



CHIEF JUSTICE'S COMMISSION
ON PROFESSIONALISM



ENSURING ACCESS TO JUSTICE FOR DEAF OR HARD OF HEARING AND LIMITED ENGLISH PROFICIENCY INDIVIDUALS THROUGH PROFESSIONALISM

October 31, 2018

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*with research assistance from
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CHIEF JUSTICE'S COMMISSION
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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: WHO DO WE HAVE IN THE ROOM?





CHIEF JUSTICE'S COMMISSION
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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: YOUR THOUGHTS — WHAT IS PROFESSIONALISM?





WHAT IS PROFESSIONALISM?

A DEFINITION FROM THE ABA:

‘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.’

AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, Teaching and Learning Professionalism, Report of the Professionalism Committee 6 (1996).



CHIEF JUSTICE'S COMMISSION
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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: YOUR THOUGHTS — ETHICS VS. PROFESSIONALISM?





ETHICS VS. PROFESSIONALISM?

The best explanation of the distinction between ethics and professionalism is offered by former Chief Justice Harold Clarke of the Georgia Supreme Court:

“. . . the idea [is] that ethics is a minimum standard which is required of all lawyers, while professionalism is a higher standard expected of all lawyers.”





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He was told not to step one foot outside.



Photo and Idea
Courtesy of
Attorney
Trish McCann Bertram
*Professional
Development Director
Georgia Public
Defender Council*



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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: YOUR THOUGHTS – WHY IS PROFESSIONALISM IMPORTANT?





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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM:
YOUR THOUGHTS – WHY IS PROFESSIONALISM IMPORTANT?

Justice O'Connor opined: “More civility and greater professionalism can . . . increase the effectiveness of our system of justice”

Sandra Day O'Connor, *Professionalism*, 76 Wash. U. L. Q. 5 (1998). Available at: http://openscholarship.wustl.edu/law_lawreview/vol76/iss1/2



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM

CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: ABOUT THE COMMISSION

The Chief Justice's Commission on Professionalism, *the first body of its kind in the nation*, was created in 1989 by the Supreme Court of Georgia with the primary charge to enhance professionalism among Georgia's lawyers.



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: COMMISSION COMPOSITION

The Commission is chaired by
the Chief Justice of the
Supreme Court of Georgia



Chief Justice Harold D. Melton



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM

CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: COMMISSION COMPOSITION

The Commission is composed of representatives of the organized bar, practicing bar, judiciary, law schools and the public.





CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: COMMISSION WORK

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.



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: COMMISSION WORK

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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: **A Lawyer's Creed and Aspirational Statement**

A Lawyer's Creed and the *Aspirational Statement on Professionalism* were adopted by the Commission in 1990 and also by Supreme Court order and made a part of the Rules and Regulations for the Organization and Government of the State Bar of Georgia.



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM:

Why Did the Supreme Court Adopt the *Creed* and *Aspirational Statement*?

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.



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: Lawyer's Creed

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



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM:
YOUR THOUGHTS – WHAT DO THE *CREED* AND *ASPIRATIONAL
STATEMENT* SAY ABOUT ACCESS TO JUSTICE?





CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM:
YOUR THOUGHTS – WHAT DO THE *CREED* AND *ASPIRATIONAL
STATEMENT* SAY ABOUT ACCESS TO JUSTICE?

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.

(Creed and Statement at Lines 19-23)



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM:
YOUR THOUGHTS – WHAT DO THE *CREED* AND *ASPIRATIONAL
STATEMENT* SAY ABOUT ACCESS TO JUSTICE?

*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
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(Creed and Statement at Lines 19-23)



CHIEF JUSTICE'S COMMISSION
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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: CHALLENGES FOR THE BENCH AND BAR





CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: CHALLENGES

Challenges # 1:

Opposing counsel is an older, well-known DUI defense attorney who repeatedly interrupts you during cross-examination to say he cannot hear you when you stand at a podium with your back towards him.



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

1. Which tenets of *A Lawyer's Creed* or the *Aspirational Statement on Professionalism* might apply
2. If more than one tenet applies are the tenets compatible or are they in conflict?
3. If the tenets are in conflict, how do you prioritize those conflicts? What "values" are relevant in your decision?
4. Once you decide which tenets apply and in what order, what skills do you need to use to resolve the "Challenge"?
(i.e. communication, honesty, courage, prudence, etc)



CHIEF JUSTICE'S COMMISSION
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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: YOUR THOUGHTS





CHIEF JUSTICE'S COMMISSION
ON PROFESSIONALISM

CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: IDEAS AND SUGGESTIONS





CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM:
APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE

- To my colleagues in the practice of law, I offer concern for your welfare. (*Creed and Aspiration* at Lines 13 – 14)
- To cooperate with opposing counsel in a manner consistent with the competent representation of all parties. (*Creed and Aspiration* at Lines 97 – 98)



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: CHALLENGES

Challenges # 2:

When your prospective client arrives for her first appointment, you learn that she is deaf. She is accompanied by her brother, who knows sign language and assures you that she is great at reading lips.



