

GEORGIA

Chief Justice's Commission on Professionalism

About the Commission

ABOUT THE COMMISSION

The Chief Justice's Commission on Professionalism, the first body of its kind in the nation, was created in 1989 by the Georgia Supreme Court with the primary charge to enhance professionalism among Georgia's lawyers. In carrying out its charge, the Commission provides ongoing attention and assistance to the task of assuring that the practice of law remains a high calling, enlisted in the service of client and public good. Composed of representatives of the organized bar, practicing bar, judiciary, law schools, and the public, the Commission serves as a catalyst for the positive change in the legal profession through educational programs and coordination of professionalism activities of the organized bar, courts, law schools, and law firms.

MISSION STATEMENT

The mission of the Chief Justice's Commission on Professionalism is to support and encourage lawyers to exercise the highest levels of professional integrity in their relationships with their clients, other lawyers, the courts, and the public and to fulfill their obligations to improve the law and the legal system and to ensure access to that system.

CALLING TO TASKS

The Commission seeks to foster among lawyers an active awareness of its mission by calling lawyers to the following tasks, in the words of former Chief Justice Harold Clarke:

1. To recognize that the reason for the existence of lawyers is to act as problem solvers performing their service on behalf of the client while adhering at all times to the public interest;
2. To utilize their special training and natural talents in positions of leadership for societal betterment;
3. To adhere to the proposition that a social conscience and devotion to the public interest stand as essential elements of lawyer professionalism.

MANDATE

The Commission's primary charge is to promote professionalism among Georgia's lawyers. In carrying out its charge, the Commission seeks to provide sustained attention and assistance to the task of ensuring that the practice of law remains a high calling, enlisted in the service of client and public good.

Specifically, the Commission's major responsibilities include:

- (1) the consideration of efforts to improve the administration of justice;
- (2) the examination of ways to make the system of justice more accessible to the public;
- (3) the monitoring and coordinating of Georgia's professionalism efforts in such institutional settings as its law firms, courts, law schools, and Bar;
- (4) the researching of professionalism efforts in jurisdictions outside Georgia;
- (5) the conducting and reporting of a study on the present state of professionalism within Georgia;
- (6) the planning of the annual convocation on professionalism;
- (7) the promotion of various regional professionalism meetings;
- (8) the providing of guidance and support to the Institute of Continuing Legal Education and other Commission-approved sponsors in the implementation of the continuing legal education professionalism requirement;
- (9) the furnishing of assistance to implement a professionalism component in the Bridge-the-Gap Program of the State Bar of Georgia;
- (10) the making of recommendations to the Georgia Supreme Court and to the State Bar of Georgia concerning additional means by which professionalism can be enhanced in the state and nation;
- (11) the receiving and administering of gifts and grants; and
- (12) the Commission shall have no authority to impose sanctions of any kind upon any member of the State Bar of Georgia.

GUIDING PRINCIPLES

The Commission came into being as a result of the conclusion that although professionalism flows from the moral development of individual practitioners of the law, lawyers need the help of an appropriate institution to guide the formation of a voluntary desire to act professionally. In carrying out its primary charge to promote professionalism among Georgia's lawyers, the Commission has been guided by four principles:

- (1) Professionalism is an umbrella concept, encompassing certain essential elements.
- (2) The Commission serves as both a clearinghouse for professionalism efforts and a catalyst for systemic change.
- (3) The Commission cultivates the professional community of the Bar.

- (4) The Commission endorses the *Stop and Think* approach to professionalism.

