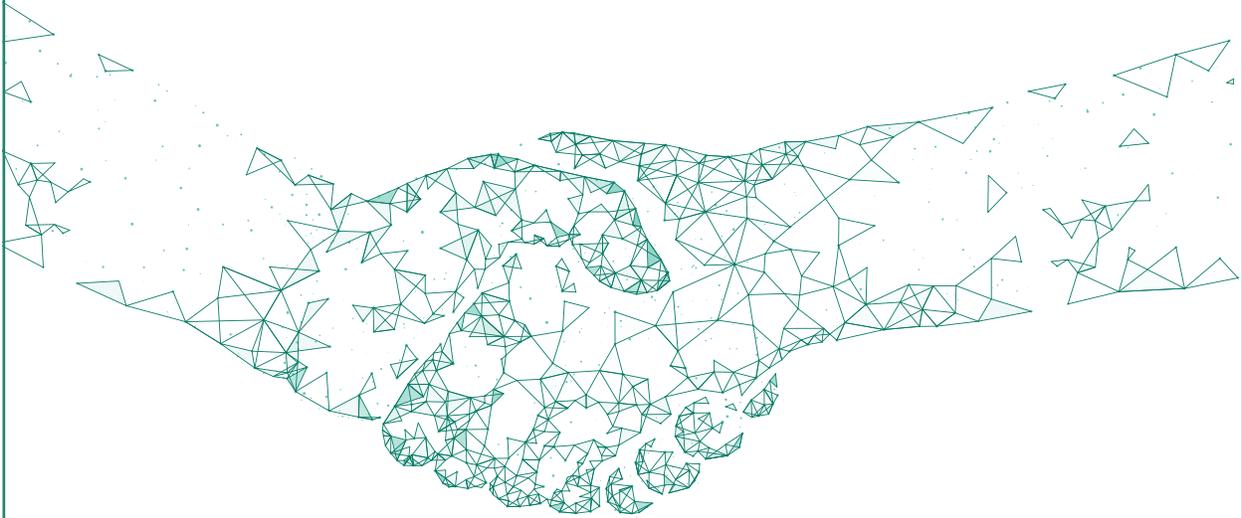


STATE BAR OF MICHIGAN

PROMOTING PROFESSIONALISM IN THE 21ST CENTURY



PROFESSIONALISM & CIVILITY

Summary



Summit Planners and Organizers

Edward H. Pappas, Chair	Jennifer Lyons
William M. Azkoul	Brian J. Plachta
Thomas R. Behm	Joel H. Serlin
Marge Bossenbery	Victoria A. Vuletich
Gregory Conyers	Janet K. Welch
Candace Crowley	

With support from law students Rebecca Gorbutt, Marla Le Mae, and Lucy McManaman

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Promoting Professionalism in the 21st Century

Thursday, October 18, 2018

Program Summary

On Thursday, October 18, 2018, over 80 respected judges and attorneys gathered at the Michigan Supreme Court Hall of Justice for a daylong Promoting Professionalism in the 21st Century Summit addressing the need to reinforce cultures of professionalism necessary to sustain a fair and impartial justice system. The Summit was the first, in the hopes of many, on civility and professionalism in the practice of law. It included speakers, workshops, panels, and breakout sessions. The goals included identifying ongoing, practical tools for developing and sustaining professionalism, particularly civility, in the Michigan legal profession; identifying how the Michigan legal profession and judiciary might contribute to strengthening the role of public civil discourse; and developing strategies for sustained local action on professionalism and civility.

The participants included a group of lawyers, judges, and law school professionals focused on sustainable solutions. The tone for the event was set by the opening remarks of Michigan Supreme Court Chief Justice Stephen J. Markman. Those were followed by a panel discussion on expectations for nurturing and maintaining a culture of professionalism. Dennis W. Archer made an impassioned call over lunch for strengthening the role of civil discourse. It culminated with the identification of many practical suggestions from breakout groups on how to use civility to make a positive difference in the legal profession and in the community.

Welcoming Remarks—State Bar of Michigan President Jennifer M. Grieco

President Grieco opened the program by welcoming lawyers and judges, with representatives from the Michigan Judicial Institute, judicial organizations including the State Bar Judicial Section, State Bar Young Lawyers Section, bar association presidents, committee leaders, and others.