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

1. Which tenets of *A Lawyer's Creed* or the *Aspirational Statement on Professionalism* might apply
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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: YOUR THOUGHTS





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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: IDEAS AND SUGGESTIONS





CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

- As a lawyer, I will aspire to to put fidelity to clients and, through clients, to the common good, before selfish interests (*Creed and Aspiration* at Lines 49 – 50)
- As to clients, I will aspire to communicate promptly and clearly with clients (*Creed and Aspiration* at Line 81)



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

- As a lawyer, as to clients, I will aspire to fully informed client decision-making (*Creed and Aspiration* at Lines 75)
- As to clients, I will aspire 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 (*Creed and Aspiration* at Lines 93 - 95)



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

- Should you reschedule to get a qualified sign language interpreter?
- Should you discuss with the client at the initial appointment the accommodations necessary for the representation?
- Should you ask your client to bear the cost of a sign language interpreter?



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

- Should you reschedule to get a sign language interpreter?
- Should you discuss with the client at the initial appointment accommodations necessary for the representation?
- Should you ask your client to bear the cost of a sign language interpreter? **NO!**



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

- Should you ask your client to bear the cost of a sign language interpreter? **NO!**

Like any public accommodation, lawyers cannot pass along the cost of an auxiliary aid or service to the disabled person. See 28 C.F.R. § 36.104 (definition of public accommodations) (2009) and 28 C.F.R. § 36.301(c) (2009).

See also Elana Nightingale Dawson, *Lawyers' Responsibilities Under Title III of the ADA: Ensuring Communication Access for the Deaf and Hard of Hearing*, 45 Val. U. L. Rev. 1143 (2011). Available at: <http://scholar.valpo.edu/vulr/vol45/iss3/8>



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

- Discuss whether the family member meet the definition of a qualified interpreter under 28 C.F.R. 36.104 (effectively, accurately and *impartially* both receptively and expressively, using any necessary specialized vocabulary).
- Learn which terminology your potential client prefers: “deaf,” “hard of hearing,” “late-deafened,” “hearing impaired,” or “oral deaf.”
- Learn whether your potential depend on spoken and/or written language, speech reading, hearing aids, hearing assistive technology systems (HATS) such as hearing loops, FM and infrared systems, TTY telephones, ASL or signed English.
- Learn how your potential client would prefer you to communicate with her: face to face with an ASL interpreter, written/typed communication such as email.



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM:
APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE

Consider whether, with additional education, you can develop appropriate cultural sensitivity to this client.



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

According to research, approximately 35 million people in the U.S. *self-report* some degree of hearing trouble.
[https://research.gallaudet.edu/
Demographics/deaf-US.php](https://research.gallaudet.edu/Demographics/deaf-US.php)



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM:
APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE

- 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.
(Creed and Aspiration at Lines 16 – 18)



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: CHALLENGES

Challenges # 3:

During the course of your representation of your client who is deaf, you find it necessary to appear in court with your client for a hearing. What should you consider?



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: YOUR THOUGHTS





CHIEF JUSTICE'S COMMISSION
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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: IDEAS AND SUGGESTIONS





CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

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

- Prevent misuses of court time by verifying the availability of key participants for scheduled appearances before the court. . .; and
- Know court rules and procedures; (*Creed and Aspiration* at Lines 123 – 124, 130)



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

Familiarize yourself with Georgia materials on the ADA and Interpreters, such as:

- *SUPREME COURT OF GEORGIA USE OF INTERPRETERS FOR NONENGLISH SPEAKING AND HEARING IMPAIRED PERSONS,*

available at

<http://coi.georgiacourts.gov/sites/default/files/coi/GA-%20Supreme%20Court%20Rule%20on%20Use%20of%20Interpreters.pdf>



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

Familiarize yourself with Georgia materials on the ADA and Interpreters, such as:

- *A MEANINGFUL OPPORTUNITY TO PARTICIPATE: A HANDBOOK FOR GEORGIA COURT OFFICIALS ON COURTROOM ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES,*

available at

[http://a2j.georgiacourts.gov/sites/default/files/afptc/ADA%20Judicial%20Handbook%202017 Oct-Update.pdf](http://a2j.georgiacourts.gov/sites/default/files/afptc/ADA%20Judicial%20Handbook%202017%20Oct-Update.pdf)



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: CHALLENGES

Challenges # 4:

You work in a law firm that handles civil rights cases. When a potential client arrives, it turns out he is from Iran and speaks Farsi and some conversational English. The client does not want to use an interpreter.



