

**Professionalism from a
Trial Judge's Perspective**

Judge Susan E. Edlein
State Court of Fulton County

April 2020

Top 10 Rules of Professionalism
From a Trial Judge's Perspective

1. Be Prepared
 - a. Georgia Rules of Professional Conduct 1.1, 1.3, 3.2
2. Advocate for your client, but pick your battles
 - a. Georgia Rules of Professional Conduct 3.1, 3.3
3. Don't be a jerk
 - a. Georgia Rules of Professional Conduct 3.4, 3.5, 3.6
4. Don't work with jerks
 - a. Georgia Rules of Professional Conduct 5.1, 5.2, 5.3
5. KISS – keep it simple
6. Be responsive
7. Be courteous
8. Be candid
 - a. Georgia Rules of Professional Conduct 3.3
9. Take care of yourself – mentally and physically
10. Care about your reputation

In this day and age, public perception of lawyers is low. A 2013 Pew Reach Study ranked lawyers at the bottom of the list of 10 professions on the basis of public esteem. Only one in five Americans (18%) say lawyers contribute a lot to society while over one third (34%) say lawyers contribute not very much or nothing at all. And when faced with stories of lawyers stealing millions from their clients and the long delays and costs of litigation, what should we do?

Those of us in the profession realize that these cases of lawyers committing crimes and stealing from their clients are the exceptions, not the rule. The vast majority of lawyers are consummate professionals. While the public may hold a negative perception of lawyers in general, on a personal level, individuals usually like “their” lawyers.

For most of us, the issues surrounding professionalism that we face are much more subtle than those splashed across the headlines. They include disputes with opposing counsel, clients who don’t want to take our advice and delays in getting cases resolved.

Georgia’s appellate courts have repeatedly commented for the need and the requirement, for professionalism and civility.

In recent years, on the federal and state level, courts throughout this country have sought to encourage professionalism among lawyers and alternative dispute resolution among citizens. In furtherance of the former of these goals, several years ago this court established the Chief Justice's Commission on Professionalism in an attempt to maintain in some instances and establish in others, a sense of civility and courtesy among lawyers. In drawing the distinction between professionalism and ethics, Chief Justice Clarke has often said that "ethics is that which is required and professionalism is that which is expected."

On one hand, the practice of law is dependent to a great extent on lawyers having respect for each other, honoring their promises, cooperating with others, and according each other a high degree of civility. On the other hand, lay persons sincerely believe that when a justiciable issue arises, if they so desire they will be accorded their "day in court." These expectations on the part of lawyers and lay persons are reasonable and are fully contemplated by our system of jurisprudence. Therefore, when these expectations are not fulfilled, there is understandable discontent with our system of justice. If the bar is to maintain the respect of the community, lawyers must be willing to act out of a spirit of cooperation and civility and not wholly out of a sense of blind and unbridled advocacy...

What is disturbing to me is that many lawyers fail to realize that the law and the Code of Professional Responsibility set minimum levels of reasonable conduct. As members of an honorable profession, we must be willing to conduct our business in a manner consistent with higher standards embodied in the Ethical Considerations and aspirational goals embodied in the professionalism movement.

Evanoff v. Evanoff, 262 Ga. 303, 304, 418 S.E.2d 62 (1992) *Benham, J.*, concurring.

We are concerned that counsel should adhere to the highest standards of professionalism and proper courtroom decorum, see *Davis v. State*, 255 Ga. 598, 610 (16) (340 S.E.2d 869) (1986); see also *Miller v. State*, 228 Ga. App. 754, 757 (6) (492 S.E.2d 734) (1997), and, accordingly, we find distasteful any argument that unnecessarily impugns the integrity of opposing counsel, even if obliquely.

Gissendaner v. State, 272 Ga. 704, 713, 532 S.E.2d 677(2000) (prosecutor referred to defense counsel's argument as "an insult to the truth.")

Appellant, by contending that his counsel was ineffective because he showed respect for and friendship with opposing counsel, raises an interesting question: is civility incompatible with advocacy? The main opinion rightly resolves this enumeration of error by holding that it is professionally reasonable for civility to be a part of a lawyer's strategic plan in the trial of a case. Being in total agreement with the main opinion, I write separately to further explain the role of civility.

The practice of law is an honorable profession that requires a high standard of conduct of its members. It is a high calling where competence, civility, community service, and public service are integral parts of the professional standards. It is not a profession where disrespectful, discourteous, and impolite conduct should be nurtured and encouraged. Such conduct should be alien to any honorable profession.

Those who hold themselves out as lawyers should realize that they help shape and mold public opinion as to the role of the law and their role as lawyers. The law sets standards for society and lawyers serve as problem solvers when conflicts arise. To fulfill their responsibility as problem solvers, lawyers must exhibit a high degree of respect for each other, for the court system, and for the public. By doing so, lawyers help to enhance respect for and trust in our legal system. These notions of respect and trust are critical to the proper functioning of the legal process.

While serving as advocates for their clients, lawyers are not required to abandon notions of civility. Quite the contrary, civility, which incorporates respect, courtesy, politeness, graciousness, and basic good manners, is an essential part of effective advocacy. Professionalism's main building block is civility and it sets the truly accomplished lawyer apart from the ordinary lawyer.

Civility is more than good manners. It is an essential ingredient in an effective adversarial legal system such as ours. The absence of civility would produce a system of justice that would be out of control and impossible to manage: normal

disputes would be unnecessarily laced with anger and discord; citizens would become disrespectful of the rights of others; corporations would become irresponsible in conducting their business; governments would become unresponsive to the needs of those they serve; and alternative dispute resolution would be virtually impossible.

To avoid incivility's evil consequences of discord, disrespect, unresponsiveness, irresponsibility, and blind advocacy, we must encourage lawyers to embrace civility's positive aspects. Civility allows us to understand another's point of view. It keeps us from giving vent to our emotions. It allows us to understand the consequences of our actions. It permits us to seek alternatives in the resolution of our problems. All of these positive consequences of civility will help us usher in an era where problems are solved fairly, inexpensively, swiftly, and harmoniously. The public expects no less and we must rise to the occasion in meeting those expectations.

