



JUDICIAL COUNCIL OF CALIFORNIA

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 21-175

For business meeting on: November 19, 2021

Title

Judicial Branch Administration: Court's Duty to Prevent Bias

Agenda Item Type

Action Required

Effective Date

January 1, 2022

Rules, Forms, Standards, or Statutes Affected

Amend Cal. Stds. Jud. Admin., std. 10.20

Date of Report

October 1, 2021

Recommended by

Work Group to Enhance Administrative Standards Addressing Bias in Court Proceedings

Contact

Michael Etchepare, Managing Attorney
michael.etchepare@jud.ca.gov

Hon. Brad R. Hill, Cochair

Hon. Stacy Boulware Eurie, Cochair

Executive Summary

To support the integrity and impartiality of the judicial system and to promote a court environment free of bias and the appearance of bias, the Work Group to Enhance Administrative Standards Addressing Bias in Court Proceedings recommends amendments to California Standards of Judicial Administration, standard 10.20 (Court's duty to prohibit bias). The work group was appointed by Chief Justice Tani G. Cantil-Sakauye to identify improvements and propose amendments to standard 10.20. The work group was charged with ensuring that the standard reflects current law and current understandings regarding the elimination of bias.

Recommendation

The Work Group to Enhance Administrative Standards Addressing Bias in Court Proceedings recommends that the Judicial Council approve amendments to California Standards of Judicial Administration, standard 10.20 (Court's duty to prohibit bias) to ensure the standard reflects current law and understandings regarding the elimination of bias and provides a framework for courts to work with local communities to address this important issue. These include amendments to:

- Emphasize the goal for courts to prevent bias, rather than simply prohibit bias;
- More broadly define the scope of the standard and its applicability to all court interactions;
- Update the list of protected classifications enumerated in the standard;
- Define the optimal roles for local or regional bias committees, and outline contemporary considerations for the composition of those committees; and
- Ensure that court users can access information regarding how they can submit complaints about court employees and judicial officers concerning bias in court interactions.

These amendments are consistent with the work group's goal to create a framework and expectations for the elimination of bias, while also recognizing the diversity of size, demographics, needs, and viewpoints of the various legal communities in the state, and the need to allow them to develop customized approaches that will best result in the elimination of bias in court interactions.

The text of the proposed amended standard is attached at pages 15–20.

Relevant Previous Council Action

The Judicial Council first adopted a standard addressing bias in court proceedings in 1987. At that time, the council adopted a general statement on a judge's responsibility to prohibit bias as California Standards of Judicial Administration, section 1. In 1993, the council amended the standard to add a recommendation for courts to create local bias committees and adopt informal complaint resolution procedures. In 1997, the council amended the standard to specify that bias was prohibited on the basis of "disability, gender, race, religion, ethnicity, and sexual orientation."

The standard was renumbered in 2007, but has not been substantively amended since 1997. In its current form, standard 10.20 recommends that judges and courts take steps to prohibit bias on these protected classifications, and includes provisions for the creation of local committees to sponsor and support educational programs and develop and maintain an informal procedure for receiving complaints about courtroom bias.

In November 2020, the Chief Justice appointed the Work Group to Enhance Administrative Standards Addressing Bias in Court Proceedings (work group) to identify improvements and propose amendments to standard 10.20. The work group was charged with ensuring that the standard reflects current law and current understandings regarding the elimination of bias, and provided a framework for courts to work with local bar communities to address these issues. The work group was asked to report back to the Chief Justice and Judicial Council in fall 2021.

The charge asked the work group to specifically consider updates to the list of protected classifications enumerated in the standard, and to evaluate the optimal role and composition of local bias committees, considering confidentiality issues with receiving and handling complaints, existing complaint avenues, and the responsibilities for those who receive complaints. The charge recognized that while bias is separate and distinct from intentional discrimination and harassment, there is often significant overlap in the learned associations, attitudes, stereotypes,

and behaviors underlying bias, discrimination, and harassment. Accordingly, the work group was asked to consider, among other things, the recommendations of the Work Group for the Prevention of Discrimination and Harassment, appointed by the Chief Justice in October 2018, and the Rules Committee proposal to adopt rule 10.351 (Judicial branch policies on workplace conduct) of the California Rules of Court, which the Judicial Council adopted in January 2020.

The work group is cochaired by Administrative Presiding Justice Brad R. Hill, Court of Appeal, Fifth Appellate District and Judge Stacy Boulware Eurie, Superior Court of Sacramento County.¹ Many members of the work group also served on the Work Group for the Prevention of Discrimination and Harassment and the committee to develop rule 10.351.

Analysis/Rationale

The work group proposes amendments to each subdivision of standard 10.20.

Duty to prevent bias

As an overarching premise, the proposed amendment changes the title of standard 10.20 from “Court’s duty to prohibit bias” to “Court’s duty to prevent bias” and replaces all uses of “prohibit” with “prevent,” such that the standard now states that courts, judicial officers, and court employees should take actions to prevent bias, rather than simply prohibit bias. This proposed change reflects the work group’s charge to modernize the standard to better reflect current understandings regarding the elimination of bias and, as discussed below, reflects a more comprehensive approach to the elimination of bias in court interactions.

