An Overview of Professionalism in Georgia
Edited by Karlise Y. Grier

and

Professionalism Pointers
for
Solo and Small Practitioners
by Karlise Y. Grier
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Beginning in 1990, the Georgia Supreme Court required 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 one hour of Professionalism CLE is distinct from and in addition to the required ethics CLE. 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, character, civility, commitment to the rule of law, to justice, and to the public good. Building a community among the lawyers of this state is a specific goal of this requirement.

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 offered by former Chief Justice Harold Clarke of the Georgia Supreme Court:

“... the idea [is] 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. As former Chief Justice Robert Benham of the Georgia Supreme Court says, “We should expect more of lawyers than mere compliance with legal and ethical requirements.”
“Professionalism” harkens back to a traditional meaning of the word rooted in the three ancient learned professions – 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.”¹ Many attempts have been made to define a profession in general and lawyer professionalism in particular. The most commonly cited is the definition developed by the late Dean Roscoe Pound of Harvard Law School:

The term refers to a group . . . pursuing a learned art as a common calling in the spirit of public service - no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose.²

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

In March of 1990, the Chief Justice’s Commission adopted *A Lawyer’s Creed* (See Appendix A) and an *Aspirational Statement on Professionalism* (See Appendix B). These two

¹ Deborah L. Rhode, Professional Responsibility: Ethics by the Pervasive Method 39 (1994)
² Roscoe Pound, The Lawyer from Antiquity to Modern Times 5 (1953)
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 documents should be utilized to frame discussions and remind lawyers about the basic tenets of our profession. While 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.**
Professionalism Pointers for Solo and Small Practitioners
by Karlise Y. Grier

A Lawyer’s Creed and the Aspirational Statement on Professionalism provide guidance to lawyers regarding the duties to clients, opposing parties and their counsel, the courts, colleagues in the practice of law, the profession and the public. Let’s take a moment to examine each of these duties.

To My Clients

Several aspects of the Aspirational Statement on Professionalism provide excellent guidance for solo and small practitioners. (See Lines 73 – 95). For purposes of this paper, I wish to highlight just one: “Maintain the sympathetic detachment that permits objective and independent advice to clients.” (See Lines 79 – 80). This is perhaps most important when a potential client first contacts an attorney for an initial consultation. One of the best pieces of advice I received as a solo practitioner was to “not take every case that came in the door.” Not every client is appropriate for every lawyer and not every lawyer is appropriate for every client. Maintaining a sympathetic detachment when first meeting a potential client allows an attorney to make an objective and independent assessment about whether the lawyer should engage in the representation. Given the pressures of private practice, it is sometimes difficult to “pass” on work, but given a lawyer’s obligation to “offer faithfulness, competence, diligence, and good judgment” and a lawyer’s obligation to “strive to represent [a client] as I would want to be represented and to be worthy of [a client’s] trust” (Lines 2 – 5), we owe it to potential clients to ensure we can uphold this professionalism goal prior to undertaking the representation. Once an attorney makes the decision to undertake representation, be sure to reach fair and equitable fee arrangements with the client as early in the relationship as possible that clearly inform the client about the nature of the representation. (See Lines 82-83, 87). The discussion about attorney’s fees should include a discussion of the views of the attorney and the client on how to expeditiously and economically achieve all of the client’s objectives. (See Line 74).
To Opposing Parties and their Counsel

Prior to 2001, Canon 7 of the Canon of Ethics stated "A lawyer should represent his client zealously within the bounds of the law." See https://www.gabar.org/barrules/ethicsandprofessionalism/upload/Ethics-Discipline-Before-2001.pdf (Last visited on September 8, 2018). The Code of Professional Responsibility further defined the meaning of “representing a client zealously” in DR 7-101. See Id. In Georgia’s current ethics rules, the Georgia Code of Professional Conduct, the term zealous only appears in the Preamble to the rule as follows: “As advocate, a lawyer zealously asserts the client’s position under the rules of the adversary system.” See https://www.gabar.org/Handbook/index.cfm#handbook/rule74 (Last visited on September 8, 2018). One could argue that over time when speaking of advocacy, the term “zealous” became more closely associated with synonyms such as “fanatical” and “hard-core” as opposed to synonyms such as “dedicated” and “committed.” An advocate can be dedicated and committed and still “strive to make [a] dispute a dignified one” by offering opposing parties and their counsel “fairness, integrity, and civility.” (See Lines 6 – 9). When interactions in cases become tense (as they sometimes do), remember that one of the Supreme Court’s original purposes for crafting aspirational ideals was to help bind Georgia lawyers together as a professional community. (See Lines 36 – 37). Creating a sense of community is perhaps more important to a solo or small practitioner because in these legal settings, the practice of law can be isolating and lonely. As stated by the Supreme Court in 1990, “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.” (See Lines 34 – 35).