Butts v. State, 273 Ga. 760, 772-73, 546 S.E.2d 472 (2001) (Benham, J., concurring)

We incline to the proposition that lawyers undertake certain professional obligations over and above those demanded of some of the other professions, among them being never to reject, for a consideration personal to themselves, the cause of the defenseless.

Weiner v. Fulton County, 113 Ga. App. 343, 346 (1966) (discussing indigent defense)

Judge Duross Fitzpatrick, Middle District of Georgia wrote of professionalism:

“As a final observation, this judge will quote Chief Justice of the United States Charles Evans Hughes who once said:

The highest reward that can come to a lawyer is the esteem of his professional brethren. That esteem is won in unique conditions and proceeds from an impartial judgment of professional rivals. It cannot be purchased. It cannot be artificially created. It cannot be gained by artifice or contrivance to attract public attention. It is not measured by pecuniary gains. It is an esteem which is born in sharp contests and thrives despite conflicting interests. It is an esteem commanded solely by integrity of character and by brains and skill in the honorable Performance of Professional duty. . . . In a world of imperfect humans, the faults of human clay are always manifest. The special temptations and tests of lawyers are obvious enough. But, considering trial and error, success and defeat, the bar slowly makes its estimate and the memory of the careers which it approves are at once its most

precious heritage and an important safeguard of the interests of society so largely in the keeping of the profession of the law in its manifold services.

If all courtesy, goodwill and decency should finally be bled out of the practice of law it will be a sad and bitter calling that remains; I cannot imagine a more unpleasant way to earn a living than to be a lawyer in a profession devoid of any semblance of kindness, courtesy or humanity.”

Williams v. Gen. Motors Corp., 158 F.R.D. 510, 512 (M.D. Ga. 1993).

So how do we address these issues while upholding the ethical and professional rules that our profession demands of us? While many of the issues involve shades of gray rather than black or white, a few practical tips from the other side of the bench may be helpful.

And do as adversaries do in law, Strive mightily, but eat and drink as friends.

-- William Shakespeare, *The Taming of The Shrew*, act 1, sc. 2, 276-277

Top 10 Rules of Professionalism
From a Trial Judge's Perspective

1. BE PREPARED

- This should go without saying, but lawyers need to be prepared. This means, if you have oral argument, you need to review not only your brief, but the relevant case law and evidentiary materials. It means if your case is on a trial calendar, be ready to try your case.
- Too often lawyers come in to court to argue motions and do nothing more than read their brief to the judge. Oral argument is a time for discourse with the Court – not to read what you have already submitted.
- Mark your exhibits ahead of time.
- Know how to introduce business records.
- Anticipate evidentiary issues and objections.
- Triple spell and grammar-check everything.
- See Georgia Rules of Professional Conduct 1.1, 1.3, 3.2

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 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.

SPECIFIC ASPIRATIONAL IDEALS

- **As to clients**, I will aspire: (a) To expeditious and economical achievement of all client objectives.
- **As to opposing parties and their counsel**, I will aspire: (b)(3) Respond promptly to all requests by opposing counsel
- **As to the court, other tribunals, and to those who assist them**, I will aspire: (a)(1) avoid non-essential litigation and non-essential pleading in litigation; (4) avoid 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

2. **ADVOCATE FOR YOUR CLIENT, BUT PICK YOUR BATTLES**

- Just because you can do something doesn't mean you should. Too often lawyers insist on a strict application and construction of rules just to cause headache to opposing counsel or the opposing party when it doesn't give her client any advantage.
- Lawyers are professionals and the public and the profession expect that we will hold ourselves to higher standards. Decide what the issues are that matter, and fight for those.
- Georgia Rules of Professional Conduct 3.1, 3.3

SPECIFIC ASPIRATIONAL IDEALS

- **As to clients**, I will aspire:
 - (a) To expeditious and economical achievement of all client objectives;
 - (b)(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
- **As to opposing parties and their counsel**, I will aspire: (a)
 - (2) Grant reasonable requests for extensions or scheduling changes; and,
 - (3) Consult with opposing counsel in the scheduling of appearances, meetings, and depositions.

3. DON'T BE A JERK (TO ANYONE)

- Zealous advocacy and civility are not mutually exclusive.
- Civility as the core of professionalism:
 - https://www.americanbar.org/publications/blt/2014/09/02_reardon.html
 - Appropriate zeal, however, never extends to offensive tactics or treating people with discourtesy or disrespect.
 - The individual lawyer is the guardian of the tone of interactions that will serve both the client and the legal system well. Clients may not understand these limits. Many clients are under the misconception that because they hired the lawyer, they have the power to dictate that lawyer's conduct. It falls to the lawyer to manage and correct that expectation and to let the client know the lawyer is more than a "hired gun."
- Exercise professional courtesies. Don't refuse opposing counsel's reasonable requests for accommodation simply to pay hardball when your client's rights are not prejudiced.
- Don't attack opposing counsel. Don't make disparaging remarks or show unpleasant feelings through non-verbal means. Personal attacks do not improve your position on legal issues.
- Maintain your dignity and reason.
- Don't let your client's emotional involvement in the case interfere with your duties as an officer of the court.
- Be a problem solver, not the problem.
- Return phone calls and respond to emails in a timely manner.
- Most discovery disputes are not discovery related; they are personality related.
- Georgia Rules of Professional Conduct 3.4, 3.5, 3.6
- Georgia Court of Appeals R. 10
 - Personal remarks that are discourteous or disparaging to any judge, opposing counsel, or any court, whether oral or written, are strictly forbidden.

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.

GENERAL ASPIRATIONAL IDEALS

As a lawyer, I will aspire:

(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.

(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.