As discussed in the Advisory Committee Comments, the work group was concerned that, as used, “prohibit” is a narrow term, focused only on forbidding a certain behavior without any corresponding discussion, education, or opportunity to learn and improve. When conduct is prohibited or forbidden, people might understand that they are not allowed to engage in that conduct, but might not otherwise understand why the conduct is problematic, why the conduct occurs, or how it can still impact people and situations even though it is explicitly forbidden. Simply prohibiting conduct, without taking the steps to educate and prevent the conduct from occurring, is insufficient to achieve the goal of fully understanding and eliminating both unconscious and explicit biases.

Prevention of bias still allows a court to prohibit or forbid bias as part of its plan to prevent bias in court interactions. But a plan to prevent bias necessarily includes a wider array of actions, including:

- Encouraging judicial officers, employees, and court users to report bias;

¹ The work group includes Justice Carin T. Fujisaki, Court of Appeal, First Appellate District, Division Three; Presiding Judge Joyce D. Hinrichs, Superior Court of Humboldt County; Judge Kevin C. Brazile, Superior Court of Los Angeles County; Court Executive Officer Nancy CS Eberhardt, Superior Court of San Bernardino County; and attorneys Rachel W. Hill and Gretchen Nelson.

- Being open to discussing and learning from real misunderstandings and instances of unconscious bias; and
- Facilitating robust education regarding how unconscious and explicit biases develop, how to recognize unconscious and explicit biases, and how to address and eliminate the expression of unconscious and explicit biases.

In short, the change from “prohibit” to “prevent” represents a fundamental change in how courts are asked to combat bias, with a focus on understanding the many forms, causes, and impacts of bias so as to prevent it, rather than simply forbidding it.

Statement of purpose

The proposed amendment to standard 10.20(a) adds a statement of purpose, which reinforces the judicial branch’s commitment to ensuring the integrity and impartiality of the judicial system and to court interactions free of bias and the appearance of bias. Subdivision (a) also states that courts should work within their local communities to improve dialogue and engagement with members of various cultures, backgrounds, and groups to learn, understand, and appreciate the unique qualities and needs of each group.

Ensuring the integrity and impartiality of the judicial system

To achieve these goals, subdivision (b) states that judicial officers and court employees should refrain from and take action to prevent biased conduct in all court interactions, and recommends additional responsibilities for judicial officers to ensure unbiased decisions, fairness, and impartiality in courtroom interactions. In outlining these responsibilities, the proposal clarifies or expands on existing standard 10.20 in several key areas.

First, in subdivision (b)(1), the proposal expands the responsibility to both refrain from engaging in conduct and to prevent others from engaging in conduct that exhibits bias beyond “courtroom proceedings” to all “court interactions.” As discussed in the Advisory Committee Comments, this change encompasses interactions beyond the courtroom itself—including interactions in clerk’s offices, at public counters, and in other places where court users may interact with judicial officers and court staff.

Second, also in subdivision (b)(1), the proposal greatly expands the list of protected classifications to now encompass bias based on age, ancestry, color, ethnicity, gender, gender expression, gender identity, genetic information, marital status, medical condition, military or veteran status, national origin, physical or mental disability, political affiliation, race, religion, sex, sexual orientation, socioeconomic status, and any other classification protected by federal or state law, including Government Code section 12940(a) and canon 3(B)(5) of the Code of Judicial Ethics, whether that bias is directed toward counsel, court staff, witnesses, parties, jurors, or any other person. The proposal adds language to clarify that courts, judicial officers, and court employees may consider such classifications only if necessary or relevant to the proper exercise of their adjudicatory or administrative functions, such as considering military and veteran status in criminal sentencing, or age in juvenile proceedings. This change is intended to

reflect current law and significantly broadens the understanding of what type of conduct constitutes impermissible bias in court interactions.

Third, in subdivisions (b)(1), (b)(2), and (b)(3), in stating the responsibility to ensure fairness in courtroom interactions and unbiased decisions, the proposal clarifies that it applies to all judicial officers. An advisory committee comment clarifies that “judicial officers” includes justices, judges, subordinate judicial officers, and temporary judges. This clarification broadens the coverage of standard 10.20 and encompasses all courtroom proceedings at both the trial and appellate court levels.

Composition and role of local or regional bias committees

In addition to these expansions and clarifications, the proposal also builds on the recommendation in existing standard 10.20 that courts create local bias committees. Specifically, in subdivision (c), the proposal states that courts should collaborate with local bar associations to establish local or regional committees, joint trial and appellate court committees, or separate or joint appellate court committees. This change allows more flexibility for courts and local bar associations. For instance, smaller courts may collaborate with local bar associations and decide to partner with other similarly situated courts to form regional committees that are better able to combine and marshal resources. Likewise, appellate courts may partner with other appellate courts or with trial courts within their region, to enable these courts to have the option to work with other similarly situated courts to create stronger committees.²

Further, in subdivision (c)(1), the proposal recommends that each local or regional bias committee be composed of representative members of the local legal community, including judicial officers, lawyers, court administrators, and individuals who interact with the court and reflect and represent the diverse and various needs and viewpoints of court users. This is a change from the existing standard, which delineates specific groups that should be represented in local committees.

