\textsuperscript{32} Two days after Judge Anthony Farris was assigned to hear the case of \textit{Texaco v. Pennzoil}, Joe Jamail, Pennzoil’s lead counsel at the time, donated $10,000 to Judge Farris’ re-election campaign and another $10,000 to the campaign of the administrative judge with supervisory powers over Judge Farris. Jamail’s contributions to seventeen other judges during this same time totaled less than $13,000. See \textit{THOMAS PETZINGER, JR., OIL & HONOR: THE TEXACO–PENNZOIL WARS} 282-88 (1987). Texaco’s motion to recuse Judge Farris on the basis of the contribution was denied. \textit{See id. at} 290-91.

\textsuperscript{33} \textit{See Richard Woodbury, Is Texas Justice for Sale?}, TIME, Jan. 11, 1988, at 74, 74.

\textsuperscript{34} Roy A. Schotland, Comment, \textit{61 LAW & CONTEMP. PROBS.} 149, 149 (1998).

\textsuperscript{35} \textit{See id. at} 149-50.

\textsuperscript{36} \textit{See id. at} 150.
cases—face the danger of losing their next election. Justice John Paul Stevens observed that the danger of judges bending to public pressure in capital cases also may extend to appointed judges who contemplate a higher judicial office.

Calling the present state of judicial elections a national problem, supreme court justices from the seventeen largest states with judicial elections met recently with legislators and academicians to explore proposals to reform the judicial election system. The meeting, sponsored by the National Center for

37. See Harris v. Alabama, 513 U.S. 504, 519 (1995) (Stevens, J., dissenting) (stating that elected judges “must constantly profess their fealty to the death penalty”); Wainwright v. Witt, 469 U.S. 412, 459 (1985) (Brennan, J., dissenting) (observing that there is an acute risk of judicial bias in capital cases where community pressure on elected judges to convict those accused of a capital crime “can overwhelm even those of good conscience”); Ruth Marcus, Justice White Criticizes Judicial Elections, WASH. POST, Aug. 11, 1987, at A5 (“If a judge’s ruling for the defendant . . . may determine his fate at the next election, even though his ruling was affirmed and is unquestionably right, constitutional protections would be subject to serious erosion.” (quoting Justice Byron R. White)).

The influence of public opinion on elected judges’ use of discretion is best demonstrated by a study of the four states where judges can override a jury’s sentence in death penalty cases. Professors Stephen Bright and Patrick Kennan found that in the three states—Alabama, Florida, and Indiana—where judges face elections, judges overrode jury sentences of life imprisonment and imposed the death penalty in at least three times as many cases as when the judges overrode jury sentences of the death penalty to impose sentences of life imprisonment. See Stephen B. Bright & Patrick J. Keenan, Judges and the Politics of Death: Deciding Between the Bill of Rights and the Next Election in Capital Cases, 75 B.U. L. REV. 759, 793 (1995). In one state—Delaware—where state judges are not elected, judges overrode the jury recommendation of the death penalty and imposed life sentences in every case they considered. Id. at 794.

38. Justice Stevens observed:

The “higher authority” to whom present-day capital judges may be “too responsive” is a political climate in which judges who covet higher office—or who merely wish to remain judges—must constantly profess their fealty to the death penalty . . . . The danger that they will bend to political pressure when pronouncing sentence in highly publicized capital cases is the same danger confronted by judges beholden to King George III.

Harris, 513 U.S. at 519-20 (Stevens, J., dissenting) (footnote omitted).

The successful effort to block Missouri Supreme Court Justice Ronnie White’s nomination to the federal bench appears to confirm Justice Stevens’s belief that judges who fail to be guided by public opinion in capital cases will not be able to advance their careers. Senator John Ashcroft from Missouri accused Judge White of being “soft on the death penalty” even though Judge White voted to uphold death sentences in seventy percent of the appeals he heard. Mary McGrory, Scandalous Symmetry, WASH. POST, Jan. 21, 2001, at B5. In his testimony at the Senate confirmation hearing for Ashcroft as U.S. Attorney General, Judge White said Ashcroft had distorted the record by labeling Judge White as “pro-criminal” for writing a dissent in a case urging retrial of a man sentenced to death because the man had inadequate counsel. See Susan Milligan, Judge Says Ashcroft “Distorted” Record Despite Testimony, He is Expected to be Confirmed, BOSTON GLOBE, Jan. 19, 2001, at A29. Ashcroft justified his opposition to White by stating that “incompetent counsel was not enough of a reason to order a new trial in such a gruesome case.” Id.

39. See Dennis Chapitan, Process of Election Judges Debated, MILWAUKEE J. SENTINEL, Dec. 10, 2000, at 2B. Critics of judicial elections feared the meeting would result in “a strategy for defense of the system rather than an effort to find solutions.” William Glaberson, Chief
State Courts, started with the premise that the election of judges will remain a reality for the foreseeable future. After shelving discussion of merit selection of judges, the participants considered the following judicial campaign reforms: educating voters through candidate forums and printed voter guides, lengthening judicial terms of office, moving toward nonpartisan elections, and public financing of judicial campaigns. The reform proposals will be presented to the Conference of Chief Justices in early 2001.

However, it is doubtful that judicial campaign election reforms alone will be effective to restore confidence and improve the image of elected judges and the courts. Even when judicial candidates agree upon spending limits, interest groups are able to set up special committees to run issue campaigns that harm one candidate and benefit another. For example, the Ohio Chamber of Commerce recently tried to unseat an Ohio Supreme Court justice whom the Chamber criticized for not voting "in favor of business." The Chamber set up

Justices to Meet on Abuses in Judicial Races, N.Y. TIMES, Sept. 8, 2000, at A14 (quoting Tom Smith).

40. See Tony Mauro, Growing Concerns Over Judicial Elections, LEGAL TIMES, Nov. 27, 2000, at 18. Professor Roy Schotland, the main organizer of the summit, stated that because many attending the meeting support judicial elections, the summit would not "put energy into that debate anymore." Id.

41. Id.

42. See Diana Strzalka, Leaders at Conference Call for Higher Standards in Judicial Elections, CHI. TRIB., Dec. 10, 2000, at C3.

