

Professionalism and the Judiciary: Lessons Learned As Georgia Approaches 20 Years of Institutionalizing Professionalism

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Introduction

What initiatives and activities can commissions and committees, created under the auspices of the judiciary, do to promote professionalism in the legal profession? To answer that question, a review of the history and operations of the Georgia Chief Justice's Commission on Professionalism, I believe, provides a fine illustration of a judicially-created entity with a proven record of promoting professionalism among lawyers. Created in 1989, the Georgia Chief Justice's Commission on Professionalism ("Commission") was the first body of its kind in the country, and to our knowledge, the world. The Georgia Commission has woven the professionalism effort into the institutional fabric of the State Bar of Georgia, which I believe is among the most progressive and effective state bar associations in the United States. The Commission has even inspired the American Bar Association and numerous other state, local and international groups of lawyers to focus on professionalism.¹

At the outset, the question can be begged if, by its very nature, the subject of professionalism

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¹In 1998, a full decade later than in Georgia, the American Bar Association's president Jerome J. Shestack focused his administration on professionalism and the ABA issued its monumental report, *Promoting Professionalism* (1998). President Shestack defined professionalism as: "A professional lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good." citing *Teaching and Learning Professionalism*, published by the Professionalism Committee of the Section of Legal Education and Admissions to the Bar (Aug. 1996). President Shestack articulated six (6) components "that are the essence of that definition. They are:

- ethics and integrity and professional standards
- competent service to clients while maintaining independent judgment
- continuing education
- civility
- obligations to the rule of law and the justice system; and
- pro bono service." *Promoting Professionalism*, supra at 3.

See, American Bar Association Section of Legal Education and Admissions to the Bar, *Report of the Professionalism Committee on Teaching and Learning Professionalism* (August 1996), published also in 112 F.R.D. 243 (1987) ("Stanley Commission).

lends itself to institutional direction? Some would say that professionalism flows from the moral development of the individual practitioner and develops only when the practitioner feels the need for moral improvement. In today's popular terminology, that sense is often characterized by the "you can't legislate morality" idea. The Georgia professionalism effort does not entirely subscribe to this line of thought and takes the position that lawyers need the help of an appropriate institution to guide the formation of a voluntary desire to act professionally. Moreover, from more than thirty years of research studies we know that one's moral development can be guided, shaped, and nurtured.

To look at the role of the judiciary in supporting professionalism of lawyers, I will first look at the essential elements Georgia's bench and bar deems necessary for a successful professionalism movement. Second, I offer my review and analysis of why and how the Georgia Commission started, along with the issues and areas that were focused on as the organization developed. Third, I will address how professionalism in Georgia's bench and bar became institutionalized through bar and court programs and activities that morphed into Georgia's brand of professionalism and I offer an assessment of its impact on the bench, bar and greater community. Throughout this paper and in the final analysis, I will review the involvement of the judiciary in Georgia's professionalism movement.

Four Essential Elements of an Effective Professionalism Effort

We in Georgia have found that there are four (4) essential elements of an effective professionalism effort:

1. The support and active involvement of the Supreme Court of Georgia;
2. A strong working relationship between the state Supreme Court and the organized bar;
3. The support of the state's law schools; and
4. The dedication of administrative resources to this effort.

The Supreme Court's involvement is essential because it is the institution of the legal profession which has the power to invoke the most interest and participation of lawyers and judges. It is the highest court in the state. It has the most influence and clout with Georgia attorneys.

The State Bar of Georgia shares some regulatory oversight of Georgia lawyers with the Supreme Court because the Bar's Office of General Counsel handles prosecution of lawyer discipline. The Bar has its own Professionalism Committee which developed the law school orientations on professionalism. The Commission occupies space at the State Bar Headquarters where the action is, so to speak, where bar committees and sections meet, rather than in the Judicial Building where the Supreme Court is housed, which can seem somewhat isolated to members of the Bar. Many local and specialty bar associations also have healthy professionalism projects.²

²The Atlanta Bar Association, the largest of Georgia's local and voluntary bars with a membership of more than 6,000 lawyers, has professionalism projects such as "Take Your Adversary to Lunch" and mentoring programs.

Law schools are involved in many ways, so that law students are brought to an awareness of the personal and professionally challenging nature of ethics and professionalism issues which arise in both law school and the daily practice of law. They are engaged as soon as they enter law school, during orientation, and while in law school, through infusion of professionalism topics in the curriculum. Law school faculty and administrators may serve as Commission members and work with the Commission through jointly-sponsored activities.

Dedication of administrative resources – professional staff, office space and support – are clearly essential to provide the requisite institutional basis for stability and continuity of a professionalism effort. In Georgia, we have found these components work, historically and practically, to foster the institutionalization of professionalism.

The Conception of the Chief Justice’s Commission on Professionalism

Why was Georgia the first state to establish a Chief Justice’s Commission on Professionalism? According to a founder, A. James Elliott, 1988-1989 president of the State Bar of Georgia, now professor and Associate Dean of Emory School of Law, the “timing was right,” it was the “perfect storm,” and “everyone thought it was a great idea.”³ The unique set of facts and the people involved in the circumstances leading to the creation of Commission provide an understanding of why and how the Commission was conceived and developed. I believe it is an interesting story, worthy of in-depth review and analysis.

Since 1985, Georgia’s Supreme Court and State Bar leadership were heavily involved in an ongoing project to promote professionalism among the state’s lawyers. In 1985-1986, State Bar President Jule Felton appointed a Special Committee on Professionalism to recommend ways in which the Georgia Bar could promote professionalism among its members.⁴ In 1986, the American Bar Association ruefully reported that while lawyer observance of the ethical rules governing their conduct was on the rise, lawyers’ professionalism, by contrast, was in steep decline.⁵ Also in 1986, President James T. Laney of Emory University delivered a lecture on “Moral Authority in the Professions.” In that lecture, President Laney not only expressed concern about the decline in moral authority of all the professions, he focused on the legal profession because of the respect and confidence in which it has traditionally been held and because it is viewed by the public as serving the public in unique and important ways. President Laney expressed his concern that the loss of moral authority seriously affects the larger society and the legal profession.

Given these challenges, the Supreme Court of Georgia and the State Bar of Georgia embarked on a long-range project to raise the professional aspirations of Georgia lawyers. This effort started with a meeting at Emory in 1988 and resulted in the Supreme Court of Georgia’s formation of the Chief Justice’s Commission on Professionalism in 1989.

³Dean A. James Elliott, *Conversation with Author* (Mar. 6, 2008).

⁴That Special Committee is now the Standing Committee on Professionalism.

⁵American Bar Association Commission on Professionalism, . . . *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism*, at 7 (1986).

The meeting, known as the “Consultation on Professionalism and the Law,” was convened by then Georgia Supreme Court Chief Justice Thomas O. Marshall on March 31, 1988. Dean Elliott says the “driving forces” on the Georgia Supreme Court behind this gathering were Chief Justice Marshall, formerly a practitioner in South Georgia, and Justice Charles Weltner, “the intellectual force on the court.”⁶ On one hand, even in 1988 Georgia could be characterized as a “Bible Belt” state – one with strong Christian leaders, ties and values. On the other hand, Georgia was known throughout the nation and the world as the “Cradle of the Civil Rights Movement,” having spawned Rev. Dr. Martin Luther King, Jr. and other civil rights luminaries.

This Consultation was hosted by President James T. Laney of Emory University.⁷ President Laney was credited with being “the creative force behind this meeting” because of his speech the prior year at Emory Law School on “Professions and Moral Authority.” Laney characterized himself as “a layman with no direct knowledge except I observe things within the university and as a citizen.”⁸ Yet, President Laney was no ordinary layman. He was, perhaps, a true renaissance man and scholar, having been Dean of the School of Religion at Emory, later serving as a United States Ambassador, and described as a “theologianeconomist.”⁹

What did President Laney say in his keynote address, starting with the perceived ills of the legal profession? He premised his remarks, as follows:

*... we need to recover somehow the law's larger jurisdiction, the larger range and concern of the law in an age of specialization. Through specialization and through the complexities of modern life, there has been a narrowing of the self-understanding of what law is about. It may reflect the all-pervasive influence of a view of the law as simply a social construct derived from no higher or more fundamental authority. But even if we are unwilling to acknowledge a religious or theological base of law, I still think it is important to look at the larger context for legal thinking from a historical perspective.*¹⁰

⁶See, *New Georgia Encyclopedia: Charles Weltner* (1927-1992), available: <http://www.georgiaencyclopedia.org/nge/Article.jsp?id=h-2918&hl=y> (accessed Mar. 18, 2008). Justice Weltner's lineage was described as: “He was the great-great-grandson of Joseph Henry Lumpkin, the first chief justice of Georgia's supreme court, and the great-grandson of Thomas R. Cobb, a Confederate general.” He was known as a moderate and respected Georgia leader and outspoken opponent of segregation. Justice Weltner was “open-minded,” says Elliott, having effectively relinquished his Congressional seat by refusing to sign a loyalty oath to support and perpetuate racial segregation propounded by then Georgia Governor Lester Maddox.

⁷Mr. Forrest M. Brown, court reporter, transcribed the proceedings, *A Consultation on Professionalism and the Law* (ed. Dr. Michael L. Goldberg, Special Consultant to the Supreme Court). “Immediately following the consultation, Chief Justice Marshall wrote to the participants requesting their reactions to the proceedings.” Excerpts from the participants' responses were included in the published proceedings, hereinafter referred to as *Consultation*.

⁸*Id.* at 4.

⁹Reginald Stuart, Education; Atlanta, N.Y. TIMES, Dec. 8, 1981, available: <http://query.nytimes.com/gst/fullpage.html?res=9D03EEDD143F93BA35751C1A9679482>, (accessed Mar. 7, 2008). See also, F. Stuart Gully, *The Academic President as Moral Leader: James T. Laney at Emory University, 1977-1993* (Mercer U. Press, 2002).

¹⁰*Consultation*, at 4.

President Laney discussed the functions of the law as identified by the sixteenth century reformers based on the laws in Biblical times, through the early Christian church, to the later part of the nineteenth century. The three historical functions of the law he identified are: 1) the teaching function, 2) implementation of the law or application of the law, and 3) the exemplary use of the law, law as an incomplete picture of an ideal society for which we are always striving.¹¹

Laney described the teaching function of the law, as follows:

Deuteronomy says we are to write the law on our hearts. The law is to become second nature, and we are to be brought up under the tutelage of the law and its authority, submitting to its direction and governing our lives by its precepts. Of course, the function of the law was to civilize. It was to raise up a law-abiding people, people who would not just keep the law but honor it, people who realized that the law stood for protection of everyone, ensuring order in society, rights, and due process.

Laney found the teaching function, the highest function of the law.

In describing the second function of law – implementation and application of the law – President Laney said:

This function is the one that comes closest to us: it is the rule of the law and its exercise through authorities, magistrates, and courts with all the sanctions, judgments, and findings that go with it. This is the process of making law real and universal. In the church, ironically, this was the accusatory function. The law was supposed to bite and cause a guilty conscience that would lead to the amendment of one's life.

Laney's concept of this function of law appears to substantiate why the Commission took the approach that it could attempt to "legislate" professionalism. Thus, professionalism would include behavioral goals, perhaps lofty ones, certainly aspirational goals beyond the ethical standards which were deemed baseline.

Laney completed the triad of functions of the law by describing the third function as "the exemplary of the law, law as an incomplete picture of an ideal society that we are always striving for."¹² He expanded:

We might call this aspect of the law "the acid code of justice." Though it is never achieved, it always judges the law and the adequacy of its application, not merely by precedent but by aspiration, or in other words, by what we know ought to be. At this level, we encounter the prophet who calls the inadequacy or the injustice of the law

¹¹*Id.* at 4.

¹²*Id.* at 5.

*into account in the name of a higher law.*¹³

Laney implored the participants to recognize that all three functions of the law are important, not just the second one – application and implementation of the law – which seems to be the sole focus of the legal profession today, not by intent but by evolution. Here, he found the law had been developed in society to what was useful, by a concentration of power, “accompanied by the need for the kind of legal advice that will enable things to get done. But, although what gets done may be legal, it may not necessarily be just.”¹⁴ He addressed the question whether the values that are sought after in hiring new attorneys – the abilities to get the job done skillfully, expediently and profitably – are the best values, and whether there is an assumption that the new attorney has good character. The effect on the legal profession, he opined, was that the legal profession is not exemplary or educative, but only functional and applicative. Thus, he questioned whether the virtues developed during the course of a “successful” career - are those that “place the highest premium on efficiency. He asked, “where in our society other complementary or even countervailing values might be engendered?”¹⁵ He suggested that lawyers consider addressing the questions outside the formal academic setting.

What did Laney suggest the legal profession do? Laney suggested that the bench and bar “raise up an elite.” This legal elite, he suggested:

*[would not be] a group intent on protecting its own privileges, but rather one that takes on a heavier responsibility to keep pushing against the narrowing tendencies of the law that economic pressures are forcing upon us. It would be an elite that would understand and repeatedly uphold the moral dimensions of the law and speak out in their behalf. Perhaps, what I’m saying is that the legal profession itself needs a group to exercise the teaching function of the law to a profession intent upon the application function only. And maybe, if the occasion arises, that group could even exercise the application function, the exemplary one, and thereby take a prophetic role.*¹⁶

Following President Laney’s remarks, the group focused on considering the three sets of relationships inherent in the practice of the law: lawyer to court, lawyer to lawyer, and lawyer to client. These relationship issues were addressed by three bar leaders and the remarks were summarized by Judge Griffin Bell, who assisted the group with discerning common threads and potential specific actions that could lead to some real results.

What did Cubbedge Snow, a Macon lawyer, President of the State Bar of Georgia in 1975 and representative to the American Bar Association, say about the lawyer to court relationship? He addressed three topics: 1. judicial conduct or “what lawyers believe ought to be professional conduct on the part of judges in their relationships with the bar;” 2. “senior lawyers providing assistance to

¹³*Id.* at 8.

¹⁴*Id.* at 6-7.

¹⁵*Id.* at 7-8.

¹⁶*Id.* at 8.

younger lawyers who face tough ethical problems and hard professional conduct problems;” and 3. “commitment to a cause transcending self-interest in light of the growing commercialization of the law.”¹⁷

On the issue of judicial professionalism, Snow opined:

*It has been my experience that judges who lack confidence in themselves are the ones who cannot command the respect of the bar. Truly great judges treat everyone fairly and equally without ever threatening or intimidating any lawyers, young or old.*¹⁸

Another issue Snow addressed was the increased commercialization and economic pressures of today’s law practices. He noted that the Supreme Court in its landmark decision, *Bates v. Arizona*,¹⁹ allowing lawyer advertising with regulation by the profession, recognized the legal profession somewhat as a trade. However, he stood with those who disagree with the characterization as a trade, seeing the legal profession not as a business because it requires extensive training, an ethical code, system of discipline and duty to serve social responsibility subordinated to financial rewards.²⁰

Snow also noted the trend toward using litigation as the primary means of resolving disputes. He sees this as a departure from counseling clients that litigation is the “last resort” or that they should consider alternative dispute resolution, as was the practice in the past. He also pointed out the courtroom practices – “win at any cost” or “Mr. Tough Guy” approaches – that portend unprofessional (and unnecessary) courtroom conduct. He says, “Certainly, vigorous and determined trial tactics have their place, and the question of balance will always be an elusive one.”²¹ However, “hardball” tactics and excessive punitive discovery measures are dangerous law practices. Snow added remarks concerning appellate judges to his observations about professionalism regarding

¹⁷*Id.* at 9-15.

¹⁸*Id.* at 12.

¹⁹*Bates v. State Bar of Arizona*, 433 U.S. 350, 97 S.Ct. 2691 (1977). The Court stated that claims regarding the quality of legal services to be provided might be so immeasurable that they would be inherently misleading. It also stated that the same concerns “might justify restraint on in-person solicitation.” The Court did not provide any substantial guidance as to specific regulations that would be allowed. Thus, it became the ABA’s responsibility to create a new set of standards regarding the advertising of legal services and the solicitation of clients. A mere six weeks after the *Bates* decision, the new regulations were adopted as part of the amended Model Code of Professional Responsibility. Although many of those regulations are no longer in effect, the ABA retained the provision prohibiting in-person solicitation. The Model Rules of Professional Responsibility were adopted by the ABA in 1983 and since that time forty-two states and the District of Columbia have adopted the Model Rules in some form. Here, the Supreme Court held that outright bans on lawyer advertising violated the free commercial speech doctrine of the First Amendment, and were therefore unconstitutional. However, the Court said that some regulation of the marketing of legal services was not only permissible, but desirable. Heretofore, under the Canons of Professional Ethics, adopted in 1908, both direct and indirect advertising, as well as solicitation, by lawyers was banned. State supreme courts generally accepted these bans, and for seventy years the 1908 Canons controlled the law regarding marketing of legal services.

²⁰Judge Simon Rifkin, *Professionalism Under Siege, A Call to Combat Professionalism*, cited in *Consultation*, at 9-10.

²¹Snow, *Consultation*, supra at 12.

lawyers and trial judges. Regarding judges who hear appellate arguments, Snow said: “There obviously needs to be a balance between questions that are important to let the lawyer know the court’s concerns and those that are merely repeated and disconcerting interruptions.”²²

As a Georgia delegate to the American Bar Association, Snow shared three recommendations from the ABA Commission on Professionalism report to the House of Delegates in August 1986. The first recommendation was that:

*... the bar should place increasing emphasis on the role of lawyers as officers of the court, or more broadly, as officers of the system of justice. Lawyers should exercise independent judgment as to how to pursue legal matters. They have a duty to make the system of justice work properly. Ideally, clients should recognize this duty and appreciate the importance to society of maintaining the system of justice.*²³

Here, Snow noted remarks from the report that lawyers sell out to the client and employ tactics to drain their opponents’ financial resources. The ABA Commission recommended that trial judges take a more active role in the conduct of litigation, see that cases advance properly, fairly and without abuse, and impose sanctions for abuse of the litigation process with authority to do so given in the court rules. Of course, at stake here, Snow noted, is to balance the trial lawyer’s direction of the litigation with the court’s ability, discretion and authority to guide the process.

What concerned G. Littleton Glover, Jr., a practitioner from Newnan and upcoming president of the State Bar of Georgia, about the relationship between lawyers and the courts? Glover was concerned with complaints that some trial judges are not strong, don’t enforce the uniform rules, and employ different sets of rules for their friends or local attorneys than for those who do not know them or come from out of town. On the flip side, he found that more competent judges explain to juries the judicial processes and how the judicial system works. Glover says that lack of professionalism by the trial bar “centers on the discovery process concerning frivolous objections, fights, and the lack of a cooperative spirit.”²⁴ He noted that in his educational experience at Harvard Law School, his civil procedure course never focused “on the notions of either ultimate rightness or, for that matter, the costliness to one’s client stemming from playing the games that can be played.”²⁵ To address this issue, Glover suggested that there would have to be some negative economic impact, such as judicial sanctions, for young lawyers who do not learn and for older lawyers who do not train them on proper litigation tactics.

Judge A. Blenn Taylor, representing the Superior Court judges, added that there is now judicial training, a goal of which is to improve relationship and cooperation between the bench and bar. He noted the change in a lawyer’s behavior after having the opportunity to observe noted attorney Bobby Lee Cook try a case in his courtroom. He commented that the ethical attorneys’

²²*Id.* at 13.

²³Excerpt from ABA Commission on Professionalism, *Report to House of Delegates*, (Aug.1986), *Consultation*, at 13.

²⁴*Consultation*, at 17.

²⁵*Id.* at 17.

behaviors are apparent and they are often the most successful. However, a trial judge can help teach an unprofessional attorney professional conduct by providing a learning experience for them.

Representing fiduciary lawyers and having canvassed his colleagues, Henry Bowden (former Atlanta City Attorney and Emory counsel) related their opinions that lawyers could not be counted on to regulate their professional conduct and that the best persons to do so are trial and appellate judges who could employ sanctions.

What was important about the quality and aspects of professional relationships between lawyers, addressed by Bob Brinson, Rome practitioner and State Bar of Georgia President-Elect? Brinson found the root of this issue in this remark: “Whether the oldest or not, ours is indeed always a contentious craft, and the law is a profession whose practitioners must be professional.”²⁶ He asked whether lawyers today have a bad image for professionalism, and opined that: “associations, meetings, and leaders can do only so much; restoration of our professionalism must begin with individual lawyers. I hope we can at least plant that seed.”²⁷ To germinate the process of encouraging individual lawyers to be more professional, Brinson suggested first making personal contact with adversaries, and second, proposed an eight-point pledge for dealing with colleagues.²⁸

Esteemed Atlanta trial attorney, Ben Weinberg, pointed out that: “We live in a materialistic world which has new temptations that were not known twenty-five or fifty years ago.”²⁹ Most profoundly, Weinberg noted the increasing problems of substance abuse affecting lawyers – not just alcohol but the range of drugs – cocaine, heroin, marijuana, etc. The need for mentoring or a preceptorship of a younger lawyer with a more experienced one was high on Weinberg’s suggestion list:

*... there needs to be some sort of revitalization of a preceptorship for young lawyers to gain some insight, not just into the methods and modes of practice, but also into the character of the practice, or, in other words, into the requisite character of the lawyer in the practice of his profession.*³⁰

To provide a young practitioner with professionalism knowledge and experience, Weinberg suggested not only forming Inns of Court but “a range of institutions, modes and methods of transmitting to young lawyers the things that senior practitioners think are important in terms of

²⁶*Id.* at 20.

²⁷*Id.*

²⁸*Id.* at 23. Brinson offered this eight point pledge: “1. My word is my bond: I will scrupulously observe all mutual understandings among counsel. 2. Opposing counsel is entitled to an initial presumption of being a good guy. I will treat other counsel with respect. 3. I will not take cheap shots. 4. I will try to arrange discovery to the mutual convenience of all parties and counsel. 5. I will return counsel’s phone calls and answer counsel’s letters. 6. I will not be tardy for appearances and appointments; if I perceive that I will be late, I will try to call. 7. I will be courteous, remembering courtesy is not weakness. 8. Although my client is entitled to my utmost zeal and my finest performance, a time will inevitably come in the process when I will not take myself too seriously. At that time, I will enjoy an occasional laugh to help prevent hardening of arteries and attitudes.”