To the Courts

There are many aspirational ideals related to a lawyer’s relationship to the courts. (See Lines 115 – 138). However, one that may be particularly relevant for solo and small practitioners is the admonition to “[a]void all delays not dictated by a competent presentation of a client’s claims.” (See Line 122). Solo and small practitioners tend to be
“chief cooks and bottle washers,” meaning you are responsible for everything – bringing in the business, doing excellent legal work, maintaining the trust account, paying the bills (and NOT out of the trust account), ordering supplies, serving as the IT department and a host of other duties. And, if an attorney also wants to have a semblance of a personal life, the time constraints on the lawyer are even more demanding. With all of the pulls on a lawyer’s time, sometimes preparing for court can be a daunting task. To ensure that a lawyer can avoid all delays not dictated by a competent presentation of a client’s claims, lawyers should think about practices that allow the lawyer to limit his or her caseload. One important aspect of this is to ensure the lawyer is regularly and consistently billing current clients for current matters. During a CLE, I once heard a person from the Office of General Counsel note that many times lawyers got into trouble because he or she had too many cases. Instead of routinely billing for current matters, the lawyers were taking in new cases. As a professional, lawyers owe it to the courts (and to their clients) to ensure that the lawyer can competently represent the client in a manner that is consistent with “the proper functioning of a fair, efficient, and humane system of justice.” (See Lines 116 – 117).

To My Colleagues in the Practice of Law

One tenet of A Lawyer’s Creed states: “To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.” (See Lines 13 – 15). Even in the best of circumstances, the practice of law is demanding and stressful. As a community of professionals, lawyers must show concern for one another. There are a myriad of ways that lawyers can show concern for one another, but I want to highlight two ways that were discussed in two recent articles on the Professionalism Page of the Georgia Bar Georgia: 1) The Importance of Lawyers Abandoning the Shame and Stigma of Mental Illness3 (See Appendix C) and 2) Promoting a Professional Culture of Respect and Safety #metoo4 (See Appendix D). Only other lawyers can truly


4 Karlise Y. Grier, *Promoting a Professional Culture of Respect and Safety #metoo*, (August 2018),
understand the stressors that come with the practice of law. As a solo or small practitioner, it is even more critical to have a robust network of professional friendships – even when clients don’t always understand how a lawyer can be “professional friends” with an opposing counsel. Let’s always strive to build a respectful and safe community of professional friends as we go about our day-to-day practices.

**To the Profession**

There is a saying that you can “do good” and “do well.” This also applies to lawyers giving back. Many lawyers find that when they:
“[a]ssist in continuing legal education efforts”;
“[a]ssist in organized bar activities”; and
“[a]ssist law schools in the education of our future lawyers”
the lawyer gains as much as he or she gives. (See Lines 13 – 15).

Teaching others is a great way for a lawyer to learn more about his or her areas of practice or to learn new areas of practice. The professional friendships that lawyers can establish or strengthen while volunteering in bar activities can be invaluable, especially to a solo or small practitioner who may not have a “built in” group of colleagues at his or her work place. There are lots of interesting and fun ways to “do good” and “do well.” Consider serving as a mentor for the Transition Into Law Practice Program, or serving as a judge for a moot court or mock trial competition. Lawyers are also encouraged to serve as a group leader for a law school orientation program. Assisting other professionals (and future professionals) is a wonderful way to help bind us together in a professional community.