Grieco noted that the State Bar convened this program because the topic is tied to the mission and purpose of the Bar, its Strategic Plan, and the recommendations of the 21st Century Practice Task Force. The Bar leads on many professionalism and civility topics, including the work of the Professional Ethics, Judicial Ethics, Judicial Qualifications, and the Character & Fitness committees, Lawyers & Judges Assistance Program, ethics helpline and seminars, Practice Management Resource Center, Professionalism in Action program in five law schools, support of local and special purpose bar associations including the Inns of Court, and professionalism programming like this Summit. The Bar also recognizes The Lawyer's Oath as a call to civility as it is administered to new lawyers.

The organized bar expects professionalism and regularly examines how we can improve. These are the hallmarks of the legal profession that require us as lawyers to be role models for others, to encourage civil discourse in all interactions and settings, to assure the resolution of disputes and conduct of business according to the rule of law and in a most civil way.

Program Introduction—State Bar of Michigan Past President Edward H. Pappas

Past President Pappas stated we are not here to solve a pervasive problem in the legal profession, as the vast majority of judges and lawyers are very professional. However, uncivil conduct appears to be rising and it is important for leaders of the legal profession to restart the discussion on the value of civility. We can't have dialogue to solve our nation's problems without civility and respect. The legal profession can place this topic in the forefront of our conversation, and that is our purpose today.

Keynote Address—Michigan Supreme Court Chief Justice Stephen J. Markman

Chief Justice Markman welcomed this long overdue conversation regarding civility and professionalism within the legal profession. His remarks were generously sprinkled with references to bar and court leaders who have done excellent work and have made a difference. He provided some basics: civility and professionalism consist of good manners, proper decorum, and respectful behavior—important components of professionalism. They are the social backdrop when using the tools of representation. Our emphasis should be on how we comport ourselves. We should allow ourselves to see how others see us.

Chief Justice Markman discussed the leadership role of judges, and noted that the culture of the court is determined at the top. He commended the Civility Code adopted by the Eastern District Court and noted it might be time to revisit civility codes as many are outdated, too limited, too vague, and do not identify conduct that crosses the line. He called for action from judges to promote the civil practice of law, to exercise judicial restraint on discretion, to treat both parties involved in litigation equally, and to foster an atmosphere of equality and stability in the justice system. He noted that civil behavior is fostered where judicial power is limited, discretion of judges is most constrained by clear and coherent standards, and appellate courts take seriously their role of review with a deep commitment to the equal rule of law.

He spoke of the need to encourage litigants to pursue their rights without the fear of being mistreated in court by judges or attorneys, and without the language of the street. He noted that if litigants are treated with respect they will walk away from a courtroom experience with a feeling of fairness and faith in the legal system, even if they lost. He warned of the public perception of the legal system falling into the negativity displayed by uncivil lawyers, judges, and lawmakers, which will lead to a lack of faith in the justice system.

Chief Justice Markman referred to Michigan Rule of Professional Conduct 6.5(a): “A lawyer shall treat with courtesy and respect all persons involved in the legal process.”

Markman asked the participants to produce focused recommendations and consider ameliorative ideas even if they concentrate on the margins. As an example, mentoring relationships can provide a pathway to compromise and resolution. He noted this is not the first time we’ve had this discussion and it most likely will not be the last. He pledged to work with the State Bar, conference participants, and others to promote civility and professionalism.

Panel Discussion

The panel consisted of U. S. District Court, Eastern District of Michigan Chief Judge Denise Page Hood; Michigan Court of Appeals Judge Jane M. Beckering; and practicing attorneys William W. Jack Jr. and Aaron V. Burrell. Moderated by Ed Pappas and conducted through brief introductory remarks from each panelist and through written questions from the audience, the panel generated many concrete ideas. Civility consists of good manners, proper decorum, and calm behavior. The Lawyer’s Oath, included on the back of the program, was positively referenced many times. Technology was identified as a culprit of lost connection when interacting with people, as less face-to-face discourse can lead to a lack of respect for others. Taking the time to sign your name to an email, or write “dear colleague,” rather than the curt replies often given, can help.