SPECIFIC ASPIRATIONAL IDEALS

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

(a) To cooperate with opposing counsel in a manner consistent with the competent representation of all parties. As a professional, I should:

- (1) Notify opposing counsel in a timely fashion of any cancelled appearance;
- (2) Grant reasonable requests for extensions or scheduling changes; and,
- (3) Consult with opposing counsel in the scheduling of appearances, meetings, and depositions.

(b) To treat opposing counsel in a manner consistent with his or her professional obligations and consistent with the dignity of the search for justice. As a professional, I should:

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

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

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

As to 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.

4. DON'T WORK WITH JERKS

- Make sure that the people you work with are an accurate reflection of your work ethic and beliefs.
- Be nice to the courthouse staff.
- Train your staff properly. Take responsibility for your staff!
- Supervise and train new lawyers.
- Georgia Rules of Professional Conduct 5.1, 5.2, 5.3

LAWYER'S CREED

To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

GENERAL ASPIRATIONAL IDEALS

As a lawyer, I will aspire:

- (f) To practice with a personal commitment to the rules governing our profession and to encourage others to do the same.

SPECIFIC ASPIRATIONAL IDEALS

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.

5. KISS – KEEP IT SIMPLE

- It is your obligation to take a complex case or issue and simplify it so that someone else who knows nothing about this case gets it.
- When cross examining, focus on the major, important issues and present them in a way that people understand. Don't get mired down in details or minor inconsistencies that don't really matter.
- Have a theme and give the court and a jury a roadmap of where you are going.
- Be brief.

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.

6. BE RESPONSIVE

- Listen and respond to the questions the judge asks – oral argument is an opportunity to have a persuasive discussion with the court.
- Listen to the testimony given by a witness – having a witness go over testimony multiple times does not make it more persuasive.

SPECIFIC ASPIRATIONAL IDEALS

- **As to clients**, I will aspire:
 - (a) To expeditious and economical achievement of all client objectives;
 - (b)(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
- **As to opposing parties and their counsel**, I will aspire:
 - (1) Not serve motions or pleadings in such a manner or at such a time as to preclude opportunity for a competent response;
 - (2) Grant reasonable requests for extensions or scheduling changes; and,
 - (3) Consult with opposing counsel in the scheduling of appearances, meetings, and depositions.

7. BE COURTEOUS

- Be polite
- Treat courthouse staff with respect.

SPECIFIC ASPIRATIONAL IDEALS

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

- (2) Be courteous and civil in all communications;
- (4) Avoid rudeness and other acts of disrespect in all meeting including depositions and negotiations

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

- (a)(6) Advise clients about the obligations of civility, courtesy, fairness, cooperation, and other proper behavior expected of those who use our system of justice.

8. BE CANDID

- Your word is your bond.
- Don't conceal law that is adverse to your position.
- Be honest.
- Leaves of Absence - be honest!
- Georgia Rules of Professional Conduct 3.3

SPECIFIC ASPIRATIONAL IDEALS

As to clients, I will aspire: (b)(3) Maintain the sympathetic detachment that permits objective and independent advice to clients;

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

- (2) Be courteous and civil in all communications;
- (4) Avoid rudeness and other acts of disrespect in all meeting including depositions and negotiations

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

- (b) (1) Act with complete honesty;
- (2) Know court rules and procedures;
- (7) Assist the judiciary in determining the applicable law

9. BE YOURSELF

- Know your style and know yourself.
- If you try to act like someone else, you lose credibility with the court and/or the jury.
- Project confidence, not arrogance.
- The exception is if you are a jerk – then act like someone else. See number 3.

GENERAL ASPIRATIONAL IDEALS

As a lawyer, I will aspire:

- (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.
- (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.

10. CARE ABOUT YOUR REPUTATION

- Reputation matters. Guard yours. Once you lose your reputation, it is difficult, if not impossible, to regain it. Lawyers talk about judges; judges talk about lawyers too.
- Find a mentor -- be active in bar associations
- Worry about yourself!
- Ask for help if you need it.
- Beware social media
 - <https://abovethelaw.com/2017/06/does-anyone-care-about-their-reputation/>
- Be scrupulous of representations and omissions. It is far more important to preserve and enhance your long-term credibility and good reputation than to risk it by shading the facts or the law in a particular case.

GENERAL ASPIRATIONAL IDEALS

As a lawyer, I will aspire:

- (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.
- (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.

SPECIFIC ASPIRATIONAL IDEALS

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

- (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.
- (3) To improve our laws and legal system by, for example:
 - (1) Assisting in the education of the public concerning our laws and legal system;
 - (2) Commenting publicly upon our laws; and,
 - (3) Using other appropriate methods of effecting positive change in our laws and legal system.

Lawyer's Creed and Aspirational Statement on Professionalism

(from the State Bar of Georgia website)

The Lawyer's Creed and Aspirational Statement on Professionalism were developed by the Chief Justice's Commission on Professionalism Commission to encourage, guide and assist individual lawyers, law firms, and bar associations. These documents have been widely distributed among the lawyers and judges of Georgia through CLE programs and Commission events. A number of local bar association have used these documents as the basis for bar pledges and creeds. Several law firms have incorporated these documents into their firm mission statements. The Commission's hope is that members of the profession will recognize the special obligations that attach to their calling and will also recognize their responsibility to serve others and not be limited to the pursuit of self-interest. The Creed and Aspirational Statement cannot be imposed by edict because moral integrity and unselfish dedication to the welfare of others cannot be legislated. Nevertheless, a public statement of principles of ethical and professional responsibility can provide guidance for newcomers and a reminder for experienced members of the bar about the basic ethical and professional tenets of their profession. The Lawyer's Creed and Aspirational Statement on Professionalism were adopted by the Commission in 1990 and by Supreme Court order made a part of the Rules and Regulations for the Organization and Government of the State Bar of Georgia.

