

A scroll with the word "Law" written in cursive is positioned at the top left. To its right is a wooden gavel resting on a stack of books. The background is a dark, blurred image of a library or study.

Law

Professionalism

Stipulations v. Trial

Voluntary Surrender v. Guardianship v. TPR

Right to Appeal

A 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.

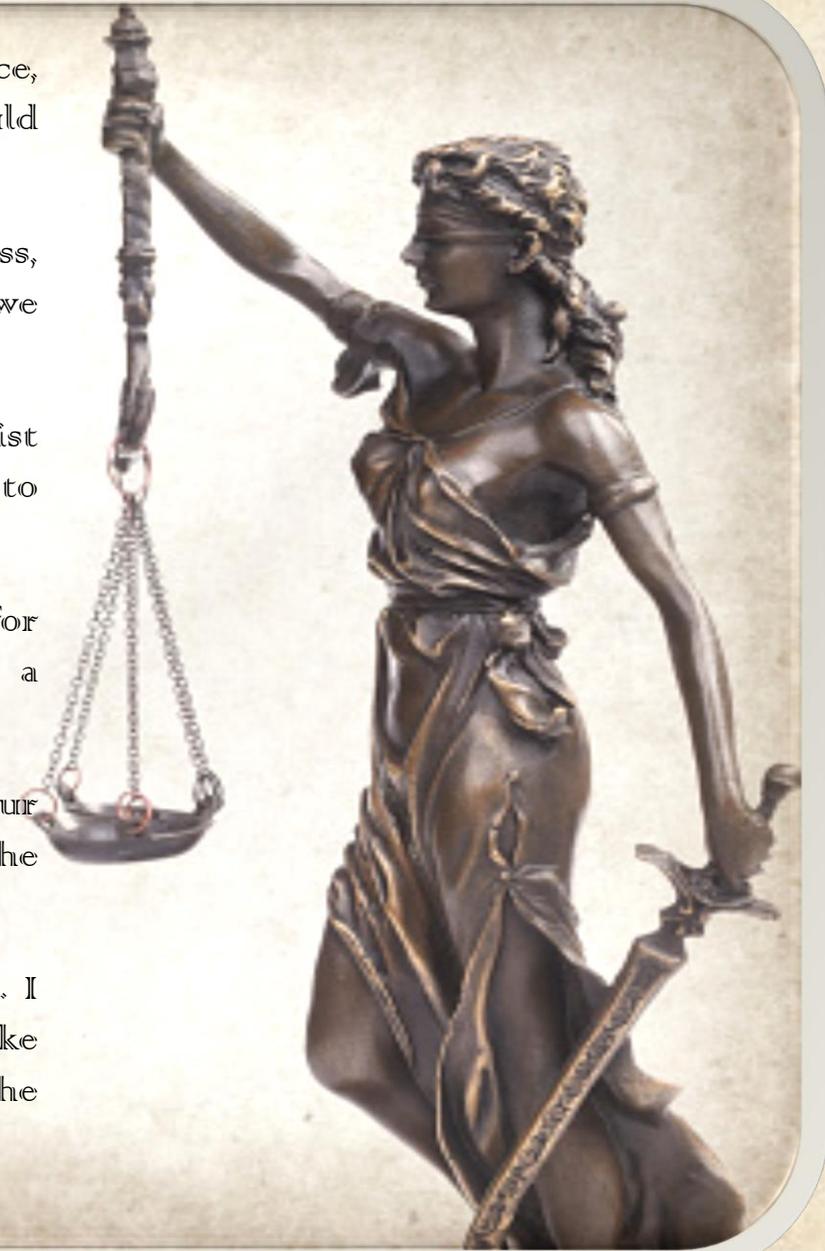
To the opposing parties and their counsel, I offer fairness, integrity, and civility. I will seek reconciliation and, if we fail, I will strive to make our dispute a dignified one.

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.