Civility is not a sign of weakness; it is a representation of how we handle tough situations. Lawyers and judges have an important role in our community to lead and to teach members of the community the value of civil behavior. How lawyers and judges comport themselves sets the tone for our profession and community. TV lawyers aren’t the best of those we see in court. The better we behave outside of the courtroom, the better we will be inside. When attacked, don’t react in kind. Being involved in bar associations helps establish collegial relationships that favorably temper the stress of the adversarial system.

Panel members noted that mentorship, positive relationships, and image are critical to professionalism. Mentorship allows new attorneys to learn from their firm or from respected lawyers of the community. Positive relationships are important to peacefully resolve client issues when possible. Judge Hood said we have a choice every time we open our mouths whether we will be civil and employ dignity and grace or not. Judge Beckering noted that advocates should fashion themselves after Atticus Finch and treat others how they would like to be treated. Aaron Burrell pointed out this is a noble profession and nobility is maintained by daily actions and interactions that begin with civility. He noted that judges should appreciate that they are an example to lawyers in the role of peacemaker when necessary as a leader in the courtroom and in the profession. Bill Jack emphasized that respect for each other is at the heart of civility and professionalism.

Other reflections were that our reputations are everything, civility starts with the judge, use last names, and be respectful. Civility codes should be used to set the expectation of how lawyers and judges should conduct themselves, and how they should treat others, especially in the courtroom. The better we behave outside of the courtroom, the better we can be inside the courtroom. Some courts have ombudsman programs and they should be explored by more courts.

Law schools should expose students to those who exemplify professional behavior. Students should have civility mentors through moot court, clinical programs, and other avenues to show how to behave in court and with others. Respectful communications should be emphasized.

Lunch and Presentation

State Bar of Michigan Executive Director Janet K. Welch, introduced Dennis W. Archer, who made a moving presentation during lunch. He began by recounting his experiences growing up in the era when *Plessy v. Ferguson* was still considered “good law,” and attending the Detroit College of Law in the 1960s. He emphasized the importance of respectfully disagreeing, as there is no excuse for being impolite. He encouraged the profession to be forceful and intelligent, formidable and considerate. He warned us not to assume the judicial system will always be there to uphold the law, and to take personal responsibility in our daily practice. He encouraged everyone to listen and be concerned about what others have to say. As has been the case in the past, lawyers have the power to change society and make lasting impressions on community. He noted his love of being a lawyer, and the history of great contributions from lawyers before us: Thomas Jefferson drafted the Constitution, John Adams argued for states’ rights, Abraham Lincoln abolished slavery, FDR healed the nation and created the New Deal, and Thurgood Marshall attacked racial bias. Lawyers have the power to challenge injustice and to heal, right wrongs, help the most vulnerable and troubled, and be counselors and peacemakers.

Today, Justice Archer said, the Michigan Supreme Court and the State Bar of Michigan have called this summit so we can provide our profession with a tool kit to solve challenges. The panelists gave great examples. Be polite. Don’t allow technology to get in the way of being respectful to each other. Incivility abounds, and nicknames, bullying, and condescension are the norm now. He recommended to all the October 2018 *ABA Journal* article “Civility Reboot” by Heidi K. Brown. He emphasized we must consider people of color and how they feel in court when there are frequently few other people of color. Archer noted that some of the biggest issues impeding civility are the sharp increase in student loans, the involvement of special interest groups, and wellness issues. Life balance, stress and anxiety management, self-doubt, and fear can lead to alcohol and other abuse. Wellness is imperative. Archer ended with a call to action: Let’s go to work.

Breakout Sessions

Small group breakouts followed lunch. Discussions focused on making positive change in civility and professionalism and what that would look like moving forward. There were several areas for concern, such as political opinions entering discourse where they are not relevant and then quickly devolving into disrespectful exchanges. There also seems to be a loss of professional courtesy and consistent respect for the rule of law, depending largely on mood or personal affinity. There were also causes for celebration, such as the increase in ADR mechanisms that encourage problem-solving rather than win/lose. There is an increase in diversity throughout the profession, including more women and people of color, fostering and also requiring greater attention to cultural nuances of civility. New law students look at a law career as a mechanism to effect positive change. The profession also welcomes the increase in first-generation lawyers and the new ideas and attitudes they bring to professionalism.

