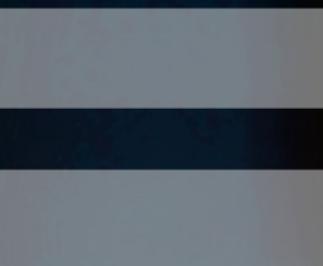




Achieving Fairness through Bias-Free Behavior:

A Pocket Guide for the Pennsylvania Courts



**Pennsylvania Interbranch Commission
for Gender, Racial and Ethnic Fairness**



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Message from Chief Justice Ronald D. Castille



With the establishment of its Interbranch Commission for Gender, Racial, and Ethnic Fairness in January of 2005, Pennsylvania joined the cluster of other states around the country that have established permanent offices or commissions to promote fairness and equality within the justice system. The Commission grew out of a large-scale study conducted under the auspices of the Pennsylvania Supreme Court from late 1999 through March of 2003 that focused on racial and gender bias within the justice system in Pennsylvania. The study included findings on 14 different topics and resulted in a voluminous report with 173 recommendations to the Supreme Court and other entities for addressing inequities within the justice system.

One of the problems identified in the report was the treatment accorded females and minorities during their contact with the court system. Regardless of what role they were playing in the justice system—attorney, litigant, witness, judge or court employee—women and minorities reported incidents of demeaning behavior directed toward them in the justice system throughout the Commonwealth. While some of the incidents were intentional, most simply demonstrated a lack of understanding or knowledge about the impact of their actions on those to whom the actions were directed.

As a consequence of these findings, the report recommended, among other things, that court employees, attorneys and judges within the justice system receive training dealing with behavior that is likely to be perceived as discriminatory or harassing. Toward that end, in December of 2007, the Pennsylvania Supreme Court approved a new

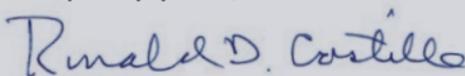
“It is our hope that this guide will help ensure that all who interact with the justice system are treated with the respect and dignity to which they are entitled, regardless of their race, color, sex, sexual orientation, national origin, age, disability or religion.”

Unified Judicial System Policy on Non-Discrimination and Equal Employment Opportunity. Drafted by our Interbranch Commission, the policy specifically proscribes this type of behavior, and provides a process for discipline and remedial action regarding such conduct by the Unified Judicial System’s personnel, related staff and court users in the courthouse.

In addition to the new policy and procedures, the Commission also produced this guide to provide simple guidelines for all participants in the justice system as a means of encouraging fair treatment. The guide first lists the pertinent findings from the study by our Supreme Court Committee on Racial and Gender Bias. The guide then outlines the responsibilities of judges, court staff, attorneys and litigants in eliminating bias in the courtroom and exhibiting respectful and fair conduct within a courtroom environment. Tips on institutionalizing fairness within the justice system, as well as actual court or disciplinary cases involving biased conduct, are listed toward the end of the guide.

It is our hope that this guide will help ensure that all who interact with the justice system, employees, attorneys, judges, or users of the system, are treated with the respect to which they are entitled, regardless of their race, color, sex, sexual orientation, national origin, age, disability or religion.

Very truly yours,

A handwritten signature in blue ink that reads "Ronald D. Castille". The signature is written in a cursive style with a distinct loop at the end of the last name.

Ronald D. Castille

Chief Justice of the Supreme Court of Pennsylvania



“All men are born equally free and independent, and have certain inherent and inalienable rights...”

Article IX, Sect. 1
Constitution of the Commonwealth of Pennsylvania

Pertinent Findings

by the Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System

As part of its study on racial, ethnic and gender bias in the justice system, the Pennsylvania Supreme Court Committee conducted a series of ten focus group discussions throughout the state. The goal of the discussions was to collect the thoughts of attorneys, judges, and court personnel of diverse races and ethnicities, and both genders, about their personal experiences with the justice system. The full report of findings from the focus group discussions is set forth in Chapter 9 of the Final Report, but among the more pertinent quotes from that report are the following:

“Power and responsibility to set the tone in the courtroom and effect change rest with the judiciary.”