43. Commentators have focused on the effects of campaign contributions on elected judges and the effects of mobilization of public opinion around issues, such as crime, on judicial campaigns. These extralegal influences on judges threaten the guarantee that judges will be fair and neutral decisionmakers, and the commentators offer a number of solutions to minimize the effect of these influences on judges. See, e.g., Kathryn Abrams, Some Realism about Electoralism: Rethinking Judicial Campaign Finance, 72 S. CAL. L. REV. 505 (1999) (analyzing judicial campaign reform recommendations and questioning the assumption that some form of electoral selection of state court judges is evitable); Paul D. Carrington, Judicial Independence and Democratic Accountability in Highest State Courts, 61 LAW & CONTEMP. PROBS. 79, 118-25 (1998) (recommending some form of appointive system for selecting judges and exploring a number of judicial campaign reforms, including judicial campaign spending limits, limits on judicial campaign tactics, and public financing of judicial campaigns); Roy A. Schotland, Elective Judges' Campaign Financing: Are State Judges' Robes the Emperor's Clothes of American Democracy?, 2 J.L. & POL. 57, 121-32 (1985) (advocating the study of ways to improve judicial campaign financing, and recommending efforts such as better voter education, conditioning bar endorsements on agreed solicitation and campaign contribution limits, more effective campaign contribution disclosure laws, and voluntary judicial campaign spending limits); Banner, supra note 30 (advocating clearer ethical rules to require disqualification of judges in cases involving significant campaign contributors); Mark Andrew Grannis, Note, Safeguarding the Litigant's Constitutional Right to a Fair and Impartial Forum: A Due Process Approach to Improprieties Arising from Judicial Campaign Contributions from Lawyers, 86 MICH. L. REV. 382, 406-18 (1987) (arguing for better regulation of judicial campaign contributions and better reusual standards in cases involving judicial campaign contributors).

44. Constance Sommer, Ohio Supreme Court Race Gets Political: "A Very Bad Campaign," CORP. LEGAL TIMES, May 2000, at 72 (according to a Chamber of Commerce analysis of court decisions, Ohio Supreme Court Justice Alice Robie Resnick was "only voting
a special committee to evade the candidates' agreed upon spending limits of $500,000, and launched a three million dollar "issue" advertisement campaign.45 One advertisement ran the banner "Is justice for sale in Ohio?" beneath the name of the justice the Chamber wanted to replace.46 The Ohio Elections Commission dismissed a complaint that the advertisement was unfair and undermined the justice system.47

Based on the Ohio experience and the inability to craft effective and constitutionally sound judicial campaign funding controls, one chief justice recently stated that "[t]here is a consensus among the chiefs of supreme courts that the only way to diminish the large amounts of contributions is to go to some sort of appointed system."48 Yet, even a judicial appointment system may be insufficient.49 In the court cases surrounding the 2000 presidential election, criticism of the majority decisions by the Florida Supreme Court, because the justices were merit-selected by Democrats, and of the majority decisions by the United States Supreme Court, because the Justices were merit-selected by Republicans, may indicate that any selection process involving partisan appointments will fail to insulate judges from criticism about their integrity and independence.50

in favor of business 18 percent of the time").


46. Id. Another advertisement praised the candidate the Chamber of Commerce supported.

Id.

47. See T.C. Brown & Sandy Theis, TV Ads Saying "Is Justice for Sale?" Can Stay, Commission Rules, THE PLAIN DEALER, Oct. 21, 2000, at 5B. Lawyers for the group running the advertisement successfully argued that "if words like 'elect,' 'defeat' or 'vote for' are not used, the ad represents constitutionally protected free speech." Id.


49. Although most commentators agree that merit selection plans are better than the judicial elections at guaranteeing judicial independence, politics still play a role in most merit selection plans. See, e.g., Karen L. Tokarz, Women Judges and Merit Selection Under the Missouri Plan, 64 WASH. L. Q. 903, 904-07 (1986) (exploring the limited success of women gaining judicial appointments and noting that rather than removing politics from judicial selection process, the judicial appointment process simply rebalances the political interest of the bar, bench, political parties, and the governor). Federal judicial appointments during the Clinton presidency were slowed by efforts "to make the federal bench more conservative," and the federal appointment system "continues to favor white men significantly and is so dominated by politics and paybacks that minority nominees are twice as likely to be rejected as whites." Joan Biskupic, Politics Snares Court Hopes of Minorities and Women, USA TODAY, Aug. 22, 2000, at 1A.

50. "The Florida court, cloaked in merit-selected robes, suffered heavy bashing last month as Republicans, including former presidential candidate Bob Dole, beat the war drums that the justices had been chosen by 'Democrats.'" Rob Modic, Top Justices Hold Summit in Chicago, DAYTON DAILY NEWS, Dec. 9, 2000, at 1B. "Seven of the [United States Supreme Court] justices were nominated by Republican presidents, and a ruling in favor of George W. Bush would open them up for criticism of the type that rained on the Democrat-appointed Florida Supreme Court when it favored Vice President Al Gore." George E. Condon, Jr., High Court Walks Nonpartisan Tightrope; Experts Say Credibility of Supreme Court on the Line, SAN DIEGO UNION-TRIB., Dec.
B. The Ethical Behavior and Civility of Judges

The professionalism movement advocates civility and compliance with both the spirit and letter of ethical rules as a means for improving lawyers’ behavior. However, the movement neglects these problems among judges, even though there are numerous instances of judges ignoring their ethical obligations or behaving badly.

Recently, the New Hampshire Supreme Court was in turmoil for several months because justices recused from cases routinely sat in on deliberations and reviewed draft opinions in those same cases. Some of the justices also were accused of attempting to influence the outcome of cases in which they or another justice had an interest. In Ohio, law clerks had to break up a fight between two supreme court justices. One of the justices was thrown against a desk and choked with his tie, causing severe bruising and two fractured ribs. Two years later, one of the same justices was involved in another incident. In that incident, the justice used a racial epithet, asked a court employee if he had any “black blood,” and then denied making these statements until confronted with a tape recording.