²⁹*Id.* at 24.

³⁰*Id.* at 24-25.

character, in terms of conduct, and in terms of regard for the profession itself.”³¹

E. Wycliffe Orr, Gainesville attorney, talked about morality and lawyers – and the perception that to be a good lawyer one can use tactics they would never use in their daily living. As Orr says:

*. . . the morals of the marketplace are not enough for the practice of law. We do have to adhere to a different honor, a very punctilious honor, and that needs to be inculcated in all of us, especially those of us beginning in the practice of law.*³²

To progress with Georgia addressing professionalism, Atlanta attorney Kirk McAlpin interjected his suggested that meetings like the Consultation be held around the state. He suggested that lawyers be encouraged to work collaboratively, to meet openly, face-to-face, to more expeditiously and efficiently resolve matters.

How could the special people in this special group look at what they could do, as individuals with some moral concerns about their profession, to promote professionalism? Felker Ward, Board of Governors member and then managing partner at a majority large Atlanta firm, was the only black male lawyer present at the Consultation. He pointed out that lawyers are accorded more influence on society than their numbers would suggest, and that makes lawyers quite “special,” when perception may not be reality. Perhaps, more important, he declared, was that, “The leaders of this special lot are our bar elected officials, our judges, and the senior members of our major law firms.”³³ It is these leaders, he suggested, who influence the profession. To the Consultation’s group of leaders he posed these questions:

[W]hy is it that the legal profession is perceived as having a degree of trustworthiness just slightly above that of a New York taxi driver?

[W]hy is it that law firms are almost the most racially segregated organizations in the United States?

[W]hy is it that almost everybody in this room . . . are members of clubs that discriminate in membership on the basis of race, sex, and religion?

[W]hy are lawyers, those who are allegedly so learned and so special, members of these organizations?

*[W]hy is it that we are so seldom found at the forefront of resisting and opposing that which we know is wrong with our society while we are just as infrequently found at the forefront of promoting in our society that which we know is right?*³⁴

³¹*Id.* at 25.

³²*Id.* at 26.

³³*Id.* at 28-29.

³⁴*Id.* at 29.

Ward says “the answer to all those questions lies in the fact that a lot of words are easier to say than to actually uphold in practice and in life.”³⁵ If the answer to professionalism lies in individual behavior, then Ward asks his colleagues “how many of us who espouse these ideals decide that we are going to take a position and do something about something that is wrong?”³⁶ If lawyers are “special” as Ward says, “then we have the responsibility to do something. The best way to do something is to teach by example. While our words may pass away, we can, by our actions, set lasting examples and enduring standards for society as a whole. I am convinced that if lawyers would make it their business to uphold that which they think is right in the course of their daily practice, the public perception of lawyers would change.”³⁷

How did Judge G. Conley Ingram address the subject of lawyers and their clients? Judge Ingram suggested that new ideas be brought to the table on this subject in this time when the economic pressures of law practice seem to shift the emphasis away from moral character of legal professionals. He referred to Canon 12 of the 1908 ABA Canons of Professional Ethics to admonish the bar “that with respect to fees, we must never forget that the profession is a branch of the administration of justice, and not a mere money-making trade.”³⁸ Judge Ingram reminded the group that winning at any cost is averse to professionalism and he noted his personal distaste for lawyer advertising that leads to “crass commercialization” of lawyers’ services that leads to “attorney/client relationships . . . [that] are bound to be more fragile, more casual, more coldly commercial, than the traditional attorney/client relationships.”³⁹ Judge Ingram opined that the Court, not the lawyer, ultimately has the responsibility to encourage professionalism in lawyer/client relations and lawyer’s conduct by applying appropriate sanctions and by showing or voicing disapproval and disappointment in a lawyer’s offending behavior. In a related remark, former State Bar President A. Gus Cleveland suggested that professionalism be promoted by encouraging participation in the organized bar and lawyers’ activities since “informal meetings among lawyers are probably the prime way to promote professionalism.”⁴⁰

In his summary, Judge Griffin Bell reviewed the discussions of the day regarding moral authority and the law and relationships of lawyers with the courts, clients and their colleagues. On professionalism, he articulated much of the hornbook law and Code of Conduct of the American College of Trial Lawyers. He emphasized that: “Professionalism is broader than the canons of ethics pertaining to a profession although ethical principles are obviously at the heart of professionalism.”⁴¹ He added:

In large measure professionalism as judged by the public is a matter of perception; the elements of civility, good conduct, learning, integrity, and an attitude of serving

³⁵ *Id.* at 30.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.* at 32.

³⁹ *Id.* at 34.

⁴⁰ *Id.* at 33.

⁴¹ *Id.* at 38.

*all reflect well on our professional standing. A basic tenet of the professional responsibility of lawyers is that every person in our society should have ready access to the independent, professional services of a lawyer of integrity and competence. . . . Integrity is, of course, integrity in all things, and consequently, a lawyer must be an honorable person at all times.*⁴²

Judge Bell called for special attention to Inns of Court, the English institution that was unavailable in 1988 in the United States.⁴³ The Inns of Court is for aspiring barristers who after one to three years may be recommended to the bar, having “presumably absorbed the customs, manners, and lore of trial practice to the point of knowing how to act in the role of a barrister.”⁴⁴ He suggested that new trial lawyers have the supervision and training of an advisor who is an experienced trial lawyer, and who certifies the younger lawyer’s readiness to practice independently.

Judge Bell also pointed to the large number of business lawyers who have no connection with the judicial system as litigators or to the administration of justice. The problem, Judge Bell sees, is:

*As the courts are called on to do more and more, there are fewer and fewer trial lawyers. The business lawyers are not called upon to take an unpopular cause and rarely are called upon to render justice to those who are unable to pay. Should not our Supreme Court, acting through the organized bar, make some effort to see that every lawyer manifests a sense of social responsibility toward the administration of justice and participates in making equal justice a reality?*⁴⁵

Judge Bell concluded with the suggestion that the organized bar, particularly the State Bar, through its programs, do more to promote professionalism and improve the public image of the profession.

Key People Unlock the Door to Promote Professionalism

The key to unlocking the door to promote professionalism in Georgia was clearly to start with an elite, diverse group of bar leaders who provided a receptive audience for Emory President Laney’s moral suasion and who all belonged to one and the same mandatory, unified and integrated bar association – the State Bar of Georgia. President Laney’s remarks at the Emory conclave on the moral authority and the legal profession were shared with a group of judges and lawyers that was not only impressive, but represented those persons at the top of Georgia’s legal community. The

⁴²*Id.* at 39.

⁴³There are now five Inns of Court in Georgia: The Bleckley American Inn of Court (affiliated with Ga. St. Col. of L., <http://www.innsocourt.org/inns/bleckleyinn>), The Joseph Henry Lumpkin American Inn of Court (affiliated with U. Ga. L. Sch., <http://www.innsocourt.org/inns/lumpkininn>), The Lamar American Inn of Court (affiliated with Emory U. Sch. of L., <http://www.innsocourt.org/inns/lamarinn>), The Charles Longstreet Weltner Family Law American Inn of Court (affiliated with Ga. St. U. Col. of L., <http://www.innsocourt.org/inns/weltnerinn>), The Chattahoochee American Inn of Court (affiliated with U. Ga. Sch. of L., <http://www.innsocourt.org/inns/chattahooinn>).

⁴⁴*Id.* at 41.

⁴⁵*Id.* at 42.

attendees at this initial proceeding included a cross-section of the bench and bar; it included judges, professors, bar leaders, women and minority lawyers from around the state.⁴⁶ These persons were most likely to be interested in and able to not only identify all the professionalism issues of the day, but to possess the skills and will to do so.⁴⁷

⁴⁶Attendees included: **Prof. Frank Alexander** (Emory law professor, specializes in real estate finance, law and theology, holds Harvard degrees in law and theology, founded the Center for the Study of Law and Religion at Emory in 1982), **Hon. Griffin B. Bell** (currently senior partner with King & Spalding LLP, whose his long and distinguished career included fourteen years serving on the U.S. Court of Appeals for the Fifth Circuit where he was one of the court's strongest enforcers of civil rights and as United States Attorney under President Jimmy Carter), **Chief Judge A.W. Birdsong, Jr.** (Georgia Court of Appeals, 1977-1998, Chief Judge 1987-1988, passed in 1998, planning to return to practice in LaGrange), **Gary B. Blasingame** (plaintiff's personal injury, now with lead partner with Blasingame Burch Garrard Ashley, P.C., Monroe), **Henry L. Bowden** (Emory graduate, trustee and advocate, served as chairman of Emory's Board of Trustees and as its general counsel defending it successfully against a state constitutional measure to eliminate property tax exemptions for private schools attempting to integrate, former Atlanta City Attorney, passed in 1977), **L. Travis Brannon, Jr.** (now retired Jones Day partner), **Robert M. Brinson** (Rome attorney, then President-Elect of the State Bar of Georgia), **Marva Jones Brooks** (pioneering first black and first female Atlanta City Attorney, now partner with Arnall Golden Gregory LLP, Atlanta), **Thomas R. Burnside, Jr.** (civil litigator and founder of Burnside Wall, LLP, Augusta, passed in 2007), **George E. Butler II** (public and commercial law North Georgia practitioner in Dahlonega), **Susan A. Cahoon** (distinguished litigation partner with Kilpatrick Stockton LLP), **Presiding Justice Harold G. Clarke** (retired after serving as Chief Justice from 1990 - 1994, served as Georgia State Legislator, returned to Forsyth), **A.G. Cleveland** (senior partner at Kilpatrick Stockton LLP, known as "The Father of Continuing Legal Education in Georgia," passed in 2000), **L. Paul Cobb, Jr.**, **Bobby Lee Cook** (legendary trial attorney now with Cook & Connally in Summerville, reputedly the prototype for television's "Matlock"), **Overton A. Currie** (known as the "dean of construction law," practiced with Smith, Currie & Hancock, LLP in Atlanta and passed in 2005), **A. James Elliott** (now Associate Dean, Emory Law School, former partner with Alston & Bird, LLP, Atlanta, teaches legal profession, commercial real estate finance and banking, co-founder of Georgia Legal Services Program), **Dean David Epstein** (was dean of Emory Law School, now business and bankruptcy practitioner with Haynes Boone, Dallas, Texas and law professor at Southern Methodist), **Dr. Michael L. Goldberg** (special consultant to the Georgia Supreme Court, served as interim director of the Chief Justice's Commission on Professionalism), **J. Littleton Glover, Jr.** (Glover & Davis, P.A., Newnan), **Jack L. Helms, Sr.** (Homerville attorney, deceased), **Hon. G. Conley Ingram** (Judge, Cobb Superior Court, Marietta, retired partner of Alston & Bird LLP), **Dr. James T. Laney** (then President of Emory University), **Kirk M. McAlpin** (esteemed senior Atlanta trial attorney), **Chief Justice Thomas O. Marshall** (Veteran Navy Captain from Americus, after private practice, elected to Superior Court Judge, Court of Appeals and appointed to Supreme Court of Georgia in 1977, passed in 1986), **E. Wycliffe Orr** (currently with Orr & Orr, Gainesville), **H. Holcombe Perry, Jr.** (the "father of the State Bar of Georgia," then senior partner in Albany firm of Perry, Walters Lippitt & Custer, deceased), **Will Ed Smith** (first elected president of the State Bar of Georgia, deceased), **Cubbedge Snow** (now of counsel, Martin Snow, LLP, Macon), **Jr., Hon. A. Blenn Taylor** (deceased), **Jr., Felker W. Ward, Jr.** (then first black managing partner of majority Atlanta law firm, investment banker and entrepreneur), **Ben L. Weinberg, Jr.** (venerated litigator currently lead partner in Weinberg Wheeler Hudgin Gunn & Dial LLC), **Justice Charles L. Weltner** (served on the Georgia Supreme Court and as Chief Justice, practiced in Atlanta until his election to United States Congress for the Fifth District, then as Superior Court judge for Atlanta Judicial District, deceased), **Edd D. Wheeler** (Judge, Social Security Administration, Office of Hearings & Appeals, now inactive member of the bar, Atlanta) and **Frank B. Wilensky** (currently with Macey, Wilensky & Kessler, LLP, Atlanta, practicing commercial law).

⁴⁷At the end of the Consultation on Professionalism at Emory in March of 1988, the participants responded. Some of the additional suggestions made about professionalism issues appear to complete the framework for implementing the entity that became the Chief Justice's Commission on Professionalism and bar and court programs and are worthy of summarizing here: 1. Persuade lawyer-judge teams to appear at bar and judicial functions over the State to simply talk about the ingredients of a good trial (Blasingame, *id.* at 46); 2. Look at how recording billable hours fosters cheating clients, encourage lawyers to work out discovery timetables by consent and not use abusive

Digging deeper into the qualifications of these participants, many of them served as the president of the Georgia Bar Association (“GBA”) and/or its successor organization, the State Bar of Georgia (“SBG”), or on the Board of Governors.⁴⁸ All of these persons were now part of a mandatory bar association with powers to discipline and regulate lawyers. The State Bar of Georgia was established by Georgia Senate Bill 62 in 1963, legislation that authorized the Supreme Court of Georgia:

tactics; balance making money with keeping the profession’s image clean (Bowden, *id.* at 46-47); 3. Improve the public’s respect for the profession by educating them on the role of the courts, attorneys and judicial administration and encourage lawyers to apply ethical standards on a daily basis (Burnside, *id.* at 47-48); 4. Hold regional meetings of lawyers generally invited to discuss professionalism subjects (Cleveland, *id.* at 48); 5. Encourage informal encounters among lawyers to minimize mistrust and suspicion, eliminate use of local court rules that favor local lawyers and short shrift outside lawyers (Cobb, *id.* at 48-49); 6. Continue the consultations called by the Georgia Supreme Court Chief Justice with a core group of repeat attendees and a new group (75% to 90%) of new participants, invite faculty, members and senior attorneys responsible for training new lawyers, encourage opposing counsel and judges to demonstrate civility and reward professional behavior. “An attitude of concern, friendship and hope could be the best background for a judge, teacher, lawyer, law firm, bar association, or its officers to quietly and sometimes privately and other times with the appropriate persons present, provide the raised eyebrow, frown, or comments to create a correction in attitude and conduct.” Require minimum CLE credits and certification of moral character and professionalism by affidavits from three attorneys. (Currie, *id.* at 49-50); 7. Communicate professionalism ideals to law students and young lawyers, deemphasize billable hours and emphasize public service and pro bono work, repeal the “win [at] all costs” theory, by talks to law students by well known and respected practitioners, a mentor program, a mandatory professionalism CLE for newly-admitted lawyers, Court adoption and promotion of written guidelines of civility and professionalism, and regional conferences similar to the Emory conclave. (Glover, *id.* at 50-51). 8. Include the topic of professionalism in continuing legal education programs and encourage law schools to place more emphasis on professionalism (Helms, *id.* at 52). 9. Involve Georgia members of the American Law Institute and Georgia members of the American Bar Foundation (Ingram, *id.* at 52). 10. Using the Supreme Court’s powers, create a “Peer Review Panel” to serve as conciliatory advisors to the court in resolving ethical disputes, assist in settlement and curtail abusive discovery, coordinate opposing interests and make recommendations to the Court. (McAlpin, *id.* at 52). 11. Add professionalism topics to the ethics requirement of mandatory continuing legal education (MCLE), consider increasing MCLE hours, have the State Bar or other organization under the auspices of the Supreme Court prepare and publish synopsis of ethical canons and lawyers attest to a yearly review as part of their MCLE requirements, have a State Bar committee conduct regional meetings around the State and require every lawyer to attend, giving MCLE credit, conduct mandatory meetings for all Georgia judges on professionalism issues. (Orr, *id.* at 53-55) 12. Include professionalism topics in mandatory CLE. (Smith, *id.* at 55). 13. Explore a mentor program in law firms and include professionalism topics, consider “through some sort of appropriate institution, the development of a Code of Professionalism” issued appropriately by the Supreme Court in the nature of aspirational goals. (Snow, *id.* at 56) Focus on the relationship between lawyers and society in general and share this conference’s ideas at seminar at State Bar Annual and Midyear Meetings. (Ward, *id.* at 56) 14. Apply Uniform Superior Court rules more uniformly, improve professionalism with local bar programs, non-divisive lawyer group and Inns of Court, include professionalism as a repetitive topic in mandatory CLE programs. (Weinberg, *id.* at 57-58). 15. Explore creating a “Center for the Study of Professionalism,” appointment of a “Special Counselor for Professionalism to act . . . in an ongoing capacity as advisor and liaison with the bar, and in particular with the Committee on Professionalism, to increase efforts to improve both the mettle and image of Georgia’s lawyers.” (Wheeler, *id.* at 58).

⁴⁸Henry L. Bowden (GBA President 1955-56), Robert M. Brinson (SBG President 1986-87), Presiding Justice Harold G. Clarke (SBG, President 1976-1977), A.G. Cleveland (SBG President 1971-72), A. James Elliott (SBG President 1988-89), J. Littleton Glover, Jr. (SBG President 1987-88), Kirk M. McAlpin (SBG President 1979-80), H. Holcombe Perry, Jr. (GBA President 1962-1963), Will Ed Smith (GBA and SBG President 1964-65), Cubbedge Snow, Jr. (SBG President 1974-1975). Most of the other attendees at some time served on the Board of Governors.

... to establish, as an administrative arm of the Court, a unified, self-governing bar association . . . composed of all persons now or hereafter licenced to practice law in this State; to provide for the adoption of rules and regulations by the Supreme Court for the organization and government of the unified bar and to define the rights, duties and obligations of members therein including the payment of a reasonable license fee and to otherwise regulate and govern the practice of law in this State; to provide for the right of a lawyer involved in any disbarment proceeding to elect to have any material issue of fact determined by a jury in the Superior Court of the County of his residence; to provide the method of making application to the Supreme Court for the establishment of the "State Bar of Georgia" and the method of establishing and amending rules and regulations governing the same; to repeal conflicting laws; and for other purposes.⁴⁹

Prior to establishment of the State Bar of Georgia, Georgia lawyers operated under voluntary associations, most notably the Georgia Bar Association formed in 1883, whose membership was "voluntary and selective."⁵⁰ The effort to create an incorporated, unified, integrated and mandatory bar association "spanned almost 40 years, and enlisted the aid and support of many of Georgia's most prominent legal minds."⁵¹ The driving force for unification was "the goal to establish a system whereby lawyers who violated designated ethical standards would be disciplined accordingly."⁵² Other purposes of this effort were to protect the public and promote efficient judicial administration. Self regulation would also "assure adequate funds for a vigorous program."⁵³ An advocate for unification noted the pros and cons of self-regulation and compulsory membership with the answer that "such membership is in the nature of a State licensing procedure, and is merely a prerequisite to the practice of law."⁵⁴

Georgia was the twenty-seventh bar to unify when it did so in 1963, after the concept was embraced in 1926, thereby joining this national trend of bars, starting with North Dakota's in 1921. During the forty years of advocating for a unified bar to self-regulate, manage and unify Georgia's lawyers, Georgia Bar Association membership grew, circuit bar associations were formed as a statewide support network and the GBA successfully reformed the laws governing bar admission by requiring passage of a bar examination, in addition to receipt of a diploma.⁵⁵ Also during this time, the Georgia Bar Association's infrastructure vested authority in a Board of Governors with members representing circuits, the *Georgia Bar Journal* was created in 1938 and in 1951 the Special

⁴⁹Jennifer M. Davis, *A Walk Down Memory Lane – Reflections on the History of the State Bar of Georgia*, Annual Meeting Special Program (June 6, 1996), at 19.

⁵⁰*Id.* The Georgia Bar Association's corporate charter states its purpose was "to advance the science of jurisprudence, promote administration of justice throughout the State, uphold the honor of the profession of the law and establish cordial intercourse among members of the bar of Georgia."

⁵¹*Id.* at 12.

⁵²*Id.* at 12.

⁵³John Miller, Joint Report of Committee to Study Integration of the Bar and the YLS Committee on Integration, *Report of Proceedings of the Georgia Bar Association*, pg. 187 (1955), *Id.* at 21.

⁵⁴*Id.* at 21.

⁵⁵*Id.* at 15 - 16.

Committee on Continuing Legal Education was made permanent.⁵⁶

Notably, in 1949, under Griffin Bell's leadership of the GBA's Younger Lawyer Section, a YLS Committee to Study Integration of the Bar was formed, chaired by Thomas O. Marshall, for the primary purpose of providing a disciplinary system, starting with screening of applicants for bar admission. Under the leadership of President H. Holcombe Perry, Jr. and during his administration in 1962-63, legislation was passed to create the State Bar of Georgia and unify all Georgia members of the bar. Bell, Marshall and Perry participated in the Emory conclave on professionalism.

When the Supreme Court entered its order establishing the State Bar of Georgia on December 6, 1963, President Holcombe Perry's remarks aptly foretold the professionalism movement that would take flight two decades later. In his Annual Meeting Address Perry said:

The Unified Bar, as described in the Act, is not just a name. It aptly and appropriately describes what the organization is intended to be. It has been pointed out that in its relation with the public the Bar has always been and always will be a unit. The actions and sayings of one lawyer reflect credit or discredit on the rest of his professional brethren in the eyes of the public. The interest of all lawyers are inextricably woven together. Through such an organization, with all lawyers participating, we will come to have a better appreciation of the fact that we are all members of a great and honorable profession of which we should be proud, a more adequate understanding of our mutual problems, a keener knowledge of our faults and our virtues, with a mutual determination to eliminate the former and preserve and enhance the latter; and finally we will have the opportunity of establishing among ourselves a sense of brotherhood, mutual respect, and trust and through all of this strive diligently to improve the administration of justice in our state.⁵⁷

The result was a unitary, integrated and mandatory bar association, the administrative arm of the Supreme Court to which attorneys practicing law in Georgia must belong and by which they are subject to discipline by the Supreme Court. While the term "integrated" here ostensibly related solely to unifying the bar and has been used interchangeably for that term, the by-product was also racial unification or integration of the members of the legal profession. I can find no evidence that in the development of Georgia's unified and integrated bar association up to 1963, there were any black attorneys who were present as members in the Georgia Bar Association or otherwise involved in the deliberations concerning unification of the members of the legal profession in Georgia.⁵⁸ Yet, the unification benefitted all attorneys and resulted in black attorneys becoming part of the new organization by which they would be subject to regulation.

