

PROFITING WITH PURPOSE: Ethical Probate Practices
Probate Panel Outline
January 24, 2025 - 1:15 PM

PANELISTS
Judge Marian Parker
Atty. Nefertara Clark Miller
Atty. Elijah Porter

I. Introduction

- **Moderator Introduction:**
Introduction of Panelists and Importance of Ethical Practices in Probate
The moderator introduces the panelists, sharing their expertise in probate law, and explains the importance of maintaining ethical standards in probate practice, especially as it relates to financial success, transparency, and fairness.
- **Objective:**
Exploring Ethical Probate Practices and Profitability
This discussion will delve into how probate professionals can achieve financial success while upholding high standards of ethics, fairness, and transparency in the administration of estates.

II. Estate Planning and Probate Overview

- **What is Estate Planning?**
Estate planning is the process of organizing an individual's assets and affairs to ensure they are managed and distributed according to their wishes after their death. This includes creating wills, trusts, powers of attorney, and healthcare directives.
- **What is Probate?**
Probate is the legal process that follows the death of an individual, where the court validates the deceased person's will (if one exists) and oversees the distribution of assets according to the terms of the will or, if there is no will, according to state law.
- **Why is Estate Planning Important?**
Estate planning helps avoid lengthy and costly probate proceedings, ensures that assets are distributed according to the decedent's wishes, and can minimize the estate's tax burden. Proper estate planning can also reduce family conflicts and provide for vulnerable individuals.
- **How Probate Works**
The probate process typically involves:
 - Validating the will (if one exists)
 - Appointing an executor or personal representative
 - Identifying and valuing assets

- Paying off debts and taxes
- Distributing remaining assets to heirs and beneficiaries

Georgia Statutes:

- **O.C.G.A. § 53-12-1:** General fiduciary duty to act in good faith.
- **O.C.G.A. § 53-4-1:** Requirements for will execution in Georgia.

III. Setting the Stage: What is Ethical Probate?

- **Panelist: Definition of "Ethical" in Probate Law**
 - Discuss the ethical obligations of fiduciaries (executors, trustees, attorneys) to act with transparency, fairness, and loyalty.
 - The fiduciary's duty to protect vulnerable parties—heirs, beneficiaries, and creditors.
 - Georgia Statute: **O.C.G.A. § 53-12-2** (Fiduciary duties in probate).

Key Topics:

- The role of transparency and fairness in managing estates
- Ensuring fiduciaries act in the best interests of all parties involved
- Protecting vulnerable parties (e.g., minor children, incapacitated individuals)
- **Panelist: Balancing Profitability with Ethical Standards**
 - Address common challenges faced by probate professionals when balancing profitability with ethical obligations.
 - Discuss managing attorney fees, executor fees, and other costs while ensuring fairness.
 - Georgia Statute: **O.C.G.A. § 53-12-230** (Payment of executor's fees).

Key Topics:

- Conflict of interest and maintaining objectivity
- Informed consent regarding fees and services
- The importance of setting fair and transparent billing practices

IV. Case Studies: Ethical Dilemmas and Solutions

- **Moderator: Introduce Real-Life Ethical Dilemmas**
Present anonymized case studies where probate professionals face difficult ethical dilemmas and explore how these issues were resolved.
 - **Scenario 1:** Conflicts of interest when multiple beneficiaries disagree on an estate's distribution.

- **Scenario 2:** An executor is tempted to make personal profits from the estate without proper disclosure.
- **Panelists:** *Discuss Ethical Solutions to Each Scenario*
 - How to avoid personal conflicts of interest (e.g., by using independent professionals or mediators).
 - Transparent communication with all stakeholders regarding distribution decisions and fees.
 - Navigating disputes fairly and professionally without compromising fiduciary duty.

Key Topics:

- Conflict resolution strategies
- Ethical billing practices in challenging circumstances
- Ensuring transparency and trust in the probate process

V. Legal and Regulatory Considerations in Ethical Probate

- **Panelist: Legal Frameworks Supporting Ethical Practices in Probate**
Provide an overview of the legal frameworks that enforce ethical standards in probate, including fiduciary duties and regulatory oversight.
 - **Georgia Statute: O.C.G.A. § 53-12-1** (General fiduciary duty to act in good faith).
 - **Georgia Statute: O.C.G.A. § 53-13-20** (Probate court’s authority to oversee fiduciaries).

