

Judge Holly W. Veal

The Lawyer as Witness in Criminal Law Cases

Friday, December 13, 2024,

9:30 a.m. – 12:00 Noon

The Lawyer's Threefold Responsibility: Navigating Testimony with Ethical Integrity

Introduction

"A lawyer is a representative of clients, an officer of the legal system and a citizen having special responsibility for the quality of justice." This foundational principle from the Preamble to Georgia's ethics rules provides a profound framework for understanding the complex responsibilities of attorneys, particularly when called to testify in criminal proceedings.

The Tripartite Role of the Lawyer

The opening statement of the Preamble illuminates three distinct yet interconnected responsibilities that become especially critical when a lawyer transitions from advocate to witness:

1. Representative of Clients

In ineffective assistance of counsel (IAC) hearings and Brady claim proceedings, lawyers must balance their role as client representatives with their broader ethical obligations. This requires:

- Protecting client confidentiality
- Maintaining client trust
- Providing honest testimony that does not compromise the client's legal interests.

2. Officer of the Legal System

As an officer of the court, a lawyer testifying has a paramount duty to:

- Uphold the integrity of the judicial process.

- Provide truthful, comprehensive testimony.
- Prioritize the pursuit of justice over personal or institutional reputation.

3. Citizen with Special Responsibility

The unique position of lawyers as citizens with a "special responsibility for the quality of justice" demands:

- Extraordinary commitment to ethical conduct
- Proactive engagement in maintaining the judicial system's integrity.
- Willingness to critically examine professional performance.

Navigating Ineffective Assistance of Counsel Hearings

When confronted with IAC proceedings, lawyers must harmonize their threefold responsibilities:

Client Representation

- Protect client confidentiality while maintaining testimonial honesty.
- Ensure that testimony does not inadvertently prejudice the client's legal interests.

Systemic Responsibility

- Provide objective, comprehensive assessment of legal representation.
- Contribute to systemic understanding and improvement of legal practice.

Citizen's Ethical Duty

- Demonstrate transparency and accountability.
- Reflect on professional performance with humility and integrity.

Brady Claim Hearings: A Test of Comprehensive Responsibility

In Brady claim proceedings, the tripartite role becomes even more pronounced:

- As a client representative, protect privileged information.
- As a court officer, ensure full disclosure of relevant information.
- As a citizen, contribute to the pursuit of justice and systemic fairness.

Practical Manifestation of Ethical Responsibilities

Implementing these interconnected roles requires:

1. **Rigorous Preparation**
 - Comprehensive review of case materials
 - Understanding the full scope of testimonial responsibilities
 - Consulting with legal counsel if necessary
2. **Testimonial Integrity**
 - Provide clear, direct, and truthful testimony.
 - Maintain professional composure.
 - Prioritize systemic integrity over personal comfort.
3. **Continuous Professional Reflection**
 - View testimony as an opportunity for growth
 - Embrace accountability.
 - Contribute to the ongoing improvement of legal practice.

Conclusion

The first sentence of the Preamble to Georgia's ethics rules is not merely a statement but a profound ethical blueprint. For lawyers called to testify, it represents a holistic approach to professional responsibility that transcends individual moments of legal practice.

By simultaneously embodying the roles of client representative, court officer, and responsible citizen, lawyers can transform challenging testimonial experiences into opportunities for justice, professional growth, and systemic improvement.

The true measure of legal professionalism lies not in perfection, but in the consistent, good-faith effort to honor these interconnected responsibilities with unwavering integrity, compassion, and commitment to the highest ideals of justice.

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ⁱ This paper copies and takes into consideration *A Lawyer's Creed and the Aspirational Statement on Professionalism*. See <https://cjcpga.org/wp-content/uploads/2019/07/2-Lawyers-CreedAspStatement-v-2013-Line-Number-with-new-logo-and-seal-v07-25-19.pdf> and An article written by former Chief Justice Harold Clarke found here: <https://cjcpga.org/wp-content/uploads/2022/02/25-GSBJ-170-1989-Professionalism-Repaying-the-Debt.-Harold-Clarke-ethics-minimum.pdf> and the guidance on planning a professionalism CLE found <https://cjcpga.org/wp-content/uploads/2018/07/4-Professionalism-CLE-Planning-Guide-vJuly-2018.pdf>