**To the public and our systems of justice**

The final duty discussed in the *Aspirational Statement on Professionalism* states: “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 is consistent with the dignity of the justice system and a learned profession[.]” (Lines 157 – 160). In pondering this statement, lawyers should think of advertisement in its broadest sense. Today, most lawyers do not advertise on television or the radio, but they do advertise via their firm web sites, LinkedIn, Facebook, Twitter, and Instagram. So, before you post or tweet an angry comment in the heat of the moment denigrating another attorney or a judge, consider how your conduct affects the image of our systems of justice. Like all professions, ours has areas where it needs improvement, but that improvement will most likely not come by venting on social media when you are angry or upset. As tempting as it may be, just don’t do it.

   Instead, consider other appropriate methods that you can use “to effect positive change in our laws and legal system.” (Line 174 – 175). One of the best things about solo and small firm practice is the flexibility it can sometimes offer you to get involved and make a difference. Some solo and small practitioners serve in the Georgia legislature. Others work with State Bar sections to draft re-writes of O.C.G.A. and still others accept pro bono cases that can provide access to the legal system for those in need. As you consider the meaning of professionalism, think about the one thing (big or tiny) that you can do to effect positive change in our laws and legal system.

Closing

   In closing, it is our duty as lawyers to offer service. As a member of our learned profession and professional community, please join me in striving to improve the law and our legal system, in making the law and our legal system available to all, and in seeking the common good through the representation of our clients.
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.

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Appendix A
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.

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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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Not serve motions or pleadings in such a manner or at such a time as to preclude opportunity for a competent response;

Be courteous and civil in all communications;

Respond promptly to all requests by opposing counsel;

Avoid rudeness and other acts of disrespect in all meetings including depositions and negotiations;

Prepare documents that accurately reflect the agreement of all parties; and

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:

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:

Avoid non-essential litigation and non-essential pleading in litigation;

Explore the possibilities of settlement of all litigated matters;

Seek non-coerced agreement between the parties on procedural and discovery matters;

Avoid all delays not dictated by a competent presentation of a client's claims;

Prevent misuses of court time by verifying the availability of key participants for scheduled appearances before the court and by being punctual; and

Advise clients about the obligations of civility, courtesy, fairness, cooperation, and other proper behavior expected of those who use our systems of justice.

To model for others the respect due to our courts. As a professional I should:

Act with complete honesty;

Know court rules and procedures;

Give appropriate deference to court rulings;

Avoid undue familiarity with members of the judiciary;

Avoid unfounded, unsubstantiated, or unjustified public criticism of members of the judiciary;

Show respect by attire and demeanor;

Assist the judiciary in determining the applicable law; and,

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:

To recognize and to develop our interdependence;

To respect the needs of others, especially the need to develop as a whole person; and,

To assist my colleagues become better people in the practice of law and to accept

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As to our profession, I will aspire:

(a) To improve the practice of law. As a professional, I should:

(1) Assist in continuing legal education efforts;
(2) Assist in organized bar activities; and,
(3) Assist law schools in the education of our future lawyers.

(b) To protect the public from incompetent or other wrongful lawyering. As a professional, I should:

(1) Assist in bar admissions activities;
(2) Report violations of ethical regulations by fellow lawyers; and,
(3) Assist in the enforcement of the legal and ethical standards imposed upon all lawyers.

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

(a) To counsel clients about the moral and social consequences of their conduct.

(b) To consider the effect of my conduct on the image of our systems of justice including the social effect of advertising methods. As a professional, I should ensure that any advertisement of my services:

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

(c) To provide the pro bono representation that is necessary to make our system of justice available to all.

(d) To support organizations that provide pro bono representation to indigent clients.

(e) To improve our laws and legal system by, for example:

(1) Serving as a public official;
(2) Assisting in the education of the public concerning our laws and legal system;
(3) Commenting publicly upon our laws; and,
(4) Using other appropriate methods of effecting positive change in our laws and legal system.

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The Importance of Lawyers Abandoning the Shame and Stigma of Mental Illness

One tenet of the Chief Justice’s Commission on Professionalism’s “A Lawyer’s Creed” is “To my colleagues in the practice of law, I offer concern for your welfare.” If you are aware of a colleague that may be experiencing difficulties, ask questions and offer to help them contact the Lawyer Assistance Program for help.