The Lawyer's Creed and Aspirational Statement on Professionalism have been adopted by the Chief Justice's Commission on Professionalism and incorporated into the Rules and Regulations for the Organization and Government of the State Bar of Georgia. The purpose of the Lawyer's Creed and Aspirational Statement on Professionalism is to serve as encouragement, guidance and assistance to individual lawyers, law firms, and bar associations as they recognize the special obligations that attach to their calling and their responsibility to serve others.

The Creed and Aspirational Statement cannot be imposed by edict because moral integrity and unselfish dedication to the welfare of others cannot be legislated. Nevertheless, a public statement of principles of professionalism can provide guidance for newcomers and a reminder for experienced members of the bar about the basic tenets of our profession.

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;
- (2) Be courteous and civil in all communications;
- (3) Respond promptly to all requests by opposing counsel;
- (4) Avoid rudeness and other acts of disrespect in all meetings including depositions and negotiations;
- (5) Prepare documents that accurately reflect the agreement of all parties; and
- (6) Clearly identify all changes made in documents submitted by opposing counsel for review.

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

(a) To represent my clients in a manner consistent with the proper functioning of a fair, efficient, and humane system of justice. As a professional, I should:

- (1) Avoid non-essential litigation and non-essential pleading in litigation;
- (2) Explore the possibilities of settlement of all litigated matters;
- (3) Seek non-coerced agreement between the parties on procedural and discovery matters;
- (4) Avoid all delays not dictated by a competent presentation of a client's claims;
- (5) Prevent misuses of court time by verifying the availability of key participants for scheduled appearances before the court and by being punctual; and
- (6) Advise clients about the obligations of civility, courtesy, fairness, cooperation, and other proper behavior expected of those who use our systems of justice.

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

- (1) Act with complete honesty;
- (2) Know court rules and procedures;
- (3) Give appropriate deference to court rulings;
- (4) Avoid undue familiarity with members of the judiciary;
- (5) Avoid unfounded, unsubstantiated, or unjustified public criticism of members of the judiciary;
- (6) Show respect by attire and demeanor;
- (7) Assist the judiciary in determining the applicable law; and,
- (8) Seek to understand the judiciary's obligations of informed and impartial decision-making.

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

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

As to our profession, I will aspire:

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

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

- (a) To counsel clients about the moral and social consequences of their conduct.
- (b) To consider the effect of my conduct on the image of our systems of justice including the social effect of advertising methods.

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

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

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

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

Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation as used in this Rule means that a lawyer shall not handle a matter which the lawyer knows or should know to be beyond the lawyer's level of competence without associating another lawyer who the original lawyer reasonably believes to be competent to handle the matter in question. Competence requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

The maximum penalty for a violation of this Rule is disbarment.

Comment

I Legal Knowledge and Skill

[1A] The purpose of these rules is not to give rise to a cause of action nor to create a presumption that a legal duty has been breached. These Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability.

[1B] In determining whether a lawyer employs the requisite knowledge and skill in a particular matter, relevant factors include the relative complexity and specialized nature of the matter, the lawyer's general experience, the lawyer's training and experience in the field in question, the preparation and study the lawyer is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, a lawyer of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

[2] A lawyer need not necessarily have special training or prior experience to handle legal problems of a type with which the lawyer is unfamiliar. A newly admitted lawyer can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of precedent, the evaluation of evidence and legal drafting, are required in all legal problems. Perhaps the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. A lawyer can provide adequate representation in a wholly novel field through necessary study. Competent representation can also be provided through the association of a lawyer of established competence in the field in question.

[3] In an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation

or association with another lawyer would be impractical. Even in an emergency, however, assistance should be limited to that reasonably necessary in the circumstances, for ill-considered action under emergency conditions can jeopardize the client's interest.

[4] A lawyer may accept representation where the requisite level of competence can be achieved by reasonable preparation. This applies as well to a lawyer who is appointed as counsel for an unrepresented person subject to Rule 6.2: Accepting Appointments.

I Thoroughness and Preparation

[5] Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

I Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should engage in continuing study and education.

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client. Reasonable diligence as used in this Rule means that a lawyer shall not without just cause to the detriment of the client in effect willfully abandon or willfully disregard a legal matter entrusted to the lawyer.

The maximum penalty for a violation of this Rule is disbarment.

Comment:

[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, a lawyer is not bound to press for every advantage that might be realized for a client. A lawyer has professional discretion in determining the means by which a matter should be pursued. See Rule 1.2. The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics

or preclude the treating of all persons involved in the legal process with courtesy and respect.

[2] A lawyer's work load should be controlled so that each matter can be handled competently.

[3] Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when a lawyer overlooks a statute of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, however, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. A lawyer's duty to act with reasonable promptness, however, does not preclude the lawyer from agreeing to a reasonable request for a postponement that will not prejudice the lawyer's client.

[4] Unless the relationship is terminated as provided in Rule 1.16, a lawyer should carry through to conclusion all matters undertaken for a client. If a lawyer's employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If a lawyer has served a client over a substantial period in a variety of matters, the client sometimes may assume that the lawyer will serve on a continuing basis. Doubt about whether a client-lawyer relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so. For example, if a lawyer has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, the lawyer should advise the client of the possibility of appeal before relinquishing responsibility for the matter.

Rule 3.1 Meritorious Claims and Contentious.

In the representation of a client, a lawyer shall not:

- (a)** file a suit, assert a position, conduct a defense, delay a trial, or take other action on behalf of the client when the lawyer knows or when it is obvious that such action would serve merely to harass or maliciously injure another;
- (b)** knowingly advance a claim or defense that is unwarranted under existing law, except that the lawyer may advance such claim or defense if it can be supported by good faith argument for an extension, modification or reversal of existing law.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment:

[1] The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

[2] The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery. Such action is not frivolous even though the lawyer believes that the client's position ultimately will not prevail. The action is frivolous, however, if the client desires to have the action taken primarily for the purpose of harassing or maliciously injuring a person, or, if the lawyer is unable either to make a good faith argument on the merits of the action taken or to support the action taken by a good faith argument for an extension, modification or reversal of existing law.

