



## SOUTHERN HEALTH LAWYERS, LLC

*Our Mission is to Provide High-Quality,  
Affordable Legal Services to Both For-  
Profit and Non-Profit Organizations*

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RICHARD D. SANDERS represents a variety of corporate clients and healthcare providers on a broad range of issues, including business transactions, fraud and abuse compliance (Anti-Kickback Statute and Stark), Certificate of Need (CON) issues, medical staff credentialing, Medicare reimbursement, antitrust policy, legislative activities, and assisting businesses in their relationships with federal and state regulatory agencies. Rich advises clients in the formation of corporate entities and has represented his clients on a wide variety of corporate transactional work including corporate financings, private placements and corporate and regulatory compliance. **SOUTHERN HEALTH LAWYERS, LLC** has an active mergers and acquisitions practice, including work on stock and asset acquisitions and divestitures, mergers and other forms of business combinations. Rich has been named to *The Best Lawyers in America* for 2013-2017, and the firm has separately been named to *Best Lawyers*, as well.

He has extensive experience representing hospital clients and healthcare providers in mediation and arbitration. In addition, he serves a neutral in arbitration and mediation with the American Health Lawyers Association Dispute Resolution Service.

After graduating from Duke University in 1992 with a double-major in political science and history, Rich earned his Juris Doctor degree from the Emory University School of Law in 1996. Rich currently serves on the adjunct faculty at the Rollins School of Public Health at Emory University and teaches courses in business and regulatory law. In 2004, he was awarded Professor of the Year. Rich is a former intelligence officer in the U.S. Navy, where he worked with an Atlanta-based unit supporting the U.S. Sixth Fleet in Naples, Italy.

He is the creator and founder of the charitable organization St. Michael's Mission, Inc. St. Michael's Mission is a ministry organized to assist and serve veterans of the armed services, especially Atlanta's growing population of homeless veterans. His non-profit activities have included: Secretary of the Board of Buckhead Baseball (Cal Ripken League), Member of the Board of the Garden Hills Neighborhood Foundation, and member of the Midtown Atlanta Rotary Club. He and his wife Rebekah live in Buckhead and have three children: James (2000), William (2002) and Caroline (2005). They are members of the Cathedral of St. Philip (Episcopal) in Atlanta.

Examples of Recent Projects:

TRANSACTIONS

- Served as counsel to large physician practice in \$27 million acquisition of a portion of its assets by a large international company.
- Facilitated a \$12,000,000 joint venture between a publicly traded company and a large physician practice.
- Assisted in sale of an interest of a large physician group practice, including the development of an agreement for the future buy-in and sale of interests.
- Developed multiple physician integration models for a regional health system.

CORPORATE COMPLIANCE

- Negotiated settlement of dispute with Department of Justice on behalf of a community hospital, after its Chief Financial Officer became a whistleblower.
- Served as Legal Independent Review Organization for large multi-regional hospital system under its Corporate Integrity Agreement.
- Achieved dismissal of false claims portion of a *qui tam* (whistleblower) action under the federal False Claims Act for a federally-qualified health center.
- Advised two regional hospitals regarding compliance with the Breach Notification provisions of the HIPAA Privacy Rule.

CERTIFICATE OF NEED

- Received approval for exemption from CON review for interventional cardiac catheterization programs for three Georgia community hospitals.
- Drafted, filed, and received CON approval for a da Vinci surgical robot for two Georgia community hospitals.
- Requested and received determination of CON exemption for an orthopedic ambulatory surgery center.

Professional Activities

State Bar of Georgia

Alabama State Bar

American Health Lawyers Association

Georgia Academy of Healthcare Attorneys, Past President

# STATE BAR OF GEORGIA ATLANTA, GEORGIA

## “LEGENDS OF GEORGIA HEALTHCARE LAW - HOW PROFESSIONALISM DEVELOPED IN GEORGIA HEALTHCARE LAW” A TOWN HALL FORUM/ PANEL DISCUSSION

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### **I. Professionalism Overview**

#### ***A. Professionalism Basics***

Review of Lawyer’s Creed, Aspirational Statement and the Core Concepts of Professionalism (See *Attachments 1, 2 & 3*).

**A Lawyer’s Creed.** Focuses lawyer on the quality of relationships with all those with whom we come in contact with including clients, opposing parties and their counsel, the courts, regulators, colleagues, the profession as a whole, and the public.

