

ELIMINATION OF BIAS: THE RULES AND AN ONGOING PROCESS

Richard P. Clem Continuing Legal Education
www.richardclem.com

I. Elimination of Bias: The Rules

Minnesota General Rules of Practice for the District Courts

Rule 2.02 Role of Judges

(a) Dignity. The judge shall be dignified, courteous, respectful and considerate of the lawyers, the jury and witnesses. The judge shall wear a robe at all trials and courtroom appearances. The judge shall at all times treat all lawyers, jury members, and witnesses fairly and shall not discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, sexual preference, status with regard to public assistance, disability, or age.

Rule 2.03 Role of Attorneys

(d) Non-Discrimination. Lawyers shall treat all parties, participants, other lawyers, and court personnel fairly and shall not discriminate on the basis of race, color, creed, religion, national origin, sex, marital status, sexual preference, status with regard to public assistance, disability, or age.

Minnesota Rules of Professional Conduct

RULE 8.4: MISCONDUCT

It is professional misconduct for a lawyer to:

(g) harass a person on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status in connection with a lawyer's professional activities;

(h) commit a discriminatory act prohibited by federal, state, or local statute or ordinance that reflects adversely on the lawyer's fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer's fitness as a lawyer shall be determined after consideration of all the circumstances, including:

- (1) the seriousness of the act,
- (2) whether the lawyer knew that the act was prohibited by statute or ordinance,
- (3) whether the act was part of a pattern of prohibited conduct, and
- (4) whether the act was committed in connection with the lawyer's professional activities

II. Elimination of Bias: An Ongoing Process

In 1993, The Supreme Court's Task Force on Racial Bias in the Courts released its final report. A copy of this 355-page report is available on the Court's website at the following link:

http://www.mncourts.gov/documents/0/Public/Court_Information_Office/Race_Bias_Report_Complete.pdf

Recognizing that the elimination of bias is an ongoing process, the Court also created the Implementation Committee on Multicultural Diversity and Racial Fairness in the Courts, now known as the Racial Fairness Committee. Most recently, that committee has conducted a series of community dialogue sessions to learn how the communities view racial and ethnic fairness in the Minnesota Court system. Since June 30, 2008, several community dialogue sessions have been conducted, in St. Paul, Columbia Heights, Rochester, Eagan, Chaska, and at the Dakota County Jail. Full reports of these Sessions can be found at the Racial Fairness Committee's website:

<http://www.mncourts.gov/?page=3249>

Each of these sessions had as its purpose:

Create a public forum for community members to describe their experiences and discuss ideas for advancing racial equality and fairness in the courts.

Here are excerpts from the suggestions made by participants in these sessions:

**EDUCATE AND TRAINING EMPLOYEE TO BE MORE UNDERSTANDING,
“HUMBLE” AND TOLERANT OF RACIAL AND SOCIETAL DIFFERENCES**

Along with hiring staff from diverse communities, staff should be regularly trained in appreciating and dealing with culturally diverse clients. [Eagan]

EMPLOY PEOPLE OF COLOR

The very first comment offered to the committee members [at one session] was one attendee's observation that all facilitators appeared to be Caucasians. In fact, of the 43 judges in the 10th Judicial District only one is a member of a minority race. There is one non-white law clerk and a few non-white people employed by court administration at either the district office located in Ramsey, Minnesota, or at one of the eight county government centers. [Columbia Heights]

In order to promote greater trust and comfort with the justice system, more people of color should be recruited and hired in all offices (courts, law enforcement, prosecution, public defense, probations and corrections). If this were accomplished, individuals coming to court would interact with people they identify with. Trust in the system needs to be developed among juveniles before they become “frequent flyers” and adult offenders. [Eagan]

The participants stated that in order to promote greater trust and comfort with the justice system, more people of color should be recruited and hired in all offices (courts, law enforcement, prosecution, public defense, probation and corrections). Court users want to interact with people with whom they identify. The view of the participants is that when a person of color walks into a courtroom he or she is often the only person of color in the room. This leads to a feeling that the professionals collude together to decide the outcome of the case. [Dakota County Jail]

Minority persons should be actively recruited for employment within the judicial system. [Columbia Heights]

The judicial system needs to have persons employed within the system to specifically address minority issues. [Columbia Heights]

More diversity in staff, attorneys, guardians ad litem [Chaska]

We need to move in the direction of the system “players” reflecting the courtroom population [Chaska]

APPOINT MORE MINORITY JUDGES

The consensus among the participants is that the court system is racially unfair. In addition to hiring a more diverse workforce (as addressed above), the participants felt that more diversity on the bench would also help eliminate bias. The participants perceived the lack of diversity within the court system as an example of the courts unwillingness to address issues of fairness. The hope of the participants is that a more diverse bench, in conjunction with other community leaders, will be able to influence government officials to begin improving the court’s diversity. [Dakota County Jail]

