

Professionalism for Public Defenders



What is “Professionalism”
and how is it different from
“Ethics?”

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

(1) the ability to recognize ethical and professionalism dilemmas

(2) the ability to form sound judgments

(3) the ability to prioritize values

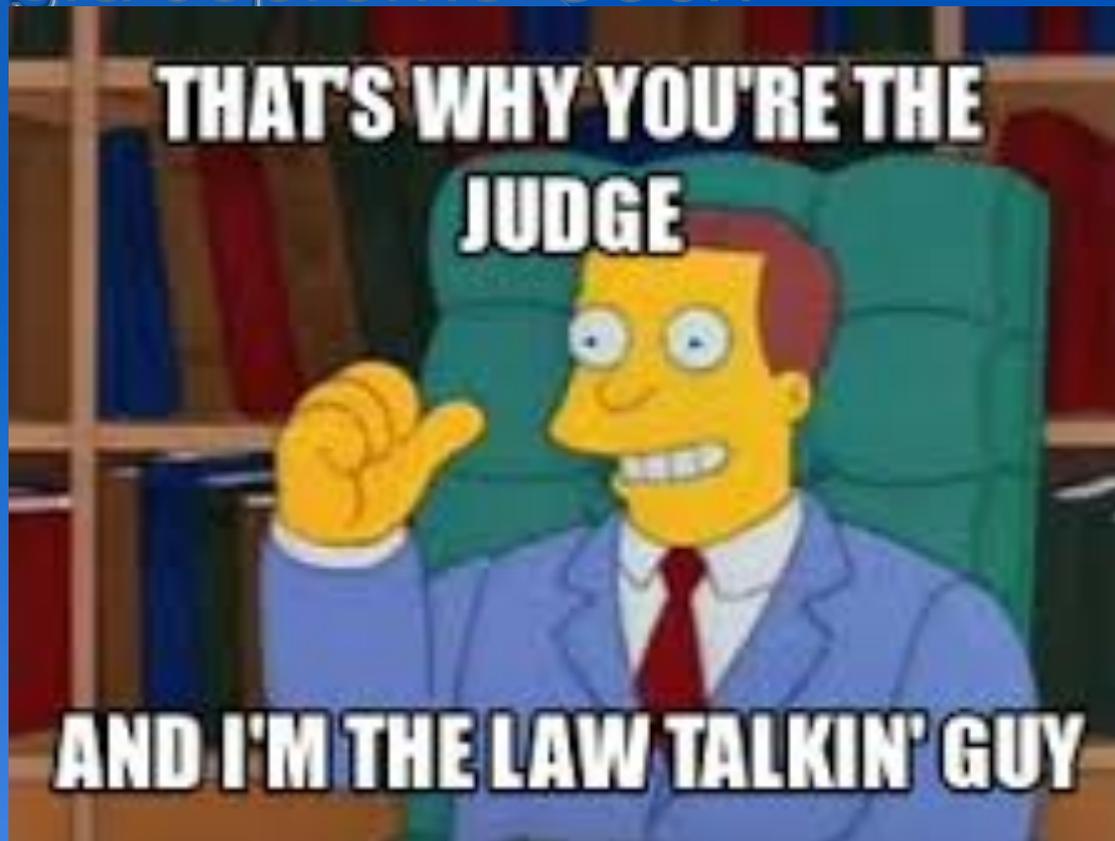
(4) the ability to implement judgments - which requires cultivating personal and interpersonal skills and habits - communication, honesty, courage, prudence.