⁵⁶*Id.* at 16 - 17.

⁵⁷Holcolombe Perry, 26 GA. B.J. 60 (1963), *Id.* at 24-25.

⁵⁸By our best sources, there were fewer than 30 black Georgia attorneys before 1950; those who came to Georgia in the mid to late 1800s had attended some of the nation's best schools but their practice opportunities were limited and some left Georgia. See, J. Clay Smith, Jr., *Emancipation: The Making of the Black Lawyer, 1844-1944* (U. of PA Press 1983).

The Georgia Bar Association, the State Bar's predecessor, a voluntary organization, held fast to the laws and social mores of the time which supported and enforced racial segregation. The Georgia Bar Association was formed by two American Bar Association leaders in Georgia and thus has had a continual link to the ABA, even initially copying the ABA's bylaws and committee structure.⁵⁹ Its membership "was always voluntary and selective," requiring a "favorable recommendation from the Executive Committee" and rejection "by five negative votes received," thus "its ranks were limited substantially to the elite of the profession."⁶⁰ And that "elite" excluded black and many other attorneys. From 1884 to 1904, the membership was small, never exceeding 25% of Georgia licensed lawyers and "all Georgia lawyers during this period were white males."⁶¹

Black lawyers of Georgia were not accepted for membership in the Georgia Bar Association. They held law licenses from the State either by admittance by examination by the court or by motion to the court based on reciprocity. Black lawyers formed their own bar associations to connect them, perform public service and to improve their professional skills.⁶² With the Supreme Court's landmark 1954 school desegregation decision, *Brown v. Board of Education*,⁶³ there was a growing Civil Rights Movement to desegregate American institutions. Georgia was deemed "the cradle of the Civil Rights Movement," with its Atlanta born and based leader, Rev. Dr. Martin Luther King, Jr., as its prime advocate. Some of Georgia's handful of black lawyers represented Dr. King, including the late Donald L. Hollowell.⁶⁴ As the State Bar unified in 1964 during the height of the Civil Rights era, the new organization – the State Bar of Georgia – became racially integrated. The State Bar of Georgia celebrated its centennial in 1984, five years before the creation of the Chief Justice's Commission on Professionalism. At that time, there were about 15,000 Georgia lawyers, half of today's amount.⁶⁵ The State Bar was quickly becoming a different organization than its predecessor – in its membership and their needs and concerns – and a real question was whether it could adapt to those changes, given its exclusive right and duty to regulate its members. The professionalism movement, if orchestrated well, could contribute greatly to the Bar's positive future – and it has.

Were the bench and bar leaders present at the Emory meeting the kind of people who not only could, but would, improve the legal profession and effectively promote professionalism? In addition to the fact that the attendees of the Emory conclave were leaders of the organized bar and outstanding practitioners and jurists, most of them were also leaders in the religious institutions in

⁵⁹H. Sol Clark, *The Earliest Years: 1884-1904*, 20 GA. ST. B. J. 102 (Feb. 1984).

⁶⁰*Id.* at 104.

⁶¹*Id.* at 104.

⁶²The National Bar Association was formed in 1925 by and for black lawyers. The Gate City Bar Association, a National Bar affiliate, was founded in 1948 in Atlanta by 10 lawyers, including one female member Rachel E. Pruden Herndon, with its membership thereafter including black lawyers from around the State. See, Thelma Wyatt Cummings, Avarita L. Hanson, & Renata Turner, *Black Lawyers of Georgia: In Pursuit of Justice*, 29 GA. B. J. 1 (Aug. 1991).

⁶³*Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

⁶⁴See, Louise Hollowell & Martin C. Lehfeldt, *The Sacred Call: A Tribute to Donald L. Hollowell – Civil Rights Champion* (Four-G Publishers, Inc.1997).

⁶⁵*First Century of the Organized Bar in Georgia*, 20 GA. ST. B. J. 3, at 100 (Feb.1984).

their communities. Many of this collection of bar leaders heavily represented Georgia's Presbyterians, Methodists, Episcopalians and Baptists.⁶⁶ President Laney's appeal to their Judeo-Christian philosophy and practice might have some success, for he clearly used Biblical examples to make his points that American laws and tradition are rooted in Biblical tenets.

Others attendees were named partners and leaders in their law firms and in the national arena with differing kinds of practices – litigation, business, civil and criminal. Some of them were respected leaders in the legal community who could see things from a female or minority point of view.⁶⁷ No doubt, the attendees were a cross-section of bench and bar leaders, albeit a very elite group. Some could say that the list of attendees at this pivotal event was serendipitous. Others might say it was deliberate and intentionally crafted. Some might see this as the good forces that are. Whatever it was or is, Georgia lawyers, American lawyers and the bench around the world are benefitting from bringing together an inclusive and special group of lawyers. It was members of this special group – putting all the relevant and necessary issues on the table, and perhaps, making a personal and individual commitment to engage in addressing these issues of professionalism – that was the force behind Georgia's institutionalizing professionalism, for it is the people who make up the institutions – the courts, the law firms, and the bar associations.

Creation of the Commission

The Commission was created after some consideration of where to place an entity to promote professionalism in Georgia. When the Supreme Court was selected as the right place, the leaders of the professionalism movement could easily handle the start-up tasks. They drafted a mission, selected a structure and members, they listed the functions of such entity and they petitioned the Supreme Court for an order to make this all official. At the same time, they secured temporary and permanent funding for operations through mandatory continuing legal education fees and sought and hired a qualified director and staff.

Why did Georgia's bench and bar leaders decide to place the professionalism effort under the auspices of the Supreme Court? The first step in creating a mechanism to promote professionalism to Georgia's bench and bar was to decide what type of entity to form and under what jurisdiction to place that entity. According to Dean A. James Elliott, some of the leaders who were present at the Emory conclave shortly thereafter discussed the appropriate authority under which to place an entity that would promote the professionalism concepts addressed at Emory. Some of the participants in this discussion, in addition to Dean Elliott, included Justices Marshall and Clarke.

⁶⁶For example: Hon. Griffin Bell (Board of Deacons of Second Ponce de Leon Baptist Church, Atlanta), Hon. A. W. Birdsong, JR., (Chairman Board of Deacons, First Baptist Church of LaGrange), Thomas Burnside (First Presbyterian Church, Augusta), Hon. G. Conley Ingram (First United Methodist Church, Marietta). Overton A. Currie, "father of Construction Law," was also described as a well-schooled biblical and legal scholar, holding a Bachelor of Divinity degree from Emory's Candler School of Theology and Master's Degree from Yale, in addition to his University of Mississippi and Yale law degrees. John H. Hinchey, *Professional Biography of Overton A. Currie*, 43. C.L.R. (3d) 322 (2005), available: http://www.kslaw.com/Library/publication/Hinchey_currie.pdf (Accessed Mar. 7, 2008).

⁶⁷Two women (Marva Jones Brooks and Susan Cahoon) and two black attorneys (Marva Jones Brooks and Felker W. Ward) were present.

There were not many options, in fact, just two were discussed – the State Bar of Georgia and the Supreme Court.⁶⁸

In considering whether to place a professionalism entity under the State Bar, they considered that the State Bar's Special Committee on Professionalism existed to inform the leaders of the bar about professionalism efforts. Formed in 1986, the State Bar Committee recognized that for lawyers to value the concepts of professionalism, the first place to start was in law school. Thus, the State Bar Committee on Professionalism's primary activity since 1993 and it continues to orchestrate the law school orientations that are held at every law school in Georgia as part of the incoming student orientation program.⁶⁹

This committee consists of volunteers who are appointed to terms by the then president-elect of the State Bar. The committee's inherent structure does not easily lend itself to providing an institutional base for an ongoing entity to support an overall professionalism movement. The committee's very existence and appointment of its members are arguably subject to the whims of current and future bar leaders, most notably bar presidents and perhaps members of the Board of Governors. The State Bar would provide some funding for the Committee's activities, but would the Bar commit to and would it provide a sufficient amount to sustain a greater and long-term effort?

Would a State Bar president give sufficient priority to the professionalism movement? Would the president have other or significant competing priorities? Would the time limit on active engagement by a bar president – two years at most of significant service as president-elect and president while practicing law – encourage the growth and development of the professionalism efforts? Would the Bar itself devote the requisite philosophical, staff and financial support in the short and long term to develop and grow a quality professionalism program?

The answer was clear. While the work of the State Bar's Committee on Professionalism was highly valued and important, because of the limitations inherent in the leadership, organization, structure, priorities and funding of the State Bar, the Bar did not lend itself to a long-term and appropriate fit for Georgia's professionalism efforts. The Committee itself would change chairs and members over the years, and with volunteers, its activities would be limited to their available time, talent, priorities and energy.

The Supreme Court of Georgia provided a better fit for siting of a professionalism entity. Its leader, the Chief Justice, already on the State's payroll, could provide a more suitable administrator, supervisor and nonpartisan advocate for professionalism. Moreover, the Supreme Court has authority over the State Bar. In fulfilling its duty to regulate the legal profession and judiciary, the Supreme Court established the State Bar, the Office of Bar Admissions and the Judicial Qualifications Commission. As described in the Court's publication:

The Supreme Court sets standards for admission of attorneys to the practice of law

⁶⁸A. James Elliott, *Conversation with Author* (Mar. 6, 2008).

⁶⁹The Committee on Professionalism is staffed by the Commission staff; the Commission provides additional financial support for the law school orientations.

in Georgia. The Office of Bar Admissions serves as the administrative office for the State Board of Bar Examiners and the Board to Determine Fitness of Bar Applicants.

The Board to Determine Fitness of Bar Applicants investigates the backgrounds of those persons who desire to be admitted to the practice of law in Georgia.

The Board of Bar Examiners is responsible for the preparation, administration, and grading of the Georgia bar examination. This examination is given twice each year in July and February to more than 1500 applicants.⁷⁰

The Judicial Qualifications Commission authorizes the Supreme Court to establish rules for discipline of judges and has seven (7) members, two who are appointed by the Supreme Court, three attorneys appointed by the State Bar, and two lay members appointed by the Governor.⁷¹

The Supreme Court gave the Commission leadership and administrative oversight, having a leadership scheme that included a chief justice, a presiding justice and five associate justices.⁷² The Supreme Court is the highest court in the State of Georgia. The seven justices are elected to staggered six-year (6) terms in nonpartisan elections with retirement mandatory at age 75. The Chief Justice is the highest ranking judge in the state judicial system and is responsible for the administration of the court. The Presiding Justice follows as the Chief Justice. In the usual case, both the Chief Justice and the Presiding Justice serve two two-year terms in each of those positions. Furthermore, the Supreme Court is the regulatory agency of the state for the legal profession and the courts. The Supreme Court could provide stability and longevity. Its justices could provide leadership, oversight, and stature. They could relate the importance of the ideals and programs of professionalism.

The answer to the question of how to start institutionalizing Georgia's professionalism efforts was evident: create the Chief Justice's Commission on Professionalism and place it under the Supreme Court. Thus, through the leadership and efforts of the then Chief Justice of the Supreme Court of Georgia, other justices, judges and leaders of the bar the Chief Justice's Commission on Professionalism was created. Georgia's professionalism movement was spearheaded by a loosely associated and ever-growing coalition of concerned and committed bench and bar leaders. They would gather, focus on a mission statement, petition the Georgia Supreme Court to amend the rules creating the bar to create the Chief Justice's Commission on Professionalism, assess the functions of such Commission and secure a staff, able to carry out their directions.

The Commission was created by an order of the Georgia Supreme Court on February 1, 1989, as an unincorporated entity. On March 15, 1989, the Supreme Court entered an order amending the Rules and Regulations for the Organization and Government of the State Bar of Georgia "by adding

⁷⁰Supreme Court of Georgia, official publication, at 37.

⁷¹*Id.* at 31.

⁷²Other officers of the Supreme Court of Georgia are the Clerk of the Court, Reporter of Decisions and Law Assistants.

thereto a new Part IX entitled Professionalism”⁷³ Rules 9-101 and 9-102 established the operational framework of the Commission. Today, the Commission is comprised of twenty-two members representing the four constituencies of law practitioners, judges, law schools, and the public at large. Some members are members by virtue of their positions within the legal community, some are appointed by the Board of Governors of the State Bar of Georgia, and the remaining members are appointed by the Supreme Court of Georgia.

The order creating the Georgia Commission on Professionalism stated:

The Commission’s primary charge will be to enhance professionalism among Georgia’s lawyers. In carrying out its charge, the Commission shall provide ongoing attention and assistance to the task of ensuring that the practice of law remains a high calling enlisted in the service of client and public good.

This is a tall order, not a quick fix, but a long-range and evolving effort, to be sure, and one that must be done for the sake of ordered society. Rather than launch a public relations campaign to improve our image, the Court and Bar focused on efforts within the profession to restore its sense of public obligation and maintain the traditions and values of this profession that are so critical to a free and open society.

After eighteen years, Georgia lawyers have what can now be characterized as our own “brand” of professionalism. We look for the meaning of professionalism in the context of our own practices – whether that is private, public, public interest, judicial, or in a specialized area of law. While there is no agreement (and there need not be) on the definition of professionalism – there is some agreement on its components. The four (4) main components of professionalism are the basic ones: 1. Competence, 2. Civility, 3. Pro bono service, and 4. Community Service.

Who are the members of the Commission? The Commission's Chair is the Chief Justice or his or her designee. The Commission's appointees reflect the profession's four main "constituencies": practitioners, judges, law schools, and the public. The public has two seats on the Commission. The judiciary has four (4) seats in addition to the Chief Justice (Federal, Court of Appeals, Superior, State Courts). A representative of each of the five ABA accredited law schools in Georgia has a seat on the Commission.⁷⁴ The constituency of practitioners shares the remaining seats, including the President of the State Bar and the President of the Young Lawyers Division Section of the State Bar. Over the years, the rules governing the Commission have been amended to include active practitioners in the areas of criminal defense, prosecutors, in-house legal counsel, and government. Judges represent the three (3) major trial courts – Federal District, Superior and State Courts.

⁷³Appendix A, *Rules and Regulations for the Organization and Government of the State Bar of Georgia*, Part IX, Professionalism.

⁷⁴The law school deans or their designees may sit on the Commission. Historically, some deans have served, as well as professors who are engaged largely in teaching and scholarship in the areas of Ethics and Professionalism.

The Georgia Commission is carefully structured to insure that all responsible parties, so to speak, are at the table and taking responsibility for addressing the problems and have a voice in the decisions. It reflects the diversity of the bar in the individual characteristics of its members and the practice environments members represent. The Commission provides a forum – in fact the only forum – where these constituencies can come together on a regular basis.

Does the Commission have staff? At the very first meeting of the Commission, one of the first agenda items was the hiring of a director, with an appropriate job description. The attendees decided to create the position of a director and “the director’s duties and desired qualities in such director, which included being a lawyer, some administrative experience, an outgoing personality, experience in the practice of law; a knowledge of how the law practice is changing in the present day.”⁷⁵ The Commission has had only three executive directors in its history – all meeting the criteria and putting their stamp of the Commission’s operations and history, including the longest serving director, Sally Evans Lockwood, who held the position for sixteen of the Commission’s eighteen years.

Today, the Commission has three employees who are housed at the State Bar of Georgia headquarters because of the need for these employees to be accessible to the members of the State Bar. The Commission’s employees are paid by the State Bar of Georgia with the Commission reimbursing the three employees’ related wages and payroll expenses to the State Bar of Georgia. The Commission’s employees are subject to the salary scales of the Supreme Court of Georgia. From time to time, the Commission will hire interns, primarily from area law schools.

How does the Commission support its staff and activities? Initially, the Commission was funded by a grant from the Commission on Continuing Lawyer Competency in Georgia from funds generated by continuing legal education fees. That initial funding was devoted to consultant fees and the first and second convocations. The Commission’s source of revenue for its permanent funding is from a surcharge paid by each active State Bar member who attends a course in professionalism sponsored by the Institute of Continuing Legal Education in Georgia (ICLE) or by any other sponsor approved by the Commission.⁷⁶ This one hour per year per lawyer requirement of continuing legal education on the topic of professionalism is mandated by the Supreme Court of Georgia. The documents establishing the Commission are silent concerning the disposition of any remaining funds should the Commission be abolished.

How did the Commission articulate professionalism in a meaningful way? During the very first year, the Commission developed *A Lawyers Creed* and *Aspirational Statement on Professionalism* to focus attention beyond the oath we all took when we were sworn in as members

⁷⁵Chief Justice’s Commission on Professionalism, Minutes of April 18, 1989, at 1. The first director, Hulett “Bucky” Askew, was hired in November of 1989.

⁷⁶Mandatory CLE is one hour in Professionalism per year per lawyer. Each CLE hour costs the lawyer a minimum of \$5, plus the Professionalism surcharge of \$15 per Professionalism hour. These fees support office space, equipment, supplies, expenses, staff salaries and benefits, database collection and maintenance, periodicals, technical support and program development. Other potential sources of revenue for professionalism efforts include: state bar dues, foundations, cy pres awards, legislative appropriations and private funding.

of the Bar – that minimum, yet still basic public statement of professional commitment.⁷⁷ *A Lawyer's Creed* focuses the attorney on the quality of relationships with all those with whom we come in contact – clients, opposing parties and their counsel, the courts, colleagues in the legal profession, the profession as a whole, and the public. It is the embodiment of the sentiment of yesterday – that an attorney is a professional 24-7, all the time, and thus must comport herself accordingly as a person with a high calling.

The *Aspirational Statement on Professionalism* is a statement of the ideals of lawyering that flesh out the actions of attorneys who deal with all the parties with whom attorneys have contact. Notably, these ideals are higher requirements and, perhaps, even conflicting or debatable requirements, than those ethical requirements or minimum standards of the Rules of Professional Conduct. Following the creation of the Commission, securing staff, members and a funding scheme, the Commission members and others embarked on the now eighteen year journey of engaging all segments of the Bar's membership in professionalism.

Engaging the Bench and Bar in Professionalism

How did Georgia successfully engage all segments of its bench and bar and commit them to professionalism? It did so in several ways. First, the definition of professionalism embraced by the Commission and in Georgia has always been multidimensional, broad and inclusive. Second, professionalism was added to the already in place mandatory continuing legal education requirements. Third, through CLE, lawyers were first assembled at invitational meetings – convocations and town hall meetings throughout the state – to address and further identify professionalism issues and concerns. Fourth, all persuasions of lawyers were involved, particularly women, black and other minority lawyers, whose numbers in the Bar's membership were increasing. Fifth, law schools were not only represented on the Chief Justice's Commission on Professionalism, law students were exposed to professionalism at the outset of their legal study with orientation programs and infusion of professionalism in their curriculum. These factors created vibrant dialogues regarding the initial concerns and helped to identify new issues and ways to address them.

Defining Professionalism

How do we define professionalism? With regard to defining professionalism, Georgia's bench and bar has embraced an inclusive, conceptually open, broad concept of professionalism, with no one definition or set of components. In the early days of the professionalism movement, the first issue addressed was the perception that the practice of law had lost its civility – as one of the learned professions (medicine and the clergy being the others). Some said that the practice of law had become more like a business - more competitive and perhaps ruthless and nasty. Some saw this as a competence issue and that might be addressed in law practice management and other contexts.

⁷⁷The *Oath of Admission* to the State Bar of Georgia: "I, _____ (attorney's name), swear that I will truly and honestly, justly and uprightly conduct myself as a member of this learned profession and in accordance with the Georgia Rules of Professional Conduct, as an attorney and counselor and that I will support and defend the Constitution of the United States and the Constitution of the State of Georgia. So help me God." (As rev. by the Sup. Ct. of Ga., Apr. 20, 2002); See Appendix B, Chief Justice's Commission on Professionalism, *A Lawyer's Creed and Aspirational Statement on Professionalism*.

The Commission on Professionalism was created largely to address the bad professional habits and behaviors of some Georgia attorneys, as well as the changing environment of law practice. Now clearly, not all lawyers were acting in an unprofessional manner. But, as the saying goes, “one bad apple spoils the whole bunch.” There were growing concerns that those bad apples were ruining the practice of law for a lot of attorneys – not only in our interactions with colleagues and the courts, but with a perceived negative image of our profession held by the public.

Yet there were other professionalism issues of concern. Lawyers, as those licensed exclusively to represent citizens in court, had a greater duty than others to insure access to that legal system. Some were concerned that their client’s and other citizen’s experiences at the courthouse should be as pleasant – efficient and effective, perhaps – as possible. They felt that some lawyers used unnecessarily aggressive trial tactics or abused pretrial discovery tactics. Lawyers employing these tactics were described as the “Rambo-type of Lawyer.” This description comes from the movies starring the actor Sylvester Stallone, who portrays the John Rambo character, a legendary character who “comes back with a vengeance” to vanquish his enemies.⁷⁸ Use of these tactics was criticized as costly to the client, the courts, the public in general and eroded the heretofore positive image of the profession.

Early in its existence, the Commission articulated what it deemed appropriate judicial and lawyer conduct – from the time we take our oath as attorneys – to our dealings with each other, the court, clients and the public – when it developed *A Lawyer’s Creed* and the *Aspirational Statement*. To articulate what constitutes civility, the Commission had to address incivility, the latter being behaviors that clearly did not constitute competence, but did not necessarily rise to the level of incompetence requiring disciplinary actions (although that was considered). Incivility, however, was believed to be why the public had lost confidence in lawyers – from the attorney who believes the “Rambo trial tactics” were to be employed to be effective litigators – to the obvious “ambulance chasers” who might promise a win to a client in their advertising and actions.