[3] It is not ethically improper for a lawyer to file a lawsuit before complete factual support for the claim has been established provided that the lawyer determines that a reasonable lawyer would conclude that there is a reasonable possibility that facts supporting the cause of action can be established after the filing of the claim; and provided future that the lawyer is not required by rules of procedure, or otherwise to represent that the cause of action has an adequate factual basis. If after filing it is discovered that the lawsuit has no merit, the lawyer will dismiss the lawsuit or in the alternative withdraw.

[4] The decision of a court that a claim is not meritorious is not necessarily conclusive of a violation of this Rule.

Rule 3.2 Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

The maximum penalty for a violation of this Rule is a public reprimand.

Comment:

[1] Dilatory practices bring the administration of justice into disrepute.

[2]The reasonableness of a lawyer's effort to expedite litigation must be judged by all of the controlling factors. "Reasonable efforts" do not equate to "instant efforts" and are sufficient if reasonable under the relevant circumstances.

Rule 3.3 Candor Toward the Tribunal.

- (a) A lawyer shall not knowingly:
- (1) Make a false statement of material fact or law to a tribunal;
 - (2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
 - (3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
 - (4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.
- (b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.
- (c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.
- (d) In an ex parte proceeding, other than grand jury proceedings, a lawyer shall inform the tribunal of all material facts known to the lawyer that the lawyer reasonably believes are necessary to enable the tribunal to make an informed decision, whether or not the facts are adverse.

The maximum penalty for a violation of this Rule is disbarment.

Comment:

[1]This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. See Rule 1.0(r) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(4) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

[2]This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

I. Representations by a Lawyer

[3] An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. The obligation prescribed in Rule 1.2(d) not to counsel a client to commit or assist the client in committing a fraud applies in litigation. Regarding compliance with Rule 1.2(d), see the Comment to that Rule. See also the Comment to Rule 8.4(b).

I. Legal Argument

[4]Legal argument based on a knowingly false representation of law constitutes dishonesty toward the tribunal. A lawyer is not required to make a disinterested exposition of the law, but must recognize the existence of pertinent legal authorities. Furthermore, as stated in paragraph (a)(3), an advocate has a duty to disclose directly adverse authority in the controlling jurisdiction that has not been disclosed by the opposing party. The underlying concept is that legal argument is a discussion seeking to determine the legal premises properly applicable to the case.

I. Offering Evidence

[5]Paragraph (c) allows that the lawyer refuse to offer evidence that the lawyer knows to be false, regardless of the client's wishes. This duty is premised on the lawyer's obligation as an officer of the court to prevent the trier of fact from being misled by false evidence. A lawyer does not violate this Rule if the lawyer offers the evidence for the purpose of establishing its falsity.

[6] If a lawyer knows that the client intends to testify falsely or wants the lawyer to introduce false evidence, the lawyer should seek to persuade the client that the evidence should not be offered. If the persuasion is ineffective and the lawyer continues to represent the client, the lawyer may refuse to offer the false evidence. If only a portion of a witness's testimony will be false, the lawyer may call the witness to testify but may not elicit from the witness the testimony that the lawyer knows is false.

[7]The duties stated in paragraphs (a), (b) and (c) apply to all lawyers, including defense counsel in criminal cases. In some jurisdictions, however, courts have required counsel to present the accused as a witness or to give a narrative statement if the accused so desires, even if counsel knows that the testimony or statement will be false. The obligation of the advocate under the Rules of Professional Conduct is subordinate to such requirements. See also Comment [9].

[8]The prohibition against offering false evidence only applies if the lawyer knows that the evidence is false. A lawyer's reasonable belief that evidence is false does not preclude its presentation to the trier of fact. A lawyer's knowledge that evidence is false, however, can be inferred from the circumstances.

See Rule 1.0(i). Thus, although a lawyer should resolve doubts about the veracity of testimony or other evidence in favor of the client, the lawyer cannot ignore an obvious falsehood.

[9]Although paragraph (a)(4) only prohibits a lawyer from offering evidence the lawyer knows to be false, it permits the lawyer to refuse to offer testimony or other proof that the lawyer reasonably believes is false. Offering such proof may reflect adversely on the lawyer's ability to discriminate in the quality of evidence and thus impair the lawyer's effectiveness as an advocate. Because of the special protections historically provided criminal defendants, however, this Rule does not permit a lawyer to refuse to offer the testimony of such a client where the lawyer reasonably believes but does not know that the testimony will be false. Unless the lawyer knows the testimony will be false, the lawyer must honor the client's decision to testify. See also Comment [7].

I. Remedial Measures

[10]Having offered material evidence in the belief that it was true, a lawyer may subsequently come to know that the evidence is false. Or, a lawyer may be surprised when the lawyer's client, or another witness called by the lawyer, offers testimony the lawyer knows to be false, either during the lawyer's direct examination or in response to cross-examination by the opposing lawyer. In such situations or if the lawyer knows of the falsity of testimony elicited from the client

during a deposition, the lawyer must take reasonable remedial measures. In such situations, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. If that fails, the advocate must take further remedial action. If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make such disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. It is for the tribunal then to determine what should be done - making a statement about the matter to the trier of fact, ordering a mistrial, or perhaps nothing.

[11]The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

I. Preserving Integrity of Adjudicative Process

[12]Lawyers have a special obligation to protect a tribunal against criminal or fraudulent conduct that undermines the integrity of the adjudicative process, such as bribing, intimidating or otherwise unlawfully communicating with a witness, juror, court official or other participant in the proceeding, unlawfully destroying or concealing documents or other evidence or failing to disclose information to the tribunal when required by law to do so.

I. Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

I. Ex Parte Proceedings

[14] Ordinarily, an advocate has the limited responsibility of presenting one side of the matters that a tribunal should consider in reaching a decision; the conflicting position is expected to be presented by the opposing party. However, in any ex parte proceeding, such as an application for a temporary restraining order, there is no balance of presentation by opposing advocates. The object of an ex parte proceeding is nevertheless to yield a substantially just result. The judge has an affirmative responsibility to accord the absent party just consideration. The lawyer for the represented party has the correlative duty to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision.