Professionalism as an Umbrella Concept

Since its inception, the Commission has viewed professionalism as a structure with essential elements or values. The elements are values based on respect for the courts, clients, other lawyers, and the public. The Commission espouses the values of competence, civility, character, commitment to the rule of law, to the lawyer's roles as counselor, officer of the court and solver of problems, commitment to pro bono, community and public service, and to work for the improvement of the law and the legal system and to ensure access to that system. Focus on one element, such as civility, results in a narrow view which overlooks other facets which offer great advantages to the Bar and more importantly, to the public. The professionalism movement in Georgia spawned two other commissions appointed by the Supreme Court of Georgia, the Commission on Equality, and the Commission on Dispute Resolution. The Community Service Task Force was created under the auspices of the Commission on Professionalism to bring an expanded focus to the community and public service aspects of professionalism. The State Bar of Georgia through its Committee on the Standards of the Profession joined forces with the Commission in designing and conducting a Transition into Practice Pilot Program to test the feasibility of requiring newly admitted lawyers to complete a skills and values curriculum linked with mentoring by experienced lawyers, which fostered the development of the bar's present mandatory Transition Into Law Practice Program (TILPP). As a joint effort of the Georgia Supreme Court and Bar, the Commission works closely with the Law Practice Management, Lawyer Assistance, Consumer Assistance, Diversity, and Pro Bono Programs of the State Bar and with the Office of Dispute Resolution. Each of these is effectively dealing with subjects which fall under the umbrella of professionalism.

Clearinghouse and Catalyst

Composed of representatives of the organized bar, practicing bar, judiciary, law schools, and the public, the Commission provides a forum where representatives of each of these constituencies can come together on a regular basis. The Commission has become both an archive and a clearinghouse for exchange of information regarding professionalism efforts past and present, local and national. Georgia's efforts to improve professionalism have become coordinated to avoid duplication and loss of effort due to a failure of communication. The Commission coordinates and oversees the professionalism projects of some twenty-seven State Bar committees. The Commission also is seen as a resource for individual lawyers and judges when preparing for presentations on professionalism or developing their own professionalism initiatives.

The Commission serves as a catalyst for systemic change in the legal profession through reinforcement of the fundamental professional values of competence, civility, character, and commitment to the public good. To that end, the Commission engages in educational programming and makes periodic recommendations to the bar, the judiciary, and the law schools of Georgia.

While it is difficult to arrive at measures of success of a long-range effort to raise the professional aspirations of the lawyers in Georgia, one way to gauge the impact of the professionalism movement is to look at the level of activity aimed at improving professionalism in 1989, when the Commission was created, and then today. The following examples show how the recommendations and initial efforts of the Commission have been taken up, sustained, and moved forward by increasing numbers of lawyers, judges, and legal educators:

- (1) The initiation by lawyers and bar groups of innovative programs to bridge the chasm between opposing counsel, such as the Atlanta Bar Litigation Section's "Take Your Adversary to Lunch" program, the Macon Bar's "Assurances of Professionalism to Opposing Counsel," and "Resolving Litigation's Civil Wars," a day-long joint CLE conference of the Georgia Trial Lawyers Association and the Georgia Defense Lawyers Association.
- (2) The development by local bar associations of pledges and creeds, such as the Atlanta Bar Association's Lawyer's Pledge, and the creative uses of such pledges and creeds, i.e., displayed on counsel tables and at bar meetings, announced by judges at calendar calls, printed in bar publications.
- (3) The creation of at the judicial district level of increasing numbers of local professionalism committees made up of lawyers and judges whose task is to promote and establish traditions of civility and professionalism by developing programs to honor colleagues adhering to high professional standards. These professional committees also give the bench and bar the opportunity to address vexing problems, such as incivility, in an informal manner that promotes education and self-improvement.
- (4) The institutionalization of Law School Orientations on Professionalism for entering students at each of the state's law schools and the increasing number and variety of courses on professionalism in law school curricula, such as Beyond Law School, the Ethics of Shaping a Professional Life, Making the Transition from Law School to Hanging Out a Shingle.
- (5) The expansion of mentoring programs in the law schools and local bar associations.
- (6) The growing numbers of lawyers and judges participating in community service through the Great Day of Service, Law Day service programs, and Law Related Education, such as the Forsyth County Bar's commitment to assign lawyers to all Law Related Education classes and to purchase Law Related Education materials for every public school in Forsyth County.
- (7) The proliferation of articles on professionalism in bar journals, section, and local bar newsletters, and other publications in the legal community.

