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# JOURNAL

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# Professionalism After the Statewide Judicial Emergency Order

The Chief Justice's Commission on Professionalism hosted a CLE in September to explore the issue of professionalism following a series of statewide judicial emergency orders.

BY KARLISE Y. GRIER

**On Sept. 28, 2021, the Chief Justice's** Commission on Professionalism hosted a free CLE to explore the issue of professionalism after the statewide judicial emergency order.<sup>1</sup> The CLE program was co-chaired by State Bar of Georgia President Elizabeth L. Fite and by Hon. T. Russell McClelland, vice chair of the Judicial Council COVID-19 Task Force; chair of the Task Force's Civil Subcommittee; past president of the Council of State Court Judges; and chief judge, State Court of Forsyth County. Judges from each class of court, as well lawyers from diverse practice areas from around Georgia participated in the CLE.<sup>2</sup>

Program Co-Chair Judge Russ McClelland gave opening remarks. He traced the history of the previous Statewide Judicial Emergency Orders (SJEOS) and reminded the audience that on March 14, 2020, the Supreme Court of Georgia entered its first SJEOS in response to the COVID-19 pandemic. Approximately 15 months later, the final SJEOS ended on June 30, 2021. McClelland told the audience that at the time of the CLE, the Supreme Court did not anticipate entering future SJEOS since the Supreme Court's authority by statute

[O.C.G.A. § 38-3-60, et seq.] to enter the SJEOS was based on the governor determining that a Public Health State of Emergency existed. When the pandemic first began, McClelland said, "We as lawyers and judges came together to learn how to work in this new environment, how to keep the courts open, how to continue representing our clients, presenting our cases to the court, having the court decide cases and dispose of cases. It took all of us coming together as lawyers and judges and as associations of lawyers and associations of judges to learn how to do this and to operate in this new environment."

"Now we have to learn how to operate without an SJEOS," he said, "and we hope we will not have a need for another SJEOS. Therefore, processes and procedures that were previously provided for under Supreme Court's SJEOS are now up to local courts to do."

McClelland said confidently that he anticipated that the local bench and Bar would work together going forward to determine the processes and procedures that would work best in each local judicial circuit. Finally, McClelland discussed the ongoing work of the Judicial COVID-19

Task Force<sup>3</sup> and resources available from the Administrative Office of the Courts to assist lawyers and judges during the ongoing pandemic.<sup>4</sup>

A panel of judges from each class of court then addressed the audience after McClelland concluded his remarks. The judges explained the work that each class of court was considering in terms of changes to court rules or the Georgia statutes and/or court rules related to the class of court. The purpose of the changes would be to maintain the practices that the Court wanted to continue post-SJEOS. The judges also explained to the audience how the proposed statutory or rule changes helped to preserve and improve the law, the legal system and other dispute resolution processes as instruments for the common good.<sup>5</sup> The judges shared a wide range of ideas for how lawyers and judges could continue to work together post-SJEOS, including holding voir dire in alternate locations other than a courtroom, having smaller calendar calls and more calendars, and continuing virtual proceedings where possible. During the panel, the judges challenged both their colleagues on the bench and lawyers to





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be flexible and creative. The judges also wrote papers to explain in more detail their class of court's thoughts on post-SJEO considerations.<sup>6</sup> Subsequent to the CLE on Oct. 28, 2021, the Judicial Council of Georgia/Administrative Office of the Courts announced that Gov. Brian Kemp had allocated up to \$110 million in federal American Rescue Plan Act funds to address backlogs of court cases, particularly cases involving serious violent felonies.<sup>7</sup>

After the judges spoke, a member from the Georgia Trial Lawyers Association, the Georgia Defense Lawyers Association, the Prosecuting Attorneys Council and the Georgia Association of Criminal Defense Lawyers presented on professionalism during the pandemic. The practitioners panel discussed a wide range of challenges facing lawyers, including the difficulty of balancing the interests of clients with the public good. The panel also shared a variety of professionalism tips. One attorney commented that she wanted to be someone that an opposing counsel wanted to work with again. Another attorney said that we as professionals need to be reasonable, accommodating and respectful. The panelist said, "I check

myself by asking if I stated my position to a judge, would the judge think that my position was reasonable, accommodating and respectful?" Yet another panelist noted that her professional association had begun to examine whether its programs, policies and practices promote equity and inclusion and mitigate biases. A female litigator panelist discussed some of the special challenges she faced as a mother and a trial attorney during the pandemic. A parents' ability to work is directly tied to the schools staying open, having child care and having her children to stay healthy, she noted. She said the profession needed to work to find solutions so that we can keep parents in the litigation field. The panelists agreed that lawyers and judges should continue to look for and retain creative solutions post-SJEO. The practitioners panel shared other thoughts that are included in the papers they wrote for the CLE.<sup>8</sup>

A third and final panel discussed the importance of lawyers engaging in the legislative process. The panel began by discussing the nexus between professionalism and legislative advocacy. One panelist referenced a line from *A Lawyer's*

