

In March of 1990, the Chief Justice's Commission adopted a Creed for Georgia Lawyers and an Aspirational Statement for the profession. **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.

Some Professionalism programing highlights include:

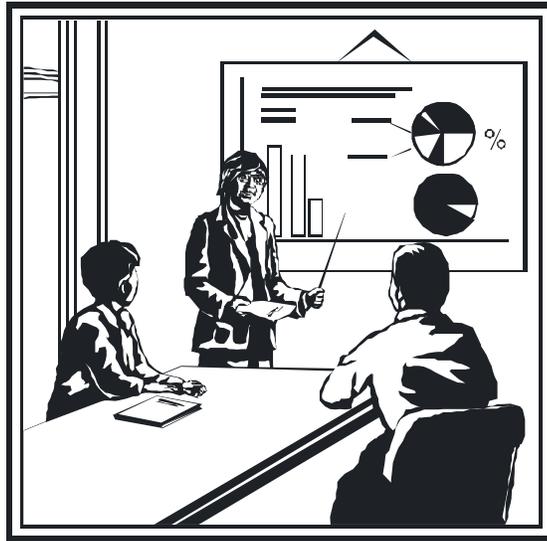
- The Professionalism CLE Guidelines require discussion of professionalism concepts as an integral and substantive part of the presentation;
- The Guidelines require written materials on professionalism;
- The professionalism segment should create a forum in which participants can explore the meaning and aspirations of professionalism and discuss the professional conflicts that confront judges and lawyers in their work;
- The seminar must contain an evaluation specifically of the professionalism programming;
- Applications for Professionalism CLE credit should be made at least 30 days in advance of the date for which you are requesting approval. This allows the Commission time to work with you on the content of your Professionalism program. If you wish to advertise that a seminar is approved for Professionalism credit, leave sufficient time for submission and approval prior to publication of seminar registration brochures;
- The Commission cannot guarantee that submissions received less than 10 business days prior to a request for approval will be processed prior to the seminar or publication date;

Please note that if you submit professionalism CLE applications after the date of the program, you run the risk that the program will not be approved for Professionalism credit.

The Commission does **NOT** approve:

- ❖ Activities such as meditation, journaling, yoga, physical fitness or other similar activities for Professionalism CLE credit;
- ❖ Trainings on substantive law for Professionalism CLE credit;
- ❖ Presentations that solely provide general information, data, or statistics regarding any subject, including, but not limited to, wellness or pro bono for Professionalism CLE credit;
- ❖ Courses on legal ethics for Professionalism CLE credit.

PROFESSIONALISM CLE PLANNING – MAKE IT FIT!



GEORGIA CHIEF JUSTICE’S COMMISSION ON PROFESSIONALISM

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PROFESSIONALISM CLE PLANNING – MAKE IT FIT!

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INTRODUCTION:

“Can you recommend someone to speak on Professionalism at our CLE?”

The staff of the Chief Justice’s Commission on Professionalism is asked that question by judges and lawyers who have been assigned the task of planning a continuing legal education (CLE) program on Professionalism. Some of the lawyers who agree to do the presentation on Professionalism appear quite frustrated by what they initially believe to be a daunting task – preparing CLE materials and a presentation that meet the requirements for Professionalism CLE credit. The task, however, is not a mission impossible.

In planning a CLE program on Professionalism, there are some important things to know. Georgia’s Mandatory Continuing Legal Education Rules and Regulations set out the requirements for continuing legal education for all Georgia-licensed attorneys.¹ The Commission on Continuing Lawyer Competency governs continuing legal education and has set out the rules for hours and accreditation of programs. There are specific requirements for sponsors of CLE activities. Of particular importance to planners of CLEs are the rules for those who teach the CLE, author legal articles, organize or chair the CLE.²

Our focus is mainly for those persons who have accepted the charge to plan and present a CLE on Professionalism. This planning will also include preparation of written materials and may also include preparation of visual aids. There are additional requirements for content that must meet the standards of the Georgia Chief Justice’s Commission on Professionalism (CJCP). Thus, the CJCP provides a very useful tool to persons charged with professionalism CLE

¹See attached Continuing Lawyers Competency, Part VIII, Chapter 1, Minimum Requirements for Continuing Legal Education, Rules and Regulations for the Organization and Government of the State Bar of Georgia (2018).

² Continuing Lawyers Competency, Part VIII, Rule 8-106, Rules and Regulations for the Organization and Government of the State Bar of Georgia (2018).

planning that is highly recommended to you.³

Every Georgia lawyer with an active license must complete at least one (1) hour of CLE on Professionalism each year. The Commission is responsible for approval of most CLE programs on Professionalism.⁴ The CJCP staff can be helpful in directing professionalism CLE planners to resources and with ideas.

However experienced and helpful the Commission staff is, the continuing philosophy of the Chief Justice's Commission on Professionalism remains the same: every CLE planner and participant should find meaning in Professionalism for herself or himself through thought, introspection, research, discussion and reflection. Therefore, we are providing some pointers to consider and an orderly process to follow for the planners of CLE's on Professionalism.

STEPS TO PLANNING AN EFFECTIVE PROFESSIONALISM CLE

Planning an effective CLE on professionalism has several components. Planners may have to go up and down those steps to analyze whether your program will be effective. It's a little like dancing – stepping back and forth – to see if your program will meet the needs of the participants, along with your learning objectives.

<p>Step 1: Define Your Audience – Is it Lawyers or Judges and What is Their Special Interest?</p>

The CJCP staff has found that to create an effective professionalism CLE you must be informative, engaging and you must fit your presentation to your audience. Much of the process of creating an informative continuing legal education program on professionalism is to gear the presentation and materials or to “spin” on the topic to be addressed to the type of practice or work setting of your anticipated participants. This is called putting professionalism in context – making it fit your audience and participants. When this is done, the CLE is a better “fit” for the participants – a better learning experience, not just one that provides a reportable CLE credit.

³See attached *Professionalism CLE Guidelines*, Chief Justice's Commission on Professionalism.

⁴See attached *Procedures for Obtaining Professionalism Credit*, Chief Justice's Commission on Professionalism.

The Georgia Bar and Professionalism. Since 1989 with the creation of the nation's first Chief Justice's Commission on Professionalism, Georgia lawyers have been at the forefront of the professionalism movement. Over the years, several concepts have evolved whereby Georgia lawyers have created our own "brand" of professionalism. What is that brand?

The four pillars of professionalism articulated regularly by former Chief Justice Robert Benham are: competence, civility, pro bono legal service and community service. Today, CJCP articulates the four pillars of professionalism as: competence, civility, character and 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.⁵ These "core concepts," practices and ideals that make up Georgia's brand of professionalism include higher ideals than the minimum ethical standards found in the Rules of Professional Responsibility, the violation of which could lead to lawyer discipline.

The Chief Justice's Commission on Professionalism has no disciplinary power or oversight of lawyer conduct, and it has never been the intent of the Supreme Court for professionalism to be enforceable.⁶ Our goal is aspirational: to make better lawyers who can better serve clients and the public, and enhance the profession in the view of our fellow citizens. Making up Georgia's brand of professionalism over the last three decades, these four main components and the many aspects of Professionalism have morphed into programs of the State Bar of Georgia and the courts of Georgia. Some of these programs and activities show the progressive nature of Georgia's bench and bar. These programs demonstrate the many ways by which Georgia lawyers have embraced Professionalism. Some programs may have particular interest and relevance to your audience and you may want to address them in your CLE programs.

For example, the State Bar General Counsel's Office does have disciplinary oversight over lawyers. Each year, as a condition of discipline, some lawyers are required to attend the General Counsel's Professional Enhancement Program. This program, also known as "Ethics

⁵ See attached 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).

⁶ See Id. and in particular the *Aspirational Statement on Professionalism*

School,” is akin to DUI school, where, as a condition of retaining one’s law license, the offending attorney must attend, at his or her own cost, a day of CLE programming. This programming includes not only a review of the Rules of Professional Conduct, but also a refresher course on Professionalism. It also includes informational sessions on all of the resources of the State Bar of Georgia designed to assist attorneys in practicing competently and professionally. Many of these bar programs emanated from the professionalism movement. Thus, let’s move to Step 2 for planning your effective professionalism CLE.

Step 2: Review the Lawyer’s Creed, Aspirational Statement and the Core Concepts of Professionalism.

The next step a CLE planner may take is to review *A Lawyer’s Creed* and the *Aspirational Statement on Professionalism* developed by the Chief Justice’s Commission on Professionalism and approved by the Supreme Court of Georgia.⁷ These two documents help to focus attention beyond the oath taken when sworn in as a member of the Bar – that minimum, yet still basic public statement of professional commitment. *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.

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. An exercise involving a comparison of the ideals in the *Aspirational Statement on Professionalism* and the *Georgia Rules of Professional Conduct* is an area that can be easily addressed in a CLE program, particularly as applied to a subject matter of law or area of practice.

CLE planners can look to what is referred to as the Core Concepts of Professionalism to meet the learning needs of the audience and objectives of the program planned. Professionalism

⁷See attached, *A Lawyer’s Creed* and *Aspirational Statement on Professionalism*, Chief Justice’s Commission on Professionalism.

in the context of being a lawyer does not have one definition – but includes **core concepts, practices and ideals** that have evolved with time. Professionalism ideals are higher than the minimum ethical standards found in the *Georgia Rules of Professional Conduct*, the violation of which could lead to lawyer discipline. The CJCP encourages judges and attorneys to define professionalism in the context of his or her work.

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.⁸
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

⁸ For life and career balance issues, see *The Complete Lawyer*, a free Internet publication available through the CLE link on the Atlanta Bar Association’s website, www.atlantabar.org.

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.

Step 3: Relate the Lawyer’s Creed, Aspirational Statement and Core Concepts of Professionalism to Your CLE’s Area of Law or Practice and Focus Attention by Asking Specific Questions Beyond Ethics That Address Professionalism Aspirational Standards.

The next step in CLE planning is to relate *A Lawyer’s Creed* and the *Aspirational Statement on Professionalism* as the starting point for the discussions and written material you will develop for the area of law your CLE is addressing, or the type of practice of your participants. The Core Concepts expressed above may also assist you in developing discussion points and materials about *A Lawyer’s Creed* and the *Aspirational Statement on Professionalism* during your CLE. How do you do this? As law professors know, you will want to seek out or create hypothetical situations. Alternatively, you can use real examples of professionalism concepts that relate to your practice or area of law. You can find some examples in the tomes and periodicals of your practice area, by contacting section leaders of the bar, or by talking to a law professor. If you are creative, you can prepare your own hypothetical situations or borrow some examples from your own practice and experience.

There are some questions that can be posed to your audience. We all know that professionalism requires that a lawyer be **competent**, by which we mean that he or she have the legal knowledge, skills, diligence, and judgment necessary to help a client. For example, Mercer Law Professor Patrick Longan provided some basic questions to ask if discussing competence in the context of professionalism in a family law case.⁹ In exploring competence, consider the following in the context of a divorce lawyer addressing questions of child custody and support with her client:

1. What can a lawyer do to demonstrate his or her competence?
2. When is it appropriate for a lawyer to make suggestions to a client that are not related particularly to legal representation, for example, suggesting counseling to a client, either for purposes of reconciliation or for the emotional consequences of family strife?
3. Is it appropriate for an attorney to talk their client out of seeking custody as a negotiating ploy? Is that an appropriate role for the lawyer? Is it appropriate only when it is in the client's best interest not to do so, or should the lawyer take into account the effect on the children?

Most CLEs on professionalism focus participants' attention on a discussion of **civility**. Is it an ethical requirement? It is certainly a professional requirement. Perhaps the most commonly-considered attribute of professionalism is civility, simply the requirement that lawyers must always be civil to one another and to adversaries and witnesses. Professor Longan would pose these questions on the topic of civility:

1. Why does civility among counsel matter?
2. What is included within civility? Where is the boundary between effective advocacy and incivility?
3. Why would counsel ever engage in uncivil conduct? What can prevent it?¹⁰

Another one of the four pillars of professionalism is **commitment to the rule of law and the public good**. Perhaps one of the highest calling of professionalism recognizes that lawyers have a responsibility to promote access to justice and legal services. Some thoughts Professor

⁹Patrick Longan, *Teacher's Manual*, "A Day in the Life of A Family Law Practitioner," DVD produced by the Georgia Chief Justice's Commission on Professionalism (2006).

¹⁰Patrick Longan, *Teacher's Manual*, "A Day in the Life of A Family Law Practitioner," DVD produced by the Georgia Chief Justice's Commission on Professionalism (2006).

Longan would have us consider are:

1. Why do lawyers have the obligation to render pro bono service when others in our economy do not?
2. How much pro bono work should we expect from busy practitioners? What are some ways to encourage more pro bono service?
3. How is the professional “obligation” to render pro bono service currently enforced? How effective has it been? What are some other ways it could be enforced?¹¹
4. What do you think of the possibility of using paralegals, or others with some limited training and some experience rendering routine legal services, to help some of the people that pro bono programs do not reach? What do the principles of professionalism have to say about that question?

These are questions that can be posited to participants who practice in any area of the law. Consider whether their area of practice is not one for which the average person would seek representation. Is there, however, some other way these attorneys can provide pro bono service in their community that can be explored?

All professionalism CLE participants can be asked the question: **What does it mean to be “Professional”?** Professionalism is not only an important aspirational concept, it is at the core of building and maintaining positive relationships with clients and the public at-large. Perhaps of equal or greater importance is that Professionalism involves a Continuing Legal Education requirement for members of the Georgia Bar.

Former Atlanta Bar Association President, W. Ray Persons, King & Spalding partner, gave us some thoughtful insights into “What is Professionalism” in his President’s Message in the August 2007 issue of *The Atlanta Lawyer*. He defined professionalism as: “an approach to the practice of law that minimizes conflict which is unnecessary for the effective representation of clients and maximizes the quality of service that the judicial system is able to provide.” He further said: “professionalism is also what we ought to expect and demand of ourselves as lawyers. Although one’s background, values and experiences in the world may differ, one’s definition of professionalism should also include a commitment to serve something larger than ourselves – justice.”

¹¹Patrick Longan, *Teacher’s Manual*, “A Day in the Life of A Family Law Practitioner,” DVD produced by the Georgia Chief Justice’s Commission on Professionalism (2006).

Mr. Persons challenged lawyers to take a look at themselves – their own values and how they exercise them – from what they do – to how they do it; from what they say – and how they say it – from how they treat others – to how they should treat others. Some would say, that is simply acting in accordance with The Golden Rule: “Do Unto Others As You Would Have Them Do Unto You.”

If it is necessary to rebuild professionalism, Persons said “lawyers must implement the elements of professionalism consistently and holistically in their daily lives.” That will make lawyers not only competent, it will make lawyers compassionate and effective. Thus, lawyers will serve that greater cause: justice.

Since the goal of the professionalism CLE requirement is to provide a forum where lawyers can reflect on what it means to be a professional lawyer in contemporary legal practice, it is sometimes helpful to leave your CLE audience with some questions to reflect on:

- Do I, as a lawyer, act often enough as a problem-solver and peacemaker?
- Do I need to seek out a mentor?
- Why did I become a lawyer in the first place?
- What kind of lawyer do I want to be?
- How can I practice law as a calling in the spirit of public service and also run a successful law practice that provides me and my family with a good quality of life? How do others do it?
- How can I do well while doing good?

As you are planning your professionalism CLE, consider the importance of reflection by your participants on the concepts that you will discuss.

Step 4: Find the Best General and Specific Speakers.

The next step in CLE planning is to find speakers or presenters and to create the materials that address the professionalism concepts, as applied to the area of practice or law, both generally and specifically. If you are the speaker or presenter then you need only focus on providing the high quality and relevant material required for approval of your program by the Commission on Continuing Lawyer Competence and the Chief Justice’s Commission on Professionalism.

If you are not the speaker then you have to find one, of course. Not just any speaker will do, because professionalism CLE's require engaging speakers. You may get ideas for speakers from various other CLE programs and from bar activities. All Georgia attorneys get regular announcements for CLE programs from the Institute of Continuing Legal Education (ICLE) that have a wealth of ideas for programs and speakers. The Atlanta Bar Association has its own CLE director, and its programs are also announced widely and available on its website, www.atlantabar.org.

You can seek out law faculty, who are often eager to vet some of their ideas before the practicing bar. For example, the five law schools in Georgia all have excellent faculty members who can be solicited to conduct CLEs – Emory, Georgia, John Marshall, Mercer and University of Georgia. All law schools have faculty members who teach Professional Responsibility and some teach Professionalism courses.

Additionally, all Georgia law schools address Professionalism during their orientations for incoming students each summer. There are special programs for incoming (transfer, visiting and first-year students) to orient them to Professionalism. These programs are conducted by the law school administration and faculty in partnership with the State Bar's Committee on Professionalism and the Chief Justice's Commission on Professionalism. The programs consist of a review of the student honor codes, a speech usually by a distinguished member of the bench or bar, and breakout groups in which students discuss hypothetical situations facilitated by group leaders who are members of bench, bar and law school faculty. These programs have been conducted in Georgia since 1993 and continue to have relevance and positively impact the students as they begin their law school career.