“Everyone, regardless of position, brings assumptions and prior experiences into the courtroom. Some people are more conscious of this than others; education and training should deal with this fact and redress any consequent problems.”

“Racial and ethnic bias in the courtroom is described by all participants as rarely being overt. Rather, when it occurs, it is oblique; it has a ‘cover.’”

“Racially- and ethnically-biased actions in court compromise minority attorneys and minority court personnel in the performance of their responsibilities.”

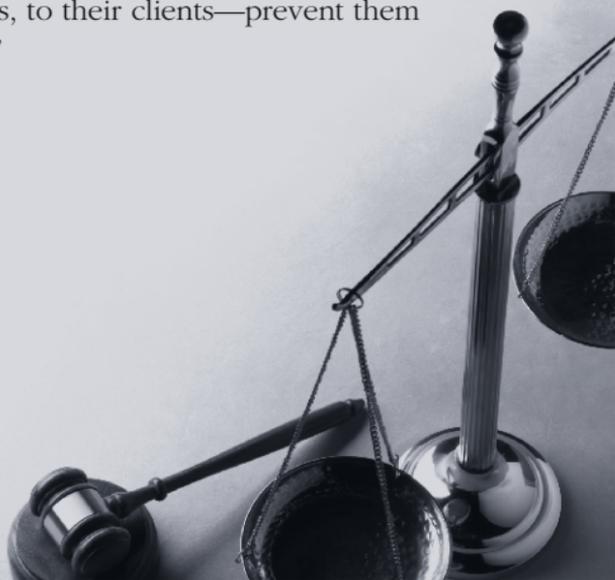
“Minority litigants complained of unequal dispositions of cases in criminal, family, and civil courts, based upon their racial and ethnic identity.”

“Gender bias is manifested in spoken words, in the demeanor of male judges and attorneys, and in the application of different standards and requirements for male and female attorneys.”

“Gender bias is both overt and subtle. When subtle, it is often difficult to link to outcomes. As a result, it can be difficult to demonstrate the effects of gender bias in an individual case.”

“Economic status and class intersects with gender and race, has a significant effect on a litigant’s courtroom experience, and can affect the outcome of a case.”

“Under current procedures for making complaints of bias, many attorneys and court personnel believe the risks—to their own careers and if attorneys, to their clients—prevent them from coming forward.”



Eliminating Bias

in the Courtroom

Judges shall:

- Exhibit leadership and set the standard for non-biased communication and disposition in the courtroom and judicial operations.
- Correct discriminatory attitudes or comments made by any participants.
- Regard all litigants, attorneys and court employees with respect, fairness and dignity.
- Eliminate any personal biases in decision-making and court interactions.
- Be mindful of bias, even in chambers.

Court Staff shall:

- Regard judges, litigants, attorneys and other court personnel with equality, respect and courtesy.
- Monitor and abolish all bias-based behaviors and attitudes.
- Expect non-biased treatment from judges, litigants and attorneys.

RES P

“One of the problems identified in the report was the lack of respect accorded females and minorities during their contact with the court system.” Chief Justice Ronald D. Castille

Attorneys shall:

- Regard judges, litigants, court personnel and other attorneys with equality, respect, and courtesy.
- Represent all clients professionally, regardless of their race, color, sex, sexual orientation, national origin, age, disability, religion or social class.
- Consider your approach and mind-set in order to eliminate attitudes and behaviors that may be biased.
- Discourage gender- or racially-biased statements or remarks made by judges, court staff, attorneys or clients.

Litigants or Citizens Using the Court should:

- Regard judges, attorneys, court personnel and other citizens using the court with respect and courtesy.
- Monitor your own behavior, attitudes and comments to ensure a non-biased display while using the courts.
- Discourage gender- or racially-biased statements or remarks made by judges, attorneys or court staff.

ECT

Ensuring Bias-Free Behavior and Communication

Let your personal behavior communicate your expectation of bias-free behavior and civility.

Use appropriate titles, and be consistent in your forms of address.

