

Recognizing and Eliminating Bias from Court Operations



Florida State Courts System

The mission of the judicial branch is to protect rights and liberties, uphold and interpret the law, and provide for the peaceful resolution of disputes

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A Message from the Supreme Court Standing Committee on Fairness and Diversity

On March 14, 2008, the Standing Committee submitted a report entitled, *Perceptions of Fairness in the Florida Court System*. The report indicates that the overall perception of those with long-standing experience in the Florida court system is that, although there have been significant improvements in reducing discrimination, disparate treatment continues to occur. We encourage you to read the report, which can be accessed at http://www.flcourts.org/gen_public/family/diversity.

With firm commitment and dedication, we continue to advance the State Courts System's efforts to eliminate from court operations bias that is based on race, gender, ethnicity, age, disability, financial status, or any characteristic that is without legal relevance, and recognize that fairness and diversity are crucial elements of our justice system. As such, it is with great pleasure that we present this guide – a positive and practical tool that you can use for recognizing and eliminating bias from court operations. This guide does not purport to be exhaustive of all practices on fairness and diversity in the courts. Rather, it strives to serve as an additional resource.

The Standing Committee hopes that you discover new ideas within these pages to further your fairness and diversity enhancement efforts. We applaud all who are already making demonstrable strides in improving fairness and diversity and inclusiveness in the court system.

Introduction

Achieving fairness and diversity in our courts is a challenge. Through the creation of task forces, commissions, and committees and through the implementation of their recommendations, Florida's court system has made much progress in understanding and addressing bias in the courts.

The Supreme Court Standing Committee on Fairness and Diversity was established to help advance the State Courts System's efforts to eliminate bias from court operations that is based on race, gender, ethnicity, age, disability, financial status, or any characteristic that is without legal relevance.

Purpose

The State Courts System continues its unwavering commitment to matters of fairness and diversity. This guide was developed to assist judges, attorneys, and court staff in creating a bias-free court environment. It represents a part of our continual efforts to promote fairness and diversity in the court system and to reshape our own approaches, as well as the court environment, to foster a justice system that enables all people to be treated with respect and dignity.

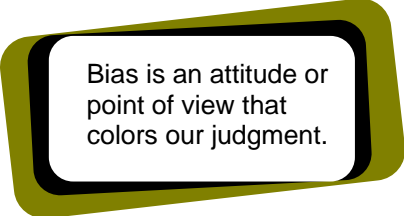
Note: *This is not an official policy and standards document.*

Recognizing Bias

What is bias? Bias is an attitude or point of view that colors our judgment. Bias means a predisposition to see things or people in a certain way. You can be biased toward some people and predisposed to see them in a positive light. Likewise, you can be predisposed to see others in a negative light based on their appearance or differences from you. Bias is an internal belief. It is a mental prejudgment, positive or negative, made about an individual. It is not until you act it out in speech or behavior that others receive the impact.

Judges: Have you ever

- ✓ Judged a case of those not proficient in the English language as unimportant or unworthy of the court?



Bias is an attitude or point of view that colors our judgment.

- ✓ Subjected victims of crime to unjust scrutiny because of the nature of the act(s) perpetrated against them, their race, gender, ethnicity, age, disability, financial status, or any characteristic that is without legal relevance?

- ✓ Hesitated to award substantial (or primary) parenting time to a father or given a smaller support order if the paying

spouse is the mother?

- ✓ Not given jury members directives on how to make bias-free verdicts?
- ✓ Made derogatory comments to witnesses or addressed them differently because of their race, gender, ethnicity, age, disability, financial status, or any characteristic that is without legal relevance?
- ✓ Implied that a witness is not valuable or is unreliable because of his or her race, gender, ethnicity, age, disability, financial status, or any characteristic that is without legal relevance?
- ✓ Recognized that circumstances such as stress, time constraints, and the absence of accountability can increase biased behavior?

Attorneys and Florida Court Personnel: Have you ever

- ✓ Made assumptions about court users based on their race, gender, ethnicity, age, disability, financial status, or any characteristic that is without legal relevance?
- ✓ Given disparaging responses and/or recognition to particular individuals based on their race, gender, ethnicity, age, disability, financial status, or any characteristic that is without legal relevance?

Steps to Eliminating Bias in the Court Environment: Rights and Responsibilities

Judges are the visible leaders of the judicial system and play a key role in eliminating bias. The Code of Judicial Conduct calls on judges to establish, maintain, observe, and enforce high standards of conduct to preserve the integrity of the judiciary.

Judges should

- ✓ Exhibit leadership and set the standard for non-biased communication and disposition in the courtroom and judicial operations.
- ✓ Disregard any personal biases in decision making and court interactions.
- ✓ Be mindful of bias even in chambers.
- ✓ Correct discriminatory attitudes or comments made by any participants. Discuss biased behavior with individuals who may be unaware of its impact, and emphasize that such behavior will not be tolerated in the court.
- ✓ Treat all litigants, attorneys, and court employees with respect, fairness, and dignity.
- ✓ Strive to be fair and accurate. Good intentions are not enough to offset implicit bias.