You can also find a wealth of possible speakers in the daily or weekly legal periodicals, like the *Daily Report*. Members of the State Bar's Committee on Professionalism also like to be invited to speak and can provide possible speakers. Finally, there is a good deal of word-of-mouth on speakers through your networking activities.

But, who are the best speakers or presenters? We suggest that you consider what issues or topics you want to and need to address and how you want to cover those materials, issues or topics. Then you can find the people who are the most knowledgeable and, perhaps, more important, by asking around you can find the people who have an interesting and engaging presentation style. You can develop your speaker's talent by suggesting issues or topics they should address. You can also ask the speakers how they will present their information. Once you have pinned down the speakers, consider how they can "interplay," - i.e., give their various

views on common issues.

How many speakers should you invite? For a one-hour CLE, one to three speakers will suffice. Consider that if you use three speakers, after you briefly introduce them they will each have only ten to twelve minutes to speak, to allow time for a question and answer period. For a two-hour CLE, you could have three to five speakers and time for a question and answer period. Consider that fewer speakers would conceivably cover their information more completely. Also, to make the program more effective, you could allow more time for audience engagement – by way of a question or answer period or allowing more commentary.

Step 5: Explore Innovative Ways to Present Your Materials.

Another step in CLE planning is to find creative ways to present your material. Consider that your participants may have different learning styles and needs. To conduct an effective program, you should address those styles and needs.¹²

Most CLE planners take the easy or obvious route in formatting their presentations. Without much thought, they use speakers or panels of speakers. We encourage planners to use presentation formats in addition to or in lieu of the usual speaker and panel discussion. These alternative types of presentation tend to be more difficult to plan and execute than the speakers or panel formats. However, the more innovative presentation formats are often deemed more effective with participants because they are more participatory.

Consider breaking your group into smaller groups to encourage more individual participation. If you are a moderator or presenter, consider preassigning roles to persons in the

¹²Kimeiko Hotta Dover, Learning Style Tests and Tips, available at http://adulted.about.com/cs/learningstyles/a/lrng_style.htm (last visited Nov. 5, 2007). Ms. Dover says that: “students have a range of learning styles. Appeal to this diversity by using a variety of presentation, activity and assignment formats. Some possibilities include:

- * enhance lectures and presentations with visual aids
- * have students research and present material, in small groups or in plenary
- * introduce content through discussion or problem-solving activities
- * invite students to explore issues through role play
- * assign practical hands-on activities, where possible
- * take students on field trips to experience things first-hand.

In teaching law students simulated classroom experiences using role plays work like field trips. You can also take students on actual field trips by asking local judges to “borrow” their courtrooms.

audience who will start the discussion. You can also distribute problems in advance or gather questions in advance to fill up a question and answer period so that you can anticipate a more lively and fruitful discussion and question and answer period.

If you have several presenters or speakers, you can present the topic like a **debate**. Here you could use point-counterpoint formatting on issues on which you have briefed the presenters or on which your presenters have done their own research. It would be helpful to assign them to diametrically opposing views.

For example, the Supreme Court Committee on Access to Civil Justice presented a Mock Appellate Argument on a case involving state funding for civil legal services for low income persons. Mercer law professor, Timothy Floyd, helped in writing the moot court problem and argued on behalf of one of the parties. This was not only an effective way of addressing the issues, it was entertaining and educational.

Another interesting format is the “**talk show**” format. Here, the “moderator” takes on an Oprah or Dr. Phil style and directs pointed questions to the panelists, then invites audience comments and participation. If using this type of presentation, you would give the scheduled panelists the list of topics in advance. You could ask your panelists to be sure to address certain issues, provide certain information and confirm your expectations in writing. This is most effective when you provide your panelists with background information and reading materials and those are the materials you would submit for CLE course approval.

One other effective format is to use **breakout groups**. This format would work best in a longer time frame – at least a two-hour program. Here, there is a facilitator or moderator and one or two speakers that address the topics broadly, cover the important concepts and legal developments. Then, using written hypothetical problems, you would break the large group into smaller breakout groups for discussion. Here it helps to pre-assign participants to the small groups. You can designate the breakout group by placing colored dots on their name tags, printing numbers on their name tags, or seating them at small tables during the main presentation. Groups should be no more than ten people, if possible. You might suggest some “ground rules” for breakout groups – such as allowing each person to speak, respecting time, not allowing put-downs, etc.

As for breakout groups, you can also suggest some operating rules, for example, that breakout group members should select a recorder (can be a volunteer) who will write the breakout group’s ideas or findings on a flip chart. When the larger group reconvenes, the recorder will present a summary of their breakout group’s ideas to the whole body. The facilitator or moderator will summarize all of the findings.

A town hall meeting can be a way to present or explore an issue. This is useful when you have more than a one-hour session. Here, speakers should be selected to present a single viewpoint on the topic. This works well when the speakers are well-informed and even diametrically opposed on the issue at hand. It is a good way to set the stage for some intellectual discourse and good debate. Then, audience members are asked to step forward (and if the room is large, a microphone, preferably a portable one, is useful) to give their views on the issue at

hand. It is good to set time limitations on both the speakers' presentations, as well as comments from individual members of the audience. You may also want to limit the opportunity to comment by individuals in the audience to increase audience participation. The town hall meeting format can be an effective exercise to gauge community or constituent values and opinions on an important topic. The town hall meeting format is the quintessential democratic format – the opportunity to speak and be heard. It can provide a lively experience. Obviously, it should be carefully used.

When using any format, consider the use of videos, Power Point presentations, and hypothetical problems to spark a good discussion and learning experience. Remember the adage, “a picture is worth a thousand words.” Videos are often a very effective way to dramatize the issues of professionalism in a non-threatening, non-demeaning or an impersonal way.

Step 6: Consider How You Evaluate Your CLE.

The management guru, Dr. Steven Covey, tells us to “begin with the end in mind.” You want your CLE to be effective. There should be some careful thought to evaluating the speakers, presentations and materials to see if the educational purposes of the CLE were met. How would you measure that? Would it be informative? Would it meet the learning needs and styles of the participants? Is it engaging? Would it leave the participants with some new information or techniques – or a new spin on some information or techniques – to use in their practice? Did your presenters, presentations and written materials contribute positively to the effectiveness of your CLE?

There are also some basic meeting planning logistics that need to be addressed to conduct an effective CLE on professionalism. Is your location conducive to the type of activity you have planned? If you plan break out groups are there a sufficient number of small rooms available? Or, if you plan break out groups is there an effective way to conduct them in the large room? Does your room have comfortable seating? Are there any bad seats or blind spots? Is the temperature good – i.e., is the heat or air comfortable or adjustable? If using audiovisual equipment do you have to provide your own? Is technical assistance available? Do you have the opportunity to try out your audiovisual equipment prior to your session to insure that it works properly?

Is your session being webcast or videotaped? Then you must inform your speakers and participants that they should speak and present their information in a manner that can be heard and understood to those participating by webcast or podcast. This may be challenging if you are using audiovisual aids. Your format should be conducive to broadcast, as well. For example, a program using breakouts would not be conducive to broadcast.

You have heard that “timing is everything.” What time is the professionalism CLE or session on your day's program? For example, if you are first on the program will your participants have to fight traffic to get there on time? If you are last on the program, will your participants be rushing out the door to go home or avoid traffic? Are you scheduled before or after lunch? Is your session concurrent with another (and maybe more popular) topic?

The CJCP is now beginning to evaluate the professionalism programming of CLE sponsors using an electronic CLE Evaluation Form via Survey Monkey. Beginning in the fall of 2018, CLE sponsors will be required to collect evaluations of professionalism programming to receive credit for professionalism programming. The CJCP prefers that evaluations of professionalism programming be collected via an electronic format rather than via paper forms. If you set your learning objectives first, you will be able to gear your teaching – presentation, presenters and materials – to be more effective. The CJCP is happy to work with you to develop a more tailored professionalism evaluation form to gauge how effective you were in meeting your particular learning objectives and evaluating the experience of the participants. This may, of course, generate some ideas for your next CLE!

CONCLUSION

Attorneys who participate in CLE's on Professionalism will appreciate and positively evaluate a program that best suits their needs. Oftentimes this means that the program, to be effective, is also entertaining. Most often participants give positive evaluations when they have actively participated in the program or they have gained some new approach or information. Their effective participation requires only that they reach into their arsenal of experiences to find applicable situations involving the core concepts of Professionalism. They will have applied the general Professionalism concepts to their specific issues and areas of practice – what they do as lawyers every day. Therefore, for planners of CLEs on Professionalism the task is no different: make your CLE fit your audience. We hope these steps, processes and suggestions have encouraged you to find a good fit and effectively teach about Professionalism.

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

RESOURCES AND REFERENCES

1. Mandatory Continuing Legal Education Rules and Regulations, Part VIII (as passed by CCLC on June 7, 2018)
2. Rule 9-102, Rules and Regulations for the Organization and Government of the State Bar of Georgia (2017)
3. Professionalism CLE Guidelines v. 07-06-18
4. Procedures for Obtaining Professionalism CLE Accreditation v. 07-06-18
5. 22 Generic Hypotheticals
6. A Lawyer's Creed
7. Aspirational Statement on Professionalism
8. Commission on Professionalism Videotape/DVD Library
9. Sample Evaluation Form v. 07-06-18

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

MANDATORY CONTINUING LEGAL EDUCATION RULES AND REGULATIONS

PART VIII

CONTINUING LAWYER COMPETENCY

MINIMUM REQUIREMENTS FOR CONTINUING LEGAL EDUCATION

Rule 8-101. Purpose.

It is of utmost importance to members of the Bar and to the public that attorneys maintain their professional competence throughout their active practice of law. To that end, these rules establish the minimum requirements for continuing legal education.

Rule 8-102. Definition.

(a) "Accredited sponsor" shall mean an organization whose entire continuing legal education program has been accredited by the Commission on Continuing Lawyer Competency. A specific, individual continuing legal education activity presented by such a sponsor constitutes an approved legal education activity.

(b) "Active member" shall include any person who is licensed to practice law in the State of Georgia and who is an active member of the State Bar of Georgia, but shall not include the Governor, Lieutenant Governor, Speaker of the House of Representatives, other Constitutional Executive Officers elected statewide, members of the Georgia Senate and the Georgia House of Representatives, United States Senators and Representatives, and shall not include judges who are prohibited by law, statute, or ordinance from engaging in the practice of law.

(c) "Commission" shall mean the Commission on Continuing Lawyer Competency (CCLC).

(d) "Inactive member" shall mean a member of the State Bar who is on inactive status.

(e) "Supreme Court" shall mean the Supreme Court of Georgia.

(f) "Year" shall mean the calendar year.

Rule 8-103. Commission on Continuing Lawyer Competency.

(A) Membership, Appointment and Terms:

There is established a permanent commission of the State Bar of Georgia known as the Commission on Continuing Lawyer Competency. The Commission shall consist of sixteen (16) members, six (6) of whom shall be appointed by the Supreme Court of Georgia and six (6) by the Board of Governors of the State Bar of Georgia, one (1) shall be designated by the Executive Committee of the State Bar of Georgia, one (1) shall be the chair of the Board of Trustees of the Institute of Continuing Legal Education in Georgia or his or her designee, one (1) shall be

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

designated by the Chief Justice's Commission on Professionalism, and one (1) shall be designated by the President of the Young Lawyers Division of the State Bar of Georgia. Members shall be members of the State Bar of Georgia. Members of the Commission appointed by the Supreme Court of Georgia and by the Board of Governors of the State Bar shall be appointed for staggered three (3) year terms and until their successors are appointed, except that the initial appointed members of the Commission shall consist of four (4) members appointed for a term of one (1) year, four (4) members appointed for a term of two (2) years, and four (4) members appointed for a term of three (3) years. The appointed members of the initial Commission shall be appointed half by the Supreme Court and half by the Board of Governors of the State Bar of Georgia. No member appointed by the Supreme Court or the Board of Governors may serve more than two (2) consecutive terms as a member of the Commission, and no such member may be reappointed otherwise to the Commission until he or she has been inactive as a Commission member for three (3) consecutive years. Members of the Commission designated by the Executive Committee, the chair of the Board of Trustees of the Institute of Continuing Legal Education, the Chief Justice's Commission on Professionalism, and the President of the Young Lawyers Division shall each serve for a term of one (1) year. No person so designated to the Commission may serve more than three (3) consecutive terms as a member of the Commission, and no such member may be redesignated otherwise to the Commission until he or she has been inactive as a Commission member for three (3) consecutive years.

The Commission shall designate each year one of its members to serve as Chairperson. The Executive Director of the State Bar of Georgia, the Executive Director of the Institute of Continuing Legal Education of Georgia, the Executive Director of the Chief Justice's Commission on Professionalism, and the Executive Director of the Commission shall serve as ex-officio members of the Commission, but shall have no vote. The Executive Director of the Commission shall serve as Secretary of the Commission.

Regulations

- (1) **Quorum.** Eight voting members shall constitute a quorum of the CCLC.*
- (2) **Chair.** The Chair of the CCLC shall be elected by majority vote during the first meeting of CCLC in each calendar year.*
- (3) **Vice Chair.** The CCLC shall elect a Vice Chair by majority vote during the first meeting of the CCLC in each calendar year.*
- (4) **Executive Committee.** The Executive Committee of the CCLC shall be comprised of the Chairperson, Vice Chairperson, and a voting member to be appointed by the Chairperson. Its purpose is to conduct all necessary business of the CCLC that may arise between meetings of the full Commission. In such matters it shall have complete authority to act for the CCLC.*
- (5) **Standards of the Profession Committee.** The Chair of the CCLC shall appoint a chair of the Standards of the Profession Committee which shall devise and recommend policy to the Commission for the operation of the Transition Into Law Practice Program. The Standards of the Profession Committee shall be composed of the designee of the Executive Committee of the State Bar of Georgia, the chair of the Board of Trustees of the Institute of Continuing Legal Education in Georgia or his or her designee, the designee of the Chief Justice's Commission on*

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Professionalism, the designee of the President of the Young Lawyers Division of the State Bar of Georgia, and any other member of the State Bar of Georgia appointed to the Standards of the Profession Committee by the Chairperson of the Commission. In addition, the Standards of the Profession Committee of the Commission shall initially be composed of the members of the Standards of the Profession Committee of the State Bar of Georgia, who shall serve at the pleasure of the Chair of the Commission.

*(6) **Other Committees.** The Chairperson may appoint from time to time any committees deemed advisable.*

*(7) **Vacancy.** A vacancy on the CCLC, in its officers, or on its committees, occurring for whatever reason, shall be filled as soon as practical in the same manner as the original holder of the position was selected.*

(B) Powers and Duties of the Board:

(1) The Commission shall have general supervisory authority to administer these Rules.

(2) The Commission shall have specific duties and responsibilities:

(a) To approve all or portions of individual courses and programs of a sponsor which satisfy the educational requirements of Rule 8-106;

(b) To determine the number of credit hours allowed for each course or educational activity;

(c) To encourage courses and programs by established organizations, whether offered within or without the State;

(d) To educate the public about the legal profession;

(e) To adopt rules and regulations not inconsistent with these Rules;

(f) To establish an office or offices and to employ such persons as the Commission deems necessary for the proper administration of these Rules and to delegate to them appropriate authority, subject to the review of the Commission;

(g) To report at least annually to the State Bar and to the Supreme Court the activities and recommendations of the Commission and the effectiveness of the enforcement of these Rules;

(h) To report promptly to the Supreme Court any violation of these Rules.

Regulations

*(1) **Appeals.** The CCLC is the final authority on all matters entrusted to it under these rules. Therefore, any decision made by a committee of the CCLC pursuant to a delegation of authority may be appealed to the full CCLC. A decision made by the staff of the CCLC pursuant to a*

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

delegation of authority may also be reviewed by the full CCLC, but should first be appealed to the Committee of the CCLC having jurisdiction on the subject involved. All appeals shall be in writing. The CCLC has the discretion to, but is not obligated to, grant a hearing in connection with any appeal.

*(2) **Amendments.** The CCLC may on its own motion, or on the motion of any interested party, amend, delete, or add to the foregoing Regulations. All motions in this regard should (1) be typed, (2) describe the amendment, (3) explain the reasons for the amendment, and (4) include a draft of the suggested new regulation.*

*(3) **All parties are welcomed to appear before the Commission in writing.** If the Commission determines that further information is needed, the parties may be invited to present their position or appeal in person or by telephone conference call.*

(C) Finances:

(1) Purpose. The Commission should be adequately funded to enable it to perform its duties in a financially independent manner.

(2) Sources. Costs of administration of the Commission shall be derived from charges to members of the State Bar for continuing legal education activities.