Key Topics:

- Fiduciary duties under Georgia law
- Court oversight and how it ensures ethical compliance
- The role of regulatory bodies in promoting ethical probate practices

VI. Common Probate Filings: Guardianships, Conservatorships, and Personal Injury Claims

- **Guardianships and Conservatorships:**
Guardianships (for minors or incapacitated adults) and conservatorships (for managing the financial affairs of incapacitated persons) are common probate filings.
 - **Georgia Statute: O.C.G.A. § 29-4-1 et seq.** (Guardianship of minors).
 - **Georgia Statute: O.C.G.A. § 29-5-1 et seq.** (Conservatorships for adults).

Key Topics:

- Differences between guardianship and conservatorship
- Ethical considerations when appointing guardians or conservators
- Protecting the rights of wards and ensuring proper oversight
- **Personal Injury & Doubtful Claims:**
Discuss situations where personal injury claims or doubtful claims impact the probate process.
 - **Georgia Statute: O.C.G.A. § 51-1-6** (Damages for personal injury and wrongful death).
 - Ethical issues in handling these claims during probate, particularly in ensuring fair representation of beneficiaries.

Key Topics:

- Handling personal injury claims in probate
- Ethical concerns related to handling doubtful claims and their impact on estate distribution
- Ensuring beneficiaries are fairly represented and all claims are handled transparently

VII. Strategies for Ethical Profitability in Probate

- **Panelist: Building a Profitable Probate Practice with Ethical Standards**
 - Structuring fees that are fair and transparent, adhering to Georgia’s statutory guidelines.
 - **Georgia Statute: O.C.G.A. § 53-12-231** (Limitations on attorney fees in probate proceedings).
 - Ethical marketing without exploiting vulnerable clients.

Key Topics:

- Fair and transparent fees
- Ethical marketing and client outreach
- Managing client expectations and communication about fees and services
- **Panelist: Using Technology to Streamline Probate Processes**
 - Implementing technology such as case management software, automation, and cloud-based services to reduce costs while maintaining quality.
 - Discussing how technology can improve accuracy and client satisfaction.

Key Topics:

- Technology’s role in streamlining processes and reducing overhead
- The ethical use of technology in probate practice
- Creating efficiencies while maintaining high service standards

VIII. Panelists' Personal Experiences: Lessons Learned

- **Moderator:** *Ask Panelists to Share Key Takeaways*
Invite each panelist to share one key lesson they've learned from their experience in probate law about balancing ethics and profitability. This could include personal challenges, solutions they found effective, or strategies they've developed for maintaining ethical standards.

IX. Tips from the Bench

- **General Insights from the Probate Bench**
 - **Common Reasons a Will May Fail:**
 - Lack of proper execution (e.g., missing signatures, witnesses).
 - Insufficient mental capacity or undue influence when the will was executed.
 - Failure to comply with Georgia's statutory requirements for will execution.
 - **Georgia Statute: O.C.G.A. § 53-4-1** (Requirements for will execution).
 - **Common Probate Hearing Types:**
 - **Doubtful Claims:** When the validity of a claim against the estate is questioned, the court will hold a hearing to resolve the dispute.
 - **Guardian ad Litem (GAL):** When minor children or incapacitated individuals are involved, the court may appoint a GAL to represent their interests in probate cases.
 - **County Administrator and Appointed Attorney Positions:** The court may appoint administrators or attorneys to manage estates when the decedent has not named a fiduciary.

Key Topics:

- What probate courts look for in valid wills
- Common mistakes that can lead to probate disputes
- The importance of clarity and proper legal procedure in probate proceedings

X. Audience Q&A

- **Moderator:** *Open the Floor to Questions*
Encourage the audience to ask questions about specific ethical dilemmas they have encountered or challenges they've faced in their practices.

Potential Questions Include:

- How do you handle ethical conflicts when multiple parties disagree on a will's interpretation?
- What are some best practices when dealing with family conflicts during probate?
- How do you ensure that executor fees are reasonable and justified?

