

LITIGATION: SOUP TO NUTS

Professionalism Panel – A View From the Bench*

**These materials were taken from materials provided by the Chief Justice's Commission on Professionalism*

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Panelists:

Hon. Catherine Salinas, U.S. District Court for the Northern District of Georgia

Hon. Sara L. Doyle, Georgia Court of Appeals

Hon. Ann B. Harris, Superior Court of Cobb County

Hon. Kelli L. Wolk, Probate Court of Cobb County

Moderator:

Kathryn Reddy, Program Co-Chair, the Linley Jones Firm, PC, Atlanta

Adeash Aj Lakraj, Program Co-Chair, Barrett & Farahany, LLP, Atlanta

Margaret Head, YLD Litigation Committee Co-Chair, Cobb County Probate Court, Marietta

Cary Burke, YLD Litigation Committee Co-Chair, Polsinelli PC, Atlanta

OVERVIEW: The purpose of this presentation is to provide younger lawyers with encouragement, assistance and guidance. The presentation should remind younger lawyers about the basic tenets of our profession. In this presentation, the panelists will explore and discuss the core concepts under the umbrella of professionalism, the Lawyer's Creed, and the Aspirational Statement on Professionalism. We will then look more closely at certain concepts that appear in the materials on professionalism. We will discuss the meaning of these terms in the context of professionalism. We will give hypotheticals and examples of professional actions as they relate to these terms from our experiences within the courts, and address the consequences of attorneys falling short of the ideal professional behavior, including expense, delay, client dissatisfaction, damage to reputation, etc. We will also look at the positive effects of consistently meeting standards of professionalism on one's reputation, career, and the legal profession.

GOALS:

1. Explore the duties of lawyers to the systems of justice, courts, public, clients, other lawyers, and the profession;
2. Discuss the roles of lawyers as advocates, counselors, negotiators, and problem solvers;
3. Understand what it means to be a "professional;"
4. Apply these concepts to questions and hypotheticals.

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THE FOUR PILLARS OF PROFESSIONALISM:

1. Competence
2. Civility
3. Character
4. Commitment to the rule of law and the public good.

Professionalism in Georgia is now a wide umbrella of ideals, encompassing the values of competence, civility, ethics, integrity, respect for the rule of law, the legal profession, other lawyers, the courts, clients and the public, fidelity to the lawyer's roles as an officer of the court, counselor at law, serving as a resolver of problems, committing to diversity, upholding duties to provide pro bono legal representation, community and public service, and working to improve the law and the legal system, and to assure access to that system. *See Chief Justices Commission on Professionalism, Part IX, Rule 9-102, Rules and Regulations for the Organization and Government of the State Bar of Georgia (2018).*

A Lawyer's Creed focuses the attorney on the quality of relationships with many of those with whom they come in contact –clients, opposing parties and their counsel, the courts, colleagues in the legal profession, the profession as a whole, and the public. It is the embodiment of the sentiment of yesterday – that an attorney is a professional 24-7, all the time, and thus must comport himself or herself accordingly as a person with a high calling.

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.

Entered by Order of Supreme Court of Georgia, October 9, 1992, nunc pro tunc July 3, 1990; Part IX of the Rules and Regulations of the State Bar of Georgia, as amended September 10, 2003 and April 26, 2013

The Aspirational Statement on Professionalism is a statement of the ideals of lawyering that flesh out the actions of attorneys who deal with many of the parties with whom they have contact. Notably, these ideals are higher requirements and, perhaps, even conflicting or debatable requirements, than those ethical requirements or minimum standards of the Rules of Professional Conduct.

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.

Entered by Order of Supreme Court of Georgia, October 9, 1992, nunc pro tunc July 3, 1990; Part IX of the Rules and Regulations of the State Bar of Georgia, as amended September 10, 2003 and April 26, 2013.

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.

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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. As a professional, I should ensure that any advertisement of my services:
 - (1) is consistent with the dignity of the justice system and a learned profession;
 - (2) provides a beneficial service to the public by providing accurate information about the availability of legal services;
 - (3) educates the public about the law and legal system;
 - (4) provides completely honest and straightforward information about my qualifications, fees, and costs; and
 - (5) does not imply that clients' legal needs can be met only through aggressive tactics.
- (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.

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The Core Concepts of Professionalism are:

1. **Civility** – That is, how we treat other lawyers, judges, clients and the public.
2. **Alternate Dispute Resolution** – That is, resolving conflicts in a non-conflicting way – mediation, arbitration, negotiation, restorative justice – so that relationships are not necessarily totally destroyed with a “winner takes all” mentality.
3. **Diversity** – Diversity involves recognizing, including, celebrating, rewarding and utilizing differences of gender, race, ethnicity, age and thought – sweetening and often strengthening the pot.
4. **Quality of Life** – Professionalism includes addressing family and life balance of lawyers and judges while comporting with all other professionalism aspirations as the lawyer also does what is required to make a living.
5. **The Image of the Profession** – Focusing on the image of the legal profession requires restoring and/or maintaining the positive perception of lawyers with the public, as those persons of a high calling – as one of the three historical learned professions, with the others being medicine and the clergy.
6. **Recognizing the Role of Lawyers in Society** – Recognizing that the profession has a responsibility to help shape public policy and use our legal skills and knowledge for the benefit of the greater society and the public
7. **Insuring Access to Justice** – Acknowledging that except for limited pro se representation, lawyers are needed to provide representation to the public, without regard to ability to pay, and all judges and lawyers must insure access to justice for all.
8. **Client Relations/Customer Service** – Providing excellent customer service to clients. A lawyers’ focus on client relations and provision of excellent customer service involves respecting clients who use the judicial system and who provide us with our livelihood. That is central to good lawyering and thus lawyers must insure that the public’s use of, and contacts with, the judicial system are positive.
9. **Mentoring** – Mentoring is nurturing new lawyers and others who may need improvement. It involves assisting, educating and guiding new lawyers, and mentoring helps to improve the profession, client service and the administration of justice.