BY MICHELLE BARCLAY

January is the month when Robin Nash, my dear friend and lawyer colleague, godfather to my child, officiate for my brother's marriage and former director of the Barton Center at Emory University, left the world. Positive reminders of him are all around, including a child law and policy fellowship in his name, but January is a tough month.

Robin’s suicide, 12 years ago, was a shock to me. As time passed and I heard stories about Robin from others who knew him and I learned more about suicide, I can see in hindsight the risk looming for him. Today, I think his death was possibly preventable.

In 2006, Robin wrote this essay about himself for Emory’s website.

“Robin Nash, age 53, drew his first breath, attended college and law school and now works at Emory University. He loves to travel to places like Southeast Asia and the Middle East but he always returns home to Emory and his hometown of Decatur. Robin majored in Economics and Mathematics. He began his law practice in 1980 in Decatur surviving mostly on court appointed cases for mentally ill patients in commitment hearings.

His practice expanded to working with institutionalized developmentally delayed clients, special education cases, wills and estate litigation and representing banks in the hugely interesting area of commercial real estate closings.

In 1995, he was appointed as a juvenile court judge in DeKalb County. He resigned from the bench effective December 2005. He sold most of his personal belongings, paid off his remaining debts and moved overseas to think and travel. After thinking and traveling for three months, he returned to the active world of Decatur. He was appointed director of the Barton Clinic effective April 15, 2006.”

When Robin came back from traveling, he told his friends—“I can be more impactful here”—which was and is true. Robin’s impact continues today through the work of young lawyers serving as Robin Nash Fellows and through the lives of the thousands of mothers, fathers, daughters and sons he touched, helping people traumatized by child abuse, neglect, addiction and crime.

He was impactful in part because he had so much empathy for others. He was
well regarded and well loved. He was a person you could count on who did extraordinary things for others—helping a student obtain a TPO in the middle of the night to stop a stalker; quietly helping a refugee family get stable and connected to services; and of course, his consistent care of his friend Vinny. Vinny was a severely disabled adult Robin befriended and with whom he had a deep connection. Because he was a lawyer, Robin was able to help Vinny obtain full access to available medical services without being institutionalized.

So why did Robin leave? He lost his battle with mental illness. He masked it well and as a private person, did not share his struggles. His friends had some insight into his struggles but it was always complicated. While a judge, Robin was known for saying things like, "I am a manager of misery" or "I manage the competition not to serve the most vulnerable families and children." But he also said, "Talk like this is just dark humor which is a useful coping mechanism for an emotionally draining job."

I know today that a low serotonin level in his body was dangerous for his depression and that the medications he took waxed and waned in effectiveness. I also now know that he had not slept well for days before he acted. We'd had a work meeting the day before he died where he made a long "to do" list. Who makes a long "to do" list when one is contemplating suicide? Plenty of people, I have learned. I saw that "to do" list on his table when I was in his apartment after his death.

What could have helped? Abandoning the shame and stigma of mental illness is a good start. I have been heartened by the social movement campaign, Time to Change, designed to help people speak up about mental illness. A safety plan shared with a reasonably wide network of people can also help. Antidepressant medications can help. Recent studies about anti-depression drugs "puts to bed the controversy on anti-depressants, clearly showing that these drugs do work in lifting mood and helping most people with depression."

Science is advancing better treatments at a rapid pace. And some experts advise that directly asking whether a person has considered killing themselves can open the door to intervention and saving a life.

Before becoming a lawyer, I worked as a nurse in a variety of settings at both Grady and Emory hospitals. I saw attempted suicides. I witnessed a number of those people who were grateful they were not successful. I saw safety plans work when enough people knew about the risks. Sometimes, medicines were changed, new treatments tried and I saw people get better.

I feel like with my background I could have and should have probed Robin more. But at the time, I thought I was respecting his privacy by not asking too many questions. Today I know that a person can be fine one day and then chemicals in their brain can wildly change within 24 hours, and they're no longer ok. I learned that not sleeping can be deadly. I have also learned that just talking about it can help a person cope.

A book that has helped me is called "Stay: A History of Suicide and the Philosophies Against It," by Jennifer Michael Hecht. If I had a second chance, I would try to use some of the arguments in that book, such as:

"None of us can truly know what we mean to other people, and none of us can know what our future self will experience. History and philosophy ask us to remember these mysteries, to look around at friends, family, humanity, at the surprises life brings—the endless possibilities that living offers—and to persevere."