(a) Sponsors of CLE programs to be held within the State of Georgia shall, as a condition of accreditation, agree to remit a list of Georgia attendees and to pay a fee for each active State Bar member who attends the program. This sponsor's fee shall be based on each day of attendance, with a proportional fee for programs lasting less than a whole day. The rate shall be set by the Commission.

(b) The Commission shall fix a reasonably comparable fee to be paid by individual attorneys who either (a) attend approved CLE programs outside the State of Georgia or (b) attend un-approved CLE programs within the State of Georgia that would have been approved for credit except for the failure of the sponsor to pay the fee described in the preceding paragraph. Such fee shall accompany the attorney's annual report.

(3) Uses. Funds may be expended for the proper administration of the Commission. However, the members of the Commission shall serve on a voluntary basis without expense reimbursement or compensation.

Regulations

*(1) **Sponsor Fee.** The Sponsor fee, a charge paid directly by the sponsor, is required for all approved programs held within Georgia. It is optional for approved programs held elsewhere. Sponsors shall remit the fee, together with a list in alphabetical order showing the names and Georgia Bar membership numbers of all Georgia attendees, within thirty (30) days after the program is held. The amount of the fee is set at \$5.00 per approved CLE hour per active State Bar of Georgia member in attendance. It is computed as shown in the following formula and example:*

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

	Formula	Example
<i>Fee</i>	\$5.00	\$5.00
<i>Multiplied by total approved CLE hours</i>	$x ?$	$x 5.4$
<i>Multiplied by number of Georgia attendees</i>	$x ?$	$x 129$
<i>Equals the total sponsor fee</i>	\$?	\$3483.00

(2) **Attendee Fee.** The attendee fee is paid by the Georgia attorney who requests credit for a program for which no sponsor fee was paid. Attorneys should remit the fee along with their annual report before January 31st following the calendar year for which the report is being submitted. The amount of the fee is set at \$5.00 per approved CLE hour for which the attorney claims credit. It is computed as shown in the following formula and example:

	Formula	Example
<i>Fee</i>	\$5.00	\$5.00
<i>Multiplied by the total approved CLE hours for which the attorney seeks credit but for which sponsor fee was paid.</i>	$x ?$	$x 3.3$
<i>Equals the total attendee fee</i>	\$?	\$16.50

(3) **Fee Review.** The Commission will review the level of the fee at least annually and adjust it as necessary to maintain adequate finances for prudent operation of the Commission in a non-profit manner.

(4) **Uniform Application.** The fee shall be applied uniformly without exceptions or other preferential treatment for any sponsor or attendee.

(5) **Professionalism Fee.** All active members of the State Bar of Georgia will be assessed a \$15 surcharge annually on their dues notice. Beginning July 1, 2018, this surcharge will allow for unlimited professionalism courses taken during that calendar year for CLE credit. The CCLC is responsible for entering all CLE credit including professionalism.

Rule 8-104. Education Requirements and Exemptions.

(A) Minimum Continuing Legal Education Requirement.

Each active member shall complete a minimum of twelve (12) hours of actual instruction in an approved continuing legal education activity during each year. If a member completes more than twelve (12) hours in a year, the excess credit may be carried forward and applied to the education requirement for the succeeding year only.

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

(B) Basic Legal Skills Requirement.

(1) Except as set out in subsections (a) and (b) below, any newly admitted active member admitted after June 30, 2005, must complete in the year of his or her admission or in the next calendar year the State Bar of Georgia Transition Into Law Practice Program, and such completion of the Transition Into Law Practice Program shall satisfy the mandatory continuing legal education requirements for such newly admitted active member for both the year of admission and the next succeeding year.

(a) Any newly admitted active member, who has practiced law in another United States jurisdiction other than Georgia for two or more years immediately prior to admission to practice in this state, may be exempted from completing the Transition Into Law Practice Program upon the submission, within three months of admission, of an affidavit to the Commission on Continuing Lawyer Competency. The affidavit shall provide the date or dates of admission in every other state in which the member is admitted to practice and a declaration that the newly admitted member has been actively engaged in the practice of law for two or more years immediately prior to admission in this state. Upon submission of a satisfactory affidavit, the newly admitted active member shall be required to complete the annual twelve hours of instruction in approved continuing legal education activity beginning at the start of the first full calendar year after the date of admission. Any newly admitted active member, who has practiced law in another United State jurisdiction other than Georgia for two or more years immediately prior to admission to practice in this state and who does not timely file the required affidavit, shall be required to complete the Transition Into Law Practice Program as set out above.

(b) Any newly admitted active member, who is a judicial law clerk or who begins a clerkship within three months of admission, shall not be subject to the requirement of completing the Transition Into Law Practice Program during the period of the judicial clerkship. Within thirty days of admission to the State Bar or within thirty days of the beginning of the clerkship if said clerkship begins within three months after admission, the member shall provide written notice to the Commission on Continuing Lawyer Competency of the date of entry into the clerkship position. Judicial law clerks are required to complete the annual twelve hours of regular instruction in approved continuing legal education courses beginning at the start of the first full calendar year after the date of admission. Within thirty days of the completion of the clerkship, the member shall provide written notice to the Commission on Continuing Lawyer Competency of the date of such completion. The member must complete, in the year the clerkship was concluded, or the next calendar year, the Georgia Transition Into Law Practice Program. Such completion of the Transition Into Law Practice Program shall satisfy the mandatory continuing legal education requirements for such member for both the year of completion of the clerkship and the next succeeding calendar year.

(2) Each active member, except those participating in the Georgia Transition Into Law Practice Program, shall complete a minimum of one (1) hour of continuing legal

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

education during each year in the area of ethics. This hour is to be included in, and not in addition to, the twelve-hour (12) requirement. If a member completes more than one (1) hour in ethics during the calendar year, the excess ethics credit may be carried forward up to a maximum of two (2) hours and applied to the ethics requirement for succeeding years.

(3) Each active member, except those participating in the Georgia Transition Into Law Practice Program, shall complete a minimum of one (1) hour of continuing legal education during each year in an activity of any sponsor approved by the Chief Justice's Commission on Professionalism in the area of professionalism. This hour is to be included in, and not in addition to, the twelve-hour (12) requirement. If a member completes more than one (1) hour in professionalism during the calendar year, the excess professionalism credit may be carried forward up to a maximum of two (2) hours and applied to the professionalism requirement for succeeding years.

(4) Confidentiality of Proceedings.

(a) The confidentiality of all inquiries to, decisions of, and proceedings by the Transition Into Law Practice Program shall be respected. No disclosure of said inquiries, decisions and proceedings shall be made in the absence of the agreement of all participating.

(b) Except as expressly permitted by these rules, no person connected with the Transitions Into law Practice Program operated under the auspices of the Standards of the Profession Committee of the Commission on Continuing Lawyer Competency shall disclose any information concerning or comments on any proceeding under these rules.

(c) The Transition Into Law Practice Program operated under the auspices of the Standards of the Profession Committee of the Commission on Continuing Lawyer Competency may reveal private records when require by law, court rule, or court order.

(d) Any records maintained by the Transition Into Law Practice Program operated under the auspices of the Standards of the Profession Committee of the Commission on Continuing Lawyer Competency, as provided herein, shall be available to Counsel for the State Bar only in the event the State Bar or any department thereof receives a discovery request or properly executed subpoena requesting such records.

Regulations

(1) Definitions.

(a) Newly Admitted Active Member. A "newly admitted active member" is one who becomes an active member of the State Bar of Georgia for the first time.

(b) Bridge-the-Gap. "Bridge-the-Gap" is a program organized and defined by ICLE. Currently, the Bridge-the-Gap program consists of two days of instruction: the first day

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

being a seminar called Bridge-the-Gap and the second day being any other approved six hour seminar to be selected by each lawyer. This program will be replaced by the Transition Into Law Practice Program after October 1, 2005.

(c) Transition Into Law Practice Program. "Transition Into Law Practice Program" is a program organized and defined by the Standards of the Profession Committee of the Commission on Continuing Lawyer Competency. Currently, the Transition Into Law Practice Program consists of two components:

(i) Attendance at the Enhanced Bridge-the-Gap program, or the Fundamentals of Law Practice program of the Institute of Continuing Legal Education, or a comparable program approved by the Commission on Continuing Lawyer Competency; and

(ii) Completion of a Mentoring Plan of Activities and Experiences.

(d) Enhanced Bridge-the-Gap. "Enhanced Bridge-the-Gap," is the continuing legal education program of the Transition Into Law Practice Program that is delivered by the Institute of Continuing Legal Education in large group settings. Enhanced Bridge-the-Gap consists of two consecutive days of course work that inform and facilitate further discussion in the mentoring context.

(e) Fundamentals of Law Practice. "Fundamentals of Law Practice" is the continuing legal education program of the Transition Into Law Practice Program that is delivered by the Institute of Continuing Legal Education in small group settings to foster close interaction between newly admitted active lawyers and instructors. Fundamentals of Law Practice consists of two consecutive days of course work that inform and facilitate further discussion in the mentoring context.

(f) Mentoring Plan of Activities and Experiences. The "Mentoring Plan of Activities and Experiences" is the plan that structures and guides the mentoring component of the Transition Into Law Practice Program. The Plan shall be submitted to the Program in the year of admission or early in the next calendar year by the newly admitted active member and his or her mentor. The Plan must be completed in the year of admission or the next calendar year.

(2) Transition Application. *Except as set out in Sections (B)(1)(a) and (B)(1)(b) above, the Transition Into Law Practice Program shall be required of all newly admitted active members admitted after June 30, 2005. The ICLE Bridge-the-Gap program shall be required of all newly admitted active members who are admitted prior to July 1, 2005.*

(3) Legal Ethics. *Legal ethics includes instruction on professional responsibility and malpractice. It does not include such topics as attorney fees, client development, law office economics, and practice systems except to the extent that professional responsibility is directly discussed in connection with these topics.*

(4) Professionalism. *The professionalism CLE requirement is distinct from, and in addition to, the ethics CLE requirement. The one-hour professionalism requirement is satisfied only by*

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

attending an activity of any sponsor approved by the Chief Justice's Commission on Professionalism in the area of professionalism. Legal ethics sets forth the minimal standards of professional conduct required of a lawyer; professionalism encompasses what is more broadly expected of lawyers to serve both client and public good. Professionalism refers to the intersecting values of competence, civility, integrity, and commitment to the rule of law, justice, and the public good. The general goal of the professionalism CLE requirement is to create a forum in which lawyers, judges, and legal educators can explore and reflect upon the meaning and goals of professionalism in contemporary legal practice. The professionalism CLE sessions should encourage lawyers toward conduct that preserves and strengthens the dignity, honor, and integrity of the legal profession. Professionalism CLE includes, but is not limited to, courses on (a) the duties of lawyers to the systems of justice, courts, public, clients, other lawyers, and the profession, (b) the roles of lawyers as advocates, counselors, negotiators, problem solvers, and consensus builders, (c) various forms of dispute resolution, (d) pro bono service, (e) the concept of a profession, (f) history of the legal profession, (g) comparison of the legal profession in different nations' systems of advocacy, and (h) jurisprudence or philosophy of law.

*(5) **Deadlines.** The normal MCLE deadlines (December 31 and approved deficiency plan extensions) are applicable to the Transition Into Law Practice Program.*

*(6) **Appointment of Mentors.;** Minimum Qualifications.*

(a) Appointment of Mentors. The Supreme Court of Georgia has the sole authority to appoint Mentors.

(b) Nomination of Mentors. The Standards of the Profession Committee may nominate individuals satisfying the Minimum Qualifications to the Supreme Court of Georgia for appointment consideration; provided however, that the Supreme Court of Georgia retains the authority to appoint Mentors upon its own recommendation and/or motion.

(c) Minimum Qualifications for Mentors. A volunteer shall meet the following Minimum Qualifications to be eligible for nomination to the Supreme Court of Georgia for appointment as Mentor:

(i) Active Status. Be an active member of the State Bar of Georgia, in good standing; and,

(ii) 5 Years of Practice. Have been admitted to the practice law for not less than five (5) years; and,

(iii) Professional Reputation. Maintain a professional reputation in his or her local legal community for competence, ethical and professional conduct; and,

(iv) Disciplinary Action. Never have received the sanction of disbarment or suspension from the practice of law in any jurisdiction, nor have voluntarily surrendered his or her license to practice law for the purpose of disposing with a pending disciplinary proceeding in any jurisdiction. During the ten (10) years preceding the nomination as mentor, the prospective mentor shall not have been otherwise sanctioned by the pertinent entity governing the admission and practice

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

of law in any jurisdiction. The term "sanctioned" means subjected to disciplinary action. (For example, in Georgia, "sanctioned" currently means any of the levels of discipline whether public or confidential listed in State Bar of Georgia Rule 4-102(b) (i.e., Disbarment; Suspension; Public Reprimand; Review Panel Reprimand; Investigative Panel Reprimand; Formal Admonition); Rule 8-107 (C) (i.e., Administrative Suspension for deficiency in continuing legal education hours); or State Bar Bylaws Article I, Section 4, Item 2 (i.e., Failure to Register with State Bar of Georgia within one year upon eligibility)). Nominations of individuals having formal complaint (s) pending before the Supreme Court of Georgia will be deferred until the final disposition of the formal complaint (s); and,

(v) Court-ordered Disciplinary Action. During the ten (10) years preceding the nomination as mentor, the prospective mentor shall not have been the subject of a written order issued by a court of competent jurisdiction that prohibits or otherwise limits the prospective mentor from practicing before that court or class of courts. A directive, request or order by a judge of a court requesting or directing that an attorney employed by an agency of government or a legal aid organization who is assigned to handle cases before that judge be transferred or reassigned to other duties or another courtroom does not constitute court-ordered disciplinary action under this part. A prospective mentor who is or has within the preceding ten (10) years been the subject of such a written order may petition the Commission on Continuing Lawyer Competency (the "Commission") for a waiver of this requirement. After review of the facts and circumstances which led to the entry of such order, the Commission may, upon good cause shown, grant such waiver if the prospective mentor is otherwise qualified to be a mentor; and

(vi) Professional Liability Insurance or Equivalent. Be covered under a professional liability insurance policy with minimum limits of \$250,000.00/\$500,000.00, or, if applicable, the equivalent to such coverage through the legal status of his or her employer.

*(7) **Status.** While CLE and TILPP mentoring activities may be completed while on inactive status, TILPP completion certification will be issued only after a member changes to active status.*

(C) Exemptions.

(1) An inactive member shall be exempt from the continuing legal education and the reporting requirements of this Rule.

(2) The Commission may exempt an active member from the continuing legal education, but not the reporting, requirements of this rule for a period of not more than one (1) year upon a finding by the Commission of special circumstances unique to that member constituting undue hardship.

(3) Any active member over the age of seventy (70) shall be exempt from the continuing legal education requirements of this rule, including the reporting requirements, unless the

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

member notifies the Commission in writing that the member wishes to continue to be covered by the continuing legal education requirements of this rule.

(4) Any active member residing outside of Georgia who neither practices in Georgia nor represents Georgia clients shall be exempt, upon written application to the Commission, from the continuing legal education, but not the reporting, requirements of this rule during the year for which the written application is made. This application shall be filed with the annual report.

(5) Any active member of the Board of Bar Examiners shall be exempt from the continuing legal education but not the reporting requirement of this Rule.

Regulations

(1) ***Inactive.*** *To be fully exempt, the member must be inactive during the entire year. An active attorney who changes to inactive status is not exempt during the year in which the status change occurs. An inactive attorney who changes to active status must comply with the full 12 CLE hour requirement.*

(2) ***Undue Hardship.*** *Requests for undue hardship exemptions on physical disability or other grounds may be granted. The CCLC shall review and approve or disapprove such requests on an individual basis.*

(D) Requirements for Participation in Litigation.

(1) Prior to appearing as sole or lead counsel in the Superior or State Courts of Georgia in any contested civil case or in the trial of a criminal case, any participant in the Transition Into Law Practice Program admitted to practice after June 30, 2005, shall complete the mandatory Advocacy Experiences of the Transition Into Law Practice Program set forth in Regulation (5) hereunder. The mandatory Advocacy Experiences shall be completed as part of the Mentoring Plan of Activities and Experiences, except that up to three (3) of the five (5) mandatory Advocacy Experiences may be obtained after completion of 60% of the credit hours required for law school graduation and prior to admission to practice. At least two (2) of the mandatory Advocacy Experiences must be completed as part of the Mentoring Plan of Activities and Experiences.

(2) Each active member who appears as sole or lead counsel in the Superior or State Courts of Georgia in any contested civil case or in the trial of a criminal case in 1990 or in any subsequent calendar year, shall complete for such year a minimum of three (3) hours of continuing legal education activity in the area of trial practice. A trial practice CLE activity is one exclusively limited to one or more of the following subjects: evidence, civil practice and procedure, criminal practice and procedure, ethics and professionalism in litigation, or trial advocacy. These hours are to be included in, and not in addition to, the 12-hour (twelve) requirement. If a member completes more than three (3) trial practice hours, the excess trial practice credit may be carried forward and applied to the trial practice requirement for the succeeding year only.

