

# The Professionalism Support Initiative (PSI)

**A Program of:**



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[www.nccourts.org/Courts/CRS/Councils/Professionalism](http://www.nccourts.org/Courts/CRS/Councils/Professionalism)

The training portion of this program was developed by Dr. Landy Anderton of Raleigh, North Carolina and Dr. Charles Cooper of Chapel Hill, North Carolina in conjunction with the Wake County Bar Association Professionalism Committee and the North Carolina Chief Justice's Commission on Professionalism.

## **Professionalism Support Initiative Program Description**

The Professionalism Support Initiative (herein after referred to as the PSI) is an informal voluntary local lawyer and judge assistance program that handles client-lawyer, lawyer-lawyer, and lawyer-judge issues. The purpose of the PSI is to promote professionalism and thereby bolster public confidence in the legal profession. PSI uses local volunteer peers to communicate privately and informally with lawyers and judges. The Chief Justice's Commission on Professionalism (hereinafter referred to as the CJCP) encourages judicial district bar associations to establish a professionalism committee with the PSI as a voluntary program under the committee's purview. The PSI offers counsel and assistance to lawyers and judges who receive repeated complaints at the State Bar, the Judicial Standards Commission, or through local bar associations that may not rise to the level of ethics or professional responsibility violations. The PSI is comprised of volunteers from the individual judicial district bar associations who seek to enhance professionalism by confidential peer influence.

No judge or lawyer is required to cooperate or counsel with the PSI volunteers. If the party against whom the inquiry is addressed refuses to cooperate by meeting voluntarily with PSI volunteers, the PSI volunteers will not take further action regarding the inquiry. Should the lawyer or judge agree to a meeting, the privacy and confidentiality of all inquiries will be maintained.

Specifically, inquiries include any query concerning "unprofessional conduct" as defined here: Unprofessional Judicial Conduct: Incivility, bias or conduct unbecoming a judge; lack of appropriate respect or deference to litigants, attorneys, court personnel, witnesses, clients, etc.; excessive delay in courtroom proceedings or filing court documents (orders, opinions); and consistent lack of preparation. Unprofessional Lawyer Conduct: Lack of appropriate respect or deference to litigants, attorneys, court personnel, witnesses, clients, etc.; abusive discovery practices; incivility, bias or other conduct unbecoming a lawyer; consistent lack of preparation; communication problems; deficient practice skills; consistent failure to return client telephone calls; and consistent failure to keep appointments and court dates. In addition, inquiries may include any rules or documents adopted by each judicial district's professionalism committee. Inquiries will not include any disciplinary charge, ethics violation, criminal conduct or any other matter falling under the provisions of Subchapter B: Discipline and Disability Rules of the Rules of the North Carolina State Bar or any sections of the Code of Judicial Conduct. In addition, inquiries will not include: Fee disputes - these can be handled by the Fee Arbitration Committee on local judicial district bar associations or similar programs at the State Bar; employment matters - examples include: lawyer uses racist or sexist language in the office, managing attorney sexually harasses associates and support staff; and lawyer/vendor disputes.

Inquiries will be referred to the PSI from the State Bar's Client Assistance Program, local bar associations, voluntary bar associations, the CJCP, and individual judges and lawyers (herein referred to as "complainants"). The PSI will not deal directly with client complainants. Client complainants who contact the PSI directly will be referred to the Client Assistance Program

and/or judicial district bar association within their country of residence. Each judicial district's PSI will follow their own internal operating procedure to determine how to best address and resolve the matter. PSI volunteers or local professionalism committee members have discretion to decide the appropriate professional to contact the lawyer or judge in question. The professionalism committees may also solicit assistance from any member of the Bar who is in the best position to be of assistance to the lawyer or judge in question. The PSI volunteers may determine that certain inquiries do not merit consideration or counseling, while others may warrant consideration and/or counseling. The PSI may inform the complainant that the PSI has received the inquiry, explain the nature of the PSI, and provide general information. The complainant should be informed that the process may take several weeks to complete, and he or she will not receive further information about the inquiry. Bar associations and the CJCP will maintain statistical records only.

