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THE LEGAL

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# The Voice of Experience

Georgia lawyers should heed the voice of experience that reminds them that one aspect of professionalism is to fulfill their role in defining part of the character of our society.

BY KARLISE Y. GRIER

I recently had the pleasure of conducting a professionalism training for a voluntary bar association. One of the reasons I enjoy leading these trainings is because I have the opportunity to meet and learn from wonderful lawyers from around the state and from various practice areas. This was the case most recently. During the professionalism CLE training, the attendees and I discussed a hypothetical problem, which asked lawyers to consider a fact pattern as follows:

Your client is marketing a property for sale and there is only one bidder; nevertheless your client wants you to try to help them get the price up by speaking to the attorney for the one bidder. Your client wants you to lead opposing counsel to believe that there are lots of competing bids, but if the bidder goes up in price, the bidder will win the bid.<sup>1</sup>

My question to the lawyers who attended the CLE was: “Would you lead opposing counsel to believe that there are lots of competing bids?” Attorneys shared a variety of views regarding the approach to the problem—as did the attendees of the CLE when the Commission first used the hypothetical problem in February 2022. What captured my attention during this in-person CLE, which allowed for interactive engagement with an audience I could observe, was how the responses of the attendees varied, in part, based on how long the

lawyers who answered the question had practiced law.

One of the answers that most surprised me came from seasoned attorney John M. Clark, who has been practicing law for 43 years. He responded by saying that he would consider, and ask his client to consider, if the action the client proposed was really in the client’s best interest. It was an intriguing question that led to some thoughtful discussions among the CLE attendees. In the past, when I have conducted CLEs using this question, I have asked attorneys to contrast what might be allowed by the rules of ethics—the minimum standards that lawyers are required to follow—with the professionalism aspirations—the higher ideals that lawyers are expected to voluntarily follow.<sup>2</sup> Comment 2 to Rule 4.1 of the Georgia Rules of Professional Conduct (Georgia’s Ethics Rules) states:

This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of *material fact*. Comments which fall under the general category of ‘puffing’ do not violate this rule. Estimates of price or value placed on the subject of a transaction and a party’s intentions as to an acceptable settlement of a claim are in this category, and so

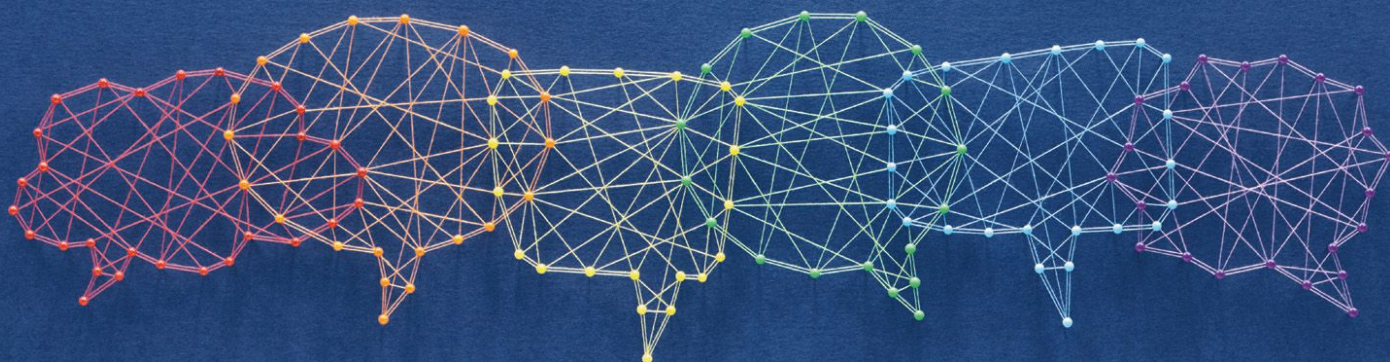
is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.”<sup>3</sup> (emphasis added)

I advise lawyers to contact the Ethics Helpline (404-527-8741 or 800-682-9806) if they want guidance about the application of Georgia’s Ethics Rules to a particular fact pattern.<sup>4</sup>