I. Withdrawal

[15] Normally, a lawyer's compliance with the duty of candor imposed by this Rule does not require that the lawyer withdraw from the representation of a client whose interests will be or have been adversely affected by the lawyer's disclosure. The lawyer may, however, be required by Rule 1.16(a) to seek permission of the tribunal to withdraw if the lawyer's compliance with this Rule's duty of candor results in such an extreme deterioration of the client-lawyer relationship that the lawyer can no longer competently represent the client. Also see Rule 1.16(b) for the circumstances in which a lawyer will be permitted to seek a tribunal's permission to withdraw. In connection with a request for permission to withdraw that is premised on a client's misconduct, a lawyer may reveal information relating to the representation only to the extent reasonably necessary to comply with this Rule or as otherwise permitted by Rule 1.6.

Rule 8.4 Misconduct.

- (a)** It shall be a violation of the Georgia Rules of Professional Conduct for a lawyer to:
- (1)** violate or knowingly attempt to violate the Georgia Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 - (2)** be convicted of a felony;
 - (3)** be convicted of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law;
 - (4)** engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation;
 - (5)** fail to pay any final judgment or rule absolute rendered against such lawyer for money collected by him or her as a lawyer within ten days after the time appointed in the order or judgment;

(6)

(i) state an ability to influence improperly a government agency or official by means that violate the Georgia Rules of Professional Conduct or other law;

(6)

(ii) state an ability to achieve results by means that violate the Georgia Rules of Professional Conduct or other law;

(6)

(iii) achieve results by means that violate the Georgia Rules of Professional Conduct or other law;

(7) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law; or

(8) commit a criminal act that relates to the lawyer's fitness to practice law or reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, where the lawyer has admitted in *judicio*, the commission of such act.

(b)

(1) For purposes of this Rule, conviction shall include any of the following accepted by a court, whether or not a sentence has been imposed:

- **(i)** a guilty plea;
- **(ii)** a plea of *nolo contendere*;
- **(iii)** a verdict of guilty; or
- **(iv)** a verdict of guilty but mentally ill.

(2) The record of a conviction or disposition in any jurisdiction based upon a guilty plea, a plea of *nolo contendere*, a verdict of guilty, or a verdict of guilty but mentally ill, or upon the imposition of first offender probation shall be conclusive evidence of such conviction or disposition and shall be admissible in proceedings under these disciplinary rules.

(c) This Rule shall not be construed to cause any infringement of the existing inherent right of Georgia Superior Courts to suspend and disbar lawyers from practice based upon a conviction of a crime as specified in paragraphs (a) (1), (a) (2) and (a) (3) above.

(d) Rule 8.4 (a) (1) does not apply to any of the Georgia Rules of Professional Conduct for which there is no disciplinary penalty.

The maximum penalty for a violation of Rule 8.4 (a) (1) is the maximum penalty for the specific Rule violated. The maximum penalty for a violation of Rule 8.4 (a) (2) through (c) is disbarment.

Rule 3.4 Fairness to Opposing Party and Counsel.

A lawyer shall not:

- (a)** unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;
- (b)**
 - (1)** falsify evidence;
 - (2)** counsel or assist a witness to testify falsely; or
 - (3)** pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the testimony or the outcome of the case. But a lawyer may advance, guarantee, or acquiesce in the payment of:
 - (i)** expenses reasonably incurred by a witness in preparation, attending or testifying; or
 - (ii)** reasonable compensation to a witness for the loss of time in preparing, attending or testifying; or
 - (iii)** a reasonable fee for the professional services of an expert witness;
- (c)** Reserved;
- (d)** Reserved;
- (e)** Reserved;
- (f)** request a person other than a client to refrain from voluntarily giving relevant information to another party unless:
 - (1)** the person is a relative or an employee or other agent of a client; or the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information; and

(2) the information is not otherwise subject to the assertion of a privilege by the client; and

(g) use methods of obtaining evidence that violate the legal rights of the opposing party or counsel; or

(h) present, participate in presenting or threaten to present criminal charges solely to obtain an advantage in a civil matter.

The maximum penalty for a violation of this Rule is disbarment.

Rule 3.5 Impartiality and Decorum of the Tribunal.

A lawyer shall not, without regard to whether the lawyer represents a client in the matter:

(a) seek to influence a judge, juror, prospective juror or other official by means prohibited by law;

(b) communicate ex parte with such a person except as permitted by law;

(c) communicate with a juror or prospective juror after discharge of the jury if:

- (1) the communication is prohibited by law or court order;
- (2) the juror has made known to the lawyer a desire not to communicate; or
- (3) the communication involves misrepresentation, coercion, duress or harassment.

(d) engage in conduct intended to disrupt a tribunal.

The maximum penalty for a violation of paragraph (a) or paragraph (c) of this Rule is disbarment. The maximum penalty for a violation of paragraph (b) or paragraph (d) of this Rule is a public reprimand.

Comment:

[1] Many forms of improper influence upon the tribunal are proscribed by criminal law. All of those are specified in the Georgia Code of Judicial Conduct with which an advocate should be familiar. Attention is also directed to Rule 8.4. Misconduct., which governs other instances of improper conduct by a lawyer/candidate.

[2] If we are to maintain the integrity of the judicial process, it is imperative that an advocate's function be limited to the presentation of evidence and argument, to allow a cause to be decided according to law. The exertion of improper influence is detrimental to that process. Regardless of an advocate's innocent intention, actions which give the appearance of tampering with judicial impartiality are to be avoided. The activity proscribed by this Rule should be observed by the advocate in such a careful manner that there is no appearance of impropriety.