So what does it mean to be professional? Atlanta Bar Association President, W. Ray Persons, King & Spalding partner, gave us some thoughtful insights into “What is Professionalism” in his August 2007 President’s Message. He defines professionalism as: “an approach to the practice of law that minimizes conflict which is unnecessary for the effective representation of clients and

⁷⁸Rambo is a popular character from a series of popular action films starring Sylvester Stallone, based on the characters created by David Morrell in his novel *First Blood*. The films featuring the character are: *First Blood* (1982), *Rambo: First Blood Part II* (1985), *Rambo III* (1988), and *Rambo* (2008). The films focus on a troubled Vietnam War veteran and Green Beret, John James Rambo, who is greatly skilled in all aspects of survival, weaponry, hand-to-hand combat and guerrilla warfare. Morrell says that in choosing the name Rambo he was inspired by “the sound of force” in the name of the Rambo apples which he encountered in Pennsylvania, and he felt that its pronunciation was similar to the surname of Arthur Rimbaud, the title of whose most famous work *A Season in Hell*, seemed to him “an apt metaphor for the prisoner-of-war experiences that I imagined Rambo suffering.” In popular culture, the name has become an eponym for a tactic of military aggression or, alternatively, a person demonstrating heroism through extreme violence, especially when outnumbered. However, the term can also be used somewhat derogatorily to describe someone who thoughtlessly charges into a fight with no regard for personal safety or careful planning. This term is commonly referred to as “Going Rambo”. <http://en.wikipedia.org/wiki/Rambo> (Accessed Mar.4, 2008).

maximizes the quality of service that the judicial system is able to provide.”⁷⁹ He further says: “professionalism is also what we ought to expect and demand of ourselves as lawyers. Although one’s background, values and experiences in the world may differ, one’s definition of professionalism should also include a commitment to serve something larger than ourselves – justice.”⁸⁰ Mr. Persons challenges us to take a look at ourselves – our own values and how we exercise them – from what we do – to how we do it; from what we say – and how we say it; from how we treat others – to how we should treat others. Some would say, that is simply acting in accordance with The Golden Rule: “Do Unto Others As You Would Have Them Do Unto You.”

Persons says “lawyers must implement the elements of professionalism consistently and holistically in their daily lives.”⁸¹ If it is necessary to rebuild professionalism, in dealing with our clients, students, family, the public, jurors, the judges we stand before, we must do so not solely with knowledge of the law, but also with the precepts and practices of professionalism. That will make us not only competent, it will make us compassionate and effective. Thus, we will serve that greater cause: justice. Persons’ definitions are good, but we still maintain that there is no one way to define professionalism.

Mandatory Continuing Legal Education

How did mandatory continuing legal education (CLE) in Georgia support professionalism? The Chief Justice’s Commission on Professionalism has no disciplinary power or oversight and it never has. Professionalism is an important aspirational concept to the bench, bar and legal academy. It is at the core of building and maintaining positive relationships with clients and the public at-large. Perhaps of greatest importance to Georgia lawyers and judges is that professionalism is a CLE requirement and that CLE is mandatory for lawyers and judges.⁸²

Before the creation of the Chief Justice’s Commission on Professionalism, the Supreme Court by its order of November 4, 1983 following a long study established a requirement of mandatory continuing legal education, effective January 1, 1984. Attorneys were thereby required to complete “20 hours CLE attendance per year of which six hours in legal ethics must be included every three years.”⁸³ The mandatory continuing education entity would have the oversight of a 12-member group, the Commission on Continuing Lawyer Competency (CCLC). The Executive Director of the Chief Justice’s Commission on Professionalism was added as an ex-officio member of the CCLC.

The general goal of Professionalism CLE is to provide a forum where lawyers, judges, and legal educators can explore and reflect on the meaning of professionalism in contemporary legal practice. Professionalism CLE is really the Commission’s main point of contact with Georgia

⁷⁹W. Ray Persons, *President’s Message*, 5 Atlanta B. J., at 3 (Aug.2007).

⁸⁰*Id.*

⁸¹*Id.*

⁸²Appendix C.

⁸³A. Gus Cleveland, *The First Twenty Years of the State Bar of Georgia*, 20 GA. ST. BAR J. 122, at 134 (Feb. 1984). Also, newly-admitted attorneys in the year of their admission were required to enroll in the Bridge-the-Gap Program; lawyers over 70 years of age and full-time judges were exempted..

lawyers. It insures that professionalism reaches all active lawyers, not just the good – or bad – apples. CLE serves as the primary means of building a community among the lawyers of Georgia. The Commission has developed many innovative programs and annually more than 500 professionalism CLE programs are offered in Georgia. Lawyers and judges enthusiastically offer to speak and serve on panels at these programs.

Mandatory professionalism CLE is aimed at something more than a one-time reminder of the problems of modern law practice, its goal is to turn professionalism into a constant awareness for every Georgia lawyer. Georgia was the first state, recently joined by Louisiana and others, that required professionalism CLE covering all lawyers, not just newly admitted lawyers - on the theory that one never outgrows the need for professionalism. Of the forty-four (44) states having mandatory continuing legal education, twelve (12) states now have a professionalism requirement.⁸⁴ Professionalism has certainly been institutionalized in the Georgia brand as a continuing legal and judicial education requirement.

Convocations and Town Hall Meetings

How did the Commission start the dialogue on professionalism with the bench and bar? As early as 1988, as the Commission was forming and after the Emory conclave, the idea of holding meetings to introduce professionalism was introduced. The Commission decided to start with additions to the “elite” of the bar, by inviting a wider variety of bar leaders – old and younger members – to the first of several Convocations on Professionalism. These Convocations would help jumpstart the dialogues on the most prevalent professionalism issues that had already been identified. They would be conducted for CLE credit. Then, the Commission would spread the messages of professionalism and get more engagement and input from a wider audience around the state, from Town Hall Meetings where members of the public were included.

On October 14, 1988, even before the official formation of the Commission, the First Annual Georgia Convocation on Professionalism took place in Macon, Georgia. Like the Consultation on Professionalism at Emory earlier that year, the Convocation was convened by Chief Justice Thomas O. Marshall, but now in conjunction with the State Bar of Georgia. The topic addressed was “The Practice of Law – Is There Anything More to It Than Making Money?” The Convocation attracted 120 participants – from the ranks of the state’s law firms, courts, law schools and bar.⁸⁵

The Convocation focused attention on several issues surrounding the commercialization of the legal profession. Attendees participated by dividing into smaller breakout groups, that caused increased interaction. Changes in CLE programming were born, as professionalism CLEs encouraged and required attendees to be engaged with each other in a more personal way than the typical panel and lecture CLE format. The premise was then and remains now that lawyers will

⁸⁴N.Y. Bar Ass’n., *Comparison of the Features of Mandatory Continuing Legal Education Rules in Effect as of July 2006* (Albany, NY: 2006).

⁸⁵To encourage participation, the Convocation was free to all participants, supported by a grant from the Georgia Bar Foundation and provided continuing legal education credit. Its proceedings were published by the Institute of Continuing Legal Education, the official CLE provider of the State Bar of Georgia. The author was a participant.

understand and interact better with each when doing business when they have had some prior meaningful personal interaction.

There were more Convocations and Town Hall Meetings during the next decade to address every aspect of professionalism that had been identified.⁸⁶ The Town Hall Meetings were the “road show,” to engage not only lawyers but members of the public in professionalism discourse. These meetings occurred from 1988 through 1997. In recent years, the concept of convocations on professionalism has been adopted by other bar groups. For example, the Family Law Section of the State Bar conducts an annual “Family Law Convocation on Professionalism.”

Some of the issues illuminated at these events have germinated programs of the bar – State Bar programs or committees with dedicated staff and continuing financial support – like the Consumer Assistance Program and Fee Arbitration Program. Other issues lead to creation of commissions by courts at all levels – from Georgia trial courts to the Supreme Court of Georgia – like the Commission on Access to Justice and the Judicial District Professionalism Program.

Diversity of Participants and the Bar

How were the growing numbers of females and lawyers of color in Georgia involved in the professionalism efforts? As the professionalism movement was taking off in the late 1980s, Georgia was also experiencing growing diversity in its bench and bar. As in former eras, some lawyers practiced in small towns, others practiced in big cities. Some lawyers were in solo practices, others practiced in large national and international law firms. Some lawyers practiced in the civil area with varying areas of specialization; others limited their practices to primarily criminal prosecution or defense. Perhaps, the most visible change in the profession was its members individual characteristics. There were more females. There were more blacks. There were more attorneys of Asian Pacific, Native and Hispanic backgrounds. They were changing the face of the legal profession that in Georgia historically had been dominated by white males. The demographic changes in bar membership coincided with the professionalism movement.

Yesterday and today, “professionalism means inclusiveness.”⁸⁷ The group of elite lawyers and judges who convened at Emory in 1988 was not only special, it included lawyers from different kinds of practices, and it included women and black lawyers. The Bar membership was changing in 1988 and the State Bar recognized this change by creating the Women and Minorities in the Profession Committee and later its Commitment to Equality Awards. The State Bar of Georgia has demonstrated in the last two decades that diversity is a “cause to celebrate” and an important aspect

⁸⁶Convocations included: (1988) *The Practice of Law - Is There Anything More to It Than Making Money?*, (1989) *A New Era of Professionalism*, (1990) *The Social Responsibilities of Lawyers in the Practice of Law - The Lawyer as Citizen*, (1991) *Professionalism - Passing It Along (Mentoring)*, (1992) *Town Hall Meetings - Attorney Concerns About Ethics and Professionalism*, (1993) *Ethics - Beyond the Code*, (1994-1996) *Town Hall Meetings - Professionalism in Client Relations*, (1996) *Professionalism and Community Service*, (1997) *Professionalism and Public Service*.

⁸⁷Hulett H. “Bucky” Askew, Remarks at Luncheon Panel, *The Role of the Bench and Bar in Transforming Legal Education*, International Conference on the Future of Legal Education, Ga. St. U. Col. of L. (Atlanta, Ga, Feb. 22, 2008). Askew, the ABA Consultant on Legal Education, formerly served as the Director of the Georgia Office of Bar Admissions and was the first Director of the Chief Justice’s Commission on Professionalism.

of professionalism.⁸⁸

Just how was Georgia's bench and bar changing to a period of inclusion after decades of exclusion? The highest court experienced a change in its seven members. Justice Robert Benham was sworn in as the first black Georgia Supreme Court justice in December of 1989. Chief Justice Leah Ward Sears (formerly Sears-Collins) was the first woman, second black and the youngest person ever to serve on Georgia's Supreme Court when she, at age 36, was appointed in February of 1992. Presiding Justice Carol W. Hunstein joined the Supreme Court as its second female on November 23, 1992. These three justices remain on Georgia's Supreme Court, joined by another black justice, Justice Harold Melton, in July, 2005.

State Bar leadership also changed with a growing and more diverse membership. In 1997-1998, the State Bar elected its first and only female president, Linda Klein, a partner in a large law firm. More women and minority lawyers have joined the Board of Governors during the era following the creation of the Commission on Professionalism. More lawyers have migrated to Georgia as a place to live, play, practice and retire, aided by a change in the bar admission requirements effective in 2003, permitting admission on motion following passage of fitness requirements, for lawyers having practiced for five of the last seven years in jurisdictions that admit Georgia licensees under the same conditions.⁸⁹

Another factor in the increased number of Georgia lawyers during this era is the increased number of law students. In the 1930's Georgia had three university based law schools – Emory, Mercer, the University of Georgia – as well as three independent law schools that were privately owned and operated with part and full-time programs – John Marshall Law School, Woodrow Wilson College of Law and Atlanta Law School. At the end of World War II, Emory ended its evening law school division. During the late 1970s, the Supreme Court of Georgia announced its intent to withdraw from the business of accrediting schools of law and to defer to the American Bar Association to accredit law schools. Emory, Mercer and the University of Georgia became accredited by the ABA. Woodrow Wilson and Atlanta Law Schools shut their doors in the late 1970s. Shortly thereafter, after a decade of debate, in 1982, the State of Georgia created the College of Law at Georgia State University, a publicly-funded urban law school with both full and part-time programs, that would become ABA accredited and is celebrating its twenty-fifth anniversary in 2007-2008. In 2003, Atlanta's John Marshall, the only remaining independent school, gained provisional ABA accreditation. Even considering that some law students may leave the state after graduation, the State Bar now reports a net gain of more than 900 new lawyers a year.

⁸⁸Jennifer N. Ide, *Diversifying Georgia's Legal Profession: A Professionalism Cause to Appreciate*, 12 GA. B.J. 68 (June 2007).

⁸⁹On December 12, 2002, the Supreme Court of Georgia entered an order adopting "Admission on Motion without Examination" effective January 1, 2003. Part C, Section 1 of the Rules Governing Admission to the Practice of Law in Georgia states, "The Board of Bar Examiners may admit on motion without examination any attorney licensed in a United States jurisdiction other than Georgia if that attorney satisfies the criteria set out in Section 2 of this Part. The attorney must also be certified for fitness, pursuant to Part A of these Rules" available: www.gabaradmissions.org (Accessed Mar. 19, 2008).

Women at the Bar

What is Georgia's record of admission of women to the Bar and how have they been included in the professionalism efforts? It appears that Georgia has followed the national trend with a significant increase in the number of women lawyers since the 1970s, a time when the number of women law students was approaching 50% of the classes.⁹⁰ According to the State Bar of Georgia's Membership Office, in 2008 there are 31,530 total active attorneys, of which 20,991 are male and 10,539 are female (34%).⁹¹ The numbers of inactive attorneys in 2008 (total of 7,314) are closer in percentages with respect to gender – 4,092 males or 55.94% and 3,222 females or 44.06%, suggesting that some females may choose not to work as a lawyer.

To gauge this growth in female bar members, by contrast, in 1970 only 5.0% of Georgia bar members were female, the number growing slightly in 1972 to 5.2%. By 2004, however, women lawyers comprised 32.38% of Georgia Bar members. Today 35.43% of the total bar members, active and inactive, are female.

The founders of the Georgia Bar Association, with its voluntary and selective membership criteria, did not contemplate women as members upon its founding in 1884 and for much time thereafter. Describing the earliest years:

During an 1894 symposium on "Requirements for Admission to the Bar," a speaker noted "[The Code requires that] the applicant must be of the male gender. Georgia is not ready to swap wifehood and motherhood even for female legal lore. The Georgia Code does not lend its influence to bring women down from her present high estate."⁹²

Women, like black lawyers, were not selected for membership in the Georgia Bar Association, following not only the mores of the day but the laws, as well. The rationale behind this "was not male chauvinism but rather of reverence for womanhood whose place should be at home rather than in the adversarial courtroom."⁹³ While there were no female lawyers present to agree or disagree with that claim, it was stated as a truth – not just a belief – that "Georgia females of that period apparently concurred with . . . [this] view."⁹⁴

Ms. Minnie Hale Daniel was "the first woman allowed to practice law in Georgia" when she was admitted on August 21, 1916.⁹⁵ She had graduated with ninety men in her class from Atlanta Law School in 1911 but was initially denied bar admission. The law in 1911 read: "Any male citizen of good moral character, who has read law, undergone a satisfactory examination, as hereafter

⁹⁰Carol W. Hunstein, *Women and the Legal Profession*, 3 GA. B. J. 46 (June 1998).

⁹¹Judy Hill, Assistant Director of Membership, State Bar of Georgia (Mar. 5, 2008).

⁹²H. Sol Clarke, *The Earliest Years: 1884-1904*, 20 GA. ST. B. J. 102, at 104 (Feb. 1984)

⁹³*Id.* at 104.

⁹⁴*Id.* at 104.

⁹⁵Donna G. Barwick, *Women at the Bar*, 20 GA. ST. B. J. 152 (Feb. 1984).

described, is entitled to plead to practice law in this State.”⁹⁶ Ms. Daniel’s admission came after she authored a bill to change that law that was signed by Governor Nat Harris.⁹⁷

The Macon Bar archives document that women lawyers were practicing in that city around this time under some interesting circumstances:

Mercer Law School first advertised for female law students in August of 1917. The following ad appeared in the Macon Daily Telegraph: "Women have been admitted to practice in Georgia, and the Mercer Law Course is open to them."

Miss Alene Hardin, billed as Macon's "first lady lawyer" was in practice by July of 1918, and maintained a law office at 301 Georgia Casualty Building (American Federal) for almost twenty years. Miss Hardin was also an animal rights advocate and distributed straw bonnets to downtown horses. She successfully lobbied the Mayor to provide hats for all of the city's work horses.

In June of 1919, Mrs. W. E. Jackson became the first woman graduate of the Mercer Law School to practice in Macon. When she appeared in the Superior Court on behalf of a criminal client, it was covered on the front page of the newspaper.⁹⁸

Viola Ross Napier of Macon was admitted to practice in 1920. She became the first woman to argue a case before the Georgia Court of Appeals, and before the Supreme Court of Georgia, in 1922. She was the first female to serve in the General Assembly.

At this time, women comprised less than 1% of the lawyers in Georgia and in the nation. No black women attorneys were licensed in Georgia until Rachel E. Pruden Herndon in 1943.⁹⁹ Yet in the decades approaching the 1990s when the professionalism movement started, the growth in the number of women at the bar is significant.

In a monumental publication, United States Census figures documenting women at the bar were showcased, permitting us to take a look at Georgia’s bar membership from 1950 to 1990, the growth in the numbers of women attorneys, and the numbers of black and other women of color attorneys has been illuminated.¹⁰⁰ This is significant, because the State Bar itself does not document

⁹⁶Sec. 4932, Ga. Civ. C. (1911).

⁹⁷Barwick, *supra* at 152.

⁹⁸Frank McKenney, Macon Bar Archives, *The First Women Lawyers in Macon*. McKenney was credited as the Macon Bar Historian, Available: <http://www.redi.net/maconbar/Hist0197.htm> (Mar. 20, 2008).

⁹⁹Donna G. Barwick, *Women at the Bar*, 20 GA. ST. BAR J. 152 (Feb. 1984). Barwick says the 1890 census show Georgia had 1 female and 1,730 male lawyers. She says in 1922 women first attended the Atlanta Bar Association meeting and the “records of the Court of Appeals show that around that time approximately one woman for every one hundred men was admitted to practice before that Court.”

¹⁰⁰J. Clay Smith, ed., *Rebels in the Law: Voices in History of Black Women Lawyers* (U. Mich. Press 2002), at 284 - 295.

any special characteristics of its members other than gender, nor does it officially collect such data. In the 1950 in Georgia, there were 112 white female lawyers, of which one was black, and a total of 2,827 male lawyers.¹⁰¹ In 1960, there were 166 white female lawyers and a total of 3,245 male lawyers in Georgia.¹⁰² In 1970, there were 4 black female lawyers, 209 white female lawyers and a total of 3,889 male lawyers in Georgia.¹⁰³ In 1980 and 1990, the numbers were much different. In 1980, there were 1,190 white female attorneys, 131 black female attorneys, 11 Hispanic women (1,321 women), and a total of 8,835 male Georgia attorneys.¹⁰⁴ In 1990, the 3,459 women attorneys included 43 Hispanic, 415 black, 2,972 white, 7 Native-American and 22 Asian, Asian-Pacific attorneys, compared to the total males of 12,546.¹⁰⁵

Given their need for a bar association, in 1928 nine women lawyers founded the Georgia Association of Women Lawyers, a still active and now much larger organization.¹⁰⁶ In 1981, Black women attorneys formed their own voluntary bar, the Georgia Association of Black Women Attorneys, one of the largest and most active voluntary bars in the state with nearly 400 members.¹⁰⁷ Both have chapters or representatives around the state.

While there has been only one female president of the State Bar of Georgia, Linda Klein, today women represent larger numbers in the bar and its leadership. Women have made some positive strides in the law and the legal profession, but there is more progress to be made.¹⁰⁸ There is a growing concern that women, particularly women of color, are leaving the legal profession in great numbers for a variety of reasons and some law schools and organizations have begun to address

¹⁰¹*Id.* at 285.

¹⁰²*Id.* at 287.

¹⁰³*Id.* at 289.

¹⁰⁴*Id.* at 291.

¹⁰⁵*Id.* at 293.

¹⁰⁶Founded in 1928, the Georgia Association for Women Lawyers (“GAWL”) has been proudly serving the diverse interests of more than 8000 women who are admitted to the State Bar of Georgia for over 75 years. GAWL’s mission is to enhance the welfare and development of women lawyers and to support their interests. Towards that end, GAWL has provided a forum for networking, mentoring, and leadership training. GAWL also seeks to support balance and quality of life for women lawyers and to advocate for a healthy work environment. www.gawl.org (Accessed Mar. 18, 2008).

¹⁰⁷The Georgia Association of Black Women Attorneys (“GABWA”), founded in 1981, represents the interests of more than 1600 black women attorneys throughout Georgia. GABWA provides an informed and reliable voice through which the needs of black women lawyers and the black community at large may be articulated. GABWA includes judges, law students, professors, deans, government and public interest lawyers, television stars, state bar attorneys, in-house attorneys from small, mid-sized and Fortune 500 corporation, solo/small firm lawyers, and large firm lawyers. GABWA’s mission statement is as follows: The Georgia Association of Black Women Attorneys is a voluntary bar organization that nurtures, supports and galvanizes the power of Black women attorneys, advocates for women and children and empowers our communities. The current Chief Justice of the Supreme Court of Georgia Leah Ward Sears was GABWA’s founding president. See, www.gabar.org (Accessed Mar. 18, 2008).

¹⁰⁸Carol W. Hunstein, *Women and the Legal Profession*, 3 GA. B. J. 46 (June 1998).

this issue.¹⁰⁹

Today, Georgia's population is half female and women represent 35 % of Georgia Bar members. The numbers suggest that there is still underrepresentation of women in the legal profession. Women, however, have had a significant impact on the legal profession, particularly and most visibly as measured in numbers.¹¹⁰ In her 2006 remarks, Sally Evans Lockwood describes this impact:

According to the ABA Commission on Women and Minorities in the Profession, almost 30 percent of the lawyers in the United States are women, projected to be 40 percent in 2010. Today, 48 percent of law students are women. Georgia law schools have already seen women make up more than 50 percent of the first year classes. Forty-four percent of tenure track faculty in law schools are women, as are 43 percent of associates in private practice and 23 percent of federal judges. While the numbers for women in some positions of leadership lag behind (19 percent of deans are women, 17 percent of law firm partners and 15 percent of general counsel), there is encouraging news in the judiciary: 28 states have had women as chief justices, and 16 states plus the District of Columbia currently have women chief justices.¹¹¹

Ms. Lockwood offers an important review of the feminine role in changing the legal profession in Georgia. As she summarizes the situation: "The profession is ripe for change, and open to it, as never before. The good news is that women are at the table, bringing their life experiences, talents, intellect and imagination. The profession needs all of us, men and women, to meet the challenges of the 21st century."¹¹² Georgia's professionalism movement has facilitated not only inclusion, but discussion, understanding and appreciation of gender differences, approaches to the practice of law, and work-life balance.

