



# ILLINOIS JUDICIAL BRANCH

## Bench Card: Achieving Fairness Free of Unconscious Bias – Deliberative Decision-Making

**Unconscious bias is also known as implicit bias, hidden bias, unintentional bias, and automatic bias.**

- It is a psychological process that influences decision-making outside of conscious awareness. Implicit associations form in memory through repeated exposure to group stereotypes in everyday life. These automatic associations can form in memory even if you consciously disagree with them.
- Accept that everyone carries these biases. Unnoticed, these biases affect thoughts and decisions, unless you proactively take measures to minimize their effects. One of the best strategies for combating bias is through deliberative decision-making.

### **Factors that increase the influence of unconscious bias**

- Limited capacity (time pressure, distraction, fatigue).
- Habitual, intuitive, spontaneous decisions.
- Subjective decision criteria.

### **Become aware of the existence of unconscious bias, ask yourself**

- Am I experiencing a positive or negative emotional reaction in terms of my attitude, views, or tone, knowing nothing about the case participants or matter before me?
- Am I requiring more or less from this person than I would from others?
- Am I reacting to this person based on assumptions, values, and beliefs rather than facts and evidence?
- Am I assessing or treating this person differently than I would if they belonged to a different racial, gender, socioeconomic, or social group?
- Is my decision-making process, not just the decision, the same as it would be for people of other racial, gender, socioeconomic class, or social groups?

### **Address the effects of unconscious bias**

- Use inclusive and welcoming language. Listen well. Keep an open mind. Learn about other cultures and consider how your own culture may influence your perceptions or perspective.
- Notice, challenge, and educate yourself on words or conduct that demean, intimidate, or harass an individual or group based on personal characteristics,

including race, gender, religion, ethnicity, disability, national origin, sexual orientation, age, or socioeconomic status.

- Keep track of your decisions and periodically inspect them for any pattern of bias.
- Remember that the more aware you are of the possibility of the unconscious bias, the less effect it will have on your decision making.
- Discuss with colleagues or mentors how they might handle or perceive a person or situation.

### **Reduce the influence of Unconscious Bias**

- Pay attention to your feelings.
- Rely on notes rather than on memory.
- Examine your thinking and reasoning process before committing to a decision.
- Slow down and think things through particularly when deciding under stress, pressure, distraction, cognitive overload, or when angry.
- Avoid snap judgments, gut feelings, generalizations, or making a decision based on sympathies or personal likes or dislikes.
- Identify, then correct, unsupported assumptions, stereotyping, and negative perceptions.
- Consider what evidence supports the conclusions you have drawn and challenge any unsupported assumptions.
- Before announcing your reasoning, articulate the reasoning behind your decisions to yourself to critically review your decision-making process.



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### Common Barriers to Deliberativeness for Judges

- Time pressure from heavy caseloads.
- Time pressure from complex cases.
- Time pressure from broad case types.
- Fatigue.
- Multi-tasking.
- Workplace distractions.
- Threats to safety.

### Actions to address those barriers and promote deliberative decision-making:

- Always
  - Use bench cards and checklists, even in areas of law that are well known to you; resist the temptation to feel that you've already seen this case before and know the answer.
  - Take notes to rely on later.
  - Talk to colleagues and staff for advice.
  - Delegate as many administrative tasks as possible.
  - Write out an opinion for yourself (even if a written opinion isn't required); write down your own decision-making steps.
  - Don't put more pressure on yourself than necessary; don't impose arbitrary decision deadlines on yourself; schedule another hearing or take more time to decide if you need it.

### Time Pressure

- Heavy Caseloads
  - Ask staff and case participants to provide more background information.
  - Restructure dockets to reduce inefficiencies with the schedule.
  - Communicate clearly and often with staff about workflow, schedules, and when interruptions are/aren't appropriate.
- Complex Cases
  - Be proactive in case management and scheduling to reduce roadblocks along the way.

- Set aside blocks of time for thinking and case preparation.
- Re-arrange the schedule so there are longer blocks of time for a specific case or case type.
- Take a little time before issuing a decision.
- Consult statistics or summary information about similar cases.
- Be aware of procrastination habits.
- Broad Case Types
  - Restructure how hearings and meetings are scheduled so there are longer blocks of time for specific case types and fewer transitions between case types.
  - Ask for more material from the parties and review all pleadings.

### Fatigue

- Take care of health, sleep, work-life balance.
- Do some non-legal activities or hobbies.
- Practice mindfulness, exercise, meditate.
- Use back-up judges effectively.
- Take more breaks or recesses.
- Take time before issuing a decision.

### Multi-tasking & Workplace Distractions

- When thinking through a case, close doors, close email, don't take phone calls, and move to a different workspace with fewer interruptions.
- Map out the week's or month's schedule in advance and set aside specific time for the kinds of tasks that often feel rushed.
- Work with staff and security to prevent disruptions.

### Threats to Safety

- Reevaluate safety plans and make sure you feel ready in case of an emergency.
- Provide resources to self-represented litigants, lawyers, or sensitive populations in advance to prevent frustration and defuse tense situations.

ILLINOIS SUPREME COURT COMMISSION



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