Increasing the Community of the Bar

In its efforts to increase the sense of community among members of the bar, the Commission encourages among lawyers and judges the habit of talking with colleagues in dialogue that is essential to a healthy professional life. These efforts include Professionalism CLE programs, town hall meetings, convocations, law school professionalism programs, mentoring, recognition for community and public service by members of the bar. To assure the perpetuation of professionalism efforts in Georgia, the Supreme Court issued an order, effective January 1, 1990, requiring each of the active members of the State Bar of Georgia to attend at least one hour per year of continuing legal education (CLE) on the topic of professionalism. This Professionalism CLE requirement was the first of its kind in the nation. The general goal of the Professionalism CLE requirement is to create a forum where lawyers, judges, and legal educators can explore and reflect upon the meaning of professionalism in contemporary legal practice. Building a community among the lawyers of the state is a specific goal of this requirement.

The Stop and Think School of Professionalism

The Commission encourages the habit of reflection ("*stop and think*") about professionalism issues. Convinced that exposure to various methods of analysis, weighing of values, and resolution of dilemmas can lead to frameworks for addressing professionalism and ethical issues, the Commission believes that these habits can be learned. Scholarly research ranging across some thirty years reveals that human beings develop in their ability to construct ethical judgments (in the sense of moral, upright conduct) along a continuum toward increasingly adequate ethical reasoning. We know that the potential for ethical development can be activated and nurtured by education. And we know that all humans develop ethically, regardless of their gender, age, race, class, culture, or religion.

Teaching and learning ethics and professionalism involves at least four skills and capacities:

- (1) the ability to recognize ethical and professionalism dilemmas
- (2) the ability to form sound judgments
- (3) the ability to prioritize values
- (4) the ability to implement judgments - which requires cultivating personal and interpersonal skills and habits - communication, honesty, courage, prudence.

Not surprisingly, Professionalism CLE discussions rarely bring forth a consensus, for individuals give differing priorities to values. However, these programs do give the participants an awareness of the issues and exposure to a framework for analysis of similar issues when they occur in the future.

While acknowledging the harsher realities of the profession, the professionalism effort also attempts to equip lawyers with a variety of strategies for coping with these realities through coordination with the Law Practice Management, Lawyer Assistance, and Consumer Assistance Programs, Pro Bono Project, and the Office of Dispute Resolution. The professionalism effort also seeks to expand horizons with respect to the richness and variety of the profession and the range of interests compatible with practice in the profession.

Commission CLE Guidelines

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.¹

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

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

the distinction 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."² 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.³

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

³ 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.⁴

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.”⁵

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.⁶

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 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.

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

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

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

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.

ISSUES AND TOPICS

In March of 1990, the Chief Justice's Commission adopted a Creed for Georgia Lawyers and an Aspirational Statement for the Profession. (Refer to Table of Contents.) These two documents should serve as the beginning points for professionalism discussions, not because they are to be imposed upon Georgia lawyers or bar associations, but because they serve as words of encouragement, assistance and guidance. These comprehensive statements should be utilized to frame discussions and remind lawyers about the basic tenets of our profession.

The kinds of issues implicit in the Lawyer's Creed and Aspirational Statement and which can be the subject of Professionalism CLE include:

- o the independence of the lawyer in the context of the lawyer-client relationship
- o the conflict between duty to client and duty to the system of justice or to the public good
- o the conflict in the duty to the client versus the duty to the opposing lawyer
- o the responsibility of the lawyer to use effective oral and written communication skills in general
- o the responsibility of the lawyer to employ effective client communications and client relations skills in order to increase service to the client and foster understanding of expectations of the representation, including accessibility of the lawyer and agreement as to fees
- o the lawyer's responsibilities as an officer of the court
- o misuse and abuse of discovery and litigation
- o the lawyer's responsibility to perceive and protect the image of the profession
- o the responsibility of the lawyer to the public generally and to public service
- o the duty of the lawyer to be informed about all forms of dispute resolution and to counsel clients accordingly

Specific topics which can be the subjects of Professionalism CLE include:

- Access to Justice
- Administration of Justice
- Alternative Dispute Resolution - negotiation, settlement, mediation, arbitration, early neutral evaluation, other dispute resolution processes alternative to litigation
- Advocacy - effective persuasive advocacy techniques for trial, appellate, and other representation contexts
- Billable Hours
- Civility
- Client Communication Skills

- Client Concerns and Expectations
- Client Relations Skills
- Commercial Pressures
- Communication Skills (oral and written)
- Discovery - effective techniques to overcome misuse and abuse
- Diversity Issues - ethnic, gender, racial, socioeconomic status
- Law Practice Management - issues relating to development and management of a law practice including client relations and technology to promote the efficient, economical and competent delivery of legal services, in accordance with Regulation (11) to Rule 8-106(B) of the Rules and Regulations for Organization and Government of the State Bar of Georgia:

Practice Management CLE includes, but is not limited to, those activities which (1) teach lawyers how to organize and manage their law practices so as to promote the efficient, economical and competent delivery of legal services; and (2) teach lawyers how to create and maintain good client relations consistent with existing ethical and professional guidelines so as to eliminate malpractice claims and bar grievances while improving service to the client and the public image of the profession.

- Mentoring
- Proficiency and clarity in oral, written, and electronic communications - with the court, lawyers, clients, government agencies, and the public
- Public Interest
- Quality of Life Issues - balancing priorities, career/personal transition, maintaining emotional and mental health, stress management, substance abuse.
- Responsibility for improving the administration of justice
- Responsibility to ensure access to the legal system
- Responsibility for performing community, public and pro bono service
- Restoring and sustaining public confidence in the legal system, including courts, lawyers, the systems of justice
- Roles of Lawyers
 - The Lawyer as Advocate
 - The Lawyer as Architect of Future Conduct
 - The Lawyer as Consensus Builder
 - The Lawyer as Counselor
 - The Lawyer as Hearing Officer
 - The Lawyer as In-House Counsel
 - The Lawyer as Judge (or prospective judge)
 - The Lawyer as Negotiator
 - The Lawyer as Officer of the Court
 - The Lawyer as Problem Solver
 - The Lawyer as Prosecutor
 - The Lawyer as Public Servant

A major goal of Professionalism CLE is to encourage introspection and dialogue about these issues. It is very difficult, if not impossible, to accomplish this in large,

undifferentiated groups. The Commission encourages the designers of these events to provide for smaller, more intensive groups. These programs can involve the lawyer/student in the process of lawyering. By definition, they present the sorts of problems lawyers typically face, and they search for solutions or ways of thinking about these problems. In courses such as these, the interest of the lawyer/student usually rises in direct proportion to his or her personal engagement in the session.

Therefore, the Commission strongly encourages the designers of the sessions to explore more creative, introspective, interactive and simulation-based methods for presenting professionalism issues in the CLE course. Experiential training should be emphasized. Lawyers tend to learn best by example, so models of behavior and professional values should be identified and discussed. Above all, courses should be structured to confront the question, "**How will you handle this situation when it occurs in your practice?**" and the more confrontational the better. Practicing lawyers invariably respond better to realism in teaching, and professionalism issues can be made just as real as any other CLE-taught topic.

The Commission recognizes that it is possible and legitimate to define other training topics as encouraging professionalism. Training in a substantive area of the law enhances competency and, therefore, assists lawyers in meeting their professional responsibilities to their clients. Nevertheless, the Commission feels that, given the very limited and minimal requirement of one professionalism CLE hour per year and the aspirational goals envisioned by the Supreme Court, substantive training in particular practice areas are eligible only for general CLE credit and not for professionalism CLE credit. For example, learning how to write a legally enforceable contract would not be an appropriate topic for Professionalism CLE. Learning how to explain to your client what a legally enforceable contract is would be appropriate for Professionalism CLE.

EXAMPLES OF FORMATS FOR COURSES

A number of different designs for professionalism courses have been developed which have been well-received by the participants while meeting the goals set out by the Supreme Court.