Other instances of injudicious behavior by state court trial judges include the following: a judge having sex with a woman whose husband was a

12, 2000, at A19. “The shot was fired at the heart of the nation by the five conservative justices of the U.S. Supreme Court, with their politically inspired ruling that installed George W. Bush as president . . . . You don’t need an inside source to realize that the five conservative justices were acting as the last in a team of Republican Party elders who helped drag Governor Bush across the finish line.” Thomas L. Friedman, Medal of Honor, N.Y. TIMES, Dec. 15, 2000, at A39. In criticizing the Court, Professor Bradley Joondeph, a former law clerk to U.S. Supreme Court Justice Sandra Day O’Connor, stated, “Given the weakness in Bush’s arguments that federal law is involved, in my view, it is difficult to understand—aside from pure politics—why the U.S. Supreme Court has inserted itself into this drama.” Bradley Joondeph, Florida Judges—Not U.S.—Need to Resolve Voting-law Ambiguities, MERCURY NEWS (San Jose) (last visited Dec. 11, 2000), available at http://www.mercurycenter.com/opinion/perspective/docs/liberal10.htm.

An apparent partisan divide even exists in some federal circuits as one reporter noted the absence of all the “Republican-appointed judges” at a ceremony for Abner Mikva, a Democrat-appointed former chief judge for the U.S. Court of Appeals for the D.C. Circuit. Jonathan Groner, Partisan Gap at Mikva Ceremony, LEGAL TIMES, Oct. 23, 2000, at 8. Partisanship in the federal judicial appointment process has gone to “new lengths,” and divisions in appellate opinions are “often along party lines, or close to it.” Stuart Taylor Jr., Why It’s Getting Harder to Appoint Judges, 31 NAT’L L.J. 2783, 2783-84 (1999).


54. Id.

55. Mark Tatage, Wright Protest Planned: Groups Expected to Push for Justice’s Resignation, PLAIN DEALER, Mar. 17, 1993, at 3B.
defendant in a criminal case the judge was hearing; a judge commenting on the physical attributes of women in his courtroom; a judge throwing a glass of water at a lawyer in court; a judge calling a defendant "a smart aleck and yelling, 'Shut up before you go to jail'"; and a judge explaining to a witness that she was "on his turf and, in his venue at least, he is God."

Federal judges are not immune to charges of poor behavior. Recently, the Ninth Circuit Judicial Council issued a public reprimand of a district court judge for "exchanging offensive notes in court with a clerk." The notes contained a number of ethnic and racial slurs, and the judicial council characterized the judge's conduct as "prejudicial to the effective administration of the business of the courts."

In another recent case, the Fifth Circuit Judicial Council found that a federal district court judge "engaged in a continuing pattern of conduct evidencing arbitrariness and abusiveness that has brought discredit on, and discord within, the federal judiciary." The Judicial Council also found that the judge's "intemperate, abusive and intimidating treatment of lawyers, fellow judges, and others . . . detrimentally affected the effective administration of justice . . . [and the judge] abused judicial power, imposed unwarranted sanctions on lawyers, and repeatedly and unjustifiably attacked individual lawyers and groups of lawyers and court personnel." The Judicial Council sanctioned the judge by barring the judge from receiving new case assignments for a period of one year, disqualifying the judge from cases involving certain attorneys for a period of three years, and issuing a public reprimand. Rather than accept the sanctions, the judge is challenging the constitutionality of the Judicial Conduct and Disability Act of 1980, which is the only authority for

59. Id.
60. Id.
62. Id. at A1.
63. Id.
65. Id.
66. Id. at 139.
67. 28 U.S.C.S. § 372(c) (1988). The Act authorizes the Judicial Council in each circuit to impose the following sanctions: certifying the disability of a judge, ordering that on a temporary basis no further cases will be assigned to the judge, censuring or reprimanding the judge by a private communication or public communication, but under no circumstances may
judicial discipline of federal judges short of impeachment by the United States Congress.68

Judge V. Robert Payant, a former president of the National Judicial College, calls instances of judges acting badly "black robe fever," and he acknowledges that this behavior is "undermining the public’s already shaky confidence in the legal system."69 Some federal judges are concerned about this behavior as well. A survey by the Seventh Judicial Circuit found that twenty-two percent of the responding judges believed that there were civility problems between or among judges.70

These findings, together with public opinion of the judiciary, political pressures possibly affecting the integrity of the judiciary, and the uncivil and unethical behavior of some judges, indicate that it is time to focus on judges’ professionalism.

III. EFFORTS TO IMPROVE THE PROFESSIONALISM OF JUDGES

Though the behavior of some judges raises civility and ethical concerns, few in the professionalism movement have given more than lip service to judges’ professionalism. There are at least three reasons for the relative silence concerning judicial professionalism. First, bar leaders and other lawyers may be reluctant to raise concerns over the professionalism of the judiciary either

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68. Coyle, supra note 58, at 60.
69. Coyle, supra note 58, at 60.
70. Forty-five percent of the judges responding believed that there is a problem with civility, and fifty percent of those believed that there were civility problems between or among judges. Interim Civility Report of the Seventh Circuit, supra note 6, app. II at 430, tbls.2 & 3. In this same survey, forty-two percent of the lawyers found civility to be lacking, and the survey did not ask lawyers’ opinions about civility problems between or among judges. Id. app. III at 433, tbl.2.
because they fear possible reprisals by judges in cases the lawyers bring71 or because the lawyers may think that the ethical prohibition against criticizing individual judges extends to honest opinions about ways to improve the judiciary.72 Second, judges may be reluctant to raise issues of judicial professionalism either because they fear disrupting judicial collegiality or because they fear that it will lead to unfair criticism of the judiciary.73 Third, the inattention to the judiciary is based, at least in part, on the history of the professionalism movement. There is a lack of empirical research to support or refute the first two reasons,74 but there is evidence to support the third reason for the lack of focus on judicial professionalism.

A. History of Judicial Professionalism Initiatives

The current concern for civility dates back at least to 1971, when former Chief Justice Warren Burger wrote that "overzealous advocates seem to think the zeal and effectiveness of a lawyer depends on how thoroughly he can disrupt the proceedings or how loud he can shout or how close he can come to

71. This statement is based upon anecdotal information and observations from the author's more than twenty years as a practicing lawyer, active bar association member, and law professor (who continues to go to court several times a week while supervising law students in clinical legal education programs). Judges wield enormous power in cases, and lawyers generally believe that any comment about the need to improve judicial professionalism will be interpreted by some judges as unfair criticism. As a result, most lawyers, and almost all bar leaders, are reluctant to offer suggestions for improving judicial professionalism beyond calls for merit selection of judges, for judges to police the professionalism of lawyers more closely, or for judges to become involved in law school programs to educate law students about lawyer professionalism.