[3A] The Rule with respect to ex parte communications limits direct communications except as may be permitted by law. Thus, court rules or case law must be referred to in order to determine whether certain ex parte communications are legitimate. Ex parte communications may be permitted by statutory authorization.

[3B] A lawyer who obtains a judge's signature on a decree in the absence of the opposing lawyer where certain aspects of the decree are still in dispute may have violated Rule 3.5. Impartiality and Decorum of the Tribunal., regardless of the lawyer's good intentions or good faith.

[4] A lawyer may communicate as to the merits of the cause with a judge in the course of official proceedings in the case, in writing if the lawyer simultaneously delivers a copy of the writing to opposing counsel or to the adverse party if the party is not represented by a lawyer, or orally upon adequate notice to opposing counsel or to the adverse party if the party is not represented by a lawyer.

[5] If the lawyer knowingly instigates or causes another to instigate a communication proscribed by Rule 3.5, Impartiality and Decorum of the Tribunal., a violation may occur.

[6] Direct or indirect communication with a juror during the trial is clearly prohibited. A lawyer may not avoid the proscription of Rule 3.5. Impartiality and Decorum of the Tribunal., by using agents to communicate improperly with jurors. A lawyer may be held responsible if the lawyer was aware of the client's desire to establish contact with jurors and assisted the client in doing so.

[7] A lawyer may on occasion want to communicate with a juror after the jury has been discharged. The lawyer may do so unless the communication is prohibited by law or a court order but must respect the desire of the juror not to talk with the lawyer. The lawyer may not engage in improper conduct during the communication.

[8] While a lawyer may stand firm against abuse by a judge, the lawyer's actions should avoid reciprocation. Fairness and impartiality

of the trial process is strengthened by the lawyer's protection of the record for subsequent review and this preserves the professional integrity of the legal profession by patient firmness.

Rule 3.6 Trial Publicity.

(a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that a person would reasonably believe to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.

(b) Reserved.

(c) Notwithstanding paragraph (a), a lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government entity with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

The maximum penalty for a violation of this Rule is a public reprimand.

Comment:

[1] It is difficult to strike a balance between protecting the right to a fair trial and safeguarding the right of free expression. Preserving the right to a fair trial necessarily entails some curtailment of the information that may be disseminated about a party prior to trial, particularly where trial by jury is involved. If there were no such limits, the result would be the practical nullification of the protective effect of the rules of forensic decorum and the exclusionary rules of evidence. On the other hand, there are vital social interests served by the free dissemination of information about events having legal consequences and about legal proceedings themselves. The public has a right to know about threats to its safety and measures aimed at assuring its security. It also has a legitimate interest in the conduct of judicial proceedings, particularly in matters of general public concern. Furthermore, the subject matter of legal proceedings is often of direct significance in debate and deliberation over questions of public policy.

[2] Special rules of confidentiality may validly govern proceedings in juvenile, domestic relations and mental disability proceedings, and perhaps other types of litigation.

[3] The Rule sets forth a basic general prohibition against a lawyer's making statements that the lawyer knows or should know will have a substantial likelihood of materially prejudicing an adjudicative proceeding. Recognizing that the public value of informed commentary is great and the likelihood of prejudice to a proceeding by the commentary of a lawyer who is not involved in the proceeding is small, the rule applies only to lawyers who are, or who have been involved in the investigation or litigation of a case, and their associates.

[4] Reserved.

[5A] There are, on the other hand, certain subjects which are more likely than not to have a material prejudicial effect on a proceeding, particularly when they refer to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration. These subjects relate to:

(a) the character, credibility, reputation or criminal record of a party, suspect in a criminal investigation or witness, or the identity of a witness, or the expected testimony of a party or witness;

(b) in a criminal case or proceeding that could result in incarceration, the possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by a defendant or suspect or that person's refusal or failure to make a statement;

(c) the performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(d) any opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration;

(e) information that the lawyer knows or reasonably should know is likely to be inadmissible as evidence in a trial and that would, if disclosed, create a substantial risk of prejudicing an impartial trial;
or

(f) the fact that a defendant has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the defendant is presumed innocent until and unless proven guilty.

[5B] In addition, there are certain subjects which are more likely than not to have no material prejudicial effect on a proceeding. Thus, a lawyer may usually state:

- (a) the claim, offense or defense involved and, except when prohibited by law, the identity of the persons involved;**
- (b) information contained in a public record;**
- (c) that an investigation of a matter is in progress;**
- (d) the scheduling or result of any step in litigation;**
- (e) a request for assistance in obtaining evidence and information necessary thereto;**
- (f) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and**
- (g) in a criminal case, in addition to subparagraphs (1) through (6):**
 - (i) the identity, residence, occupation and family status of the accused;**
 - (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;**
 - (iii) the fact, time and place of arrest; and**
 - (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.**

[6] Another relevant factor in determining prejudice is the nature of the proceeding involved. Criminal jury trials will be most sensitive to extrajudicial speech. Civil trials may be less sensitive. Non-jury hearings and arbitration proceedings may be even less affected. The Rule will still place limitations on prejudicial comments in these cases, but the likelihood of prejudice may be different depending on the type of proceeding.

[7] Finally, extrajudicial statements that might otherwise raise a question under this Rule may be permissible when they are made in response to statements made publicly by another party, another party's lawyer, or third persons, where a reasonable lawyer would believe a public response is required in order to avoid prejudice to the lawyer's client. When prejudicial statements have been publicly made by others, responsive statements may have

the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding. Such responsive statements should be limited to contain only such information as is necessary to mitigate undue prejudice created by the statements made by others.

Rule 5.1 Responsibilities of partners, managers and supervisory lawyers.

- (a) A law firm partner as defined in Rule 1.0(l), and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Georgia Rules of Professional Conduct.
- (b) A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Georgia Rules of Professional Conduct.
- (c) A lawyer shall be responsible for another lawyer's violation of the Georgia Rules of Professional Conduct if:
- (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
 - (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

The maximum penalty for a violation of this Rule is disbarment.

