

# **GUIDELINES FOR PRACTICING GENDER NEUTRAL COURTROOM PROCEDURES**

*Approved by the*

**The Texas Supreme Court**

**By: The Gender Bias Reform Implementation Committee**

Based on findings and recommendations of

**The Supreme Court of Texas**

**Gender Bias Task Force**

**PUBLISHED April, 2004**

## **DEDICATION**

This guidebook is gratefully dedicated to the Supreme Court of Texas and the Texas Court of Criminal Appeals, whose recognition of the need for guidelines to provide for equal access to the halls of justice without regard to gender or race, is appreciated by the men and women of the State of Texas.

## **SPECIAL THANKS**

To the Texas Bar Foundation for their support and participation in the funding of this educational project.

## INTRODUCTION

The Gender Bias Task Force was commissioned by the Texas Supreme Court to identify bias and implement strategies to bring about gender fairness in the Texas Judicial System and practice of law.

The Gender Bias Task Force, created by the Supreme Court of Texas, discovered after a two-and-one-half year study, that many Texas women and men experience discriminatory or inequitable treatment in the Texas judicial system simply because of their sex.

Much of the gender bias documented by the Task Force occurs in the courtroom – in the exchanges among judges, attorneys, litigants, court personnel, and witnesses.

### **For example, the Task Force made the following findings:**

- Nine out of ten female law professionals responding to a State Bar survey reported being the target of at least one incident of gender discrimination in the courtroom during the preceding three years.
- Women litigants often experience hostile, demeaning, or condescending treatment from attorneys and sometimes from judges.
- Judges rarely reprimand counsel or court personnel whose behavior or comments exhibit gender bias.
- Gender stereotypes and gender-biased treatment toward litigants and counsel of both sexes have a negative impact on the litigation process and may affect case outcome.
- Discriminatory treatment of attorneys affects their credibility and may have serious consequences on their ability to advocate effectively for clients.

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## RECOGNIZING GENDER BIAS

One of the most striking findings of the Task Force was the significant gap between the perceptions of men and women concerning the extent of gender fairness. Although a majority of male attorneys and judges surveyed by the Task Force believed that bias against women does exist, most felt that it exists in only a few areas and involves a few individuals. In contrast, more than half of the women respondents indicated that bias against female litigants not only exists, but that it is widespread. Most women also said gender bias is subtle and hard to detect rather than readily apparent.

Gender bias can be subtle and unintentional. This guide is designed to help judges, attorneys and court personnel identify gender fairness in our courts. Gender-neutral courts will promote “equal justice under law.” Review the list on the next page and see if you find yourself saying,

**“THAT’S NOT GENDER BIAS, IS IT?”**

**Do You See Yourself Here?****Have you ever:**

- Told an off-color joke in chambers?
- Remarked to a female attorney that her family commitments might interfere with her responsibilities to the court or her client?
- Hesitated to award a father primary child custody or given a smaller support order if the paying spouse is the mother primarily because of her gender?
- Called a female lawyer “dear,” “honey,” “sweetie,” “sweet-heart” or “darling”? How about “young lady,” “missy,” “little lady,” “little miss”, “lady lawyer” or “Miss America”?  
Expressed surprise that a woman would appear in court late in her pregnancy?
- Called a woman by her first name but addressed a man as “Mister so-and-so”?
- Referred to a female criminal defendant as a “bimbo”?
- Treated a female criminal defendant with more leniency just because she is a female?
- Made remarks about a woman’s physical appearance, attractiveness, or unattractiveness, either to her face or behind her back? Allowed your court staff to do this? ...  
Does “nice legs” ring a bell?

**You're saying "Not Me!" Right?****Well, Consider This:**

The facade of the United States Supreme Court Building concisely expresses the mission of the nation's courts:

**Equal Justice Under Law.**

**This abiding rule is graphically portrayed by the figure of Themis – blind justice holding scales in balance.**

*Gender bias may be defined as the predisposition or tendency to think about and behave toward people mainly on the basis of their sex.*

The goals of the Task Force and the Gender Bias Reform Implementation Committee include identifying gender biased practices and helping the legal profession move towards a universal practice of gender fairness. The first step is to identify all the practices that fit the definitions of gender bias.