72. Rule 8.2 of the ABA Model Rules of Professional Conduct provides, in pertinent part:

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

MODEL RULES OF PROF'L CONDUCT R. 8.2 (1999) [hereinafter MODEL RULES].

As the plain language of Rule 8.2 indicates, lawyers are only prohibited from making false or reckless statements concerning particular judges, and they are not prohibited from making statements that are truthful. In fact, commentary to the rule states that a lawyer's honest assessment of judicial qualifications "contributes to improving the administration of justice." Id. at cmt. 1.

73. This statement is based primarily on anecdotal information and observations from more than twenty years as a practicing lawyer and law professor and from numerous conversations with individual judges. The authority structures in most courts provide individual judges with a great deal of autonomy. Many judges express the belief that there is little they can do to effect change in the behavior of other judges and that to attempt to do so may actually bring more disharmony among the judiciary. Some judges are also fearful that programs aimed at improving the judiciary may spur unfounded criticism upon the judiciary as an institution.

74. More empirical research into lawyers' opinions of judges as well as judges' opinions of other judges is needed.
insulting all those he encounters—including the judges.”  

Mindful that lack of civility exists among judges as well as lawyers, Chief Justice Burger noted, “Every judge must remember that no matter what the provocation, the judicial response must be [a] judicious response and that no one more surely sets the tone and the pattern for courtroom conduct than the presider.”  

Despite identifying the need for judges to set the tone for courtroom conduct, Chief Justice Burger focused his remarks on the need to improve lawyers’ civility.  

Chief Justice Burger’s narrow focus on lawyers was also present in his 1984 recommendation to the American Bar Association (ABA) to explore the “decline in professionalism” by focusing on advertising and competition among lawyers.  

In response, the ABA created the Commission on Professionalism (known as the Stanley Commission).  

In keeping with Chief Justice Burger’s recommendation, the Stanley Commission surveyed a nonrandom sample of 234 corporate executives and judges about the professionalism of lawyers, not the professionalism of judges.  

After conducting the survey and exploring the issues, the Stanley Commission recommended that law schools, the practicing bar, bar associations, and the judiciary give more attention to ethics and professionalism.  

Yet, the Commission’s actual recommendations for judges were sparse.  

The Commission advised judges to take a more active role in policing lawyer conduct by seeing that “cases advance promptly, fairly and without abuse” and by “impos[ing] sanctions for abuse of the litigation process.”  

The Commission also recommended that “members of the judiciary

75. Warren E. Burger, The Necessity of Civility, 52 F.R.D. 211, 213 (1971). However, concerns over civility can easily be traced to the early part of the twentieth century. In 1906, Roscoe Pound stated:

The idea that procedure must of necessity be wholly contentious disfigures our judicial administration at every point . . . . It leads counsel to forget that they are officers of the court and to deal with the rules of law and procedure exactly as the professional football coach [deals] with the rules of the sport . . . . The effect . . . is not only to irritate parties, witnesses and jurors in particular cases, but to give to the whole community a false notion of the purpose and end of law . . . . If the law is a mere game, neither the players who take part in it nor the public who witness it can be expected to yield to its spirit when their interests are served by evading it.


76. Burger, supra note 75, at 215.

77. Id. at 215-17. Chief Justice Burger also acknowledges that “only a tiny fragment of reckless, irresponsible lawyers are guilty.” Id. at 217.

78. LAWYERS’ IDEALS/LAWYERS’ PRACTICES, supra note 7, at ix.

79. Id.

80. STANLEY REPORT, supra note 7, at 254 nn.22-24 and accompanying text.

81. Id. at 263-65.

82. See id. at 290-96.

83. Id. at 290-91.
and the practicing bar must all do far more to report instances of illegal or unprofessional conduct . . . to either the appropriate disciplinary commission or prosecuting attorney."\(^{84}\) The only other recommendations involving the judiciary called for measures requiring broader public or legislative support such as merit selection of judges, more funding for disciplinary agencies under the control of state high courts, and more funding for state high court control of the bar admission process.\(^{85}\)

At the ABA's August 1988 meeting—two years after the Stanley Report—the ABA adopted as policy the "recommendation that state and local bar associations 'encourage their members to accept as a guide for their individual conduct, and to comply with, a lawyers' creed of professionalism.'"\(^{86}\) At the same meeting, the ABA adopted a "Lawyer's Creed of Professionalism," proposed by the ABA Torts and Insurance Section,\(^{87}\) and a "Lawyers' Pledge of Professionalism," proposed by the ABA Young Lawyers' Section.\(^{88}\) Both of these documents deal solely with lawyer professionalism.\(^{89}\) The ABA has neither promulgated a professionalism creed for judges nor engaged in a campaign to improve the professionalism of the judiciary, even though the ABA plays an important role in matters of professionalism and promulgating model standards for judicial conduct.\(^{90}\)

More recently, the Conference of Chief Justices adopted A National Action Plan on Lawyer Conduct and Professionalism.\(^{91}\) The Action Plan states that the vast majority of lawyers are competent, conscientious, honest, and civil.\(^{92}\) The Action Plan states further that "the unprofessional and unethical conduct of a small, but highly visible, proportion of lawyers taints the image of the entire legal community and fuels the perception that lawyer professionalism has

\(^{84}\) Id. at 287.

\(^{85}\) See id. at 292-96.

\(^{86}\) Creeds of Professionalism, supra note 5, at 01:401.

\(^{87}\) Id.

\(^{88}\) Id. at 01:403.

\(^{89}\) Id. at 01:401-03.

\(^{90}\) The ABA is a membership association for both lawyers and judges. In the words of the Chief Justice of the Indiana Supreme Court, "few question [the ABA's] legitimate interest in matters of professionalism. [The ABA] is a forum in which judges exercise influence well beyond their numbers." Randall T. Shepard, What Judges Can Do About Legal Professionalism, 72 FLA. BAR J. 30, 34 (1998).