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Regulations

Trial MCLE

(1) Lead Counsel is defined as the attorney who has primary responsibility for making all professional decisions in the handling of the case.

(2) The trial MCLE rule applies to all members who appear as sole or lead counsel in the Superior or State Courts of Georgia in any contested civil case or in the trial of a criminal case. As a segment of the 12-hour (twelve) total MCLE requirement, the MCLE exemptions are applicable to the trial MCLE rule. Likewise, the normal MCLE deadlines (December 31st and approved deficiency plan extensions) are applicable to the trial MCLE rule.

(3) Due to the "exclusively limited" requirement, trial CLE must be (a) clearly segregated and identified (b) a minimum of one (1) hour in length, and (c) limited to one or more of the five (5) listed subjects in order to receive trial CLE credit. The "exclusively limited" requirement does not prohibit credit for a seminar that deals with one or more of the subjects stated in the Rule in the context of a particular field of trial practice, such as medical malpractice, personal injury defense, criminal cases, construction law, etc.

(4) MCLE transcripts will reflect trial CLE in addition to ethics and total CLE. However, the certification of compliance is made by the members when they make the court appearance described in the Rules. The sanctions for false certification or other non-compliance lie with the Court in which the lawyer appeared and with the State Disciplinary Board of the State Bar of Georgia. If the Commission receives allegations or evidence of a false certification or other non-compliance, a report thereof shall be forwarded to the State Disciplinary Board for any action it deems necessary.

(5) For participants in the Transition Into Law Practice Program who wish to appear as sole or lead counsel in the Superior or State Courts of Georgia in any contested civil case or in the trial of a criminal case, the mentors and beginning lawyers shall devise five (5) mandatory Advocacy Experiences tailored to the practices of the beginning lawyers. The following are examples:

i. An actual or simulated deposition of a witness or adverse party in a civil action;

ii. An actual or simulated jury trial in a civil or criminal case in either a state or federal court;

iii. An actual or simulated nonjury trial or evidentiary hearing in a state or federal court;

iv. An actual or webcast of an appellate argument in the Supreme Court of Georgia, the Court of Appeals of Georgia, or a United States Circuit Court of Appeals; and

v. An actual or simulated mediation.

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Other advocacy experiences may be selected by Mentors to comply with Rule 8-104(D).

Rule 8-105. Annual Report.

The Commission shall provide at the end of each year to all non-exempt active members an Annual Report of their CLE record in such form as the Commission shall prescribe.

A member whose record contains credit for unearned hours shall report corrections on or before January 31st. A member whose record fails to include credit for earned hours may report corrections on or before January 31st.

Rule 8-106. Hours and Accreditation.

(A) **Hours.** The Commission shall designate the number of hours to be earned by participation, including, but not limited to, teaching in continuing legal education activities approved by the Commission.

Regulations

(1) ***Computation Formula.*** *CLE and ethics hours shall be computed by the following formula:*

$$\frac{\text{Sum of total minutes of actual instruction}}{60} = \text{total hours (round to the nearest 1/10th of an hour)}$$

60

(2) ***Actual Instruction.*** *Only legal education shall be included in computing the total hours of actual instruction. The following shall not be included: (a) introductory remarks, (b) breaks, (c) business meetings, (d) questions and answer sessions at a ratio in excess of 10 minutes per CLE hour, (e) programs of less than 60 minutes in length.*

(3) ***Teaching.*** *For their contribution to the legal profession, attorneys may earn credit for non-paid teaching in an approved continuing legal education activity. Presentations accompanied by thorough, high quality, readable, and carefully prepared written materials will qualify for CLE credit on the basis of three (3) credits for each hour of presentation. Repeat presentations qualify for one-half of the credits available for the initial presentation. A speaker may elect to split the teaching credit with another attorney who, under the speaker's supervision, prepares the written materials. If the intended speaker prepares the written materials and cannot speak due to health problems, emergency or required court appearance, the teaching credit will be split between the speaker and the substituted speaker at the request of either. Should neither make such request, the credit will be given to the actual speaker.*

(4) ***Author.*** *The CCLC may award up to a maximum of (6) hours of CLE credit for the authoring of legal articles upon the written certification by the attorney to the CCLC of (a) the amount of time expended in researching and writing the article and (b) the submission of a copy thereof to the CCLC for review, provided that (1) the article or treatise's content and quality are consistent with the purposes of CLE, (2) it is published in a recognized publication which is primarily directed at lawyers, and (3) the project was not done in the ordinary course of the practice of*

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

law, the performance of judicial duties, or other regular employment. If co-authors are involved, the credit may be divided on the basis of each attorney's contribution. An attorney requesting author credit shall pay the normal attendee fee.

*(5) **Organizer.** The chairperson who organizes an approved CLE activity and who does not make a formal oral presentation therein shall qualify for CLE credit as if he or she had made a one hour presentation. If co-chairpersons are involved, the credit shall be divided on the basis of each attorneys' contribution. An attorney requesting this type of credit should pay, or arrange for the sponsor to pay, the normal attendee fee.*

*(6) **Lawyer Wellness.** Wellness and mental health issues, including stress, anxiety, substance abuse, depression and suicide, materially affect lawyers' competency to practice law and their lives. CLE credit as required under Rule 8-104(A) is available for seminars on these and similar quality of life and law practice topics. To receive CLE credit these wellness topics must be discussed in the context of the legal profession and the effects on the quality of the legal services the lawyer is able to provide. Presentations approved may include stress management in the context of work/life balance in the practice of law, signs of substance abuse or mental health issues in oneself or a colleague within the legal community, lawyer assistance programs and other topics that are focused on the impact of substance abuse, mental health issues or stress management on lawyers and judges. CLE credit will not be given to presentations which solely focus on personal stress reduction techniques such as breathing exercises, meditation and yoga. In addition, professionalism CLE credit is available when these topics are presented in a professionalism program approved by the Chief Justice's Commission on Professionalism.*

*(7) **Trial Observation.** Every trial encompasses many aspects of the practice of law that are consistently taught in both law school and continuing legal education seminars. Observing how this education is applied into actual practice in the form of a current trial is, in and of itself, very educational. Its importance in achieving competency as a lawyer cannot be emphasized enough. To encourage this, CLE credit for observing trials is available under the following guidelines*

(a). Jury trials, bench trials, motion hearings and appellate court arguments in any Federal or State court are eligible. Administrative hearings, trials and probate court, and mediations/arbitrations are also eligible.

(b). Proceedings in magistrate court and pro se matters are not eligible.

(c). Credit is not available for trials in which the member takes an active role in the trial or any phase thereof.

(d). The credit shall be treated as In-House and subject to the limitations of Regulation 8e under Rule 8-106 (B).

(e). The credit is not eligible for ethics or professionalism CLE.

(f). The credit is self-reported to the CCLC and must include:

- member's name and bar number*
- the name of the court, parties, date of trial and type of trial*
- the credit applicable (actual time rounded to nearest tenth of an hour)*
- the administrative fee required by Rule 8-103(C)(2) (currently \$5 per credit hour)*

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

*(8) **Active Non-Resident.** Active non-Georgia members residing in other mandatory CLE states may satisfy all Georgia requirements by (1) meeting the CLE requirements of the resident state, (2) so reporting annually on their Georgia MCLE affidavit, and (3) paying the Georgia CLE, professionalism, and late fees normally paid by active members residing in Georgia.*

*(9) **Active Military Duty.** Active members serving on active duty with the United States Armed Forces shall be exempt from the continuing legal education but not the reporting requirement of this Rule.*

(B) Accreditation Standards: The Commission shall approve continuing legal education activities consistent with the following standards:

(1) They shall have significant intellectual or practical content, and the primary objective shall be to increase the participant's professional competence as a lawyer;

(2) They shall constitute an organized program of learning dealing with matters directly related to the practice of law, professional responsibility or ethical obligations of lawyers;

(3) Credit may be given for continuing legal education activities where (a) live instruction is used or (b) mechanically or electronically recorded or reproduced material is used if a qualified instructor is available to comment and answer questions;

(4) Continuing legal education materials are to be prepared, and activities conducted, by an individual or group qualified by practical or academic experience in a setting physically suitable to the educational activity of the program;

(5) 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;

(6) The Commission may issue from time to time a list of approved accredited sponsors deemed by it to meet the requirements set forth in this Rule. Any other sponsor desiring to be approved for accredited sponsor status must file an application with the Commission with such program material and information as the Commission may require;

(7) Any accredited sponsor must keep and maintain attendance records of each continuing legal education program sponsored by it, which shall be furnished to the Commission upon its request.

Regulations

*(1) **Continuing Legal Education.** The CCLC shall determine those matters which directly relate to the practice of law so as to be eligible for CLE credit. They shall constitute an organized program of learning dealing with matters directly related to the practice of law, professional responsibility, or ethical obligations of lawyers.*

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

(2) **Law School Courses.** Courses offered by an ABA accredited law school shall receive credit on the basis of one-half (1/2) hour of CLE credit for each 60 minutes of actual instruction. No more than twenty-four (24) CLE hours in any calendar year may be earned by law school courses. Success on an examination is not required for credit and the course may be attended on an audit (not for academic credit) basis. No credit is available for law school courses attended prior to becoming an active member of the State Bar of Georgia. Law courses in schools other than law schools will not qualify.

(3) **Bar Review/Refresher Course.** Courses designed to review or refresh recent law school graduates or other attorneys in preparation for any bar exam shall not be approved for CLE credit.

(4) **Approval.** CLE activities may be approved upon the written application of sponsors on an individual program basis, sponsors on an accredited sponsor basis, or attorneys on an individual program basis. In addition, the CCLC may approve both CLE activities and accredited sponsors on its own motion, on either an individual program or accredited sponsor basis. All applications for CLE course approval shall:

(a) Be submitted at least thirty (30) days, and preferably longer, in advance of the course, although the CCLC may grant retroactive approval;

(b) Be submitted on forms furnished by the CCLC;

(c) Contain all information requested on the form;

(d) Be accompanied by a course outline or brochure that describes the course content, identifies the teachers, lists the time devoted to each topic, and shows each date and location at which the program will be offered;

(e) Include a detailed calculation of the total CLE hours and of the ethics hours.

In addition to the foregoing, sponsors shall within thirty (30) days after the course is concluded:

(a) Furnish to the CCLC a list in alphabetical order of the name and State Bar number of each Georgia attendee;

(b) Remit to the CCLC the appropriate sponsor fee. Sponsors who have advance approval for courses may include in their brochures or other course descriptions the information contained in the following illustration:

This course (or seminar, etc.) has been approved by the Commission on Continuing Lawyer Competency of the State Bar of Georgia for mandatory continuing legal education credit in the amount of _____ hours, of which _____ hours will also apply in the area of ethics. The reporting of your attendance at this course will be done for you by (name of sponsor). To assure proper credit, please be sure to furnish us with your correct Georgia Bar number. (If applicable: The administrative fee for this course will be paid for you by (name of sponsor) directly to the Commission.)

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Sponsors not having advance approval shall make no representation concerning the approval of a course for CLE credit by the CCLC.

The CCLC will mail a notice of its decision on all CLE activity approval requests within ninety days of their receipt. Approval thereof will be deemed if the notice is not timely mailed. This automatic approval will not operate if the sponsor contributes to the delay by failing to provide the complete information requested by the CCLC, or if the CCLC timely notifies the sponsor that the matter has been tabled and the reason therefore.

(5) Approval of Accredited Sponsors. *CCLC may, at its sole discretion, approve the accredited sponsors. Accredited sponsors shall:*

- (a) Complete such application as the CCLC requires;*
- (b) Comply with all the CLE rules and regulations, including any amendments thereto;*
- (c) Upon request by the CCLC, submit, on forms to be furnished by the CCLC, all future CLE activities for confirmation of the approved total number of CLE hours, ethics hours, trial hours and professionalism hours*
- (d) Conduct all CLE activities substantially as advertised and represented to the CCLC;*
- (e) Furnish to the CCLC, within 30 days after each CLE activity, the following:*
 - (i) A list of the name and State Bar membership number of each Georgia attendee; and*
 - (ii) The required sponsor fee for the CLE activity;*
- (f) Allow in-person observation of all CLE activities by the Justices of the Supreme Court, officers of the State Bar of Georgia, members of the Overview Committee, members of the CCLC and the CCLC staff;*
- (g) Comply with any and all requirements or representations which may be contained in any form required by the CCLC for the confirmation of the number of approved hours, and*
- (h) Submit such other forms as the CCLC may from time to time require, and reply to any and all inquiries from the CCLC.*

(6) Restrictions on Accredited Sponsors. *Accredited sponsors shall not use any name which may cause confusion with the State Bar or any of its entities or with the Commission on Continuing Lawyer Competency, or with ICLE in Georgia. At the sole discretion of the CCLC, an accredited sponsor may be required to place a disclaimer upon any communication with members of the State Bar which disclaims the accredited sponsor from any connection with the State Bar or CCLC. Such disclaimer, if required, shall be approved by the CCLC. An accredited sponsor shall not link to any web page on the State Bar of Georgia without the written approval of the*

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

State Bar of Georgia and subject to any requirements and restriction that may be placed upon such approval.

*(7) **Revocation of Accredited Sponsor Status.** The CCLC may, with or without cause, at its sole discretion, revoke the accredited sponsor status of any CLE provider.*

*(8) **In-House/Self-Study CLE.** The Commission recognizes that law firms, corporate legal departments and similar entities, either alone or in conjunction with each other, will develop and present In-House continuing legal education activities to assist their member attorneys in maintaining their professional competence. The Commission further recognizes that these In-House CLE activities often are designed to address matters most relevant to a firm's own attorneys. However, it is also educational and beneficial for attorneys to meet and learn from colleagues who practice in other firms, corporate legal departments, or similar entities including sole practitioners.*

The Commission recognizes that active member attorneys on an individual basis may participate in distance learning CLE activities, which constitutes Self-Study.

These In-House/Self-Study CLE activities may be approved for credit under these Rules and Regulations plus the following additional conditions:

(a) All In-House/Self-Study CLE activities shall be designed specifically as an organized program of learning.

(b) All In-House/Self-Study CLE activities must be open to observation by members of the CCLC and its staff;

(c) Experienced attorneys must substantially contribute to the development and presentation of all In-House/Self-Study CLE activities;

(d) In-House/Self-Study CLE activities must be scheduled at a time and location so as to be free of interruptions from telephone calls and other office matters.

(e) Up to six (6) CLE hours may be earned by an attorney in a calendar year through any combination of approved In-House/Self-Study activities. In addition, up to six hours of In-House/Self-Study credit may be carried forward and applied to In-House/Self-Study CLE for the next calendar year or carried back to the previous year to satisfy a CLE deficiency as long as the In-House/Self-Study limit for that year has not been met. While In-House credits count toward this six (6) CLE hour annual limit for all members of the sponsoring law firm or legal department, non-member attorneys who attend those In-House CLE programs will receive regular credit that does not count toward the six (6) CLE hour annual limit. For example, if a law firm conducts a seminar attended both by its partners or associates and by in-house counsel of its corporate client or other invited attorney guests, these credits would count toward the six (6) hour limit for the firm's partners and associates, but not for the non-member guests.

*(9) **Facilities.** Sponsors ordinarily must provide a facility with adequate lighting, temperature controlled ventilation, and a designated non-smoking area. For a non-clinical CLE activity, the*

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

facility should be set up in classroom or similar style to provide a writing surface for each pre-registered attendee, to provide a minimum of two linear feet of table space per chair, and should provide sufficient space behind the chairs in each row to permit easy access and exit to each seat. Crowding in the facility detracts from the learning process and will not be permitted.

*(10) **Written Materials.** Qualifying written materials shall specifically address each of the topics of the seminar. These materials must be prepared by the speaker (or someone acting under his or her direct supervision) and shall be distributed to all attendees at or before the time the seminar is held. There are essentially three rationales for these requirements. First, they ensure speaker organization and preparation. Second, they alleviate the need for attendees to take notes and allow them to concentrate on the oral presentations. Finally, they provide a valuable reference tool for the attendees after they leave the seminar.*

Examples of written materials which alone would not qualify include, but are not limited to, the following: (1) topical outlines; (2) topical outlines with case citations; (3) copies of statutes or cases; (4) copies of leases, contracts, wills and other legal instruments (unless accompanied by qualifying explanatory text); (5) hornbooks (unless speaker prepared and on point); (6) casebooks; (7) subsequently prepared transcripts.

The quality of oral presentations and the overall educational value of the seminar will not excuse the written materials accreditation requirement.

It is recognized that on rare occasions, or for unique topics, preparation of written materials may not be possible or appropriate. Thus, for example, where the particular law which is the topic of a seminar changes dramatically immediately before the seminar is given, the prepared materials may be rendered obsolete. Likewise, written materials may not always be suitable for a clinical program on oral advocacy. In these exceptional circumstances, the requirements of this regulation may not apply. If there is any question as to whether written materials are required for a given topic, the sponsor is advised to contact the Commission in advance of the seminar.