While the work group promotes diverse membership in local committees, it also recognizes that identifying certain groups for inclusion can have the opposite effect—leading to exclusion of some groups and viewpoints, and creating a false sense of diversity that is antithetical to the elimination of bias. Instead, the proposal recognizes that each community varies greatly in size, demographics, needs, and viewpoints, and that the issues that confront each local community are unique. The proposal allows courts to recognize and build on the unique aspects of their communities, and create committees within the broad framework and guidelines of standard 10.20 that address those unique viewpoints and needs.

Subdivisions (c)(2) and (c)(3) recommend that local or regional committees sponsor and support educational programs designed to eliminate unconscious and explicit biases within the court, and

² As used in this report and its accompanying comment chart, the phrase “local bias committee” is intended to refer to any such committee created at a local, regional, or appellate level, and includes single court committees, regional committees, trial/appellate court committees, and joint appellate committees.

also engage in regular outreach with their local communities. In making these recommendations, the work group chose not to set baseline requirements on the number and type of education programs or community outreach activities, but rather to leave those details to be evaluated by each individual committee within the framework created by the standard.

For subdivision (c)(2), the proposal broadly recommends education programs on how such biases develop, how to recognize them, and how to address them, as well as other topics on bias relevant to the local community that the committee may learn of through its community outreach efforts. The work group considers these topics to be of particular importance because education is critical to developing an awareness of the origins of bias, and an awareness of the impact of bias on individuals and access to impartial justice. For subdivision (c)(3), the work group recommends community outreach efforts to include learning about issues of importance to court users and fostering ongoing dialogue regarding concerns related to bias in court interactions. It is important that court users have an avenue to discuss issues of bias in court interactions.

By creating a framework, the work group recognizes that there is not just one correct approach to eliminating bias. Each court and local bias committee must engage their local community to learn what issues concern *their* court users, how bias is manifesting itself in *that* court, and what steps might work to combat *those* particular concerns. For meaningful change to occur, and for local communities to trust the work of the court and local bias committee, the court and committee must be flexible, insightful, and responsive to the particular concerns of their community.

Complaint resolution

Although existing standard 10.20 recommends that local bias committees create their own informal complaint resolution procedures, the current proposal eliminates that recommendation. Instead, courts should ensure that the public can easily access existing information about how to make a complaint against an individual judicial officer or court employee in court interactions regarding bias based on a protected classification. This recommendation was made in large part because of the many existing and effective avenues for making complaints regarding bias in court interactions against judicial officers and court employees, and to avoid creating duplicative and conflicting procedures.

As explained in the Advisory Committee Comment to subsection (d), authority, responsibility, and procedures for addressing complaints concerning judges and subordinate judicial officers are generally outlined in California Rules of Court, rules 10.603 and 10.703, and the California Code of Judicial Ethics, canon 3(D). In practice, courts have developed robust procedures for addressing such complaints against judges and subordinate judicial officers, which are typically made to a court's presiding judge or justice or to a supervising judge.³ In addition, the Commission on Judicial Performance (CJP)—the independent state agency responsible for

³ For simplicity, the term “presiding judge” is used in this report and corresponding comment chart to refer to presiding judges, administrative presiding justices, or other supervising judges or justices to whom complaints of bias may be made pursuant to local court policy.

investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges, under article VI, section 18 of the California Constitution—provides detailed information on its website at cjp.ca.gov about how to file confidential complaints against judicial officers and the procedures it employs for addressing such complaints.

Similarly, California Rules of Court, rules 10.351 and 10.610, as well as Government Code section 71650 et seq., include authority and processes for addressing complaints against court employees. In practice, courts have developed procedures for addressing complaints against employees, including those raised by court users, and have a legal responsibility to take immediate corrective action on certain types of complaints against court employees. Generally, those complaints can be made to the employee's supervisor or court management and are ultimately the responsibility of the court executive officer.

In addition to the concerns about creating duplicative and conflicting complaint procedures, the complaint resolution guidelines outlined in the existing standard were often unworkable for courts and committees. While several commenters have opposed the proposal on the grounds that it eliminates the recommendation to create a viable, confidential complaint procedure that provides an additional safe space for complainants, the work group concluded that these informal complaint resolution procedures raise various concerns.

For example, the work group was concerned that having local or regional bias committees resolve complaints may actually exacerbate a complainant's confidentiality concerns. Any inquiry by such a committee would be known and resolved by a group of local attorneys, judicial officers, and other committee members who would necessarily need to know the particular facts of the complaint. The work group has concerns that such an approach would significantly expand the number of local individuals who were aware of the existence or details of the complaint.

Conversely, a CJP complaint is processed and investigated by an experienced CJP investigator outside of the local court system, with established investigation procedures and confidentiality provisions, and the ability to subpoena witnesses. The CJP provides confidentiality for complainants, and has existing procedural safeguards in place to protect complainants from retaliation for asserting good faith complaints to the CJP. Retaliation complaints can be made to either the CJP or the presiding judge or justice. Likewise, complaints about judicial officers may also be made directly to a court's presiding judge or justice. In addition to CJP procedures, most courts also have formal, internal procedures for how complaints to the presiding judge or justice are processed, and they have the unique ability and responsibility to address issues of bias immediately and directly with the judicial officer, if warranted. These processes lead to direct resolution of complaints and better protect the confidentiality of the complainant.

