

A PERSONAL COMMITMENT TO JUDICIAL PROFESSIONALISM

Judge Eric Richardson
Fulton County State Court
Atlanta, Georgia

I became a Fulton County State Court Judge in 2013, following a nearly 20 year career as a lawyer. Almost immediately after taking the bench, I started receiving requests from lawyer groups to speak on professionalism. In at least one instance, a request seemed to be directed to me because I was one of the new judges and this was some sort of rite of passage. In every instance, it was assumed that I was inherently qualified to speak on professionalism simply by virtue of being a newly-appointed judge. Indeed, in my career before taking the bench, I attended numerous professionalism CLE seminars and heard various judges recite horror stories about bad lawyer conduct and give off-the-cuff advice about what lawyers should and should not do in their practices.

The fact that I receive deference and respect as a judge means that lawyers feel bound to at least pretend to listen to me. But there is absolutely nothing about being a judge that qualifies me (or any other judge) to write or speak on professionalism. If you have appeared before judges for any length of time, you have probably encountered many examples of unprofessional judicial conduct. In one recent instance of unprofessional judicial conduct, the Fifth Circuit Court of

Appeals removed a judge from a case for showing anti-prosecutor bias. According to the Fifth Circuit

[T]he judge packed the record with hostile remarks against the government and its attorneys. He repeatedly indicated that government attorneys, especially those from Washington, are lazy, useless, unintelligent, or arrogant. At times, these same sorts of comments were directed at the particular government attorneys appearing before him. What's more, he compared the government with ISIS, referred to its attorneys as "thugs," and alluded to the Department of Justice as unethical. These sorts of comments do reveal a level of prejudice—not just skepticism—against the government as a party in this case.

United States v. Khan, 997 F.3d 242, 249-50 (5th Cir. 2021). This is an extreme example that resulted in a public reprimand to a judge. But there are numerous examples of unprofessional judicial conduct occurring in courts nationwide every day that go unaddressed. Why is this so?

The reason judicial professionalism is not enforced is rooted in the distinction between ethics and professionalism. Former Georgia Supreme Court Chief Justice Harold Clarke explained the distinction between ethics and professionalism as follows:

Professionalism differs from ethics in the sense that ethics is a minimum standard ... while professionalism is a higher standard expected of all lawyers.¹

¹ Chief Justice's Commission on Professionalism Annual Report 2009-2011, at p.4, available at <http://www.gabar.org/aboutthebar/lawrelatedorganizations/cjcp/upload/AnnualReport09-11.pdf>.

The Code of Judicial Conduct establishes the basic minimum **ethical** requirements governing the behavior of judges.² The Judicial Qualifications Commission (JQC) investigates alleged ethical misconduct by Georgia judges and makes recommendations to the Georgia Supreme Court regarding sanctions for such misconduct.³ There is no such mechanism for enforcement of judicial professionalism. Even if there existed a formal enforcement mechanism for judicial professionalism, many lawyers would be hesitant to use it for fear that it may adversely impact them in that judge's courtroom in the future.

Given that there are numerous examples of judicial unprofessionalism that go unaddressed, what authority do I have as a judge to speak to anyone about professionalism? It is not enough to have **institutional** authority to speak to you. If I desire to deliver an effective message about professionalism, I must have **moral** authority as well. At the very least, to have any implied moral authority, I must know what it really means to exhibit professionalism and I must exhibit professionalism as a judge. Below I will first discuss professionalism for lawyers generally, then turn my attention to judicial professionalism specifically.

² See Code of Judicial Conduct at 2, available at <https://img1.wsimg.com/blobby/go/d72953e9-9d0a-4693-87a4-cedcc5933b8d/downloads/Code%20of%20Judicial%20Conduct%202020.pdf?ver=1626268807895>.

³ See <https://gajqc.gov/home>.

To address what it viewed as declining professionalism in the field, in 1989 the Georgia Supreme Court created the Chief Justice’s Commission on Professionalism, the first body of its kind in the nation. The primary charge of the Commission was and remains to enhance professionalism among Georgia’s lawyers. In carrying out its charge, the Commission provides ongoing attention and assistance to the task of assuring that the practice of law remains a high calling, enlisted in the service of client and public good.⁴

Ultimately, the Commission developed the Lawyer’s Creed and Aspirational Statement on Professionalism (LCAS). The LCAS were developed to encourage, guide and assist individual lawyers, law firms, and bar associations. They are reproduced below in their entirety and are available on the State Bar of Georgia website.⁵ I commend each of you here to read them in full.