**Future Lawyer? He was told
not to step foot outside...**



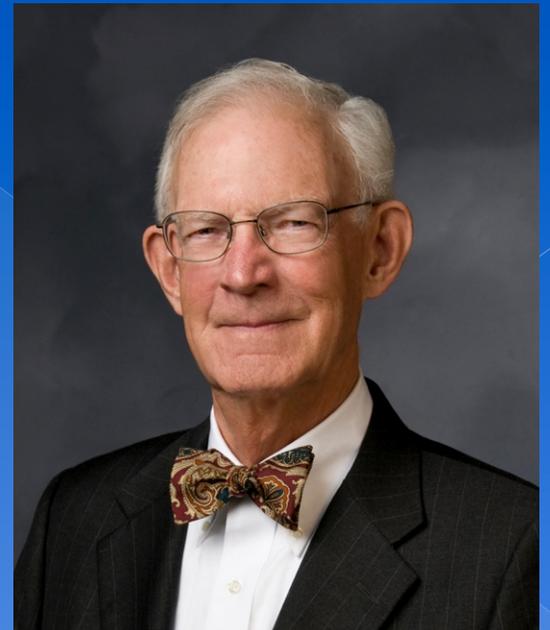
"We should expect more of lawyers than mere compliance with legal and ethical requirements."

former Chief Justice Robert Benham of the Georgia Supreme Court



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 Chief Justice
Norman Fletcher



