

Resources for Implied Bias Presentation on 2-12-2020 to the Boone and Callaway County Bar

Opinions:

State v. Walton, 74 Mo. 270 (Mo. 1881) (jury bias-actual or implied)

State v. Rashad, 484 S.W.3d 849, 859-861 (Mo. App. E.D 2016) (concurring opinion by Van Amburg, J. on bias and *Batson* challenge).

Jones v. City of Kan. City, 569 S.W.3d 42 (Mo. App. W.D. 2019) . The opinion before a “special panel” of five judges noted in affirming the judgment against the City : “The City's equal employment opportunity and diversity manager acknowledged the risk of injecting bias in employment decisions when candidates for promotion are subjectively evaluated. Jones admitted evidence that the KCFD had not held any training concerning race discrimination or diversity in more than three years, and that the KCFD has never received training on implicit bias, while other City employees have received such training. The jury heard testimony that several KCFD fire stations are racially-segregated, and that KCFD Chief Paul Berardi was aware of complaints that African-American firefighters are retaliated against when traded into a station with all Caucasian firefighters. Witnesses testified to frequently hearing the word "n----r" and other racial slurs in the workplace. Statistical evidence demonstrated that it takes significantly more time for an African-American KCFD firefighter to be promoted than Caucasians. Jones v. City of Kan. City, 569 S.W.3d 42 (Mo. App. 2019)” Id. at 49. Note the Court rejected the challenge to the statistical evidence on implicit bias based on the *Daubert* standards.

Rules

Rule 15.05

MCLE reporting for the 2019-2020 compliance year is not available at this time. We are in the process of developing a new reporting application, which will be available later this year. Once the new system is available, we will provide notification and instructions.

IMPORTANT NOTICE: Rule 15.05 was recently revised on November 15, 2019 and INCLUDES A NEW MCLE REQUIREMENT FOR 2019-2020. <https://www.courts.mo.gov/page.jsp?id=146413>

Rule 15 requires attorneys to complete a total of 15 hours of CLE programs or activities. Of the fifteen hours of accredited programs and activities, at least three credit hours must be devoted exclusively to professionalism, substance abuse, mental health, legal or judicial ethics, or malpractice prevention, and at least one of these three credit hours must be devoted exclusively to explicit or implicit bias, diversity, inclusion or cultural competency.

Up to six hours may be completed through self-study or on-demand programs; however, **you may not satisfy the ethics or elimination of bias requirements through on-demand or self-study programs.**

Rule 2-2.3 A judge shall perform the duties of judicial office without bias.

Rule 37.048 A court professional shall perform his or her duties without bias.

Mo. Ct. COR 18.01 The manifestation of bias or prejudice in the performance of court duties impairs the fairness and impartiality of court proceedings.

Rule 4-8.4 Maintaining the integrity of the Profession—Misconduct by means that violate the Rules of Professional Conduct or other law; (g) manifest by words or conduct, in representing a client, bias or prejudice based upon race, sex, religion, national origin. See full text of Rule below.

Rule 2-4.2 Campaign Conduct of Judges and Judicial Candidates.

Mo Ct COR 18.02 The presiding judge of each circuit and each appointing authority shall establish procedures for individuals to report cases of bias.

Rule 88.07 Termination of Mediation: The mediator shall not state the reason for termination of mediating except when the termination is due to a

conflict of interest or bias on the part of the mediator, in which case another mediator may be appointed.

Rule 2-2.11 Recusal (1) The judge has a personal bias or prejudice concerning a party or a party's lawyer or knowledge of facts that are in dispute in the proceeding that would preclude the judge from being fair and impartial.

Rule 24.07 Severance. (c) The court finds the existence of a bias or discrimination against the party that requires a separate trial of the offense.

Rule 37.60 Severance : Municipal Division.

Rule 88.05 Qualifications of Mediator.

Rule 88.06 Duties of Mediator (4) disclose any interest that could result in bias.

COR 18 18.01 to 18.04 Bias or Prejudice in the Judicial System

Mo. Ct. R. Terminology "impartiality ' means absence of bias or prejudice in favor of, or against, particular parties or classes or parties, as well as maintenance of an open mind in considering issues that may come before the judge"

Instructions

Civil Instructions

Supreme Court of Missouri en banc

October 30, 2019
Effective January 1, 2020

In re: New MAI-CIVIL Instructions, Notes on Use, and Committee Comments

1. TABLE OF INSTRUCTIONS

MAI 2.00(C) JUROR BIAS – INSTRUCTION FOR USE IN ALL CASES – BEFORE JURY

(Instruction - New)
(Notes on Use - New)
(Committee Comment - New)

MAI 2.03(A) JUROR BIAS – INSTRUCTION FOR USE IN ALL CASES

(Instruction - New)
(Notes on Use - New)
(Committee Comment - New)

ORDER

1. New MAI-CIVIL Instructions, Notes on Use, and Committee Comments as listed above, having been prepared by the Committee on Jury Instructions - Civil and reviewed by the Court, are hereby adopted and approved.
2. The Instructions, Notes on Use, and Committee Comments as set forth in the specific [exhibits attached hereto](#) must be used on and after January 1, 2020, and may be used prior thereto; any such use shall not be presumed to be error.
3. It is further ordered that this order and the specific exhibits attached hereto shall be published in the South Western Reporter and the Journal of The Missouri Bar.
Day – to – Day

GEORGE W. DRAPER III
Chief Justice

Criminal Instructions:

Missouri Supreme Court Order October 30, 2019:
Separate order for changes to MAI-CR 4th 400.02, 402.01, and 402.05

<https://implicit.harvard.edu/>