

TO: Representative Assembly Clerk,  
Members of the Representative Assembly

FROM: Edward H. Pappas, Chair  
State Bar of Michigan Professionalism Work Group

RE: Proposed Professionalism Principles for Lawyers and Judges and Commentary

DATE: August 14, 2019

1. Issue

Should the Representative Assembly support the proposed Professionalism Principles for Lawyers and Judges and Commentary to reinforce the culture of professionalism to sustain a fair and impartial justice system?

RESOLVED, the Representative Assembly supports the proposed Professionalism Principles for Lawyers and Judges and Commentary and recommends that the Michigan Supreme Court adopt these principles and commentary.

The proposed Professionalism Principles for Lawyers and Judges and Commentary are set forth below in Section 6.

2. Background and Reason for Proposal

While most lawyers and judges are highly professional, uncivil conduct appears to be on the rise, necessitating further guidance on the value of civility within the legal and judicial system. To address this issue, the State Bar of Michigan (SBM) sponsored an October 2018 summit – Promoting Professionalism in the 21<sup>st</sup> Century – during which over 80 respected judges and attorneys gathered at the Michigan Supreme Court Hall of Justice to discuss the need to reinforce cultures of professionalism to sustain a fair and impartial justice system. The summit featured speakers, workshops, panels, and breakout sessions, focusing on identifying ongoing, practical tools for developing and sustaining professionalism, particularly civility, in the Michigan legal profession. It identified how the Michigan legal profession and judiciary might contribute to strengthening the role of public civil discourse and developed strategies for sustained local action on professionalism and civility. A summary of the summit can be found at <https://www.michbar.org/file/professional/pdfs/Professionalism-Summary.pdf>

One of the top ten most shared recommendations that emerged from the breakout groups at the summit was to “consider the adoption of Michigan-specific civility guidelines for lawyers and judges and use them more deliberately.”

Shortly after the summit, SBM President Jennifer M. Grieco appointed a Professionalism Work Group to implement the recommendations as stated in the summit summary. The Work Group included Sandra K. Carlson, Flint; Kevin L. Francart, Lansing; Tina S. Gray, Williamston; Thomas H. Howlett, Bloomfield Hills; Hon. Shalina D. Kumar, Pontiac; Michael S. Leib, Bloomfield Hills; Jennifer Lyons, Grand Rapids; Hon. Milton L. Mack, Jr., Lansing; Hon. Allie Greenleaf Maldonado, Petoskey; Martha D. Moore, Auburn Hills; Nicholas M. Ohanesian, Grand Rapids; Edward H. Pappas, Troy (Chair); Lorie Nancy Savin, Pontiac; Joel H. Serlin, Southfield; Daria Solomon, Shelby Township; Judith A. Susskind, Southfield; Joan P. Vestrand,

Auburn Hills; Victoria A. Vuletich, Grand Rapids; Kimberley A. Ward, Ann Arbor; Jennifer M. Grieco, Birmingham (Ex officio). State Bar Liaisons are Candace A. Crowley, Danon D. Goodrum-Garland, and Janet K. Welch.

The Work Group focused its initial work on developing Michigan-specific civility guidelines. Numerous jurisdictions have adopted civility guidelines, including Genesee and Oakland counties in Michigan and the United States District Courts for the Eastern and Western Districts of Michigan; however, Michigan does not currently have a uniform set of guidelines for its lawyers and judges. The Work Group looked at many similar efforts by bar associations and courts around the country. They conversed with the American Bar Association Center for Professional Responsibility about trends and new developments. They considered Michigan's Rules of Professional Conduct and Code of Judicial Conduct. They drafted and reviewed several versions of guidelines that might work for Michigan lawyers and judges. By late July they had a set of principles they believed can speak to all Michigan lawyers. Because of the thoughtful and inclusive makeup of the Work Group, the Principles reflect Michigan's legal culture in litigation, mediation, and transactional work.

The Work Group voted unanimously to support the proposed Professionalism Principles for Lawyers and Judges and Commentary. By having a common set of principles to look to throughout the state, the practice of law in Michigan will be positively affected because the basics of civility and professionalism and acceptable conduct in the practice of law will be shared and understood by lawyers and judges. This will also grow the public's confidence in a fair, civil, and impartial justice system.