*(11) **Sponsor Records.** In addition to the required attendance records, sponsors are encouraged, though not required, to solicit written evaluations of each sponsored program from its attendees and to maintain for at least two years after the program all such evaluations received, both for the sponsor's benefit and for furnishing to the Commission upon its request. A sponsor's policy either to solicit and maintain such evaluations or not to do so may be considered by the Commission as a factor bearing on the sponsor's accreditation.*

*(12) **Primary Objective Test.** The primary objective of CLE shall be to increase the attendee's professional competence as a lawyer. Worthwhile professional activities which have other primary objectives are encouraged, but do not meet the accreditation standards for CLE credit. Bar meetings, service on committees, jury duty, and client development or marketing seminars are examples of activities which do not meet the primary objective test.*

*(13) **ADR CLE.** CLE activities which train attorneys in the generally accepted processes of alternative dispute resolution are consistent with Accreditation Standards 1 and 2 where such programs meet the other criteria set forth herein.*

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

*(14) **Practice Management CLE.** (CLE activities relating to the development and management of a law practice including client relations) 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. Practice Management CLE is consistent with Accreditation Standards 1 and 2 where such programs meet the other criteria set forth herein.*

*(15) **CLE Delivery Formats.** In addition to traditional approved continuing legal education activities attended live and in-person by groups of attorneys, distance learning delivery formats are acceptable provided they are designed specifically as organized programs of learning and meet the other accreditation standards set out in these Rules and Regulations. These distance learning CLE activities may be attended by an individual attorney with no minimum number of attendees needed to receive approved MCLE credit, but must comply with the In-House/Self-Study CLE Regulation 8 to Rule 8-106(B). Examples of qualifying distance learning formats include: live CLE activities presented via video or audio replays of live CLE activities; on-line computer CLE activities, CD-ROM and DVD interactive CLE activities; and written correspondence CLE courses. When attended by an individual attorney, the distance learning activity constitutes Self-Study CLE. Examples of non-qualifying educational activities that are encouraged on a non-MCLE approved credit basis include: reading cases and advance sheets, legal research, internet chat groups and jury duty.*

Rule 8-107. Grace Period and Noncompliance.

(A) Grace Period

(1) Members who are deficient in their CLE, fees, or other requirements at the end of a calendar year are entitled to an automatic grace period until March 31st of the succeeding year to make up their deficiency. This does not change the requirement that members file their annual report by January 31st.

(2) Members who remain deficient on April 1st of the succeeding year shall pay a late CLE fee in an amount to be set by the Commission.

(B) Noncompliance

(1) Notice. Members who remain deficient in their CLE, annual report filing, fees, or other requirements on April 1st of the succeeding year are in noncompliance. The Commission shall so notify the members by first class mail to the member's current address contained in the membership records of the State Bar of Georgia. Service or actual receipt is not a prerequisite to actions authorized by these Rules.

(2) Hearing. Members may contest their noncompliance by requesting a hearing before the Commission. The request should be in writing, contain the reasons for their contest, and be made within 60 days of the date of the notice of noncompliance mailed by the Commission. The Commission shall hear the matter at its next meeting. No action will

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

be taken while hearings are pending.

(3) **Report.** The Commission shall report to the Supreme Court those members who remain in noncompliance after the time to request hearings has expired or any requested hearings have been held.

(4) **Supreme Court of Georgia Action.** Upon receipt from the Commission of a report of noncompliance, the Supreme Court of Georgia shall enter an order it deems appropriate including an allowance of additional time for compliance or summary suspension from the practice of law until further order of the Court.

Regulation

*(1) **Late CLE Fee:** An attorney who does not complete the annual, minimum CLE requirement until after March 31st of the following year shall pay a \$100 late CLE fee. This fee shall be due April 1st. Thereafter, if the attorney's CLE deficiency is not corrected by September 30th of the same year, or if the \$100 late CLE fee remains unpaid on that September 30th, an additional \$150 late fee shall be due immediately.*

Rule 8-108. Reinstatement.

An active member suspended under the provisions of these rules may be reinstated by the Court upon motion of the Commission and upon a showing that the delinquency has been corrected and payment to the Commission of a uniform reinstatement fee fixed by the Commission.

Regulations

*(1) **Reinstatement Fee.** The uniform reinstatement fee is \$500 for a member's first reinstatement, \$1,000 for a second reinstatement by the same member, and \$2,000 for all subsequent reinstatements by the same member. This fee must accompany the reinstatement motion. It shall not be waived and is non-refundable in the event reinstatement is not granted.*

*(2) **Policy.** Reinstatement will be granted only upon a showing that the member has attended sufficient approved CLE activity to make-up the deficiencies causing the suspension and all deficiencies in subsequent years. Also, the member's progress toward meeting MCLE requirements in the calendar year in which the reinstatement is requested will be included as information in the CCLC's motion to the Supreme Court.*

*(3) **Motion.** The motion for reinstatement shall list the CLE activities by course number, sponsor, location, dates and hours. It shall be accompanied by proof of attendance, any attendee fee that may be due, and the reinstatement fee.*

*(4) **CCLC Action.** If the suspended member is found to be in compliance, the CCLC will file a motion with the Supreme Court of Georgia setting forth the facts along with its recommendation which may or may not be that reinstatement be granted. The Supreme Court will make the final decision on reinstatement. If the suspended member is found to*

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

not be in compliance, the CCLC will inform him of the curative actions necessary to cure his deficiencies.

Rule 8-109. Confidentiality.

Records of the Commission are not confidential.

Rule 8-110. Immunity.

The State Bar, its employees, the Standards of the Profession Committee members and advisory, the Commission on Continuing Lawyer Competency, its employees, members and advisory, the Chief Justice's Commission on Professionalism, its employees, members, and advisors shall be absolutely immune from civil liability of all acts in the course of their official duties.

Rule 8-112. Foreign Law Consultants.

Foreign law consultant members of the State Bar of Georgia shall be subject to and shall comply with the provisions of this Part VIII in the same manner and to the extent as active members of the State Bar of Georgia.

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Foreign law consultant members of the State Bar of Georgia shall be subject to and shall comply with the provisions of this Part VIII in the same manner and to the extent as active members of the State Bar of Georgia.

PART IX PROFESSIONALISM

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 of Georgia 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 of Georgia. 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 of Georgia Annual Meeting in 1990; the non-lawyer general public member shall serve until the conclusion of the State Bar of Georgia 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 of Georgia Annual Meeting in 1991. The remaining members of the Commission shall serve until the conclusion of the Annual Meeting of the State Bar of Georgia 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 of Georgia and the State Bar of Georgia 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 of Georgia 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 of Georgia member who attended a course in professionalism approved by the Commission.

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 toward 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 to 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 the 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.

PART X CLIENTS' SECURITY FUND

PREAMBLE

The purpose of the Clients' Security Fund is to promote public confidence in the administration of justice and the integrity of the legal profession by providing monetary relief to persons who suffer reimbursable losses as a result of the dishonest conduct of members of the State Bar of Georgia.

Rule 10-101. Fund Established.

There is established a separate fund of the State Bar of Georgia designated "Clients' Security Fund of the State Bar of Georgia". There is also established a Clients' Security Fund Board of Trustees which shall receive, hold, manage and disburse from the Fund such monies as may from time to time be appropriated to it by the State Bar of Georgia, or received through voluntary contributions, income from investments or other funding sources.

Rule 10-102. Definitions.

For this rule, the following terms shall have the following meanings:

- (a) The "Board" means the Clients' Security Fund Board of Trustees.
- (b) "Claimant" means one who files a claim for reimbursement with the Board of Trustees.
- (c) The "Fund" means the Clients' Security Fund of the State Bar of Georgia.
- (d) "Lawyer" means one who, at the time of the commencement of his or her handling of the matter in which the loss arose, was a Member of the State Bar of Georgia.

Rule 10-103. Funding.

(a) The State Bar of Georgia shall provide funding for the payment of claims and the costs of administering the Fund. In any year following a year in which the gross aggregate balance of the Fund falls below \$1,000,000, the State Bar of Georgia shall assess and collect from each dues-paying member a pro rata share of the difference between the actual Fund balance and \$1 million, provided that such assessments shall not exceed \$25 in any single year. The aggregate amount paid to claimants from the Fund in any year shall not exceed \$500,000. The Board of Governors may from time to time adjust the Fund's minimum aggregate balance, maximum annual payout, or maximum annual assessment to advance the purposes of the Fund or to preserve the fiscal integrity of the Fund.

(b) All monies or other assets of the Fund shall constitute a trust and shall be held in the name of the Fund, subject to the direction of the Board.

(c) No disbursements shall be made from the Fund except by the Board of Trustees.

Rule 10-104. Board of Trustees.

(a) The Board of Trustees shall consist of six lawyers and one (1) non-lawyer appointed by the President of the State Bar of Georgia. The initial appointments to the Board shall be of such terms as to result in the staggered expiration of the terms of all members of the Board. Thereafter, the appointments shall be for a term of five (5) years.

(b) Vacancies shall be filled by appointment of the President of the State Bar of Georgia for any unexpired term.

(c) The Board members shall select a chairperson, and such other officers as the Board members deem appropriate.

(d) A quorum for the transaction of business at any meeting of the Board shall consist of three current members in attendance.

(e) The Board may adopt a regulation to terminate Trustees who fail to regularly attend meetings and may adopt additional regulations for the administration of the Fund which are not otherwise inconsistent with these rules.

Rule 10-105. Investigations.

(a) The Board shall review every claim, and in its discretion, will investigate to the extent the Board deems appropriate those claims which appear to meet the requirements for payment as described in these rules.

(b) The Board may approve for payment from the fund such claims as are found, after investigation, to be meritorious and in accordance with these rules.

(c) Applications for relief shall be submitted on forms prescribed by the Board.

Rule 10-106. Eligible Claims.

(a) The loss must be caused by the dishonest conduct of the lawyer and shall have arisen out of and by reason of a lawyer-client relationship, or a fiduciary relationship, between the lawyer and the claimant.

(b) As used in these Rules, "dishonest conduct" means wrongful acts committed by a lawyer in the nature of theft or embezzlement of money or the wrongful taking or conversion of money, property or other things of value.

(c) A complaint against the lawyer who caused or is alleged to have caused such loss shall have been filed with the State Disciplinary Board of the State Bar of Georgia and final disposition of such complaint has been made resulting in disciplinary action against the lawyer in the form of indefinite suspension, disbarment, or voluntary surrender of license.

(d) The claim shall be filed no later than two years after the date of final disciplinary action by the Supreme Court of Georgia. In the event disciplinary action cannot be prosecuted due to the fact that the attorney is either deceased or cannot be located, the claim shall be filed no later than five years after the dishonest conduct was first discovered by the applicant; provided, however, the claim shall be filed no later than seven years after the dishonest conduct occurred.

(e) Except as provided by Section (f) of this Rule, the following losses shall not be reimbursable:

- (1) Losses incurred by spouses, children, parents, grandparents, siblings, partners, associates and employees of lawyer(s) causing the losses;
- (2) Losses covered by any bond, surety agreement, or insurance contract to the extent covered thereby, including any loss to which any bonding agent, surety or insurer is subrogated, to the extent of that subrogated interest;
- (3) Losses incurred by any financial institution which are recoverable under a "banker's blanket bond" or similar commonly available insurance or surety contract;
- (4) Losses incurred by any business entity controlled by the lawyer, or any person or entity described in Section (e) (1) hereof;
- (5) Losses incurred by any governmental entity or agency;
- (6) Losses incurred by corporations or partnerships, including general or limited.

(f) In cases of extreme hardship or special and unusual circumstances, the Board may, in its discretion, recognize a claim which otherwise would be excluded under these Rules in order to achieve the purpose of the Fund.

(g) In cases where it appears that there will be unjust enrichment, or the claimant unreasonably or knowingly contributed to the loss, the Board may, in its discretion, deny the claim.

(h) The Board shall require the applicant to exhaust his or her civil remedies unless the Board determines that the pursuit of the civil claim is not feasible or practical.

Rule 10-107. Payments.

(a) If, in the judgment of the Board, a reimbursable loss has been sustained by a claimant and the circumstances warrant relief, then, after taking into consideration the resources of the Fund and the priority to be assigned to such application in the discretion of the Board, the Board may, in the exercise of its discretion, as a matter of grace and not of right, grant monetary relief.

(b) Such monetary relief shall be in such an amount as the Board may determine and shall be payable in such a manner and upon such conditions and terms as the Board shall prescribe.

Rule 10-108. No Legal Right to Payment.

No person shall have any legal right to payment or reimbursement from the Fund whether as a claimant, third-party beneficiary, or otherwise.

Rule 10-109. Restitution and Subrogation.

(a) A lawyer whose dishonest conduct results in reimbursement to a claimant shall be liable to the Fund for restitution; the

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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, character, and commitment to the rule of law 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.¹³

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 between ethics and professionalism is one 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."¹⁴ Many attempts have been made to define a profession in general and lawyer

¹³ GEORGIA RULES OF PROFESSIONAL CONDUCT, Preamble [8], Part IV, Rules and Regulations for the Organization and Government of the State Bar of Georgia (2018).

¹⁴ DEBORAH L. RHODE, PROFESSIONAL RESPONSIBILITY: ETHICS BY THE PERVASIVE METHOD 39 (1994)

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

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.¹⁵

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.¹⁶

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.”¹⁷

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

¹⁵ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 5 (1953)

¹⁶AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, *Teaching and Learning Professionalism, Report of the Professionalism Committee* 6 (1996),

¹⁷HAROLD G. CLARKE, *Professionalism: Repaying the Debt*, 25 *Georgia Bar Journal* 170 (1989)

all.¹⁸

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, character and commitment to the rule of law and 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. These are the values that make us a profession enlisted in the service not only of the client but of justice and the broader 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. *A Lawyer's Creed*, and an *Aspirational Statement on Professionalism*. (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 *A Lawyer's Creed* and in the *Aspirational Statement on Professionalism* and that can provide a context 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

¹⁸COURT OF APPEALS OF MARYLAND PROFESSIONALISM COURSE FOR NEW ADMITTEES TO THE MARYLAND BAR, *Professionalism Above and Beyond Ethics* 15 (1992)

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Specific topics that can be used as subject matter to provide context for a 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 (14) to Rule 8-106(B) of the Rules and Regulations for Organization and Government of the State Bar of Georgia:

Practice Management CLE. (CLE activities relating to the development and management of a law practice including client relations) 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. Practice Management CLE is consistent with Accreditation Standards 1 and 2 where such programs meet the other criteria set forth herein.

- 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 with other ethical obligations and professionalism aspirations priorities, career/personal transition, maintaining emotional and mental health, stress management, substance abuse.
- Responsibility for improving the administration of justice

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

- 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
- Satisfaction in the Legal Profession
- Sexual Harassment
- Small Firms/Solo Practitioners

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 PROGRAMMING V. 07-06-18

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 is 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

A Lawyer's Creed and the *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. *A Lawyer's Creed* and the *Aspirational Statement on Professionalism* cannot be imposed by edict, because moral integrity and unselfish dedication to the welfare of others cannot be legislated. Nevertheless, a public statement of

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

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. [Rule 8-106(B)(5)]

- 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 each time and more often than not.

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

First-year law students of Karl N. Llewellyn, jurisprudential scholar who taught at Yale, Columbia, and the University of Chicago Law Schools, often cautioned his 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.¹⁹

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.

¹⁹MARY ANN GLENDON, A NATION UNDER LAWYERS 17 (1994)

PROCEDURES FOR OBTAINING PROFESSIONALISM CLE ACCREDITATION

On May 31, 1991, the Supreme Court of Georgia amended the Rules and Regulations for the Organization and Government of the State Bar of Georgia as follows:

Part VIII (Continuing Lawyer Competency), Chapter 1, Rule 8-104(B)(3) is amended by adding the following underlined language:

(B)(3) Each active member, except newly admitted members, shall complete one (1) hour of continuing legal education during each year in an activity of any sponsor approved by the Chief Justice's Commission on Professionalism in the area of professionalism. This hour is to be included in, and not in addition to, the twelve-hour (12) requirement. If a member completes more than one (1) hour in professionalism during the calendar year, the excess professionalism credit may be carried forward up to a maximum of two (2) hours and applied to the professionalism requirement for succeeding years.

Pursuant to the above rule change, the following procedures have been developed by the Chief Justice's Commission on Professionalism (referred to as "the Commission") for obtaining professionalism accreditation:

1. No later than thirty (30) days prior to the date of the program, a prospective sponsor shall make written application to the Commission on Professionalism credit for the proposed program, including:
 - (a) Format - See Professionalism CLE Guidelines for suggestions;
 - (b) Speakers and topics;
 - (c) Written Materials;
 - (d) An outline or power point of the discussion topics during the program;
 - (e) An electronic evaluation form to be distributed to all attendees at the program;
 - (f) A request to utilize any Commission materials, if needed, such as articles, hypotheticals or videotapes.