10. Law Practice Management – Understanding that by using sound Law Practice Management techniques, lawyers may improve their legal practice and provide more cost-effective client service. This assists in ensuring that the public has access to affordable legal services, protects the public, allows for efficient administration of justice, and improves both lawyers’ profit potential and quality of life. Law Practice Management must also consider, however, the *Aspirational Statement on Professionalism*, which states “As a lawyer, I will aspire ‘To practice law not as a business, but as a calling in the spirit of public service.’”

11. Discovery Use – Utilizing proper discovery techniques and avoiding discovery abuse improves both the administration of justice and the public image of lawyers.

12. Community Service – Contributing in a positive manner to the community with service beyond legal work in such activities as social service, faith-based activities, politics, education, sports, recreation, arts and the military, is part of the higher calling of the legal profession.

Questions for our Panel of Judges*:

1. What does professionalism mean to you?
 - a. How do you apply the principals to your office and your position?
2. What are the core functions of professionalism?
3. How can attorneys improve the image of profession?
4. What is our responsibility to society?
5. One of Aspirational statements says “As to my colleagues in the practice of law, I will aspire to assist my colleagues [to] become better people in the practice of law.... (Lines 139)... Do you think this means I need to help opposing counsel?
6. What is your opinion on granting continuances?
 - a. Should the lawyers inform the clients?
 - b. Does the reason for the request matter?
7. Discovery...where is the line between being diligent and being oppressive?
 - a. How can an attorney balance civility and diligence?
 - b. What is included within civility? Where is the boundary between effective advocacy and incivility?
8. Is it ever appropriate for attorneys to posture?
9. What guidance or suggestions can you give for participating in ADR?
10. How should attorneys manage client expectations?
11. What types of conflicts should involve the Judge’s chambers?
12. What effect does professionalism have on your reputation?

*With an opportunity for comments, questions and participations from the audience.

Hypotheticals to Consider:

Problem 1: Abusive Discovery

You represent a mother in a custody dispute against her child's father. The father does not want to pay for supervised visits with his child and alleges that he would like to spend time at home during his visitations on the weekends instead of visiting the child in a neutral location.

So far the reports from the supervised visits seem to support the father's position that he does not need supervised visits and that the father should be allowed to have the child stay with him at his home on the weekends. Your client is worried the reports from the supervised visits will negatively impact her visitation with the child.

Both parents are wealthy and have never been married to each other.

Before the next status conference with the Court, your client demands that you subpoena all of the father's financial records to see how he spends his money, how much he spends on other activities, such as dining out and entertainment. Your client also insists that you obtain the father's Uber records to show that he hardly ever spends time at home on the weekend or weeknights. The status conference is two weeks away and your client knows the father will be away on business during the next two weeks which will make fighting the subpoenas difficult.

- What do you tell your client?

General Themes/Talking points:

- Professionalism is about candor, integrity and honesty and developing a reputation for same.
- Professionalism about controlling your clients and encouraging them to do the right thing despite their anger or frustration with a potential opponent.
- To practice law as a profession, not simply as a business.

References:

A Lawyer's Creed:

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. (Lines 6 – 9)

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. (Lines 10 – 12)

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional one. (Lines 13 – 15)

Aspirational Statement on Professionalism:

As a lawyer, I will aspire to preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good. (Lines 48, 60 – 61)

As a lawyer, I will aspire to practice law not as a business, but as a calling in the spirit of public service. (Lines 48, 71)

As to clients, I will aspire to fully informed client decision making. As a professional, I should: ... (2) Counsel clients about the value of cooperation as a means toward productive resolution of disputes; (3) Maintain the sympathetic detachment that permits objective and independent advice to clients (Lines 73, 75, 77 – 80)

As to opposing parties and their counsel, I will aspire 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; . . . (4) Avoid rudeness and other acts of disrespect in all meetings including depositions and negotiations. . . .(Lines 96, 103 – 111)

As to the courts, other tribunals, and to those who assist them, I will aspire 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; . . . (3) Seek non-coerced agreement between the parties on procedural and discovery matters;. . .(6) Advise clients about the obligations of civility, courtesy, fairness, cooperation, and other proper behavior expected of those who use our systems of justice. (Lines 115 – 127)

Problem 2: Unethical Conduct by an Opposing Lawyer

You are involved in a case during which the opposing lawyer commits a number of breaches of the ethical standards and in your opinion, is generally incompetent in this area of law.

- Do you have an obligation to report the conduct to the State Bar?
- If not, what do you do about it?

General Themes/Talking points:

- *Professionalism is about protecting the public.*
- *Professionalism is about concern for the well-being of your fellow colleagues.*

References:

A Lawyer's Creed:

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. (Lines 6 – 9).

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional one. (Lines 13 – 15).

Aspirational Statement:

As to opposing parties and their counsel, I will aspire to treat opposing counsel in a manner consistent with his or her professional obligations and consistent with the dignity of the search for justice. (Lines 96 – 98)

As to my colleagues in the practice of law, I will aspire to assist my colleagues [to] become better people in the practice of law and to accept their assistance if offered to me. (Lines 139, 142)

As to our profession, I will aspire to protect the public from incompetent or other wrongful lawyering. As a professional, I should report violations of ethical regulations by fellow lawyers. (Lines 144, 149 – 150, 152)