\(^{92}\) Id. at 1.
declined precipitously in recent decades."93 The Action Plan's "sole objective . . . is to promote professionalism in the legal profession and the judiciary,"94 and it calls upon judges to lead by example.95 While the Action Plan promotes the concept of a lawyer professionalism creed, it fails to consider the need for a professionalism creed for judges, and it does not thoroughly explore how judges can lead by exemplifying their own professionalism.

Since the Stanley Report, there have been nearly fifteen years of introspection over professionalism and a multitude of special professionalism committees, creeds of professionalism or codes of civility, organizations, and prizes aimed at improving professionalism.96 After all of this activity, there are just a few examples of efforts to improve judges' professionalism.

B. Current Judicial Professionalism Initiatives

The work of the Committee on Civility of the Seventh Judicial Circuit is a notable exception to the historical inattention to the professionalism of the judiciary.97 The Committee was the first group to examine judicial conduct as well as lawyer conduct, and the Committee defined civility as "professional conduct in litigation proceedings of judicial personnel and attorneys."98 In 1989, the Committee conducted an informal survey of over 1500 lawyers and judges in the Seventh Judicial Circuit.99 According to the Committee's chair, Federal District Court Judge Marvin Aspen, the Seventh Circuit's survey may be "the first to venture into the problem of judicial incivility."100 In the survey, many lawyers said that "judges are sarcastic, arrogant, rude, lack respect for lawyers, lack judicial temperament and needlessly humiliate lawyers in court."101

93. Id.
94. Id. at 3.
95. See id. at 4.
96. The Nelson Mullins Riley & Scarborough Center on Professionalism at the University of South Carolina School of Law has produced a Directory of Professionalism Initiatives that contains information on national professionalism activities, state level commissions on professionalism, law school professionalism or ethics centers, award winning professionalism programs, and other professionalism activities. See Professionalism Initiatives, 52 S.C. L. REV. 747 (2001) (providing a condensed version of the Directory, which is on file in its full form with the South Carolina Law Review). See also Joy, supra note 3, at 988-89 (listing several professionalism activities).
97. See generally Interim Civility Report of the Seventh Circuit, supra note 6 (including judges in its survey on civility and professionalism); Final Civility Report of the Seventh Circuit, supra note 6 (reporting final comments about perceived incivility in the profession).
99. Id. at 377-79, at 426 app. I.
100. Aspen, supra note 1, at 515.
In responding to these and other complaints about judges, Judge Aspen stated:

Judges must, by example and by comments in written opinions, set the proper tone of civility in the courtroom. One has only to peruse the pages of current volumes of reported cases to come upon vitriolic and demeaning condemnations by the score of a court, judicial colleagues' opinions, or attorneys.\[102\]

In discussing incivility among lawyers, Judge Aspen notes that judges "bear considerable responsibility" not to "tolerate lawyer incivility," and a failure to address such conduct "sends the wrong signal to the bar, and puts the ethical advocate in a posture where he or she may, unfortunately, conclude that the only recourse left to an opponent's 'Rambo' tactics is to 'fight fire with fire.'"\[103\] Judge Aspen argues that judges must set a good example in written opinions and "set the proper tone of civility in the courtroom."\[104\]

In keeping with this sentiment, the Committee proposed standards for professional conduct that covered judges as well as lawyers, and these standards were adopted by the Seventh Circuit.\[105\] With respect to judicial conduct, the Preamble for the Standards for Professional Conduct for the Seventh Circuit provides: "A judge's conduct should be characterized at all times by courtesy and patience toward all participants. As judges we owe to all participants in a legal proceeding respect, diligence, punctuality, and protection against unjust and improper criticism or attack."\[106\]

The Seventh Circuit Standards outline thirty duties lawyers owe to other counsel\[107\] and eight duties lawyers owe to the court.\[108\] The Standards conclude by outlining the twelve duties judges owe to lawyers, parties, and witnesses.\[109\] These include obligations to "be courteous, respectful, and civil," to "not employ hostile, demeaning, or humiliating words in opinions or in written or

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102. Aspen, supra note 1, at 519.
103. Id.
104. Id.
106. Id.
107. Id. at 187-89. These duties include matters of civility, such as treating other counsel, parties, and witnesses in a "civil and courteous manner," as well as various pledges such as promises to use stipulations for matters not in dispute, to consult with opposing counsel when scheduling matters, and not to use discovery or other legal processes for purposes of delay or "as a means of harassment." Id.
108. Id. at 189. These duties require lawyers to "speak and write civilly and respectfully," "be punctual," "not knowingly misrepresent, mischaracterize, misquote, or miscite facts or authorities," and "act and speak civilly" to clerks, secretaries, bailiffs, and other court personnel. Id.
109. Id. at 190.
oral communications,” to “be punctual in convening all hearings, meetings, and conferences,” to “be considerate of time schedules” of others, to “allow lawyers to present proper arguments and to make a complete and accurate record,” to “make all reasonable efforts to decide promptly all matters presented,” and to “give the issues in controversy deliberate, impartial, and studied analysis.”

In language that tracks the Standards of Conduct for the Seventh Federal Judicial Circuit, the Tenth Judicial Circuit of Alabama adopted Standards of Professional Conduct that require the same twelve standards for judges’ conduct. In addition, the Wisconsin Supreme Court has adopted Standards of Professional Responsibility, Courtesy and Decorum for the Courts of the State of Wisconsin. The standards are not enforceable by disciplinary boards, but they do establish requirements of civility for judges and other court personnel as well as lawyers. Finally, Ohio is considering adopting a separate “Judicial Creed.” The proposed creed is short and simply reaffirms the judge’s oath of office, ethical obligations, and commitment to fairness.

Like many lawyers’ creeds, Ohio’s proposed judicial creed is vague and aspirational. Similarly, the judicial professionalism efforts of the Seventh Federal Judicial Circuit, the Tenth Judicial Circuit of Alabama, and the

110. Id. The other duties judges owe include the following: to refrain from “impugn[ing] the integrity or professionalism of any lawyer on the basis of the clients whom or the causes which a lawyer represents,” to do their “best to insure that court personnel act civilly toward lawyers, parties, and witnesses,” “not [to] adopt procedures that needlessly increase litigation expense,” and to “bring to lawyers' attention uncivil conduct which we observe.” Id.