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

--Former Georgia Supreme Court Chief Justice Harold Clarke

Ethics

- How lawyers must behave
- The “Law of Lawyering”
- Rules of Professional Conduct
- Malpractice avoidance
- Focuses on misconduct or the negative dimensions of lawyering

Professionalism

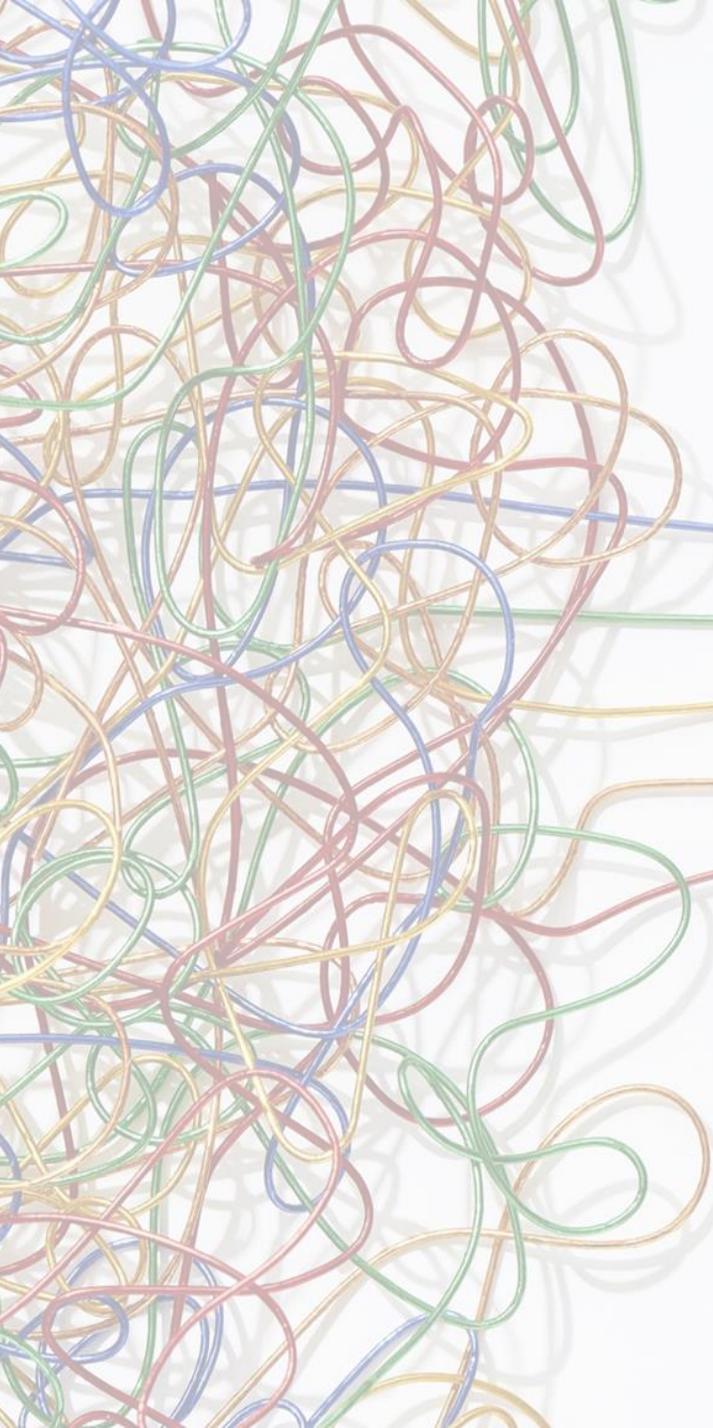
- How lawyers should behave
- Aspirations of the profession
- Focuses on conduct that strengthens the dignity, honor, and integrity of the legal system



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.
- 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.



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.

Stipulations v. Trial

- ❖ How does this tenet relate to your analysis and determination of whether to conduct a full-on trial, versus recommending to your client that he/she waive/stipulate to allegations at PPH or Adjudication?
- ❖ What do you, as the attorney, take into consideration in making your determinations of moving forward with a trial versus entering waivers/stipulations?
- ❖ Are your own interests outweighing your client's interests?
- ❖ Can this occur either way?
 - It's in your client's interest to move forward with a trial, but you...
 - Do not feel comfortable litigating
 - Do not have the time to prepare for a trial
 - Intimidated by the other parties or the judge
 - It is in your client's interest to waive/stipulate, but you...
 - Want to press the other parties to prove their case
 - Want to "prove something" to the other parties/judge

GENERAL ASPIRATIONAL IDEALS Discussion

“As a lawyer, I will aspire:
To achieve the excellence
of our craft...”

“to be the moral voice of clients
to the public in advocacy” ...

“while being the moral voice of
the public to clients in
counseling.”