Black Lawyers

How were black lawyers, implicitly and explicitly formerly excluded from bar membership but subjected to court discipline, brought into the fabric of the Bar and included in professionalism and bar programming? In 1988, there was a growing diversity of membership of the State Bar of

¹⁰⁹Jill Schachner Chanen, *Early Exits; Women of Color at Large Firms Tell ABA Researchers They Are Being Overlooked and Undervalued—Maybe That's Why They are Leaving in Droves*, X ABA J. 33 (Aug. 2006); See also the Leadership Institute for Women of Color Attorney in Law & Business, Inc., www.leadingwomenofcolor.org.

¹¹⁰Sally Evans Lockwood, *Women's Impact on the Legal Profession*, 12 GA. B. J. 58 (Feb. 2007). Ms. Lockwood is the Director of the Georgia Office of Bar Admissions and the former Executive Director of the Chief Justice's Commission on Professionalism.

¹¹¹*Id.* at 58. Lockwood points out that Georgia Chief Justice of the Supreme Court Leah Ward Sears is the first black woman to head a state supreme court and the next chief in line is Presiding Justice Carol Hunstein. Georgia has three women on its Court of Appeals, Chief Judge Anne Barnes, Presiding Judge M. Yvette Miller and Judge Debra Bernes.

¹¹²*Id.* at 60. See also, Penelope M. Huang, *It's About Time II: Examining Flexible Work Arrangements from the Attorney's and the Firm's Perspectives – A Study of Part-Time Policies of Georgia Law Firms* (Ga. Ass'n. for Women Lawyers, 2008).

Georgia, beyond the formerly largely white male members. The administration of black mayors starting in the mid-1970s to the present in Atlanta (Maynard Holbrook Jackson, Andrew Young, William Campbell, Shirley Franklin) and in other major Georgia cities (Augusta, Savannah, Macon), welcomed black professionals. Black lawyers responded, coming to Atlanta after graduating from some of the nation's most prestigious law schools. There was also some political movement in the late 1980s to increase the number of black judges throughout Georgia, the idea behind which was to improve equity and justice in the courts.¹¹³

The group that convened the meeting at Emory and the first Convocations giving the life to the Commission on Professionalism somewhat reflected the bar's demographics at that time. More importantly, the bar's elite influenced the general membership to be a more welcoming body. Since the group of committed leaders put their words and deeds to the test, the issues and approaches to professionalism are not only complete, they largely reflect the needs and concerns of the full array of Georgia lawyers, including black lawyers.

Georgia now ranks twelfth in the estimated number of attorneys who reside and are active in their state bar.¹¹⁴ It is fifth in size, among states having a unified bar. Most of the lawyers in Georgia are concentrated in Atlanta and, more specifically, in the three Metropolitan Atlanta counties (Cobb, Fulton, DeKalb) that coincide with judicial districts 4, 5, and 6.¹¹⁵

According to our best estimates, today an estimated 2,500 black lawyers are licensed in Georgia.¹¹⁶ While Georgia's bar membership – including black members – is still largely

¹¹³*Brooks v. St. Bd. of Elections*, 848 F.Supp. 1548 (S.D. Ga. 1994). (Georgia state representative and others brought class action under Voting Rights Act of 1965 challenging state's judicial elections system. Court denied parties' motion to approve their settlement that would have changed the way Georgia would choose judges to increase the number of blacks on the bench. Afterwards, Governor Zell Miller appointed black judges to state courts.); See Ronald D. Smothers, *Court Overturns Georgia Accord On New Judges*, N.Y. TIMES, Mar. 9, 1994, Available: <http://query.nytimes.com/gst/fullpage.html?res=9D00E5D6163DF93AA35750C0A962958260&scp=1&sq=Ronald+Smothers+%2B+March+9%2C+1994&st=nyt>, accessed Mar. 24, 2008.

¹¹⁴N.Y. St. Bar, *supra*. States having a professionalism requirement include: Alabama, (1.0 hour in ethics or professionalism), Louisiana, Georgia, New Mexico, Ohio (1.0 hour professionalism), Florida (5.0 hours in legal ethics, professionalism, substance abuse or mental illness awareness), Indiana (1 six hour applied professionalism course during the first 3-year cycle), New Hampshire (2.0 hours ethics, professionalism, substance abuse, prevention of malpractice or attorney-client dispute), New York (4.0 hours in ethics and professionalism), North Carolina (2.0 hours ethics and/or professionalism), Pennsylvania (1.0 ethics, professionalism or substance abuse), and Tennessee (3.0 hours ethics or professionalism). Six states (District of Columbia, Maryland, Massachusetts, Michigan, Nebraska, New Jersey, South Dakota) and the District of Columbia do not have mandatory continuing legal education .

¹¹⁵According to the Membership Department of the State Bar of Georgia, as of December, 2007, there were 29,292 active attorneys in Georgia (excludes inactive, emeritus - retired, and those under discipline). The Atlanta District includes lawyers in Fulton County and the City of Atlanta, Judicial District 5 with 13,727 active members. The Metropolitan Atlanta Judicial Districts (Atlanta, DeKalb, Cobb) contain 19,511 active members. The seven judicial districts outside of the three Metropolitan Atlanta districts have 15,565 members. Thus, over half of the active bar members report a Metropolitan Atlanta address to the Bar.

¹¹⁶The author, as a leader in the African-American legal community in Georgia, has kept unofficial estimates of black lawyers in Georgia since the early 1980s. The State Bar of Georgia does not track racial identity of its members. She estimates that as of early 2008, there are approximately 2500 black lawyers licensed by

concentrated in the Atlanta Metropolitan areas, there has been significant growth in the number of black attorneys and there are now more black practitioners both in and outside of Atlanta, a situation much different than in the 1980s at the beginning of the professionalism movement. There were few black lawyers and even fewer black judges outside of Atlanta up to the 1980s. The growth in the number of black lawyers has been largely females, who now make up about two-thirds of the total numbers (an estimated 1600 females and 900 males).

What does this mean for diversity of the bar and larger community? The latest available United States census figures from the 2000 Census, updated in 2006, show that as of 2006 Georgia's population was 8,186,453 and that it was made up of 65.8% white persons and 29.9% black persons.¹¹⁷ Georgia's total bar membership is around 29,000. Thus, black lawyers in Georgia, according to our best estimate, have never been excess of 10% of the active bar membership. The number of black attorneys is far from the nearly 30% of black persons in Georgia's general population.

Does the future offer encouragement? The "pipeline issue" has gained attention amid continuing lackluster statistics on minorities in law firms. This issue is based on the significantly decreasing number of black students who are entering law schools today. The decrease in law students is due to a number of factors, including the increasing dropout rates for students of color in K-12 grades, colleges and universities and the successful attacks on college and admissions policies that recognize race as factor.¹¹⁸ Many concerned members of the Bar, as well as the larger community, are addressing the pipeline issue primarily through mentoring programs for children of color from K-12, as well in as college and law school.¹¹⁹

How do all attorneys of color fare? Attorneys of color equal about one in 20 attorneys at large law firms, according to the *Minority Law Journal*, and although that number is an improvement from one in 30 attorneys in 2001, law firm composition is far different from the general U.S. population, in which almost one of every three citizens is a person of color.¹²⁰ In addition, from 1992

Georgia, of which approximately two-thirds of female. That is less than 10% of the active bar membership.

¹¹⁷U.S. Census Bureau, *State & County Quick Facts*, available: <http://quickfacts.census.gov/qfd/states/13000.html>, (accessed Mar. 7, 2008).

¹¹⁸*Gratz v. Bollinger*, 123 S. Ct. 2411 (2003). The Supreme Court held that the University of Michigan's undergraduate admissions program violated the Equal Protection of white applicants because it was not narrowly tailored to achieve the school's interested in diversity, although diversity is a compelling state interest. Here, the program automatically gave 20 points or one-fifth of the total points needed for admission, an advantage to all "underrepresented minority" applicants.) But see, *Grutter v. Bollinger*, 123 S. Ct. 2325 (2003). The Supreme Court upheld the University of Michigan Law School's admissions policy that was narrowly tailored to further a compelling interest in obtaining the educational benefits from a diverse student body. The Law School's policy did not violate Equal Protection because the school looked not just at race but at the applicant's academic abilities and other "soft variables" in a flexible assessment process.

¹¹⁹The Gate City Bar Association established the Justice Robert Benham Law Camp in 2007, a three-week experience to address the pipeline issue. See www.gatecitybar.org. (Accessed Mar. 20, 2008).

¹²⁰Firms build 'pipeline' for minority talent --Firms nationwide are reaching out to colleges, high schools to pique interest in law, available:http://www.dailyreportonline.com/Editorial/News/singleEdit.asp?origin=NewsA1rt&individual_SQL=3%2F12%2F2008%4021897 (Accessed, Mar. 12, 2008)

to 2006, the number of African-Americans and Mexican-Americans enrolled in the nation's law schools accredited by the American Bar Association fell from 3,937 to 3,595, according to the Law School Admission Council.¹²¹ Since the State Bar of Georgia does not keep statistics on the racial background of its members, I have not seen much data on Georgia lawyers of color who are not black, although there may be some information gleaned from census data.

However, I do know that in the last two decades Georgia has experienced significant growth in its population in the last two decades with people of color from Latin and South America, as well as from Africa and the Caribbean. Many of these new residents may be immigrants with attendant legal status issues who may not possess the education and meet the requirements for admission to Bar. However, what this population means for the Bar's professionalism programs, as well as the administration of justice, is just surfacing. One issue has already surfaced – the need for more court interpreters in judicial circuits where there are a large number of Spanish-speaking people. The law schools in Georgia may be a good source for more information on the growing population of lawyers of color, as well as the Office of Bar Admissions.

Law Schools

The American Bar Association, as the sole accrediting agency for American law schools, has made teaching and learning professionalism a priority for many years.¹²² Georgia law schools have been at the forefront in inculcating students with professionalism, including coordinating professionalism orientations, adding first-year professionalism programs and at Mercer's law school a mandatory first-year course on professionalism is part of the curriculum.

How did Georgia lead the way in instituting law school professionalism programs for students? Begun in 1993 as pilot program, the Georgia Bar took its professionalism movement to where it all should start – to all Georgia law schools. Now a permanent feature in the schools, the Georgia Bar's Committee on Professionalism and the Chief Justice's Commission on Professionalism, make sure that every incoming law student (including visitors and transfer students) have participated in a mandatory Orientation on Professionalism at the start of their legal studies. A bar leader, law school professor, administrator, or even an upper class student will introduce the program which is usually integrated with a discussion of the School's Honor Code and an introduction to the Rules of Professional Conduct. Then a well-respected judge or practitioner presents her or his views on professionalism. After the judge's brief remarks, students engage in small group discussions facilitated by volunteer judges, lawyers and law faculty members, sparked by hypothetical situations in the context of law school or legal practice. The discussions make the students not only "feel like a real lawyer," they also introduce them to professionalism ideals and often cause them to reflect on their reasons for attending law school.

Some schools infuse professionalism concepts in other ways into the curriculum. For example, Emory has a second first year orientation session. Mercer has a required first-year course

¹²¹*Id.*

¹²²ABA Section of Legal Education and Admissions to the Bar Professionalism Committee and the Standing Committees on Professionalism and Lawyer Competence of the ABA Center for Professional Responsibility, *Proceedings - Teaching and Learning Professionalism: Symposium Proceedings* (Oct. 2-4, 1996).

on Professionalism, and other schools have programs inviting practitioners to address these issues, like John Marshall's annual Bobby Lee Cook Practical-Legal Symposium. The Georgia Bar, having started "a good thing" has been recognized throughout the country for these law school orientations on professionalism. Many law schools in addition to the five in Georgia – now more than 30, I believe, have replicated these orientations in some form.

How is professionalism brought to law school faculty and offered to practitioners at the schools? The Chief Justice's Commission on Professionalism supports the National Institute for Teaching Ethics and Professionalism (NIFTEP), lead by Georgia State Law Professor Clark Cunningham. NIFTEP provides an annual workshop for academics and practitioners to work on teaching ethics and professionalism.

Additionally, Emory, Georgia, Georgia State and Mercer Law Schools, having been the beneficiaries of a multi-million dollar court award, put on rotating annual symposia on ethics and professionalism and have endowed chairs for their professors of ethics and professionalism.¹²³ This year, Georgia State hosted this conference, the "International Conference on the Future of Legal Education," February 20-23, 2008. This symposium took as its point of departure a highly critical report on American legal education recently issued by the Carnegie Foundation for the Advancement of Teaching: *Educating Lawyers*. That report and another highly critical study by Professor Stuckey at the University of South Carolina Law School, raises concerns about the future of legal education, particularly the appropriate balance of instruction on the substantive law, skills and values – all which relate to professionalism. In September of last year, the symposium was hosted by Emory Law School with the theme, "Disability and Lawyers." A truly insightful conference, not dealing necessarily with representation of clients with disabilities, it addressed the topic from the viewpoint of the lawyer or law student with disabilities.

Institutionalizing Professionalism in Georgia

How has Georgia institutionalized professionalism? Professionalism is now institutionalized in Georgia in several ways. First, through the values and core concepts addressed in CLE programs and the activities and signature programs of the Chief Justice's Commission on Professionalism. Second, through bar programs, most prominently those of the State Bar of Georgia. Third, through programs of the courts and related entities, most pronouncedly the Supreme Court of Georgia.

Values and Core Concepts

Georgia lawyering has progressed to our own "brand" of professionalism. As we did in the beginning, we continue to look for the meaning of professionalism in context of our own practices – whether that is private, public, public interest, or in a specialized area of law. While there is no agreement (and there need not be) on the definition of professionalism – there is some agreement

¹²³ Law School Symposia: Mercer U., *Ethics in Settlement Negotiations* (Mar. 9-10, 2001); U. of Ga., *Problems in Discovery & Professionalism* (Nov. 15, 2002), Emory U., *What Do Clients Want?* (Mar. 14-15, 2003), Ga. St. U., *Inaugural Award for Innovation & Excellence in Teaching Professionalism*, (Jan. 30, 2004), Mercer U., *Judicial Selection*, (Oct. 22, 2004), U. of Ga., *Taking Your Case to the Court of Public Opinion - Strategic, Legal and Ethical Implications* (Nov. 4, 2005), Emory U., *Lawyers and Disability* (Sept. 7-8, 2007), Ga. St. U., *The Future of Legal Education* (Feb. 20-24, 2008).

on its components. The four (4) main components of professionalism are the basic ones: 1. Competence, 2. Civility, 3. Pro bono service, and 4. Community Service.

And what are those values? Former Georgia Supreme Court Justice Harold Clarke, known as “the conscience of the legal profession in Georgia,” taught us that while it may be impossible to reach a consensus on a definition of professionalism, while it may be that professionalism is in the eye of the beholder, yet each of us beholders can benefit from examining, clearing, improving the vision of those eyes, the values that motivate us.¹²⁴ So we find it more useful to talk about the values of professionalism. And what are those values that make us a profession, members of a high calling enlisted in the service of client and public good?

Professionalism in the context of being a lawyer does not have one definition – but includes core concepts, practices and ideals that have evolved with time. Professionalism ideals are higher than the minimum ethical standards found in the Rules of Professional Conduct, the violation of which could lead to lawyer discipline. These ideals are found in *A Lawyers Creed* and the *Aspirational Statement of Professionalism*.¹²⁵ The Commission continues to encourage judges and attorneys to define professionalism contextually for themselves.

The core concepts of Professionalism are briefly stated as follows:

1. **Civility.** Civility is how we treat other lawyers, judges, clients and the public.
2. **Alternative Dispute Resolution.** Alternative dispute resolution affords parties the opportunity to resolve conflicts in a non-conflicting way by mediation, arbitration, negotiation, restorative justice – so that relationships are not necessarily totally destroyed when the winner takes all.
3. **Diversity.** Recognizing, celebrating, rewarding and utilizing differences of gender, race, ethnicity, age and thought can sweeten and often strengthen the pot of ideas, options and business opportunities.
4. **Quality of Life.** Professionalism includes addressing family and life balance of judges and lawyers when doing what is required to make a living.
5. **Image of the Profession.** An impetus of the professionalism movement has been the perceived need to restore the positive perception of lawyers with the public, as those persons of a high calling – one of the three historical learned professions – law, medicine and the clergy.
6. **Recognizing Role of Lawyers in Society.** Owning the profession recognizes judges are responsible for the rule of law and to maintain the stability of the law. Lawyers have to help shape public policy and protect the public (from even ourselves).
7. **Insuring Access to Justice.** Except for limited *pro se* representation, lawyers are needed to provide representation to the public, without regard to ability to pay. Thus,

¹²⁴See, Harold G. Clarke, *Remembering Forward* (Mercer U. Press 1995). In the Foreword by Celestine Sibley, she calls Justice Clarke the court’s “spiritual leader” and explains how Justice Clarke enabled Justice Weltner to serve as Chief Justice: “Harold Clarke made it possible. He stepped down as chief justice temporarily to allow Justice Weltner to serve before he died in the post he had long desired. When Justice Weltner was sworn in, he went back to his office and found cards and stationary with the imprint of his new title. Harold Clarke provided them.” *Id.* at xi.

¹²⁵Appendix B.

- the bench and bar must insure access to justice for all.
8. **Client Relations/Customer Service.** Judges are responsible for the administration of justice and the operations of the judicial system. Lawyers represent those persons using the judicial system. Thus, the bench and bar must focus on providing good customer service with courtesy and efficiency, to clients and the public.
 9. **Mentoring.** Mentoring is nurturing new lawyers and others whose practices and careers may need improvement. It involves assisting, educating and guiding new lawyers. Mentoring helps to improve the profession, client service and the administration of justice.
 10. **Law Practice Management.** Use of the best practices of business helps lawyers improve the administration of justice and their legal practice. This improves client service, protects the public, allows for efficient administration of justice, and improves both lawyers' profit potential and quality of life.
 11. **Discovery Use.** Proper discovery and avoidance of abuse improves both the administration of justice and public image of lawyers.
 12. **Community and Public Service.** Positively contributing to the community with service beyond judicial duties or legal work is part of the higher calling of the legal profession. Judges and lawyers who participate in such activities as social service, church and religious activities, politics, education, sports, recreation, arts and the military, provide perhaps the most demonstrable commitment to community.

Commission Activities and Signature Programs

What does the Commission do? The Chief Justice's Commission on Professionalism has steered the institutionalization of Georgia's brand of professionalism by carrying out its functions, duties and programs. The Commission's work centers around educational programming, periodic recommendations to the State Bar, the judiciary, and the law schools in Georgia, and coordination of professionalism activities of the organized bar, courts, law schools, and law firms. To further its charge, the Commission works in four (4) broadly-defined mandates as it:

1. Develops educational materials, law school curricula, and continuing legal and judicial education programs on the values of professionalism: competence, civility, legal ethics, integrity, commitment to the rule of law, to justice, and to the public good;
2. Administers the Professionalism Continuing Legal Education (CLE) requirement, effective January 1, 1990, by which the Georgia Supreme Court mandated that each active member of the State Bar complete one hour of CLE annually on the topic of professionalism;
3. Serves as a resource, archive and clearinghouse for exchange of information regarding professionalism initiatives past and present, local, national, and international; and
4. Provides guidance to professionalism movements in other jurisdictions, nationally and internationally.

To carry out these mandates, the Commission presents its own "signature" programs and it interacts with numerous State Bar of Georgia committees, departments, divisions and other affiliated

court and bar offices, locally, nationally and internationally. The Commission is responsible for several premiere programs, solely or as a co-sponsor, in partnership with other entities including the State Bar of Georgia and the Supreme Court of Georgia. These are dynamic, ever-evolving programs, some of which have been referenced already. Briefly described, the Commission's signature programs are as follows:

1. **Continuing Legal Education Programs.** The Commission presents continuing legal and judicial education programs that encourage lawyers, judges, and legal educators to explore and reflect upon the meaning and goals of professionalism in contemporary legal practice. Within the explicit mandate, the CLE activities of the Commission may include town hall meetings, convocations on professionalism, in-house firm and retreat programs, programs for local and circuit bar associations, and programs for State Bar sections and divisions.

Each year, staff reviews and approves for CLE credit hundreds of CLE's conducted by other entities. The Executive Director conducts some CLE's upon request. The continuing philosophy of the Commission remains the same: every CLE planner, presenter and participant should find meaning in professionalism for herself or himself through thought, introspection, research, discussion and reflection. Staff will assist CLE planners with developing ideas for a CLE and preparation of written material. Staff may direct inquirers to materials or sources for material and assist judges, attorneys, judges and law professors in developing effective educational programs. Staff collects data and reviews educational materials from a wide variety of sources to obtain program ideas, concepts, materials and other resources to share upon request.

2. **Law School Orientations.** The most successful joint venture to date of the Commission and the State Bar is the Law School Orientation on Professionalism Program. The law school orientations have been replicated by at least 30 other law schools outside of Georgia. They were created in 1993 after Town Hall meetings were held by the Commission so the law schools would introduce the concept of professionalism to law students at the outset of their careers. The orientations are spearheaded by the State Bar's Committee on Professionalism for which the Commission staff s its three meetings and the five law school orientations. The Commission also provides some funding to the law schools for this purpose although some schools decline it. All law schools conduct orientations for entering first-year, transfer and visiting students; Emory provides a second orientation to students after their first semester of law school.

The message to the law students is identical to the message of Professionalism continuing legal education required of all active members of the State Bar of Georgia: that the function of lawyers is to assist the client in the proper use of the legal system and that a lawyer acts as both advocate for the client and counselor to the client. When acting as advocate, the lawyer represents the client's interest to others in a vigorous and committed manner, while at the same time remaining conscious of duties to other lawyers, the legal system, and the community in general.

Law students also explore professionalism and ethical standards in the context of their academic experience by learning to apply the school's academic or honors code to law school situations.