The CJCP has advisory and oversight responsibility for the PSI. The CJCP has the authority to adopt additional operating procedures for the administration of the PSI. The CJCP has developed an orientation program for the purpose of having each judicial district bar association train their volunteers on how to handle professionalism inquiries. The training program may be given in conjunction with continuing legal education or professionalism committee meetings.

If your local bar is interested in implementing the PSI program, call the CJCP at (919) 890-1455 for any assistance.

## **Suggested Implementation of PSI for Local Bar Associations**

### **CJCP**

#### **I. Training**

- Development and updating of training materials, including videotapes and supporting manuals.
- Procuring and providing funds for the services of a qualified trainer for volunteers.

#### **II. Advertising**

- Development and printing of pamphlet outlining the program, with contact information.
- Generating articles and presentations about the program.

#### **III. Documents**

- Development and printing of program description, program protocol, training information and program pamphlet for distribution.

#### **IV. Role**

- Serves as PSI program oversight.
- Receives complaints and refers them to the local Bar Association's PSI point of contact.

### **Local Bar**

#### **I. Training**

- Schedule and conduct training sessions for volunteers.
- Distribute training materials when needed.
- Request more materials from the CJCP when needed.

#### **II. Recruitment**

- Advertise in local Bar publications.
- Serve as point of contact for volunteer issues.
- Maintain a list of active volunteers and any interested possible volunteers.
- Meet with the local judiciary about the program and how it can be used as a resource for the members of the bench.

#### **III. Documents**

- Business cards and/or rolodex cards with information on BarCARES, PALS and FRIENDS

#### **IV. Role**

- Serves as central location for complainant calls, main PSI point of contact.
- Receive complaints.
- Records all the information from the complainant, suggests complainant writing a letter outlining the complaint, determines next course of action.
- Records and maintains on file where the call originated from, and the nature of the complaint.
- Follow approved PSI protocol.

# **Procedural Protocol**

## **I. Purpose**

The Professionalism Support Initiative (herein after referred to as the PSI) exists to promote professionalism and thereby bolster public confidence in the legal profession. PSI uses local peers to communicate privately and informally with attorneys and judges.

## **II. Confidentiality**

All conferences and discussions in pursuit of the objectives of the PSI shall be confidential. See Rule 1.6 Confidentiality of Information in the North Carolina State Bar Revised Rules of Professional Conduct. The terms and conditions set forth in Rule 1.6 shall apply to all conferences and discussions held as a result of the PSI. In January 2004, the North Carolina State Bar Council approved the PSI as a program under the provisions on Rule 1.6(c).

## **III. Insurance Coverage**

All representatives of the Chief Justice's Commission on Professionalism (herein after referred to as the CJCP) are insured by BB&T/Asura for any civil action arising from duties performed under PSI. Members and volunteers of the judicial district bar associations and their committees and volunteers for the PSI, insured with Lawyers Mutual Liability Insurance Company and BB&T/Asura are covered with liability insurance for any civil action arising from duties performed under the PSI.

## **IV. Complaints and Referrals**

### **A. Complaints:**

1. Clients complaints about lawyers: Most complaints and referrals will come primarily to Professionalism and PSI committees from the North Carolina State Bar Client Assistance Program, judges, and local bar associations. The interviewers at the Client Assistance Program shall make referrals to the local Professionalism or PSI committee, in the event that telephone calls on behalf of a client have been unsuccessful. If the Client Assistance Program determines that the complaint is not an ethical violation but believes the conduct constitutes unprofessional conduct and that the conduct is an ongoing concern, the Client Assistance Program shall refer the complaint to the professionalism or PSI committee in the community where the lawyer works or resides.
2. Lawyers/Judges complaints about lawyers. Complaints and referrals are made to the Professionalism and PSI committees by telephone calls or letters from lawyers/judges concerning unprofessional conduct by other lawyers.

3. Lawyers and/or clients complaints about judges. Complaints and referrals will come to the Professionalism and PSI committees by telephone calls, letters or the Client Assistance Program concerning unprofessional conduct by judges that appear not to violate the Judicial Standards Commission rules.
- B. Professionalism or PSI committees shall use their discretion whether or not to pursue a complaint or referral. Upon receipt of a complaint or a referral, the Professionalism or PSI committee will try to take action within a reasonable time.