In addition, there was concern that referring complaints against judicial officers and court employees to local or regional bias committees might trigger various due process concerns, especially given that these committees might not be adequately resourced or experienced to conduct the highly specialized inquiries that may be needed in response to a bias complaint against a judicial officer or court employee. Likewise, referring complaints about court

employees to local or regional bias committees may create personnel and labor relations concerns, which could create conflict with existing court personnel policies and labor relations agreements regarding resolution of employee complaints. In addition, referring complaints about court employees to these committees deprives the court of the ability to address the complaint internally and comply with any legal obligations the court may have arising from the complaint, including the need to take immediate corrective action in certain circumstances.

Finally, recommending that local or regional bias committees resolve complaints of bias against judicial officers may result in conflicts with certain ethical obligations for judicial officers who are members of these committees. Judicial officers who become aware of complaints against other judicial officers have ethical obligations that require them to take appropriate corrective action, which may include reporting the information to the presiding judge or justice or the CJP. (Canons of Judicial Ethics, canon 3D(1) and (2); see also, CJEO Formal Opinion 2020-15). Presiding judges and justices and judges with supervisory authority have additional judicial oversight and reporting responsibilities. (See Code of Judicial Ethics, canon 3C(4); Cal. Rules of Court, rules 10.603(c)(4) & 10.703; CJA Jud. Ethics Committee Op. No. 64.) A system in which those complaints are handled informally, at a local level, could undercut those obligations.

Likewise, the distinction that local bias committees should only address complaints that are appropriate for less formal resolution or education as compared to discipline is similarly unworkable given that it is often difficult to determine at the outset if the complaint warrants discipline or would be appropriate for less formal resolution. Judicial officers on the committee making that determination could face their own discipline for not reporting a required complaint to CJP if they made the wrong determination as to whether the complaint was appropriate for informal resolution or merited discipline.

As a result of these concerns, rather than recommending that courts and bias committees create new procedures to resolve bias complaints against judicial officers and court employees, the proposal recommends that each court effectively communicate information to its court users regarding existing procedures to submit complaints of bias in court interactions. While many courts already provide this information on their websites, in their local rules, or displayed in courthouses, the revised standard recommends that all courts take similar steps to ensure that they are providing complaint procedures to court users in a meaningful and accessible manner.

Importantly, the work group proposal does not prohibit courts from having local or regional bias committees resolve bias complaints. Courts and committees with existing informal complaint resolution processes for complaints against judicial officers may continue using those processes, and other courts and committees may choose to create their own processes, if they conclude that is the best way to address bias complaints in their communities. If so, the work group recommends that they fully consider the concerns discussed above. Because of the specific labor and employment laws governing courts and court employees, including the direction provided in rule 10.351 of the California Rules of Court, and the fact that courts already have personnel policies and memorandums of understanding that govern complaints against court employees, having local bias committees resolve complaints against court employees is not recommended.

Application of local rules and implementation

Subdivision (e) recommends that courts memorialize in local rules the existence of a local or regional bias committee.

Subdivision (f) encourages courts to implement the revised standard as soon as possible, emphasizing the importance of addressing bias in court interactions. The revised standard better reflects current law and understandings on the elimination of bias and provides a modern framework to address these important issues.

Policy implications

In drafting the proposed amendment, the work group considered two competing objectives: (1) whether to mandate certain statewide procedures and standards that would apply uniformly regardless of each local community's unique circumstances; or (2) whether to provide courts and local or regional bias committees with a broader framework, recommendations, and guidelines that could be used to guide discussions and decisions at the local court and committee level.

As discussed in the Analysis/Rationale section above, and further discussed in the Alternatives Considered section below, the work group has emphasized the second option. The work group wants to empower courts and local or regional bias committees with the discretion to create meaningful programs and procedures that will positively impact court users. The work group understands that there is not just one correct approach to eliminating bias in court interactions, and desires to give courts and committees the flexibility to engage, partner, and problem solve with their local communities, within the framework established by this proposal.

Comments

This proposal was circulated for public comment from May 14 to June 25, 2021,⁴ and generated 76 comments signed by 105 commenters.⁵ The majority of comments focused on the decision to

⁴ Prior to public comment, the work group provided an early opportunity to provide input via email from January 19 through February 12, 2021. Information regarding this opportunity was included in the California Courts website, posted in *Court News Update*, reported in the *Daily Journal*, and distributed to court leadership and others who reached out to the work group to express interest, including the Judicial Council's Tribal Court–State Court Forum, the California Lawyers Association, the California Employment Lawyers Association, and California Attorneys for Criminal Justice. The work group received a number of informative comments as part of this process.

In addition, the work group obtained information from several courts that have already created local bias committees, education programs, and community outreach activities to address bias in court interactions. Some members of the work group met with committees early in the review process, and two committees were invited to speak to the entire work group at its meeting on May 4, 2021. In addition, the work group received a briefing from the director of the CJP regarding how complaints against judicial officers are processed and investigated, and specifically how the CJP resolves bias complaints. These meetings provided valuable information, and the work group used that information to discuss ways to accentuate the positive work of local bias committees and address the challenges they reported. This information, and the information received during the early input period, provided a wide array of ideas, perspectives, and educational material, and was used to shape this proposal.

