

Professionalism: Public Service for the Common Good

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The Atlanta Legal Aid Society

What is Professionalism? How is it different from Ethics?

"Ethics is a minimum standard which is required of all lawyers while professionalism is a higher standard expected of all lawyers."

-Harold Clarke, Former Chief Justice of the Georgia Supreme Court

"We should expect more of lawyers than mere compliance with legal and ethical requirements."

-Robert Benham, Former Chief Justice of the Georgia Supreme Court

"I have concluded that professionalism, in a legal sense, is to a great extent practicing the golden rule. It is not -- do my opponent in before my opponent does me in, -- but rather, it is do unto your fellow attorneys, the judges and society as you would have them do unto you."

-Norman Fletcher, Retired Chief Justice of the Georgia Supreme Court

"To me, the essence of professionalism is a commitment to develop one's skills to the fullest and to apply that 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."

-Sandra Day O'Connor, Former Justice of the US Supreme Court

"[A profession] 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."

-Dean Roscoe Pound, late Dean of Harvard Law School

I. INTRODUCTION

The focus of our Professionalism discussion is Public Service. *“A Lawyer’s Creed”* and the *“Aspirational Statement on Professionalism”*, attached in full as Exhibits A and B, are the source documents for the concepts of professionalism in Georgia. The Lawyer’s Creed and Aspirational Statement were adopted by the Chief Justice’s Commission on Professionalism and incorporated into the Rules and Regulations for the Organization and Government of the State Bar of Georgia Commission in 1990 and, by Supreme Court order, made a part of the *Rules and Regulations for the Organization and Government of the State Bar of Georgia*.

Tenets from The Lawyer’s Creed and Aspirational Statement that are pertinent to our discussion include:

Excerpts from A Lawyer’s Creed:

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.

Excerpts from the Aspirational Statement on Professionalism:

As a lawyer, I will aspire:

(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.

(e) To make the law, the legal system, and other dispute resolution processes available to all.

(i) To practice law not as a business, but as a calling in the spirit of public service.

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

(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.

How can we advance these goals and aspirational ideals within the real estate sector of the Bar? What are some of the issues that the lower-income and less sophisticated members of our community face that the real estate practitioners of the Bar can help address in the spirit of public service? In this paper, we will explore some ideas for specific education that the residential real estate practitioner is uniquely situated to provide and further explore some specific opportunities of pro bono service that any real estate practitioner could undertake. We will also provide some supporting materials for strategies for working effectively with pro bono clients.

II. AT THE CLOSING TABLE: helping to avoid misconceptions, mistakes, and misdeeds.

In Georgia, real estate closings are required to be performed by lawyers.¹ Why is this important? In an advisory opinion reaffirming this long-standing rule, the Georgia Supreme Court

¹ O.C.G.A. § 15-19-50 (practice of law includes conveyancing, preparation of legal instruments of all kinds whereby legal right is secured, rendering of opinions as to the validity or invalidity of titles to real or personal property, and giving of any legal advice); In re UPL Advisory Opinion 2003-2, 277 Ga. 472 (2003); Formal Advisory Opinion No. 00-3 (Feb. 11, 2000) (“The lawyer must be in control of the closing process from beginning to end.”)

explained that “the public interest is best protected when a licensed Georgia attorney, trained to recognize the rights at issue during a property conveyance, oversees the entire transaction.” In re UPL Advisory Opinion 2003-2, 277 Ga. 472 (2003)

Recognizing that real estate transactions are so significant as to require an attorney to oversee them, how can real estate lawyers bring the spirit of public service and advancing the public good to the closing table? What role can residential real estate lawyers play at the closing table (or before) in helping non-lawyers better understand the transaction at hand and, in particular, the implications of homeownership? Concepts that real estate lawyers may think of as basic and obvious may not necessarily be common knowledge or readily evident to those who are not real estate lawyers. Based on common misconceptions and issues we see in our own practice, we offer the following suggestions of information and advice that the residential real estate closing attorney is uniquely situated to impart to our client community:

Demystifying Common Misconceptions & Misunderstandings

A. Explaining Material Terms of the Transaction. Georgia law presumes that you read what you sign, but how many people actually read their closing documents? (How long would a closing take if they did?!) The closing attorney plays a crucial role in reviewing the key terms of the transaction and ensuring that the parties understand what they’re signing. The attorney may be the last safeguard against fraud and financial exploitation.

CASE EXAMPLE: The Lead Balloon. Alice Kelly² bought her home in 2006 with two mortgages, a first and second. The second mortgage was for \$29k, with a 15 year term. She timely paid all of the monthly payments due of \$336, but when the loan reached the

² Names of Legal Aid clients have been changed to protect their privacy.

maturity date in 2021, the servicer said she still owed \$26k! *“This is a scam!”* she said, *“I don’t owe that and I’m not paying it.”* Alice is a seemingly-well-educated, middle class mother of two, living in a nice neighborhood in Alpharetta. But now she’s about to lose her home to foreclosure. What went wrong and how could this have been avoided?