## **V. Initial Contact**

The PSI-designated volunteer shall make initial contact with the lawyer or judge in question by telephone. At that time, the volunteers shall inform the lawyer or judge that a complaint has been referred regarding unprofessional conduct, and that the PSI volunteers would like to meet with him or her at a convenient time to discuss the complaint. The PSI volunteers shall emphasize the confidential nature of the conference and advise that no record shall be maintained, and that only the type of complaint may be registered for statistical purposes omitting all specific information related to the complaint. The PSI volunteers shall advise that the matter shall remain in confidence, and only the complainant, Professionalism or PSI committee (including necessary staff members), and any other referring entity shall know of the complaint. The PSI volunteers shall also emphasize the purpose of the conference as an assistance measure only and not an enforcement action preceding punishment or sanction.

## **VI. Goals**

- A. The PSI volunteers' primary objective is to inform the lawyer or judge that they are in this conference because they care about him/her and want to help if possible. They will also discuss the unprofessional conduct alleged by the complaint or referral, with the intent to discuss avenues and means for resolution. The PSI volunteer's intention shall not be to probe and discover information for prosecution of the lawyer or judge in question. The PSI volunteer shall emphasize the importance of professionalism in the practice of law or judicial activity, and if needed, counsel the lawyer or judge on the options available for assistance. The PSI volunteer's role shall be assistance, not enforcement.
- B. If the PSI volunteer finds the lawyer in question has violated provisions of the North Carolina State Bar Revised Rules of Professional Conduct or the general statutes of the State of North Carolina, the PSI volunteer is obligated, pursuant to North Carolina State Bar Revised Rules of Professional Conduct Rule 8.3 to report the violations. The PSI volunteer shall remind the lawyer or judge in question of this obligation during the conference, but should emphasize that they are present because of professionalism issues, not reportable ethical or illegal activity.
- C. In the absence of violations of rules and statutes, PSI volunteer shall emphasize the standards of civility and professional responsibility expected of lawyers practicing in

his or her community. If a lawyer is inexperienced and needs a mentor, the PSI volunteer shall suggest they agree to find a suitable mentor. If the lawyer or judge has a problem that may be rectified by discussion, the PSI volunteer shall take the necessary steps to assist him or her. If the problem is depression, alcohol or drug abuse, the PSI volunteer shall inform the lawyer or judge of all the assistance programs available through the North Carolina State Bar and the voluntary bar associations that can render necessary assistance. The main emphasis should be that the volunteers are there to help, in any way they can.

- D. Any action taken as a result of the conference shall be by voluntary on the part of the lawyer or judge in question, with the exception of rules and statutes violations set forth above. The PSI volunteer may recommend the lawyer or judge participates in PALS, FRIENDS, BarCARES, or other similar programs. The PSI volunteer shall have no authority to force the lawyer or judge to apply for and participate in such an assistance program.

## **VII. Subsequent Conferences**

PSI volunteers shall not be involved in subsequent PSI conferences with the lawyers or judges in question. After the initial conference, the PSI volunteer shall not follow up and monitor the progress of the lawyer or judge in question, unless asked to do so by that lawyer or judge. If further assistance or treatment is necessary, the PSI volunteer shall recommend appropriate assistance programs. If the lawyer or judge asks for further assistance from the PSI volunteer, and if the PSI volunteer agrees to provide further assistance, additional conferences may be scheduled.

## **VIII. Community Standards Versus Personal Beliefs**

- A. The PSI volunteers shall only present the standard of practice in his or her community during the conference with the lawyer or judge in question. The PSI volunteer shall not visit a lawyer or judge with the intent to dissuade him or her from engaging in conduct that is legal. For example, if a PSI volunteer, vehemently opposed to lawyer advertising, visited a lawyer regarding a complaint, and during the conference, informs the lawyer of his or her disapproval of lawyer advertising, such an encounter would greatly reduce the intent, purpose and desired results of the PSI.
- B. PSI volunteers shall be fully aware of the standard of practice in his or her community. Numerous publications throughout the state define these standards. They include: the CJCP Professionalism Creed, the introduction and rules to the North Carolina State Bar Revised Rules of Professional Conduct, the rules and standards of the volunteer bar associations, the local rules in each judicial district, the North Carolina and United States Constitutions, and applicable statutes, local, state and federal.

