

## **Mercer University School of Law Professionalism Orientation 2022**

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Welcome to Mercer Law School. You will find that in Georgia, and at Mercer in particular, we place a great deal of emphasis on helping you understand and cultivate the ethical and professional virtues that you will need as a lawyer. That begins in orientation, with the professionalism orientation sponsored by the Professionalism Committee of the State Bar of Georgia.

You will find in your orientation materials welcome letters from the Chief Justice of the Georgia Supreme Court and the President of the State Bar of Georgia. Read those. They are evidence of the commitment in this state to welcoming you to the profession and to helping you develop into the professional you want to become and that clients, the courts, and the public need.

Here is how the professionalism orientation will work. On Friday of orientation week, you will visit the courthouses in Macon and be welcomed by one or more judges. You will be in professional attire, dressed as a lawyer would dress to appear in court. You will remain in professional attire for the afternoon professionalism orientation. There will be a brief speech, and then you will stand and recite the Mercer Law School Student Creed. The Student Creed is in your orientation materials. You should read it now and have it in front of you during that ceremony. You will then disperse to have a small group discussion with volunteer lawyers and judges about one or more of the hypothetical situations in this document. Your active participation in the discussion will be expected. Prepare accordingly. Then there will be an informal reception for all students and group leaders.

We recognize that you come to these hypotheticals without the benefit of any formal training in legal ethics or professionalism. You will learn about these topics in detail, but for now just read the Georgia Lawyer's Creed and Aspirational Statement on Professionalism, which is being provided to you with this document. The Supreme Court of Georgia first approved the Lawyer's

Creed and Aspirational Statement in 1990, and it is still the foundational document for professionalism in Georgia.

You will see in the Lawyer's Creed that lawyers owe duties to clients, the courts, the public, to the profession, and to their fellow lawyers. It is important to be able to identify those duties, but it is easier to recite them in the abstract than to implement them in a particular situation. Sometimes the duties conflict. What if being faithful to your client means being uncooperative with opposing counsel? What if following the law requires you to act not in your client's best interest? What if helping your client harms the public? Where duties conflict, lawyers need good judgment to chart a course.

The problems that follow are simplified versions of problems of judgment (also known as "practical wisdom" problems) that you will deal with in depth in the spring in our Legal Profession course. They call upon you to exercise good judgment in complex situations. Put yourself in the shoes of the lawyer in the problem and be ready to explain what you would do, why you would do it, and how you would go about it. Refer as necessary to the Georgia Lawyer's Creed and Aspirational Statement on Professionalism. Approach the discussions prepared but with an open mind. Listen to your group leaders and to your classmates. They may have perspectives that you do not have.

One last note: you will learn much more about this, but I want to leave you with this thought. You all came to law school because you are searching for meaningful careers, in which your work will have meaning for others and meaning for you. The good news is that the key to both of those things is a deep understanding of, and firm commitment to, the values of the profession that go by the name "professionalism." Let the journey to that understanding and commitment begin now.

--Professor Longan

### Problem #1: The Billing Partner and the Associate

You are an associate at a law firm and have been assigned to work on a multi-million-dollar case in which your firm is defending a Fortune 500 corporation. There are three lawyers in your firm working on the case. The Senior Partner has overall “big-picture” strategic responsibility for the matter but is not deeply involved on a daily basis. The Junior Partner makes the tactical decisions day-to-day. Your role as the Associate is to implement the decisions that the more senior lawyers make.

A crucial part of the case is the testimony that the plaintiff’s expert witness will give. You are assigned to take the deposition of the expert. A deposition is sworn testimony under oath, usually given in a lawyer’s conference room. You prepare diligently for the deposition, spending 40 hours studying the documents produced in the case and getting up to speed on the expert’s field of expertise. The deposition goes well, and you obtain admissions from the expert that enable your firm to have the judge exclude the expert’s testimony. Because the expert’s testimony is excluded, your client obtains a summary judgment, which is victory in the case by order of the judge without a trial.

