

ICLE Zoning Seminar  
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# Presentation on Professionalism

*Moderator:*

FRANK E. JENKINS, III  
Jenkins & Bowen, P.C.  
15 South Public Square  
Cartersville, Georgia 30120  
(770) 387-1373

*Panel Members:*

DOUG DILLARD, ESQ.  
Weissman, Nowack, Curry & Wilco, PC

DAVID FLINT, ESQ.  
Schreeder, Wheeler & Flint, LLP

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**Chief Justice's Commission on Professionalism**  
Suite 620, 104 Marietta Street, NW  
Atlanta, GA 30303  
(404) 225-5040  
(404) 225-5041 - fax

***Professionalism CLE Guidelines***

**INTRODUCTION**

In 1989, the Supreme Court of Georgia took two significant steps to confront the concerns and further the aspirations of the profession. First, it created the Chief Justice's Commission on Professionalism (the "Commission") and gave it a primary charge of ensuring that the practice of law in this state remains a high calling, enlisted in the service not only of the client, but of the public good as well. This challenging mandate was supplemented by the Court's second step, that of amending the mandatory continuing legal education (CLE) rule to require all active Georgia lawyers to complete one hour of Professionalism CLE each year [Rule 8-104 (B)(3) of the Rules and Regulations for the Organization and Government of the State Bar of Georgia and Regulation (4) thereunder]. The Court designated the Institute of Continuing Legal Education in Georgia (ICLE) as the sole sponsor of professionalism training and made the rule effective January 1, 1990. On May 31, 1991, the Supreme Court changed the rule to allow sponsors in addition to ICLE to conduct professionalism events so long as the sponsor is approved by the Commission according to its policies and procedures and complies with the *Professionalism CLE Guidelines*.

The Commission recognizes the need to provide guidance to ICLE and any other proposed Professionalism CLE provider as to the Court's expectations regarding this training. In adopting these guidelines, the Commission intends that ICLE, other CLE sponsors, and individual trainers or speakers be clear as to the goals of this requirement and what the desired outcomes from this training are.

**GENERAL PURPOSE**

The general goal of the Professionalism CLE requirement is to create a forum in which lawyers, judges and legal educators can explore the meaning and aspirations of professionalism in contemporary legal practice and reflect upon the fundamental premises of lawyer professionalism – competence, civility, integrity, and commitment to the rule of law, to justice, and to the public good. Building a community among the lawyers of this state is a specific goal of this requirement.

**RESULTS DESIRED**

More than a one-time reminder of the problems of contemporary law practice, Professionalism CLE seeks to turn professionalism into a constant awareness for every Georgia lawyer. If successful, Professionalism CLE courses will inculcate a habit of talking with colleagues and engaging in dialogue that is essential to a healthy professional life. They also will encourage the habit of reflection (or the "*stop and think*" rule of morality). They will acquaint lawyers with the harsher realities of the profession, but also will equip them with a variety of strategies for coping with these realities. They will also deepen one's awareness of a lawyer's particular professional



situation and can provide a sense of empowerment or control over a professional career rather than a passive acceptance of an untenable situation. They should expand the horizons of participants with respect to the richness and variety of the profession and the range of interests compatible with practice in the profession. And lastly, they can stimulate the imagination about the potential of a professional life.

### **ROLE OF THE COMMISSION**

The Commission should be viewed as a resource for information and materials on Professionalism by any sponsor, group, or person planning a CLE session on professionalism. The Commission encourages sponsors to tailor their Professionalism sessions to the issues relevant to the group to whom the sessions are presented. Once a format for the Professionalism session has been determined by the sponsor, the Commission may be contacted and asked to search its files to ascertain whether relevant materials are available for the session being planned. While the Commission itself cannot plan, implement, and conduct all of the nearly 1000 annual CLE Professionalism sessions which are offered by various sponsors, the Commission is willing to assist, to the extent it receives sufficient advance notice, in the planning of a CLE session on Professionalism.