The proposed solutions from the small groups were impressive. Not surprisingly, many of the same ideas were called for by each breakout group, and each group brought something new and innovative to the conversation. The list of ideas generated by the breakouts is included in this summary. The duplicate ideas have been consolidated for clarity and focus. The ideas are numerous and the possibilities for further action abound.

As the Summit concluded, participants were willing and eager to meet again, and to talk to everyone in their respective circles about this topic. Their purpose is to help promote a more positive experience for those within the profession, to improve the public perception of lawyers and the judicial system, and to encourage more civil discourse in the public realm.

The Top Ten Most Shared Recommendations

1. Encourage bar associations, lawyer organizations, and judicial groups to conduct similar summits.
2. Consider the adoption of Michigan-specific civility guidelines for lawyers and judges and use them more deliberately.
3. Review The Lawyer's Oath more frequently and include it in a State Bar curated clearinghouse and professionalism tool kit.
4. Focus on personal relationship building, inclusion, and more thoughtful communication, especially when using technology.
5. Focus on lawyer wellness.
6. Recognize lawyers and judges practicing civility and professionalism through awards, social media, and other methods designed to celebrate those who exemplify good practice.
7. Create more court ombudsman programs to invite communications regarding judges and lawyers who may be struggling with civility in the courtroom.
8. Send the message through mentorship and similar efforts that uncivil conduct unfavorably affects time management, economics of law practice, and personal credibility.
9. Encourage the public and the business community to look for attorneys with civility and professionalism qualities.
10. Involve the public in this conversation and invite community organizations to have public speakers on the subject.

Breakout Discussions—Developing Practical Tools

Seven breakout groups of about ten members each were asked to answer four essential questions. Their discussions were recorded by group members. Many of the same ideas were called for by each breakout group, and each group brought something new and innovative to the conversation. All ideas are included here. Duplicate ideas have been consolidated for clarity and focus.

What kinds of actions or activities would be effective in your community (bar association, judicial association, law school, law firm, individual practitioners, pro bono program, discipline system, trainers, etc.) to help raise awareness and engage in sustained professionalism and civility conversations? Identify as many as possible.

- Develop clear statewide civility guidelines for lawyers and judges; consider providing incentives, court enforcement, and sanctions; provide them upon swearing in, delivery of scheduling orders and other opportune times, and to out-of-state lawyers
- Create a State Bar curated clearinghouse of civility resources
- Encourage similar conference for state judges, especially chief judges, through the Michigan Judicial Institute; include information on when sanctions for incivility are warranted
- Encourage civility mentorship programs, including online matches with volunteers
- Build emotional intelligence through personality assessments and trainings
- Consider creating civility panels to provide impartial review and decision similar to fee arbitration
- Consider creating mandatory CLE on civility; use American Board of Trial Advocates videos in civility curriculums
- Encourage bench-bar meetings focusing on civility
- Include civility information as part of a multifaceted orientation at swearing in
- Attach The Lawyer's Oath to materials at all appropriate times
- Provide sample advertising that portrays professional image
- Consider peer-on-peer mentorship for obstreperous counsel; use episodic mentoring in a Lawyers and Judges Assistance style intervention
- Use ADR and mediation skills to demonstrate civil interaction
- Develop more law school professionalism programs and a comprehensive civility curriculum; expand the Professionalism in Action Program to third-year students; provide civility counseling for students
- Develop more civility awards; consider rethinking the Representative Assembly Unsung Hero Award and conferring Professionalism Awards instead; establish Civility Super Lawyers program with lapel pin to demonstrate honor
- Celebrate these ideals through the *Bar Journal*, videos, social media and other avenues to showcase exemplary lawyers
- Create book clubs with lawyers and judges
- Educate re MRPC 6.5(a)
- Encourage get-togethers outside of the courtroom environment, like lunches, for colleagues to get to know each other better
- Encourage lawyers to engage more with opposing counsel by phone and in person
- Establish an Annual Lawyers Oath Day
- Create an Atticus Finch Society
- Replicate Grand Rapids Hillman Advocacy Program