The following formats have proven effective in eliciting active participation and fostering reflection in CLE professionalism courses:

1. **The hypothetical format:**

A panel is asked to respond to hypothetical situations which raise questions or concerns ranging from pure ethical issues to professionalism concerns. The panel is facilitated in its discussion by a lawyer whose job it is to push the discussion and point out inconsistencies or disagreements. The ethical issues can be addressed in terms of the Code of Professional Responsibility and the Standards of Conduct, but the professionalism concerns tend not to be subject to right/wrong answers. This format tends to work best with discrete groups (i.e., lawyers who work in the same practice area) where the hypotheticals can be drawn from the day-to-day practice of those particular lawyers.

[Hypotheticals developed by the Commission are available to planners of CLE events.]

2. **Use of role play through videotapes:**

A valuable training technique, especially when interaction with the audience is a goal, is to use role-plays to dramatize a particular issue or concern. There are now available several videotapes which were developed specifically to demonstrate through role plays various ethical and professionalism dilemmas. Videos produced by the American Bar Association, the University of Pennsylvania Center on Professionalism, and the Commission are particularly well-suited for these courses, and have been used successfully in both large and small group sessions. The use of role plays can be an effective technique for generating active and spirited audience participation in a discussion. Descriptions of the videotapes produced by the Commission are attached. A list containing more detailed descriptions of the videotape programs produced by the Commission and others is available from the Commission.

3. **Use of non-role play videotapes:**

The Commission and other organizations have developed videotapes on various professionalism topics, such as civility, clients, discovery, gender, service (For example, the Commission's *Perspectives on Lawyer Professionalism*, a 9-videotape series of interviews with Georgia lawyers and judges). Detailed descriptions of the programs produced by the Commission and others are available from the Commission. (Refer to Table of Contents.)

4. **Town hall meeting:**

Particularly conducive to discussions of professionalism for local bar associations, in-house CLE, office or firm retreats is the town hall meeting format. After introductory remarks about the need to explore professionalism in contemporary practice, the major portion of the meeting is devoted to discussions in small breakout groups of professionalism concerns in the particular practice setting. These discussions can be stimulated by oral questions or a written questionnaire. Responses to the questions provide data for the sponsoring organization to use as it deems appropriate. For example, some firms have responded to town meeting data highlighting the need for more feedback and guidance for associates by instituting mentoring programs.

5. **ADR training:**

Training in the processes of dispute resolution in addition to litigation, such as arbitration, mediation, and early neutral evaluation, qualify for professionalism CLE credit.

There are a variety of other designs and programs which are appropriate for in-house CLE programs, firm retreats, for specialized groups and for large groups. The goal of any design, however, should be to generate thought-provoking and introspective discussion among the participants about the meaning of professionalism in contemporary legal practice.

WHAT THIS TRAINING SHOULD NOT BE

The Lawyer's Creed and Aspirational Statement on Professionalism have been adopted by the Chief Justice's Commission as encouragement, guidance and assistance to individual lawyers, law firms, and local and circuit bar associations. They are specifically not intended:

- o To supersede or amend the disciplinary rules established by the Supreme Court;
- o To establish a standard of conduct against which lawyer negligence might be judged or to become a basis for the imposition of civil liability of any kind;
- o To establish a new basis for any formal disciplinary proceedings or enforcement;
or
- o To establish any State Bar policy or set of principles, unless the State Bar or any local bar chooses to adopt a particular "Lawyer's Creed."

The Commission's hope is that members of this profession will recognize the special obligations that attach to their calling and will also recognize their responsibility to serve others and not be limited to the pursuit of self interest. The Creed and Aspirational Statement cannot be imposed by edict, because moral integrity and unselfish dedication to the welfare of others cannot be legislated. Nevertheless, a public statement of principles of ethical and professional responsibility can provide guidance for newcomers and a reminder for experienced members of the bar about the basic ethical and professional tenets of our profession.