- ✓ Understand that, at some level, we are all conscious of differences. To ensure attentiveness and minimal distraction, remove strong emotions and stress, which may increase the likelihood of relying on automatic responses.
- ✓ Avoid becoming overworked. It could lead to quick and easy methods to resolve situations.

Judges have a right to

- ✓ Be treated with respect and courtesy.
- ✓ Expect non-biased treatment from court employees, litigants, and attorneys.
- ✓ Object to biased statements or remarks made by litigants, attorneys, court employees, and all others who participate in court proceedings.

Attorneys are officers of the court and have an important role and obligation in maintaining the dignity and integrity of the court. Through their conduct and treatment of litigants and employees, attorneys have a significant impact on the legal system and the pursuit of justice.

Attorneys should

- ✓ Treat the judge, court employees, litigants, witnesses, and other attorneys with fairness, respect, and courtesy.
- ✓ Represent all clients with paramount effort.
- ✓ Monitor their own behavior, comments, and attitudes to avoid bias that is without legal relevance.

Attorneys have a right to

- ✓ Be treated with fairness, courtesy, and respect by judges, court personnel, litigants, witnesses, and other attorneys.
- ✓ Expect non-biased treatment from judges and litigants.
- ✓ Object to biased statements or remarks made by judges, litigants, witnesses, other attorneys, or court employees.

Florida Court Personnel are often the first contact, and sometimes the only contact, that members of the public have with the court system. By conveying respect and providing assistance to all, court employees play an important role in eliminating bias in the administration of justice.

Florida Court Personnel Should

- ✓ Treat judges, litigants, attorneys, witnesses, and other court personnel with equality, respect, and courtesy.
- ✓ Monitor for and abolish all bias-natured behaviors and attitudes.
- ✓ Expect non-biased treatment from judges, litigants, and attorneys.
- ✓ Regard judges, litigants, court personnel, and other attorneys with equality, respect, and courtesy.
- ✓ Consider their approaches and mind-sets and eradicate behaviors and attitudes that may reflect bias.
- ✓ Object to gender biased or race biased statements by judges, court staff, or litigants. Discuss biased behavior with individuals who may be unaware of its impact, to communicate that such behavior will not be tolerated in the court environment.

Florida Court Personnel have a right to

- ✓ Be treated with respect and courtesy.
- ✓ Be provided with written personnel policies that prohibit discriminatory treatment and promote fairness.
- ✓ Object to gender-biased and other biased remarks during court business.
- ✓ Expect non-biased treatment from judges, litigants, attorneys, and other court staff.

Achieving Bias-Free Communication

Chances are very high that your communication has some degree of bias in it.

Do you think your communication is always bias-free? Do you think that you are equally respectful and effective with a “diverse” range of people – people who are similar to you and people who are different? Chances are very high that your communication has some degree of bias in it. Occasionally, you may send messages that some people are valued and some are not. And, there’s a good chance you sometimes unintentionally exclude or stereotype people.

Each of us can choose to communicate more effectively. We can identify our own biases, explore methods to reduce them, and work to communicate in more inclusive, bias-free ways.

Eliminating bias takes awareness, openness, and practice. Many biased statements seem so natural and familiar that we are unaware of the discomfort they cause for others. Become conscious of your communication and what it may imply.

This section provides suggestions for eliminating bias from your communication as one strategy for creating a more inclusive court environment and for modeling the attitudes about diversity that the State Courts System values. While some basic suggestions are offered below, the key to effective bias-free communication is treating all people with respect and consideration regardless of their race, gender, ethnicity, age, disability, financial status, or any characteristic that is without legal relevance.

General guidelines for bias-free communication include



- ✓ Be aware of words, images, and situations that suggest that all or most members of a group are the same. Stereotypes often lead to assumptions that are unsupportable and offensive. An example would be assuming that all Asians are Chinese.
- ✓ Avoid qualifiers that reinforce stereotypes. A qualifier is added information that suggests what is being said is an exception to what is expected. An example would be saying that a group of black judges spoke at our symposium. Consider whether you would describe members of the majority population in the same

manner; i.e., “a group of white judges.”

- ✓ Identify people by identity characteristics, such as “black” or “female”, only when relevant. Very few situations require such identification.
- ✓ Be aware of language that, to some people, has questionable connotations. While a word or phrase may not be personally offensive to you, it may be to others.
- ✓ Be aware of the possible negative implications of color symbolic words. Color symbolism can vary dramatically between cultures. In some instances, black and yellow have become associated with the undesirable or negative. Choose language and usage that do not offend people or reinforce bias.

Race and Ethnicity

- ✓ Avoid qualifiers that imply that all members of specific ethnic groups or races are the same, e.g., suggesting that all persons of a certain ethnicity are good at athletics. If you specify race or ethnic origin, be certain it is relevant.
- ✓ Avoid language that has questionable racial or ethnic connotations, e.g., “you people,” or “those foreigners.”