From the outset the contractual payments due on the loan were not enough to pay off the loan balance, and the payment plan contemplated a large balloon to be due at maturity. Sure, this was listed in the disclosures she received, but she didn’t read or understand them and no one explained it to her. How much more would she have had to pay in order to pay the full loan balance within the 15 year term? \$381 per month - only \$45 more than she was paying!

What can a closing attorney do to help avoid this type of situation? Make sure to review all material terms with the borrower, especially when there are unusual features, like an adjustable interest rate, balloon payment, interest-only period, etc.

B. Escrow 101. One of the key components of many mortgage payments is the escrow for property taxes, homeowners insurance, and mortgage insurance (if applicable), but this is one of the topics homeowners seem to understand the least. It’s not uncommon to have clients say things like:

“I just bought my house and I was supposed to have a fixed rate, but they just increased my payments!”

“I always paid my own taxes and insurance, but my lender just added escrow to my mortgage (I only got a couple months behind on my insurance).”

“They went up on my escrow and I don’t agree with it so I’m only going to pay my regular payment amount.”

In order to dispel some of these misunderstandings and hopefully avoid escrow problems, here are some escrow basics that attorneys could provide at the closing table:

- 1) The escrow portion of the mortgage payment will adjust each year depending on the cost of property taxes and homeowners insurance. It’s up to the homeowner to do what they can to keep these costs as low as possible, including periodically shopping for insurance if the premiums increase a lot, applying for all property tax exemptions, and appealing tax assessments (see more information below).
- 2) If the mortgage doesn’t include an escrow account, the lender can still add one at any time (and at the lender’s discretion). This is almost certain to happen if the homeowner is late paying their property expenses.
- 3) The escrow portion of the mortgage payment is required to be paid, and failure to pay the entire payment (including escrow), can result in default and foreclosure.

C. Property Tax Exemptions & Appeals. High tax bills can lead to unaffordable escrow increases on a mortgage and/or tax liens on the property, placing the homeowner at risk of losing their home to foreclosure or tax sale. We often have clients who have no idea that they qualify for property tax exemptions that would significantly lower their property tax bills. Advice about applying for the basic homestead exemption, as well as disability, veterans, and senior exemptions (generally at age 62, 65, and 70) where applicable, may help a struggling individual or family stay in their home.

Often tax bills have increased because of rising tax assessment values, particularly in rapidly-developing in-town neighborhoods. It is a common misconception that a high

tax value is a good thing because it indicates that the home is worth a lot, but the homeowner doesn't realize that the higher value translates into higher taxes. Many people don't realize they have the right to appeal their tax value when they receive the assessment notice, and that this can help reduce the amount of their taxes. Along with simple information about applying for property tax exemptions, giving information about appealing increased tax values could help homeowners maintain stability in their homes.

D. Client Misconception: “*I don't have a mortgage, I have a home equity line.*”

CASE EXAMPLE: Double Trouble. Eddie Parker got a home equity line of credit that he used to pay off a small existing mortgage balance, car notes on his vehicles, and pay back some small loans from family. Fifteen years into the 30-year term, his payments suddenly increased to more than double what he had been paying. He couldn't understand the increase, couldn't afford the new payment amount, and was surprised when he started getting threats about foreclosure. When his Legal Aid attorney referred to the loan as being a mortgage on his home, Eddie responded: “I don't have a mortgage, I have an equity line.”

This example highlights a couple of misconceptions our clients sometimes do not understand about HELOCs.

- 1) Most of these loans have a draw period for the first 10-15 years, in which the payments due are only for interest, with no payments required toward the principal. At the end of the draw period, the loan converts to an amortizing principal and interest payment for the remaining term. This can result in significant payment shock and can lead to default if the new payment is not affordable on the borrower's income. A little bit of time explaining this at closing, and perhaps even running

payment calculations for homeowners who want to pay on the principal before they're required to do so, could go a long way to helping borrowers prepare for the amortizing loan period.

- 2) Sometimes borrowers do not understand that a HELOC is a mortgage, and if they struggle financially and fall behind on their payments, the HELOC can be foreclosed like any other mortgage. An explanation at closing that non-payment of the HELOC carries the same risk of foreclosure as any other type of mortgage could help avoid future confusion, and possibly potential foreclosure.

E. What is Non-Judicial Foreclosure, Anyway?

If real estate attorneys were to poll non-attorney acquaintances to see how many of them know what the foreclosure process is, they might be surprised at how little people actually understand about it. No one sits at closing thinking that they might be facing foreclosure one day, and probably don't want to dwell on it, but anyone can have an unexpected hardship in their lives that could put them at risk of foreclosure, through no fault of their own. Foreclosure is a key term of any mortgage transaction, and the closing attorney plays a crucial role in educating the public about the implications.

Client misconception: *"I don't owe that, so they can't foreclose!"*

Many people we speak with assume that there will be a court process before a mortgage company can foreclose, or some sort of safeguard to keep a lender from foreclosing on a disputed amount. Of course, for most mortgages in Georgia, this is not the case unless the homeowner hires a lawyer to bring an affirmative lawsuit.