⁵ Of the comments, 41 were unique comments in support or opposition to the proposal, signed by individuals or third-party groups. An additional comment, comment 1 on the attached comment chart, was cosigned by 30 different attorney and third-party groups, all in opposition. An additional 34 commenters submitted a substantially similar comment as the comment cosigned by the 30 groups, and those comments are also included in comment 1.

eliminate the recommendation that local bias committees create informal complaint resolution procedures. Comments on this topic were mixed. Some commenters, including a comment submitted by the Superior Court of San Diego County, supported the removal of the informal complaint resolution procedure, and emphasized concerns with tasking local bias committees with resolving informal complaints of bias:

Including a complaint resolution procedure and an investigatory role by a local committee raises a number of significant legal, ethical and liability issues for a court and the committee members, because it: (1) would overlap and conflict with CJP procedures and also court employee disciplinary procedures that are governed by statute, case law and collective bargaining agreements which provide employees with due process rights...⁶

Likewise, the Superior Court of Orange County supported the removal of the recommendation that local bias committees create an informal complaint resolution process, noting that “[t]he current standard in some ways duplicates, and in other ways, conflicts with existing systems to address complaints of bias and discrimination,” while outlining specific available procedures for resolution of complaints against judicial officers and court employees.⁷

Other commenters, including some attorneys and attorney groups, disagreed. One group of 64 attorneys and attorney groups submitted a joint letter in opposition of the work group’s proposal. A full list of the attorneys and attorney groups who signed the opposition or submitted substantially similar comments, and the issues that they raised, is found in comment 1 of the comment chart, pages 21–29. The primary concern of these commenters is the work group’s proposal to no longer recommend that local bias committees create informal complaint resolution procedures. This group is concerned that the CJP and existing court procedures to resolve bias complaints are ineffective:

Accordingly, it is well understood that a complaint to the Commission [on Judicial Performance] is utterly futile. Further, a complaint to the Presiding Judge (PJ) in no manner protects the complaining party from retaliation, repeat offenses or from the PJ themselves if they are the alleged bad actor. Due to social and economic pressures, it is extremely difficult for an attorney to make a complaint of bias against a judge. Providing a safe space to do so, is of utmost importance to the proper administration of justice and to access to justice for all. Intentionally eliminating such a space is unconscionable.⁸

⁶ Comments submitted on behalf of the Superior Court of San Diego County, by Presiding Judge Lorna A. Alksne and Court Executive Officer Mike Roddy, are referenced in the comment chart as comments 36 and 37.

⁷ Comment submitted on behalf of the Superior Court of Orange County, Presiding Judge Erick Larsh, referenced in comment chart as comment 33.

⁸ Comment submitted by and/or signed by a group of 64 attorneys and attorney groups, referenced in comment chart as comment 1.

Still others, including the Contra Costa Superior Court Bias Committee, expressed concern that the proposal would eliminate existing local committee informal complaint resolution procedures, noting that it had created its own effective procedure:

Our Committee seeks clarification as to whether the proposed revisions would eliminate the complaint procedure that our county has worked so hard to develop and of which it is so justifiably proud. We believe the complaint process is a necessary avenue for ensuring the prevention and elimination of bias in our court. We feel the complete elimination of an informal complaint process would set back years of work and progress, in our court and in others, towards the goal of prevention of bias in the judicial system statewide.⁹

The work group considered these various viewpoints and ultimately decided to remove the recommendation that local bias committees create informal complaint resolution procedures, concluding that the existing procedures provide the most appropriate and confidential forums for people to raise specific complaints alleging bias by a judicial officer or court employee, and for those complaints to be investigated and resolved. As noted in the Advisory Committee Comments, and further discussed in the Analysis/Rationale section above, the work group was concerned that a separate informal complaint procedure raised privacy concerns, duplicated existing complaint mechanisms, and created potential conflicts with local court procedures and legal responsibilities for addressing complaints against employees and judicial officers. Yet importantly, the work group's proposal does not prohibit courts and local or regional bias committees, such as the Contra Costa Superior Court Bias Committee, from creating their own informal complaint procedures to resolve complaints of bias against judicial officers. The work group determined that there is no one correct way to eliminate bias; the best method should be determined by each local court and bias committee, working together in partnership with their local community.

Other than comments addressing the informal complaint resolution procedure, the majority of comments from courts, judges, court executive officers, attorneys, and various attorney groups were supportive of the work group's proposal. The California Lawyer's Association noted that it "strongly supports the overarching goal of this proposal," and offered some specific suggestions that are addressed in the comment chart at pages 31–36.¹⁰ The Superior Court of Los Angeles County, through its presiding judge and court executive officer, stated that "the framework anticipated and promoted by a newly amended Standard 10.20 is a useful support for these and other such efforts [achievement of public trust and confidence in the judiciary]."¹¹ More

⁹ Comment submitted on behalf of Judge Joni T. Hiramoto, chair of the Contra Costa Superior Court Bias Committee, referenced in comment chart as comment 7.