Several weeks after the judge renders the summary judgment, you are walking down a hallway in your firm’s offices. An administrative assistant calls you over to his desk and shows you the bill that has been prepared for your Fortune 500 client. As an associate, you are not typically involved in billing clients, but the administrative assistant points out that the client is to be billed for 100 hours of your time in preparation for the expert’s deposition. You know you only spent 40 hours, and you quickly go to your office and confirm from your records that you reported those 40 hours accurately to the Senior Partner, who oversees billing the client.

What should you do? Be sure to think through various scenarios about what may be happening and why and anticipate what reactions there may be to whatever course of action you take.

## Problem #2: Just a Small Favor for an Old Friend

You represent a client in a civil case in which the other party is represented by Jay Lillard, a friend and law school classmate. You know that Jay has been in recovery from alcoholism for several years, and he has shared with you some of his experiences with rehab and Alcoholics Anonymous. He had been doing well, but over the last several months you noticed that the quality of his work deteriorated. For example, he showed up for a court hearing late, looking disheveled. Another time, he missed a deadline to respond to some written discovery you had served on him; when you reminded him, he was apologetic and asked for an extension. You gave him the extension, but his responses came in after the extended deadline and were incomplete.

Your trial in Jay's case is on the docket two weeks from today. The judge has already entered the pretrial order, which specifies who the witnesses will be. You know that under the law the pretrial order can only be amended by consent of all parties or on a showing of "manifest injustice." That prohibition specifically includes the identification of expert witnesses. Jay calls you to say that he wants to amend the pretrial order by agreement to add an expert witness that he had not disclosed before. He tells you, "My case is basically over without this witness." You agree – you were surprised that he had not named an expert before. When you press him, Jay finally tearfully admits that he relapsed some months ago and that as a result of his drinking he forgot to disclose his expert. "I forgot" will not convince the judge to allow the expert. Jay asks you to agree to amend the pretrial order "as a favor to an old friend who's fallen on hard times." Sad to say, Jay's speech on this call is slurred. It is 10:00 a.m., and your friend is drunk.

What should you do?

Problem #3: The Scrivener's Error

You have been representing Mr. Smith in a contentious divorce case for several years. Mrs. Smith is represented by counsel. You have had many dealings with this attorney over the years, and frankly you do not like him. You also have a low opinion of his competence and his professionalism.

The clients have agreed to split their property 50/50, with your client Mr. Smith "buying out" Mrs. Smith for her half of the property. The parties have not, however, been able to agree on the valuation of certain real estate that is jointly owned. Mrs. Smith has developed a strong view, without much evidence, that one particular property (the so-called Holt Property) is worth \$550,000. You and your client have an appraisal of the Holt Property that shows its value as \$425,000.

You receive from the attorney for Mrs. Smith a document entitled "Second Proposal For A Basis of Settlement -- Smith v. Smith" which, among other things, shows a suggested figure of \$70,081.85 for the value of Mrs. Smith's share in the Holt property. This value was calculated by a computation set forth in the proposal. This is the computation:

Value	\$550,000.00
Less encumbrance	<u>-308,362.99</u>
Net Value	\$141,637.01
Mrs. Smith's 50% share	\$70,081.85

You note the arithmetical errors in this computation. You also note that, if instead the parties used the appraisal you and your client obtained, Mrs. Smith's share would be:

Value	\$425,000.00
Less encumbrance	-308,362.99
Net Value	\$116,637.01
Mrs. Smith's 50% share	\$58,318.51

You share Mrs. Smith's offer with Mr. Smith. He says that he wants to accept the \$70,081.85 figure. It is more than he thinks he should have to pay, but he is willing to pay the difference to be done with the divorce. He would not agree to pay the amount that Mrs. Smith would be demanding if her attorney had done the math correctly. Mr. Smith says, "accept the offer – and say nothing about the error." Assume it would not be fraud to accept the offer. What should you do?