### **BACKGROUND**

At least three separate topics are tied up in what is generally referred to as legal ethics: the disciplinary rules and "the law of lawyering," the concept of professionalism and role differentiation, and the question of how to do justice. A fourth topic, legal malpractice avoidance, is also of concern since the same fact situation will oftentimes give rise to both ethics and malpractice considerations. All of these topics, of course, are interrelated. As the Preamble to the Georgia Rules of Professional Conduct cautions:

In the nature of law practice conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict among a lawyer's responsibilities to clients, to the legal system, and to the lawyer's own interest in remaining an upright person. The Rules of Professional conduct prescribe terms for resolving such conflicts. Within the framework of these Rules, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules.<sup>1</sup>

### **DISTINCTION BETWEEN ETHICS AND PROFESSIONALISM**

The Supreme Court has distinguished between ethics and professionalism, to the extent of creating separate one-hour CLE requirements for each. The best explanation of the distinction

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<sup>1</sup> GEORGIA RULES OF PROFESSIONAL CONDUCT, Preamble [8], Part IV, Rules and Regulations for the Organization and Government of the State Bar of Georgia.

between ethics and professionalism that is offered by former Chief Justice Harold Clarke of the Georgia Supreme Court:

*"... the idea that ethics is a minimum standard which is required of all lawyers while professionalism is a higher standard expected of all lawyers."*

Laws and the Rules of Professional Conduct establish minimal standards of consensus impropriety; they do not define the criteria for ethical behavior. In the traditional sense, persons are not "ethical" simply because they act lawfully or even within the bounds of an official code of ethics. People can be dishonest, unprincipled, untrustworthy, unfair, and uncaring without breaking the law or the code. Truly ethical people measure their conduct not by rules but by basic moral principles such as honesty, integrity and fairness.

The term "Ethics" is commonly understood in the CLE context to mean "the law of lawyering" and the rules by which lawyers must abide in order to remain in good standing before the bar. Legal Ethics CLE also includes malpractice avoidance. "Professionalism" harkens back to the traditional meaning of ethics discussed above. The Commission believes that lawyers should remember in counseling clients and determining their own behavior that the letter of the law is only a minimal threshold describing what is legally possible, while professionalism is meant to address the aspirations of the profession and how we as lawyers should behave. Ethics discussions tend to focus on misconduct -- the negative dimensions of lawyering. Professionalism discussions have an affirmative dimension -- a focus on conduct that preserves and strengthens the dignity, honor, and integrity of the legal system.

As former Chief Justice Benham of the Georgia Supreme Court says, "We should expect more of lawyers than mere compliance with legal and ethical requirements."

## **THE MEANING OF PROFESSIONALISM**

The three ancient learned professions were the law, medicine, and ministry. The word profession comes from the Latin *professus*, meaning to have affirmed publicly. As one legal scholar has explained, "The term evolved to describe occupations that required new entrants to take an oath professing their dedication to the ideals and practices associated with a learned calling."<sup>2</sup> Many attempts have been made to define a profession in general and lawyer professionalism in particular. The most commonly cited is the definition developed by the late Dean Roscoe Pound of Harvard Law School:

The term refers to 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. Pursuit of the learned art in the spirit of a public service is the primary purpose.<sup>3</sup>

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<sup>2</sup>DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD 39 (1994)

<sup>3</sup>ROScoe POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 5 (1953)



*Teaching and Learning Professionalism*, the 1996 Report of the Professionalism Committee of the American Bar Association Section of Legal Education and Admissions to the Bar, expands the Pound definition and particularizes it for lawyers:

A professional lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good.<sup>4</sup>

Retired Chief Justice Harold Clarke defined a professional as “a member of a group which provides an essential service in which the public has a vital interest and which requires of the performer extensive training and the exercise of qualitative judgment.”<sup>5</sup>

Retired Chief Justice Norman Fletcher often explained his sense of professionalism as follows:

I have concluded that professionalism, in a legal sense, is to a great extent practicing the golden rule. It is not -- do my opponent in before my opponent does me in, -- but rather, it is do unto your fellow attorneys, the judges and society as you would have them do unto you.

Retired Justice Sandra Day O'Connor of the United States Supreme Court gave us this definition:

To me, the essence of professionalism is a commitment to develop one's skills to the fullest and to apply that responsibly to the problems at hand. Professionalism requires adherence to the highest ethical standards of conduct and a willingness to subordinate narrow self-interest in pursuit of the more fundamental goal of public service. Because of the tremendous power they wield in our system, lawyers must never forget that their duty to serve their clients fairly and skillfully takes priority over the personal accumulation of wealth. At the same time, lawyers must temper bold advocacy for their clients with a sense of responsibility to the larger legal system which strives, however imperfectly, to provide justice for all.<sup>6</sup>

The Commission believes that the ability to define professionalism in words is not as important as the pursuit of professionalism in our work. Thinking about professionalism and discussing the values it encompasses can provide guidance in the day-to-day practice of law. Professionalism is a wide umbrella of values encompassing competence, civility, legal ethics, integrity, commitment to the rule of law, to justice and to the public good. Professionalism calls us

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<sup>4</sup>AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *Teaching and Learning Professionalism, Report of the Professionalism Committee* 6 (1996),