Creed which says, "I will strive to improve the law and our legal system ... ." He continued by stating that it is a charge to us as lawyers to improve the law. Another attorney advised the audience that when considering legislative advocacy to think about the role which the person is advocating. Are you advocating on behalf of a client, are you advocating as a citizen and voter in a particular legislative district, or are you advocating as a representative of the State Bar of Georgia? The role in which you are advocating impacts how you engage with legislators. He said regardless of your role, however, some professionalism tenants are universal, such as competency, trustworthiness, candor and disclosure of conflicts of interests. Another panelist explained the importance of lawyers helping legislators to understand the ramifications of legislation and offered his opinion that lawyers outside of the metro-Atlanta area could be especially helpful since most of the current legislative leadership lived outside of metro-Atlanta. The panel also discussed the role of judges and the Judicial Council of Georgia in the legislative process. One legislative tip that the audience found particularly

helpful during the CLE was that there is a user's guide to the Georgia Code.<sup>10</sup> The panelists shared a wealth of other important information that is contained in their written materials.<sup>11</sup>

At the conclusion of the panels, President Fite introduced Chief Justice David E. Nahmias. Chief Justice Nahmias told the audience, "Because professionalism is so important to our legal system, especially as it gets larger and more complex, the Supreme Court of Georgia created this professionalism program for Georgia lawyers in 1989. It was the first one in the country although most states have now followed our lead. We want lawyers to focus on not only their minimal ethical duties but on the higher standards of our profession, and we want to provide training and encouragement to do that." He also said that the Supreme Court's May 2020 SJEO emphasized the importance of professionalism among lawyers and judges as the legal system faced the pandemic and all of the consequences that flowed from it. That provision emphasizing professionalism was repeated in every subsequent extension of the SJEO, although the Court also later added a line focused on the obligation to engage in discovery in good faith and in a safe manner because we heard that civil discovery was a particular point of concern. Chief Justice Nahmias also shared that he, former Chief Justice Melton and the other Supreme Court of Georgia justices all tried to emphasize the importance of professionalism at almost every opportunity to address Georgia judges and lawyers about the pandemic. He said the justices realized that in this time of heightened professional and personal stress, it's more important than ever for lawyers and judges to think about and live up to the aspirations of our profession.

Chief Justice Nahmias also addressed some questions lawyers had shared with him about a small number of judges

whose conduct had raised public health concerns. He told the audience we have a pretty good system in place to address those concerns informally, as long as those concerns get communicated to the COVID-19 Task Force, the State Bar leadership, the leadership for the council for the relevant class of court, or to Justice LaGruta, Presiding Justice Boggs or himself. You should feel free to raise safety concerns in that way so we have the opportunity to address them with the judge involved. "With that said," he continued, "I don't want to suggest that we have seen a large number of problems with the professionalism of lawyers or judges. To the contrary—I've been incredibly impressed with the overall high level of professionalism our colleagues at the Bar and on the bench have displayed throughout this challenging time, which we have endured now for almost 18 months. Indeed, your work has often been inspirational."

Chief Justice Nahmias concluded, "When we finally emerge from this pandemic, we are going to be in a new normal. We won't go back to the pre-COVID ways of doing things and we shouldn't do that. We've learned a lot of valuable lessons and we have realized some new and better ways of making our legal system function ... . No matter where we go from here, we are going to need a high level of professionalism from our lawyers and judges to keep our justice system functioning effectively on behalf of the citizens we serve. I thank all of you for being professional ... . I thank you for encouraging professionalism among your colleagues and holding them to a high standard." ●



**Karlise Y. Grier**

Executive Director  
*Chief Justice's Commission  
on Professionalism*  
kygrier@cjcpga.org

## Endnotes

1. See <http://cjcpga.org/092821-cjcp-cle/>.
2. <http://cjcpga.org/wp-content/uploads/2021/09/Speaker-Cover-Page-and-Biographies-for-09-28-21-Website-UPDATED.pdf>.
3. <https://georgiacourts.gov/judicial-covid-19-task-force/>.
4. *Id.*
5. See A Lawyer's Creed and the Aspirational Statement on Professionalism at Lines 58-59, <http://cjcpga.org/wp-content/uploads/2019/07/2-Lawyers-CreedAspStatement-v-2013-Line-Number-with-new-logo-and-seal-v07-25-19.pdf>.
6. See <http://cjcpga.org/wp-content/uploads/2021/09/Judges-09-28-21-Written-Materials-for-Upload-to-Web.pdf>.
7. See <https://jcaoc.georgiacourts.gov/wp-content/uploads/sites/6/2021/10/Press-Release-ARPA-funding-for-Judicial-Branch.pdf>.
8. See <http://cjcpga.org/wp-content/uploads/2021/09/Practitioners-Panel-09-28-21-Written-Materials-for-Upload-to-Web.pdf>.
9. See A Lawyer's Creed and the Aspirational Statement on Professionalism at Lines 20-21, <http://cjcpga.org/wp-content/uploads/2019/07/2-Lawyers-CreedAspStatement-v-2013-Line-Number-with-new-logo-and-seal-v07-25-19.pdf>.
10. See [https://www.legis.ga.gov/api/document/docs/default-source/lc-resources/user's-guide-to-the-official-code-of-georgia-annotated1.pdf?sfvrsn=bd4e3b0f\\_2](https://www.legis.ga.gov/api/document/docs/default-source/lc-resources/user's-guide-to-the-official-code-of-georgia-annotated1.pdf?sfvrsn=bd4e3b0f_2).
11. See <http://cjcpga.org/wp-content/uploads/2021/09/Legislative-Panel-09-28-21-Written-Materials-for-Upload-to-Web.pdf>.