

Within Our Reach:

Gender, Racial and Ethnic Equality in the Courts



The Administrative Office of the Trial Court
and
The Supreme Judicial Court of Massachusetts

February 4, 2004

Dear Colleague:

Fairness and equality are bedrock principles of our constitutional democracy. Each of us must treat others with courtesy, dignity and respect at all times. Behavior manifesting bias or prejudice based on race, gender, religion, national origin, ethnicity, disability, age, sexual orientation or socioeconomic status is inimical to our justice system and will not be tolerated in the courthouse.

We are pleased to present this booklet, **Within Our Reach: Gender, Racial and Ethnic Equality in the Courts**. It was produced by the Trial Court's Gender Equality Advisory Board and Racial and Ethnic Access and Fairness Advisory Board, and updates the Court Conduct Handbook which was first issued more than a decade ago. **Within Our Reach** provides important guidelines concerning appropriate behavior for those who work in the judicial branch and for those who use our court system. It is a useful reminder of our responsibility to treat each other with dignity and respect, and we urge you to read it.

We commend the Gender Equality Advisory Board and the Racial and Ethnic Access and Fairness Advisory Board for their work on this booklet and for their continuing efforts to promote fairness and equality throughout the judicial branch.

Yours sincerely,

Margaret H. Marshall

Margaret H. Marshall
Chief Justice
Supreme Judicial Court

Robert A. Mulligan

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Chief Justice for Administration
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Trial Court of Massachusetts

YOUR RIGHTS AND RESPONSIBILITIES

**As a private citizen...
as a court employee...
as an attorney...
as a judge...**

You have the right:

- T To be treated with fairness, respect and courtesy;**
- T To expect nonbiased treatment from everyone you encounter in the legal system; and**
- T To object to biased statements regardless of who makes them.**

You have the responsibility:

- T To treat everyone with fairness, respect, and courtesy regardless of race, gender, religion, national origin, ethnicity, disability, age, sexual orientation or socioeconomic status.**

“All people are born free and equal . . .”

These introductory words form the foundation of the Constitution of the Commonwealth of Massachusetts. Article I states that “Equality under the law shall not be denied or abridged because of sex, race, color, creed or national origin.”

The Massachusetts Judiciary has a long tradition of protecting individual rights. In addition to faithfully fulfilling the duties of their professions, the judges, court employees and attorneys in our court system work hard to eliminate unlawful and unconstitutional bias. They have pursued this goal for more than a generation, and most particularly for the fifteen years that the Supreme Judicial Court and the Administrative Office of the Trial Court have spearheaded efforts to address gender, racial and ethnic bias in the courts.

Unfortunately, inappropriate language and behavior demeaning towards women and individuals of color are still too common in the courts, as they are in society at large. Despite improvements, the problem still exists and its import should not be underestimated or ignored. Although some practices may not be motivated by bias, they may nonetheless produce biased results or give the impression of bias, and must be addressed.

This booklet offers valuable guidance for eliminating gender, racial and ethnic bias and discrimination in the courts of Massachusetts. It effectuates the court’s policy of treating all people with respect and dignity, and should be a blueprint for all who work in and are served by the courts.

Further, if we are to preserve the integrity of our courts we must also work together to eliminate all inequities within the courts, such as those based on disability, sexual orientation, religion, age and socioeconomic status. This booklet is an important step toward that larger goal.

YOUR ROLE IN ELIMINATING GENDER, RACIAL AND ETHNIC BIAS

JUDGES: Judges are the most visible leaders of the court. You are in a unique position both to prevent and to eliminate biased behavior in court. You can do this by serving as a model of respectful and equal treatment of others, by rendering fair decisions, and by intervening to stop the biased behavior of others, whether the bias is intentional or unintentional.

The Code of Judicial Conduct

Canon 2 (C): A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, ethnicity, or sexual orientation.

Canon 3 (B) (5): 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, ethnicity, disability, age, sexual orientation, or socioeconomic status, and shall require court personnel and others not to do so.

(6) 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, ethnicity, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel, or others.

COURT EMPLOYEES: In interactions with the public and colleagues, court employees play a central role in promoting equality and fairness in the courts. Members of the public generally have their first and often their only experience with the court system through an interaction with an employee outside of the courtroom; for example, at the clerk's counter or on the telephone. By conveying respect and providing effective assistance to all, you help the users of the courts know and feel that they have been treated fairly and respectfully by the courts. It is equally important to communicate respect and consideration to your colleagues, creating a comfortable and welcoming workplace for all.

