

GARDEN STATE CLE LESSON PLAN

A 1.0 credit course

**FREE DOWNLOAD
LESSON PLAN AND EVALUATION**

MAINTAINING A BIAS FREE COURTROOM

With

**Hon. Paul Catanese
Presiding Judge, Municipal Court (ret.)**

And featuring

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Senior Instructor**

Program description

A critical component of maintaining public confidence in the integrity and neutrality of the judiciary is the responsibility of the judge to maintain a bias-free court room. This CLE will alert you to all the pitfalls associated with the vitally important judicial duty.

I. Introduction

- **Hon. Paul Catanese, PJMC (ret.)**

II. Social contract between the judiciary and the people of the State of NJ

- **The people of NJ will voluntarily comply with the judgments and orders of the judiciary but in exchange we expect members of the judiciary to decide cases based on 1) lawfully admitted evidence and 2) the law**
- **No politics or other influences should be involved in the decision making process in the court system.**
- **Public confidence in how cases are decided**
- **When there is a doubt that the cases are decided in this way, then there is a breakdown in society and the judiciary is not taken seriously**
- **Judges should be aware that they are on the only interaction between the judiciary and the citizens of this state – at least on the municipal court level**
- **What people see when they come to municipal court is what they think “justice” is in NJ – this is what the justice system is in NJ**
- **Judges have a heavy burden in this manner and it is important to keep in mind**
- **Judges should give the perception that cases will only be decided based on the law and evidence – it is the public’s perception and that is most important**
- **Per the 1947 New Jersey Constitution, there is no political affiliation of the judiciary**
- **Judicial training talks about conflicts and public perception – especially with regard to politics**
- **Politics become involved in the court system in different ways – political pressure of how to deal with certain cases, in administering fines, etc.**

III. Bias in the courtroom

- **This can come across in many ways**
 - **Inadvertently**
 - **Purposeful conduct**
 - **Sometimes unintentionally**
- **Very important to maintain bias free courtroom**

- **We all have biases but judiciary needs to be mindful – cannot be based on race, creed, color, ethnicity, gender, national origin**
- **Any perception of a bias can be problematic as well**
- **Guidelines for judges:**
 - **Treat each person with respect and dignity – treat each person the same**
 - **Don't draw conclusions by just looking at people**
- **Judges should reflect on their own biases in order to insure that the perception that they are not biased comes across in court**
- **People can be offended even when the judge does not intend to offend someone by what is said**
- **Judges should keep in mind the perception that is created**
- **Judges are assessing credibility when making decisions but they cannot make a decision based on ethnicity, color, gender, etc. – be sure to distinguish between what a person is saying and other things that may be influencing you**
- **Judges must separate out external factors and make decisions just based on law and facts**
- **Look for demeanor on the bench and tone of voice**
- **Not yelling, degrading, profanity**
- **Step back from stressful situation and take a break before you show stress on the bench – be able to monitor yourself**
- **Must maintain decorum and maintain your cool throughout all proceedings**
- **Judges should maintain environment of respect, integrity, and austerity in the courtroom**
- **Cannot let things get the better of you – deal with each case – treat each person with respect but when there are some people who need some additional instruction because they are not being respectful to the bench – but that does not mean that you should treat everyone that way**

IV. Dealing with the difficult attorney

- **Difficult to address as a judge**
- **Maybe judge should recuse him/herself in order to avoid such difficulties**
- **Some attorneys it is their nature and inability of how to communicate with the court**
- **Judges need to control the courtroom**

- V. Courtroom humor – when a judge tries to be funny**
- **Judges are not in a position to have interactions such as these**
 - **Need to assess whether someone would be offended – “what is everyone going to think?”**
 - **Not just on the bench – but in chambers as well – even in public – you are a public figure and people know who you are**
 - **Judges are not there to laugh and have fun – there is a job to do**
 - **Sarcasm should not be used in the courtroom – even if someone is sarcastic with you**
 - **Everyone is watching the judge in the courtroom and how you act is how everyone else will act**
- VI. Tone of voice**
- **Right tone of voice can eliminate any perception of bias**
 - **Respectful but firm in what you say – when you get wishy-washy that is when you lose control of the courtroom**
 - **Conviction in rendering your rulings – speak with confidence**
 - **Consider lowering voice as someone is getting louder and antagonistic**
 - **Give attorneys/litigants opportunity to make a record even when ruling against them**
 - **“day in court” means through the entire case – until the person leaves the courtroom and the case is done**
- VII. Body language while on the bench**
- **Looks of boredom and not paying attention – this can cause public to lose confidence**
 - **Body language is a way that people perceive the judge and the system**
 - **People should know that the judge is paying attention to each witness and everything going on in the courtroom**
 - **Courts can ask questions for clarification but it is a fine line when judges begin asking questions about the elements of the offense because judges are not prosecutors and not defense counsel**
 - **Not the role of the judge to impeach the defendant’s credibility**
 - **Judges should ask questions to clarify the facts – looking for clarification**
- VIII. Formality of the courtroom setting**
- **Critical**