XI. Closing Remarks

- **Moderator:** *Summarize Key Takeaways*
Recap the major themes discussed during the panel:
 - Ethical practices are crucial for long-term success and trust in probate.
 - Profitability is achievable while maintaining high ethical standards.
 - Transparency, fairness, and communication are essential to maintaining trust.
- **Panelists:** *Final Words of Advice*
Each panelist provides final thoughts and advice on how to navigate the challenges of probate practice while upholding ethical standards.
- **Call to Action**

Panel Discussion Materials: "Profiting with Purpose: Ethical Probate Practices"

I. Introduction

The session begins with an introduction by the moderator, who introduces the panelists and emphasizes the significance of maintaining ethical standards within the probate profession. The panelists bring a wealth of experience in probate law, and the moderator highlights how the discussion will focus on achieving financial success while adhering to the highest ethical standards, ensuring fairness, transparency, and trustworthiness in probate practices. The importance of these principles in building sustainable careers and maintaining the integrity of the legal profession is emphasized.

The main objective of the discussion is to explore how probate professionals can achieve profitability while upholding ethical duties. This includes understanding the delicate balance between running a successful business and maintaining a high standard of fairness in handling estates and clients. The session is intended to provide insights into best practices, as well as real-world solutions for navigating complex ethical issues that arise in probate law.

II. Estate Planning and Probate Overview

Before diving into the specifics of ethical practices in probate, it's essential to understand the foundation of the field itself: estate planning and probate law. Estate planning involves organizing a person's assets and financial matters to ensure they are distributed according to their wishes after death. This includes creating key documents such as wills, trusts, powers of attorney, and healthcare directives. Effective estate planning helps prevent costly legal battles and provides a clear plan for managing one's estate.

Probate, on the other hand, is the legal process that occurs after someone's death. This process involves validating the decedent's will, appointing a personal representative or executor, and ensuring that debts, taxes, and other obligations are settled before distributing the remaining assets to beneficiaries. If there is no will, the court oversees the distribution of assets according to state law, which may vary by jurisdiction.

The importance of estate planning cannot be overstated. Proper planning minimizes the need for lengthy probate proceedings, ensures that assets are distributed according to the decedent's wishes, and helps reduce the tax burden. Additionally, it can safeguard the interests of vulnerable beneficiaries, such as minor children or incapacitated individuals, and prevent potential family conflicts.

In Georgia, estate planning and probate law are governed by various statutes, including **O.C.G.A. § 53-12-1**, which sets forth fiduciary duties, and **O.C.G.A. § 53-4-1**, which outlines the legal requirements for the execution of a will. Understanding these statutes is critical for professionals involved in probate, as they set the framework for ethical behavior and legal compliance throughout the process.

III. Setting the Stage: What is Ethical Probate?

To understand ethical probate practices, we must first define what "ethical" means in this context. Ethical probate law requires fiduciaries—such as executors, trustees, and attorneys—to act with honesty, transparency, and fairness when managing the estate of a deceased person. These fiduciaries have a legal duty to act in the best interests of the estate's beneficiaries, avoiding any personal conflicts of interest, and ensuring all parties are treated fairly and impartially.

The panel discusses the ethical obligations of fiduciaries, emphasizing the need for full disclosure, transparent decision-making, and accountability. Executors and trustees, for example, must manage the estate's assets carefully, ensure creditors are paid, and prevent any improper use of estate funds. The duty of loyalty is also paramount, meaning fiduciaries must avoid any self-dealing or actions that could benefit themselves at the expense of the beneficiaries.

Moreover, ethical probate practices require a fiduciary to safeguard vulnerable parties, including heirs, beneficiaries, and creditors. These individuals often depend on the

fiduciary to ensure that the deceased person's wishes are honored and that their financial interests are protected. Ethical duties to these parties include providing them with clear information about the probate process, being transparent about costs, and ensuring their rights are upheld.

When it comes to balancing profitability with ethical duties, probate professionals face challenges. For example, it's essential to maintain reasonable attorney's fees, executor's fees, and other costs associated with the probate process without overburdening the estate or its beneficiaries. In Georgia, **O.C.G.A. § 53-12-230** governs the payment of executor fees, ensuring that fees are commensurate with the work performed and that they are reasonable given the estate's complexity. Ethical billing practices—providing clear invoices, avoiding conflicts of interest, and ensuring fair compensation for services rendered—are all critical to upholding the integrity of the process.

