

U.S. District Court for the Eastern District of Michigan Adopts the “Lawyer’s Commitment of Professional Civility”

FBA Chapter Institutes the Cook-Friedman Civility Award

By Michael J. Riordan

“Behavior that is admired is the path to power among people everywhere.”

— Seamus Heaney’s translation of Beowulf

Civility works in the legal profession. Experienced litigators know that civil conduct, another name for good manners, is a key ingredient to success in and out of the courtroom. Civil behavior reduces the delay and expense of litigation and has the added benefit of reinforcing the image of lawyers as being ethical and professional. It also earns goodwill.

Despite its manifest benefits, civility among lawyers is on the decline. At a time when the profession needs to demonstrate that it merits the esteem in which it has been traditionally held, rude, aggressive, discourteous, and downright hostile behavior has gained a foothold in the practice of law. To stem this unseemly trend, the U.S. District Court for the Eastern District of Michigan and the Federal Bar Association (FBA) are collaborating to encourage and recognize attorneys who demonstrate the principles of civility.

The framework for this collaboration began in 1996, when the court adopted “The Civility Principles of the Eastern District of Michigan” (the “Civility Principles”). Then, in December 2007, as a way to increase the awareness of the Civility Principles and to encourage compliance with their letter and spirit, the court adopted a 10-point “Lawyer’s Commitment of Professional Civility” (the “Lawyer’s Commitment”) and incorporated it into the Civility Principles. Along with the adoption of the Lawyer’s Commitment, the court and the FBA have renewed

their efforts to raise the Bar’s consciousness of the importance of civility. The court is distributing copies of the Lawyer’s Commitment to federal practitioners and is displaying them in courthouses in the Eastern District. In conjunction with the court’s efforts, the FBA created the Cook-Friedman FBA Civility Award, presented at the FBA’s annual dinner to a civil practitioner who is an outstanding example of professionalism.

The goal of this joint effort is to convince lawyers that civility works.

Background to the Adoption of the Lawyer’s Commitment

Under the direction of then Chief Judge Julian Abele Cook, the district court established its first Civility Committee in 1996. The creation of the committee was part of the court’s “Plan for Reduction of Expense and Delay in Civil Cases as provided in 28 USC 471, *et seq.*”¹ Section VII(c) of the plan states that the “Court would request that the Federal Bar Association/Detroit Chapter (FBA) and the State Bar of Michigan propose a civility plan to the Court.”² Following months of work, the Civility Committee, consisting of members of the FBA and the State Bar U.S. Courts Committee, recommended that the court adopt the Civility Principles—which the court did.³

Adherence to the Civility Principles is voluntary. The principles expressly provide that the “standards should not be used alone as a basis for litigation, sanctions or penalties.” They are divided into five sections. The preamble describes the conduct that is expected generally of judges and attorneys. In short, a lawyer’s “conduct should

be characterized...by personal courtesy and professional integrity in the fullest sense of those terms.” The second section considers “Attorneys’ Responsibilities to Other Counsel.” The third section describes “Attorneys’ Responsibilities to the Court.” The fourth and fifth sections cover the “Court’s Responsibilities to Attorneys” and the “Judges’ Responsibilities to Each Other.” The principles conclude with an appendix, which is the oath of office every Michigan lawyer takes upon admission to the State Bar.⁴

In 2007, former Chief Judge Bernard Friedman reconstituted the Civility Committee as one of the court’s joint standing committees, with membership consisting of representatives from the court, the FBA, the State Bar, and the court’s ombudsman. Under the direction of its chairperson, the Honorable John Corbett O’Meara, the committee concluded that the 1996 Civility Principles continue to adequately express the standard of professional conduct expected in the Eastern District. However, the committee learned that practitioners seemingly are unaware of those standards.⁵ The committee recommended to the court a renewed effort among the bar and bench to increase the visibility of the Civility Principles based on the belief that increased awareness will foster increased compliance.

Thus, the committee recommended that the court adopt and incorporate into the Civility Principles the “Lawyer’s Commitment of Professional Civility” to serve as a concise summary and affirmation of the Civility Principles. The committee also asked the FBA to consider establishing an annual civility award as a means for raising the visibility of the issue in a positive way.