Gender

- ✓ Use gender-neutral words/phrases in your language, e.g., chairperson. Avoid the use of “man” or “woman” in job titles.
- ✓ Address both female and male perspectives with phrases like “employees and their spouses or partners.” Use pronouns and references that include both genders instead of only male, e.g., “he/she” or “women/men.”
- ✓ Avoid describing men by profession and women by physical attributes.
- ✓ Use “gender” rather than “sex” to differentiate between men and women.

Age

- ✓ Mention age only when it is relevant.
- ✓ Permit people of all ages to speak for themselves rather than assuming you know what they want.
- ✓ Avoid making inappropriate assumptions about people based on their age.


Disability

- ✓ Use “person first” language, e.g., “person with a disability,” “student with a disability.”
- ✓ Avoid using the term disability as an adjective, e.g., “the disability community.”

- ✓ Avoid the use of “suffers from” or “survivors.”
- ✓ Avoid using adjectives as nouns, e.g. "the deaf, the blind, the disabled." Rather, use "people who are deaf."
- ✓ Plan for and provide alternate forms of communications at events and gathering. This might include having interpreters, providing written materials in print format or in Braille, or providing oral interpretation for all visual information.

Sexual Orientation

- ✓ Use "sexual orientation" rather than phrases like "the gay lifestyle" or “sexual preference.”



Procedural fairness...is one of the strongest predictors of the public's trust and confidence...

- ✓ Use the phrase "partner or spouse."
- ✓ Do not assume someone's sexual identity based on appearances, mannerisms, or occupation.
- ✓ Do not assume a person's sexual orientation by the activities in which they are involved.

You may ask if paying close attention to one's words and nonverbal communication is simply being “Politically Correct.” The answer is, “No, it's about a *different* ‘PC.’ It's about being ‘Professionally Competent’... being ‘Personally Conscious.’ ” And, it's about *respect*. Bias-free, inclusive communication is professional, humane, competent, and caring.

Thoughts on Procedural Fairness

Procedural fairness, the sense that the parties believe the process is fair and transparent, whether or not the outcome is favorable to them, is one of the strongest predictors of the public's trust and confidence in the Florida State Courts System.


Perceptions of procedural fairness are also significantly affected by the quality of treatment that the public receives during every interaction with the court. As judicial officers and court staff, we must hold fast to the basic concepts of procedural fairness, as this helps to ensure that those interacting within the court environment go away from the process with at least some degree of **trust** and **confidence** for the State Courts System.

Opinion surveys prove that we need to do a better job of earning the public's trust and confidence in the judicial system. Procedural fairness allows us to locate the source of diminished trust and confidence and find ways for courts to respond, especially to people who appear in court as litigants, jurors, or witnesses.

Building Trust and Confidence

When interacting in the court environment, people observe behaviors of judges, attorneys, and other court staff, or look for actions to indicate that they can trust the character and sincerity of those who work in the court system. People react positively when they feel that they are treated with politeness, dignity, and respect and that their rights are respected. Helping the public understand how the court system works can lead to court user satisfaction. Here are some suggestions for building trust and confidence among the public:

- ✓ Emphasize that the interests and needs of all parties will be fairly considered.
- ✓ Encourage court staff to be ambassadors for the State Courts System through day-to-day interactions with the public. Remember that all of our actions directly and indirectly affect public perceptions of the courts.
- ✓ In communications with the public, judges should affirm that all rights will be protected.



People also react positively when they feel that they are treated with politeness, dignity, and respect and that their rights are respected.

- ✓ Make appropriate eye contact; acknowledge court users and parties by name.
- ✓ Treat all people entering the court environment with courtesy and respect.
- ✓ Ensure that litigants who require interpreters—and the interpreters—are treated with dignity and respect.
- ✓ Respect the public's time; avoid long waits and delays, if possible.
- ✓ Emphasize high quality service to the public in all trainings for court staff and judges.
- ✓ Make use of jury service and other public venues to educate the public about the courts.

Institutionalizing Fairness and Diversity

- ✓ Create an atmosphere in which Florida Court Personnel realize the importance of bias-free behavior.
- ✓ Make sure that a commitment to bias-free behavior is communicated to all staff.
- ✓ Make fairness and diversity a part of the court's long-range planning.
- ✓ Establish effective recruitment, hiring, promotion, and retention practices that are inclusive of minorities and women.
- ✓ Collect the necessary data to monitor fairness in the courts.

- ✓ Develop and support training programs in fairness, diversity awareness, cultural competence, and cultural sensitivity.
- ✓ Require staff to attend training programs.
- ✓ Collaborate and create alliances with agencies and individuals outside the courts that might be able to assist with studying fairness, recruiting a diverse workforce, or providing education and training efforts.

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The Florida Supreme Court Standing Committee on Fairness and Diversity
http://www.flcourts.org/gen_public/family/diversity/index.shtml

The National Center for State Courts
<http://www.ncsc.org>

The National Consortium for Racial and Ethnic Fairness in the Courts
www.consortiumonline.net

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