¹⁰ Comment submitted on behalf of the California Lawyers Association by CEO and Executive Director Ona Alston Dosunmu and President Emilio Varanini, referenced in comment chart as comment 4.

¹¹ Comment submitted on behalf of the Superior Court of Los Angeles County by Presiding Judge Eric C. Taylor and Executive Officer/Clerk of Court Sherry R. Carter, referenced in comment chart as comment 31.

specifically, the Legal Aid Association of California noted its support to broaden the scope of the standard so that it would encompass more potential court interactions:

Although we support all of the recommendations made by the work group, we especially approve of the proposal to expand the responsibility to ensure integrity and impartiality beyond “courtroom proceedings” to all “court interactions” including interactions in the clerk’s offices, at public counters, and in other places where court users may interact with judicial officers and court staff. This is particularly important because the legal system is not only made up of attorneys and judges; bias can be found preliminarily in one’s legal journey and every step of the process should be free of any biased decisions.¹²

However, some commenters raised concerns that the proposal recommended, but did not require, that courts create local bias committees. The Women Lawyers of Alameda County opined that “bias committees are necessary to field bias complaints and to further educate the judiciary on diversity,” and expressed disappointment that they were not made mandatory in the standard.¹³ Others appreciated the flexibility, including Judge Robin L. Wolfe of the Superior Court of Tulare County who supported the proposal to allow courts and local committees the autonomy and discretion to take actions specifically tailored to local communities:

We also appreciate the consideration and flexibility the amendments allow to smaller courts to take into consideration their unique circumstances and demographics in forming their committees as well as the ability to join other small courts to allow for more diversity, shared resources, and resolve potential conflicts of interest.¹⁴

As discussed in greater detail in the Analysis/Rationale section above, the work group considered these viewpoints and continued to recommend creation of local bias committees. As outlined in California Rules of Court, rule 1.5(c), the Standards of Judicial Administration within the rules of court are guidelines or goals recommended by the Judicial Council. The nonbinding nature of the standards is indicated by the use of “should” in the standards instead of the mandatory “must” used in the rules. Maintaining the recommendations in the standard as guidelines is also consistent with the work group’s overall premise of creating a framework within which courts can work with their local communities toward the elimination of bias in court interactions, rather than creating top-down mandates. While the proposal makes recommendations, the work group also recognizes that there is not just one correct approach, and that courts need the latitude to

¹² Comment submitted on behalf of the Legal Aid Association of California by Executive Director Selena Copeland, referenced in comment chart as comment 23.

¹³ Comment submitted on behalf of The Women Lawyers of Alameda County, by Board Member Amy Blair, referenced in comment chart as comment 41.

¹⁴ Comment submitted by Judge Robin L. Wolfe, Superior Court of Tulare County, referenced in comment chart as comment 21.

create customized processes and to partner with their local communities to find solutions that meet the unique and specific needs of each court and the local community that it serves.

A full listing and response to comments is found in the comment chart at pages 21–183.

Alternatives Considered

Based on the public comments, as well as comments, discussions, feedback, and information provided by various groups and interested parties throughout the process, the work group considered alternative proposals in two primary areas: (1) requiring specific composition and tasks for local bias committees, and (2) recommending that local bias committees develop informal complaint resolution procedures.

Composition and tasks for local or regional bias committees

The work group received several comments regarding whether to mandate certain baseline requirements for all courts and local or regional bias committees. For example, some commenters suggested that the work group prescribe the composition of these committees and specifically recommend that committees contain members of certain demographic groups. Other commenters suggested that the work group mandate certain required minimum activities for bias committees, including required minimum number of education sessions and community outreach activities, mandatory reporting requirements, and mandatory complaint resolution procedures.

As discussed in greater detail in the Analysis/Rationale section above, the work group was concerned that naming certain demographic groups for inclusion in these committee, or setting quotas for membership, would necessarily lead to the exclusion of other groups or viewpoints. Likewise, for education programs, community outreach, and reporting requirements, the work group proposal gives each court and local bias committee the discretion, flexibility, and autonomy to fulfill those recommendations as they deem best. The work group understands that there is not just one correct approach to eliminating bias in court interactions, and the proposed amendments allow each court and local bias committee to create procedures and programs that are specifically tailored to the unique needs, viewpoints, and demographics of that community, and that will address the specific bias issues present for their court users.

Recommending that local or regional bias committees develop informal complaint resolution procedures

Another alternative that the work group considered was to recommend that all local or regional bias committees create informal complaint resolution processes for complaints of bias against judicial officers and court employees. While the work group considered various statewide processes and requirements, it ultimately removed the recommendation that local bias committees create informal complaint resolution procedures for complaints against individual judicial officers or employees.

As explained in the proposed Advisory Committee Comment, and as more fully detailed in the Analysis/Rationale section above, this decision was made in large part because of the many existing and updated avenues for making complaints regarding bias in court interactions,

including at both the local court level and through the CJP. This decision was made (1) to avoid conflicts between those procedures; (2) to avoid concerns that committees overseeing confidential complaints against judicial officers and court employees may trigger privacy, due process, judicial ethics, and labor-relations issues; and (3) due to concerns that some local bias committees may not have sufficient resources or expertise to handle such complaints.