113. See id. § 62.01.

114. Press Release, Ohio Supreme Court, Supreme Court Considers Judicial Creed (June 6, 2000) (on file with author).

115. The proposed Ohio Judicial Creed states as follows:

Judicial Creed

For the purpose of publicly stating my beliefs, convictions, and aspirations as a member of the Judiciary of the State of Ohio:

I re-affirm my oath of office and acknowledge my obligations under the Canons of Judicial Ethics.

I recognize the role of a judge as a guardian of our system of jurisprudence dedicated to equal justice under law for all persons.

I believe that the role of a judge requires scholarship, diligence, personal integrity, and dedication to the attainment of justice.

I know that a judge must not only be fair but also give the appearance of being fair.

I will treat all persons, including litigants, lawyers, witnesses, jurors, judicial colleagues, and court staff with dignity and courtesy and will insist that others do likewise.

I will aspire every day to make the Court I serve a model of justice and truth.

Id.
Wisconsin Supreme Court are largely aspirational. Nevertheless, all of these efforts recognize that judges as well as lawyers have professionalism responsibilities.

IV. PROPOSALS FOR IMPROVING PROFESSIONALISM BY IMPROVING THE PROFESSIONALISM OF THE JUDICIARY

Although there are many reasons for the inattention to judicial professionalism, there is no reason to continue to exclude concerns over judges’ conduct from the professionalism movement. If bar associations and judges believe that professionalism creeds are good for lawyers, then they should implement professionalism creeds for judges.

The Stanley Commission noted that its primary concern was the public’s view of the legal profession and stated that all segments of the Bar should “[p]reserve and develop within the profession integrity, competence, fairness, independence, courage and a devotion to the public interest.”116 In keeping with the Commission’s goals, the ABA Lawyer’s Creed includes a pledge for lawyers to “strive to make our system of justice work fairly and efficiently.”117 Yet the fair and efficient administration of justice is equally, if not primarily, the duty of judges, and the ABA has not enacted an ABA Judge’s Creed.

The ABA Lawyer’s Creed also contains promises to treat all parties, lawyers, and court personnel with respect; to maintain competency in the areas of practice; to report ethics violations of fellow lawyers; to protect the public image of the legal profession; and to contribute to the public good.118 The Seventh Judicial Circuit and a few other courts’ efforts to establish standards of conduct for judges indicate that each of these pledges or promises is equally applicable to judges.119

While professionalism creeds or civility standards for judges may be a first step, they are not enough for the judiciary to lead the professionalism movement by example. Judicial conferences and state supreme court justices must explore concrete steps to improve legal professionalism, starting with measures to improve judicial professionalism. These measures should include consideration of the following recommendations to monitor judges’ professionalism and to establish better recusal standards.120 Better monitoring

116. STANLEY REPORT, supra note 7, at 265.
117. Creeds of Professionalism, supra note 5, at 01:401.
118. Id. at 01:401-03.
119. See supra notes 97-115 and accompanying text.
120. These two recommendations do not address all of the issues important to improving judicial professionalism. Rather, these are concrete examples of what the judiciary should be doing to lead by example. I hope that judges, bar associations, and other commentators will explore some of the other judicial professionalism issues such as the need to enforce prohibitions against ex parte communications, the effect of politics on judicial appointments, the need for judges to be more sensitive to issues of race and gender, and the need to ban state and federal judges from attending all-expense paid educational seminars funded by “private interests bent
of judges’ performances would address both the civility and ethics dimensions of the professionalism movement, and better recusal standards would demonstrate a commitment to meaningful ethical rules. Both recommendations should also improve public confidence in, and respect for, judges and the legal profession.

A. Monitor Judges’ Records on Professionalism

State high courts and federal judicial conferences need to do a better job of monitoring the professionalism of judges. Because judges often act publicly in either hearing cases or listening to appellate arguments, they can be evaluated by those with whom they come in contact. Performance evaluations are widely used in public and private employment, but very few state supreme courts, and none of the federal judicial conferences, have meaningful evaluations of judicial performance. As of 1995, only the Navajo Nation and ten states had performance reviews of judges.121

Those states with judicial performance reviews usually focus on trial judges, and their reviews are based on surveys completed by lawyers and, in some instances, appellate judges, police officers, and probation officers.122 Such surveys usually contain questions regarding a judge’s legal ability, management skills, and demeanor.123 Typically, the surveys are filled out after court appearances. In addition to questions about legal ability, the surveys ask if the judge was fair and impartial, considerate and courteous to participants, on influencing their future decisions.” A Threat to Judicial Ethics, N.Y. TIMES, Sept. 15, 2000, at A34 (advocating reform of the practices by private interests such as providing “free vacations at posh resorts” to judges attending legal seminars that promote a “free-market approach to matters like protecting the environment,” and criticizing Chief Justice William Rehnquist’s support for lifting a ban on federal judges collecting honorariums for appearances). See also DOUG KENDALL, NOTHING FOR FREE: HOW PRIVATE JUDICIAL SEMINARS ARE UNDERMINING ENVIRONMENTAL PROTECTIONS AND BREAKING THE PUBLIC’S TRUST 1-2 (Community Rights Counsel 2000) (discussing whether “private corporations and special interests [should] be permitted to fund, and thus shape, the continuing legal education of our nation’s judges”).

121. A. John Pelander, Judicial Performance Review in Arizona: Goals, Practical Effects and Concerns, 30 ARIZ. ST. L.J. 643, 645-46 n.6 (1998). The ten states with judicial performance review programs by 1995 include the following: Alaska, Arizona, Colorado, Connecticut, Hawaii, Illinois, Maryland, New Hampshire, New Jersey, and Utah. Id. Other states were exploring judicial performance review programs in 1995, and it is likely that review programs are now in place in more than ten states. Id. at 646 n.6. For example, the New Mexico Supreme Court established a statewide judicial performance evaluation program in 1997. N.M. Judicial Performance, ALBUQUERQUE J., Sept. 19, 1998, at A5. In 1985 the ABA House of Delegates approved guidelines for the evaluation of judges. RICHARD H. KUH, Foreword to SPECIAL COMM. ON EVALUATION OF JUDICIAL PERFORMANCE, AMERICAN BAR ASSOCIATION GUIDELINES FOR EVALUATION OF JUDICIAL PERFORMANCE (1985) [hereinafter ABA GUIDELINES FOR JUDICIAL PERFORMANCE].