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: YOUR THOUGHTS





CHIEF JUSTICE'S COMMISSION
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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: IDEAS AND SUGGESTIONS





CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

- To my clients, I offer faithfulness, competence, diligence, and good judgment. I will strive to represent you as I would want to be represented and to be worthy of your trust. (*Creed and Aspiration* at Lines 1 - 5)



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

- As to clients, I will aspire to expeditious and economical achievement of all client objectives (*Creed and Aspiration* at Line 74)
- As to clients, I will aspire to communicate promptly and clearly with clients (*Creed and Aspiration* at Line 81)
- As to clients, I will aspire to fully informed client decision-making (*Creed and Aspiration* at Line 75)



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

- As to the courts, other tribunals, and to those who assist them, I will aspire to represent my clients in a manner consistent with the proper functioning of a fair, efficient, and humane system of justice (*Creed and Aspiration* at Lines 116-117)



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

- Should you make the decision regarding an interpreter or the client?
- Should you discuss with the client the ramifications for attorneys fees (his responsibility) vs. costs for an interpreter (your or court's responsibility)?
- Should you discuss with the client other factors that impact the representation?



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: CHALLENGES

Challenges # 5:

An attorney in your firm sometimes “jokes” about a firm client who has Parkinson’s disease and imitates the client’s loss of muscle control. What if the client observes the “jokes”? What if you alone hear and see the “jokes”?



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: YOUR THOUGHTS





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CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: IDEAS AND SUGGESTIONS





CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

- To my clients, . . . I will strive to represent you as I would want to be represented and to be worthy of your trust. (*Creed and Aspiration* at Lines 2 - 5)



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

- As a lawyer, I will aspire 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*.
(*Creed and Aspiration* at Lines 54 - 57)



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

- As a lawyer, I will aspire 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.
(*Creed and Aspiration* at Lines 64 - 66)



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

- As a lawyer, I will aspire to practice with a personal commitment to the rules governing our profession and to encourage others to do the same. (*Creed and Aspiration* at Lines 62 - 63)



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: *APPLYING THE CREED AND ASPIRATIONS TO LAW PRACTICE*

- Should you discuss the behavior with the clients privately?
- Should you discuss the behavior with the attorney?
- Should you report the behavior to others in your firm/organization?



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: A Suggested Methodology for Professional Growth

1. Read the *Georgia Rules of Professional Conduct* and *A Lawyer's Creed and the Aspirational Statement on Professionalism* on a Regular Basis.
Jenny Jensen suggests adding a tickler to your calendar for January 1st of each year
2. Engage in Individual Study to think about how you apply the rules to your professional life.
3. Discuss with other lawyers and judges the challenges presented in living professionalism values.
4. If you are involved in a Bar section, a local or voluntary bar or a professional association, consider doing a webinar or a lunch and learn about a professionalism topic of particular interest to your group.



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM: Resources

- The Judicial Council Standing Committee on Access to Justice Committee, <http://a2j.georgiacourts.gov/>
- A HANDBOOK FOR GEORGIA COURT OFFICIALS ON COURTROOM ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES:
http://a2j.georgiacourts.gov/sites/default/files/afptc/ADA%20Judicial%20Handbook%202017_Oct-Update.pdf
- A MENTAL ILLNESS AND COGNITIVE DISABILITIES COMPANION GUIDE TO THE HANDBOOK FOR GEORGIA COURT OFFICIALS ON COURTROOM ACCESSIBILITY FOR INDIVIDUALS WITH DISABILITIES:
http://a2j.georgiacourts.gov/sites/default/files/afptc/ADA_Judicial_Handbook_2017_files/A%20Meaningful%20Opportunity%20to%20Participate%20Accessible%20pdf%20final.pdf



CHIEF JUSTICE'S COMMISSION ON PROFESSIONALISM:

Where Can I Get Additional Help

1. **Administrative Office of the Courts Commission on Interpreters**
(404) 463-3808
2. **Chief Justice's Commission on Professionalism**
(404) 225-5040
3. **Administrative Office of the Courts Access to Justice Committee**
(770) 690-4269
4. **State Bar of Georgia Ethics Helpline**
(404) 527-8741 or (800) 682-9806



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CHIEF JUSTICE'S COMMISSION
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THANK YOU!

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