

**MSILS Definitions
Knowledge**

**STATE BAR OF MICHIGAN POSITION
By vote of the Representative Assembly on April 16, 2005**

MSILS Definitions should:

- (a) Incorporate the language proposed by the ADB defining knowledge.
- (b) Not incorporate a specific definition but rely upon Section 1.0 of the Proposed MRPC.

Synopsis

The Supreme Court version incorporates a more general definition of “knowledge” as proposed by the ADB. ~~This definition is not consistent with the definition in the Proposed MRPC.~~ The MRPC definition governs a finding with respect to whether a MRPC was violated. The definitions as to 'states of mind' in the Standards only kick in after a finding of misconduct and they serve a different purpose, to wit, sorting out the lawyer's intent for purposes of imposing a sanction. Many states (approximately 30) use both the Standards and the MRPC without a clash in definitions. Campbell maintains that “knowledge” should be consistently defined as “actual knowledge”.

Supreme Court Version (also ADB Version)

The Supreme Court version defines knowledge more generally as “the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result”.

The ADB supplied the following Commentary in support of their version:

Are the definitions of “intent” and “knowledge” sufficiently helpful to draw distinctions regarding a lawyer’s mental state? If not, what terms might be better?

Generally, “intent” “is the mental resolution or determination to do” something, Black’s Law Dictionary (7th ed, 1999), p 813, and “knowledge” is an “awareness or understanding of a fact or circumstance.” *Id.*, p 876. Some other definitions may cause these two concepts to overlap. The Standards’ definitions seem faithful to the foregoing definitions and drawn with the determination to avoid overlap. The Standards define “intent” as “the conscious objective or purpose to accomplish a particular result,” and define “knowledge” as “the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.” Experience with the application of the ABA Standards so far has not revealed significant problems with these definitions.

Campbell Version

Donald Campbell recommends that “knowledge” be defined consistently as “actual knowledge” in the MRPC and the MSILS. The Proposed MRPC 1.0 (Terminology) defines knowledge:

(f) “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.

Campbell supplied the following Commentary in support of his version:

The definitions for “intent” and “knowledge” in the ADB’s proposed Standards cannot be squared with the definitions of “knowingly”, “known”, or “knows” in MRPC 1.0. Adding to the confusion, the ADB uses the word “knowingly” dozens of times without an express definition of the term, but does not use the word “knowledge” in the proposed Standards, except to define it.

Finally, the ADB’s distinction between the terms “intent” and “knowledge” is not consistent with the approach taken by the MRPC. The term “intent” is not used at all in the MRPC, instead the MRPC adopted “knowingly”, “known”, or “knows” to mean “actual knowledge of the fact in question.” MRPC 1.0 adds, “A person’s knowledge may be inferred from circumstances.”