I recognize, as the Commission did, that aspirational professional goals cannot be imposed by edict “because moral integrity and unselfish dedication to the welfare of others cannot be legislated.”⁶ Nevertheless, as the Commission did, I express my hope that judges “will recognize the special obligations that attach to

⁴ See <http://www.gabar.org/aboutthebar/lawrelatedorganizations/cjcp/>.

⁵ See <http://www.gabar.org/aboutthebar/lawrelatedorganizations/cjcp/lawyers-creed.cfm>.

⁶ *Id.*

their calling and will also recognize their responsibility to serve others and not be limited to the pursuit of self-interest.”⁷

Let’s look at the Lawyer’s Creed and see how it may apply to judges.

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.⁸

As applied to judges, obviously we should exercise “good judgment.” But more than that, judges should aspire to be diligent and treat lawyers and all who appear before us as we would want to be treated. This is the golden rule. Former Chief Justice Norman Fletcher was an advocate of this view of professionalism:

I have concluded that professionalism, in a legal sense, is to a great extent practicing the golden rule. It is not – do my opponent in before my opponent does me in, – but rather, it is do unto your fellow attorneys, the judges and society as you would have them do unto you.⁹

⁷ *Id.*

⁸ LCAS ln. 2-5.

⁹ *See*

<http://www.gabar.org/aboutthebar/lawrelatedorganizations/cjcp/professionalism-cle-guidelines.cfm#6>.

Following the golden rule is inherently more difficult for judges because our position insulates us from the repercussions of not following the rule. We can demand respect, candor, and courtesy, and sanction lawyers and parties for lack of such respect, candor, or courtesy, but there is no reciprocal sanction for us if we fail to exhibit those qualities. The imbalance of being able to demand respect without being forced to give respect is inherently corrupting.

Some judges succumb to this power imbalance and develop the condition sometimes referred to as “robeitis.” I have often thought of it as “judicial privilege.” Regardless of the name we attach to it, it exists to some extent with every judge. I have to acknowledge the privilege, and adjust for it. I must often remind myself that respect is a two way street—it is a relationship. As a lawyer, I have been treated disrespectfully by judges, and I have seen other litigants disrespected by judges. I never showed disrespect in return (lest I or my clients be punished for it), but such conduct never engendered respect for those judges; rather the respect was for the harm those judges could do to me and my clients simply by virtue of their position as judge. The only way to ensure that you are truly respected by others is to be respectful toward others.

To my colleagues in the practice of law, I offer concern for your welfare. I will strive to make our association a professional friendship.¹⁰

¹⁰ LCAS ln. 13-15.

As a judge, I have sometimes struggled with this concept. I have to decide cases on the facts and the law. If I have or show concern for the welfare of litigants, will that lead to biased decisions or decisions based on emotions? My answer is, “Not necessarily.” Concern for the welfare of others and empathy are foundational to professionalism, and as judges we should exhibit these qualities. It does not mean that you ignore or twist the law and facts to achieve a solution that preserves others’ feelings or promotes their welfare. Rather, it means placing yourself in their shoes, and acknowledging and understanding the impact that your actions will have on their lives.

Concern for the welfare of others has become paramount in the current pandemic. Even as courts have reopened and judges have attempted to return to court business, the Georgia Supreme Court stressed the importance of judicial professionalism, including sensitivity to the general welfare of persons who engage with the court:

Judges are also reminded of their obligation to dispose of all judicial matters promptly and efficiently, including by insisting that court officials, litigants, and their lawyers cooperate with the court to achieve that end, although this obligation must not take precedence over the obligation to dispose of matters fairly and with patience, which requires sensitivity to health and other concerns raised by court officials, litigants and their lawyers, witnesses, and others.

Fifteenth Order Extending Declaration of Statewide Judicial Emergency, Section VI (June 7, 2021).¹¹

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.¹²

At times, I must “check my judicial privilege,” and remind myself that I am a servant of the people and justice. Being a public servant means recognizing that those who you are serving are of utmost importance. Being a servant also should mean striving to deliver better customer service. But what does good customer service and high professionalism look like in practice?

Some states have formally adopted principles of professionalism for judges. In 2014, the Supreme Court of Ohio Commission on Professionalism released the *Professionalism Dos and Don'ts: Judicial Professionalism*, which recommends guidelines for judges in carrying out their professional responsibilities in the courts.¹³ It begins with a statement on the importance of judicial professionalism:

¹¹ Available at https://www.gasupreme.us/wp-content/uploads/2021/06/15th-SJEO_as-issued.pdf.

¹² LCAS ln. 16-23.

¹³ The *Professionalism Do's and Don'ts: Judicial Professionalism* is available at <https://www.supremecourt.ohio.gov/Publications/AttySvcs/judProfessionalism.pdf>.

