

1. Why do we need these?

While most lawyers and judges are civil and professional, the lack of civility among some members is a constant source of frustration. Bar leaders consistently hear requests from members as to what the State Bar can do to improve civility in our profession. Civility and professionalism are tied to the mission and purpose of the State Bar, its strategic plan, and the recommendations of the 21st Century Practice Task Force. Because of this, the Bar convened stakeholders in October of 2018 to renew the conversation on civility and professionalism. One of the top recommendations that emerged from the summit was to adopt Michigan specific civility guidelines – principles - for all state courts, with incentives and sanctions. The guidelines would be provided upon swearing in to new lawyers, with scheduling orders, when out-of-state or foreign lawyers are temporarily admitted to practice in Michigan state courts under the pro hac vice admissions rule, and all other opportunities to reinforce the message. The Professionalism Principles, like the federal guidelines, would apply to judges and lawyers. They would apply both in and out of court, including litigation, mediation, and transactional matters.

2. How are these different from the Michigan Rules of Professional Conduct?

Just what is “professional” is often a subjective matter. Generally, lawyers are trained to recognize what the Rules require or forbid rather than how to achieve the attributes of professionalism. The Principles are an additional resource for lawyers to provide concrete examples of professional behavior.

3. How are these different from the Michigan Code of Judicial Conduct?

See answer to Question 2. The Principles provide specifics.

4. How are these different from The Lawyer’s Oath?

The Oath is set out in State Bar Rule 15, Section 3(1) and is taken by new lawyers when they are admitted to practice in Michigan. Throughout their careers, some lawyers may not think to review the Oath to ensure compliance with it in their daily practice. So, it has far less visibility than the Michigan Rules of Professional Conduct. Also, we have generally done a poor job of communicating to ourselves that it is in our profession’s own best interests to create a work environment in which we treat each other with respect. These Principles set forth specifics on how to make that happen. The Principles have far greater application and would be used in many more situations than upon swearing in of a new lawyer; they would serve as a routine reminder of the need for professionalism throughout the career of lawyers and judges.

5. Are efforts underway to revise The Lawyer’s Oath to enhance the concepts of civility?

The Professionalism Work Group will consider possible amendments to enhance the concepts of civility in the Oath after action is taken on the Principles. As a reminder, the Representative Assembly asked the Michigan Supreme Court to consider its Plain English version of the Oath in 1998. In December of 1998, the Court advised the Bar that “The Justices are not persuaded that the rule should be supplemented in such a manner, and thus have closed the file.”

6. How will the Principles be enforced?

It’s a good idea to think of the Principles in terms of encouragement rather than enforcement. The Principles are aspirational and address no possible enforcement or disciplinary process. Remember, violations of the MRPC, and the MCJC, are handled by the Attorney Grievance Commission, and the Judicial Tenure Commission, respectively. The next stage of the work will be at the Supreme Court and we are confident discussions with them will help define more how to use the Principles.

7. Why not call them the “Michigan” Professionalism Principles?

The Principles would apply to all lawyers and judges who in Michigan who are involved in providing legal services in this jurisdiction, including as an example pro hac vice admitted lawyers and in-house counsel licensed in another jurisdiction practicing under MRPC 5.5(d).

8. Why does the Commentary address wellness issues?

Lawyers and judges may face personal and professional challenges that may lead to more pressure on professionalism and civility. For example, changes in the laws to limit what were previously profitable practice areas, underfunded courts, the sharp increase in student loans, the ever-widening economic gap of consumers challenging their ability to pay for legal services, and the involvement of special-interest groups. Each challenge has affected lawyer wellness, heightening stress, self-doubt, anxiety, fear, and abuse of alcohol and medication – all of which can generate or exacerbate incivility. Recognizing the importance of lawyer wellness can help increase professionalism.

9. What has the response of audiences been when they received information on these?

In its development phase, this project has been the subject of many bench-bar presentations and bar association programs over the last year. While some audiences have initially questioned why we need the principles, the overwhelming response has been positive, supportive, and encouraging.

10. What happened to the March 2000 RA resolution to study the implementation of civility guidelines for all lawyers in Michigan?

We have been unable to find evidence of any action that followed the resolution. That year began a several year period of budget stress and cutbacks and we believe the implementation effort did not survive in that environment.

11. Why should lawyers and judges support adoption of the Principles?

The Principles could be used as a readily available resource to improve daily interactions in the legal profession between judicial officers and lawyers, between opposing counsel, and between lawyers and others involved in the legal process. Also, they could be used as a resource to educate legal consumers about the professional integrity required of Michigan lawyers and judges.