IMPROVE ACCESS WITH PUBLIC TRANSPORTATION TO COURT FACILITIES-COURT, PROBATION

Public transportation to court facilities, probation agents and detention facilities was seen as problematic in making it to court hearings, reporting to probation offices and going to and leaving county correctional/ detention facilities. At least with regard to Community Correction offices, providing neighborhood reporting and testing offices could serve to reduce probation revocation hearings for failure to make timely contact with probation agents. [Eagan]

A poor public transportation system in Dakota County makes it difficult for people to make it to hearings and meetings at court facilities and probation and detention locations. Another issue that worsens this problem is that forty percent of the Dakota County jail population are not Dakota County residents. Many of the participants shared that they had missed court hearings because they had no way to get to the Dakota County facility.[Dakota County Jail]

AFFORDABILITY OF COURTS

The cost of the justice system is often beyond the means of the minority client. The need to raise revenue to fund justice system programs is all too often falling on defendants and their families in the form of fees, surcharges, assessments and fines. Often defendants get into the repetitive cycle of failing to pay their financial obligations to the system, having a warrant issued or a drivers license suspended, being arrested, losing work time or their jobs and committing additional crimes to make ends meet. [Eagan]

STUDY BAIL SENTENCING PRACTICES TO ENSURE NON-DISPARATE IMPACT

This topic was strongly identified as an area within the court system that seems to result in the most obvious form of bias. The participants shared their own numerous experiences which depicted this to be a serious problem in Dakota County. [Dakota County Jail]

COMMUNITY AND/OR SCHOOL LIAISON OFFICERS

Concerns were expressed about the language barriers that exist between Somali parents and their children, the result of the children having a better understanding and being more fluent in the English language than their parents. Parents indicated they often times feel left out or ignored when their children have interactions with law enforcement and because they do not always understand what is being said, they feel they are unable to adequately advocate for their children.

A community liaison officer would be helpful in an effort to bridge this gap.

Similar issues were also expressed regarding the school system. It was suggested that in addition to a school liaison officer, it would be helpful for teachers and schools to be educated on the Somali culture to have a better understanding of Somali students and their backgrounds and perspectives.

Concerns were voiced within one small group that there is also inadequate orientation and introductory training for the largely refugee population regarding coming to America. [Rochester]

EDUCATION AND COMMUNITY OUTREACH

All small groups expressed a need for education within the Somali community about the laws and the justice system in general. Concerns were voiced that many in the Somali community lack the education and knowledge about what is legal and what is illegal and feel that with an education about the legal system, they could stop problems before they arise.

It was suggested that one venue in which to provide this training would be the cable TV channel where the Somali community currently airs programs nightly. It would be most beneficial to have

a variety of members from the justice community provide this education – law enforcement, public defenders, prosecutors and judges. [Rochester]

Scholarships should be offered to students who want to pursue equal justice. There should be outreach efforts to international student organizations. [Columbia Heights]

The court needs to be re-organized to encourage greater multi-cultural acceptance. The judicial system needs to develop contact people with the various communities. [Columbia Heights]

Social service programs and churches can assist in outreach efforts. [Columbia Heights]

The judicial system needs to do a better job of disseminating information. Traditional media outlets don't work with minority populations. Minority newspapers, church bulletins, outreach to community centers and ethnic organizations would be more effective. [Columbia Heights]

IMMIGRATION

There were many comments about the unfairness of the immigration system. While immigration law is governed at the federal level, it has frequent interplay with persons in state court. There is a disconnect between the things that happen in our state courts and the consequences that flow from a federal immigration deportation proceeding. [Columbia Heights]

The legal system needs to do a better job of educating judges, staff, prosecutors, defense and others about matters relating to immigration and deportation. It has an obligation to inform and educate both the public as well as individual defendants on these issues. [Columbia Heights]

Additional training about the impacts of immigration matters could be developed and offered to members of the bench and bar. The judicial system doesn't recognize the problems that are faced constantly by a non-citizen. [Columbia Heights]

It was suggested that the district court judges should write a letter to immigration court judges explaining that their actions affect perceptions in the state court and this dialogue should reach across the federal/state court line of division. [Columbia Heights]

Concern was expressed about the unfairness of returning a person to the country of their birth, from which they may have emigrated many years earlier, or even as a child, simply because of a relatively minor criminal conviction, making what appears to be a very reasonable plea negotiation into an extremely harsh consequence. The criminal justice system should take these extra-judicial sanctions into account when making prosecutorial, defense and judicial determinations. [Columbia Heights]

RACIAL PROFILING

Many comments were received from non-white attendees indicating their belief that police make traffic stops of minority individuals more readily than of white drivers. One person stated that he was faced with the decision to either just pay the fine or lose time from his work in order to contest a ticket for a burned out taillight. He stated that he felt that if he'd been a white driver with a burned out taillight (unaware that it was needing replacement) he would have been let go by the police officer with just a warning.

Another person spoke of loaning a car with a broken taillight to a white female for two years. She was never stopped by law enforcement. He then loaned this vehicle to an African male. That very day the man was pulled over for a traffic stop.