## **IX. Reporting**

Following the initial conference with the lawyer or judge in question, and any subsequent conferences, the PSI volunteer shall notify the agency or referring committee only that the conference occurred. As stated above, the CJCP or PSI Committee shall only maintain information concerning the type of complaint for statistical purposes.

## **X. Conclusion**

The volunteer lawyers and judges participating in the PSI shall seek to emphasize and enhance the standards and traditions of legal professionalism as they exist in each particular community or district in the State of North Carolina. The intention of PSI is to recruit lawyers and judges to become actively involved in communicating and encouraging principles of professionalism, ultimately benefiting all members of the legal community and the public at large.

# Training: A “How To” Outline for Volunteers

## A THREE - STAGE STRUCTURE FOR ATTORNEY VISITS

### I. The Introductions Stage

#### *Goals:*

- Who are we?
- Why we are here?
- Confidentiality (Rule 1.6) and Reporting Professional Misconduct (Rule 8.3) issues
- What’s the problem/issue that occasions the visit?

#### *Skills and Attitudes:*

- Descriptive
- Non-judging
- Calming words, calming tone
- Adopting the “Adult” ego-state (Avoiding the "Critical Parent" or the "Compliant Child" ego-states)

### II. The “Working Through” Stage

#### *Goals:*

- Listening to the attorney's response to issues you have raised
- Dealing with Denial: always start gently with "softer way" before using "harder", more blunt statements regarding the possible consequences of person's behavior
- Reaching a “Common Understanding”

#### *Skills and Attitudes:*

- Active Listening
- Mirroring -- playing back what he/she says until the attorney recognizes you really understand his/her thought, feelings, perceptions, etc.
- Non-resistance (anger often covers fear or shame, which are often the real issues)
- Balancing: Problem solving < ----- > Non-Problem solving

### III. The Closure Stage

#### *Goals:*

- Facilitating getting needed clarification
- Facilitating getting needed consultation, coaching, or help
- Discussion of follow-up – What will and will NOT happen?

#### *Skills, Attitudes, & Resources*

- Permission v. Coercion
- Referral and Follow-up Options
  - Practice management consultation
  - PALS, FRIENDS, BarCARES
  - An attorney mentor
  - Follow-up call or talk

## EXAMPLES OF SIX POSSIBLE CLOSURE PATTERNS

By the end of the visit, the team should be prepared for the possibility that the visited attorney could reach one of the following six "patterns of closure". The pattern of closure has to do with the degree to which the visited attorney is: 1) "open" or "closed" to discussion and communication about the issues that originally triggered the visit, and 2) is in "agreement", "confusion", or "disagreement" as to the facts and issues raised in the visit. Being prepared for any of these patterns will allow the team to be comfortable with the variety of different expected "endings" of successful meetings.

<p>The Communication is:</p> <p>On the Facts &amp; Issues there is:</p>	<p>Open</p>	<p>Closed</p>
<p><b>Agreement</b></p>	<p>The visited attorney understands the issues and basically agrees with the team regarding the facts presented. He/she is willing to talk freely about reactions and next steps.</p>	<p>The visited attorney understands the issues and basically agrees with the team regarding the facts presented. However, he/she is closed regarding personal reactions to the issues and/or is unwilling to discuss next steps.</p>
<p><b>Confusion</b></p>	<p>The visited attorney is confused or mystified regarding the facts and issues but is willing to openly discuss reactions, clarifications, and/or next steps.</p>	<p>The visited attorney is confused or mystified regarding the facts and issues. But he/she is unwilling to openly discuss reactions, clarifications, and/or next steps.</p>
<p><b>Disagreement</b></p>	<p>The visited attorney is in disagreement regarding facts and issues but is willing to openly discuss reactions, points of view, and next steps.</p>	<p>The visited attorney is in disagreement regarding facts and issues and is unwilling to openly discuss reactions, points of view, and next steps.</p>

# Common Understanding

In Stage II of the visit (the "Working Through") it is desirable, though not absolutely necessary, to reach some degree of common understanding about the issues raised. If you cannot reach understanding on one level, try for understanding in another one. At the least, try for "agreement to disagree".