RELATION TO COMMISSION ON CONTINUING LAWYER COMPETENCY (CCLC) AND INSTITUTE OF CONTINUING LEGAL EDUCATION (ICLE)

- A. All rules, accreditation standards, and regulations of Commission on Continuing Lawyer Competency (CCLC) shall be observed.
- B. The criteria for co-sponsorship should be observed by any group wishing to co-sponsor a session with ICLE. These criteria are available from ICLE (1-800-422-0893; 770-466-0886; 706-369-5664).
- C. Written materials should be designed to stimulate discussions about the nature of the profession, the lawyer-client relationship, and the relationship between business and professional values. CCLC accreditation standards provide as follows:

Thorough, high quality, and carefully prepared written materials should be distributed to all attendees at or before the time the course is presented. It is recognized that written materials are not suitable or readily available for some types of subjects; the absence of written

materials for distribution should, however, be the exception and not the rule.

- D. Each attendee should be given an evaluation form to be completed and returned to the sponsor which not only evaluates the particular course and trainers, but offers ideas or suggestions to the Commission on how best to address professionalism concerns.

CLOSING THOUGHTS

Professionalism is about both principles and character. All lawyers would prefer that their practices be character-building rather than debasing. They want to be able to achieve a good life in the practice of law.

Professional behavior, however, is not simply a matter of character and principle; it is a matter of choice and decision-making. Thus, the issue is not all or nothing. It is not a question of being or not being ethical. It usually is not a question of right or wrong. It is a question of doing or not doing the ethical or professional thing. In our high pressure world, it may not be possible to act professionally all the time. It is, however, possible and important to act more professionally more often.

Karl N. Llewellyn, jurisprudential scholar who taught at Yale, Columbia, and the University of Chicago Law Schools, often cautioned his first-year law students:

The lawyer is a man of many conflicts. More than anyone else in our society, he must contend with competing claims on his time and loyalty. You must represent your client to the best of your ability, and yet never lose sight of the fact that you are an officer of the court with a special responsibility for the integrity of the legal system. You will often find, brethren and sistern, that those professional duties do not sit easily with one another. You will discover, too, that they get in the way of your other obligations – to your conscience, your God, your family, your partners, your country, and all the other perfectly good claims on your energies and hearts. You will be pulled and tugged in a dozen directions at once. You must learn to handle those conflicts.⁷

Professionalism discussions are too often framed as simple issues of rule-following or rule-violation. But the real issue facing lawyers as professionals is developing the capacity for critical and reflective judgment and the ability to “handle those conflicts,” described by Karl Llewellyn. The CLE sessions should strive to cultivate reflective judgment about the practice of law and to assess how well current practices are serving the legal profession and the system of justice in light of the best traditions of our practice.

⁷ MARY ANN GLENDON, A NATION UNDER LAWYERS 17 (1994).

Supreme Court Rule

March 15, 1989,
as amended, May 4, 1989, December 1, 1989,
May 23, 1990, October 15, 1990, February 14, 1992
May 19, 1992, October 9, 1992, November 29, 1994,
November 8, 1996, September 10, 2003, February 3, 2005,
November 27, 2006, November 15, 2007

It is ordered that Part IX Professionalism of the Rules and Regulations for the Organization and Government of the State Bar of Georgia, establishing Rule 9-102, the Chief Justice's Commission on Professionalism, be amended as to the criteria for appointment of a non-lawyer by the Board of Governors of the State Bar of Georgia, as follows:

Rule 9-101. Purpose.

This Part of the State Bar Rules is adopted in recognition of the importance of professionalism as the ultimate hallmark of the practice of law. The purpose of this Part is to create within the State Bar a Commission to identify, enunciate and encourage adherence to non-mandatory standards of professional conduct. These standards should involve aspirations higher than those required by the Georgia Rules of Professional Conduct in Part IV.

Rule 9-102. Chief Justice's Commission on Professionalism.