The law school professionalism programs are conducted at the five law schools each fall, now annually reaching more than 1,000 law students, and involving nearly 200 judges, practitioners and law professors who volunteer as speakers and group leaders. Each program opens with remarks by a Supreme Court justice or State Bar leader about the importance of professionalism. The major part of the program is devoted to a breakout session where lawyers and judges lead small groups of students in an examination of hypotheticals designed to provoke discussion of ethics and professionalism issues in the law school experience or in the practice of law.

The law school orientations are evaluated annually and a written report is prepared by staff that assesses the program's operations and evaluates them from the viewpoint of the participants – law students, professors, and volunteer judges and attorney group leaders. There are many repeat volunteers who not only enjoy the program but who use it as a means to receive Professionalism CLE at no cost. The Orientation Annual Report is provided to the Committee, law school liaisons, law school deans and keynote speakers. At the end of a program, one student got up and said, "I feel relieved that I do not have to discard my personal ethical values in order to become a lawyer."

3. **Justice Robert Benham Community Service Awards.**

The Justice Robert Benham Awards for Community Service Program is the third signature program of the Commission. During Justice Benham's tenure as Chief Justice and Chair of the Commission, he made the community and public service aspects of professionalism a top priority and he created the Community Service Task Force. The Task Force focused on two initiatives: the creation of a program to honor judges and lawyers for community and public service and encouraging local bar associations to engage in community service.

In 1998, at the recommendation of the Task Force, the State Bar of Georgia instituted the awards program in honor of Justice Benham. Since that time, these awards have been presented by the State Bar and the Commission to honor judges and lawyers from the ten (10) judicial districts in Georgia who have made significant contributions to their communities and thereby demonstrate the positive contributions of members of the Bar beyond their judicial duties or legal work. Additionally, the Lifetime Achievement Award may be given, an honor reserved for a lawyer or judge who, in addition to meeting the criteria for receiving the Justice Robert Benham Award for Community Service, has demonstrated an extraordinarily long and distinguished commitment to volunteer participation in the community throughout his or her legal career.

Once honorees are determined by the Selection Committee, the awards event is publicized and a presentation ceremony and reception is held to honor the recipients.

In 2007, more than 150 persons attended this event; in 2008, attendance was over 200. This program provides an excellent opportunity to showcase to the public, as well as to the bar, many core professionalism concepts, as it exposes lawyers' good deeds done on behalf of the greater community and with members of the community. It is partially subsidized by State Bar funds.

4. **Transition into Law Practice (Mentoring) Program**

The Transition Into Law Practice Program (TILPP) is the nation's first bar-mandated required mentoring program for newly-admitted attorneys who must participate for one year after bar admission. If our new attorneys did not have sufficient exposure to professionalism ideals and concepts in law school, we now have the prototype program where they can work with more experienced attorneys to improve their professionalism in "real life" practice. Much credit for this program goes to John T. Marshall, senior partner at Powell Goldstein LLP, who has been its lead voice, with a chorus of many, in filling the void for new attorneys. After more than a decade in the developmental stages, the TILPP (also known as the Mentoring Program), is now almost a permanent fixture as a requirement for newly admitted attorneys.¹²⁶

Georgia's Bench and Bar worked carefully and tirelessly to find a mechanism to introduce new lawyers to law practice and assist them in their first year of practice. They considered this a way to not burden new lawyers (often heavily in debt after years of education) with an apprenticeship program in perhaps a lowly compensated position. Instead, they developed a program that includes every newly admitted lawyer, even those who do not yet have a legal position or practice. They found a way to include those who practice on the civil side, in large and in small firms, on the criminal side as defenders or prosecutors, as solo practitioners and those who are not yet in practice.

The goal of the Transition into Law Practice Program is to afford every lawyer newly admitted to the State Bar of Georgia with meaningful access to an experienced lawyer equipped to teach the practical skills, seasoned judgment, and sensitivity to ethical and professionalism values necessary to practice law in a highly competent manner. Paired with experienced volunteer mentors, who must have practiced a minimum of five (5) years, have completed mentor training, and be certified by the Georgia Supreme Court, mentees must complete a set curriculum of activities. TILPP is under the State Bar's Standards of the Profession Committee, a committee of the Commission on Continuing Lawyer Competency that administers the Bar's mandatory continuing legal education program. The Transition into Law Practice Program is staffed by an executive director who is an experienced lawyer and an administrative assistant.

¹²⁶In accordance with the State Bar's Sunset Policy, the Standards Committee has recommended to the Commission on Continuing Lawyer Competency, Executive Committee, Board of Governors and finally to the Supreme Court, that the Transition Into Law Practice Program become a permanent program of the State Bar of Georgia.

After its first full year of operations, the overwhelming majority of participants all found this a worthy activity. The Standards Committee of the CCLC has issued the Final Report on the first three years of operations as a bar program and has recommended that the program become a permanent fixture of the State Bar of Georgia. This program has received much positive attention nationally and even internationally. It will be the subject of a national conference in March, featuring former Commission executive directors, Bucky Askew and Sally Lockwood and its executive director, Douglas Ashworth, the primary architects of the program, along with John Marshall.¹²⁷

5. **National Institute for Teaching Professionalism (NIFTEP)**

The National Institute for Teaching Ethics and Professionalism (NIFTEP), now entering its fourth year, is a signature program primarily under the oversight and administration of Georgia State University College of Law Professor Clark Cunningham. The Commission assisted in its development, provides some annual funding for the Workshop, and assists with annual program development. This is a valuable vehicle to bring together a “think tank” of no more than thirty law school faculty members and practitioners to develop teaching modules for professionalism. The Chair of the State Bar Committee on Professionalism and other committee members have attended. Members of the judiciary who teach ethics and professionalism may participate, to share their views, and provide fresh ideas and new initiatives for teaching professionalism in the contexts of the judicial system, practice of law, and the legal academy.

6. **Consortium of Professionalism Initiatives**

In furtherance of its mission to be a resource for the national professionalism movement and given its historical position as the first state bar commission on professionalism, the Georgia Commission participates in the Consortium of Professionalism Initiatives. The Consortium is now coordinated by Art Garwin, Executive Director of the ABA’s Center on Professional Responsibility. This group meets during ABA Midyear and Annual Meetings, as well as during the ABA Center on Professional Responsibility’s Annual Meeting.¹²⁸ Any interested party may attend Consortium meetings. Judges, including members of the Conference of Chief Justices, attend these meetings on occasion. This group serves not only as a network for professionalism executives, it also provides a source for program reviews, sharing of information and initiatives.

7. **The Professionalism Library**

The Commission maintains a wealth of professionalism resource materials as a service to those who wish to develop Professionalism CLE’s, courses or for other

¹²⁷Nelson Mullins Riley & Scarborough Center on Professional Responsibility, Mar. 27 - 29, 2008, Columbia, S.C..

¹²⁸ABA Midyear Meeting, Los Angeles, Ca., Feb. 6-12, 2008; ABA Center on Professional Responsibility Annual Meeting, Boston, Ma., May 28-30, 2008; ABA Annual Meeting, N.Y., N.Y., Aug.7 - 12, 2008.

purposes. Over the years, many seeking professionalism resources have been directed to our office by national and international organizations, such as the American Bar Association. Staff provides research and concepts, upon request, on any aspect of professionalism. The library of materials is periodically assessed, catalogued and updated.

Professionalism materials are developed either by or on behalf of the Commission. DVDs and videos make up a special component of materials in the Commission's library. Some of the DVD's and videos were produced specifically for the Commission. The latest production is the DVD: "A Day in the Life of A Family Law Practitioner," produced from a script written by Mercer Law School Professor Patrick Longan. Videos produced by other entities, purchased by the Commission, are also in our library. A Commission committee reviews anticipated educational video projects and addresses the standards for content, costs, competitive provider selection, and diversity concerns. Instructional manuals and guides are also provided to accompany the videos. The DVDs and videos have been well-received by judges and practitioners taking CLE's in which they are used, as well as by law professors who use them in course work on Professionalism.

The Commission has a wealth of written materials describing its programs that are available to the bar and the public through the State Bar of Georgia's website link, www.gabar.org or upon request. Each year, the Commission posts a packet of Law Day resources, prepared under the auspices of the Committee on Professionalism, for use by individuals and local bar associations.

The State Bar's Involvement in Professionalism

What programs and activities are conducted by the State Bar to promote professionalism? It was the Commission's thinking that lawyers need the support of an institution to guide a voluntary desire to act professionally, particularly as they face today's practice. Making up Georgia's brand of professionalism over the last two decades, many aspects of professionalism have morphed into programs of the State Bar of Georgia, judicial and other affiliated entities. These programs are often supported in some way by the Commission. Many of these programs and activities demonstrate the progressive nature of our bench and bar – the many ways that Georgia lawyers have embraced professionalism, by meeting the diverse needs and concerns of Georgia lawyers. The Bar's professional enhancement programs, with which the Commission interacts, are described briefly and include the following:

1. **Consumer Assistance Program.** This program improves communications between lawyers and clients on minor problems that do not concern serious ethical violation.
2. **Diversity Program.** This program represents a major commitment to increase opportunities for ethnic minority attorneys in the assignment of corporate and governmental legal work. Participating corporations and government entities seek to forge a lasting working partnership with minority lawyers throughout Georgia. This program, directed by an experienced attorney, is open to all minority- and majority-owned law firms as well as corporations and governmental agencies in Georgia. Currently, it is addressing pipeline issues.

3. **Fee Arbitration Program.** This program provides a convenient mechanism for resolving fee disputes between attorneys and clients and for the resolution of fee disputes between lawyers resulting from a partnership dissolution, sharing of fees or the withdrawal of a lawyer from a partnership.
4. **Judicial District Professionalism Program (JDPP).** The purpose of the Judicial District Professionalism Program (JDPP) is to promote professionalism within the legal profession through increased communication, education and the informal use of local peer influence. The JDPP was developed by and is under the jurisdiction of the Bench and Bar Committee of the State Bar of Georgia and the Councils of Superior, State and Municipal Court Judges. The previous Commission executive director, Sally Lockwood, among others, was involved in its development. Incidents giving rise to use of the JDPP are to be reported to the Executive Director of the State Bar, or to the Consumer Assistance Program of the Bar. This program is just a few years old and has been publicized to the bench and bar. Members of the Board of Governors play an important role in its administration along with bar staff, because they are responsible for addressing matters of concern with the lawyers or judges who are the subjects of the reported incidents.

The Commission assists the JDPP by educating the bench and bar about this program through participating in CLEs and other informational initiatives. The JDPP DVDs are also useful professionalism teaching tools. JDPP Brochures and the three-part DVD's are maintained by the Bar's Communications Department and can be obtained by request.

5. **Law Practice Management Program.** Through this program the Bar assists law firms and solo practitioners in everything from what type of office equipment to buy to what type of billing process is best for their firms. The department maintains a law office management and technology library with resource personnel who are available for consultations in lawyers' offices or by telephone regarding management issues. The department's resources and materials are available to all Bar members, particularly those who do not have professional office management personnel.
6. **Lawyer Assistance Program.** This program provides confidential assistance to Bar members whose personal problems may be interfering with their ability to practice law. Such problems include stress, chemical dependency, family problems and mental or emotional impairment. Services are confidential and free to Bar members.
7. **Office of the General Counsel.** Each year, as a condition of discipline, the Office of General Counsel conducts its Professional Enhancement Program, also known as "Ethics School." This is akin to DUI school, where practitioners are afforded the opportunity for a fee to brush up on their ethics and professionalism and to get reacquainted with bar programs and services to improve their practice and avoid future disciplinary situations. The Commission provides a presentation and course materials for this CLE.

The State Bar also has committees, commissions and a Young Lawyers Division that address professionalism concerns and with which the Commission interacts. These include:

1. **Access to Justice Committee.** This committee considers and makes recommendations to the Board of Governors necessary to promote the growth of pro bono service to the poor by members of the State Bar. It conducts a continuing review of the operations of the Pro Bono Project and shall make recommendations to its director concerning the means and methods of improving and continuing the quality of service provided by the Pro Bono Project. It promotes the establishment and efficient maintenance of legal aid organizations equipped to provide free legal services to those unable to pay for such service, shall study the administration of justice as it affects persons in low income groups, studies and reports on methods of making legal service more readily available persons of moderate means, and encourages and assists local bar associations in accomplishing this purpose.
2. **Bench and Bar Committee.** Of particular importance to the judiciary, this committee identifies and facilitates solutions to issues of mutual interest between State judges and Georgia lawyers for the benefit of the bench, bar and public. It may recommend to the President-elect members to serve on standing committees of the State Bar.
3. **Commission on Continuing Lawyer Competency (CCLC).** This entity enhances bar members' professional competence as lawyers. Active lawyers are required to keep current on the law by completing a minimum of twelve hours of education each year, including one hour of ethics and one hour of professionalism. For trial attorneys, three hours must be in trial practice. The CLE Department assists attorney in keeping track of their CLE hours throughout the year and administers required CLE requirements.
4. **Committee on Professionalism.** This standing committee considers and makes recommendations to the Executive Committee and Board of Governors necessary to preserve professionalism in the practice of law. Its mandate is to concern itself with the various facets of professionalism including knowledge, technical skill, commitment to clients, dedication to the law and public good, and ultimately the provision of competent legal services to the public.
5. **Committee on the Standards of the Profession.** A committee of the Commission on Continuing Lawyer Competency, the Standards Committee is responsible for oversight of the Transition Into Law Practice Program, also known as the Mentoring Program.
6. **Communications/Publications Department.** The State Bar's publications and media relations are coordinated by the Communications Department and various related committees. Along with producing the *Georgia Bar Journal, Directory & Handbook*, and Consumer Pamphlet series, the department is also responsible for updating and maintaining the State Bar's website. The Commission produces a regular feature in the *Bar Journal*, its Professionalism Page, featuring articles by prominent judges and lawyers and penned by the executive director about Commission activities.
7. **Equal Justice Commission.** A combination of the Supreme Court Committee for Gender Equality, the Supreme Court Office of Gender Equality and the Commission on Racial and Ethnic Bias in the Court System, this commission addresses issues and interests of women and all minority and ethnic groups residing in the state in their

relations with the courts.

8. **Foundation of Freedom Commission.** An initiative of the State Bar, this program promotes public understanding of the law and its role in society through a public education program about democracy, the rule of law, the legal profession, and the judicial system.
9. **Local Bar Activities Committee.** This committee promotes the organization and maintenance of local and circuit bar associations throughout the state, creates a closer affiliation between such associations and the State Bar, and promotes activities statewide to recognize Law Day (May 1).
10. **Women and Minorities in the Profession Committee.** This committee promotes equal participation of minorities and women in the legal profession. It presents annually its Commitment to Equality Awards to persons who have advanced the cause during the State Bar's Midyear Meeting.
11. **Young Lawyers Division.** The YLD aids and promotes the advancement of the younger members of the State Bar by providing a program of activities and projects which serve both the profession and the public, including its own Professionalism Committee. These include leadership development and a committee on professionalism. All members of the State Bar who have not yet reached their 36th birthday or who have been admitted to their first bar less than three years are automatically members.

Court Programs and Other Entities

What are the other entities, primarily under judicial administration, with which the Chief Justice's Commission on Professionalism regularly interacts? Described briefly, these include:

1. **Georgia Commission on Dispute Resolution.** This Supreme Court of Georgia Commission develops and oversees a comprehensive statewide system of alternative dispute resolution to complement the existing system of justice.
2. **Institute of Continuing Legal Education in Georgia.** Known as the "ICLE," this is the not-for-profit educational service of the State Bar of Georgia and a consortium of the Bar and the five ABA accredited law schools of the Universities of Georgia, Emory, Mercer, Georgia and Atlanta's John Marshall Law School.
3. **Institute of Continuing Judicial Education in Georgia.** Known as the "ICJE," this is a resource consortium of the Georgia judicial branch, the State Bar of Georgia, and the five ABA accredited law schools of the State (Emory, Georgia, Georgia State, John Marshall, and Mercer). It bears primary responsibility for basic training and continuing education of elected officials, court support personnel and volunteer agents of the State's judicial branch. The Commission regularly works with the ICJE to present professionalism programming at its annual conferences.
4. **Pro Bono Project of the State Bar of Georgia and Georgia Legal Services Program.** This joint initiative involves private attorneys in representation of low income citizens in civil matters, provides information to lawyers on what programs are available when they want to volunteer, and gives technical assistance to local bar associations when they want to develop or revise pro bono programs.

5. **Supreme Court Committee on Civil Justice.** The mission of this committee is to strengthen Georgia's civil justice system by developing, coordinating and supporting policy initiatives to expand access to the courts for poor and vulnerable Georgians.

The Role of Judges in Promoting Professionalism - On and Off the Bench

What has been the role of Georgia's judiciary in promoting professionalism? Perhaps, I should first ask whether judges can or should address professionalism issues as part of their official duties, as attorneys appear in their court rooms, conduct litigation or advance appellate cases. I believe this question might better be answered by a judge. This question has, however, arisen in the Georgia courts where some discussion or dicta on professionalism has been provided in court opinions.¹²⁹

Second, and what has been borne out in the Georgia experience, especially with the creation of the Chief Justice's Commission Professionalism, is that Georgia judges, particularly the Supreme Court justices, have assumed many roles in promoting professionalism among members of the profession. The nearly twenty year history and operations of Georgia's Chief Justice's Commission on Professionalism provides a template of the type of things a court or bar can do to not only promote professionalism, but to make great strides toward institutionalizing professionalism efforts affecting attorneys. Judges can perform many roles to promote professionalism. Judges can serve as the leaders of the professionalism charge by virtue of their stature in society, position in the bar, and their position in government.

Our state government scheme gives the Supreme Court the administrative authority over

¹²⁹Supreme Court Justice Robert Benham has written about professionalism in several concurring opinions. He has been careful to state his agreement with the disposition of these cases, while noting his disagreement with the professionalism exhibited. The opinions offer some insights as to a judicial response to professionalism in a dispute context. See *Butts v. Butts*, 273 Ga. 760, 546 S.E.2d 472 (2001 (J. Benham, concurring, poses the question: "is civility incompatible with advocacy" when appellant contends "that his counsel was ineffective because he showed respect for and friendship with opposing counsel."); *Evanoff v. Evanoff*, 262 Ga. 303, 418 S.E.2d 62 (1992) (J. Benham, concurring, says "we must encourage those lawyers who are willing to negotiate rather than litigate because willingness to negotiate is one of the highest forms of professionalism."); *King v. State*, 267 Ga. 477, 421 S.E.2d 708 (1992)(J. Benham, concurring, writes separately "to address the issue of professionalism of law enforcement officers when they appear as witnesses); *Allen v. Lefkoff, Duncan, Grimes & Dermer, P.C., et al*, 265 Ga. 374, 453 S.E.2d 719 (1995)(J. Benham, concurring, to clarify that the malpractice case be decided on legal requirements, not ethical or professional requirements and says "there must be at least one voice raised in alarm, giving warning that without vigilance on the part of this court, the trial bench, and the practicing bar, there may be dire consequences stemming from this infusion of ethical concepts into a heretofore strictly legal forum.")

Chief Justice Leah Ward Sears, adds some additional insight in *Green v. Green*, 263 Ga. 551, 437 S.E.2d 457 (1993)(J. Sears-Collins, concurring specially, disagreeing with both reasons the majority gives for reversing, but having other reason for reversal to concur, says when majority sets aside the appellee's judgment based on findings that his attorney violated professionalism standards, that the majority's reliance on professionalism standards infringes on, if not violates both parties' right to due process, and begins "the descent of the slippery slope of legislating civility and courtesy" when in the future the Court will have to classify some professional standards as more important than others.)

lawyers and judges. Because Georgia Supreme Court justices serve for minimum terms of six (6) years, their tenure provides stability and continuity for a professionalism entity. Although the Chief Justices serve for two two (2) year terms, during which time they serve as the Chair of the Chief Justice's Commission on Professionalism in addition to their other duties, this time frame has proven to be sufficient for individual justices to advance their chosen aspects of professionalism. For example, Justice Robert Benham, during his tenure was a strong advocate for the community and public service and pro bono aspects of professionalism. Justice Norman Fletcher focused attention on indigent defense. Current Chief Justice Sears is directing her efforts to access to civil legal services.

As the harbingers of "the rule of law" and its applications, as well as representatives of the judicial system and the administration of justice, judges can bring order, as well as their rule-making authority to professionalism measures. For example, as necessary the Commission has petitioned the Supreme Court to amend the Rules governing the bar to include more representatives to the Commission and to further explicate the Commission's duties.

Within their judicial roles and responsibilities for administering justice and promoting the rule of law, judges can advocate for mechanisms and educational programs to address aspects of professionalism. These programs can be administered by the Commission, or they can become programs under the oversight of the State Bar of Georgia or the Supreme Court as commissions or committees.

Judges can serve as exemplars of professionalism in action. Judges' lives and philosophies on professionalism make excellent feature articles in the pages of bar journals.¹³⁰ Judges featured, as well, in local, national and international media can positively focus the public on the roles of judges, the rule of law and the positive aspects of their lives.

When they make professionalism their mantra, judges can be most effective as teachers and mentors when communicating professionalism ideals. Thus, judges are often invited as the keynote speakers at the annual law school orientations on professionalism. Judges often are asked to participate in continuing legal education programs that teach on professionalism. Giving their time and attention to share the ideals with Georgia's bench and bar demonstrates the importance the judiciary affords professionalism.

