

RESOURCE GUIDE
ELIMINATION OF BIAS 101
Thomas Jefferson School of Law
Rupa G. Singh and Lea Fields-Bernard

A. RULES

1. ABA Model Rules of Professional Conduct

Rule 6.2: Accepting Appointments

A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:

- (a) representing the client is likely to result in violation of the Rules of Professional Conduct or other law;
- (b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
- (c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer's ability to represent the client.

Rule 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (d) engage in conduct that is prejudicial to the administration of justice;
- (e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or
- (f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

2. California Rules of Professional Conduct

Rule 2-400: Prohibited Discriminatory Conduct in a Law Practice

In the management or operation of a law practice, a member shall not unlawfully discriminate or knowingly permit unlawful discrimination on the basis of race, national origin, sex, sexual orientation, religion, age or disability in: (1) hiring, promoting, discharging, or otherwise determining the conditions of employment of any person; or (2) accepting or terminating representation of any client.

3. California Code of Civil Procedure

Section 231.5: A party may not use a peremptory challenge to remove a prospective juror on the basis of an assumption that the prospective juror is biased merely because of his or her race, color, religion, sex, national origin, sexual orientation, or similar grounds.

4. California Rules of Court

Rule 10.611: Nondiscrimination in court appointments

Each court should select attorneys, arbitrators, mediators, referees, masters, receivers, and other persons appointed by the court on the basis of merit. No court may discriminate in such selection on the basis of gender, race, ethnicity, disability, sexual orientation, or age.

Rule 10.612: Use of gender-neutral language

Each court must use gender-neutral language in all new local rules, forms, and documents and must review and revise those now in use to ensure that they are written in gender-neutral language.

5. California Rules of Court, Standards of Judicial Administration

Standard 10.20: Court’s duty to prohibit bias (in relevant part)

(a) General. To preserve the integrity and impartiality of the judicial system, each judge should:

- (1) *Ensure fairness.* Ensure that courtroom proceedings are conducted in a manner that is fair and impartial to all of the participants.
- (2) *Refrain from and prohibit biased conduct.* In all courtroom proceedings, refrain from engaging in conduct and prohibit others from engaging in conduct that exhibits bias, including but not limited to bias based on disability, gender, race, religion, ethnicity, and sexual orientation, whether that bias is directed toward counsel, court personnel, witnesses, parties, jurors, or any other participants.
- (3) *Ensure unbiased decisions.* Ensure that all orders, rulings, and decisions are based on the sound exercise of judicial discretion and the balancing of competing rights and interests and are not influenced by stereotypes or biases.

(b) Creation of local committees on bias. Each court should establish a local committee with local bar associations to assist in maintaining a courtroom environment free of bias or the appearance of bias. Courts within one or more counties may choose to form a single committee. The local committee should:

- (1) Be composed of representative members of the court community, including but not limited to judges, lawyers, court administrators, and representatives and individuals from minority, women's, and gay and lesbian bar associations and from organizations that represent persons with disabilities;
- (2) Sponsor or support educational programs designed to eliminate bias within the court and legal communities, including but not limited to bias based on disability, gender, race, religion, ethnicity, and sexual orientation; and
- (3) Develop and maintain an informal procedure for receiving complaints relating to bias in the courtroom, including but not limited to bias based on disability, gender, race, religion, ethnicity, and sexual orientation.

B. ARTICLES OF INTEREST

- 1. Ronald Chen and Jon Hanson, “Categorically Biased: The Influence of Knowledge Structures on Law and Legal Theory,” 77 S. Cal. L. Rev. 1103 (2003-2004).
- 2. Samuel L. Jackson and Stephanie L. Quinn, “Identifying and Exposing the Many Faces of Bias in the Legal Profession,” City Attorney’s Dept., Spring Conf.-Squaw Creek (May 8, 2009) (www.lawyersclubsandiego.com/associations/4937/files/Identifying.and.Exposing.The.Many.Faces.of.Bias.in.the.Legal.Profession-JacksonQuinn.pdf).
- 3. Justin D. Levinson, “Forgotten Racial Equality: Implicit Bias, Decision-making, and Misremembering,” 57 Duke L. J. 345 (2007-2008).
- 4. Ruth N. Steinholtz and Stephen P. Sharpley, “An Enlightened Approach to the Elimination of Bias in the Legal Profession,” The CLE Journal (Apr. 2004) (available through ALI-ABA).