Of course, first I would have just asked about his mental health with love and listened. I still wish for that chance to try.

Afterword by Chief Justice's Commission on Professionalism Executive Director Karline Yvette Grier: One tenet of the Chief Justice's Commission on Professionalism's "A Lawyer's Creed" is "To my colleagues in the practice of law are aware of a colleague that may be experiencing mental health difficulties, to help them contact the Lawyer Assistance Program for help.

Counseling for Attorneys
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Elizabeth Mehlman, J.D., Ph.D.
www.AtlantaPsychologist.org
(404) 874-0937
Midtown Atlanta

Michelle and Andy Barclay are so grateful to the Emory University community for the grace and care that surrounded everyone, especially the students, when Robin died.

Michelle Barclay, JD, has more than 20 years experience working in Georgia’s judicial branch. She is currently the division director of Communications, Children, Families, and the Courts within the Judicial Council of Georgia’s Administrative Office of the Courts. Before becoming a lawyer, she was a nurse for 10 years, specializing in ICU and trauma care. Her degrees include a Juris Doctor from Emory University School of Law, a Bachelor of Science in Nursing from Emory University and a Bachelor of Interdisciplinary Studies from Georgia State University. She is also co-founder along with her husband Andrew Barclay of the Barton Child Law and Policy Center at Emory University School of Law. She can be reached at 404-657-9289 or michelle.barclay@georgiacourts.gov.

Endnotes

2018 JUNE 79
From the President—
Best Way to Deal With Stress? Chillax!

Before You Accept that Friend Request or Publish that Post: Ethical Issues for Consideration in Social Media Interaction

2018 State Bar Annual Meeting Coverage

Juggling Practice With Part-Time Service

56TH STATE BAR PRESIDENT
KENNETH B. HODGES III
Promoting a Professional Culture of Respect and Safety #MeToo

In keeping with our professionalism aspirations, I challenge you to take a proactive, preventative approach to sexual harassment and to start the discussions . . . about things we as lawyers can do to promote a professional culture of respect and safety to prevent #MeToo.

BY KARLISE Y. GRIER

“There is no doubt that Marley was dead. This must be distinctly understood, or nothing wonderful can come of the story I am going to relate.”—Excerpt from: “A Christmas Carol” by Charles Dickens.

To borrow an idea from an iconic writer: There is no doubt that #MeToo testimonials are real. This must be distinctly understood, or nothing wonderful can come of the ideas I am going to share.

I start with this statement because when I co-presented on behalf of the Chief Justice’s Commission on Professionalism at a two-hour seminar on Ethics, Professionalism and Sexual
Harassment at the University of Georgia (UGA) in March 2018, it was clear to me that men and women, young and old, question some of the testimonials of sexual harassment that have recently come to light. For the purposes of starting a discussion about preventing future #MeToo incidents in the Georgia legal profession, I ask you to assume, arguendo, that sexual harassment does occur and to further assume, arguendo, that it occurs in Georgia among lawyers and judges. Our attention and discussion must therefore turn to “How do we prevent it?” We won’t expend needless energy on “Is he telling the truth?” We won’t lament, “Why did she wait so long to come forward?”

First, I want to explain why I believe that sexual harassment in the legal profession is, in part, a professionalism issue. As Georgia lawyers, we have A Lawyer’s Creed and an Aspirational Statement on Professionalism that was approved by the Supreme Court of Georgia in 1990. One tenet of A Lawyer’s Creed states: “To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.” Frankly, it is only a concern for the welfare of others that in many cases will prevent sexual harassment in the legal profession because of “gaps” in the law and in our ethics rules. For example, under federal law, sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees. According to a 2016 article on lawyer demographics, three out of four lawyers are working in a law firm that has two to five lawyers working for it. In Georgia, there are no state laws similar to Title VII’s statutory scheme.