Ethics v. Professionalism

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

—Former Georgia Supreme Court Chief Justice Harold Clarke

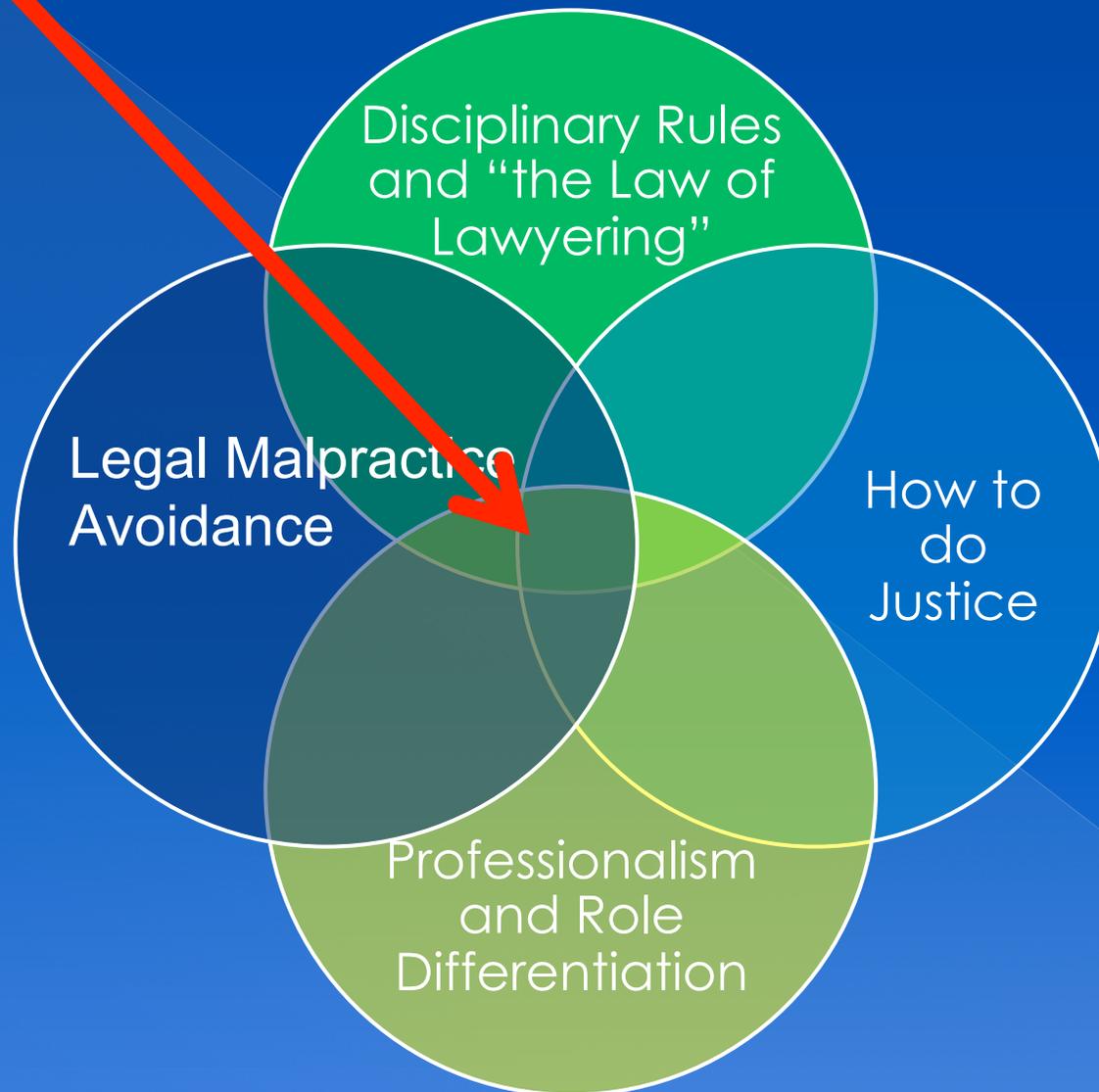
Ethics

- “Law of Lawyering”
- Rules of Professional Conduct
- Malpractice Avoidance
- Focus on misconduct or the negative dimensions of lawyering

Professionalism

- Aspirations of the profession
- How lawyers should behave
- Focus on conduct that strengthens the dignity, honor, and integrity of the legal system

Legal Ethics



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.

Hypotheticals

You took one of your new public defenders to court for the first time. Unfortunately, she acted rudely to one of the judge's secretaries, and argued to the court that the District Attorney "lied through his teeth" about an important matter.

What should you do?

A Lawyer's Creed

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General Aspirational Ideals

- (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.

Hypotheticals

The Chief Assistant Circuit Public Defender in your circuit has a habit of telling racist and sexist jokes.

What should you do?

It has become common in your circuit to tell off-color jokes and commiserate about clients and other court stakeholders as a way to blow off steam. The comments are often made in public areas where outsiders can overhear.

What should you do?

General Aspirational Ideals

- (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.

Hypotheticals

You frequently square off in court against ADA Eliza Nance, whose conduct often makes things unpleasant between you. You greatly dislike her and feel that she is grossly unfair to your clients. You are trying another case against her today. You see her on the courthouse steps, and on the way in you notice that she has a tear in her clothing, that will prove deeply embarrassing to her when discovered.

What do you do?

A Lawyer's Creed

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SPECIFIC ASPIRATIONAL IDEALS

As to clients, I will aspire:

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

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

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

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- (1) Not serve motions or pleadings in such a manner or at such a time as to preclude opportunity for a competent response;
- (2) Be courteous and civil in all communications;
- (3) Respond promptly to all requests by opposing counsel;
- (4) Avoid rudeness and other acts of disrespect in all meetings including depositions and negotiations;
- (5) Prepare documents that accurately reflect the agreement of all parties; and
- (6) Clearly identify all changes made in documents submitted by opposing counsel for review.

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

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

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

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

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their assistance offered to me.

As to our profession, I will aspire:

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

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

- (a) To counsel clients about the moral and social consequences of their conduct.
- (b) To consider the effect of my conduct on the image of our systems of justice including the social effect of advertising methods. As a professional, I should ensure that any advertisement of my services:
 - (1) is consistent with the dignity of the justice system and a learned profession;
 - (2) provides a beneficial service to the public by providing accurate information about the availability of legal services;
 - (3) educates the public about the law and legal system;
 - (4) provides completely honest and straightforward information about my qualifications, fees, and costs; and
 - (5) does not imply that clients' legal needs can be met only through aggressive tactics.
- (c) To provide the pro bono representation that is necessary to make our system of justice available to all.
- (d) To support organizations that provide pro bono representation to indigent clients.
- (e) To improve our laws and legal system by, for example:
 - (1) Serving as a public official;
 - (2) Assisting in the education of the public concerning our laws and legal system;
 - (3) Commenting publicly upon our laws; and,
 - (4) Using other appropriate methods of effecting positive change in our laws and legal system.

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UP TO NOW

FROM NOW ON