122. Pelander, supra note 121, at 652-54.

123. See ABA GUIDELINES FOR JUDICIAL PERFORMANCE, supra note 121, at 36 app. B-1 (Conn. Lawyer’s Questionnaire), 51-55 app. B-3 (N.J. Lawyer’s Questionnaire).
arrogant, unduly impatient, or biased against participants according to race, ethnicity, gender, religion, or other reasons. The surveys also ask if the judge was punctual, took unnecessary recesses, adjourned too early, encroached on the proper function of the lawyers or jury, and acted reasonably promptly and decisively.

Judicial performance surveys are often used by committees or commissions making recommendations for judicial retention election purposes, by entities and individuals designing judicial education programs, and by individual judges seeking to improve their judicial skills. All of these purposes are important to improving the professionalism of the judiciary. State high courts and federal judicial conferences that do not currently have judicial review programs in place should implement them pursuant to their inherent authority to regulate the administration of justice and judges’ conduct. Judicial review programs should also include appellate judges and supreme court justices. In addition, high courts and judicial conferences should monitor judges’ records in reporting ethical misconduct of other lawyers and judges.

124. See id.
125. See id.
126. See Pelander, supra note 121, at 646 n.6 (noting that as of 1998, only Alaska, Arizona, Colorado, Hawaii, and Utah use judicial performance reviews for retention election purposes).
127. Canon 3D of the ABA Code of Judicial Conduct provides:

D. Disciplinary Responsibilities

(1) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge’s fitness for office shall inform the appropriate authority.

(2) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Rules of Professional Conduct ... should take appropriate action. A judge having knowledge that a lawyer has committed a violation of the Rules of Professional Conduct ... that raises a substantial question as to the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects shall inform the appropriate authority.

MODEL CODE OF JUDICIAL CONDUCT Canon 3D(1), (2) (1999).

However, Professor Leslie Abramson is critical of the language of the ABA Code of Judicial Conduct and of state versions that track the ABA judicial reporting language. See Leslie W. Abramson, The Judge’s Ethical Duty to Report Misconduct by Other Judges and Lawyers and Its Effect on Judicial Independence, 25 HOFSTRA L. REV. 751 (1997). Abramson states that “the standards are unclear in their language and judges are frequently unsure or unwilling to apply them.” Id. at 783. She argues that “special efforts must be made to clarify those standards in order to preserve both the integrity of the legal system and the reporting judge’s independence in meting out appropriate sanctions.” Id. Abramson recommends that the language of Canon 3 should be modified to read:

(1) A judge who receives credible information that another judge either is no longer fit to continue in office or has committed a violation of the Code shall inform the appropriate authority.

(2) A judge who receives credible information that a lawyer either is no
Based on the results of the surveys and other monitoring, state high courts and judicial conferences should provide feedback to each judge at least yearly. High courts and judicial conferences should then recognize exemplary judges with some type of award, and judges with significantly low scores should be placed in a mentor or peer counseling program.128

B. Establish Better Recusal Standards

Every state and the District of Columbia has a code of ethics governing judges’ behavior. Forty-nine states and the District of Columbia base their judicial ethics codes to varying degrees on the ABA Model Code of Judicial Conduct,129 and Montana has a code of judicial conduct that “bear[s] some degree of similarity to the Model Codes.”130 Despite the pervasiveness of judicial ethics codes, there is still a serious need to remove the appearance of undue influence by campaign contributors on elected judges.131

Canon 3E of the Model Code of Judicial Conduct provides that “[a] judge shall disqualify himself or herself in a proceeding in which the judge’s impartiality might reasonably be questioned.”132 Additionally, existing canons of judicial ethics require judges to avoid “impropriety and the appearance of impropriety,”133 and to perform all of their judicial duties “impartially and

longer fit to practice law or has committed a violation of the applicable rules of professional conduct shall inform the appropriate authority. The judge’s obligation to inform does not preclude the judge from handling a lawyer’s misconduct by taking additional disciplinary measures against the lawyer.

Id. at 780.

I agree with Abramson. I also believe that monitoring judges in terms of their disciplinary responsibility to report misconduct will encourage the timely reporting of unethical conduct by other judges and lawyers.

128. Responding to a request from the Florida Supreme Court for a proposal to address issues of professionalism among Florida state court judges, Professor Lawrence Krieger recommended a system of attorney evaluations of judges with feedback and some form of recognition for exemplary judges. Letter from Professor Lawrence Krieger to the Florida Supreme Court (Sept. 7, 1999) (on file with author).


130. SHAMAN, supra note 129, § 1.02, at 5.

131. See supra Part I.A.

132. MODEL CODE OF JUDICIAL CONDUCT, supra note 127, Canon 3E.

133. Id. at Canon 2 ("A judge shall avoid impropriety and the appearance of impropriety in all of the judge’s activities.").
These canons indicate that unlike private lawyers who owe a duty to their clients, judges hold an office of public trust and owe duties to the public to be independent, fair, and above reproach.

There are no records of how many judges have voluntarily disqualified themselves from cases involving campaign contributors or supporters. Judges are not always ready to explain on the record why they disqualify themselves, and most campaign contribution cases are never reported. The public is aware, however, of celebrated cases in which judges have not recused themselves from hearing matters involving substantial campaign contributors. As a result, the public believes campaign contributors influence elected judges' decisions, and this is eroding the public's faith in the legal system.

The need to ensure the independence and impartiality of elected judges led the ABA to appoint an Ad Hoc Committee on Judicial Campaign Finance to recommend new, specific rules for disqualification of judges presiding over cases involving major contributors to their campaigns. The new ABA disqualification rules require a judge's recusal in every proceeding in which the judge's impartiality may be reasonably questioned, specifically including instances when a party or a party's lawyer has contributed a threshold amount to the judge's campaign. The new disqualification provision in Canon 3E(1)

134. *Id.* at Canon 3 ("A judge shall perform the duties of judicial office impartially and diligently.").