A white male attendee stated that he's had friends (persons of color) who have been stopped in Columbia Heights for no apparent reason. Another person stated that the random checks at the airport are "difficult to stomach." One person expressed the view that it's the entire American system, not just the judicial system.

One man stated that he and friends (all immigrants) were playing soccer at a local public park. The police came and shut down the soccer game stating they had not completed the required field registration and paid the permit fee. No registration or fees were required for the non-immigrants playing basketball on courts in the same park near the soccer field.

Some people raised the issue of whether there is in fact one system of justice. Rather it seems there is street justice versus courtroom justice. It appears that police have their own version of justice as demonstrated by racial profiling matters. Is there any accountability of police? Being charged, even if the charges are later dismissed, has significant consequences to individuals, families and communities. [Columbia Heights]

LANGUAGE BARRIERS AND CULTURAL UNDERSTANDING

One attendee commented that in cross cultural matters there is often a need not only for a language interpreter, but also for a "cultural broker" to provide assistance in the translation of the differing views and beliefs of the parties. For example, in the predominant American culture, it is felt that a person who is speaking the truth looks into the eyes of the listener when speaking. This is contrasted by the views of several minority groups in which the cultural rules state that it is disrespectful to look directly into another person's eyes as sustained eye contact signifies contempt or confrontation. [Columbia Heights]

There is a need for greater recognition about the burden of interpreting. It isn't solely a courtroom need. There is a need from more help at court administration counters; we need greater sensitivity to language barriers. It would help if people were allowed to schedule or request an interpreter at the counter and not just have to rely on family and friends. In response to a question about whether there is bilingual staff it was stated that there is one Spanish speaking person employed in Anoka. [Columbia Heights]

It is necessary to critically review what the judicial system is doing to provide understandable written documents and to provide interpreter services beyond its current scope of courtroom services. [Columbia Heights]

Having interpreters available is important [Chaska]

The courts need to increase its number of bilingual staff. [Columbia Heights]

Materials on the court's websites should be translated. [Columbia Heights]

It would be helpful to have interpreters available for court administrations in blocks of time, such as every Monday from 2-4 p.m. having a Spanish language interpreter available, every Wednesday from 10-12 p.m. having an Arabic interpreter available, etc. [Columbia Heights]

GENERAL IMPROVEMENTS TO INTER-CULTURAL RELATIONS

Many suggestions spoke to improvements of race relations in society at large as well as within the judicial system. One person stated that high school age people should be sensitized to racial issues. [Columbia Heights]

GENERAL IMPROVEMENTS TO ADMINISTRATION OF JUSTICE

Citizen described feeling "proud of the American system", but recognized that lack of resources is a weakness and results in "unfairness". [Chaska]

There is a need for greater understanding that regardless of race, people are scared and apprehensive about going to court. They don't know what to expect. [Columbia Heights]

If you are arrested and found innocent, should be a way to remove it. [Chaska]

Important for judge to take time, so participants feel like they have been heard. [Chaska]

Judge could use more time to make decisions [Chaska]

Need more resources in the justice system. Need more time spent on cases. Cases are at risk, because public defenders do not have enough time. Legislature needs to recognize they need to designate funds for the justice system. [Chaska]

The most important issue concerning fairness may be the shortage of public defenders. [Columbia Heights]

Some attendees expressed a view that public defenders should make greater efforts to know their clients as individuals rather than "just as a number." [Columbia Heights]

Continue to promote Self-Help Center, interpreters, timely access to justice [Chaska]

Citizen suggested that court could use more citizen volunteers like “guardians” for children [Chaska]

Legislative changes that could be made to remove small or menial items (ex. barking dog and traffic charges) from the court calendar and workload, which would allow the court more time to focus on larger and higher priority issues. [Chaska]

The process and policies concerning expungement of criminal records needs review. [Columbia Heights]

One facilitator believed the most important single step we could take is to communicate and take any other actions that would increase the funding of public defenders in the State of Minnesota. This addresses many of issues raised about racial unfairness, economic unfairness, immigration awareness, as well as other issues relating to a criminal defendant being able to understand his or her individual rights and be able to act accordingly. [Columbia Heights]

The judicial system should continue to look for ways to create fairness in the civil litigation arena as well. This certainly involves self help services that are provided and could be expanded. It also involves considering the so-called “Civil Gideon” issue of having public defenders appointed in these matters, or at least expanding pro bono representation. [Columbia Heights]

Efforts need to be taken to raise the comfort level for people in court proceedings – to decrease apprehension and fear of the process. [Columbia Heights]

In his comments Pastor Kim noted there are four types of justice: 1) retributive, 2) procedural, 3) restorative and 4) distributive. All of these require fairness. The American criminal justice system is an example of retributive justice. [Columbia Heights]

We need to recognize issues of fairness based on disparities of wealth, economics, etc. How do we level the playing field? [Columbia Heights]

The issue of criminal records and their accuracy was raised. It was also discussed that there are problems relating to expungement as these records prevent people from getting employment. [Columbia Heights]