

**THE SUPREME COURT OF OHIO COMMISSION ON PROFESSIONALISM**

**Professionalism CLE Guidelines  
Adopted June 14, 2002**

These Guidelines are offered by the Supreme Court of Ohio Commission on Professionalism to enhance the quality and variety of continuing legal education programs on professionalism in Ohio. The members of the Commission are grateful to the judges and lawyers who contributed to the development of these guidelines and to the many judges and lawyers who give their time to plan and present professionalism CLE programs.

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#### *A Brief History of the Professionalism CLE Requirement*

In August 1989, Chief Justice Thomas J. Moyer of the Supreme Court of Ohio announced the formation of a Supreme Court committee to examine creeds of professionalism adopted by other states and to explore the possibility of a creed of professionalism for lawyers in Ohio.

The Chief Justice also charged the committee to assemble information that would raise the consciousness of attorneys regarding their individual and collective responsibility to maintain a high level of professionalism in relationships with clients, judges and other members of the bar. The committee ultimately recommended the adoption of a creed, and emphasized that the creed would be effective only if used in concert with other approaches to professionalism concerns, such as “post-admission-to-the-bar” education.

The work of the committee, and a subsequent bench-bar conference focusing on its report, led to the formation in 1992 of the Supreme Court of Ohio Commission on Professionalism (the Commission). Established by Rule XV of the Rules for the Government of the Bar of Ohio, the Commission is charged to “promot[e] professionalism among attorneys admitted to the practice of law in Ohio.” Gov. Bar Rule XV goes on to say,

Professionalism connotes adherence by attorneys in their relations with judges, colleagues, clients, employees and the public to aspirational standards of conduct. The commission shall devote its attention to the law as a profession and to maintaining the highest standards of integrity and honor among the members of the profession.

In 1997, on recommendation of the Commission, the Supreme Court adopted the Statement on Professionalism, A Lawyer’s Creed, and A Lawyer’s Aspirational Ideals, at the same time amending Gov. Bar Rule X to include a requirement that each licensed attorney receive biennially at least one hour of instruction “related to professionalism (including A Lawyer’s Creed and A Lawyer’s Aspirational Ideals adopted by the Supreme Court).” The Supreme Court also amended Rule IV of the Rules for the Government of the Judiciary, effective January 1, 1999, to require that judges “complete at least two hours of classroom instruction related to both judicial ethics and professionalism.”

This Rule further states,

For purposes of this rule, professionalism shall be broadly defined, with periodic curriculum to include material designed to instill in judges the importance of professional conduct among themselves as well as instruction to judges on facilitating professionalism among attorneys as set forth in A Lawyer’s Creed, and A Lawyer’s Aspirational Ideals adopted by the Supreme Court.

In July, 2001, upon recommendation of the Commission, the Supreme Court issued a Statement on Judicial Professionalism and A Judicial Creed.

### ***Early CLE Programs on Professionalism***

Because of the wording of Amended Gov. Bar Rule X, organizations providing CLE around the State have debated what to present in a “professionalism CLE program” and how to present it. Some took the reference to A Lawyer’s Creed and A Lawyer’s Aspirational Ideals to mean that each professionalism program required coverage of those two documents. This early interpretation led to repetitive, sometimes superficial, and narrowly focused programs. In response, a number of CLE providers within the State began to consider how to improve the quality of CLE programs devoted to professionalism, which in turn led to considerations of a definition of professionalism.

### ***Defining Professionalism***

Numerous organizations and individuals have attempted to articulate a satisfactory definition of professionalism. Many approve Harvard Dean Roscoe Pound’s mid-century words:

The term refers to a group pursuing a learned art as a common calling in the spirit of public service — no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose.<sup>1</sup>

*Teaching and Learning Professionalism*,<sup>2</sup> the 1996 report of the Professionalism Committee of the American Bar Association Section of Legal Education and Admissions to the Bar, expands the Pound definition and particularizes it for lawyers:

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.<sup>3</sup>

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<sup>1</sup>ROSCOE POUND, THE LAWYER FROM ANTIQUITY TO MODERN TIMES 5 (1953).

<sup>2</sup>Report of the Professionalism Committee, *Teaching and Learning Professionalism 6* (ABA Section on Legal Education and Admissions to the Bar, 1995).

<sup>3</sup>Id.