(A) Membership, Appointment and Terms

There is established a permanent Commission of the State Bar of Georgia known as the Chief Justice's Commission on Professionalism. The Commission shall consist of twenty-two (22) members as follows: (1) the Chief Justice of the Supreme Court of Georgia or his or her designee, who shall serve as Chair of the Commission; (2) The Chief Judge of the Court of Appeals or his or her designee; (3) one superior court judge designated by the Council of Superior Court Judges; (4) one state court judge designated by the Council of State Court Judges; (5) five law school faculty members designated by the deans of the accredited law schools in the State of Georgia, one of whom must be a member of the State Bar Committee on Professionalism; provided, however, such faculty members shall not be from the same law school; (6) two non-lawyer citizens from the public at large; (7) the President of the State Bar of Georgia; (8) the President of the Young Lawyers Division of the State Bar of Georgia; (9) one Federal District Judge; and (10) eight members of the State Bar of Georgia actively engaged in the practice of law, one of whom must be employed by a unit of federal state, or local government, one must be engaged primarily in criminal defense practice, one must be a federal or state prosecutor, and one must be in-house counsel.

Three of the practicing lawyers and one of the non-lawyer citizens from the public at large shall be appointed by the Board of Governors of the State Bar of Georgia. The remaining members of the Commission, with the exception of the President of

the State Bar of Georgia, the President of the Young Lawyers Division of the State Bar of Georgia, the superior court judge, and the state court judge, shall be appointed by the Supreme Court. The terms of the members of the Commission shall be staggered and that shall be accomplished by the initial appointments being as follows: two of the practicing lawyer members appointed by the Board of Governors shall serve until the conclusion of the State Bar Annual Meeting in 1990; the non-lawyer general public member shall serve until the conclusion of the State Bar Annual Meeting in 1990; the superior court judge member, one practicing lawyer member appointed by the Board of Governors and one law faculty member shall serve until the conclusion of the State Bar Annual Meeting in 1991. The remaining members of the Commission shall serve until the conclusion of the Annual Meeting of the State Bar in 1992. Thereafter, the superior court judge member shall serve for a two year term as designated by the Council of Superior Court Judges, the state court judge member shall serve for a two year term as designated by the Council of State Court Judges, and all other members of the Commission shall serve for three (3) year terms, and no member (except the Chief Justice, that member appointed by the Court of Appeals, and the law school representatives) may serve more than two (2) terms on the Commission.

(B) Powers and Duties of the Commission:

The Commission's major responsibilities shall be:

- (1) To consider efforts by lawyers and judges to improve the administration of justice;
- (2) To examine ways of making the system of justice more accessible to the public;
- (3) To monitor and coordinate Georgia's professionalism efforts in such institutional settings as its bar, courts, law schools and law firms;
- (4) To monitor professionalism efforts in jurisdictions outside Georgia;
- (5) To conduct a study and issue a report on the present state of professionalism within Georgia;
- (6) To plan the yearly Convocation on Professionalism;
- (7) To promote various regional convocations on professionalism;
- (8) To provide guidance and support to the Commission on Continuing Lawyer Competency in its implementation and execution of the continuing legal education professionalism requirement;
- (9) To help implement a professionalism component in the Bridge-the-Gap program;
- (10) To make recommendations to the Supreme Court and the State Bar concerning additional means by which professionalism can be enhanced;

(11) To receive and administer gifts and grants; and

(12) The Commission shall have no authority to impose sanctions of any kind upon any member of the State Bar of Georgia.

(C) Finances

Funding for the Chief Justice's Commission on Professionalism shall be provided by an additional surcharge for each active State Bar member who attends a course in professionalism sponsored by the Institute of Continuing Legal Education (ICLE) or by any other sponsor approved by the Commission. The rate shall be set annually by the Chief Justice's Commission on Professionalism, and the surcharge shall be remitted directly to it by ICLE, by any other such sponsor, or, in an appropriate case, by the individual State Bar member who attended a course in professionalism approved by the Commission.

A LAWYER'S CREED

(The Lawyer's Creed, Aspirational Statement and the General & Specific Aspirational Ideals were 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)

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 canceled 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.

Chief Justice's Commission on Professionalism

Structure