“Judge” or “Your Honor”
“Counselor” or “Attorney”
“Ms.” or “Mr.” (unless “Miss” or “Mrs.” are requested)
“Doctor,” “Officer,” “Representative,” or “Senator”

Use gender-neutral or gender-inclusive terms when addressing a group.

“Members of the jury, bar”
“Counselors”
“Ladies and gentlemen”
“Colleagues”

Do not use diminutive or endearment terms.

“Honey,” “sweetie,” “dear”
“Little lady,” “pretty girl,” “young lady”
“Son,” “boy”

Refrain from commenting on physical appearance.

Skin color or ethnicity
Dress or hairstyle
Specific body parts or pregnancy
Age, height, or size
Disability



Avoid using racial, ethnic or other derogatory descriptors.

Do not communicate racial, ethnic, sexual, or stereotypical remarks, gestures, jokes, or other analogous biases in the court or chambers.

Avoid offensive touching.

Treat all people with equal dignity and respect.

Avoid assumptions or inquiries as to a person's profession or agenda in the court.

Be mindful of bias, even in chambers.

Intercede when anyone exhibits behavior that appears to be biased.

Demonstrating Respect, Neutrality and Fairness

Conduct on the Bench

- Be alert to how your words and/or behavior are received by listeners.
- Be aware that non-verbal communication is also important.
- Consider giving brief remarks about your role and intention to demonstrate respect, neutrality, and fairness to all involved. This should include court reporters and court interpreters, among others.

Court Staff Behavior

- Be conscious of the diversity among court staff.
- Be aware that different ideas and values enhance the management and direction of a court.
- Understand that cultural differences and customs can underlie behaviors. Appreciation of those differences and customs can be a powerful safeguard against costly misunderstandings, employee dissatisfaction, and turnover.

The Courtroom Environment

- Provide signs in languages appropriate to the users of the court.
- Displays reflecting the ethnic and cultural diversity in your particular community are helpful in reducing anxiety about being in an otherwise unfamiliar setting.



Institutionalizing Fairness

A. Value Fair Treatment

- Provide an atmosphere in which court staff realize the importance of fair treatment.
- Make sure that a commitment to fairness is communicated to all staff.
- Make fairness a part of the long-range planning of the courts.

B. Hire a Diverse Staff

- Establish effective recruitment, hiring, promotion, and retention practices that are inclusive of qualified minorities and women.
- Develop or adjust personnel practices to promote a representative workforce.

C. Study Fairness and Implement Solutions

- Collect the necessary data to monitor fairness in the courts.
- Periodically assess whether the recommendations are being implemented.
- Analyze efforts for effectiveness, and then adjust accordingly.

“...in December of 2007, the Pennsylvania Supreme Court approved a new Unified Judicial System Policy on Non-Discrimination and Equal Employment Opportunity.”

Chief Justice Ronald D. Castille

D. Educate and Train Staff

- Develop training programs in fairness, diversity awareness, cultural competence, and cultural sensitivity.
- Provide tools and definitions for creating a clear understanding of what is acceptable behavior, and what is not.
- Encourage or require staff to attend training programs.
- Make sure that training programs are available in every sector of the justice system.

E. Develop Complaint Policies and Procedures

- Implement the UJS Policy on Non-Discrimination and Equal Employment Opportunity in response to complaints of bias, in accordance with the procedures established by the AOPC.

F. Collaborate with Others

- Collaborate with both governmental and non-governmental individuals and groups outside the courts that might be able to assist with studying fairness, recruiting a diverse workforce, or education and training efforts.

Disciplinary Cases Involving Bias

Reprimands for Sexual Harassment or Bias

A Pennsylvania Magisterial District Judge was removed from office for sexually harassing a female employee. The former Judge repeatedly made sexually charged statements to his female staff members. He also shared photos of nude females with them, and described in graphic detail child pornography photographs from a proceeding before him, despite the staff members' protests. In *re Berkheimer*, 877 A.2d 579 (Pa. Ct. Jud. Disc. 2005).

A Judge of the Superior Court of the State of New York was suspended for 60 days without pay for sexually harassing a female clerk. The Judge made offensive remarks of a sexual nature to the female law clerk, and also had unwanted physical contact with the clerk on more than one occasion. In *re Seaman*, 133 N.J. 67, 627 A.2d 106 (1993).