Former ABA President Jerome Shestack identified six components of professionalism: “ethics and integrity, competence combined with independence” of judgment, “meaningful continuing learning, civility, obligations to the justice system, and pro bono service.”<sup>4</sup>

Justice Sandra Day O’Connor of the United States Supreme Court also offered a useful definition:

To me, the essence of professionalism is a commitment to develop one’s skills to the fullest and to apply [them] responsibly to the problems at hand. Professionalism requires adherence to the highest ethical standards of conduct and a willingness to subordinate narrow self-interest in pursuit of the more fundamental goal of public service. Because of the tremendous power they wield in our system, lawyers must never forget that their duty to serve their clients fairly and skillfully takes priority over the personal accumulation of wealth. At the same time, lawyers must temper bold advocacy for their clients with a sense of responsibility to the larger legal system which strives, however imperfectly, to provide justice for all.<sup>5</sup>

In 1997, the Supreme Court of Ohio adopted A Lawyer’s Creed and A Lawyer’s Aspirational Ideals, defining a lawyer’s professional commitments in terms of relationships to clients, to opposing parties and counsel, to the courts, to other colleagues, to the profession as a whole, and to the public and our system of justice.

A related question that groups in and outside the State of Ohio have struggled with over the last few years is how “ethics” differs from “professionalism”? The general consensus has emerged that ethical rules represent the minimum standards below which a lawyer’s conduct may not fall, while notions of professionalism represent the highest standards of conduct that the public has a right to expect of lawyers and to which all lawyers should aspire. It is this core concept that the Supreme Court of Ohio and this Commission have embraced. Ethics CLE programs tend to dwell on lawyer conduct while professionalism CLE programs emphasize the positive: a lawyer’s obligation to help, counsel, and protect clients and to promote justice and the public good.

Ultimately the most meaningful definition of professionalism is the one that each lawyer develops as an individual guide. Through thinking about professionalism and discussing the values it encompasses, lawyers gain practical guidance for the day-to-day practice of law. Whether a lawyer prefers Dean Pound’s definition or a more recent articulation, *professionalism may best be thought of as a broad concept that includes the values of achieving and maintaining competence, acting with integrity, committing to a life of service, and seeking justice for all*. Commitment to these basic values is what makes a lawyer’s work professional.

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<sup>4</sup>Jerome J. Shestack, *Taking Professionalism Seriously*, ABAJ 70 (August, 1998).

<sup>5</sup>Quoted in *Professionalism Course for New Admittees to the Maryland Bar* (1992).

### ***Goals of the Professionalism CLE Requirement***

In the view of the Commission, the goals of the professionalism CLE requirement in the State of Ohio are four:

1. to provide opportunities for lawyers and judges to consider in a sustained and serious way issues that affect competence, integrity, service and justice in the contemporary practice of law;
2. to bring lawyers and judges together for discussions of these shared values of the legal profession;
3. to promote the understanding of and commitment to “A Lawyers Creed” and “A Lawyers Aspirational Ideals”; and
4. to promote the understanding of and commitment to “A Judicial Creed.”

### ***Suggested Issues and Topics***

The ideals and values reflected in “A Lawyer’s Creed,” “A Lawyer’s Aspirational Ideals” and “A Judicial Creed” should serve as the beginning point for conceptualizing professionalism CLE for lawyers and judges, but should not be the exclusive topics of discussion. These documents should be used to suggest issues and subjects that lawyers and judges need to examine as they strive to meet the lofty goals and ideals, and to achieve the highest standards, of a learned profession. Bar associations and other CLE providers are encouraged to explore the subject of professionalism in its broadest meaning. While lawyer professionalism is often demonstrated through behavior that may be described as civil, courteous, and respectful, professionalism CLE should be designed to encourage serious exploration of, and education about, a broad range of issues of concern to the legal profession.

The Commission believes the following issues are among those appropriate for professionalism CLE:<sup>6</sup>

- Maintaining independence in the context of the lawyer-client relationship.
- Conflicts between duty to client and duty to the system of justice or to the public good.
- The conflict in duty to the client versus relationships with other lawyers.
- The duty of the lawyer to be informed about all forms of dispute resolution and to counsel clients accordingly.
- The responsibility of the lawyer to employ effective client communication.

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<sup>6</sup>Many of the issues listed below are taken directly from, or adapted from, the Professionalism CLE Guidelines of Chief Justice’s Commission on Professionalism of the State of Georgia (hereinafter, Georgia Professionalism Commission).

- The responsibility of the lawyer to communicate clearly regarding the expectations of representation, including the accessibility of the lawyer.
- The responsibility of the lawyer to establish a fair and equitable fee arrangement understood and agreed to in advance by the client.
- The responsibility of the lawyer to the court and the judiciary.
- The responsibility of the lawyer to understand the image of the profession.
- The responsibility of the lawyer to the public generally and to public service.
- The responsibility of the lawyer to make our system of justice available to all.
- The responsibility of the lawyer to promote equality for all persons.
- The responsibility of the lawyer to educate the public concerning laws and the legal system.
- The responsibility of the lawyer to recognize, understand and respect racial, culture, and gender differences.