**Aspirational Statement on Professionalism.** Statement of the ideals of lawyering that identify the actions of attorneys who deal with all parties with whom attorneys have contact. Specifically, these ideals are higher requirements than ethical requirements or the minimum standards of the Rules of Professional Conduct.

#### **Core Concepts of Professionalism.**

1. Civility – How we treat other lawyers, judges, clients and the public
2. Alternate Dispute Resolution – Resolving conflicts in a non-conflicting way so that relationships are not necessarily totally destroyed with the winner takes all.

3. Diversity – Involves recognizing, celebrating, rewarding and utilizing differences of gender, race, ethnicity, age and thought – sweetening and often strengthening the pot.
4. Quality of Life – Includes addressing family and life balance of lawyers and judges while doing what is required to make a living.
5. The Image of the Profession – Focusing on the image of the legal profession.
6. Recognizing the Role of Lawyers in Society – Owning the profession recognizes that lawyers have to help shape public policy.
7. Insuring Access to Justice – Recognizing that except for limited pro se representation, lawyers are needed to provide representation to the public, without regard to ability to pay.
8. Client Relations/Customer Service – Lawyers’ focus on client relations and provision of good customer service involves respecting clients who use the judicial system and who provide us with our livelihood.
9. Mentoring – Mentoring is nurturing new lawyers and others who made need improvement.
10. Law Practice Management – Understanding that using the best practices of business, lawyers may improve their legal practice and client service.
11. Discovery Use – Proper discovery and avoidance of abuse improves the administration of justice and public image of lawyers.
12. Community Service – Positively contributing to the community with service beyond legal work in such activities as social service, church and religious activities, politics, education, sports, recreation, arts, and the military, is part of the higher calling of the legal profession.

## **II. Historical Changes in Technology in Practice and How it Affects Professionalism**

### ***A. Professionalism Implications***

Technology has changed the ever day practice of law. Discussions of professionalism concerns in dealing with utilization of technology in the practice of law on a day-to-day basis. Multiple areas in the practice of law wherein technology has changed and/or complicated the practice of law including, but not limited to: (i) utilization of software; (ii) predictive coding and technology assisted research; (iii) communication with clients and outside and opposing counsel on mobile technology including smartphones, ipads, tablets, etc.; and (iv) utilization and/review of social media accounts. Strategies for being mindful of professionalism concerns in utilization of all technology applications.

### ***B. Software Utilization***

1. Every practice utilizes a multiple of software programs on a day-to-day basis including: (i) timekeeping software; (ii) document storage software; (iii) billing software; (iv) predictive coding and research software; and (v) messaging software. Attorneys should be mindful of client relations/customer service implications as it relates to professionalism. Lawyers’ focus on client relations

and provision of good customer service involves respecting clients who use the judicial system and who provide us with our livelihood.

C. *Communication Utilizing Electronic Devices.*

1. It is common in the everyday practice of law to communicate with clients, outside counsel and opposing counsel through electronic devices including smart phones, tablets, ipads, etc. Communication utilizing electronic devices should be respectful, articulate and concise. Discussion of professionalism implications including Civility – how we treat other lawyers, judges, clients and the public. Attorneys should be mindful of use of appropriate language, tone, etc.

D. *What Exactly is “Civility” and How does it apply to Communication Utilizing Electronic Devices?*

1. **Civil Conduct is a Condition of Lawyer Licensing:**

\*Legal Profession is largely self-governing

\*Capacity to act in a manner that engenders respect

\*When tempted to respond to an unpleasant email, text or similar electronic message with similar response, Lawyers should be mindful to respond in a manner to resolve conflicts inherent in duties owed to client, the legal system and lawyer’s own interest through exercise of discretion and judgment while maintaining a professional, courteous, and civil attitude toward all persons involved in legal system

\*Tension between zealous advocacy and civility

\***Rule 1.3 – Diligence:** Lawyer’s duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect

\*Individual lawyer is always the guardian of the **tone** of interactions with other attorneys

\*Remember communication through electronic devices has facilitated interpersonal communication in many ways and is a valuable mode of communication for the lawyer who is familiar with all applicable ethical rules.