Understanding can be reached in one or more of the following "levels":

- The **Facts** that were brought forward
- The **Motivations** of the people involved
- What might be **Next Steps**

Or at the very least:

- Agreement that **Perceptions Differ**  
(agreement to disagree)

## Hypo #1

A call comes to the your local county bar association from a client or the Client Assistance Program of the NC State Bar. Lawyer A has been reported five (5) times in the last three (3) months. The complaints all relate to inattentiveness to detail. The incidents do not yet rise to the level of a violation of the Revised Rules of Professional Conduct, but the frequency and volume of calls is an indication of a problem. The subject matter of the calls is as follows:

1. Client 1 says she has been trying to get Lawyer A to call her back for three weeks, but he never calls.
2. Client 2 called to report that Lawyer A did not show up in court for a custody hearing and it will now be another two (2) months before the case can be rescheduled.
3. Client 3 says he called to check on his DWI court date and the secretary said she could not find his file and there was no record that he had paid Lawyer a fee of \$2500.
4. Client 4 says she called Lawyer A to ask him to cancel a Deed of Trust that Lawyer A should have cancelled three (3) years before, and he will not call back to report on the status.
5. Client 5 reported that he went to Lawyer A's office for a 2 pm appointment and waited until 4:30 pm without being seen. He was told that Lawyer A was in court, but he later learned that Court adjourned at 12:30 pm and a friend told him that Lawyer A's car was seen at the Doll House at 3 pm.

## Hypo # 2

Lawyer Smith practices in the local small county Bar. Lawyer Jones is a bankruptcy lawyer from a large metropolitan Bar in an adjoining county. Smith represents a wife who is married to a man that works for a bankrupt company represented by Jones. Smith has been unable to obtain any financial information from the lawyer representing the husband in the domestic case. Smith is going out of town on Thursday, and the domestic hearing for support is scheduled for Monday. Smith issues a subpoena for everyone she can imagine who might have any financial information about the husband; however, she puts on the subpoena to call her office before coming to court on Monday. Jones lives about 100 miles from the location of the hearing.

Smith returns to her office on Sunday night and finds a subpoena to quash from Jones. There is no indication that Jones called Smith's office. The financial information is supplied by a source other than Jones. On Monday morning, at calendar call, Smith advises the Court that she has received the information she needed and that she will be ready to hear the case at 2 pm. At that point, Jones stands and tells the Court that he would like to be heard on his motion to quash. The judge tells Lawyer Jones and Lawyer Smith to go outside the courtroom to see if they can resolve their differences in regards to the subpoena.

When they walk out of the courtroom, Smith turns to Jones as if to shake his hand and says, "Hello. I am..." Before she can finish her introduction, Jones says, "I know who you are, and you're a @\$%!" Smith replies, "Excuse me? What did you say?" Jones states again, "I said, I know who you are! And you're not just a @\$% but you're a flaming @\$%!" Smith stand in disbelief and becomes embarrassed as she looks around the foyer, seeing former clients and other citizens who knew her as a district court judge watching the incident. At that point, Smith says, "Because I had received the financial information, I wanted you to know that it is not necessary for you to be here for the hearing at 2 pm." Jones replied, "I did not plan on being here at 2 pm anyway" and walks away from Smith, left standing in shock and humiliation.

Smith writes a letter to the local Professionalism Support Initiative Committee, reciting the above facts. What, if anything, can the Committee do concerning Jones' unprofessional conduct?