¹³⁰Judges have been regularly featured in the *Georgia Bar Journal*, since the inception of the Chief Justice's Commission on Professionalism: Thomas O. Marshall, *State of the Judiciary Address to the State Bar of Georgia*, 25 GA. ST. B. J. 46 (Aug. 1988) (Then Chief Justice Marshall), Harold G. Clarke, *State of the Judiciary Address to the State Bar of Georgia*, 27 GA. B. J. 42 (Aug. 1990); *Appellate Judicial Profiles – Chief Justice Charles L. Weltner*, *Justice Robert Benham*, *Judge George H. Carley*, *Judge Marion T. Pope, Jr.*, 29 GA. B. J. 65 (Nov. 1992), *Appellate Judicial Profiles – Chief Justice Harold G. Clarke*, *Justice Richard Bell*, *Chief Judge John W. "Jack" Sognier*, *Judge A.W. "Buck" Birdsong*, 29 GA. B. J. 5 (Aug. 1992), *Profile - Court of Appeals Judge J.D. Smith*, 29 GA. B. J. 6 (Fall 1993), *Appellate Judicial Profiles - Justice Willis B. Hunt, Jr.*, *Justice Carol W. Hunstein*, *Judge William Leroy McMurray, Jr.*, *Judge Dorothy Toth Beasley*, *Judge Gary Blaylock Andrews*, *Judge Edward H. Johnson*, *Judge G. Alan Blackburn*, 29 GA. B. J. 190 (May 1993); *Appellate Judicial Profiles - Justice Norman S. Fletcher*, *Justice Leah Sears-Collins*, *Judge Clarence Cooper*, 29 GA. B. J. 119 (Feb. 1993), *Profile of Justice Leah Sears*, 4 GA. B. J. 69 (Aug. 1998), Mary Cash McCall, *Profile of Chief Justice Robert Benham*, 4 GA. B. J. 66 (June 1998).

Judges can engage in scholarship on professionalism. Judges thoughts and especially their experiences with professionalism ideals, behaviors and concepts are powerful teaching tools. Their scholarship can inform the bar and their colleagues about the issues they deem important or about their experiences. For example, the Chief Justice's Commission on Professionalism often calls upon judges to write articles for the Professionalism Page, our regular column in *The Georgia Bar Journal*, the State Bar's official publication, that is now published six times a years. Since the creation of the Commission, many judges have authored articles or provided written commentary worthy of publication.¹³¹

Finally, but by no means have I been all inclusive, judges can act as conveners of people – lawyers, judges and laity – to discuss professionalism. Judges can provide the forum and set the tone and agenda for vetting and defining traditional and developing professionalism issues. As discussed herein, commencing with Chief Justice Thomas Marshall and the Emory Consultation in 1988, Georgia's judiciary and the Commission members first convened convocations, then the town hall meetings as MCLE programs to encourage dialogue and learning about professionalism. Additionally, other types of programs have been called for by the judiciary as continuing legal education programs.

The role of the judiciary in institutionalizing and supporting professionalism in the legal profession is the same yesterday, today and I suspect tomorrow. Judges are needed, as Nike says, to “just do it.”

Conclusion: Lessons Learned and Still Being Learned by Georgia's Bench and Bar on Promoting Professionalism

The State Bar of Georgia may not initially evoke thoughts as a particularly progressive organization. However, I believe nothing could be further from the truth. The State Bar of Georgia, now the fifth largest in the country of mandatory bars, is made up of the finest lawyers in America. We care about professionalism and we have done something about it by creating the Chief Justice's Commission on Professionalism. Through the Commission, Georgia's bench and bar have developed the prototype of a professionalism movement. Many of the ideas of professionalism were vetted during the early years of the Commission through the Convocations and Town Hall Meetings throughout Georgia. Out of these interactions of the bench and bar – as well as with public input - programs have grown that have been institutionalized within the State Bar of Georgia or under the Supreme Court of Georgia – The Fee Arbitration, Consumer Assistance, Lawyer's Assistance,

¹³¹Professionalism articles by Supreme Court, Appellate, Superior and State Court judges include: Harold G. Clarke, *Professionalism: Repaying the Debt*, 25 GA. B. J. 173 (May 1989), Harold G. Clarke, *Professionalism Page*, 27 GA. BAR J. 48 (Aug. 1990), Carol W. Hunstein, *The Decline of Professionalism: Bar Versus Bench Responsibilities*, 29 GA. B. J. 110 (Nov. 1992), Dorothy T. Beasley, *Professionalism and Mentoring*, 26 GA. B. J. 176 (Feb. 1992), Tommy Day Wilcox, *The Lawyer as an Officer of the Court*, 29 GA. B. J. 182 (Feb. 1993), Robert Benham, *Chief Justice Robert Benham Speaks to Lawyers on the Importance of Community Service*, 1 GA. B. J. 12 (June 1996), Leah Sears, *Let's Not Accept the Unacceptable*, 3 GA. B. J. 56 (Feb. 1998), Robert Ingram & Judge Robert L. Allgood, *Restoring Professionalism and Reining in Rambo*, 6 GA. B. J. 48 (Aug. 2000), P. Harris Hines, *Exemplary Stewards of the Law*, 8 GA. B. J. 84 (Aug. 2002), Paul W. Bonapfel, *Practicing in Grand Style – Officers of the Court*, 8 GA. B. J. 63 (Apr. 2003), Part 2, 8 GA. B. J. 83 (June 2003), Part 3, 9 GA. B. J. 70 (Aug. 2003).

Diversity Programs, and Alternative Dispute Resolution – to name a few.

The Mission of the Chief Justice’s Commission on Professionalism has been constant: “to support and encourage lawyers to exercise the highest levels of professional integrity in their relationships with their clients, other lawyers, the courts, and the public and to fulfill their obligations to improve the law and the legal system and to insure access to that system.” As the Commission enters its nineteenth year, a question now before us is: how do we measure the accomplishments of the Commission, the embodiment of Georgia’s professionalism movement?

Perhaps, we could look at how many lives have been touched – judges, lawyers, law professors, law students, clients and members of the public. Every lawyer licensed in Georgia since 1990 – including all judges – has been required to complete annually one CLE credit in an approved professionalism course. According to Bar statistics there are now over 29,000 active members of the State Bar of Georgia, with about 900 new lawyers joining the Bar each year. Hundreds of CLE programs have been approved each year on professionalism, reaching those thousands of lawyers in attendance.

Every entering student in a Georgia law school since 1994 has engaged in an orientation on professionalism at the onset of their legal studies. That’s thousands of students. Hundreds of students at Mercer have taken a mandatory, year-long, first-year course on professionalism developed and taught by Professor Patrick Longan, a member of the Commission. Thousands of students at Emory have again been exposed to professionalism in the second semester of their first year with another orientation on professionalism, under the aegis of Associate Dean Jim Elliott, a founder and member of the CJCP. Thousands of volunteer attorneys who have participated in those orientations have had the opportunity to take their own pulse on professionalism issues. Numerous law students have been exposed to professionalism in encounters with judges and practitioners in other classes and law school activities, such as internships and law school events.

But the real questions may be: What has the attorney and law student learned? What have they applied? Has this educational process caused modification of behavior and is that positive behavior modification? How have these lives been touched by the programs and activities of Georgia’s professionalism activities and initiatives? Are relationships between and among attorneys better, more productive, more genteel? Are relationships with clients more efficient, effective, honest and productive? Are judicial operations and the actions of judges with colleagues, attorneys and the public improved? Have the lives of judges and lawyers been improved through professionalism programs? Does the public “get it” when the bench and bar explain the importance of the rule of law and the roles of judges, the courts and attorneys? Does the public believe that members of the bench and bar have integrity and are committed to the rule of law?

We do not yet have precise answers to those questions. Over the years since the development of the Commission, its activities and those which receive its support, there have been attempts to evaluate the effects of Georgia’s professionalism movement. Clearly, professionalism standards are ideals for aspirational behaviors. Is measurement important, or is education, modeling, mentoring and behavior modification more important?

Even so, we believe there is evidence, although anecdotal, of improved professionalism

among Georgia lawyers, lawyers and the bench, and lawyers and the public. The Transition Into Law Practice Program has involved thousands of newly admitted attorneys and hundreds of seasoned attorneys, well over 90% of each group who have highly rated the program and believe it has improved the practice of law in Georgia. Thousands of law students, attorneys, judges and law professors have commented favorably about their participation in law school orientations.

With Commission and bar programs, such issues as work-life balance have now made the list of professionalism issues being addressed. Even the issues of happiness of professionals and whether their work is a “good fit” for them are now seen as important concerns. The Bar’s commitment through its Diversity Program has led to a greater understanding that diversity initiatives are “good business” for all in this multiethnic, multiracial and multidimensional society and world. That program has even recently tackled the pipeline issue to address tomorrow’s diversity in the legal profession. Georgia is in a unique position to lead the way in this regard, given its tradition and history of prominent black bar, community, civic and civil rights leaders and organizations.

Yet, the economics and competition of law practice remain today. Are clients willing to pay the price? Are attorneys willing to pay the price? Can starting salaries of \$160,000 be justified to clients? Can these salaries be enough to compensate attorneys who must sacrifice personal time, pro bono work, community service, family time? Are senior attorneys being forced into retirement? Will there be more opportunities for pro bono partners? Do some of the processes we have assumed helpful to the profession and the public, such as alternative dispute resolution on the civil side, diversion programs on the criminal side, undermine justice?

Through the efforts of the Commission, with mandatory CLE and with an engaged bench and bar, we in Georgia will continue to find our own meanings of professionalism. We will continue to meet the new challenges on the professionalism horizon by creating new initiatives to address new issues. We will continue to look to the judiciary to fulfill their roles as our leaders. Together we will honor the legacy of two decades of the Georgia’s Chief Justice’s Commission on Professionalism, while we look forward to what we face as lawyers in this new millennium. We have all the essential ingredients to do so successfully: the support of an active Supreme Court, a strong working relationships between that Supreme Court and the State Bar of Georgia, involvement of all the law schools, and sufficient administrative resources. Our Commission has proven to be the vehicle to institutionalize Georgia’s professionalism movement, and it has spawned many other such entities nationally and sparked the interest of the judges, lawyers and legal scholars in other countries, as well.

APPENDIX A**RULES AND REGULATIONS FOR THE ORGANIZATION AND GOVERNMENT OF
THE STATE BAR OF GEORGIA****PART IX
PROFESSIONALISM**

March 15, 1989,
as amended, May 4, 1989, December 1, 1989,
May 23, 1990, October 15, 1990, February 14, 1992
May 19, 1992, October 9, 1992, November 29, 1994,
November 8, 1996, September 10, 2003, February 3, 2005,
November 27, 2006, November 15, 2007

It is ordered that Part IX Professionalism of the Rules and Regulations for the Organization and Government of the State Bar of Georgia, establishing Rule 9-102, the Chief Justice's Commission on Professionalism, be amended as to the criteria for appointment of a non-lawyer by the Board of Governors of the State Bar of Georgia, as follows:

Rule 9-101. Purpose.

This Part of the State Bar Rules is adopted in recognition of the importance of professionalism as the ultimate hallmark of the practice of law. The purpose of this Part is to create within the State Bar a Commission to identify, enunciate and encourage adherence to non-mandatory standards of professional conduct. These standards should involve aspirations higher than those required by the Georgia Rules of Professional Conduct in Part IV.

Rule 9-102. Chief Justice's Commission on Professionalism.**(A) Membership, Appointment and Terms**

There is established a permanent Commission of the State Bar of Georgia known as the Chief Justice's Commission on Professionalism. The Commission shall consist of twenty-two (22) members as follows: (1) the Chief Justice of the Supreme Court of Georgia or his or her designee, who shall serve as Chair of the Commission; (2) The Chief Judge of the Court of Appeals or his or her designee; (3) one superior court judge designated by the Council of Superior Court Judges; (4) one state court judge designated by the Council of State Court Judges; (5) five law school faculty members designated by the deans of the accredited law schools in the State of Georgia, one of whom must be a member of the State Bar Committee on Professionalism; provided, however, such faculty members shall not be from the same law school; (6) two non-lawyer citizens from the public at large; (7) the President of the State Bar of Georgia; (8) the President of the Young Lawyers Division of the State Bar of Georgia; (9) one Federal District Judge; and (10) eight members of the State Bar of Georgia actively engaged in the practice of law, one of whom must be employed by a unit of federal

state, or local government, one must be engaged primarily in criminal defense practice, one must be a federal or state prosecutor, and one must be in-house counsel.

Three of the practicing lawyers and one of the non-lawyer citizens from the public at large shall be appointed by the Board of Governors of the State Bar of Georgia. The remaining members of the Commission, with the exception of the President of the State Bar of Georgia, the President of the Young Lawyers Division of the State Bar of Georgia, the superior court judge, and the state court judge, shall be appointed by the Supreme Court. The terms of the members of the Commission shall be staggered and that shall be accomplished by the initial appointments being as follows: two of the practicing lawyer members appointed by the Board of Governors shall serve until the conclusion of the State Bar Annual Meeting in 1990; the non-lawyer general public member shall serve until the conclusion of the State Bar Annual Meeting in 1990; the superior court judge member, one practicing lawyer member appointed by the Board of Governors and one law faculty member shall serve until the conclusion of the State Bar Annual Meeting in 1991. The remaining members of the Commission shall serve until the conclusion of the Annual Meeting of the State Bar in 1992. Thereafter, the superior court judge member shall serve for a two year term as designated by the Council of Superior Court Judges, the state court judge member shall serve for a two year term as designated by the Council of State Court Judges, and all other members of the Commission shall serve for three (3) year terms, and no member (except the Chief Justice, that member appointed by the Court of Appeals, and the law school representatives) may serve more than two (2) terms on the Commission.

(B) Powers and Duties of the Commission:

The Commission's major responsibilities shall be:

- (1) To consider efforts by lawyers and judges to improve the administration of justice;
- (2) To examine ways of making the system of justice more accessible to the public;
- (3) To monitor and coordinate Georgia's professionalism efforts in such institutional settings as its bar, courts, law schools and law firms;
- (4) To monitor professionalism efforts in jurisdictions outside Georgia;
- (5) To conduct a study and issue a report on the present state of professionalism within Georgia;
- (6) To plan the yearly Convocation on Professionalism;
- (7) To promote various regional convocations on professionalism;
- (8) To provide guidance and support to the Commission on Continuing Lawyer Competency in its implementation and execution of the continuing legal education professionalism requirement;

- (9) To help implement a professionalism component in the Bridge-the-Gap program;
- (10) To make recommendations to the Supreme Court and the State Bar concerning additional means by which professionalism can be enhanced;
- (11) To receive and administer gifts and grants; and
- (12) The Commission shall have no authority to impose sanctions of any kind upon any member of the State Bar of Georgia.

(C) Finances

Funding for the Chief Justice's Commission on Professionalism shall be provided by an additional surcharge for each active State Bar member who attends a course in professionalism sponsored by the Institute of Continuing Legal Education (ICLE) or by any other sponsor approved by the Commission. The rate shall be set annually by the Chief Justice's Commission on Professionalism, and the surcharge shall be remitted directly to it by ICLE, by any other such sponsor, or, in an appropriate case, by the individual State Bar member who attended a course in professionalism approved by the Commission.

APPENDIX B

A LAWYER'S CREED

To my clients, I offer faithfulness, competence, diligence, and good judgement. 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.

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

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.

ASPIRATIONAL STATEMENT ON PROFESSIONALISM

The Court believes there are unfortunate trends of commercialization and loss of professional community in the current practice of law. These trends are manifested in an undue emphasis on the financial rewards of practice, a lack of courtesy and civility among members of our profession, a lack of respect for the judiciary and for our systems of justice, and a lack of regard for others and for the common good. As a community of professionals, we should strive to make the internal rewards of service, craft, and character, and not the external reward of financial gain, the primary rewards of the practice of law. In our practices we should remember that the primary justification for who we are and what we do is the common good we can achieve through the faithful representation of people who desire to resolve their disputes in a peaceful manner and to prevent future disputes. 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.

As professionals, we need aspirational ideals to help bind us together in a professional community. Accordingly, the Court issues the following Aspirational Statement setting forth general and specific aspirational ideals of our profession. This statement is a beginning list of the ideals of our profession. It is primarily illustrative. Our purpose is not to regulate, and certainly not to provide a basis for discipline, but rather to assist the Bar's efforts to maintain a professionalism that can stand against the negative trends of commercialization and loss of community. It is the Court's hope that Georgia's lawyers, judges, and legal educators will use the following aspirational ideals

to reexamine the justifications of the practice of law in our society and to consider the implications of those justifications for their conduct. The Court feels that enhancement of professionalism can be best brought about by the cooperative efforts of the organized bar, the courts, and the law schools with each group working independently, but also jointly in that effort.

GENERAL ASPIRATIONAL IDEALS

As a lawyer, I will aspire:

- (a) To put fidelity to clients and, through clients, to the common good, before selfish interests.
- (b) To model for others, and particularly for my clients, the respect due to those we call upon to resolve our disputes and the regard due to all participants in our dispute resolution processes.
- (c) To avoid all forms of wrongful discrimination in all of my activities including discrimination on the basis of race, religion, sex, age, handicap, veteran status, or national origin. The social goals of equality and fairness will be personal goals for me.
- (d) To preserve and improve the law, the legal system, and other dispute resolution processes as instruments for the common good.
- (e) To make the law, the legal system, and other dispute resolution processes available to all.
- (f) To practice with a personal commitment to the rules governing our profession and to encourage others to do the same.
- (g) To preserve the dignity and the integrity of our profession by my conduct. The dignity and the integrity of our profession is an inheritance that must be maintained by each successive generation of lawyers.
- (h) 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.
- (i) To practice law not as a business, but as a calling in the spirit of public service.

SPECIFIC ASPIRATIONAL IDEALS

As to clients, I will aspire:

- (a) To expeditious and economical achievement of all client objectives.
- (b) To fully informed client decision-making. As a professional, I should:
 - (1) Counsel clients about all forms of dispute resolution;
 - (2) Counsel clients about the value of cooperation as a means towards the productive resolution of disputes;
 - (3) Maintain the sympathetic detachment that permits objective and independent advice to clients;
 - (4) Communicate promptly and clearly with clients; and,
 - (5) Reach clear agreements with clients concerning the nature of the representation.
- (c) To fair and equitable fee agreements. As a professional, I should:
 - (1) Discuss alternative methods of charging fees with all clients;
 - (2) Offer fee arrangements that reflect the true value of the services rendered;
 - (3) Reach agreements with clients as early in the relationship as possible;
 - (4) Determine the amount of fees by consideration of many factors and not just time spent by the attorney;
 - (5) Provide written agreements as to all fee arrangements; and
 - (6) Resolve all fee disputes through the arbitration methods provided by the State Bar of Georgia.
- (d) To comply with the obligations of confidentiality and the avoidance of conflicting loyalties in a manner designed to achieve the fidelity to clients that is the purpose of these obligations.

As to opposing parties and their counsel, I will aspire:

- (a) To cooperate with opposing counsel in a manner consistent with the competent representation of all parties. As a professional, I should:
 - (1) Notify opposing counsel in a timely fashion of any canceled appearance;
 - (2) Grant reasonable requests for extensions or scheduling changes; and,
 - (3) Consult with opposing counsel in the scheduling of appearances, meetings, and depositions.
- (b) To treat opposing counsel in a manner consistent with his or her professional obligations and consistent with the dignity of the search for justice. As a professional, I should:
 - (1) Not serve motions or pleadings in such a manner or at such a time as to preclude opportunity for a competent response;
 - (2) Be courteous and civil in all communications;
 - (3) Respond promptly to all requests by opposing counsel;
 - (4) Avoid rudeness and other acts of disrespect in all meetings including depositions and negotiations;
 - (5) Prepare documents that accurately reflect the agreement of all parties; and
 - (6) Clearly identify all changes made in documents submitted by opposing counsel for review.

As to the courts, other tribunals, and to those who assist them, I will aspire:

- (a) To represent my clients in a manner consistent with the proper functioning of a fair, efficient, and humane system of justice. As a professional, I should:
 - (1) Avoid non-essential litigation and non-essential pleading in litigation;
 - (2) Explore the possibilities of settlement of all litigated matters;
 - (3) Seek non-coerced agreement between the parties on procedural and discovery matters;
 - (4) Avoid all delays not dictated by a competent presentation of a client's claims;
 - (5) Prevent misuses of court time by verifying the availability of key participants for scheduled appearances before the court and by being punctual; and
 - (6) Advise clients about the obligations of civility, courtesy, fairness, cooperation, and other proper behavior expected of those who use our systems of justice.

- (b) To model for others the respect due to our courts. As a professional I should:
 - (1) Act with complete honesty;
 - (2) Know court rules and procedures;
 - (3) Give appropriate deference to court rulings;
 - (4) Avoid undue familiarity with members of the judiciary;
 - (5) Avoid unfounded, unsubstantiated, or unjustified public criticism of members of the judiciary;
 - (6) Show respect by attire and demeanor;
 - (7) Assist the judiciary in determining the applicable law; and,
 - (8) Seek to understand the judiciary's obligations of informed and impartial decision-making.

As to my colleagues in the practice of law, I will aspire:

- (a) To recognize and to develop our interdependence;
- (b) To respect the needs of others, especially the need to develop as a whole person; and,
- (c) To assist my colleagues become better people in the practice of law and to accept their assistance offered to me.

As to our profession, I will aspire:

- (a) To improve the practice of law. As a professional, I should:
 - (1) Assist in continuing legal education efforts;
 - (2) Assist in organized bar activities; and,
 - (3) Assist law schools in the education of our future lawyers.

- (b) To protect the public from incompetent or other wrongful lawyering. As a professional, I should:
 - (1) Assist in bar admissions activities;
 - (2) Report violations of ethical regulations by fellow lawyers; and,
 - (3) Assist in the enforcement of the legal and ethical standards imposed upon all lawyers.

As to the public and our systems of justice, I will aspire:

- (a) To counsel clients about the moral and social consequences of their conduct.
- (b) To consider the effect of my conduct on the image of our systems of justice including the social effect of advertising methods.
- (c) To provide the pro bono representation that is necessary to make our system of justice available to all.
- (d) To support organizations that provide pro bono representation to indigent clients.
- (e) To improve our laws and legal system by, for example:
 - (1) Serving as a public official;
 - (2) Assisting in the education of the public concerning our laws and legal system;
 - (3) Commenting publicly upon our laws; and,
 - (4) Using other appropriate methods of effecting positive change in our laws and legal system.

APPENDIX C

EXCERPTS FROM MANDATORY CONTINUING LEGAL EDUCATION RULES AND REGULATIONS WITH REFERENCES TO PROFESSIONALISM CLE

INTRODUCTION

At the request of the State Bar of Georgia, the Supreme Court of Georgia on November 4, 1983, adopted rules establishing minimum requirements for Continuing Legal Education (CLE). It created the Commission on Continuing Lawyer Competency (CCLC) of the State Bar to administer those rules. This brochure contains in regular font the rules of the Court and in italics the regulations of the CCLC issued under authority of Rule 8-103(B)(2)(d) of the Rules and Regulations for the Organization and Government of the State Bar of Georgia, as amended.