Upon the demonstration of sufficient cause by the prospective sponsor, the 30-day requirement may be waived by the Commission.

2. Following a review of the prospective sponsor's application, the Commission will send notice to the State Bar of Georgia CLE Department indicating approval or non-approval of the program. The CLE Dept. is responsible for approval of the remainder of the CLE hours. The CLE Dept. will then send notice to you with an approval Excel Spreadsheet that will list the course ID and approval information to you.

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

3. No separate list of Professionalism attendance at the seminar is required. The sponsor should follow the usual procedures established by the CLE Dept. as to reporting of names of attendees, Bar numbers, and appropriate hours. If reporting partial credit for an attendee, please note on the attendance list whether the partial credit included the one hour, or portion thereof, of Professionalism. This notation is significant for a determination of the CLE fee owed, as well as for the recording of credit.
4. Providers of Professionalism CLE must ensure that attendees take an evaluation of the Professionalism component of the program and return the evaluation of the Professionalism CLE program to the Commission. The Commission prefers the Evaluation in an electronic form and can provide you with a link to an evaluation for your Professionalism CLE program in advance of the program that CLE Sponsors may send to attendees via e-mail.
5. Beginning July 1, 2018, the Professionalism surcharge **will be paid by all Active Bar Members through their membership dues**, in the amount of \$15 per year.

This means, effective July 1, 2018, providers of CLE programs will no longer be responsible for the collection of these fees and, therefore, should not include a \$15 per hour professionalism fee in calculating the sponsor's CLE fees since Active State Bar members will pay the professionalism fee along with their annual membership dues. **This change in policy does not eliminate the Professionalism CLE requirement**, just the way the professionalism fees are collected and the way in which you, as a sponsor, calculate the cost of your CLE fees.

The regular CLE fee of \$5.00 per CLE hour taken will still apply to all Professionalism hours, as it is still considered a regular CLE hour, as are Ethics and Trial hours (in Georgia). Therefore, effective July 1, 2018, in calculating the cost for CLE hours, simply multiply the total number of CLE hours by \$5 for the total amount of CLE fees owed. You will continue to pay these fees to the State Bar of Georgia CLE Department, whose contact information is as follows: (404) 527-8710, cle@gabar.org, Suite 100, 104 Marietta Street, NW, Atlanta, Georgia 30303.

6. The CLE Dept. is responsible for entering all CLE credit, including Professionalism. If a problem arises with regard to recording of credit, the sponsor should call them at (404)527-8700 or 1-800-334-6865.

July 1, 2018

HYPOTHETICALS

The Commission has developed the enclosed set of hypotheticals for use in CLE programs. The scenarios are a mixture of both ethical problems and professionalism dilemmas. A panel (or the audience) is asked to identify the problems raised by the hypothetical, discuss whether the *Rules of Professional Conduct* apply, and whether the code applies or not if there are "professionalism" issues in the problem.

Professionalism hypotheticals are difficult to develop. The scenario presented should lead to a discussion that is not dictated either by strict ethical rules or strategic advantage. If the issue presented is one of pure "ethics" in the narrow code sense, the solution is easy because it is mandatory. Similarly, if the solution is one which both takes the high road and is in the best interest of the client, there is little debate. Issues of professionalism arise because a particular course of conduct is not governed by ethical standards or by the answer to the question "*What is in the best interest of my client?*"

Generally, these hypotheticals will present the conflicts that lawyers oftentimes face between the duty to their client, their sense of fairness to others, and their responsibilities to the court and to the public. Sometimes the conflict can be resolved by reference to the rules; sometimes the rules even complicate the dilemma; and oftentimes they don't address the problem at all. Then it is a professionalism issue.

The Commission encourages reference to A Lawyer's Creed and Aspirational Statement on Professionalism adopted by the Commission in the discussion of these hypotheticals. Thoughtful and useful guidance is offered in those two statements that can lead to the resolution of professionalism dilemmas.

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

GENERIC HYPOTHETICALS

1. Hidden Witness.

You represent the defendant in a lawsuit and have subpoenaed an expert witness. You have asked the witness simply to remain in the foyer of the courthouse and that you will call him if you need him. During the presentation of the plaintiff, it becomes obvious that this same expert witness is necessary for the authentication of some very important documents which relate to the case. You know that if the plaintiff is unable to get these documents into evidence, the plaintiff will lose. The plaintiff's lawyer requests that the judge give him a brief recess in order for him to locate an expert witness and she agrees. Plaintiff's lawyer calls the expert witness's office and is told by the receptionist that the expert witness is out of the office for the entire day. Plaintiff's lawyer returns to the court and reports to the judge what he has been told. It is obvious that the judge is highly irritated that the plaintiff's lawyer is so ill-prepared that he didn't (1) realize that the testimony of the expert witness was necessary and (2) that he did not subpoena the expert witness. What do you do?

2. Legal Fees.

You have just completed a complicated financial agreement and have billed Client A \$10,000. Two months later, Client B comes into your office with the exact same problem. It takes you only one hour to change the names, dates, etc. of the earlier agreement. You send the new agreement to Client B who is very pleased with the quality of the product and the speed with which you got it to the client. Both were sizable, important deals. How much do you bill Client B?

- A. The straight hourly rate (i.e., \$300)?
- B. \$5,000?
- C. \$10,000?

3. Too Much Work.

You have been courting a particular potential client for several years. The person finally calls and asks you to handle a very major transaction which will clearly lead to much more legal work for many years to come. She wants you to handle all the work personally and not delegate it to anyone else. Unfortunately, you are so busy that it is going to be extraordinarily difficult for you to take on this new work. What do you tell the potential client?

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

4. Abusive Discovery.

You represent a plaintiff who is a very wealthy individual. The defendant is a very small company which is in some serious financial distress. You know that your client has a weak claim at best. However, your wealthy client demands that you inundate the defendant with interrogatories and requests for documents, knowing full well that the defendant cannot afford to pay its counsel to comply with the discovery requests. Your client is also aware that the president of the defendant company has scheduled a trip to Europe for the purpose of negotiating a transaction which could save his company. Your client demands that you notice the defendant's president for a deposition for the Wednesday of the week he intends to be in Europe. What do you tell your client?

5. Confidential Information.

One day you receive a telefax of a memo written by Plaintiff's counsel in a lawsuit which you are defending. Without reading the substance of the memo you realize two things:

- (a) the memo lays out the plaintiff's trial strategy; and
- (b) it was faxed to you by mistake.

What do you do with this memo? If it is ten pages long, would you read the entire memo before deciding? Would you inform your client that this happened? Would your answer be different if attorney/client privileged materials were inadvertently provided to you in response to a document request?

6. Eavesdropping.

You are sitting in the snack bar of the courthouse waiting for the time to report back on a case when you realize the group sitting in the next booth is discussing the case you are litigating. Do you have an obligation to interrupt them and tell them who you are? Do you have an obligation to tell the attorney for the other side that you heard his witnesses discussing the case?

7. Unethical Conduct by an Opposing Lawyer.

You are involved in a transaction during which the opposing lawyer commits a number of breaches of the ethical standards. Do you have an obligation to report the conduct to the State Bar? If not, what do you do about it?

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

8. Pro Bono.

A young lawyer in your firm comes to you and tells you that she has been asked to take on a pro bono representation. You and the other senior partner are determining what response you should make to this young lawyer. All of the lawyers in your firm are very busy at this time and the requested pro bono undertaking will clearly add additional strain on your legal personnel. What questions do you ask the associate?

Additional facts:

- A. The representation will not be unpopular, it will simply be time consuming and has no prospects of leading to any paying business in the future.
- B. Although this activity will generate no fees for your firm currently, your young associate will be placed into contact with all companies considering locating major facilities in your community. This contact could very well lead to substantial new legal business in the future. Do you approach it differently?
- C. The pro bono activity relates to something which is very unpopular in the community and may well cause some of your existing clients to be unhappy, perhaps even to leave your firm if you take on the representation.

9. Threatened Criminal Action.

In a dispute with a landlord, you agree that for a certain rebate of rent you will not turn her in for criminal violations of the tenancy code. Is that okay?

10. Stonewalling.

During a judicial chambers conference with the judge on a discovery dispute, a partner has just asserted that a properly-discoverable document requested by the other side cannot be located. The associate, aware that the document is in the partner's briefcase, whispers in the partner's ear that the document is present and available. The partner remains silent. What does the associate do?

11. Settlement Limits.

You are authorized by your client to offer \$100,000 to settle a case. As a negotiating strategy and without consulting the client, you decide to make an offer of \$75,000 and you inform the plaintiff's lawyer that this is your first and final offer and last dollar. Is that okay?

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

12. Bidding for Work.

You are approached by the general counsel of a major corporation who would like you to represent the corporation locally. He tells you that he is interviewing you and two other lawyers in town and that he wants you to bid on doing his work.

- A. The work is likely to result in fees of \$5,000.
- B. The work is likely to result in fees of \$50,000.
- C. The work is likely to result in fees of \$500,000.

Would you submit a bid? Does the amount matter?

13. Granting Continuances.

A good friend of yours is representing the plaintiff in a case in which you represent the defendant. He calls you and asks you to agree to a continuance because he is overloaded with work and simply cannot get prepared in time. Do you agree to it? Do you inform your client? What if your client instructs you not to agree to the continuance?

Does the reason for the request matter? What if his father died and he must leave town? The judge will grant it anyway, right?

What if he isn't a friend but is the "jerk" who refused to give you a continuance in a recent case? Does that change your answer? What if you do not know him and don't expect ever to litigate a case against him again?

14. Dead Client.

You are representing the plaintiff in a personal injury suit, and depositions of your client and the defendant are scheduled for next week. You get a call informing you that your client has been killed in an automobile accident. Do you inform the defendant and his lawyer of this fact before you depose the defendant?

15. Subject Matter Conflict.

Your law firm represents two clients who are in the same business. Client A asks you to bring a certain lawsuit which will cause great concern within the industry (i.e., it could make "bad law"). Client B, who has no direct involvement in the matter, asks the firm not to bring the lawsuit because of the potential damage to the industry. What does the firm do? What criteria do you apply when making the decision?

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

16. Angry Client with no Claim.

A client comes to you angry at a party in a business transaction and asks you to sue the other party for a contract breach, antitrust violations and to allege several RICO claims in the process. The client is wealthy, very angry and willing to pursue the lawsuit even if he will lose on all counts, because as he says "it will make that S.O.B. suffer." You quickly determine that he has no hope of ultimately winning although you believe there are enough questions to survive motions to dismiss and to result in protracted litigation. This could result in substantial billings, which the client is quite willing to pay. What do you do?

17. Late-Paying Client.

A long-term client calls you at 3:00 p.m. and tells you he needs advice on a complicated matter by 9:00 a.m. the next morning. This will require most of the rest of the day and the evening to complete the work, but you feel you can get it done by the deadline. However, you discover the client owes your firm a substantial amount of money for previous work and has been balking at paying the outstanding receivables. Would it be appropriate to raise this with the client, or condition the undertaking this new work on his agreement to pay for the prior work?

18. The Delegating Partner.

On his way out the door to the Masters, a partner tells you to research a matter for an important client, not to spend more than two hours on it, and to have a memo on his desk tomorrow morning. You are not an expert in the area and really do not know where to begin. Do you tell the partner you cannot do it under those criteria? Do you accept the assignment but spend as much time as necessary to get it done? If so, how would you bill it?

19. The Morning Lawyer.

You are negotiating a complicated deal with a lawyer who is brilliant and focused in the morning and ignorant and disorganized in the afternoon. At lunch one day he consumes four martinis and you immediately understand the problem. Yet his clients seem to have no clue as to his impairment. Would you:

1. only arrange negotiating sessions with him that begin after 2:00 p.m.?
2. warn him that his impairment jeopardizes his ability to represent his client?
3. warn his client of the problem?
4. warn his partners?
5. contact the State Bar and file a complaint against him?

Are there other alternatives?

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

20. Dying Client.

You are called to the hospital by a long-time client who is dying of cancer. She tells you that she wants to change her will to disinherit her children and leave her entire estate to a close friend. She also announces that she wants you to complete the work quickly because she intends to commit suicide as soon as the will is finalized. What do you do?

21. Protection of the Public.

One of your long-time clients asks you to go to the jail and bail out his son who has been arrested for dealing drugs. When you arrive you realize that the boy has a serious drug problem but you can arrange to have him released that afternoon. He informs you that he needs to get out quickly because he is in desperate need of a "fix." What do you do?

22. Accident and Release.

Your client is a company that wishes to sell the assets of one of its divisions to another company with which it has had a business relationship for several years. As part of the deal, the two companies have agreed to resolve some minor disputes over accounts receivable by entering into a standard form mutual release in which each company releases all claims against the other that arose prior to the closing date. Your client is elated because 24 hours before closing his truck ran a red light hitting the purchaser company's truck, destroying the contents of that truck which were valued at over \$100,000. The other parties are not aware of this. Should you disclose this at closing?

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;

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

- (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.

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

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.

As Revised, 2013

CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM

VIDEO/DVD PROGRAM DESCRIPTIONS

"ABA ETHICAL DILEMMAS AND PROFESSIONALISM: VIGNETTES" ABA Center for Professional Responsibility

Each videotape program features four dramatic vignettes illustrating ethical dilemmas confronting lawyers. A lively and informative discussion by distinguished practitioners follows each vignette. While the vignettes are frequently set within various fields of practice, the dilemmas and discussions are generally applicable to a wide range of practice areas.

Attorney Client Relations (57:00)

Excerpts from the feature films "Anatomy of a Murder" and "Outrage" scrutinize the ethical edge of criminal defense when lawyers steer their clients toward viable defenses with questionable facts. Paternalism is examined in a divorce setting as a lawyer goes behind his client's back to get retained. Witness preparation in civil litigation demonstrates the lawyer's influence on testimony when the courtroom is viewed as "theater." The panel members examine dimensions of professional conduct within the lawyer-client relationship as they attempt to answer the question of "Who's in charge, client or attorney?"

Client Confidentiality (59:00)

The conflict between maintaining client confidences and the lawyer's duty to disclose, including a hard look at issues pitting legal ethics against common moral values, is sharply depicted. What should a lawyer do when a personal injury client implies he or she will give perjurious testimony in tomorrow's trial? Can a lawyer disclose the condition of an AIDS client seeking child custody, when her condition is putting others at risk? What happens when a lawyer knows an innocent person has been sentenced to death - because his uncharged client pulled the trigger? What are the obligations to report another lawyer's misconduct when it adversely affects your client's claim?

Conflicts of Interest (57:00)

Four examples of this frequent problem area are explored. What does a firm do when it discovers that two of its lawyers represent both the buyer and seller of a real estate parcel? How does a lawyer explain to his friend that writing his wife's will and their pre-nuptial agreement may disqualify him from representing this friend in a divorce? Does a lawyer have a defense in a disciplinary hearing on charges of acquiring his client's literary rights - especially when the client was acquitted? What does an insurance defense lawyer do when the client will not consent to representation after receiving a "reservation of rights" letter? Panel discussion focuses on the lawyer in situations which conflict with the client's rights.

Associate Partner Relations (57:00)

A dynamic series of monologues illustrates the various perspectives of associates and partners on issues of law office management. How do high billable hours reflect partnership aspiration? Can office policy be flexible enough to meet the needs of a single-parent associate - and should it? How does an associate handle suspicions of a partner's misconduct and how should the partner react? What factors should be

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

considered in assigning cases to associates? Are they discrimination or good business decisions? The panel highlights intra-office communications, problem solving and individual decision-making.

Independence of Counsel (34:00)

The vignettes follow a sequence of events within a corporation that manufactures a metal alloy which proves to be defective. What should the corporate counsel do when he first has reason to believe the alloy is faulty? What are the options when his supervisor ignores his request to do more testing? What are his obligations during discovery? How should he deal with threats by a former employee to disclose information inconsistent with the corporation's discovery compliance?

Vignettes Only (70:00)

This program contains the 20 vignettes presented in the five videos of this series. No panel discussion is included in this program.

"ABA/SOB VIGNETTES" (27:45)

ABA Center for Professional Responsibility

Theme is "SOB Litigators" (Stubborn, Obnoxious, Boorish). Vignettes include a deposition (inexperienced female attorney and male SOB attorney), a settlement conference, and two trial scenes. Scenes include a trial in which the SOB attorney suggests non-existent evidence and uses other unfair tactics. Facilitator is Stell Huie of Long, Aldridge and Norman in Atlanta.

"A FIRM COMMITMENT" (30:00)

A New Film on the Retention of Minority Lawyers, 1991, The Bar Association of San Francisco Committee on Minority Employment and The National Association for Law Placement. Based on interviews with over 100 minority attorneys by producer/director Abby Ginzberg, *A Firm Commitment* combines vignettes portraying the obstacles facing minority attorneys in majority firms with brief first-person interviews with successful minority attorneys and corporate leaders. It confronts the subtle and often unconscious perception of minority lawyers--and minorities in general--as less smart, less ambitious, less dedicated and generally less competent than their white colleagues.