<sup>5</sup>HAROLD G. CLARKE, *Professionalism: Repaying the Debt*, 25 Georgia Bar Journal 170 (1989)

<sup>6</sup>COURT OF APPEALS OF MARYLAND PROFESSIONALISM COURSE FOR NEW ADMITTEES TO THE MARYLAND BAR, *Professionalism Above and Beyond Ethics* 15 (1992)

to be mindful of the lawyer's roles as officer of the court, advocate, counselor, negotiator, and problem solver. Professionalism asks us to commit to improvement of the law, the legal system, and access to that system. These are the values that make us a profession enlisted in the service not only of the client but of the public good as well. While none of us achieves perfection in serving these values, it is the consistent aspiration toward them that defines a professional. The Commission encourages thought not only about the lawyer-client relationship central to the practice of law but also about how the legal profession can shape us as people and a society.

## A LAWYER'S CREED

**To my clients,** I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust.

**To the opposing parties and their counsel,** I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

**To the courts,** and other tribunals, and to those who assist them, I offer respect, candor, and courtesy. I will strive to do honor to the search for justice.

**To my colleagues in the practice of law,** I offer concern for your welfare. I will strive to make our association a professional friendship.

**To the profession,** I offer assistance. I will strive to keep our business a profession and our profession a calling in the spirit of public service.

**To the public** and our systems of justice, I offer service. I will strive to improve the law and our legal system, to make the law and our legal system available to all, and to seek the common good through the representation of my clients.



## ***ASPIRATIONAL STATEMENT ON PROFESSIONALISM***

The Court believes there are unfortunate trends of commercialization and loss of professional community in the current practice of law. These trends are manifested in an undue emphasis on the financial rewards of practice, a lack of courtesy and civility among members of our profession, a lack of respect for the judiciary and for our systems of justice, and a lack of regard for others and for the common good. As a community of professionals, we should strive to make the internal rewards of service, craft, and character, and not the external reward of financial gain, the primary rewards of the practice of law. In our practices we should remember that the primary justification for who we are and what we do is the common good we can achieve through the faithful representation of people who desire to resolve their disputes in a peaceful manner and to prevent future disputes. We should remember, and we should help our clients remember, that the way in which our clients resolve their disputes defines part of the character of our society and we should act accordingly.

As professionals, we need aspirational ideals to help bind us together in a professional community. Accordingly, the Court issues the following Aspirational Statement setting forth general and specific aspirational ideals of our profession. This statement is a beginning list of the ideals of our profession. It is primarily illustrative. Our purpose is not to regulate, and certainly not to provide a basis for discipline, but rather to assist the Bar's efforts to maintain a professionalism that can stand against the negative trends of commercialization and loss of community. It is the Court's hope that Georgia's lawyers, judges, and legal educators will use the following aspirational ideals to reexamine the justifications of the practice of law in our society and to consider the implications of those justifications for their conduct. The Court feels that enhancement of professionalism can be best brought about by the cooperative efforts of the organized bar, the courts, and the law schools with each group working independently, but also jointly in that effort.

## GENERAL ASPIRATIONAL IDEALS

As a lawyer, I will aspire:

- (a) To put fidelity to clients and, through clients, to the common good, before selfish interests.
- (b) To model for others, and particularly for my clients, the respect due to those we call upon to resolve our disputes and the regard due to all participants in our dispute resolution processes.
- (c) To avoid all forms of wrongful discrimination in all of my activities including discrimination on the basis of race, religion, sex, age, handicap, veteran status, or national origin. The social goals of equality and fairness will be personal goals for me.
- (d) To preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.
- (e) To make the law, the legal system, and other dispute resolution processes available to all.
- (f) To practice with a personal commitment to the rules governing our profession and to encourage others to do the same.
- (g) To preserve the dignity and the integrity of our profession by my conduct. The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.
- (h) To achieve the excellence of our craft, especially those that permit me to be the moral voice of clients to the public in advocacy while being the moral voice of the public to clients in counseling. Good lawyering should be a moral achievement for both the lawyer and the client.
- (i) To practice law not as a business, but as a calling in the spirit of public service.