3. Fiscal Impact of the Proposal

None known.

4. Staffing Impact of the Proposal

None known.

5. Prior Assembly Action

The Representative Assembly has long supported promoting professionalism and civility. In April of 1996 the Assembly supported the ten goals of the State Bar's Long-Range Committee, including "professionalism and competence of the Bench and Bar." On April 29, 2000, the Assembly "[s]upported the proposed resolution to encourage the State Bar to study the implementation of civility guidelines for all lawyers in Michigan." At the April 2009 meeting, as then president, I introduced the first "Professionalism in Action" law school program to occur at the Thomas M. Cooley Law School orientation for 1L students, and to be introduced to other Michigan law schools. The Professionalism in Action program continues today at all Michigan law schools to emphasize to law students the importance of professionalism in the practice of law. The proposed Professionalism Principles for Lawyers and Judges and Commentary will continue SBM's commitment to helping ensure a culture of professionalism to sustain a fair and impartial justice system.

6. Professionalism Principles for Lawyers and Judges, and Commentary on Professionalism Principles for Lawyers and Judges

The Principles and Commentary follow.

## **PROFESSIONALISM PRINCIPLES FOR LAWYERS AND JUDGES**

In fulfilling our professional responsibilities to clients, we, as attorneys and officers of the court, must remain mindful of our obligations to the administration of justice and its truth-seeking process designed to efficiently resolve disputes in a rational and peaceful manner. In serving in our professional capacity, we adhere to these principles of professionalism:

1. We are civil in our interactions with all people involved in a legal matter or the justice system.
2. We treat all people involved in a legal matter or the justice system with respect.
3. We cooperate with each other within the bounds of our justice system.
4. We extend professional courtesy to each other.
5. We do not engage in, or tolerate, conduct that may be perceived as rude, abrasive, hostile, or obstructive.
6. We do not disparage or attack other persons involved in the justice system, or employ hostile, demeaning, or humiliating words in written or oral communications or opinions.
7. We do not exhibit, act upon, or manifest bias against any person involved in a legal matter or the justice system.
8. We treat all people involved in a legal matter or the justice system fairly, regardless of their personal characteristics or viewpoints.
9. We act with honesty and integrity in our interactions with all people involved in a legal matter or the justice system and honor promises and agreements fairly reached.
10. We act in good faith and advance only those positions just under the facts and law.

**COMMENTARY ON PROFESSIONALISM  
PRINCIPLES FOR LAWYERS AND JUDGES**

Rule 1 of the Rules Concerning the State Bar provides, in part, that the “State Bar of Michigan shall . . . aid in promoting improvements in the administration of justice and advancements in jurisprudence, in improving relations between the legal profession and the public, and in promoting the interests of the legal profession in this State.” To achieve these lofty goals, we have established ten principles of professionalism (“Principles”) as guidance to attorneys and judges on acceptable conduct in the practice of law. The Principles are not intended to form the basis for discipline, professional negligence, or sanctions, or to replace the Michigan Rules of Professional Conduct, the Michigan Code of Judicial Conduct, or the Michigan Court Rules, although many of the Principles are derived from them. Nevertheless, lawyers and judges together should exhibit the highest levels of professionalism to preserve and advance our noble profession, and to serve as exemplars to the public we serve.

The Principles are intertwined, but each Principle deserves to be singled out because of its individual importance to professionalism. Civility is the foundation for professionalism, but you cannot have civility without respect, cooperation, courtesy, fairness, honesty, good faith, and integrity. Nor can civility exist in the presence of personal attacks, bias, or prejudice.

A lawyer is responsible to zealously represent a client, but zealous representation does not include unprofessional conduct. Unprofessional conduct increases the cost of transactional matters and litigation and wastes judicial resources, with no benefit to the client and to the detriment of the legal profession, and most important, our justice system.

Besides adhering to the Principles, lawyers and judges work to achieve balance in their lives knowing that personal health and wellness are necessary for the best treatment of others. Lawyers and judges are also encouraged to devote time to reflect on their behaviors and interactions with others to grow and abide by the Principles.