AMANDA KUMAR'S CASE (40:00)

Professor Steve Gillers, New York University School of Law

Amanda Kumar's Case is not a series of relatively brief vignettes, but rather a 40 minute story in which two younger lawyers in a small firm investigate their client's claim and try to negotiate a settlement with the powerhouse law firm that represents the wealthy corporate adversary. Although the story takes place in a pre-litigation setting, many of the issues it raises can also arise in other practice contexts. Although the story has a "David and Goliath" spin, both David and Goliath turn out to be ethically challenged.

The program contains about two dozen ethical issues: some are obvious, others are hard to spot. Along the way the discussion leader can stop the tape and ask the class or audience to identify and try to solve the ethical dilemmas so far revealed. If the tape is

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

used at a CLE event, bar meeting, or law office function, the leader may choose to use a panel of experts.

The tape comes with a short teacher's manual identifying and discussing the issues it contains and prefaced with some suggestions about how to use an ethics video to teach legal ethics. Some of the issues confronted by the lawyers on the tape are:

- What level of certainty must a lawyer have before threatening a lawsuit?
- Before any adverse action is taken, can a lawyer conducting an investigation question others without revealing her status as an attorney?
- Can a lawyer settle a threatened claim against a defendant, although the lawyer is aware but the defendant is not, of facts that could conclusively establish that the client and not the defendant was negligent?
- Can a lawyer start a website in order to learn whether there are other potential plaintiffs with claims against the defendant similar to the one asserted by the lawyer's client?
- Must a lawyer discuss fee arrangement with the client at the inception of the matter? If the lawyer does have that discussion and does reach an agreement on fee, under what circumstances may the lawyer change the fee arrangement in the middle of the matter?
- Can a lawyer negotiate to settle a claim against a well-funded adversary where the lawyer recognizes that the lawyer is not really equipped to actually litigate the claim against the adversary if the settlement fails?
- What restraints does the requirement of "civility" impose on lawyers in negotiations?

1989 CONVOCATION ON PROFESSIONALISM: A NEW ERA OF PROFESSIONALISM (28:00)

Keynote Speakers: Chief Justice Thomas O. Marshall
L. Stanley Chauvin, ABA President

Justice Marshall discusses the distinction between the calling to practice law and the obsession to make money.

Mr. Chauvin discusses the importance of the Bates decision, in that it blurred the line between commerce and the learned profession of the practice of law. He also speaks about areas of dispute which do not belong in the courtroom and could better be resolved by ADR. He says that lawyers are called to resolve disputes and not to be conflict managers. Mr. Chauvin believes that the two biggest threats to the legal profession are large law firms (they result in the loss of the original role of the lawyer as advisor and confidante) and the multi-discipline practice - related business organizations. Decrying the high costs of running law firms, he says that lawyers have an obligation to put professionalism before profit. "The office manager is not the client."

Included in the video is a tape of "Expectations vs. Realities" (described below). After the video was shown, participants divided into groups to discuss the video.

1989 CONVOCATION ON PROFESSIONALISM(25:00)

Closing Session, Conclusion
Keynote Speakers: Justice Charles Weltner

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Justice Harold Clarke
Dana Miles

Dana Miles summarizes the first of the breakout discussions, which focused on concerns about the profession (rather than the assigned topic of expectations vs. realities). Discussion included mentoring, attorney advertising, revisions to the Disciplinary Standards, development of Professionalism Standards, internships, billable hours, duty for pro bono and other public service, and Miles concludes that lawyers still want to help people.

Justice Charles Weltner summarizes the second breakout session which was grouped by the Professional as Litigator, Professionalism in the Corporate, Banking, and Fiduciary Practices, and Professionalism Outside the Private Practice of Law. He discusses the participants' belief that trial judges should play a greater part in encouraging professionalism. Other concerns expressed were billable hours, advertising, lack of civility and mentoring, and "Do we have any fun practicing law?"

Presiding Justice Harold Clarke summarizes the third breakout session focusing on concrete solutions: law schools should teach professionalism, mentoring, courts need to be more active in managing trials, public service, pro bono, community service, elective office.

Dana Miles concludes by discussing the duties of an attorney as laid out by a 19th Century lawyer.

1989 CONVOCATION ON PROFESSIONALISM - "EXPECTATIONS VS. REALITIES: FROM LAW SCHOOL TO THE PROFESSION" (20:00)

Various newly admitted lawyers discuss their different perceptions of expectations and realities about the practice of law.

1996 CONVOCATION ON PROFESSIONALISM - JUSTICE ANTHONY KENNEDY (32:00)

Justice Kennedy's keynote remarks address the crucial importance of professionalism in the practice of law to the administration of justice. He speaks also of the need to restore civility to legal discourse.

"DINNER AT SHARSWOOD CAFÉ" (Law Practice in Four Different Areas) (41:00)

Professor Stephen Gillers, New York University

Scene I

The applicability of a lawyer's duty to disclose suspected fraud on a tribunal when disclosure would harm the client's intent.

Scene II

Fundamental questions about the advocacy system. A nearly incompetent lawyer in a civil case makes mistakes that could cost his client and young son a recovery to which they are almost certainly entitled. What is the duty of the opposing lawyer?

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Scene III

The duties of a criminal defense lawyer who comes into possession of contraband, the fruits of a crime, or weapons.

Scene IV

Duties of an in-house lawyer in dealing with a supervisor's conduct that could result in the client's liability.

ETHICS AND PROFESSIONALISM IN THE PRETRIAL STAGES OF CRIMINAL PROSECUTION AND DEFENSE: "THE CASE OF THE BLUE LAGOON NIGHTCLUB"(22:00)

A hypothetical criminal case involving drug offenses which raises ethics and professionalism issues for both prosecution and defense. In a series of scenes, each discussed in turn as the story evolves, the owners of a nightclub suspected of being an important stop in the city's drug traffic consult defense counsel as the police and prosecutors initiate an investigation. Issues include confidences revealed by and conflicts of interest between defense counsel's clients, the ethics of criminal investigation, the appropriate tone of confrontation and cooperation between prosecution and defense, and the ethical responsibility for candor at the time of plea bargain. The program is intended to provoke discussion both among and between prosecutors and defense lawyers about their professional roles in the criminal justice process. Tape plus discussion can be tailored for a one or two hour program. Instructor's Manual included.

ADDRESS BY SANDY D'ALEMBERTE: "DETOQUEVILLE, ATTICUS FINCH, AND LEGAL SERVICES IN AMERICA" (57:30)

GSU College of Law, Miller Lecture 1990

Mr. D'Alemberte, who was at the time President-Elect of the ABA, discussed the legal services initiatives the bar should take in the wake of the Reagan administration legacy. He suggests building on existing programs, expanding the use of IOLTA funds, and assessing legal needs. (Includes questions and answers)

LET JUSTICE BE DONE (40:00)

Produced by the Georgia Supreme Court Commission on Equality to help raise sensitivity to subtle forms of biased behavior which is often difficult to identify and remedy. Consists of 7 scenes in which actors, representing different personnel within the judicial system, portray behavior that may be perceived to result from gender, racial, or ethnic bias. The teaching guide provides a script of each scene and questions designed to encourage discussion. Issues include:

Law Enforcement

Language Barriers

Responding to the Public

Legal Representation

The Juror

Perceptions of Bias

Judicial Response

"MEET YOUR JUDGES" (4:29)

ABA Partnership Outreach

Describes the first national model program for the ABA Partnership Outreach. The model involves a panel of judges who answer citizens' questions regarding legal matters and the judicial process. The purpose of the program is to de-mystify the judiciary.

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

“NEGOTIATION IN THE PRACTICE OF LAW: A VIDEO COMPANION”

This videotape package shows six one-on-one negotiations, depicting a variety of negotiation strategies, styles, and outcomes. Package includes an hour-long video with teaching notes created for ALI-ABA. Portrays twelve negotiators with a mix of experience levels, age, gender, and ethnicity.

"ONE CLIENT AT A TIME", 1994, ABA.(23:00)

Outlines key strategies which lead to improved communication and exceptional service as defined by clients. Describes: how to be more available to clients; ways to improve timeliness and communication; how to show care and concern.

“OPENING THE DOOR TO GENDER, ETHNIC & RACIAL EQUITY”

Produced by the Hillsborough County Bar, Florida Bar Association with a grant by the Florida Bar Foundation.

This three scene program if used in its entirety can qualify for 3.0 hours of CLE credit including 3.0 hours of professionalism. Scene 1 presents gender bias and race bias issues and lawyer to lawyer conduct. It also includes issues of gender bias in the judicial professionalism context. These issues are in the context of a pre-trial conference. Scene 2 presents issues of gender bias , affirmative action, compensation, race bias, and disabilities in the context of a firm partners’ meeting to determine whether certain associates should be recommended for partner, retained with increased salary, retained at current salary or terminated. Scene 3 presents issues of staffing of law suits, lawyer to lawyer gender bias, and client to lawyer gender bias in the context of staffing of a law suit.

"PERSPECTIVES ON LAWYER PROFESSIONALISM" (98:00)

A series of nine video segments containing commentary from practicing lawyers about the nature of the legal profession in the 1990's, especially with respect to practice in private firms. The tapes are particularly appropriate for firm or corporate in-house CLE programs or firm retreats. Each video segment is available on a separate tape, or the entire 9 segment series can be purchased on one tape. A three-topic grouping can be used for a one-hour program. Teacher's Notes included. Entire 9 segments on one tape or 9 separate tapes. The topics are:

Law as Business	Clients	Service
Deciding to Become a Lawyer	Civility	Gender
Public Perceptions of Lawyers	Quality of Life	Discovery

"QUEEN'S BENCH - ALL IN DAY'S WORK"(25:00)

Facing Gender Bias in the Legal Profession," 1993, ABA Committee on Women in the Profession. Produced and directed by Abby Ginzberg. Discussion Guide for Facilitators and written participant materials. Presents vignettes portraying the dilemmas facing women attorneys as they try to advance in their workplaces, represent their female

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

clients, and juggle family and work responsibilities. It confronts many of the double binds women find themselves in as they seek to be treated as equals in the profession, from the persistent focus on the personal appearance of women attorneys to stereotypes of women which uniformly result in lower child custody support awards. Very good vignette of appropriate judicial response to gender bias remarks.

"RAMBO LITIGATION AND YOUR PROFESSIONAL OBLIGATIONS" (60:00)

Panel Discussion with Arthur Miller
State Bar of Texas

"RITA'S CASE: THE LAWYER AS PROBLEM SOLVER" (45:00)

Examines the professionalism theme that good lawyers are good problem solvers by presenting a comparison of two different styles of lawyer counseling in a complex custody case. A narrator traces the development of the case as the viewers observe interviews with the two lawyers and counseling sessions conducted by them. Rita is a child abandoned by her drug-addicted mother shortly after her birth. Her maternal grandmother, with a myriad of problems all her own, obtains and occasionally relinquishes custody of Rita. The lawyers are called in when the Department of Children's Services attempts to terminate the grandmother's custody. This case raises issues that pervade all of lawyering, but the context is sufficiently remote from most practices to give the viewers the distance they will need to think seriously about the role of the lawyer as problem solver and to do so in a way that will be relevant to their own practices regardless of what those practices might be. Includes cues for stopping tape for discussion and concluding comments. Designed for a two or three hour program. Teacher's Manual included.

SCHOOL FOR JUDGES - SEGMENT FROM "SIXTY MINUTES", March 31, 1991 (15:00)

Highlights from the National Judicial College in Reno, Nevada.

"THE CASE OF THE SILENT ALARM"(31:00)

Based on the burglary of a small construction company office and the resulting civil suit for damages, the Case of the Silent Alarm pits a small company and small law firm against the resources of a large corporate client and large law firm. Dilemmas involving the tension between zealous representation and overstepping professionalism bounds permeate the program. The 7-scene series is designed for a two-hour program. Three individual scenes can be used for a one-hour program. Among the issues confronted by the lawyers in the videotape are:

- Responding to a client's insistence on playing "hardball" and on setting strategy
- Dealing with misleading statements and gestures made by an officer of the corporate client to the corporation's attorney to protect the officer's employment
- Reacting to the mistaken receipt of opposing counsel's written strategy for handling the case
- Associating counsel to appeal to the ethnic make-up of the jury
- Dealing with substance abuse by opposing counsel when the consequences of the abuse inure to one's client's benefit

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

- Reporting opposing counsel to the bar for ethical violations

For use in Georgia please contact:

Institute of Continuing Legal Education in
Georgia (ICLE) at 1-800-422-0893.

“THE CHALLENGES OF IN-HOUSE COUNSEL AT HOMEWARES CORPORATION, USA” (Approx. 33:00 minutes)

This videotape program uses realistic scenes to depict problems faced by practicing lawyers. The issues focus on the problems faced by one attorney in her role as in-house counsel for the Homewares Corporation. The situations are uniquely relevant to persons acting as in-house counsel at corporations, trade associations, governmental entities and the like. The entire six scene series can be used to build on the others as events unfold, or the scenes can be shown individually to present an effective program. Individual scenes can be selected to focus on particular issues or to meet time constraints. The instructor can provide participants with background information to enable them to understand what has occurred prior to the selected scene(s). The materials can be discussed in small or large groups, in formats ranging from one hour to two or even three hours.

THE CHANGING FACE OF LAW: DANGERS AND OPPORTUNITIES IN THE NINETIES*

Tape #1 *Focus Group: Clients* (60:00)

MANDATES FROM BUSINESS CLIENTS

This first video in this three-part set is a focus group discussion by purchasers of legal services from businesses of all sizes. Together, they represent the kinds of clients firms are trying to attract or keep.

See and hear these buyers of legal services frankly discuss:

- ▶ Frustration over the hourly rate
- ▶ How to get a prospective client's attention
- ▶ Why preventative law can be a substantial new source of revenue from some clients, and much more...

Tape #2 *Focus Group: Lawyers* (60:00)

SECRETS OF THE SUCCESSFUL LAW FIRM

The second video is a focus group discussion by lawyers representing large and small law firms. They hit on the major issues facing the legal profession:

- ▶ How firms perceive the future of the legal profession
- ▶ Ways to attract new clients
- ▶ How to get costs down and still deliver excellent service

Tape #3 *Roundtable: Lawyers & Clients* (60:00)

CLIENTS AND LAWYERS FACE OFF

The final video in this set places buyers of legal services and lawyers together in a one hour roundtable discussion. This candid dialogue offers a unique perspective on the stark differences between law firm and client objectives and how they can be reconciled for the benefit of both parties.

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Discussions include:

- ▶ What companies expect from a law firm
- ▶ How to win in today's "buyer's market"
- ▶ What the competition is up to!

*No written materials. General articles on professionalism in client relations can be provided by the Commission for use with these tapes.

“THE GUIDING HAND: ETHICAL ISSUES IN ESTATE PLANNING” (Approx. 20:00)

Produced by Abby Ginzberg for the CEB (Continuing Education of the Bar, California) A multimedia fictional case study. It highlights the ethical issues encountered by lawyers who advise and perform estate planning for elderly clients and married couples. The Guiding Hand raises perhaps *the* fundamental issue of “who is the client” when multiple family members consult the attorney together to discuss each other’s estate planning, or the estate planning of a frail older relative.

The Guiding Hand focuses on the ethical dilemmas that arise in three broad areas: When (1) an attorney is asked by a family member to perform estate planning for an elder of questionable competency; (2) an attorney is asked to perform estate planning for a married couple, or multigenerationally, and (3) an attorney is asked by a family member to initiate conservatorship proceedings for a person who is a former or current client, or was a prospective client.

The primary attorney duties that come into play in these situations include: the duty to maintain client confidences; to avoid interests adverse to a client and avoid the representation of adverse interests; to keep a client reasonably informed about significant developments relating to the representation; and to refrain from withdrawing from employment until the member has taken reasonable steps to avoid prejudice to the rights of the client.

“THE TRIAL OF THE MODERN LAWYER”(80:00)

Law Day, 1991, Walter F. George School of Law, Mercer University
Closing arguments by Elton Richey, Albert Reichart, and Charles Adams.

“TIME FOR JUSTICE PRO BONO IN ACTION” (14:30)

Shows lawyers and clients in various contexts from around the U.S. discussing actual pro bono work. Produced for the American Bar Association in 1992.

“WINNING WITHOUT LOSING YOUR PROFESSIONALISM” (150:00)

Produced by the Section of Litigation and ABA-CLE, 1997

Series provides practical methods to deal with abusive, unfair and unethical tactics directed against you and your client. Experienced litigators explain effective techniques that allow you to win with professionalism. Corporate Counsel discuss the qualities and skills they look for in choosing a firm to represent them. In addition to a frank discussion, each of the three programs in the series includes a demonstration of the skills being taught. The first program in the series, The Beauty Contest, examines the elements of a winning presentation at a “beauty contest.” The second program, Taking the Deposition, examines techniques for taking depositions when faced with an obstructive, unprofessional opposing counsel. The final program, Defending the

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Deposition, examines techniques for defending depositions when the counsel taking the deposition are abusive and unprofessional.