*Gender bias may include the following:*

**① STEREOTYPED THINKING THAT LEADS TO DISPARATE TREATMENT IN THE COURTROOM**

- Fathers denied custody because judges do not believe men can or should be primary caretakers
- Mothers denied custody because they work outside the home
- Male criminal defendants given stiffer sentences than female criminal defendants for the same crime
- Women attorneys considered “too tough” for behavior praised as zealous advocacy when exhibited by male attorneys
- Women seated at counsel table presumed to be legal assistants or secretaries rather than attorneys
- Female court personnel assumed to have no authority or ability to handle matters presented to them

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**② DEVALUATION OF WOMEN AND WOMEN'S WORK**

- Undervaluing the work women perform as homemakers and caregivers for children and the elderly in civil damage suits and in property division upon divorce
- Credibility of women litigants, witnesses and lawyers discounted solely on the basis of their sex
- Tolerating terms of endearment or less than respectful forms of address toward female counsel, witnesses or court personnel which convey that women attorneys, litigants, witnesses and court personnel have a lower status than their male counterparts

**③ PLACING A BURDEN ON ONE SEX THAT IS NOT PLACED ON THE OTHER**

- Holding women attorneys to higher standards than their male counterparts; assuming competence on the part of male attorneys but expecting female attorneys to prove their ability
- Expecting more credentials or greater qualifications before qualifying women as expert witnesses than those expected for men in the same profession

## HOW GENDER BIAS IS MANIFESTED IN THE COURTROOM

**AS TO LITIGANTS:** The Task Force found that women litigants often experience hostile, demeaning or condescending treatment in the courtroom, and that male litigants are negatively affected by gender stereotypes both in the family law system and in the criminal justice system.

- Calling female litigants by first names while addressing male litigants by title (Mr., Dr., Professor)
- Making condescending references to women's roles, such as referring to the litigant as "just a housewife"
- Expressing surprise upon hearing that a father is seeking custody of his child

**In a gender neutral court, the claims of men and women litigants are considered equally legitimate and are treated accordingly. A gender neutral court requires that courts strive to free the litigation process from predetermined assumptions regarding the relative roles and attributes of men and women.**

**AS TO DOMESTIC VIOLENCE AND SEXUAL ASSAULT VICTIMS:** The Task Force learned that domestic violence and sexual assault cases present special gender fairness problems. **Gender biased behavior may include:**

- Viewing domestic violence and sexual assault as less serious than other criminal acts
- Minimizing victim's experiences, such as assuming that acquaintance rape is less traumatic than "stranger rape"

- Questioning the credibility of female crime victims in ways that the credibility of male crime victims is not questioned
- Blaming victims for causing the abuse or assault

**In a gender neutral court, special care is taken to treat all victims of crime with respect and sensitivity to the trauma they have experienced. Victims of domestic violence and sexual assault must not be subjected to unjust scrutiny because of the nature of the act(s) perpetrated against them. Their testimony is no less credible because the alleged acts are sexual or occurred in a domestic context.**

**AS TO COURT PERSONNEL:** Gender bias in the treatment of court personnel may include:

- Assuming that a female clerk is subordinate to a male clerk
- Addressing female court personnel by terms of endearment or diminutives

**In a gender neutral court, court personnel are viewed as providing valuable service to everyone using the court and are accorded respect and courtesy. It is unfair to assume that employees' authority or ability to assist is related to their gender.**

**AS TO LAWYERS:** The Task Force heard of numerous incidents in which women attorneys were treated with rudeness, condescension or contempt. Treating male and female attorneys differently solely because of gender is not only unfair to them – it can

undermine their credibility and may have serious consequences on their ability to be effective advocates for clients. This disparate treatment undermines the justice system's goal of providing equal justice for all. Treatment that can sabotage the goal of fairness includes:

- Referring to female attorneys by diminutives (honey, sweetie, little lady, etc.) or first names while addressing male attorneys as Mr. (Last Name)
- Remarking on the attractiveness or attire of female attorneys
- Looking to male attorneys to provide information to the court and ignoring female attorneys
- Failing to recognize and respond to women lawyers to the same extent and in the same manner that male lawyers are responded to and recognized

**In a gender neutral court, the judge does not engage in this gender-biased behavior or tolerate it from attorneys or court personnel. Good attorneys, regardless of gender, are seen as competent advocates. Women attorneys in a gender-neutral court are not expected to be more passive in their advocacy or more tolerant of interruption or reprimands than men.**

**AS TO WITNESSES:** The Task Force found that male and female witnesses often experienced disparate treatment. Imagine being summoned into court for the sole reason that you have information important to a case, and then being treated in a hostile, demeaning, or condescending manner! Such behavior may include:

- Treating women in such a way as to indicate that their opinions or statements are unimportant, irrational or unduly emotional
- Referring to female witnesses by first names, terms of endearment, or diminutives
- Addressing female expert witnesses as Miss/Mrs./Ms. rather than by an earned title, such as Doctor/Professor that denotes an area of expertise

**In a gender neutral court, credibility of witnesses is judged by the same standard for women and for men. To promote fairness in the courtroom the court, court personnel and attorneys should avoid treating witnesses in a way that leads the jury to factor gender into their evaluation of witness credibility. Treatment of female or male witnesses that suggests that they are not worthy of belief solely because of their gender thwarts the goal of gender fairness. In a gender-neutral court, expert witnesses are judged on the basis of their qualifications and not their gender. Sometimes attorneys will explain that referring to witnesses in ways that undermine their credibility is nothing more than a trial tactic. However, trial tactics based on or exploiting gender bias are not tolerated in a gender-neutral court.**

**AS TO PEOPLE FROM DIVERSE COMMUNITIES:** A court sensitive to “equal justice under law” treats everyone entering the court with dignity and respect, regardless of gender, racial or ethnic background, disability, sexual orientation, religion, age, ability to speak English or any other distinguishing characteristics.

**A gender-neutral court is careful not to make assumptions about people’s roles or identities in the courts based on any of these factors.**

## SOME SUGGESTED WAYS TO AVOID GENDER BIAS

### ① Address all persons in the courtroom by last names and appropriate title.

- ◆ Counsel or attorney
- ◆ Mr./Ms. (unless Miss or Mrs. are requested)
- ◆ Dr. or Officer or Representative/Senator
- ◆ Jurors or Juror
- ◆ Presiding Juror

To avoid differential treatment or even the appearance of differential treatment, address both women and men in the same formal or professional manner. Always use a consistent form of address such as “Attorney X” and “Attorney Y.” In private conversation or social settings, first names and other informal address may convey a friendly or casual attitude; in the public settings where courthouse business takes place they suggest a lack of respect.

### ② Address mixed groups of women and men with gender neutral or gender inclusive terms.

- ◆ Colleagues
- ◆ Members of the jury
- ◆ Members of the bar
- ◆ Counselors
- ◆ Ladies and gentlemen

Conversation that creates an exclusively masculine or feminine atmosphere should be avoided so that everyone is included in the justice system.

**③ Use gender neutral language in all court correspondence and jury instructions.**

Use “Dear Counsel” when not using the individual’s name and where appropriate include reference to he/she, him/her. The plural (witnesses/they) is helpful.

**④ Avoid terms of endearment and diminutive terms in courthouse interaction, as such terms imply a lower status.**

- ◆ honey, sweetie, dear, doll, babe
- ◆ little lady, pretty girl, young lady, lady lawyer (in reference to adult women)
- ◆ boy, son (in reference to adult men)

These terms can demean or offend even if the speaker does not intend to do so. Courtroom protocol requires the highest degree of professionalism and courtesy.