ATTORNEYS: As officers of the court, attorneys also play a critical role in maintaining the dignity and integrity of the judicial system. This is codified in the Rules of Professional Conduct, which prohibit lawyers from engaging in conduct manifesting bias or prejudice when appearing in a professional capacity before a tribunal (Rule 3.4). However, your contribution to a respectful and just judicial system extends beyond your conduct in a case. Fair and equal treatment of employees, litigants, and others, in and out of the courtroom, as well as your participation in relevant activities sponsored by the bar associations, also help to promote a court system which is fair for all.

MEMBERS OF THE PUBLIC: The courts are your courts. You should expect to be treated with fairness, respect and courtesy, just as you should treat everyone else with fairness, respect and courtesy. Your behavior in court can help to set a tone of respect throughout the court community.

**STEREOTYPES HAVE NO PLACE
IN OUR TREATMENT OF PEOPLE
OR IN THE HANDLING OF CASES**

Bias exists in our society, and it is sometimes difficult to overcome deeply ingrained preconceptions. We must make a sincere and honest effort to recognize unwarranted and impermissible assumptions and to prevent them from coloring our perceptions of individuals in the courtroom, our assessments of credibility, our fact finding, our decision making and our priorities.

LITIGANTS

The claims of litigants must be accorded equal respect regardless of the gender, race or ethnicity of the litigant. For instance, guard against any tendency to label female litigants as more troublesome or emotional than male litigants, or to regard cases typically brought by female litigants, such as child support enforcement, as less important than other cases. Similarly, avoid stereotypes of male litigants, for example applying different standards to assess damages for facial scarring of male and female plaintiffs. Stereotyping litigants from particular racial or ethnic groups is equally harmful. For example, it would be inappropriate to think of some groups as having a greater propensity for criminal activity or violence than other groups.

VICTIMS

Courts must take special care to treat all victims of crime with respect and sensitivity to the trauma that they have experienced. Victims of domestic violence and sexual assault must not be subjected to heightened scrutiny because of the nature of the act(s) perpetrated against them, or because of their relationship to the perpetrator. Nor should the race of victims affect their treatment or the handling and outcome of their cases.

COURT EMPLOYEES

All court employees should be accorded respect and courtesy. Do not assume that an employee's ability to assist you or level of authority is related to the employee's gender, race, or ethnicity.

ATTORNEYS

Good attorneys, regardless of gender, race or ethnicity, are zealous advocates. For instance, do not expect that women or lawyers of particular ethnicities will be more passive in their advocacy, tolerate more interruption, or respond differently to reprimands. Recognize and treat all attorneys with equal attention, respect, and courtesy.

WITNESSES

Be alert to ingrained stereotypes of women and people of color when assessing witnesses. For instance, do not assume that female witnesses are more likely than others to be irrational or unduly emotional, then disbelieve them when their actions are inconsistent with your expectations. Conversely, do not discredit men who are more emotional than you might expect men to be. The same holds true for witnesses of particular racial or ethnic groups who, for example, may be viewed as less educated or as more likely to associate with criminals. Credibility should be based on evaluation of the individual witness, not on stereotypes.

EXPERT WITNESSES

Expert witnesses must be judged on the basis of their qualifications and not their gender, race or ethnicity. Be sure that the standards for qualification as experts are unbiased.

WHAT CAN I DO?

1. ADDRESS ALL INDIVIDUALS BY LAST NAMES AND APPROPRIATE PROFESSIONAL TITLES.

- **Counselor or Attorney**
- **Mr./Ms. (Unless Miss or Mrs. are requested)**
- **Dr. or Officer or Representative/Senator**

Using first names and other informal forms of address can lead to many problems. On the one hand, when used to address women and individuals of color, and not male and/or white individuals, such informality has traditionally suggested a lack of respect. On the other hand, informal address, particularly when used in familiar tones and with personal conversation, may suggest an acquaintance with and partiality in favor of the person addressed. To avoid differential treatment or the appearance of differential treatment, address everyone in the same formal, professional manner.