Instead, the work group recommends that each court communicate how court users can use the existing procedures to make complaints about bias in court interactions based on a protected classification. In addition, and as discussed in greater detail in the Analysis/Rationale section above, courts and local bias committees that have existing informal complaint resolution processes may also opt to continue using those processes, and other courts and committees may choose to create their own processes. If so, the work group recommends that they fully consider the concerns discussed above.

Fiscal and Operational Impacts

The work group does not anticipate any significant one-time or sustained annual costs associated with the amendment of standard 10.20. It does anticipate some minor operational impacts on courts and some judicial officers. Specifically, the work group anticipates that some courts may need to examine existing complaint procedures to ensure that avenues for complaints about bias based on a protected classification are easily accessible to the public. In addition, some members of court leadership, some judicial officers, and some court employees may be tasked with working with local bar communities to create local or regional bias committees or update processes and procedures for existing committees. This could result in increased workload for those individuals as more courts attempt to launch their own local or regional bias committees.

Attachments and Links

1. Standards of Judicial Administration, standard 10.20, at pages 15-20
2. Chart of comments, at pages 21-183

Standard 10.20 of the California Standards of Judicial Administration is amended, effective January 1, 2022, to read:

Standard 10.20. Court’s duty to ~~prohibit~~ prevent bias

(a) General Statement of purpose

The California judicial branch is committed to ensuring the integrity and impartiality of the judicial system and to court interactions free of bias and the appearance of bias. Consistent with this commitment, each court should work within its community to improve dialogue and engagement with members of various cultures, backgrounds, and groups to learn, understand, and appreciate the unique qualities and needs of each group.

(b) Duty to ensure integrity and impartiality of the judicial system

Each court, its judicial officers, and its employees have the duty to ~~preserve~~ ensure the integrity and impartiality of the judicial system, ~~each judge should~~.

~~(1)~~ Ensure fairness

~~Ensure that courtroom proceedings are conducted in a manner that is fair and impartial to all of the participants.~~

~~(2)~~(1) Refrain from and ~~prohibit~~ prevent biased conduct

In all ~~courtroom proceedings~~ court interactions, each court, its judicial officers, and its employees should refrain from engaging in conduct and ~~prohibit~~ should take action to prevent others from engaging in conduct that exhibits bias, including but not limited to bias based on age, ancestry, color, ethnicity, disability, gender, gender expression, gender identity, genetic information, marital status, medical condition, military or veteran status, national origin, physical or mental disability, political affiliation, race, religion, sex, ethnicity, and sexual orientation, socioeconomic status, and any other classification protected by federal or state law, including Government Code section 12940(a) and Code of Judicial Ethics, canon 3(B)(5), whether that bias is directed toward counsel, court ~~personnel~~ staff, witnesses, parties, jurors, or any other ~~participants~~ person. The court, judicial officers, and court employees may consider such classifications only if necessary or relevant to the proper exercise of their adjudicatory or administrative functions.

~~(2)~~ Ensure fairness

Each judicial officer should ensure that courtroom interactions are conducted in a manner that is fair and impartial to all persons.

1 (3) *Ensure unbiased decisions*

2
3 Each judicial officer should ensure that all orders, rulings, and decisions are
4 based on the sound exercise of judicial discretion and the balancing of
5 competing rights and interests and are not influenced by stereotypes or
6 biases.

7
8 **(b)(c) Creation of local or regional committees on bias**

9
10 ~~Each court should establish a local committee with local bar associations to assist~~
11 ~~in maintaining a courtroom environment free of bias or the appearance of bias.~~
12 ~~Courts within one or more counties may choose to form a single committee. To~~
13 ~~assist in providing court interactions free of bias and the appearance of bias, courts~~
14 ~~should collaborate with local bar associations to establish a local or regional~~
15 ~~committee. Trial courts may choose to form a regional committee. Appellate courts~~
16 ~~may choose to form separate or joint appellate court committees or join a trial court~~
17 ~~committee or regional committee formed by or composed of trial courts within the~~
18 ~~appellate courts' districts. The local~~ Each committee should:

19
20 (1) Be composed of representative members of the court community, including
21 but not limited to ~~judges~~ judicial officers, lawyers, court administrators, ~~and~~
22 ~~representative~~ and individuals who interact with the court and reflect and
23 represent the diverse and various needs and viewpoints of court users from
24 minority, women's, and gay and lesbian bar associations and from
25 organizations that represent persons with disabilities;

26
27 (2) Sponsor or support educational programs designed to eliminate unconscious
28 and explicit biases within the court and legal communities, ~~including but not~~
29 ~~limited to bias based on disability, gender, race, religion, ethnicity, and~~
30 ~~sexual orientation; and~~ Education is critical to developing an awareness of
31 the origins of bias and the impact of bias on individuals, culture, and society.
32 Education should include:

33
34 (A) Information as to bias based on the protected classifications listed in
35 (b)(1);

36
37 (B) Information regarding how unconscious and explicit biases based on
38 these classifications develop, how to recognize unconscious and
39 explicit biases, and how to address and eliminate unconscious and
40 explicit biases; and
41

(C) Other topics on bias relevant to the local community informed by the committee's independent assessment of the unique educational needs in that community.