Minimum Requirements for Continuing Legal Education

Rule 8-101. Purpose

It is of utmost importance to members of the Bar and to the public that attorneys maintain their professional competence throughout their active practice of law. To that end, these rules establish the minimum requirements for continuing legal education.

Rule 8-102. Definition

(a) "Accredited sponsor" shall mean an organization whose entire continuing legal education program has been accredited by the Commission on Continuing Lawyer Competency. A specific, individual continuing legal education activity presented by such a sponsor constitutes an approved legal education activity.

(b) "Active member" shall include any person who is licensed to practice law in the State of Georgia and who is an active member of the State Bar of Georgia, but shall not include the Governor, Lieutenant Governor, Speaker of the House of Representatives, other Constitutional Executive Officers elected statewide, members of the Georgia Senate and the Georgia House of Representatives, United State Senators and Representatives, and shall not include judges who are prohibited by law, statute, or ordinance from engaging in the practice of law.

(c) "Commission" shall mean the Commission on Continuing Lawyer Competency.

(d) "Inactive member" shall mean a member of the State Bar who is on inactive status.

(e) "Supreme Court" shall mean the Supreme Court of Georgia.

(f) "Year" shall mean the calendar year.

Rule 8-103. Commission on Continuing Lawyer Competency

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(B) Powers and Duties of the Board

(1) The Commission shall have general supervisory authority to administer these Rules.

(2) The Commission shall have specific duties and responsibilities:

(a) To approve all or portions of individual courses and programs of a sponsor which satisfy the educational requirements of Rule 8-106(B);

- (b) To determine the number of credit hours allowed for each course or educational activity;
- (c) To encourage courses and programs by established organizations, whether offered within or without the State;
- (d) To educate the public about the legal profession;
- (e) To adopt rules and regulations not inconsistent with these Rules;
- (f) To establish an office or offices and to employ such persons as the Commission deems necessary for the proper administration of these Rules and to delegate to them appropriate authority, subject to the review of the Commission;
- (g) To report at least annually to the State Bar and to the Supreme Court the activities and recommendations of the Commission and the effectiveness of the enforcement of these Rules;
- (h) To report promptly to the Supreme Court any violation of these Rules.

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Rule 8-104. Education Requirements and Exemptions

(A) Minimum Continuing Legal Education Requirement

Each active member shall complete a minimum of twelve (12) hours of actual instruction in an approved continuing legal education activity during each year after January 1, 1984. If a member completes more than twelve (12) hours in a year after January 1, 1984, the excess credit may be carried forward and applied to the education requirement for the succeeding year only. Any continuing legal education activity completed between July 1, 1983, and December 31, 1983, shall be credited as if completed in 1984.

(B) Basic Legal Skills Requirement

(1) Any newly admitted active member must attend the Bridge-the-Gap program of the Institute of Continuing Legal Education in the year of his or her admission, or in the next calendar year, and such attendance shall satisfy the mandatory continuing legal education requirements for such newly admitted member for both the year of admission and the next succeeding year.

(2) Each active member, except newly admitted members, shall complete a minimum of one (1) hour of continuing legal education during each year in the area of ethics. This hour is to be included in, and not in addition to, the twelve (12) hour requirement. If a member completes more than one (1) hour in ethics during the calendar year, the excess ethics credit may be carried forward up to a maximum of two (2) hours and applied to the ethics requirement for succeeding years.

(3) Each active member, except newly admitted members, shall complete a minimum of one (1) hour of continuing legal education during each year in an activity of any sponsor approved by the Chief Justice's Commission on Professionalism in the area of professionalism. This hour is to be included in, and not in addition to, the twelve-hour (12) requirement. If a member completes more than one (1) hour in professionalism during the calendar year, the excess professionalism credit may be carried forward up to a maximum of two (2) hours and applied to the professionalism requirement for succeeding years.

(4) Each active member, except newly admitted members, shall complete a one-time mandatory three (3) hours of continuing legal education in Alternative Dispute Resolution by March 31, 1996. Lawyers are deemed to have satisfied this requirement by attending any of the following: (1) a law school class primarily devoted to the study of ADR; (2) a training session to be a neutral that was approved for CLE credit or would now be eligible for CLE credit; or (3) an approved CLE seminar devoted to ADR. Lawyers admitted to the bar after July 31, 1995, may satisfy this requirement by attending the Bridge-the-Gap

seminar conducted by the Institute of Continuing Legal Education in Georgia. The Georgia Commission of Dispute Resolution will review requests for exemption from CLE requirement based on law school course work.

Regulations

(1) Definitions.

(a) *Newly Admitted Active Member.* A “newly admitted active member” is one who becomes an active member of the State Bar of Georgia for the first time.

(b) *Bridge-the-Gap.* This requirement is satisfied by completing ICLE’s program as it is organized and defined by ICLE. Currently, the Bridge-the-Gap program consists of two days of instruction: the first day being a seminar called Bridge-the-Gap and the second day being any other approved six hour seminar to be selected by each lawyer.

(2) **Transition Application.** The ICLE Bridge-the-Gap program shall be required of newly admitted attorneys who are admitted in 1984 or subsequent years. An attorney admitted in 1983 or a previous year must comply with the normal 12 CLE hour requirement beginning in 1984.

(3) **Legal Ethics.** Legal ethics includes instruction on professional responsibility and malpractice. It does not include such topics as attorney fees, client development, law office economics, and practice systems except to the extent that professional responsibility is directly discussed in connection with these topics.

(4) **Professionalism.** Professionalism is knowledge and skill in the law faithfully employed in the service of client and public good. It includes, but is not limited to, courses on (a) the duties of attorneys to the judicial system, courts, public, clients, and other attorneys; (b) competency; (c) pro bono; (d) the concept of a profession; (e) history of the legal profession; (f) comparison of the legal profession in different nations’s systems of advocacy; and (g) jurisprudence of philosophy of law. Ethics sets forth the standards of professional conduct required of a lawyer; professionalism includes what is more broadly expected. The professionalism CLE requirement is distinct from, and in addition to, the ethics CLE requirement. Therefore, the one hour professionalism requirement is only satisfied by attending an activity of any sponsor approved by the Chief Justice’s Commission on Professionalism in the area of professionalism.

(C) Exemptions:

(1) An inactive member shall be exempt from the continuing legal education and reporting requirement of this Rule.

(2) The Commission may exempt an active member from the continuing legal education, but not the reporting, requirements of this Rule for a period of not more than one (1) year upon a finding by the Commission of special circumstances unique to that member constituting undue hardship.

(3) Any active member over the age of seventy (70) shall be exempt, upon written application to the Commission, from the continuing legal education requirements of this Rule, including the reporting requirements.

(4) Any active member residing outside of Georgia who neither practices in Georgia nor represents Georgia clients shall be exempt upon written application to the Commission, from the continuing legal education, but not the reporting requirement of this Rule during the year for which the written application is made. This application shall be filed with the annual reporting affidavit.

(5) Any active member of the Board of Bar Examiners shall be exempt from the CLE but not the reporting requirement of the Rule.

Regulations

(1) **Inactive.** To be fully exempt, the member must be inactive during the entire year. An active attorney who changes to inactive status is not exempt during the year in which the status change occurs. An inactive attorney who changes to active status must comply with the full 12 CLE hour requirement.

(2) **Undue Hardship.** Requests for undue hardship exemptions on physical disability or other grounds may be granted. The CCLC shall review and approve or disapprove such requests on an individual basis.

(3) **Age.** An attorney attaining age 70 at any time during a calendar year may, if he so elects in writing, be exempt from the full CLE requirements of that year and all subsequent years. The written application may be filed prior to or after attaining age 70, and may be applied retroactively.

(4) **Professionalism.** Since professionalism, unlike any other CLE, may be obtained only from sponsors approved by the Chief Justice's Commission on Professionalism, it is recognized that a hardship will be imposed on some non-exempt out-of-state attorneys who would have significant travel time and expense to attend this one hour of CLE in Georgia. Therefore, any attorney who meets all of the following hardship criteria may substitute an ICLE video tape on professionalism as an in-house, self-study program with the "five attorney rule" waived when the attorney: resides more than 50 miles from Georgia, requests no more than three substitute hours per year, has less than one professionalism hour from other ICLE seminars and carry-over, and complies with all ICLE policies and procedures including the payment of video rental, course materials, and administrative fees established by ICLE.

(5) **ADR.** By Order of the Supreme Court of Georgia, dated March 9, 1993, an alternative dispute resolution (ADR) CLE requirement was enacted. This regulation incorporates that rule into the MCLE program for informational purposes.

Each active member shall complete a three hour course of continuing legal education in the area of alternative dispute resolution (ADR). This three hours will be credited toward satisfaction of the 12 hour CLE requirement under Rule 8-104(A) for the year in which the course is taken and will also be credited toward satisfaction of the trial MCLE requirement under Rule 8-104D(2) for the same year.

The three hour ADR course requirement shall be completed before December 30, 1995. Lawyers admitted to the bar after that date shall complete the requirement in the calendar year of admission or during the following calendar year.

A lawyer is deemed to have satisfied the ADR requirement if he or she:

1. While a student at an accredited law school, completed a course which was substantially devoted to the study of ADR;
2. Has completed in the past a course of training as a neutral which was approved for at least 3 hours of CLE credit; or
3. Completed a course of training as a neutral which would now be approved for at least 3 hours of CLE credit.

The Georgia Commission on Dispute Resolution will review requests for exemption from the ADR CLE requirement on the basis of law school course work.

Ethics CLE credit may be approved for the portion of an ADR course dealing directly with EC 7-5 or other ethical rules.

Professionalism CLE credit may be approved subject to a review by the Chief Justice's Commission on Professionalism of the specific course content.

Seminars designed to satisfy the ADR requirement under the Rule, and their sponsors, must be approved by both the CCLC and the Georgia Commission on Dispute Resolution.

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Rule 8-106. Hours and Accreditation

(A) Hours

The Commission shall designate the number of hours to be earned by participation, including, but not limited to, teaching in continuing legal education activities approved by the Commission.

Regulations

(1) **Computation formula.** CLE and ethics hours shall be computed by the following formula:

$$\frac{\text{Sum of the total minutes of actual instruction}}{60} = \text{total hours (round to the nearest 1/10th of an hour)}$$

(2) **Actual Instruction.** Only legal education shall be included in computing the total hours of actual instruction. The following shall not be included: (a) introductory remarks; (b) breaks; (c) business meetings; (d) questions and answer sessions at a ratio in excess of 10 minutes per CLE hour; (e) programs of less than 60 minutes in length.

(3) **Teaching.** For their contribution to the legal profession, attorneys may earn credit for non-paid teaching in an approved continuing legal education activity. Presentations accompanied by thorough, high quality, readable, and carefully prepared written materials will qualify for CLE credit on the basis of three (3) credits for each hour of presentation. Repeat presentations qualify for one-half of the credits available for the initial presentation. A speaker may elect to split the teaching credit with another attorney who, under the speaker's supervision, prepares the written materials. If the intended speaker prepares the written materials and cannot speak due to health problems, emergency or required court appearance, the teaching credit will be split between the speaker and the substituted speaker at the request of either. Should neither make such request the credit will be given to the actual speaker.

(4) **Author.** The CCLC may award up to a maximum of six (6) hours of CLE credit for the authoring of legal articles upon the written certification by the attorney to the CCLC of (a) the amount of time expended in researching and writing the article; and (b) the submission of a copy thereof to the CCLC for review, provided that (1) the article or treatise's content and quality are consistent with the purposes of CLE; (2) it is published in a recognized publication which is primarily directed at lawyers; and (3) the project was not done in the ordinary course of the practice of law, the performance of judicial duties, or other regular employment. If co-authors are involved, the credit may be divided on the basis of each attorney's contribution. An attorney requesting author credit shall pay the normal attendee fee.

(5) **Organizer.** The chairperson who organizes an approved CLE activity and who does not make a formal oral presentation therein shall qualify for CLE credit as if he or she had made a one hour presentation. If co-chairpersons are involved, the credit shall be divided on the basis of each attorneys' contribution. An attorney requesting this type of credit should pay, or arrange for the sponsor to pay, the normal attendee fee.

(6) **Active Non-Resident.** Active non-Georgia members residing in other mandatory CLE states may satisfy all Georgia requirements by (1) meeting the CLE requirements of the resident state, (2) so reporting annually on their Georgia MCLE affidavit, and (3) paying the Georgia CLE, professionalism, and late fees normally paid by active members residing in Georgia.

(B) Accreditation Standards:

The Commission shall approve continuing legal education activities consistent with the following standards:

- (1) They shall have significant intellectual or practical content, and the primary objective shall be to increase the participant's professional competence as a lawyer;
- (2) They shall constitute an organized program of learning dealing with matters

directly related to the practice of law, professional responsibility or ethical obligations of lawyers;

(3) Credit may be given for continuing legal education activities where (a) live instruction is used; or (b) mechanically or electronically recorded or reproduced material is used if a qualified instructor is available to comment and answer questions;

(4) Continuing legal education materials are to be prepared, and activities conducted, by an individual or group qualified by practical or academic experience in a setting physically suitable to the educational activity of the program;

(5) Thorough, high quality, and carefully prepared written materials should be distributed to all attendees at or before the time the course is presented. It is recognized that written materials are not suitable or readily available for some types of subjects; the absence of written materials for distribution should, however, be the exception and not the rule.

(6) The Commission may issue from time to time a list of approved accredited sponsors deemed by it to meet the requirement set forth in this Rule. Any other sponsor desiring to be approved for accredited sponsor status must file an application with the Commission with such program material and information as the Commission may require;

(7) Any accredited sponsor must keep and maintain attendance records of each continuing legal education program sponsored by it, which shall be furnished to the Commission upon its request.

Regulations

(1) **Continuing Legal Education.** *The CCLC shall determine those matters which directly relate to the practice of law so as to be eligible for CLE credit. They shall constitute an organized program of learning dealing with matters directly related to the practice of law, professional responsibility, or ethical obligations of lawyers.*

(2) **Law School Courses.** *Courses offered by an ABA accredited law school shall receive credit on the basis of one-half (½) hour of CLE credit for each 60 minutes of actual instruction. No more than twenty-four (24) CLE hours in any calendar year may be earned by law school courses. Success on an examination is not required for credit and the course may be attended on an audit (not for academic credit) basis. No credit is available for law school courses attended prior to becoming an active member of the State Bar of Georgia. Law courses in schools other than law schools will not qualify.*

(3) **Bar Review/Refresher Course.** *Courses designed to review or refresh recent law school graduates or other attorneys in preparation for any bar exam shall not be approved for CLE credit.*

(4) **Approval.** *CLE activities may be approved upon the written application of sponsors on an individual program basis, sponsors on an accredited sponsor basis, or attorneys on an individual program basis. In addition, the CCLC may approve both CLE activities and accredited sponsors on its own motion, on either an individual program or accredited sponsor basis. All applications for CLE course approval shall:*

a. Be submitted at least thirty (30) days, and preferably longer, in advance of the course, although the CCLC may grant retroactive approval;

b. Be submitted on forms furnished by the CCLC;

c. Contain all information requested on the form;

d. Be accompanied by a course outline or brochure that describes the course content, identifies the teachers, lists the time devoted to each topic, and shows each date and location at which the program will be offered;

e. Include a detailed calculation of the total CLE hours and of the ethics and professionalism hours.

In addition to the foregoing, sponsors shall within thirty (30) days after the course is

concluded:

- a. Furnish to the CCLC a list in alphabetical order, on magnetic tape if available, of the name and State Bar number of each Georgia attendee;
- b. Remit to the CCLC the appropriate sponsor fee. Sponsors who have advance approval for courses may include in their brochures or other course descriptions the information contained in the following illustration:

This course (or seminar, etc.) has been approved by the Commission on Continuing Lawyer Competency of the State Bar of Georgia for mandatory continuing legal education credit in the amount of _____ hours, of which _____ hours will apply in the area of ethics, and _____ hours in the area of professionalism. The reporting of your attendance at this course will be done for you by (name of sponsor). To assure proper credit, please be sure to furnish us with your correct Georgia Bar number. (If applicable: The administrative fee for this course will be paid for you by (name of sponsor) directly to the Commission.)

Sponsors not having advance approval shall make no representation concerning the approval of a course for CLE credit by the CCLC.

The CCLC will mail a notice of its decision on all CLE activity approval requests within ninety (90) days of their receipt. Approval thereof will be deemed if the notice is not timely mailed. This automatic approval will not operate if the sponsor contributes to the delay by failing to provide the complete information requested by the CCLC, or if the CCLC timely notifies the sponsor that the matter has been tabled and the reason therefore.

(5) In-House/Self-Study CLE. *The Commission recognizes that law firms, corporate legal departments and similar entities, either alone or in conjunction with each other, will develop and present In-House continuing legal education activities to assist their member attorneys in maintaining their professional competence. The Commission further recognizes that these In-House CLE activities often are designed to address matters most relevant to a firm's own attorneys. Also, the Commission recognizes that active member attorneys on an individual basis may participate in distance learning CLE activities, which constitutes Self-Study. In-House/Self-Study CLE activities may be approved for credit under these Rules and Regulations plus the following additional conditions:*

- (a) All In-House/Self-Study CLE activities shall be designed specifically as an organized program of learning.*
- (b) All In-House/Self-Study CLE activities must be open to observation by members of the CCLC and its staff;*
- (c) Experienced attorneys must substantially contribute to the development and presentation of all In-House/Self-Study CLE activities;*
- (d) In-House/Self-Study CLE activities must be scheduled at a time and location so as to be free of interruptions from telephone calls and other office matters.*
- (e) Up to six (6) CLE hours may be earned by an attorney in a calendar year through a combination of approved In-House/Self-Study CLE activities. Written application for CLE credit above the annual In-House/Self-Study limit may be made during the calendar year in which this credit is earned, and upon approval by the CCLC the excess credit may be carried forward and applied to In-House/Self-Study CLE for the next calendar year only.*

(6) Facilities. *Sponsors ordinarily must provide a facility with adequate lighting, temperature controlled ventilation, and a designated non-smoking area. For a non-clinical CLE activity, the facility should be set up in classroom or similar style to provide a writing surface for each pre-registered attendee, to provide a minimum of two linear feet of table space per chair, and should provide sufficient space behind the chairs in each row to permit*

easy access and exit to each seat. Crowding in the facility detracts from the learning process and will not be permitted.

(7) **Written Materials.** Qualifying written materials shall specifically address each of the topics of the seminar. These materials must be prepared by the speaker (or someone acting under his or her direct supervision) and shall be distributed to all attendees at or before the time the seminar is held. There are essentially three rationales for these requirements. First, they ensure speaker organization and preparation. Second, they alleviate the need for attendees to take notes and allows them to concentrate on the oral presentations. Finally, they provide a valuable reference tool for the attendees after they leave the seminar.

Examples of written materials which alone would not qualify include, but are not limited to, the following: (1) topical outlines; (2) topical outlines with case citations; (3) copies of statutes or cases; (4) copies of leases, contracts, wills and other legal instruments (unless accompanied by qualifying explanatory text); (5) hornbooks (unless speaker prepared and on point); (6) casebooks; (7) subsequently prepared transcripts.

The quality of oral presentations and the overall educational value of the seminar will not excuse the written materials accreditation requirement.

It is recognized that on rare occasions, or for unique topics, preparation of written materials may not be possible or appropriate. Thus, for example, where the particular law which is the topic of a seminar changes dramatically immediately before the seminar is given, the prepared materials may be rendered obsolete. Likewise, written materials may not always be suitable for a clinical program on oral advocacy. In these exceptional circumstances, the requirements of this regulation may not apply. If there is any questions as to whether written materials are required for a given topic, the sponsor is advised to contact the Commission in advance of the seminar.

(8) **Sponsor Records.** In addition to the required attendance records, sponsors are encouraged, though not required, to solicit written evaluations of each sponsored program from its attendees and to maintain for at least two years after the program all such evaluations received, both for the sponsor's benefit and for furnishing to the Commission upon its request. A sponsor's policy either to solicit and maintain such evaluations or not to do so may be considered by the Commission as a factor bearing on the sponsor's accreditation.

(9) **Primary Objective Test.** The primary objective of CLE shall be to increase the attendee's professional competency as a lawyer. Worthwhile professional activities which have other primary objectives are encouraged, but do not meet the accreditations standards for CLE credit. Bar meetings, service on committees and jury duty are examples of activities which do not meet the primary objective tests. In addition, seminars which are put on for clients or prospective clients for the purpose of client development or as a marketing tool would not meet the primary objective test.

(10) **ADR CLE.** CLE activities which train attorneys in the generally accepted processes of alternative dispute resolution are consistent with Accreditation Standards 1 and 2 where such programs meet the other criteria set forth herein.

(11) **Practice Management CLE.** (CLE activities relating to the development and management of a law practice including client relations) Practice Management CLE includes, but is not limited to, those activities which (1) teach lawyers how to organize and manage their law practice so as to promote the efficient, economical and competent delivery of legal services; and (2) teach lawyers how to create and maintain good client relations consistent with existing ethical and professional guidelines so as to eliminate malpractice claims and bar grievances while improving service to the client and the public

image of the profession. Practice Management CLE is consistent with Accreditation Standards 1 and 2 where such programs meet the other criteria set forth herein.

*(12) **CLE Delivery Formats.** In addition to traditional approved continuing legal education activities attended live and in-person by groups of attorneys, distance learning delivery formats are acceptable provided they are designed specifically as organized programs of learning and meet the other accreditation standards set out in these Rules and Regulations. These distance learning CLE activities may be attended by an individual attorney with no minimum number of attendees needed to receive approved MCLE credit, but must comply with the In-House/Self-Study CLE Regulation 5 to Rule 8-106(B). Examples of qualifying distance learning formats include: live CLE activities presented via video or audio replays of live CLE activities; on-line computer CLE activities, CD-ROM and DVD interactive CLE activities; and written correspondence CLE courses. When attended by an individual attorney, the distance learning activity constitutes Self-Study CLE. Examples of non-qualifying educational activities that are encouraged on a non-MCLE approved credit basis include: reading cases and advance sheets, legal research, internet chat groups, observations of trial and jury duty.*

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