## SPECIFIC ASPIRATIONAL IDEALS

### As to clients, I will aspire:

- (a) To expeditious and economical achievement of all client objectives.
- (b) To fully informed client decision-making. As a professional, I should:
  - (1) Counsel clients about all forms of dispute resolution;
  - (2) Counsel clients about the value of cooperation as a means towards the productive resolution of disputes;
  - (3) Maintain the sympathetic detachment that permits objective and independent advice to clients;
  - (4) Communicate promptly and clearly with clients; and,
  - (5) Reach clear agreements with clients concerning the nature of the representation.
- (c) To fair and equitable fee agreements. As a professional, I should:
  - (1) Discuss alternative methods of charging fees with all clients;
  - (2) Offer fee arrangements that reflect the true value of the services rendered;
  - (3) Reach agreements with clients as early in the relationship as possible;
  - (4) Determine the amount of fees by consideration of many factors and not just time spent by the attorney;
  - (5) Provide written agreements as to all fee arrangements; and
  - (6) Resolve all fee disputes through the arbitration methods provided by the State Bar of Georgia.
- (d) To comply with the obligations of confidentiality and the avoidance of conflicting loyalties in a manner designed to achieve the fidelity to clients that is the purpose of these obligations.

### As to opposing parties and their counsel, I will aspire:

- (a) To cooperate with opposing counsel in a manner consistent with the competent representation of all parties. As a professional, I should:
  - (1) Notify opposing counsel in a timely fashion of any cancelled appearance;
  - (2) Grant reasonable requests for extensions or scheduling changes; and,
  - (3) Consult with opposing counsel in the scheduling of appearances, meetings, and depositions.



- (b) To treat opposing counsel in a manner consistent with his or her professional obligations and consistent with the dignity of the search for justice. As a professional, I should:
- (1) Not serve motions or pleadings in such a manner or at such a time as to preclude opportunity for a competent response;
  - (2) Be courteous and civil in all communications;
  - (3) Respond promptly to all requests by opposing counsel;
  - (4) Avoid rudeness and other acts of disrespect in all meetings including depositions and negotiations;
  - (5) Prepare documents that accurately reflect the agreement of all parties; and
  - (6) Clearly identify all changes made in documents submitted by opposing counsel for review.

As to the courts, other tribunals, and to those who assist them, I will aspire:

- (a) To represent my clients in a manner consistent with the proper functioning of a fair, efficient, and humane system of justice. As a professional, I should:
- (1) Avoid non-essential litigation and non-essential pleading in litigation;
  - (2) Explore the possibilities of settlement of all litigated matters;
  - (3) Seek non-coerced agreement between the parties on procedural and discovery matters;
  - (4) Avoid all delays not dictated by a competent presentation of a client's claims;
  - (5) Prevent misuses of court time by verifying the availability of key participants for scheduled appearances before the court and by being punctual; and
  - (6) Advise clients about the obligations of civility, courtesy, fairness, cooperation, and other proper behavior expected of those who use our systems of justice.
- (b) To model for others the respect due to our courts. As a professional I should:
- (1) Act with complete honesty;
  - (2) Know court rules and procedures;
  - (3) Give appropriate deference to court rulings;
  - (4) Avoid undue familiarity with members of the judiciary;
  - (5) Avoid unfounded, unsubstantiated, or unjustified public criticism of members of the judiciary;
  - (6) Show respect by attire and demeanor;
  - (7) Assist the judiciary in determining the applicable law; and,
  - (8) Seek to understand the judiciary's obligations of informed and impartial decision-making.

**As to my colleagues in the practice of law, I will aspire:**

- (a) To recognize and to develop our interdependence;
- (b) To respect the needs of others, especially the need to develop as a whole person; and,
- (c) To assist my colleagues become better people in the practice of law and to accept their assistance offered to me.

**As to our profession, I will aspire:**

- (a) To improve the practice of law. As a professional, I should:
  - (1) Assist in continuing legal education efforts;
  - (2) Assist in organized bar activities; and,
  - (3) Assist law schools in the education of our future lawyers.
- (b) To protect the public from incompetent or other wrongful lawyering. As a professional, I should:
  - (1) Assist in bar admissions activities;
  - (2) Report violations of ethical regulations by fellow lawyers; and,
  - (3) Assist in the enforcement of the legal and ethical standards imposed upon all lawyers.

**As to the public and our systems of justice, I will aspire:**

- (a) To counsel clients about the moral and social consequences of their conduct.
- (b) To consider the effect of my conduct on the image of our systems of justice including the social effect of advertising methods.
- (c) To provide the pro bono representation that is necessary to make our system of justice available to all.
- (d) To support organizations that provide pro bono representation to indigent clients.
- (e) To improve our laws and legal system by, for example:
  - (1) Serving as a public official;
  - (2) Assisting in the education of the public concerning our laws and legal system;
  - (3) Commenting publicly upon our laws; and,
  - (4) Using other appropriate methods of effecting positive change in our laws and legal system.