A basic explanation at closing of what non-judicial foreclosure means is critical. In particular, the lender can foreclose by sending a notice 30-days in advance and then

auctioning the property on the courthouse steps. There is no judge or court overseeing it to make sure that the foreclosure is authorized. So if you're struggling with your payments, it's important to seek free assistance (see HUD counseling information below). And if you have a dispute about your payments or how much is owed, it's important to seek legal advice.

F. If You Are Struggling, Free Help May Be Available. For homeowners who find themselves struggling with their mortgage payments after closing, a HUD-certified housing counseling agency may be able to provide free help, including help with applying for loss mitigation options such as a forbearance, repayment plan or loan modification. HUD-Certified housing counselors in the homeowner's area can be found at www.hud.gov/findacounselor. Many homeowners fall victim to foreclosure "rescue" scams, unwittingly paying money for "help" with a loan modification (usually no help at all), or signing a deed or bad sales contract with the scammer without understanding what they're signing. If more people know that free assistance is available, many of these scams could be avoided and more homes could be saved from foreclosure.

G. HOAs Can Foreclose. We get calls from time to time from homeowners who are facing foreclosure by their homeowners association or condominium association. Sometimes the homeowner has been struggling financially and prioritized their mortgage payments and not the HOA or condo association dues. Sometimes the homeowner had a dispute with the association and stopped paying dues or was fined for disputed violations. Too often we hear that the homeowner had no idea that the association has a lien for amounts due and can foreclose. Sometimes, by the time we hear from the homeowner, the situation has gotten out of hand, with added attorneys fees and collection costs resulting in a very large

amount owed that leaves the homeowner with very limited options to try to save their home. Advice at the closing table when an individual buys a home that failure to pay association dues or fines can result in losing a home to foreclosure may help avoid some of these unfortunate situations.

Helping to Avoid Title Problems

- H. Tangled Title: Consider a JTWROS Deed.** We get many calls from individuals with issues involving heirs property - the homeowner died intestate and now there are multiple heirs with fractional interests. We often see this sort of tangled title result in issues for the heir(s) living in the home in dealing with the mortgage on the home, among other problems. The real estate closing lawyer might help avoid some of these issues by asking, in any closing that involves multiple homeowners, whether the individuals want a joint tenancy with right of survivorship deed. This question can be asked with refinances, when title is examined, as well as with home purchases.
- I. Avoiding Tangled Title: Do You Have a Will?** Some clients may have no idea of how Georgia intestacy law works and the unexpected issues that can arise when a home ends up with numerous fractional interest owners. The closing of a home purchase, or a mortgage refinance, is a great time to ask a homeowner if they have a Last Will and Testament, to address what will happen to their home - what for many of us is the most valuable asset we will ever own.
- J. Client Misconception:** *“I put my grandson/girlfriend/brother-in-law/neighbor on the deed to my house, now I need you to take them off!”*

Too often, we get calls from individuals who want us to remove someone from title to their home. The information that a deed is not like a life insurance policy, where you can change

the beneficiaries any time you want, can come as a rude awakening. Advice at the closing table that if the client is thinking about signing a deed after closing (or if someone is asking them to sign a deed), *they should talk to a lawyer first*, might help avoid some unintended future ownership issues.

K. Why Owner's Title Insurance is Important. The average non-real estate lawyer buying a home may have no real concept of the value received by paying a few hundred dollars for an owner's title insurance policy - or of the magnitude of the risk a homeowner assumes by forgoing this coverage to save those couple of hundred dollars at closing. Some extra time spent explaining the coverage and the risks to a homeowner who is thinking about waiving owner's title insurance is a valuable service.

Avoiding Fraud, Exploitation & Other Scams

L. Be on the Lookout for Red Flags of Fraud/Exploitation

Most of the fraudulent transactions we see in our practice are not being handled by attorneys. And most closing attorneys are likely alert to issues such as ID theft, fraud/forgery, lack of capacity, etc. Nonetheless, we occasionally see transactions that slip through the cracks. Some of the common red flags of these transactions might include:

- 1) An unrepresented party (no realtor);
- 2) Information for closing being provided by a third party (such as a family member, or the other party to the transaction);
- 3) "Seller" remaining in possession of the home (often there is a side agreement/fraudulent inducement to the contract that is not consistent with a standard sale, such as a promise that the owner will get the home back when they

repay money loaned, or that sale proceeds are being used to repair the home and then put the owner back on title);

- 4) Low sales price in comparison with market value;
- 5) Senior, disabled, or unsophisticated homeowner unable to articulate a coherent understanding of the transaction; and/or
- 6) No verification that the bank account belongs to the party to whom loan or sales proceeds are to be paid (or another party, such as a family member coordinating the transaction, has access to the funds).

M. Warn About Scam Solicitations After Closing. After a purchase or refinance transaction is recorded in the deed records, homeowners are inundated with all kinds of official-looking notices that are really scammy solicitations. These include offers to get the certified copy of the deed for \$80, and mortgage insurance notices that reference the name of the lender and make it seem like there's going to be a problem with the loan if the homeowner doesn't respond. Warnings at closing to be on the lookout for these scams can help homeowners from falling victim.