The Judicial Conduct Board filed a formal complaint against a District Justice, and an agreement as to findings of fact and conclusions of law was submitted. Following trial, the Court of Judicial Discipline found that the Judicial Conduct Board had proven by clear and convincing evidence that the District Justice performed duties while under the influence of alcohol, had improper contact with a female clerk in his office, and used expletives in front of co-workers. Sanctions imposed included a six-month suspension without pay, and a requirement that the District Justice enter into a sobriety-monitoring contract. When he refused to comply with the latter, he was removed permanently from judicial office. In *re: District Justice Bradford Clark Timbers*, No. 3 JD 95, 674 A.2d 1217 (Pa. Ct. Jud. Dis.1996).

A Judge in Georgia was permanently barred from service after making comments involving gender bias. The Judge was disciplined twice before for inappropriate comments. The third instance involved a custody hearing in which the Judge refused to give custody to the petitioning mother because she was living with a male out of wedlock. The Judge also quoted verses from the Bible, and made comments about the appearance of a female witness. *Matter of Inquiry Concerning a Judge, No. 1496, 261 Ga. 537, 407 S.E.2d 743 (1991).*

The Judicial Conduct Board filed a formal complaint against a Judge alleging sexual harassment of a litigant, police officers, and employees. The charge also included the use of court employees for election purposes. The Court concluded that the Board had offered clear and convincing evidence in support of the claim of sexual harassment on one of the charges, and a sanction of severe reprimand was imposed. *In re: Richard D. Cicchetti, Former Judge, No. 2 JD 96, 697 A.2d 297 (Pa. Ct. Jud. Disc. 1997).*

Reprimands for Race and Ethnic Bias

A Florida Judge was reprimanded for stating at a hearing, “Now, you can throw your Italian temper around in the bars but you don’t throw it around in my courtroom. I’m just as Irish as you are Dago.” *In re Carr, 593 So.2d 1044, 1045 (Fla. 1992).*

A New York Family Court Judge was removed from office for conduct including making racially charged comments on two occasions. The Court found that this pattern of conduct created the appearance of an unfair system for litigants, and damaged public confidence in the judiciary. *In re Esworthy, 568 N.E. 2d 1195, 1196 (N.Y. 1991).*

Disciplinary Cases (cont.)

A California Judge's repeated use of racial slurs was found to have violated the state ethics code, even though most of the remarks were made during in-chambers conferences, and not in open court. *In re Stevens*, 6445 P. 2d 99, 100 (Cal. 1982).

A former Pennsylvania Magisterial District Judge was reprimanded for making racially and ethnically derogatory statements about minority members of the community in the presence of his staff. He also was reprimanded for his practice of publically criticizing his female staff members while using derogatory and demeaning language. *In re Brown*, 907 A.2d 684 (Pa. Ct. Jud. Disc. 2006).

A Special Assistant County Attorney in Minnesota received a private admonition for submitting a Motion in Limine to the Court in which she asked the Court to prohibit the defense from hiring a person of color to help in representing the Defendant. The request resulted from a conversation between the Special Assistant County Attorney and the Defense Attorney in which race was discussed as an issue in the case. The Defendant was African American and he was charged with robbing a Caucasian couple. The Special Assistant County Attorney filed the motion to prevent the defense from hiring an attorney of color "for the sole purpose of playing upon the emotions of the jury." *In re Charges of Unprofessional Conduct Contained in Panel File 98-26*, 597 N.W.2d 563, 566 (Minn. 1999).

Reprimand for Religious Bias

A Pennsylvania Judge was removed from office for favoring persons appearing before him based on their religious beliefs. The evidence established that the Judge would pass out cards with religious poems on them to litigants whom he believed would accept the message, and on one occasion, he left the bench and physically embraced a Defendant as “brother in Christ.” In *Judicial Inquiry & Review Board v. Fink*, 532 A. 2d 358, 368 (Pa. 1987).