Within the broad range of issues illustrated above, here are some specific topics the Commission recommends for CLE:<sup>7</sup>

- Alternative Dispute Resolution: negotiation, settlement, mediation, arbitration, other dispute resolution processes alternative to litigation.
- Advocacy: effective, persuasive advocacy techniques for trial, appellate, and other representation contexts.
- Client Management Issues: finding clients, entering into engagement arrangements, including fees, maintaining communication with clients regarding client interests, cultivating clients.
- Law Office Management Issues: issues relating to development and management of a law practice, including the handling of funds, including client funds, management of employees, the hiring and firing of attorneys, the efficient and competent delivery of legal services, monitoring ethical compliance of attorneys within the organization, eliminating malpractice claims, eliminating client complaints of poor service.
- Economic and Commercial Issues That May Undermine a Commitment to Professionalism.
- A Commitment to Diversity Within the Legal Profession: addressing issues of bias, affirmatively seeking diversity through hiring and retention practices, identifying reasons for embracing diversity.
- Diversity Training: promoting enhanced understanding of racial, cultural, and gender differences.
- The Impact of Racial, Cultural, and Gender Differences on Communication Styles.
- Civility and Related Behavior Problems.
- Billable Hours and Quality of Professional Life Issues.
- Discovery: effective techniques to overcome abuse.
- Mentoring.

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<sup>7</sup>A number of the topics listed below were suggested by the Professionalism CLE Guidelines of the Georgia Professionalism Commission.

- Proficiency and Clarity in Oral, Written, and Electronic Communications.
- Quality of Life Issues: balancing priorities, career/personal transition, emotional and mental health, stress management, time management.
- Ensuring Access to the Legal System: community, public and pro bono service, ensuring representation for those unable to afford it.

### ***Format Considerations and Programmatic Resources***

Because a major goal of professionalism CLE is to encourage a broad understanding and dialogue about these important issues, the Commission encourages those who design professionalism CLE programs to utilize an interactive format whenever possible. Professionalism programs in which one person lectures, although occasionally appropriate, are not usually conducive to the type of learning which encourages attorneys to achieve personal or professional insights to take back to their offices and use effectively in their practices. When the lecture format is used, recommendations for livening the presentation include: audio-visual materials (such as Power Point), testimonials, excerpts from depositions and video-taped depositions, and question and answer sessions with written questions distributed prior to discussion.

The best professionalism CLE is often contextual, designed for specific groups, the members of which share a common practice area or a common practice setting. Providers are encouraged to develop short or extended hypothetical problems presenting practical professionalism issues.

Presenters may also stimulate a thoughtful professionalism discussion by developing a brief survey asking participants first to respond individually and then as a group to such questions as the following:

“Identify three members of your bar association whom you consider to be professional.”

“List at least three qualities of professionalism exhibited by one or more of those identified.”

“In order of importance, list five qualities that make a good judge.”

“As a new lawyer, describe a favorable experience you have had with a veteran attorney or judge that you consider to be an example of true professionalism.”

“Describe unprofessional conduct you have encountered and suggest possible remedies.”

Also helpful may be depictions of professionalism situations on videotape. While providers may benefit most from resources developed and delivered locally, a number of successful programs have been presented using video vignettes and materials available from other professionalism commissions and centers, such as the following:

- Chief Justice's Commission on Professionalism  
800 The Hurt Building  
50 Hurt Plaza  
Atlanta, GA 30303  
404-225-5040  
[www.gabar.org/cjcp.htm](http://www.gabar.org/cjcp.htm)
  
- The Texas Center for Legal Ethics and Professionalism  
P.O. Box 12457  
Austin, TX 78711  
800-204-2222, x 2161  
[www.txethics.org](http://www.txethics.org)
  
- Center for Professionalism  
Florida Bar Association  
650 Apalachee Parkway  
Tallahassee, FL 32399  
850-561-5747  
[www.flabar.org](http://www.flabar.org)
  
- New Jersey Commission on Professionalism  
New Jersey State Bar Association  
New Jersey Law Center  
One Constitution Square  
New Brunswick, NJ 08901-1520  
732-249-5000  
[www.njsba.com/commission\\_on\\_prof/](http://www.njsba.com/commission_on_prof/)

### ***Conclusion***

These CLE Guidelines are offered by the Commission in an effort to enhance the quality and variety of continuing legal education programs on professionalism in Ohio. The members of the Commission are grateful to the judges and lawyers who have contributed to the development of these Guidelines and who give their time to plan and present professionalism CLE programs. Additional suggestions of issues, topics, format, and resource materials are welcome.