N. Free Real Estate Filing Notification Registries. Fraudulent deed filings do happen. Homeowners may benefit from knowing about free registries where they can sign up to get alerts of filings on their property. Links to free services include:

Statewide:

Filing Activity Notification System: <https://fans.gsccca.org/>

Fulton County:

Real Estate Activity Alert and Contact Tool: <https://apps.fultonclerk.org/reaact>

DeKalb County:

Info about the Property Fraud Registry: <https://dksuperiorclerk.com/real-estate/>

To register for the Property Fraud Registry:
<https://registry.myfivepoint.com/dekalb/fraudreg/>

III. PRO BONO OPPORTUNITIES FOR THE REAL ESTATE LAWYER

A. Real Estate Related Opportunities

(1) Clearing Title: Affidavits of Descent, Probate Deeds and Quitclaim Deeds. In our practice, we often see individuals in need of Affidavits of Descent, Executor Deeds, Administrator Deeds or Quitclaim Deeds between family members to clear-up title. Title clearing documents may be needed for a variety of reasons, such as: (i) to enable a client to speak with the mortgage servicer, and to apply for a loan modification if payments on the mortgage are behind; (ii) to enable a client to qualify for property tax exemptions; (iii) to make insurance claims following a natural disaster; (iv) to qualify for a home repair grant; (v) to sell or refinance to access home equity; etc. When individuals try to handle deeds on their own, the results can be problematic. Real estate lawyers have undoubtedly come across many of these issues in reviewing title, such as: grantor/grantee names not being listed correctly; missing, incomplete, or inaccurate legal descriptions; execution problems, such as missing witness or notary, or notary for grantee signature instead of grantor's; the list goes on! Would the real estate bar be willing to provide simple services, like deed preparation and recordation, for free to low-income individuals? Beyond Legal Aid clients, how can the bar help get the message out that those services may be available?

(2) Simple Probate. At times, more than basic title clearing documents are needed. We see a significant need among our low income client community for pro bono legal assistance for simple probate matters. The need for probate assistance can be most significant when

the family has fallen behind on mortgage payments following the death of the homeowner, and probate action is needed to enable a beneficiary or heir to qualify for a loan modification to bring the mortgage current and avoid potential loss of the home to foreclosure.

(3) Consultations with Atlanta Legal Aid on Weird Title Issues. From time to time in our practice, we have title questions or see unusual title issues, where we would benefit from a consultation with a residential closing attorney about options to remedy the issue. These issues may come up when there is no mortgage or sale transaction currently contemplated. While at times we seek feedback from the RPLS ListServ community, there are other times where we need a more focused consultation, including a review of the documents at issue, and potentially input from a title insurance underwriter.

- a) For example, we recently had a client, Jim Morris, who needed help correcting the legal description of his long-time family home in Summer Hill, where he had lived for many decades. He was trying to obtain a senior home repair grant, but the organization providing assistance needed to confirm that he had title to the home. His parents, from whom he had inherited the property, purchased the home from Herman J. Russell, who (as the real estate bar might be aware) owned a significant number of properties in Atlanta. The purchase deed listed the correct property address, but inadvertently included the legal description for a neighboring property also owned by Russell. Mr. Morris, an 82-year old living on limited Social Security income, could not afford to pay for a survey of the property. To resolve the issue, Legal Aid conducted extensive deed research, tracing ownership of the property into the Russell family, and locating a prior legal

description for the property. Because the description located was in conflict with the description for the next-door property (which had been subdivided from one original lot), we called upon a local title attorney to review and assist us in confirming the correct description for the property. We then prepared an affidavit of ownership providing the correct legal description of the property and the possession of the property established by the Morris family for the past 40 years. Mr. Morris was able to obtain his home repair grant.

(4) Pro Bono or Low Bono Closings. From time to time, our work results in an outcome that requires a residential real estate transaction closing. For example, we have represented clients who have purchased their home through mortgage substitutes such as contracts for deed (also referred to as land installment contracts or bond for title arrangements) that did not give the client record legal title at origination. In our experience, individuals to whom these arrangements are marketed typically do not understand the significant differences between these mortgage substitute arrangements and a conventional home purchase with a deed and mortgage. Following a dispute between the parties, we have successfully negotiated settlements to reform the mortgage substitute arrangement into a conventional mortgage transaction with the homebuyer receiving record legal title. In those instances, a residential real estate closing attorney handling the closing of the new transaction without charging legal fees, or charging a reduced rate, would provide a significant service to a low-income member of our community who is finally becoming the record legal owner of their home.

Another example of a need for a closing attorney has occurred where we have assisted a client with being recognized by their mortgage servicer as a successor-in-interest to the original

homeowner and borrower (following death or divorce) and with applying for a loan modification when the mortgage payments are behind. On occasion, the mortgage servicer may require a closing attorney handle the execution of the resulting assumption and loan modification transaction.