There is currently nothing in Georgia’s Rules of Professional Conduct that explicitly prohibits sexual harassment of a lawyer by another lawyer. Moreover, it is my understanding that generally the Office of the General Counsel will not prosecute a lawyer for alleged lawyer-on-lawyer sexual harassment absent a misdemeanor or felony criminal conviction, involving rape, sexual assault, battery, moral turpitude and other similar criminal behavior. Other circumstances in which laws or ethics rules may not apply include sexual harassment of lawyers by clients or sexual harassment that occurs during professional events, such as bar association meetings or continuing education seminars.

Former Georgia Chief Justice Harold Clarke described the distinction between ethics and professionalism as . . . the idea that ethics is a minimum standard which is required of all lawyers while professionalism is a higher standard expected of all lawyers. Therefore, in the absence of laws and ethical rules to guide our behavior, professionalism aspirations call on Georgia lawyers to consider and implement a professional culture of respect and safety that ensures zero tolerance for behavior that gives rise to #MeToo testimonials.


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practical advice for legal employers to address or to prevent sexual harassment.9 Some of the suggestions included: establishing easy and inexpensive ways to detect sexual harassment, such as asking about it in anonymous employee surveys and/or exit interviews; not waiting for formal complaints before responding to known misconduct; and discussing the existence of sexual harassment openly.10 The federal judiciary's working group on sexual harassment has many reforms that are currently underway, such as conducting a session on sexual harassment during the ethics training for newly appointed judges; reviewing the confidentiality provisions in several employee/law clerk handbooks to clarify that nothing in the provisions prevents the filing of a complaint; and clarifying the data that the judiciary collects about judicial misconduct complaints to add a category for any complaints filed relating to sexual misconduct.11 For those planning CLE or bar events, the American Bar Association Commission on Women in the Profession cautions lawyers to "be extremely careful about excessive use of alcohol in work/social settings."12

During our continuing legal education seminar at UGA, one of the presenters, Erica Mason, who serves as president of the Hispanic National Bar Association (HNBA), shared that HNBA has developed a "HNBA Conference Code of Conduct" that states in part: "The HNBA is committed to providing a friendly, safe, supportive and harassment-free environment for all conference attendees and participants. . . . Anyone violating these rules may be sanctioned or expelled from the conference without a registration refund, at the discretion of HNBA Leadership." Mason also shared that the HNBA has signs at all of its conferences that reiterate the policy and that provide clear instructions on how anyone who has been subjected to the harassment may report it. In short, you don’t have to track down a procedure or figure out what to do if you feel you have been harassed.

Overall, some of the takeaways from our sexual harassment seminar at UGA provide a good starting point for discussion about how we as lawyers should aspire to behave. Generally, our group agreed that women and men enjoy appropriate compliments on their new haircut or color, a nice dress or tie, or a general "You look nice today." Admittedly, however, an employment lawyer might say that even this is not considered best practice.

Many of the seminar participants agreed on some practical tips, however. Think twice about running your fingers through someone’s hair or kissing a person on the cheek. Learn from others’ past mistakes and do not intentionally pat or "flick" someone on the buttocks even if you mean it as a joke and don’t intend for it to be offensive or inappropriate.14

In our professional friendships, we want to leave room for the true fairy-tale happily ever after endings, like that of Barack and Michelle, who met at work when she was an associate at a law firm and he was a summer associate at the same firm.15 We also need to ensure that our attempts to prevent sexual harassment do not become excuses for failing to mentor attorneys of the opposite sex.

Finally, just because certain behaviors may have been tolerated when you were a young associate, law clerk, etc., does not mean the behavior is tolerated or accepted today. Professionalism demands that we constantly consider and re-evaluate the rules that should govern our behavior in the absence of legal or ethical mandates. Our small group at UGA did not always agree on what was inappropriate conduct or on the best way to handle a situation. We did did agree that the conversation on sexual harassment was valuable and necessary.

So in keeping with our professionalism aspirations, I challenge you to take a proactive, preventative approach to sexual harassment and to start the discussions in your law firm, corporate legal department, court system and/or bar association about things we as lawyers can do to promote a professional culture of respect and safety to prevent #MeToo.●

**Endnotes**


5. The Georgia Code of Judicial Conduct differs from the Georgia Rules of Professional Conduct in that Rule 2.3 (b) of the Code of Judicial Conduct specifically prohibits discrimination by a judge in the performance of his or her judicial duties. See https://