**⑤ Avoid comments on or references to physical appearance, such as:**

- ◆ body parts
- ◆ pregnancy
- ◆ dress style
- ◆ hair style

Comments on physical appearance can be seen as demeaning and put people at a disadvantage by drawing attention to their gender rather than the reason for their presence in the court. Comments 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 how others perceive her. Avoid using opposing counsel's gender as a litigation tactic either inside or outside the courtroom.

**⑥ Jokes and remarks with sexual content, or jokes and remarks that play on sexual stereotypes, are out of place in the courthouse setting.**

Everyone in the courthouse must protect the dignity and integrity of the court and show respect for every other person. Sexual, racial, and ethnic jokes and remarks are improper in the courthouse and in the administration of justice.

**⑦ Avoid comments, gestures and touching that can offend others or make them uncomfortable.**

Because touching people may offend them, it should be avoided. They may not feel free to interrupt or complain, especially when the person doing the touching is in a position of authority, such as a supervisor touching an employee or a court employee touching a litigant, witness, juror, or attorney.

Sexually suggestive comments, gestures, and touching, as well as sexual advances, undermine the dignity of the court. Such acts may constitute sexual harassment which is prohibited by law and subject to sanction pursuant to court policy. Harassment to provoke an emotional response is inappropriate under all circumstances.

**8 Treat women and men with dignity, respect and attentiveness, mindful of their professional accomplishments.**

The Task Force found that women lawyers are much more likely than men to be asked if they are attorneys. Do not inquire of a woman regarding her professional status when you would not ask the same question of a man. To avoid this, use a question that applies to everyone, such as, **“Will all attorneys please identify themselves to the court?”**

## RESPONSIBILITY FOR ELIMINATING GENDER BIAS IN THE COURTROOM

It is up to judges, attorneys, and court personnel to work together to eliminate gender bias and to promote fairness.

**AS JUDGES:** Judges play a key role in eliminating bias from the judicial system. A judge can establish an environment that makes it clear that men and women are and will be considered equals in the eyes of the law. Judges are obligated under the Texas Code of Judicial Conduct to require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status against parties, witnesses, counsel, or others. This requirement does not preclude legitimate advocacy when any of these factors is an issue in the proceeding (see Canon 3B(7)). Judges are also obligated under the Code to require staff, court officials and others subject to the judge's direction and control to observe the standards that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties (see Canon 3C(2)). A judge's treatment of people in the court, the decisions the judge makes, and intervention in inappropriate conduct of attorneys and court personnel are of utmost importance.

**AS ATTORNEYS:** As officers of the court, attorneys have an important role in maintaining the dignity and integrity of the court. An attorney's treatment of litigants, witnesses, court personnel, and other attorneys has a significant impact on the judicial system. The Texas Disciplinary Rules of Professional Conduct specifically address "bias or prejudice based on race, color, national origin, religion, disability, age, sex or sexual orientation" in connection with an adjudicatory proceeding (see Rule 5.08). In addition, the Texas Lawyers Creed calls on all attorneys to "treat counsel, opposing parties, the Court, and members of the Court staff with courtesy and civility," and not to manifest by words or conduct bias or prejudice.

**AS COURT PERSONNEL:** Members of the public often have their first and sometimes their only experience with the court system through a court employee. By conveying respect and providing assistance to all, court personnel play an important role in eliminating bias in the administration of justice.

This Guide has been prepared based on some of the findings and recommendations of the Gender Fairness Task Force published in its Final Report in February 1994. The purpose is to provide guidance for the bench, bar and court personnel. This Guide does not set a legal standard of care or conduct, nor does it supplant the Texas Code of Judicial Conduct or the Texas Rules of Disciplinary Procedure. It is not a set of rules that lawyers may use and abuse to incite ancillary litigation or arguments over whether it has been observed.

The Supreme Court of Texas and the Court of Criminal Appeals hereby approve the Guide as part of an educational program to promote fairness in the administration of justice in Texas.

Additional copies of this handbook  
are available through the

**Texas Center for Legal Ethics and Professionalism**

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