A different example recently occurred when an individual contacted us for advice after entering into a contract to sell her home, with a non-typical structure for payment of the sales price. The sales price was to be paid in monthly installments over time, and the contract provided for the buyer to sign a promissory note and a mortgage secured by the home - effectively, seller-financing. The arrangement was the buyer's idea, not the idea of the selling individual, and the selling individual was in need of her own legal counsel to ensure that the documents to be executed at closing adequately protected her interests. While this type of situation is unusual for our practice, situations do come up from time to time where a low-income individual selling their home has a need for pro bono legal assistance, sometimes of a limited scope.

(5) Title Curative Work. Opportunities to undertake title curative work for low-income individuals also arise in our practice. For example, occasionally we are presented with forged deed issues, where legal work is needed to clear the forged deed from the public records. Two recent examples of forged deed issues we have handled include:

- (a) Foreclosure Rescue Forged Deed:** Homeowner Betty Jones contacted Atlanta Legal Aid after her mortgage servicer told her she “wasn’t on the deed” to her home. Ms. Jones had fallen behind on her mortgage payments after being out of work for a period of time due to medical issues. She was facing foreclosure when she was contacted by a company who told her they could help her avoid foreclosure and

obtain a loan modification to bring her current on her mortgage. Ms. Jones paid the company \$3,000, in installment payments, for this assistance.

Unbeknownst to Ms. Jones, the company got the scheduled foreclosure sale of Ms. Jones' home canceled by: (i) forging her signature on a deed that purported to transfer title to her home to two individuals and an LLC, and (ii) filing fraudulent Chapter 13 bankruptcy cases in the names of the two individuals, without their knowledge, on the eve of the scheduled foreclosure sale. Ms. Jones only learned about the forged deed when her mortgage servicer told her that they couldn't provide the loan modification for which she had been approved because Ms. Jones appeared to no longer own the home.

Atlanta Legal Aid investigated Ms. Jones' claims, and after finding that the facts supported her version of events, we filed a conventional quiet title action to have the forged deed voided by court order. The quiet title action was resolved in Ms. Jones' favor with: (i) a consent order signed by the cooperative individual who was named as a purported grantee; (ii) an order granting our Motion for Judgment on the Pleadings with respect to the other individual named as a purported grantee, who was not cooperative because she had been harmed by the fraudulent bankruptcy filing in her name; and (iii) default judgments with respect to the two entities we located in the U.S. bearing the name of the grantee LLC.

(b) Deed Signed By Deceased Grantors (or the Zombie Deed Case): Jeremy Smith contacted Atlanta Legal Aid after a title search he obtained, in preparation for selling his family home, revealed a deed purporting to transfer title from his parents to an LLC. The home had been owned by Mr. Smith's parents, who both died

intestate. Mr. Smith had lived in the home and cared for his ailing mother in her final years. Mr. Smith was disabled and paralyzed from the waist down, could not afford to maintain the home and needed to sell. The deed purporting to transfer title from his parents had been “signed” by his parents years after they both had died. Atlanta Legal Aid prepared and recorded an affidavit signed by Mr. Smith, providing record notice that the deed to the LLC was forged, with both his parents’ death certificates attached. We also contacted the managing member of the purported grantee LLC, who, after being informed that Mr. Smith had filed a police report, readily cooperated in signing a quitclaim deed confirming that the LLC did not claim any interest in the property. Arnall Golden Gregory assisted with this case by providing pro bono probate assistance to enable Mr. Smith to sell the home.

(6) Home Sale Scams. We are seeing an uptick in situations where a vulnerable individual is induced to sign a contract to sell their home on very unfavorable terms, sometimes with very little benefit to the homeowner, and where it would have been clear to the buyer that the homeowner did not understand the terms of the transaction. These situations call for more extensive legal assistance, often litigation. For those members of the real estate bar willing to consider more involved pro bono work, we would be glad to put you on a referral list to consider these types of cases when they arise.

B. Opportunities to Branch Out Beyond Real Estate Transactions

For those real estate practitioners interested in exploring opportunities beyond real estate transactions, supported by Atlanta Legal Aid, we offer the following possibilities:

(1) Property Tax Appeals. Each year, Atlanta Legal Aid organizes clinics to assist Fulton County homeowners with appealing their home property value assessments. Differing

levels of involvement are available for volunteers, including: (a) help with supporting research; (b) help staffing clinics; and (c) representation of clients at Board of Examiner hearings. BOE hearings are much less formal than court hearings. Training is provided. While individual experiences may vary, we estimate many of these opportunities involve about 5 hours of volunteer time.

(2) Homestead Exemption Applications. We also organize clinics each year to assist Fulton County homeowners with applying for homestead exemption applications (the basic exemption, as well as specialty exemptions such as disability, seniors and veterans exemptions). Training is provided. We also welcome non-attorney volunteers for these clinics.

(3) Simple Wills. Assisting homeowners with a basic will can avoid future fractured title issues! Atlanta Legal Aid can provide training, including training to a firm or other group. We estimate 5 to 10 hours of volunteer time per will.