- Consider requiring civility continuing legal education for renewal of license
- Reduce bar dues for peer to peer mentorship
- Present clients with a copy of The Lawyers Oath when signing a fee agreement to help educate clients about attorney ethics rules.
- Communicate that civility is not a sign of weakness
- Partner with local bars to create Committee for Civility
- Circulate emails and texts from local bars to invite attendance when a highly regarded lawyer is about to conduct a trial or major hearing

Are you aware of any resources—websites, books, articles, organizations, case law, blog sites, speakers, other, that should be included in a Professionalism Tool Kit?

- Website, blog or report on good attorney image—short engaging stories of lawyer good actions
- Training on civility, emotional intelligence, and personalities
- Wellness resources and better attention to wellness goals for attorneys
- “Civility Reboot,” Heidi K. Brown, October 2018 *ABA Journal*
- *60 Minute Mentoring* book by Amy Timmer
- *The Path to Lawyer Well Being*, 2017 ABA publication
- Link to resources provided to Summit participants
- A writing app that checks for tone
- Ethics school curriculum
- The Lawyers Oath
- Publications and advertising samples like *Should I Hire a Lawyer* that include information that lawyers must follow ethical rules
- Videos showing civil behavior in face of disagreement
- Practical tips
- Inns of Court program curriculums
- New lawyer kit, using American Board of Trial Advocates videos as one resource
- Information on how to repair relationships—steps to make it better
- Civility skill building training programs with discipline on one side, good ideas on other with role play, defusing tactics, how to deal with unprofessional situations, how not to take the bait
- Examples and tips on proper deposition and discovery objections, sample motions and other tools to help judge’s decisions
- Possible professionalism hotline at the Bar, similar to Florida and Colorado
- Information on how to create an ombudsman program
- Sample messages for clients that want you to be the bad guy
- Information on how uncivil conduct unfavorably affects time management, economics of law practice, credibility
- Personality and emotional intelligence tools—how to interact with others
- Certificates of professionalism and civility

How can we sustain this conversation around the state over the next year and beyond?

- Invite local bar association discussions and forums to carry the message; circulate this information to bars for feedback and design of own programs; ask for their input and involvement in development of tool kit
- Pursue policies and create standards
- Separate ethics and civility issues
- Honor differences in jurisdictions
- Take personal ownership of this cause —tell everyone we know, keep the conversation alive
- Build relationships with others around this topic
- Develop a professional responsibility seminar for solo and small firms, emphasizing civility as an important part of law practice management
- Create events to encourage those doing a great job
- Use mass marketing to spread the word
- Use a large firm managing partners forum to discuss the topic
- Encourage courts to focus on civility
- Ask the Litigation Section to propose court rule changes to subpoena provisions
- Revisit pending court rule changes to address issues that arise with uncivil conduct

How can we invite the public to the discussion/who should be involved?

- Involve the community, include open discussion to include incivility within the community and ask the public their thoughts
- Dialogue with the business community and specifically the Chamber of Commerce
- Assure the public that civility matters, and that uncivil conduct is expensive and non-productive
- Replicate what west side of the state is doing with business community
- Create a center for civil discourse
- Build bridges to local communities in ways that are meaningful to them
- Michigan Legal Help
- Target markets, like the “Who Should You Trust” program
- Use media to feature strong collaborative lawyers who do well
- Involve mental health professionals
- Communicate helpful expectations of lawyers, judges, and others in legal profession
- Engage community with lawyers through Constitution Day, Law Day, other civic education forums
- Conduct occasional court hearings in public
- Involve judges, prosecutors and defense attorneys in community service together
- Strengthen pro bono requirements
- Survey people who have used the judicial system
- Establish speaker circuits in local communities
- Include police, mayors, schools
- Use social media to publish what lawyers do in addition to A Lawyer Helps
- Please don't let this fall through the cracks!

SBM

STATE BAR OF MICHIGAN

MICHAEL FRANCK BUILDING
306 TOWNSEND STREET
LANSING, MI 48933-2012

www.michbar.org