Key ethical topics to explore include avoiding conflicts of interest, ensuring informed consent, and setting fair billing practices. Professionals should be vigilant about potential ethical pitfalls, such as overcharging or taking actions that benefit themselves or third parties at the expense of the estate.

IV. Case Studies: Ethical Dilemmas and Solutions

A critical component of understanding ethical probate practice involves exploring real-life case studies where professionals face difficult decisions. The moderator presents two anonymized scenarios for discussion.

The first scenario involves conflicts of interest when multiple beneficiaries disagree on the distribution of an estate. One beneficiary may feel they are entitled to a larger share, while others disagree, leading to tensions and possible legal battles. In this case, the fiduciary's duty is to remain impartial, ensuring that the distribution aligns with the decedent's wishes and Georgia probate law, regardless of personal interests. The panelists discuss how to navigate such conflicts ethically, suggesting methods such as open communication, the use of mediation, and a firm commitment to the decedent's intent.

The second scenario deals with an executor who is tempted to make personal profits from the estate by selling assets to themselves or their family members without disclosure. The panel discusses the critical role of transparency in avoiding self-dealing. Executors are bound by fiduciary duty to act solely in the best interest of the estate and its beneficiaries. This situation could have been managed more ethically by fully disclosing any potential conflicts and obtaining approval from the court or beneficiaries for the sale.

The panelists highlight that ethical challenges are inevitable in probate, but they can be overcome by adhering to fiduciary duties, maintaining transparency, and fostering open communication with all stakeholders.

V. Legal and Regulatory Considerations in Ethical Probate

Probate professionals must operate within a framework of laws and regulations designed to protect estates, beneficiaries, and creditors. Legal frameworks govern fiduciary duties, ensuring that all actions taken during the probate process are in compliance with established rules. For example, fiduciaries are legally obligated to act in the best interests of the estate and its beneficiaries, as outlined in **O.C.G.A. § 53-12-2**.

Georgia law also provides for oversight by courts and regulatory bodies, such as the probate court, which has the authority to monitor the actions of executors and trustees. This oversight ensures that fiduciaries are fulfilling their responsibilities ethically and in accordance with state law. **O.C.G.A. § 53-13-20** outlines the probate court's authority to review and, if necessary, remove a fiduciary who is not fulfilling their duties appropriately.

Ethical practice in probate law requires professionals to be familiar with these statutes, as they ensure transparency, fairness, and accountability throughout the probate process. Regulatory bodies like the State Bar of Georgia and the American Bar Association (ABA) also provide ethical codes that govern the conduct of probate professionals. The **ABA Model Rules of Professional Conduct** provide clear guidance on issues such as conflict of interest, duty to clients, and fair billing practices, which are integral to maintaining the ethical integrity of the probate process.

VI. Common Probate Filings: Guardianships, Conservatorships, and Personal Injury Claims

Probate professionals often deal with common filings that require special ethical considerations. Guardianships and conservatorships are two such filings. A guardianship is typically appointed for a minor child or an incapacitated adult who needs someone to manage their personal care and well-being. A conservatorship, on the other hand, deals with managing the financial affairs of an incapacitated person. These filings come with a significant ethical responsibility, as the appointed fiduciary must act in the best interest of the individual they are tasked with caring for.

In Georgia, **O.C.G.A. § 29-4-1 et seq.** governs guardianships, while **O.C.G.A. § 29-5-1 et seq.** covers conservatorships. Fiduciaries in these cases must be diligent in ensuring that their actions are in the best interest of the ward. This often includes regular reporting to the court and oversight to prevent abuse or mismanagement.

Personal injury claims and doubtful claims are another area where probate professionals must navigate ethical challenges. These claims may arise when the decedent was involved in a personal injury lawsuit prior to death or when the estate faces claims that are uncertain or disputed. Professionals must handle such claims with care, ensuring that all involved parties are treated fairly and that any settlements or awards are appropriately distributed.