(4) Gender Affirming Name Change Project. This is probably the easiest form of litigation you can do. Volunteer work involves filing a simple petition and notice by publication. In some cases there may be a court hearing (uncontested); in other cases, courts are entering an order following a motion without a hearing. A detailed training packet will be provided. We estimate that most cases will involve no more than 5 hours of volunteer time.

(5) Enhanced Services Project (ESP). ESP is an Atlanta Legal Aid call-back project. Volunteers make calls to follow-up on advice previously given by an ALAS staff member. Volunteers do not have to be a subject matter expert.

(6) TPO Projects. For those interested in volunteering for short-term litigation, we can provide training to handle obtaining Temporary Protective Orders in domestic violence

situations. These cases will involve appearing in court. Our Gwinnett County and Cobb County offices have established TPO pro bono projects that will provide support.

C. How to Sign-Up? Contact Atlanta Legal Aid Director of Pro Bono Legal Services Cari King at chking@atlantalegalaid.org. Or sign-up at LegalAidProBono.org

D. Legal Malpractice Insurance Coverage and Scope of Representation. When volunteers sign-up for pro bono opportunities with Atlanta Legal Aid, Atlanta Legal Aid's malpractice insurance policy covers the volunteer's work. We have our own client engagement form for the client to sign, but a volunteer lawyer is also welcome to use his or her own engagement form as well, to provide clarity on the scope and limitations of the representation.

E. Opportunities Outside the Metro Atlanta Area. Our pro bono projects generally serve clients located within the 5 county Metro Atlanta Area (Clayton, Cobb, DeKalb, Fulton and Gwinnett counties). For those who wish to serve their local communities outside of the Atlanta area, we encourage you to explore pro bono opportunities offered by the Georgia Legal Services Program - glsp.org

IV. SUPPORTING MATERIALS

The following supporting materials providing strategies for working effectively with pro bono clients are attached:

Exhibit C: *Key Strategies for Working Effectively with Pro Bono Clients*, by Sarah Babcock, Pro Bono Director, Lawyers for Equal Justice; reprinted from the Georgia Bar Journal

Exhibit D: *Concrete Strategies for Effective Representation of Pro Bono Clients*, by Cole Thaler, Atlanta Volunteer Lawyers Foundation

Also see: *Tips for Working with Pro Bono Clients* at
<https://www.learnthelaw.org/tips-working-pro-bono-clients>

EXHIBIT “A”

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.

EXHIBIT “B”

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.

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 cancelled 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. As a professional, I should ensure that any advertisement of my services:

(1) is consistent with the dignity of the justice system and a learned profession;

(2) provides a beneficial service to the public by providing accurate information about the availability of legal services;

(3) educates the public about the law and legal system;

(4) provides completely honest and straightforward information about my qualifications, fees, and costs; and

(5) does not imply that clients' legal needs can be met only through aggressive tactics.

(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.

Key Strategies for Working Effectively with Pro Bono Clients

Many attorneys have taken pro bono cases with the best of intentions, only to face challenges with their clients. This article will give you tools for effectively representing clients in the scarcity mindset.

BY SARAH BABCOCK



PHOTO BY ISTOCK.COM/SHUTTERSTOCK

Two associates meet for lunch, and the conversation quickly turns to their respective workloads:

“Alex, how is that pro bono case you picked up going? I remember it sounded like a really strong case for illegal eviction.”

“Ugh, terrible,” Alex responds. “I had to give it back—I scheduled two meetings with the client, but she missed both of them, and I could never reach her because her phone number kept changing. It was like she didn’t even want my help.”

Many attorneys have taken pro bono cases with the best of intentions, only to face the same situation as Alex. Clients fail to show up for scheduled meetings, are hard to reach or withhold important details from the volunteer attorney. Understandably frustrated, these attorneys sometimes feel that their efforts are not appreciated by the clients, and, like Alex, they simply give up.

According to recent behavioral economics science, however, Alex should not take her pro bono client’s actions personally. Missing scheduled meetings or failing to identify important facts are actually characteristic behaviors for any person who is experiencing scarcity, as many pro bono clients are. Indeed, attorneys themselves often experience time scarcity, which produces the same effects. Being mindful of the similarities between the challenges faced by a busy attorney and a pro bono client will allow volunteer attorneys to approach their clients with

empathy instead of judgment. With that mindset and some concrete tools to counteract the effects of scarcity, volunteer attorneys can both better serve their pro bono clients and achieve better results.