As the guardians of our legal system, judges are expected to establish and maintain the highest level of professionalism. The way in which judges manage their dockets, interact with counsel, and preside over their courtrooms sets a standard of professionalism for the attorneys who appear before them. Just as significantly, the words and actions of judges also shape the public's perception of the justice system.¹⁴

Some of the Dos of judicial conduct include:¹⁵

- Be accessible to parties to resolve discovery disputes.
- Be aware of attorneys' professional and personal schedules before setting a court date or denying a timely motion for continuance.
- Take the bench promptly and begin hearings at the scheduled time.
- Be patient and temperate, especially under trying circumstances.
- Be aware of your mood and take necessary breaks to decompress so that you can render the next decision refreshed.
- Make decisions after the conclusion of proceedings in such a manner as will make the litigants feel that their arguments were fully considered.¹⁶

¹⁴ *Id.*

¹⁵ As its title suggests, the *Professionalism Dos and Don'ts* also include Don'ts of judicial conduct. In the spirit of keeping the discussion positive and exhortatory, examples of Don'ts are omitted here.

¹⁶ Many other states have adopted and published similar principles of judicial professionalism. See, e.g., Hawai'i (available at <https://casetext.com/rule/hawaii-court-rules/hawaii-principles-of-professionalism-for-hawaii-judges/rule-principles-of-professionalism-for-hawaii-judges>), and New Jersey (available at <https://www.njd.uscourts.gov/sites/njd/files/Principles%20of%20Professionalism.pdf>). The Seventh Federal Judicial Circuit has included a section on "Courts' Duties to Lawyers" in its published Standards for Judicial Conduct (available at https://www.wied.uscourts.gov/sites/wied/files/documents/Standards_Professional_Conduct.pdf). An excellent (although dated) discussion of judicial

I agree with all of the Dos and Don'ts set out by the Ohio Commission on Professionalism. And, although the Dos and Don'ts were created before the current pandemic, they are fully applicable in the current post-pandemic environment of masks, social distancing, virtual proceedings, and limited availability of jurors for trials.

For example, the Dos and Don'ts urge that judges be available to resolve discovery disputes. The pandemic forced judges to learn and utilize technology that facilitates more convenient and faster resolution of cases. Video conferencing platforms have made it far more convenient to schedule and conduct hearings on discovery disputes, especially in cases involving numerous participants or out-of-town litigants. Moreover, on video conferences, the lawyers and litigants may access the record, look up case law on demand, and share exhibits and other information on screen where all participants can fully view them. Flexibility in allowing virtual hearings exemplifies good customer service.

The Dos and Don'ts urge judges to be patient and temperate, especially under trying circumstances. The current pandemic is a perfect example of "trying circumstances." Judges, court personnel, lawyers, and litigants are learning new technologies and new procedures all at the same time, under heightened personal

professionalism initiatives is found in Peter A. Joy, A Professionalism Creed for Judges: Leading by Example, 52 S. C. L. Rev. 667 (2001), available at <https://core.ac.uk/download/pdf/347466211.pdf>.

and professional stress. New technology is great when it actually works as intended, but it often doesn't. Safety protocols are essential, but they are often confusing. Many litigants are experiencing court for the first time, and using new technologies for the first time. As judges, we should apply the golden rule and give everyone else the patience and temperance we would want to receive if the roles were reversed.

My agreement with the Do's and Don'ts is not enough to have the moral authority to speak on professionalism. There must also be accountability. So I now pledge to all of you that I will do my best to abide by the Dos and Don'ts, and I also ask that all of you who appear before me in the future hold me accountable. If you have appeared before me and found that I failed to live up to the standards of the Dos and Don'ts, I invite you to tell me how I can do better. I cannot guarantee that I will take your suggestions or in fact exhibit better professionalism, but I promise to listen respectfully with an open mind and not hold it against you.

Of course, I can only give you my personal commitment. I cannot speak for any other judges whom you might encounter. So what should you do when you encounter a judge whose conduct falls in that gap between minimal judicial ethics and the aspirational ideals of professionalism? I encourage all of you not to stand silent and simply continue to endure unprofessional conduct from judges. Privately and respectfully, ask your judges how you can have a better relationship

with them in the courtroom (or virtually). If the interactions have taken a negative turn, ask your judges if you can have a “reset” and start fresh with more constructive communications. Do not hesitate to examine your own conduct and be receptive to constructive feedback from your judges. With good intentions, constructive feedback, and consistent effort, I and my fellow judges will truly be worthy of the task of speaking on professionalism.