- **Judges are required to wear robes and sit behind a bench for the purpose of formality**
- **Raised level of the bench**
- **“majesty of the law”**
- **When you take away from that, then there can be a perception that the decisions are not based on law and evidence**
- **Judges should look appropriately in order to represent the judiciary – put on a good appearance**
- **Avoid being “familiar” with people – no sense of familiarity with attorneys or litigants**
- **Judges should not refer to attorneys by first name – maintain courtroom decorum**
- **Familiarity means that others perceive that you are going to be treated differently – not just in open court but also in chambers**
- **Perception by the public as well as other counsel – perception of special relationship between judge and attorney(s)**

IX. Diversity of litigants/cultural biases

- **NJ is a melting pot**
- **People from all over the world are likely to come into the municipal court setting**
- **Cultural differences and therefore perceptions of justice are different**
- **In many countries the judiciary is just part of the mechanism to oppress the citizens of that country**
- **Many people come to court very nervous and very weary about the system because they are afraid that the justice system in this country is the same as the system in their own country**
- **Judges should keep this in mind and make people feel comfortable – treat them with respect and dignity – may be difficult because of language barriers**
- **Judges cannot be frustrated that people cannot speak English – or that they say that they do not speak English when they actually do**
- **Although other cultures may allow certain conduct that is criminal here, we cannot tolerate that here – make certain that people are made aware – remind people that they are in our country and they must understand that issue and that problem**
- **Court should recognize cultural differences between people when taking a plea and trying to get a factual basis – don’t get**

- frustrated – sensitive to cultural differences – may require additional instructions and time to put through plea agreement**
- **Challenge is to have a cultural sensitivity without being stereotypical**
- **Always have a certified interpreter there or use “language line” to assist – judges must assess whether people are understanding what is going on even when they say they understand**
- **Is there justice being done if the person does not understand what is going on?**
- **Consider adjourning when there is a trial and no resources regarding language differences; when there is a more minor case then a “friend” of the defendant who speaks the language may be helpful but still need to assess body language to determine whether there is a full understanding**
- **Judges should be sensitive to the fact that there are other people in the courtroom who may not need an interpreter and that they are waiting for their cases to be heard – consider announcing that interpreter cases may take a bit of time and if anyone wants to leave the courtroom during that time.... – this allows judges to focus on the defendants before them**
- **There are things that are not picked up on tape that are in the courtroom, i.e. body language, interaction between court officers – should only be court staff in the court staff area – look at perception of the public – police are part of executive branch not judiciary**

X. Sexual harassment in the courthouse

- **Training for judges when new as well as periodic follow up training**
- **Judges must be aware of these issues – must sense what is going on in courtroom and court office**
- **Insure that people are not being harassed – either within the court staff or with the public because of nature of the job**
- **The judge’s job is more than just getting on the bench – need to know what is going on**
- **Comments can be misconstrued even when trying to be complimentary**
- **Should be no comment by the court on the mode of clothing for people who come to court – not talking about professionals who are wearing a uniform or other professional clothing**

- **Judges must be sensitive to comments regarding clothing – clothing does not mean that there is a difference of how someone would be treated – everyone should be treated with respect**
- **Judges should be cognizant of their short falls and internal biases but some sessions should be videotaped in order to be able to assess perception of the public – good training tool – evaluating interactions in order to make corrections**

XI. Advice to New Judges

- **When you get on the bench you are representing the State of NJ and the judiciary and you are held to a higher standard**
- **Be fair and impartial and only be influenced by the facts and the law – if you cannot do that they you are in the wrong business and if there is anything that may interfere then you need to leave those behind**