Reprimand for Socio-economic Bias

A Wisconsin Judge was publicly reprimanded by the Wisconsin Supreme Court for his intemperate expression of personal views concerning the character of a person who was not before him and for statements in his letter of apology that manifested a bias on the basis of socio-economic status. In *the Matter of Michelson*, 591 N.W.2d 843 (1999).

Reprimand for Failure to Intervene

A concurring opinion, noting the need for intervention by the trial court in response to counsel’s egregious gender bias, observed: “A judge should be vigilant in maintaining the integrity of the judicial system by putting a stop to an attorney’s misconduct in a manner that lets the attorney know the remarks or conduct, or both, will not be tolerated.” In *Vitko v. Vitko*, 524 N.W.2d 102, 105 (N. Dak. 1994).

Acknowledgments

We acknowledge the National Center for State Courts (NCSC) for allowing us to adapt their guide for use in Pennsylvania courts. Within that resource, the NCSC acknowledged the assistance of many states whom we would like to thank as well: California, Georgia, Kentucky, Massachusetts, Michigan, New Mexico, New York, Texas, and West Virginia. Each of these states has produced a guide or handbook designed to assist judicial officers, attorneys, court personnel and the public in developing a deeper understanding of, and sensitivity to, the issue of fair treatment for all within their state justice systems.

We are grateful to the Chief Justice of the Supreme Court of Pennsylvania, Ronald D. Castille, and his colleagues on the Court, for their support of this project and the Interbranch Commission in general. We also would like to thank our Executive Director, Lisette McCormick, Esq., and her staff, Christine Kalinik, Rebecca Olds and Carey Cummings, Esq.; our Committee members, Hon. Doris Smith-Ribner, Samuel Yun, Esq., and Kathleen Wilkinson, Esq.; the Administrative Office of Pennsylvania Courts, especially the Court Administrator of Pennsylvania, Zygmunt Pines, and the Director of Human Resources, David Kutz; and our colleague, Anna Venturini, Esq., for their invaluable assistance in developing and reviewing this handbook.

Resources

Supreme Court of Pennsylvania

The Pennsylvania Supreme Court Committee on Racial and Gender Bias in the Justice System, Final Report (March 2003), available at www.pacourts.us/NR/rdonlyres/EC162941-F233-4FC6-9247-54BFE3D2840D/0/FinalReport.pdf

The Unified Judicial System of Pennsylvania Policy on Non-Discrimination and Equal Employment Opportunity, available at www.pacourts.us/NR/rdonlyres/88FE8EE3-B5C7-4E35-8BB6-ABFC298D42B6/0/312jad1attach.pdf

The National Consortium for Racial and Ethnic Fairness in the Courts

www.consortiumonline.net/index.html

The National Center for State Courts

www.ncsconline.org

The NCSC Race and Ethnic Fairness Initiative includes a link to an electronic database of the main findings and recommendations of the various commissions and task forces established by state judicial branches to investigate and improve racial and ethnic fairness in their courts.

See: www.ncsconline.org/WC/CourTopics/ResourceCenter.asp?id=1

The NCSC CourTopics Database provides a wealth of information on fairness issues, including resource guides, frequently asked questions, and other publications.

See: www.ncsconline.org/WC/CourTopics/topiclisting.asp

Racial Fairness Online Resources

http://www.ncsconline.org/Projects_Initiatives/RaceEthnicFairness/index.htm

- Race and Gender Fairness in the Courts: Task Force, Commission, and Committee Reports
- Combating Racial Bias in the Justice System Frequently Asked Questions
- Combating Bias in the Courts: Resource Guide
- Best or Promising Practices for Combating Bias in the Courts: Reference List
- Diversity Resource Guide
- Racial Profiling Resource Guide

Gender Fairness Online Resources

www.ncsconline.org/wc/courttopics/ResourceGuide.asp?topic=GenFai

- Gender Bias Resource Guide
- Gender Bias Frequently Asked Questions
- Best or Promising Practices for Combating Bias in the Courts: Reference List
- Combating Bias in the Courts: Resource Guide
- Race and Gender Fairness in the Courts: Task Force, Commission, and Committee Reports





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for Gender, Racial and Ethnic Fairness**

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