### Hypo #3

A client sends a letter to the local county bar association to complain about the conduct of her lawyer. She believes that her attorney charged her too much money and did not settle her case when he could have, all in the name of being a “zealous advocate.” She relates the following as examples of unprofessional conduct:

1. The first time she met the lawyer and presented him with a copy of the complaint, he criticized the opposing attorney, calling her “lazy.” When he saw that a hearing was scheduled before a particular judge, he called the judge “corrupt and stupid.”
2. He filed an answer and counterclaim, and on the 31<sup>st</sup> day after service of the counterclaim, filed an entry of default, even though he had been informed that opposing attorney’s spouse had died a few days before. The default was set aside and it became quite expensive for her.
3. At the deposition of the opposing party, her attorney called the opposing attorney a “liar” and was rude and verbally abusive to the plaintiff. The plaintiff’s attorney stopped the deposition to get a protective order for his client, and this was also very expensive for her.
4. Although he was always late in answering discovery, as soon as the opposing attorney was one day late, he would file a motion to compel. She was always billed for these court appearances.
5. After delaying the mediation several times, he walked out of the mediation after only 30 minutes, telling her that it was a waste of time. The opposing attorney stated that she hoped to settle the case in mediation.
6. When the case was finally set for trial, her attorney made so many prejudicial comments during jury selection and his opening statement, the trial judge declared a mistrial. This was also very expensive for her.

After the mistrial, she fired the attorney and hired another. Her case was settled within 30 days of hiring another attorney.

# Large Group Debriefing

## Questions/Issues

- How to listen without appearing to agree.
  - Validate his/her perceptions ("Given that you saw things the way you did, I can understand how you felt...")
- How to respond if the visited attorney tries to *turn the tables* on the visitors.
  - Refuse to answer; keep spotlight on him/her ("I'd really like to understand how you saw things and what led you to ...")
- What to do with *dead time/awkward silence*.
  - If in doubt, always go back to restating what you hear them saying; ask further questions regarding their perception; or reflect further on the information or issues that led to the meeting.
- How much information do you need before the visit?
  - Try before the meeting to understand the longer range *pattern* of behavior which led to the referral to PSI
- What resources can the volunteers use to give the attorney follow-up ideas?
  - Before the visit, prepare broad outlines of follow-up -- resources to suggest an invitation to call you later, some other attorney who could serve as a mentor, etc.
- How much commitment should there be for further contact and follow-up calls/meetings, etc.?
  - The team should think about this prior to the visit and create a contingency plan on an individual, case by case basis.

# More Effective Approaches

- Mirroring without agreement
  - Say: “It sounds like you thought that...”
  - Say: “I understand that...”
  - Say: “Given that you saw it that way, I can understand how you ...”
- If the Visited Attorney Attempts Turning Tables
  - Use Non-resistance.
  - Validation of their *feeling*, not necessarily their *action*.
- To Reduce Arguing
  - Ask the person to listen to *the whole list* before responding.
  - Assure a kind of *due process*. (You really are interested in *their* perceptions.)
  - Use: “Can you think for a minute how you might have felt if someone had [said, done, etc.] that to you?”
- Dead time and silence
  - Turn yourself back into a mirror. People love to hear what they have said and know that the listener is tracking and understanding what the speaker is intending to communicate.
- Where to go next
  - “Call me if I can help.”
  - Try to keep from arguing about facts.
  - Talk about how *perceptions* differ and how *contexts* make significant differences in how behavior is perceived.
  - Help them *reframe* the situation into one *they can benefit* from. (e.g., may be a way to change perceptions)
  - Acknowledge that you feel awkward in this visit. “*Lead from weakness*,” i.e., show that you are willing to be vulnerable. Humility sometimes bridges gaps quickly.
  - Responding to questions when the tables are turned vs. keeping spotlight on them: “I could answer that, but we’re more interested in trying to understand *your* side. How do *you* see things?”

## Less Effective Approaches

- *Advice-giving* too early in the meeting.
- Do not say: “We’re here because of *what you did.*”
- Getting "caught" into personally agreeing or disagreeing about appropriateness of the behavior.
- Trying to fill dead time/awkward silence too quickly.
- Arguing about facts or appropriate behavior.
- Making judgments about the behavior in question.
- Trying to force the attorney to agree with the complaint.
- Seeking to persuade and force some resolution.
- Completing process by forcing him/her into a decision.