Comment:

[1] Paragraph (a) applies to lawyers who have managerial authority over the professional work of a firm. See Rule 1.0(e). This includes members of a partnership; the shareholders in a law firm organized as a professional corporation; and members of other associations authorized to practice law; lawyers having comparable managerial authority in a legal services organization or a law department of an enterprise or government agency; and lawyers who have intermediate managerial responsibilities in a firm. Paragraph (b) applies to lawyers who have supervisory authority over the work of other lawyers in a firm.

[2] Paragraph (a) requires lawyers with managerial authority within a firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that all lawyers in the firm will conform to the Georgia Rules of Professional Conduct. Such policies and procedures include those designed to detect and resolve conflicts of interest, identify dates by which actions must be taken in pending matters, account for client funds and property and ensure that inexperienced lawyers are properly supervised.

[3] Other measures that may be required to fulfill the responsibility prescribed in paragraph (a) can depend on the firm's structure and the nature of its practice. In a small firm of experienced lawyers, informal supervision and periodic review of compliance with the required systems ordinarily will suffice. In a large firm, or in practice situations in which difficult ethical problems frequently arise, more elaborate measures may be necessary. Some firms, for example, have a procedure whereby junior lawyers can make confidential referral of ethical problems directly to a designated senior partner or special committee. See Rule 5.2. Firms, whether large or small, may also rely on continuing legal education in professional ethics. In any event, the ethical atmosphere of a firm can influence the conduct of all its members, and partners may not assume that all lawyers associated with the firm will inevitably conform to the Rules.

[4] Paragraph (c) expresses a general principle of personal responsibility for acts of another. See also Rule 8A(a).

[5] Paragraph (c)(2) defines the duty of a partner or other lawyer having comparable managerial authority in a law firm, as well as a lawyer who has direct supervisory authority over performance of specific legal work by another lawyer. Whether a lawyer has supervisory authority in particular circumstances is a question of fact. Partners and lawyers with comparable authority have at least indirect responsibility for all work being done by the firm, while a partner or manager in charge of a particular matter ordinarily also has supervisory responsibility for the work of other firm lawyers engaged in the matter. Appropriate remedial action by a partner or managing lawyer would depend on the immediacy of that lawyer's involvement and the seriousness of the misconduct. A supervisor is required to intervene to prevent avoidable consequences of misconduct if the supervisor knows that the misconduct occurred. Thus, if a supervising lawyer knows that a subordinate misrepresented a matter to an opposing party in negotiation, the supervisor as well as the subordinate has a duty to correct the resulting misapprehension.

[6] Professional misconduct by a lawyer under supervision could reveal a violation of paragraph (b) on the part of the supervisory

lawyer even though it does not entail a violation of paragraph (c) because there was no direction, ratification or knowledge of the violation.

[7] Apart from this Rule and Rule 8.4(a), a lawyer does not have disciplinary liability for the conduct of a partner, associate or subordinate. Whether a lawyer may be liable civilly or criminally for another lawyer's conduct is a question of law beyond the scope of these Rules.

[8] The duties imposed by this Rule on managing and supervising lawyers do not alter the personal duty of each lawyer in a firm to abide by the Georgia Rules of Professional Conduct. See Rule 5.2(a).

Rule 5.2 Responsibilities of a Subordinate Lawyer.

(a) A lawyer is bound by the Georgia Rules of Professional Conduct notwithstanding that the lawyer acted at the direction of another person.

(b) A subordinate lawyer does not violate the Georgia Rules of Professional Conduct if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

The maximum penalty for a violation of this Rule is disbarment.

Comment:

[1] Although a lawyer is not relieved of responsibility for a violation by the fact that the lawyer acted at the direction of a supervisor, that fact may be relevant in determining whether a lawyer had the knowledge required to render conduct a violation of the Rules. For example, if a subordinate filed a frivolous pleading at the direction of a supervisor, the subordinate would not be guilty of a professional violation unless the subordinate knew of the document's frivolous character.

[2] When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it. However, if the question is reasonably arguable, someone has to decide upon the course of action. That authority ordinarily reposes in the supervisor and a subordinate may be guided accordingly. For

example, if a question arises whether the interests of two clients conflict under Rule 1.7: Conflict of Interest, the supervisor's reasonable resolution of the question should protect the subordinate professionally if the resolution is subsequently challenged.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants.

With respect to a nonlawyer employed or retained by or associated with a lawyer:

- (a)** a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;
- (b)** a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer;
- (c)** a lawyer shall be responsible for conduct of such a person that would be a violation of the Georgia Rules of Professional Conduct if engaged in by a lawyer if:
 - (1)** the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or
 - (2)** the lawyer is a partner in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; and
- (d)** a lawyer shall not allow any person who has been suspended or disbarred and who maintains a presence in an office where the practice of law is conducted by the lawyer, to:
 - (1)** represent himself or herself as a lawyer or person with similar status;
 - (2)** have any contact with the clients of the lawyer either in person, by telephone or in writing; or
 - (3)** have any contact with persons who have legal dealings with the office either in person, by telephone or in writing.

The maximum penalty for a violation of this Rule is disbarment.

Comment:

[1] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer should give such assistants appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

[2] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to establish internal policies and procedures designed to provide reasonable assurance that nonlawyers in the firm will act in a way compatible with the Georgia Rules of Professional Conduct. See Comment [1] to Rule 5.1. Paragraph (b) applies to lawyers who have supervisory authority over the work of a nonlawyer. Paragraph (c) specifies the circumstances in which a lawyer is responsible for conduct of a nonlawyer that would be a violation of the Georgia Rules of Professional Conduct if engaged in by a lawyer.

[3] The prohibitions of paragraph (d) apply to professional conduct and not to social conversation unrelated to the representation of clients or legal dealings of the law office, or the gathering of general information in the course of working in a law office. The thrust of the restriction is to prevent the unauthorized practice of law in a law office by a person who has been suspended or disbarred.