The Effects of Scarcity

In their book “Scarcity: Why Having too Little Means so Much,” economist Sendhil Mullainathan and psychologist Eldar Shafir challenge the reader to imagine two different scenarios for packing a suitcase for a business trip.¹ In the first scenario, the suitcase is large and has plenty of room for everything one could need, plus anything else that one might want.² There is even some extra room in case an unexpected need for more space arises. The suitcase is packed easily and without much thought.³

In the second scenario, however, the suitcase is much smaller. So small, in fact, that all of the necessary items do not fit.⁴ In this scenario, the reader has to start making difficult choices about which pair of shoes to take, how many shirts will be sufficient, and whether to forego an umbrella, even though it may rain. And there is no room in the suitcase to accommodate any unexpected event. Packing the second suitcase takes more thought and more precision, and is more taxing.⁵ The focus required to pack the suitcase might even lead to forgetting an important event, like a meeting with a friend or a family member’s birthday.⁶

For pro bono clients, the issue is not a small suitcase, but a small budget. These clients are often making difficult decisions about how to pay for necessities when there simply is not enough money for every needed item. While the attorneys serving these clients may not face the same financial constraints, the concept quickly becomes familiar if we substitute time for the suitcase. Many attorneys are “time poor,” chronically having more things to do than there is time to do them.

Our young, hardworking associate Alex, for example, might have a number of assignments with pressing deadlines. She naturally focuses on the assignment with the closest deadline—perhaps a draft of a brief that is due in two days. According to Mullainathan and Shafir’s research,

PRO BONO STAR STORY



THOMAS E. RAY



Thomas E. Ray
*Retired lawyer and
in-house volunteer for
the Brunswick Regional
Office of Georgia Legal
Services Program*

After practicing bankruptcy law for 44 years in Chattanooga, Tenn., I retired in April 2015 and moved to Amelia Island, Fla. While contemplating how I could contribute to the community and also pass the time other than walking the beach and laying by the pool (which beats working by a long shot!), I decided that I wanted to work a couple of days a week pro bono with a much reduced stress level than I had experienced the past four decades.

While looking into taking the Florida Bar Exam, it suddenly struck me that I had barely passed the Tennessee Bar Exam 44 years ago, so why would I even think of taking another bar exam now! Besides I really didn’t want to study that much at the beach. So I checked out my locale and realized that I was close to Brunswick, Ga., So while still in Chattanooga, I decided to get a Georgia license which didn’t involve study or a test.

After retirement, I contacted the Georgia Legal Services Program (GLSP) in Brunswick and told them I wanted to work one or two days a week filing mostly bankruptcy cases. At first they were surprised and wanted to know why I would give up my time

in retirement to work pro bono. I had always wanted to do volunteer work but had never done much as a practicing attorney. They hired me on the spot (for no pay, of course).

The past 15 months of working mostly one day a week have been very rewarding and fulfilling for me. While primarily filing chapter 7 bankruptcies, my most memorable cases have been filing name change petitions. This is an area that I had limited experience in but I have found the clients to be very appreciative of my efforts. One particular elderly lady needed her name changed in order to obtain a photo ID so she could vote. She was married in 1954, but her birth certificate had her first name as “Lisa” with no middle name while she had been known as “Lois Marie” all of her life. One of her aunts had even written that name in the family Bible. She thought her mother simply forgot the given name when she filled out the birth certificate. We met on several occasions to gather the facts, prepare the petition, and attend the court hearing. I found her to be such a delight. She told me all about her life and childhood. After the court hearing for the name change, we were leaving the courthouse when she gave me a big hug, and after thanking me, she said that she “would never forget me!” While I have many fond memories as a practicing lawyer, I have found that my retirement is even more fulfilling because of my work at GLSP. ●

Alex’s time scarcity will result in some characteristic behaviors. First, she will “tunnel”—focusing intensely on the brief, to the exclusion of all else.⁷ This focus will allow her to complete the draft on time, but will lead her to neglect the discovery responses and client memo that are due

the following week. In addition, scarcity taxes Alex’s “bandwidth”—her fluid intelligence, executive control and mental capacity.⁸ After finishing the brief, Alex is left with fewer mental resources to address a partner’s concern about her legal research for another case. Turning her attention to

that issue, she may forget about a meeting scheduled with a different partner the next day. And as a result of diminished self-control, Alex might give into temptation and watch her favorite reality TV show when she gets home instead of working, which could cause her to be unprepared for a meeting with a client the next day.

It may be tempting to attribute these missteps to lack of discipline on Alex's part. But what Mullainathan and Shafir's research shows is that Alex's behavior is characteristic of anyone experiencing scarcity. Alex's actions are caused not by an inherent lack of control, work ethic or attention to detail, but rather by scarcity itself. In other words, scarcity creates the lack of discipline, not the other way around.

As applied to scarcity of financial resources, Mullainathan and Shafir describe the effects of scarcity this way: "[I]f you want to understand the poor, imagine yourself with your mind elsewhere. You did not sleep much the night before. You find it hard to think clearly. Self-control feels like a challenge. You are distracted and easily perturbed. And this happens every day."⁹ Most clients seeking pro bono assistance are experiencing scarcity and its effects to some degree. Given all of the obstacles that scarcity creates, it can be a real challenge for attorneys to represent these clients effectively.