2. **Appropriate Utilization of Social Media?**

1. It can be difficult to navigate the appropriate utilization of social media in the everyday practice of law. Current examples:

\***Facebook/Twitter/Instagram.** In 2014 the ABA considered whether attorneys can review the social media/Facebook accounts of jurors and potential jurors before and during a trial. It was determined that “*passively reviewing*” publicly available information is permissible, but the sending of an “*access request*” to view the juror’s profile constitutes forbidden ex-parte communication.

**\*LinkedIn.** LinkedIn, a popular professional social networking site has an “*endorsement*” feature which encourages members to publicly acknowledge the skills and expertise in their connections’ biographical profiles. LinkedIn members can endorse their connections for five specific “skills and expertise” each time they visit the connections’ profile. Discussion of professionalism and ethical issues concerning providing endorsements. In general professional endorsements and testimonials should be avoided. In addition, if the attorney plays an active role in creating or maintaining the profile or listing, i.e. by adding information or pictures, or inviting colleagues and clients to participate, the profile or listing may be deemed to be a “by or on behalf of a member” triggering the ethical advertising rules.

**2. Social Media Profiles and Posts May Constitute Legal Advertising**

Many attorneys (including judges, arbitrators, and in-house counsel) may not think of their social media profiles and posts as constituting legal advertisements. Since many jurisdictions consider attorney and law firm websites to be deemed as advertisements, social media profiles (including blogs, Facebook pages and LinkedIn profiles) are by nature websites, and also constitute advertisements.

**3. Accidental False or Misleading Statements in Social Media**

A common example of this occurs when an attorney creates a social media accounts and completes the profile without realizing that the social media platform will identify the lawyer to the public as an “expert” or “specialist” or as having legal “expertise” or “specialties”. Ethics rules in most states generally prohibit attorneys from claiming to be a “specialist” in the law.

**4. Inadvertent Disclosure of Privileged or Confidential Information**

We all acknowledge that social media creates the potential risk of inadvertently disclosing privileged or confidential information, including the identities of current or former clients. Pursuant to ABA Formal Opinion 10-457, an attorney must obtain client consent before posting information about clients on websites. In a content-driven environment like social media where users are accustomed to casually commenting on day-to-day activities, including work-related activities, attorneys must be careful to avoid posting any information that could potentially violate confidentiality obligations.

**Example:**

*In re Skinner*, 740 S.E.2d 171 (Ga. 2013), the Georgia Supreme Court rejected a petition for voluntary reprimand (the mildest form of public

discipline permitted under that state's rules) where a lawyer admitted to disclosing information online about a former client in response to negative reviews on consumer websites.

**5. Careful of “Friending” Colleagues, Judges, Mediators and/or Arbitrators**

We are all aware that real-world professional and personal relationships are subject to professionalism and ethical guidelines. Online interactions (i.e. becoming Facebook “friends” or LinkedIn connections) between attorneys and judges and/or arbitrators are likewise subject to ethical constraints.

**6. Be Cautious of Inadvertently Creating Attorney-Client Relationships**

An attorney-client relationship may be formed through electronic communications, including social media communications. ABA Formal Opinion 10-457 recognized that by enabling communications between prospective clients and lawyers, websites may give rise to inadvertent lawyer-client relationships and trigger ethical obligations to prospective clients. The interactive nature of social media (*e.g., inviting and responding to comments to a blog post, engaging in Twitter conversations, or responding to legal questions posted by users on a message board or a law firm's Facebook page*) creates a real risk of inadvertently forming attorney-client relationships with non-lawyers, especially when the objective purpose of the communication from the consumer's perspective is to consult with the lawyer about the possibility of forming a lawyer-client relationship regarding a specific matter or legal need. Depending upon the ethics rules in the jurisdiction(s) where the communication takes place, use of appropriate disclaimers in a lawyer's or a law firm's social media profile or in connection with specific posts may help avoid inadvertently creating attorney-client relationships, so long as the lawyer's or law firm's online conduct is consistent with the disclaimer.

**7. Conclusion / Discussion**

Despite the risks associated new technology including the use of social media as a legal professional, the unprecedented opportunities this revolutionary technology brings to the legal profession to, among other things, promote greater competency, foster community, and educate the public about the law and the availability of legal services justify the effort necessary to learn how to use the technology in an ethical manner. E-mail technology likely had its early detractors and, yet, virtually all lawyers are now highly dependent on e-mail in their daily law practice. It will be interesting to see what the next ten years will bring in new technology to the practice of law.