Lawyer's Commitment of Professional Civility

Before the court's adoption of the Lawyer's Commitment, the committee reviewed the text, content, and efficacy of more than 140 professionalism and civility creeds, standards, oaths, guides, obligations, codes, principles, and the like, that have been adopted by various jurisdictions, bar associations, and specialty bar groups across the United States and Canada. In the end, the committee concluded that the best way to raise practitioner awareness of the Civility Principles and their fundamental content would be to summarize the principles in plain English. The 10 points in the Lawyer's Commitment can be readily reproduced for review by practitioners so they can recognize and incorporate the Civility Principles into their daily practice of law:

- A lawyer shall conduct him/herself in accordance with the standards of professional integrity and personal courtesy set forth in the Civility Principles of the United States District Court for the Eastern District of Michigan.
- A lawyer shall honor and respect the Constitution of the United States, the judicial system, the legal profession and will strive to uphold the dignity of each.
- A lawyer shall be guided by a fundamental sense of integrity, candor and fair play.
- A lawyer shall abstain from disrespectful, disruptive and/or abusive behavior, and will at all times act with dignity, decency and courtesy.
- A lawyer shall seek to resolve and not prolong legal disputes, without lessening your obligations to client interests.
- A lawyer shall respect the time and commitments of others and will be diligent and punctual in communicating with others and fulfilling your own responsibilities.
- A lawyer shall exercise independent judgment and will not be guided by ill will, deceit or avarice.

- As a lawyer you shall further your profession's dedication to public service.
- A lawyer shall strive to do honor to the search for truth and justice.
- As a lawyer your word is your bond.

To further educate practitioners, the court prominently displays and distributes copies of the Lawyer's Commitment to attorneys. The FBA has included the Commitment on its website at www.fbamich.org, in its publications, and at FBA functions, and leads newly admitted practitioners to the court in recitation of the Commitments at the FBA's New Lawyer Seminar. Most significantly, the FBA created the Cook-Friedman FBA Civility Award and made clear the fact that the award is among the highest honors that can be bestowed upon a practitioner in the Eastern District.⁶

The Cook-Friedman FBA Civility Award

In selecting lawyers to receive the Civility Award, the following criteria are used:

- The attorney has been significantly engaged in the practice of civil law;
- The attorney demonstrates the highest levels of legal competency and professionalism;
- The attorney's conduct is in accordance with the highest standards of professional integrity and personal courtesy as set forth in the Civility Principles of the United States District Court for the Eastern District of Michigan;

- The attorney has demonstrated, while fulfilling the fundamental duty to represent clients vigorously, a mindfulness of the equally important obligation to the administration of justice, which is a truth-seeking process designed to resolve human and societal problems in a rational, peaceful, and efficient manner; and
- The attorney is guided by a fundamental sense of dignity, decency, candor, and fair play.

The award is named after former Chief Judges Cook and Friedman in recognition of their dedication to civility and professionalism in the practice of law and for their guidance in creating the Civility Principles and the Lawyer's Commitment of Professional Responsibility.

Edward M. Kronk, of Butzel Long, was the inaugural recipient of the Cook-Friedman FBA Civility Award at the FBA's annual dinner last June. His brief remarks accepting the award are befitting not only the dignity of the award and the recipient, but they are wise guidance to all of us. First, he asked, "From what source does civility arise?"

Civility is a very human concept. It is about how to treat people. My dad didn't tell me how to treat people—he showed me. He showed me how to treat people with respect. We are engaged in an honorable profession, one that is very much about people. And they should be respected—all of them.

Second, how is civility harmonized with an adversarial system of justice? And, in

a related context, how do you get people to embrace it?

Recent experience teaches that civility can't be legislated or made the subject of a Rule without being challenged.⁷

So what then? My suggestion is twofold. Going back to my dad, model it. Model civility like these two judges have done; like so many fine lawyers we've all known and worked with (and against) over the years have done. And beyond that, affirmatively and vigorously send the message—as lawyers, to your colleagues; as judges, to the lawyers and litigants—that civility is what's expected. It's what we do around here. And the other way is just not acceptable. It may not be illegal. It may not get you sanctioned. But it is just not acceptable. It's not OK and it won't work.