Tools for Effectively Representing Clients in the Scarcity Mindset

Luckily, there are a number of trainings and resources that provide some easy tools to address many of the common scarcity pitfalls. Two excellent sources of training and tools are the Breaking Poverty Barriers to Equal Justice training given by Donna Beegle and the Practising Law Institute's recent massive open online course on Effective Communication with the Legal Services Client given by Alicia Aiken. These trainings, along with the research on scarcity, provide some concrete tips on how attorneys representing pro bono clients can manage some of the effects of scarcity on those clients:

- Make small talk and try to find 1-2 areas of connection with the client,

just as you would for a billable client.¹⁰ Building rapport leads to trust, which will increase the likelihood that your client will divulge all of the essential facts about her case. This in turn leads to a more successful representation.

- Don't attribute motive to a client's behavior.¹¹ For example, when a client doesn't show up to a scheduled meeting, don't assume it is because he doesn't value your time or your services. The client was likely focused on other, more immediate pressing needs, and the meeting escaped his attention.
- Remember that clients in poverty have scarce resources, as do most of their neighbors and family. Ask your client about the resources available to him: Internet, phone, mail, etc.¹² Ask which form of communication is best for him. Don't assume that your client's U.S. mail is secure.
- Ask your client about the constraints on her time and ability to travel when setting meeting times. Allow your client to choose from several options instead of proposing a time yourself.¹³ This will make it more likely that the client will choose a time and location that truly works for her instead of simply going along with your suggestion.
- Don't assume your client can read. Offer to read things aloud or to go over important documents with the client.
- Repeat new information so the client has a chance to absorb it fully.¹⁴ Take the time to ask if he has any questions for you and to answer them thoroughly.
- Remember that these clients are likely in crisis. Follow up with them regularly instead of waiting for them to contact you. Don't assume that your client's lack of responsiveness means that she does not want your help.
- Many low-income clients have received and internalized deficiency messages. Society has not communicated to these clients that they are valued members of our community;

to the contrary, they have likely received many messages that are just the opposite. Counteract this by focusing on your client's strengths and assets. Compliment them on the things they have done "right" and the obstacles they have overcome.¹⁵

- Give your client the benefit of the doubt.

So if Alex applied a few of these suggestions with her pro bono client, how could things have turned out differently?

"Alex, how is that pro bono case you picked up going? I remember you said the client missed an appointment with you."

"It's going great, actually. She did miss an appointment, but it was scheduled at the end of the month when she was stressed out about making rent, and it just slipped her mind. I totally understood—the same thing has happened to me when I've got too much going on. After I asked her what the best way for us to stay in touch was, we agreed that she would call me once a week at a set time since her number tends to change. We go to court next week and I feel really good about the case." ●



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Endnotes

1. Mullainathan & Shafir, *Scarcity: Why Having too Little Means so Much*, Times Books (2013), at 69.
2. *Id.*
3. *Id.* at 70.
4. *Id.* at 69.
5. *Id.* at 70.
6. *See id.* at 41.
7. *Id.* at 27-29.
8. *Id.* at 39-66.
9. *Id.* at 161.
10. Beegle, *Breaking Poverty Barriers to Equal Justice Companion Guidebook*, at 71.
11. *Id.* at 99.
12. Aiken, Practising Law Institute training, June 2016.
13. *Id.*
14. Beegle at 90.
15. *Id.* at 96-98.

EXHIBIT "D"

Concrete Strategies for Effective Representation of Pro Bono Clients

- Take the time to build rapport – 5 minutes of small talk with your client to build a connection and trust will save you time in the long run.
- Allocate extra time for meetings with your pro bono clients. These meetings can require additional time due to transportation problems or communication issues.
- Provide an agenda or to-do list at the beginning of the meeting, and let the client know about your time constraints, if any.
- Try to listen to the client's story initially without taking notes or interrupting. Take notes during follow up questions.
- Ask about the client's access to resources such as the internet, email, post office, etc. Your client's U.S. Mail may not be secure – ask if you can send documents by mail and the best mailing address.
- Ask your client about constraints on his or her schedule and transportation when scheduling meetings. Offer several options and let the client choose among them.
- Don't assume your client is literate. Read the key parts of documents aloud or discuss important points in paperwork with the client. Review the engagement letter or retainer agreement orally with the client.

- Avoid legalese. Use plain language and common terms. Ask the client to let you know if you accidentally slip into legalese.
- Don't attribute motive to your client's behavior. Missing a meeting doesn't mean your client doesn't want your help; more likely, he or she had to deal with a pressing issue.
- Proactively reach out to your client. Follow up regularly without waiting for him to call. Your client's lack of responsiveness doesn't mean he doesn't want your help, he may just be dealing with other demands.
- Promise only what is realistic. Set appropriate expectations repeatedly and clearly, while affirming your commitment to help the client. "I can't promise we will win the case, but I can promise that I will do my best."
- Compliment your client on her strengths and assets. Focus on what the client has done "right" and the obstacles she has overcome.
- Set appropriate boundaries and maintain them. A weekly call with the client may be appropriate; daily calls likely are not. Explain to the client that you will call promptly with any updates (and keep that promise!) and that otherwise, you can only speak with him on a weekly/biweekly basis.