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

University of Pennsylvania Law School Center on Professionalism

ETHICS AND PROFESSIONALISM FOR THE PRACTICING LAWYER VIDEOTAPE SERIES

Tapes produced by the University of Pennsylvania Law School Center on Professionalism together with teaching materials designed to examine the issues of professional responsibility. NOTE: The use of these tapes and teaching materials requires a skilled facilitator approved by the Commission.

REPRESENTING THE FAMILY OF A CORPORATE CLIENT: MATT'S CASE (38:39)

The program begins with a corporate attorney receiving a late-night phone call from a long-time business client. The client's teenage son has been arrested and charged with reckless driving and possession of a controlled substance. The car driven by the son at the time of the arrest was the father's company car and pursuant to state forfeiture laws, the car is seized. The attorney agrees to represent both the father (in the car forfeiture case) and son (in the criminal charge). The district attorney's office views the case as an opportunity to send a message on illegal steroids. Father and son are anxious for an expeditious resolution of the matter. Issues of competency, conflicts of interest, confidentiality and the boundaries of zealous advocacy are raised throughout the program.

Issues

- Joint representations and conflicts of interest
- Third party interference with representation
- Representing and counseling a minor
- Third party interference with representation of a client
- Fee arrangements and payments of lawyer services by third party
- Allocation of decision-making responsibility
- Counseling and attorney communication obligations
- Professional conduct in negotiations
- Professional accountability to third parties and to the community at large

ETHICAL ISSUES IN CORPORATE REPRESENTATION: THE SEASIDE RESORT (16:30)

The program presents a civil case arising out of the legal representation of a small business. The story begins as three individuals consult a lawyer about their plan to purchase a seaside hotel and turn it into a popular resort. The lawyer advises them to create a small, closely held corporation for the purpose of purchasing and operating the hotel. The corporation is formed and the resort is operated successfully for several years until a guest drowns in an accident. Due to an apparent oversight by the resident manager, there is no insurance coverage for the accident. A lawsuit will threaten the future of the resort and perhaps the financial security of the three investors.

Issues

- Conflict between representing corporation and its individual investors
- Communicating with a corporate client through its officers, directors and employees
- Scope of representation of the corporate client
- Creation of client relationship
- Lawyer's role in advising on business v. legal issues
- Conflict of interest with former client
- Fee arrangements
- Lawyers as investor in client's business
- Ethical issues in recommending a client's business to third parties

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Professional Responsibility for Lawyers: A Guided Course

*Professional Responsibility in Corporate Transactions: The Leveraged Buyout of the Harris Company

(24:00)

Purpose

Professional Responsibility in Corporate Transactions: The Leveraged Buyout of the Harris Company has been developed by the Center on Professionalism of the University of Pennsylvania Law School as a teaching tool for continuing legal education programs in professional responsibility in corporate law. Its purpose is to provide course participants with experience in the identification and resolution of ethical dilemmas that may arise in corporate transactions with a special emphasis on conflicts of interest.

Format

The program which is part of a series, "Professional Responsibility for Lawyers: A Guided Course" available from the publisher, Commerce Clearing House, Inc. contains four components:

- (1) **Case Study** - The case study is the underlying story and factual problem upon which the videotape and all the teaching materials are based.
- (2) **Videotape** - The videotape dramatizes the case study. The videotape is 24 minutes long and has six parts.
- (3) **Discussion Leader's Guide** - The Discussion Leader's Guide explains the method for teaching the program, analyzes the ethical issues raised, provides sources for resolution of the issues and includes the script to the videotape. The Guide includes a discussion of the applicability of the Model Rules of Professional Conduct and the Model Code of Professional Responsibility in the context of this case study.
- (4) **Participant Study Materials** - The Participant Study Materials supply pertinent resources to assist program participants in their identification and analysis of the ethical issues presented and include a program evaluation form.

Description

The Harris Company Case Study begins with a decision by the chief executive officer to initiate a management buyout of the company. The case study goes on to examine the relationships between all the players and their lawyers: the buyout group, the board of directors, the investment banking firm, the lenders and the competing bidders. As the deal evolves, relationships alter, obligations change and conflicts emerge. Jason Flynn, lawyer for the leveraged buyout firm and primary drafter of the deal, finds himself entangled in webs of conflict as he strives to maintain confidentiality of communications from the several interests he is serving.

Issues

The case study follows the law firms representing the parties and in-house counsel as ethical dilemmas arise at each stage of the transaction. Among the issues raised are:

- Conflicts of Interest
- Creation of Client Relationship
- Confidentiality
- Lawyer as Investor in Client Business
- Firm Management of Conflicts
- Withdrawal from Representation
- Counseling Obligations
- Fee Arrangements

*Published by Commerce Clearing House, Inc. in cooperation with the Center on Professionalism of the University of Pennsylvania Law School

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Professional Responsibility for Lawyers: A Guided Course

***Representing the Corporate Client: The Saga of Albinex**

(21:00)

Purpose

Representing the Corporate Client: The Saga of Albinex has been developed by the Center on Professionalism of the University of Pennsylvania Law School as a teaching tool for continuing legal education programs in professional responsibility in corporate law. Its purpose is to provide course participants with experience in the identification and resolution of ethical dilemmas that may arise in counseling a corporate or other entity client.

Format

The program which is part of a series, "Professional Responsibility for Lawyers: A Guided Course" available from the publisher, Commerce Clearing House, Inc. contains four components:

- (1) **Case Study** - The case study is the underlying story and factual problem upon which the videotape and all the teaching materials are based.
- (2) **Videotape** - The videotape dramatizes the case study.
- (3) **Discussion Leader's Guide** - The Discussion Leader's Guide explains the method for teaching the program, analyzes the ethical issues raised, provides sources for resolution of the issues and includes the script to the videotape. The Guide includes a discussion of the applicability of the Model Rules of Professional Conduct and the Model Code of Professional Responsibility in the context of this case study.
- (4) **Participant Study Materials** - The Participant Study Materials supply pertinent resources to assist program participants in their identification and analysis of the ethical issues presented and include a program evaluation form.

Description

The case study begins with FDA approval of an exciting new drug designed for adults with insulin-dependent diabetes. As rumors surface of potential unreported side effects from the drug, the pharmaceutical company's lawyer instructs one of the firm's associates to conduct an internal corporate inquiry. Both the conduct and the outcome of that inquiry raise questions of conflicting loyalties to the corporate entity and to individual employees. Questions are raised concerning what to report to the FDA, and how to resolve a dispute within the law firm concerning that question. Increasing tensions in the firm lead the associate to make a serious error in disclosing information. Deciding on a course of action and allocating responsibility for the error raise troubling questions for the law firm as it seeks to do what is right for the firm as well as the client.

Issues

The case study explores the ethical dilemmas faced by the Dryden Drug Company's law firm. Among the issues raised are:

- Identification of Client
- Confidentiality and Permissible Disclosure
- Scope of Attorney/Client Privilege
- Conflicts of Interest
- Conduct of Internal Investigations
- Counseling Obligations
- Associate/Partner Disagreement
- Management of Erring Associate
-

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Professional Responsibility for Lawyers: A Guided Course

*Professional Responsibility in Advising a Client Who's In Charge? The Lawyer as Counselor

(21:00 & 16:00 versions)

Purpose

The allocation of decision-making responsibility between professional and client is a pervasive theme in the professions, including the practice of law. Many clients are strong-willed and, given adequate information, will want to make as many decisions as possible. Other clients will want the professionals to "take charge" of most, if not all, decisions. Nor do only clients differ. Lawyers, and other professionals, exhibit a wide range of attitudes as to the appropriate role in the process of helping clients reach decision.

"Who's in Charge? The Lawyer as Counselor" is designed to raise dramatically several major professional responsibility and skill issues in the advising role.

Format

VHS Videotape - 21 minutes

Transcript

Discussion Questions and References for Discussion Leader

Description

The videotape presents excerpts of a counseling session involving a Philadelphia lawyer and his client, an indigent woman who is the plaintiff in a personal injury suit. The litigation (a real Philadelphia case) involves claims arising from a miscarriage suffered by the plaintiff, allegedly as the result of being barraged by unlawful collection threats made by a finance company to which she was indebted. The lawyer has called his client to the office to discuss with her the final pre-trial settlement offer made by the lawyer for the defendant finance company.

Issues

- Is the advising function consistent with the letter and spirit of the prevailing rule of professional conduct?
- What should be the lawyer's goal when advising a client?
- When, if ever, should the lawyer give more than legal advice?
- How does a lawyer's advising function differ from that of other professionals?
- Why do our professional codes invest clients with so much responsibility for making decisions?
- Is the paradigm of the neutral lawyer fully informing the autonomous client realistic?
- Does a lawyer advising a client owe an obligation to the client's adversary? To a third party?

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Professional Responsibility for Lawyers: A Guided Course

*Counseling and Negotiation:

The Settlement of Lancer v. American Steel Co.

(21:00)

Purpose

Counseling and Negotiation: The Settlement of Lancer v. American Steel Co. is a case study being developed by the Center on Professionalism of the University of Pennsylvania Law School as a teaching tool for continuing legal education programs in professional responsibility. Set in the context of the settlement process, its purpose is to provide course participants with experience in the identification and resolution of ethical dilemmas arising during client counseling, negotiation and interactions with the tribunal.

Format

The program which is part of a series, "Professional Responsibility for Lawyers: A Guided Course" will be published by Commerce Clearing House, Inc. in 1991 and contains four components:

- (1) **Case Study** - The case study is the underlying story and factual problem upon which the videotape and all the teaching materials are based.
- (2) **Videotape** - The videotape dramatizes the case study.
- (3) **Discussions Leader's Guide** - The Discussion Leader's Guide explains the method for teaching the program, analyzes the ethical issues raised, provides sources for resolution of the issues and includes the script to the videotape. The Guide examines the issues in light of the model Rules of Professional Conduct and the Model Code of Professional Responsibility.
- (4) **Study Materials** - The Study Materials supply pertinent resources to assist program participants in their identification and analysis of the ethical issues presented.

Description

Counseling and Negotiation: The Settlement of Lancer v. American Steel Co. is based on personal injury litigation arising after the collapse of the Morgantown Civic Center. The plaintiff, Robin Lancer is a young gymnast hurt in the Civic Center accident. Defendants make a settlement offer. Lancer's mother is desperate to accept, but her lawyer counsels against it. Defendant's lawyer learns crucial information about Lancer's injury from his expert physician which he does not reveal in settlement negotiations. Because the settlement involves a minor, court approval is required and the defense lawyer must decide how candid to be in his presentation.

Issues

Among the issues that the lawyers on both sides of the law suit encounter are the following:

- Allocation of Decision-making Responsibility Between Lawyer and Client
- The Lawyer as Counselor
- Professional Conduct in Negotiations
- Candor Toward the Tribunal
- Obligation of Truthfulness to Third Persons

Published by Commerce Clearing House, Inc. in cooperation with the Center on Professionalism of the University of Pennsylvania Law School

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Professional Responsibility for Lawyers: A Guided Course

*Conflicts and Confidentiality: Trouble at Upper Black Eddy

(12:00)

Purpose

Conflicts and Confidentiality: Trouble at Upper Black Eddy has been developed by the Center on Professionalism of the University of Pennsylvania Law School as a teaching tool for continuing legal education in the areas of confidentiality and conflicts of interest. Its purpose is to provide course participants with experience in the identification and resolution of ethical dilemmas that may rise in these areas.

Format

The program which is part of a series, "Professional Responsibility for Lawyers: A Guided Course" available from the publisher, Commerce Clearing House, Inc., contains four components:

- (1) **Case Study** - The case study is the underlying story and factual problem upon which the videotape and all the teaching materials are based.
- (2) **Videotape** - The videotape dramatizes the case study.
- (3) **Discussion Leader's Guide** - The Discussion Leader's Guide explains the method for teaching the program, analyzes the ethical issues raised, provides sources for resolution of the issues and includes the script to the videotape. The Guide includes a discussion of the applicability of the Model Rules of Professional Conduct and the Model Code of Professional Responsibility in the context of this case study.
- (4) **Participant Study Materials** - The Participant Study Materials supply pertinent resources to assist program participants in their identification and analysis of the ethical issues presented and include a program evaluation form.

Description

The Case Study presents a lawyer whose friend and former client has entrusted him with confidential information adverse to a new and important client. As the lawyer struggles with issues of disclosure versus betrayal, it becomes increasingly clear to him that his major new client is about to dump industrial waste illegally on property bordering a major river. He cannot stop the illegal dumping without betraying the confidences of his best friend and other confidences entrusted to him. The case study follows the lawyer as he tries to sort out his conflicting legal and personal obligations.

Issues

The case study follows the lawyer as he confronts ethical dilemmas involving confidentiality and conflicts of interest. Among the issues raised are:

- Permissible Disclosure of Confidences
- Impact of Economic Concerns on Lawyer Judgment
- Obligations to Present and Former Clients
- Lawyer Participation in Improper Client Conduct
- Obligations to Third Parties and the Public
- Competence and Scope of Representation
- Conflicting Obligations in Multi-Jurisdictional Practice

Published by Commerce Clearing House, Inc. in cooperation with the Center on Professionalism of the University of Pennsylvania Law School

PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Professional Responsibility for Lawyers: A Guided Course

*Professional Responsibility in Pretrial Litigation: The Morgantown Civic Center Collapse

(20:00)

Purpose

Professional Responsibility in Pretrial Litigation: The Morgantown Civic Center Collapse has been developed by the Center on Professionalism of the University of Pennsylvania Law School as a teaching tool for continuing legal education programs in professional responsibility in litigation. Its purpose is to provide course participants with experience in the identification and resolution of ethical dilemmas that may arise in the course of pretrial litigation.

Format

The program which is part of a series, "Professional Responsibility for Lawyers: A Guided Course" available from the publisher, Commerce Clearing House, Inc., contains four components:

- (1) **Case Study** - The case study is the underlying story and factual problem upon which the videotape and all the teaching materials are based.
- (2) **Videotape** - The videotape dramatizes the case study.
- (3) **Discussion Leader's Guide** - The Discussion Leader's Guide explains the method for teaching the program, analyzes the ethical issues raised, provides sources for resolution of the issues and includes the script to the videotape. The Guide includes a discussion of the applicability of the Model Rules of Professional Conduct and the Model Code of Professional Responsibility in the context of this case study.
- (4) **Participant Study Materials** - The Participant Study Materials supply pertinent resources to assist program participants in their identification and analysis of the ethical issues presented and include a program evaluation form.

Description

The Morgantown Civic Center Collapse case study is based on pretrial litigation in mass tort law suit. During a gymnastic equipment trade show at the Civic Center a freestanding mezzanine collapses killing or injuring numerous participants and spectators. Numerous actions are filed against multiple defendants, including American Steel, manufacturer of the reinforcing bars imbedded in the concrete mezzanine. American's law firm attempts to represent its client with zeal while also fulfilling its other, sometimes conflicting, professional responsibilities.

Issues

Ethical dilemmas testing the limits of zealous representation arise during the pretrial stage of the litigation. Among the issues that American's law firm encounters are the following:

- The Discovery Process: Use or Abuse
- Document Destruction
- Deposition Preparation and Conduct
- Investigation and Expert Witness Procedures
- Subordinate/Supervisory Lawyers Relations
- Client Perjury

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PROFESSIONALISM CLE PROGRAMMING V. 07-06-18

Chief Justice's Commission on Professionalism

PROFESSIONALISM CLE EVALUATION

Sponsor: _____

Title of Overall CLE Seminar: _____

Title of Professionalism CLE Course (If part of a larger CLE program)

Date: _____

1. Overall, the Professionalism CLE presentation was:

Very Valuable Valuable Neutral Somewhat Valuable Not Valuable

2. The Professionalism CLE presentation integrated discussion of the Lawyer's Creed and Aspirational Statement on Professionalism through the Professionalism CLE presentation.

Excellent Good Adequate Marginal Deficient

3. The Professionalism CLE presentation encouraged me to consider various strategies based on the Lawyer's Creed and Aspirational Statement on Professionalism for coping with contemporary law practice.

Excellent Good Adequate Marginal Deficient

4. Effectiveness of general Professionalism CLE presentation format:

Excellent Good Adequate Marginal Deficient

5. Effectiveness of Professionalism CLE presentation speaker(s) (if applicable):

Excellent Good Adequate Marginal Deficient

6. Value of Professionalism CLE presentation panel (if applicable):

Excellent Good Adequate Marginal Deficient

7. Effectiveness of Professionalism CLE presentation discussion leader (if applicable):

Excellent Good Adequate Marginal Deficient

8. Was the Professionalism CLE presentation effective in enhancing your understanding the distinction between ethics and professionalism?

Yes No If yes, how?

9. Did you have an opportunity to discuss your ideas and thoughts on professionalism during the Professionalism CLE presentation?

Yes No

10. General suggestions or comments regarding the Professionalism CLE presentation (Please use reverse side if necessary)

Thank you