2. AVOID TERMS OF ENDEARMENT AND DIMINUTIVE TERMS -- THEY DO NOT BELONG IN COURTHOUSE INTERACTIONS.

- **girl or boy (for adults)**
- **honey, sweetie, dear**
- **little lady, young lady, young man**
- **your kind, you people**

Terms of endearment and diminutive terms should not be applied to anyone in the courts. These terms can demean or offend, even if the speaker does not intend to do so. In the past, they have been used disproportionately to suggest that women or people of color have lower status or less power.

3. ADDRESS MIXED GROUPS OF WOMEN AND MEN WITH GENDER NEUTRAL OR GENDER INCLUSIVE TERMS.

- **colleagues**
- **members of the jury**
- **counselors**
- **ladies and gentlemen**

Referring to a mixed group as “brothers” or “gentlemen” implies that women are not legitimate members of the community who must be taken seriously. Avoid this or any other conversation that creates an exclusively masculine atmosphere. All persons should feel that they have access to the courts and that they are treated fairly and equally. Exclusionary expressions or terms that highlight a person’s gender undermine that goal.

4. DO NOT COMMENT ON PHYSICAL APPEARANCE.

- **physical characteristics**
- **dress style or jewelry**
- **your feelings about a person’s looks**
- **pregnancy**

Comments on physical appearance may be demeaning, putting people at a disadvantage by drawing attention to their physical traits, gender, race or ethnicity rather than the reason for their presence in the court. Remarks appropriate in a social setting often are inappropriate in a professional setting. For example, complimenting a female attorney on her appearance or drawing attention to her pregnancy while she is conducting business may undermine the way others perceive her.

**5. REFRAIN FROM BEHAVIOR OF A SEXUAL NATURE.
IT WILL NOT BE TOLERATED IN THE COURTS.**

Everyone in the courthouse must protect the dignity and integrity of the court and show respect for every other person. Sexually-suggestive comments, graphics, gestures and touching, comments on sexual orientation, and sexual advances humiliate and intimidate people, and undermine the dignity of the court. Power imbalances in the court setting can exacerbate the offense, since individuals in less powerful positions may feel unable to put a stop to the behavior. Such acts can also constitute sexual harassment punishable by law and subject harassers to serious sanctions pursuant to court policy.

**6. AVOID COMMENTS OR BEHAVIOR THAT CALL
INAPPROPRIATE ATTENTION TO ANY
INDIVIDUAL'S RACIAL OR ETHNIC GROUP.**

Similarly, jokes, comments, and behavior based upon race or ethnicity have no place in the courthouse or the administration of justice. For example, ethnic jokes and racially-based or ethnically-based name calling, whether directed at an individual or used to refer to a racial or ethnic group, can be humiliating and intimidating to those individuals or the members of those groups. Such behavior is at best insensitive and, at worst, can constitute illegal discrimination or harassment.

**7. TREAT ALL PROFESSIONALS WITH EQUAL
DIGNITY.**

Surveys have shown that women lawyers and lawyers of color are asked if they are attorneys significantly more often than white men are. At the security desk, at the counter, or in the courtroom, do not ask the professional status of a woman or person of color when you would not ask the same question of a white man. All participants in our legal system must be accorded equal and appropriate dignity and respect.

This Handbook revises the Court Conduct Handbook first published by the Supreme Judicial Court in 1990, and retains many of its original provisions. The original handbook was based on the findings of the Gender Bias Study of the Court System of Massachusetts, and was written under the direction of the Committee for Gender Equality, chaired by the Honorable Ruth I. Abrams of the Supreme Judicial Court. The handbook was written by the Task Force on Court Conduct, chaired by Maria C. Moynihan, Esq., with the Honorable Barbara A. Dortch-Okara acting as Advisor. It was completed with the assistance of Gladys Maged, Executive Director of the Committee for Gender Equality.

The current version also includes new material based on the findings of the Commission to Study Racial and Ethnic Bias in the Courts. It was updated to ensure continued relevancy. It was prepared by the Gender Equality Advisory Board to the Chief Justice for Administration and Management under the direction of Vice Chair Timothy H. Gailey, First Justice of the Chelsea Division of the District Court Department, and by the Racial and Ethnic Access and Fairness Advisory Board, under the direction of member Kay Hodge, Esq.. Former Chief Justice Barbara A. Dortch-Okara oversaw the revision process, and Lois Frankel, Coordinator for Gender Issues, provided staff assistance. Printing was made possible with educational funds of the Judicial Institute of the Administrative Office of the Trial Court.

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