

**Pennsylvania Interbranch Commission for Gender, Racial and  
Ethnic Fairness**

**PROPOSED AMENDMENTS TO PENNSYLVANIA  
CODE OF JUDICIAL CONDUCT**

**Pennsylvania Code of Judicial Conduct**

**Canon 3. A judge shall perform the duties of judicial office impartially and diligently.**

*B. Administrative Responsibilities.*

(5) A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so. A judge shall not retaliate, nor permit judicial employees or other persons subject to his or her direction or control to retaliate, against any person who complains about bias, prejudice, or harassment, who files a complaint upon that basis, or who cooperates with, or assists in, an investigation of such complaint. This Canon does not preclude judges from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a legal proceeding, to the judicial decision-making process or to the proper administration of justice.

(6) A judge shall require lawyers in a legal proceeding or a matter over which the judge is presiding to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others. This Canon does not preclude lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a legal proceeding.

Official Note

[1] Canons 3B(5) and 3B(6) are designed, in part, to reflect the Supreme Court of Pennsylvania Unified Judicial System of Pennsylvania Policy on Non-Discrimination

and Equal Employment Opportunity (“the Policy”).<sup>1</sup> The purpose of the Policy is “to ensure that all individuals having business with the UJS are treated in a dignified, civil, respectful, and non-discriminatory manner.”<sup>2</sup> The Policy applies to all Personnel of the System (as defined in 42 Pa.C.S.A. Section 102 as judicial officers, personal staff, administrative staff, and central staff), Related Staff (as defined in 42 Pa.C.S.A. Section 102 as all individuals employed at public expense who serve the UJS, including district attorneys, public defenders, sheriffs and other officers serving process or enforcing orders, registers of wills, prothonotaries, clerks of the courts, clerks of the orphans’ court division, coroners, jury commissioners, probation officials and the personnel of all of the foregoing), and Court Users (including, but not limited to, attorneys, applicants for employment, litigants, witnesses, jurors and volunteers).<sup>3</sup>

[2] Whether a judge’s conduct constitutes a violation of Canons 3B(5) or 3B(6) can be determined only by a review of all of the circumstances; e.g., the gravity of the acts and whether the acts are part of a pattern of prohibited conduct.

[3] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[4] The term “harassment”, as used in Canons 3B(5) and 3B(6), shall have the meaning ascribed to it in the Policy.<sup>4</sup> Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[5] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is

---

<sup>1</sup> Supreme Court of Pennsylvania Unified Judicial System of Pennsylvania Policy on Non-discrimination and Equal Employment Opportunity, 2 Pa Code §201-211

<sup>2</sup> 2 Pa Code §201

<sup>3</sup> Id

<sup>4</sup> 2 Pa Code §202

unwelcome. For purposes of Canons 3B(5) and 3B(6), sexual harassment does not refer to socially acceptable behavior or occasional compliments of a socially acceptable nature. It refers to behavior that a reasonable person could and does consider unwelcome or personally offensive.

[6] Charges of retaliation are viewed as separate and distinct from the original disciplinary complaint and may result in disciplinary action, even though the original harassment or discrimination complaint is dismissed.<sup>5</sup>

[7] A person “subject to a judge’s direction or control” may include, among others, a sheriff, probation officer, lawyer, witness, party or court crier.

[8] Canon 2A of the Code of Judicial Conduct requires judges to respect and comply with the law and to conduct themselves at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary.<sup>6</sup> The requirements of Canon 2A also may apply to conduct addressed by Canons 3B(5) and 3B(6).

---

<sup>5</sup> Id.

<sup>6</sup> Code of Judicial Conduct, Pennsylvania Rules of Court, State, 2008 Edition.