136. *See* LESLIE W. ABRAMSON, JUDICIAL DISQUALIFICATION UNDER CANON 3C OF THE CODE OF JUDICIAL CONDUCT 44-46 (1986) (discussing the application of Canon 3C and the disqualification or recusal of judges). Canon 3E in the current version of the Model Code is the successor to Canon 3C in the original version of the Model Code. MODEL CODE OF JUDICIAL CONDUCT, supra note 127, app. B (correlation table between the 1972 and 1990 codes).

137. *See supra* notes 30-34 and accompanying text (discussing some instances where judges have refused to recuse themselves and where appellate courts have not disqualified the judges in cases involving substantial campaign contributors to the judges).

138. *See supra* notes 12-27 and accompanying text.

139. *See* A.B.A. AD HOC COMM. ON JUDICIAL CAMPAIGN FINANCE, REPORT TO THE HOUSE OF DELEGATES (May 5, 1999), available at http://www.abanet.org/cpr/adhoc599.html (last visited Dec. 10, 2000) [hereinafter AD HOC COMMITTEE REPORT]. The Ad Hoc Committee was created in 1998 to review recommendations of the Task Force on Lawyer's Political Contributions concerning contributions to judges' election campaigns. *Id.* The Task Force investigated both "pay to play" contributions—lawyers' campaign contributions to obtain legal work from government entities—and the effect of contributions in judicial elections. *See id.*

140. Canon 3E, as amended in 1999, provides:

   (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
   
   (c) the judge knows or learns by means of a timely motion that a party or a party's lawyer has within the previous [ ] year[s] made aggregate contributions to the judge's campaign in an amount that is greater than [[[$ ] for an individual or [$ ] for an entity]] [[is reasonable and appropriate for an individual or an entity]].
does not set specific dollar limits, but "leaves that issue up to individual jurisdictions, recognizing that jurisdictions vary with respect to the cost of judicial campaigns, the size of the electorate, the availability of alternative sources such as public funding, and other factors." 141

The new recusal provisions were cosponsored by several ABA committees142 and adopted by the ABA House of Delegates in August 1999.143 Although it was critical of some aspects of the ABA Task Force’s work, the Committee on Professionalism and Competence of the Bar of the Conference of Chief Justices commended the ABA’s efforts.144 In the Conference of Chief Justices’ response to the ABA Task Force report, the Chief Justices stated that they supported recusal of judges in “jurisdictions where judicial candidates have knowledge of the identity of campaign contributors and the amounts of their contributions, and only to the extent that it applies to lawyers or parties who donate more to a judicial campaign than the amount permitted by law, whether established by statute or court rule.” 145 Yet, none of the state high courts have exercised their inherent authority to regulate judicial conduct by implementing new ethical rules requiring judges’ recusal in cases involving their substantial campaign contributors.

The comments to Canon 2A of the Model Code of Judicial Conduct prohibiting impropriety or the appearance of impropriety state that “[t]he test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge’s ability to carry out judicial

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MODEL CODE OF JUDICIAL CONDUCT, supra note 127, at Canon 3E(1)(e). A note to this section states that:

This provision is meant to be applicable wherever judges are subject to public election. Jurisdictions that adopt specific dollar limits on contributions in section 5C(3) should adopt the same limits in section 3E(1)(e). Where specific dollar amounts determined by local circumstances are not used, the "reasonable and appropriate" language should be used.

Id. Canon 3E(1)(e) n.4. Further, the code defines "aggregate" for the purpose of this section to mean:

[n]ot only contributions in cash or in kind made directly to a candidate’s committee or treasurer, but also, except in retention elections, all contributions made indirectly with the understanding that they will be used to support the election of the candidate or to oppose the election of the candidate’s opponent.

MODEL CODE OF JUDICIAL CONDUCT, supra note 127, Terminology.


142. In addition to the Ad Hoc Committee on Judicial Campaign Finance, the other co-sponsors of the new ethics rules were the ABA Standing Committee on Ethics and Professional Responsibility, the ABA Judicial Division, and the ABA Special Committee on Judicial Independence. See AD HOC COMMITTEE REPORT, supra note 139.

143. See Conference Report, supra note 141, at 399.

144. See CONFERENCE OF CHIEF JUSTICES, RESOLUTION XIV (adopted on Jan. 21, 1999) (on file with author).

responsibilities with integrity, impartiality and competence is impaired."146 Although public opinion polls are not the equivalent of the "reasonable minds" test for impropriety, public opinion does demonstrate the perception that elected judges' decisions are improperly influenced by campaign contributions.147 By adopting and enforcing better recusal standards, high courts can take a positive step toward improving the image of the elected judges by fully embracing the spirit of ethical rules prohibiting the appearance of impropriety and guaranteeing fairness and impartiality. If state supreme courts do not act, the public will continue to question the fairness and impartiality of elected judges who preside over cases involving their campaign contributors.

V. CONCLUSION

Judges have been, and continue to be, in the forefront of the lawyer professionalism movement. To date, much of their leadership has been in the form of rhetoric and hortatory pronouncements leveled at lawyers and not at the judiciary. For professionalism to improve in the foreseeable future, there must be a frank appraisal of how the judiciary can improve itself. Judges set the tone for lawyers' conduct during litigation, and judges serve as role models for the legal profession. State high courts also adopt ethics rules and oversee the enforcement of those rules for both lawyers and judges. Judges are central to the American concept of justice; society at large, as well as parties before the court, lawyers, and court personnel, have the right to expect judges to be independent, fair, and competent.148

A professionalism creed for judges is a starting point, but the judiciary must do more. The judiciary should examine ways to improve itself, and this Article offers two concrete proposals: judicial review programs that monitor the professionalism of judges at both the trial and appellate level, and better recusal mechanisms in states which elect judges. By implementing these and other meaningful policies to improve judicial professionalism, the judiciary will begin to lead the legal profession by example and not by mere words.

146. See Model Code of Judicial Conduct, supra note 127, Canon 2A cmt.
147. See supra notes 12-27 and accompanying text.
148. The introductory paragraph of the Preamble to the ABA Model Code of Judicial Conduct states:

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under rule of law.

Model Code of Judicial Conduct, supra note 127, Preamble.