Often times, when I have discussed the hypothetical problem, the discussions have centered on the meaning of professionalism in the context of the hypothetical. We have also discussed *if* the conduct were considered as puffing, what would be the possible professionalism consequences for the lawyer, if the lawyer did what the client asked. One of the consequences that is always considered is the impact on the lawyer’s reputation. Reminding lawyers about the importance of their reputation and how easy it is to lose their reputation is an important conversation. During a Law School Orientation on Professionalism in 2019, Presiding Judge Stephen Louis A. Dillard of the Court of Appeals of Georgia gave advice to incoming law students about reputation that also remains a great reminder for lawyers. He said, “The one thing you have as a lawyer is your reputation. ... It takes a lifetime to build up your reputation and only a moment to lose it. ... No client is worth losing your reputation.”<sup>5</sup>

Clark’s question about whether the action was in fact in the client’s best interest presented another avenue for discussing





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this hypothetical problem. His question reminded me that while at first blush the hypothetical problem may seem to pit the client's objectives against the attorney's ethics rules or professionalism aspirations, this is perhaps not true. Possibly what is in the client's best interest and the lawyer's best interest are the same—not engaging in misleading conduct regardless of whether it is puffing. Sometimes, when we as lawyers are in the midst of working on behalf of our clients, we forget that we are not only called upon to serve as advocates but also as counselors. Georgia's General Aspirational Ideals phrase the reminder about lawyers as counselors in this manner: "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."<sup>6</sup> Clark's experienced voice and wise counsel echoed what the Supreme Court of Georgia said in 1992 when the Court adopted A Lawyer's Creed and the Aspirational Statement on Professionalism: "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."<sup>7</sup> I hope Georgia lawyers

will continue to embrace their roles as counselors, as well as advocates, and that they will heed the voice of experience that reminds us that one aspect of professionalism is to fulfill our role in defining part of the character of our society. ●



**Karlise Y. Grier**

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

## Endnotes

1. Thank you to Angela Hsu who drafted the original version of the hypothetical problem for the Commission's February 23, 2022, Pop-Up CLE: Perspectives on Professionalism and Ethics. See <http://cjcpga.org/022222-cjcp-cle/> (Last visited Oct. 14, 2022).
2. See Harold G. Clarke, *Professionalism: Repaying the Debt*, 25 Ga. St. B. J. 170, 173 (1989), <http://cjcpga.org/wp-content/uploads/2022/02/25-GSBJ-170-1989-Professionalism-Repaying-the-Debt.-Harold-Clarke-ethics-minimum.pdf> (ethics is a minimum standard which is required of all lawyers while professionalism is a higher standard expected of all lawyers) (Last visited Oct. 14, 2022).
3. State Bar of Georgia, State Bar Handbook, Ethics and Discipline, Current Rules, Rule 4.1, <http://www.gabar.org/Handbook/index.cfm#handbook/rule289> (Last visited Oct. 14, 2022).
4. Lawyers who would like to discuss an ethics dilemma with a member of the Office of the General Counsel staff should contact the Ethics Helpline at 404-527-8741, 800-682-9806 or log in and submit your question by email. State Bar of Georgia, Ethics and Discipline, <https://www.gabar.org/barrules/ethicsandprofessionalism/index.cfm>.
5. To view Judge Dillard's 2019 comments to incoming Mercer 1L students, discussing their reputation, visit <https://www.dropbox.com/s/9tayqrs93j1nui/Judge%20Dillard%20Reputation.mp4?dl=0>.
6. Chief Justice's Commission on Professionalism, *A Lawyer's Creed and Aspirational Statement on Professionalism* at Lines 67-70, <http://cjcpga.org/wp-content/uploads/2019/07/2-Lawyers-CreedAspStatement-v-2013-Line-Number-with-new-logo-and-seal-v07-25-19.pdf> (Last visited Oct. 14, 2022).
7. Chief Justice's Commission on Professionalism, *A Lawyer's Creed and Aspirational Statement on Professionalism* at Lines 33-35, <http://cjcpga.org/wp-content/uploads/2019/07/2-Lawyers-CreedAspStatement-v-2013-Line-Number-with-new-logo-and-seal-v07-25-19.pdf> (Last visited Oct. 14, 2022).