

# JUSTICE FOR ALL



## BIAS-FREE BEHAVIOR AND LANGUAGE IN OUR COURTS

COMMITTEE ON EQUALITY  
IN THE WEST VIRGINIA JUDICIARY

April 2004

*A Letter from the Chair of the  
Committee on Equality  
in the West Virginia Judiciary*

---

Since the 1993 creation of the West Virginia Task Force on Gender Fairness in the Courts, now the Committee on Equality in the West Virginia Judiciary, the Supreme Court of Appeals and the State's judicial officers have demonstrated their commitment to eliminating all forms of bias in our judicial system. Today, we believe that instances of bias are encountered infrequently. However, achieving the ultimate goal of a bias-free court environment requires ongoing self-examination and education.

This booklet was created to help judicial officers reexamine their own conduct and the conduct of those subject to their direction and control.

Please read the booklet carefully. Committing yourself to the principles set forth on the following pages furthers the goal of eradicating bias in our courts and bringing justice to all.

*Judge J. Lewis Marks, Jr.*

*Chair*

## RECOGNIZING BIAS

---

---

### BIAS IS...

Stereotyped thinking that leads to improper disparate treatment in the courtroom.

Devaluation of a person or their work due to prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

Placing a burden on one class of persons that is not placed on other classes.

# FAIRNESS IS THE LAW!

---

---

*A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.*

Code of Judicial Conduct, Canon 3(B)(5)

*A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others.*

Code of Judicial Conduct, Canon 3(B)(6)

## SEVEN STEPS TO BIAS-FREE BEHAVIOR

---

---

***A judge's bias-free behavior and insistence on the same from others in the courtroom are the most effective ways to eliminate biased behavior.***



**A**VOID prejudice bases upon race, gender, religion, national origin, disability, age, sexual orientation, or socioeconomic status.

- *Guard against stereotyping or allowing others to stereotype by class.*
- *Disallow derogatory terms.*



**A**DDRESS counsel, witnesses, litigants, and others in a formal manner. Use a title if possible (e.g., Doctor, Officer, Counselor).

- *Guard against addressing or allowing others to address a male attorney as “Counselor Smith,” or “Mr. Prosecutor” and then calling a female opponent by her first name, or failing to address her by her title, e.g., “Counselor Jones.”*
- *If no title is appropriate, use “Mr.” or “Ms.,” rather than first names. Use “Mrs.,” only if a woman requests it.*



**A**VOID commenting on an individual's physical appearance, even if the remark is intended to be purely complimentary. Do not call attention to body parts, hair style, dress style, or pregnancy.



**A**VOID using terms of endearment and diminutive terms.

- *Do not use terms such as “honey,” “little lady,” or “young lady,” “buddy,” or “guy.” Do not refer to men as “boys” or women as “girls.”*



**D**O NOT ALLOW the informality of chambers to foster biased behavior.



**A**VOID sexual innuendos. Off-color, racist, or ethnically-based jokes or slang should not be voiced in the courthouse.



**A**VOID unnecessary touching. Except for a handshake, touching is generally inappropriate in a professional setting.

# DEALING WITH BIAS IN YOUR COURTROOM

---

---

*Inattentiveness to issues of bias may inadvertently convey a tolerance of bias.*

Let your behavior communicate your expectation of bias-free behavior and civility both in and out of the courtroom.

Be proactive. Tell those appearing in your courtroom the type of behavior you expect.

Immediately intervene when someone crosses the line. Failure to do so will send a message that bias is “O.K.” in the courthouse.

If a person’s behavior is repeatedly or clearly offensive, sternly admonish the person, demand an apology, and warn what will happen if there is a recurrence.

# GENDER NEUTRAL LANGUAGE

---

---

*Why use gender neutral language?*

*It's the right thing to do!*

*It's in your own self-interest. Gender-specific or gender-exclusive language is genuinely disagreeable to many people.*

*Gender-neutral language is easy to learn and use.*

*Your use of gender-neutral language serves as a good example for others.*

## THREE SIMPLE RULES FOR GENDER-NEUTRAL LANGUAGE

---

---

### USE GENDER-NEUTRAL TERMS IN ALL COURT CORRESPONDENCE AND JURY INSTRUCTIONS.

#### **USE**

chair or chairperson  
members of the jury  
foreperson  
colleagues  
husband and wife  
spouse  
homemaker  
postal worker  
police officer  
firefighter  
nurse  
work-hours  
person to person

#### **NOT**

chairman  
gentlemen of the jury  
foreman  
brethren  
man and wife  
husband/wife  
housewife  
mailman  
police man  
fireman  
male nurse  
man-hours  
man to man



## REPHRASE FOR GENDER NEUTRALITY

- Avoid using “he,” “his,” or “him” if you are referring to both men and women, or if gender is unknown.  
In that case, use “he or she,” “his or hers,” or “him or her.”



## DELETE ALL UNNECESSARY GENDER-SPECIFIC PRONOUNS WHENEVER POSSIBLE.

- Replace a pronoun with a neutral article (e.g., change “his” to “the”).
- Change the singular to plural (e.g., change “her” to “their”).
- Use an adjective other than a pronoun (e.g., change “his office” to “judicial office”).
- Use “who” with or without a noun (e.g., change “If he fails to appear...” to “One who fails to appear...”).
- Repeat a noun or use a synonym for a noun (e.g., change “Each worker must fill in his form” to “Each worker must fill in the worker’s form” or “Each worker must fill in the ‘Employee Form’”).

**“Justice does not depend upon legal dialectics so much as upon the atmosphere of the courtroom, and that in the end depends primarily upon the judge.”**

**Hon. Learned Hand  
Brown v. Walter  
62 F. 2d 798, 800 (2d Cir. 1933)**



Supreme Court of Appeals of West Virginia  
Administrative Office of the Courts  
Building 1, Room E-100  
1900 Kanawha Blvd., East  
Charleston, West Virginia 25305  
(304) 558-0145  
<http://www.state.wv.us/wvsca/>

Cover Photo Credit: Tomas R. Vernon, Esq.