That's the message to spread. And that's what the institution of this award does. I am honored to be its first recipient.

A plaque with Ed's name, to which the names of all future recipients will be added, is now on permanent display at the Levin United States Courthouse in Detroit.⁸ It is hoped that the message and the exemplary mold from which its recipients are cast will stand as models to the bench and bar as the type of professionalism expected of those who practice in the Eastern District and that the message spreads to all those who enter the Levin Courthouse.

The Future of Civility

As the old saying goes, people can (and should) disagree without being disagreeable.⁹ Nowhere is that more applicable than in the practice of law. The oath attorneys take upon admission to the State Bar of Michigan and the rules of ethics and professional responsibility are intended to instill in all members of the Bar a commitment to a fundamental sense of integrity and fairness to uphold the dignity and respect members should have for each other, the law, and the bench.

All persons involved in the judicial process—judges, litigants, witnesses, and court officers—owe a duty of courtesy to one another.¹⁰ Because litigation is an inherently

contentious and adversarial setting, it requires that members of the Bar demonstrate professionalism and civility for the benefit of the other participants in, and observers of, our legal system.¹¹ An attorney is an advocate and must be devoted to furthering the legal interests of his or her client even at the risk that the litigation could become contentious and heated. But the Lawyer's Commitment and the Civility Principles remind us that things that may be said or done, that later are regretted, can be avoided by committing oneself to the principles. Litigation does not require that the parties

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leave with a resolution and their attorneys depart holding a grudge. Vigorous representation should not end friendships or professional associations.¹² Professionalism and civility in the practice of law benefit clients and foster the continued respect of our legal system.

The United States District Court of the Eastern District of Michigan and the Federal Bar Association are working together to make the practice of law more civil; contentious, but not discourteous; passionate, but not toxic; zealous, but not fanatical. While mindful of the devotion and vigorous representation that a lawyer owes to a client, the creation of the Lawyer's Commitment of Professional Civility and the institution of the Cook-Friedman FBA Civility Award will help promote civility and encourage good, honest, ethical behavior that will reflect well on our cherished legal system. ■

The author has written this article in his individual capacity and the views expressed in it do not necessarily represent the views of the United States Department of Justice.



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FOOTNOTES

- Administrative Order No. 08-AO-009.
- Id.*
- United States District Court, Eastern District of Michigan, *Civility Principles*, available at <<http://www.mied.uscourts.gov/Rules/LocalRules/>>. All websites cited in this article were accessed April 3, 2009.
- See *id.* See also *Lawyers Oath*, available at <<http://www.michbar.org/generalinfo/lawyersoath.cfm>>.
- This obliviousness to the Civility Principles was found to be so even though those admitted to practice in the district court promise in their application for admission to abide by the Civility Principles as part of the admission process. Specifically, the court's application has an "Applicant's Oath of Admission" that reads, in part, "I have read and will abide by the Civility Principles approved by the Court." The Applicant's Oath of Admission is available from the Clerk's Office, United States District Court for the Eastern District of Michigan.
- The Cook-Friedman FBA Civility Award is the civil practitioner counterpart to the FBA's Gilman Award that is "given annually to an outstanding practitioner of criminal law who exemplifies the excellence, professionalism, and commitment to public service of Len Gilman, who was U.S. Attorney at the time of his death in 1985." See <<https://www.fbamich.org/index.cfm?location=1>> (Leonard R. Gilman Award).
- See *Fieger v Michigan Supreme Court*, 553 F3d 955 (CA 6, 2009); *Fieger v Michigan Supreme Court*, 2007 WL 2571975 (ED Mich, 2007); *Grievance Administrator v Fieger*, 476 Mich 231, 719 NW2d 123 (2006).
- The FBA solicits nominations for the Cook-Friedman FBA Civility Award in the spring of each year. For more information, visit the FBA's website at <<https://www.fbamich.org/index.cfm?location=12>>.
- See Stano, *Another Take on 'Civility'*, 78 Okla B J 3131 (2007), available at <<http://www.okbar.org/obj/articles07/120807stano.htm>>.
- In re Snyder*, 472 US 634, 647 (1985).
- See *id.*
- See Stano, n 9 *supra*.