VII. Strategies for Ethical Profitability in Probate

Building a profitable probate practice while maintaining strong ethical standards requires thoughtful strategies. The panelists discuss how to structure fees fairly and transparently, in line with Georgia's guidelines for attorney and executor compensation. For example, **O.C.G.A. § 53-12-231** places limits on attorney fees in probate proceedings, ensuring that they are reasonable and justified.

Effective marketing strategies are also key to attracting clients while adhering to ethical standards. Probate professionals should avoid exploiting vulnerable clients or using misleading advertising. Instead, they should focus on providing value, offering clear and honest communication about fees and services.

In addition to pricing transparency, using technology to streamline probate processes is a powerful way to reduce overhead and improve client satisfaction. Embracing automation and cloud-based systems can increase efficiency, reduce errors, and enhance service delivery, all while keeping costs manageable. Ethical professionals should also focus on building a reputation for fairness, trustworthiness, and quality service, which can lead to long-term success in probate practice.

VIII. Panelists' Personal Experiences: Lessons Learned

The moderator invites the panelists to share personal experiences and lessons learned throughout their careers. Each panelist discusses a key moment where they learned the importance of balancing ethical practice with business success. Whether dealing with a difficult client, resolving a conflict of interest, or navigating a complex probate case, the panelists provide invaluable insights into how to maintain integrity in the face of professional challenges.

IX. Tips from the Bench

In this section, the panelist Judge will provide practical advice from their own experience and observations from the bench. They share insights on common probate hearing types, including doubtful claims, contested wills, and fiduciary disputes. Judges often see these cases in probate court and offer guidance on what can make a will fail, including issues like improper execution, lack of mental capacity, and undue influence.

Additionally, the Judge will discuss becoming a Guardian ad Litem (GAL), the role of a county administrator, and other appointed attorney positions in probate. These roles require careful ethical consideration, as they involve acting as an impartial advocate for minors, incapacitated persons, or the estate itself. Panelists and the judge panelist will speak about the common pitfalls in these roles and the ethical standards required to avoid conflicts of interest and uphold fairness.

X. Audience Q&A

The floor is opened for questions, allowing the audience to engage directly with the panelists. The moderator encourages questions about specific ethical challenges, from dealing with family conflicts to managing fiduciary duties. This section allows for a lively exchange of ideas, as professionals seek advice on how to navigate complex situations in probate law.

XI. Closing Remarks

To conclude the panel, the moderator summarizes the key takeaways, emphasizing the importance of maintaining ethical standards in probate work. Ethical practices are not only essential for the long-term success and sustainability of a probate practice but also build trust and strengthen the profession's reputation. Professionals who embrace fairness, transparency, and clear communication will find that profitability can be achieved while staying true to their ethical obligations.

Panelists share their final words of advice, encouraging the audience to commit to ethical practices. Regardless of experience level, the message is clear: ethical behavior is foundational to the success of any probate professional and the integrity of the field.

Finally, the moderator calls on the audience to uphold ethical standards in their practices, ensuring that the legacy of professionalism and fairness continues to guide the probate profession in Georgia and beyond.

SELF PROVING AFFIDAVIT

STATE OF GEORGIA
COUNTY OF XXXXXXXX

Before me, the undersigned authority, on this day personally appeared the Testator, _____, and the witnesses, _____ and _____, known to me to be the testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and all of said individuals being by me duly sworn, Marian Walker, testator, declared to me and to the witnesses in my presence that said instrument is the last will and testament or a codicil to the last will and testament of the testator and that the testator had willingly made and executed it as a free act and deed for the purposes expressed therein. The witnesses, each on oath, stated to me in the presence and hearing of the testator that the testator had declared to them that the instrument is the testator’s last will and testament or a codicil to the testator’s last will and testament and that the testator executed the instrument as such and wished each of them to sign it as a witness; and under oath each witness stated further that the witness had signed the same as witness in the presence of the testator and at the testator’s request; that the testator was 14 years of age or over and of sound mind; and that each of the witnesses was then at least 14 years of age.

_____(SEAL)
_____, Testator

----- (SEAL)
(insert full name of witness), Witness

----- (SEAL)
(insert full name of witness), Witness

Sworn to and subscribed before me by the Testator, _____ and the witnesses, _____ and _____ this _____ day of and _____, 2025.

_____, Notary Public
My Commission Expires: _____

EXHIBIT A