The Principles offer general guidance in the practice of law for lawyers and judges, both inside and outside the courtroom, including in alternative dispute resolution proceedings. These examples provide a better understanding of the Principles; they are illustrative and not meant to encompass all specific conduct:

## **1. Lawyers**

- We allow opposing counsel to make their arguments without interruption, and we fairly consider their arguments.
- We promptly respond to communications from clients and other attorneys.
- We confer early and in good faith to discuss the possibility of settlement, but not as a means to adjourn discovery or delay trial.
- We accurately represent, characterize, quote, and cite facts and authorities in our written and oral communications.
- We draft documents that accurately reflect the parties' understandings, the court's rulings, and the facts.
- We do not engage in ex parte communications unless authorized by law.
- We only make proper objections grounded in rules of evidence and procedure.
- We are punctual and arrive sufficiently before, and are prepared for, all proceedings.
- We are punctual in our professional interactions with clients, attorneys, and others outside of the court.
- We are considerate of the time schedules of lawyers, parties, and witnesses.
- We are reasonable and act in good faith in scheduling hearings, conferences, depositions, and other proceedings.

- We are respectful of the personal emergencies and exigencies of litigation or practice in scheduling.
- We attempt to verify the availability of necessary participants and witnesses before dates for hearings or trial are set, or, if that is not feasible, immediately after such dates have been set.
- We give notice of any scheduling changes or cancellations at the earliest practicable time.
- We only make good faith requests for time extensions.
- We agree to good faith, reasonable requests for time extensions and waivers of formal procedure if they are not prejudicial to the interests of our clients.
- We act in good faith in deciding when to file or serve motions and pleadings.
- We only make discovery requests reasonable in scope and nature.
- We respond promptly to reasonable discovery requests by the opposing party.
- We only engage in conduct during a deposition that is allowed in the presence of a judicial officer and is appropriate under court or evidentiary rules.
- We readily stipulate to undisputed facts.

## **2. Judges**

- We are patient and respectful of a party's right to be heard and afford this opportunity.
- We do not condone a lawyer being uncivil to another lawyer or others, and we call such conduct to the attention of the offending lawyer on our own initiative.
- We see as paramount our obligations to the administration of justice to facilitate the resolution of the matters before us consistent with the law and in a civil manner.

- We endeavor to work with other judges to foster cooperation in our mutual goal of enhancing the administration of justice.
- We are courteous, respectful, and civil in opinions, ever mindful that we are the ultimate measure of the public's faith and confidence in our system of justice.
- We are punctual in convening the business of the court.
- We are considerate of the time schedules of lawyers, parties, and witnesses.
- We are respectful of the personal emergencies and exigencies of litigation or practice in scheduling.
- We assure that judicial proceedings are conducted with dignity, decorum, and courtesy.
- We maintain control of the proceedings, recognizing that we have both the obligation and authority to ensure that all proceedings are conducted in a civil manner.
- We do not engage in practices and procedures that needlessly increase litigation expense or contribute to unnecessary delay.
- We recognize that a lawyer has the right and duty to present a cause fully and properly and that a litigant has the right to a fair and impartial hearing. Within the practical limits of time, we allow lawyers to present proper arguments and to make an accurate record.
- We make all reasonable efforts to decide promptly all matters presented to us for decision.
- We assure that people with disabilities interacting with the court as lawyers, parties, witnesses and jurors know the court's ability to make reasonable accommodations.
- We ensure that self-represented litigants have equal access to the legal system while still holding them to the same legal standards as a litigant represented by counsel.

- We ensure that our staff treats litigants, attorneys, and those persons interacting with the justice system with dignity and respect.
- We do not permit ex parte communications unless authorized by law.

**STATE BAR OF MICHIGAN POSITION**

**By vote of the Representative Assembly on September 26, 2019**

Should the Representative Assembly support the proposed Professionalism Principles for Lawyers and Judges and Commentary and recommend that the Michigan Supreme Court adopt these principles and commentary?

- (a) Yes
- (b) No