- How do we accomplish this advocacy?
 - Filing motions, filing appeals, initiating discussions with the parties to the case (SAAG/CM, CAA)
 - As we strive to achieve this excellence, do you feel that sometimes others are not readily receptive to hearing statements from your client’s perspective?
-
- How candid are you in your discussions with your clients in counseling them about why/how their situation culminated to the point of their children being removed or potentially be removed from their home?
 - How can you counsel them about the purpose of the child welfare system from the perspective of “for the benefit of the public/child”?

ADA Hypothetical

You believe that the allegations against your client relating to mental health issues and instability in housing have been inflated, and rise to the level of discrimination under the ADA and you feel comfortable in arguing that “*poverty and mental health illness are not automatically dependency.*”

Strategically, how do you handle this?

- File formal motions?
- Make your arguments on the record? Do you make the arguments at every hearing?
- Do you feel that making the ADA discrimination argument is a double-edged sword?

Pre-TPR Hypothetical

Your client consistently tells you that the entire situation involving her [5] children being removed from her home is not her fault, and she does not accept responsibility for any of her actions for the duration of the case. The potential for a non-reunification ruling is high, which will then put her on the trajectory for a TPR. How do you begin to craft your conversations—in content and tone—at this point in the case?

- Are you very direct with your client about their lack of self-awareness?
- Do you strategically, but ethically, begin to slow down the pace of the case to try to give your client more time?
- Do you feel obligated to speak to your client about what is in the best interests of the child versus what they feel is fair or right for he/she as the parent?
- TWIST #1: Your client just gave birth to her sixth child
- TWIST #2: All of the first 5 children have varying and different special needs, but the sixth child does not seem to have any cognitive delays.

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.**

SPECIFIC ASPIRATIONAL IDEALS Discussion

As to clients, I will aspire: To fully informed client decision-making. As a professional, I should:
(Line 75)

Maintain the sympathetic detachment that permits objective and independent advice to clients. (Lines 79-80)



- How detached is detached enough and how much is too detached?
- Once you are past focusing on your own interests, how often do you think that you need to check-in with your client in order to ensure that you are effectively advocating for their current interests?
- Discussion of TPR v. Voluntary Surrender

Communicate promptly and clearly with clients. (Line 81)



- How do you know if you have communicated effectively with your client?
- Do you send your client written descriptions of your explanations of their case?
- Do you go over the same information to your client two or three different ways in order to ensure that they understand?

Reach clear agreements with clients concerning the nature of the representation. (Line 82-83)



- At what point do you start talking to your client about alternative permanency options?
- Discussion of the impact of a TPR v. Voluntary Surrender
- How often do you check with your client about their goals/wishes for permanency?

TPR Trial Hypothetical

The case has been dragging out for four years, and there has been a fault on both your client's part as well as DFCS, who has dropped the ball on providing appropriate services (i.e. incorrect referrals and expired service authorizations). The case is moving towards TPR, and you are not confident that your client will be able to cure the issues of dependency in sufficient time, and she is currently pregnant—with triplets. However, you also do not think that DFCS will be able to actually put-up sufficient evidence for a TPR to be [properly] granted by the Court (e.g. several different case workers have been assigned to the case, and it is unlikely that any of the previous case workers will be available to testify; you know that many of your client's drug screens have been misplaced by the Division; and you are aware that the Division does not have an adoptive resource for the children that are currently in foster care).

- Do you speak with your client about executing a voluntary surrender—perhaps to avoid her babies coming into care if this case is still open; or to lessen the impact in the future if she has DFCS involvement again?
- Do/How do you explain to her from a procedural perspective that if the Division cannot put forth sufficient evidence, then technically the TPR should not be granted, but it is still a gamble to move forward?

TPR Appeal Hypothetical

Your client has been very emotional throughout the entirety of the case, which has lingered for three years. You are now at TPR, which has been granted after four days of grueling testimony. You believe that there are several procedural issues that would cause the case to be overturned on appeal, and you discuss this with your client immediately following the hearing on the TPR. Your client does not say that she does not want to appeal, however she does express to you that even though he/she still wants his/her children home with his/her, he/she is so very tired of fighting with DFCS and tired of missing work to come to court, and he/she just wants it all to be over and put it behind her. What do you do?

- Do you think that it is appropriate to give your client some time to recover from the stress of the trial and speak with her about it again a few days? Or leave it alone and wait to see if he/she contacts you back?
- Do you take it as a given that you will an appeal on behalf of your client following a TPR?