(3) ~~Develop and maintain an informal procedure for receiving complaints relating to bias in the courtroom, including but not limited to bias based on disability, gender, race, religion, ethnicity, and sexual orientation. Engage in regular outreach to the local community to learn about issues of importance to court users. Specifically, committee members should be encouraged to:~~

(A) Inform local community groups regarding the committee's activities; and

(B) Seek information from the local community regarding concerns as to bias in court interactions and how the court can address those concerns.

(e)(d) Minimum components of a complaint procedure Providing information regarding complaint procedures

~~An informal complaint procedure developed and maintained by a local committee on bias should:~~

~~(1) Contain a provision specifying that the intent of the procedure is to educate with the purpose of ameliorating the problem rather than disciplining the person who is the subject of the complaint;~~

~~(2) Accommodate local needs and allow for local flexibility;~~

~~(3) Apply to all participants in courtroom proceedings;~~

~~(4) Apply only to complaints as to which the identity of the complainant is known;~~

~~(5) To the extent possible and unless disclosure is required by law, protect the confidentiality of the complainant, the person who is the subject of the complaint, and other interested persons;~~

~~(6) Relate to incidents of behavior or conduct occurring in courtroom proceedings;~~

~~(7) Apply to incidents of bias whether they relate to race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status;~~

- 1 ~~(8) Contain a provision that exempts activities constituting legitimate advocacy~~
2 ~~when matters of race, sex, religion, national origin, disability, age, sexual~~
3 ~~orientation, or socioeconomic status are relevant to issues in the courtroom~~
4 ~~proceeding;~~
5
6 ~~(9) Focus on incidents that do not warrant discipline but that should be corrected;~~
7
8 ~~(10) With respect to those incidents that if substantiated would warrant discipline,~~
9 ~~advise the complaining party of the appropriate disciplinary authority;~~
10
11 ~~(11) Contain a provision specifying that nothing in the procedure in any way~~
12 ~~limits the ability of any person to submit a complaint of misconduct to the~~
13 ~~appropriate disciplinary body; and~~
14
15 ~~(12) To the extent possible and unless disclosure is required by law, prohibit~~
16 ~~retention of written records of complaints received but permit collection of~~
17 ~~data on types of complaints or underlying anecdotes that might be useful in~~
18 ~~educational programs.~~

19
20 Each court should effectively communicate to its court users regarding existing
21 procedures to submit complaints of bias in court interactions based on protected
22 classifications, as listed in (b)(1). This should include information regarding how to
23 submit complaints about court employees directly to the court and how to submit
24 complaints about judicial officers either directly to the court or to the Commission
25 on Judicial Performance. Possible methods of communication include providing
26 this information on the court website, including the information in the court's local
27 rules, displaying the information in courthouses, or any other similar method to
28 ensure that courts are providing complaint procedure information to court users in a
29 meaningful and accessible manner.
30

31 ~~(d)~~**(e) Application of local rules**
32

33 The existence of the local committee, and its purpose, ~~and the features of the~~
34 ~~informal complaint procedure~~ should be memorialized in the applicable local rules
35 of court.
36

37 **(f) Implementation**
38

39 All courts should implement the recommendations of this standard as soon as
40 possible.
41
42

Advisory Committee Comment

Subdivision (b). An earlier version of this standard referred to the “court’s duty to prohibit bias.” The word “prohibit” has been replaced with “prevent” in the title of the standard and in subdivision (b), such that the standard now asks courts, judicial officers, and court employees to take actions to prevent bias rather than prohibit bias. This change reflects a more comprehensive approach in how courts are to combat bias, focusing on understanding the many forms, causes, and impacts of bias rather than simply forbidding it. Preventing bias may include, for example, prohibiting bias; encouraging judicial officers, employees, and court users to report bias; being open to discussing and learning from real misunderstandings and instances of unconscious bias; and focusing on robust education regarding how unconscious and explicit biases develop, how to recognize them, and how to address and eliminate bias.

The judicial officer duties stated in this subdivision are consistent with the California Code of Judicial Ethics, which addresses judicial officer responsibilities for performing judicial duties without bias, prejudice, or harassment (canon 3(B)(5)); for requiring attorneys in proceedings before the judicial officer to refrain from manifesting bias, prejudice, or harassment (canon 3(B)(6)); for discharging judicial administrative duties without bias or prejudice (canon 3(C)(1)); and for requiring staff and court personnel under the judicial officer’s control to refrain from manifesting bias, prejudice, or harassment in the performance of their duties (canon 3(C)(3)).

An earlier version of this standard applied solely to judges and referred to “courtroom proceedings.” “Judge” has been expanded to “judicial officers,” which includes all judges as defined by California Rules of Court, rule 1.6, and all appellate and Supreme Court justices. The expanded phrase broadly covers any judge, justice, subordinate judicial officer, or temporary judge who might conduct a courtroom proceeding. Additionally, in subdivision (b)(1), “courtroom proceedings” has been changed to “court interactions” to expand the scope of proceedings and actions covered by this standard to include not only proceedings occurring in courtrooms but also interactions in other areas of the court, including in the clerk’s office and at public counters.

Subdivision (d). An earlier version of this standard encouraged local bias committees to create informal complaint procedures for court users and members of the public to submit complaints regarding bias in court proceedings. The recommendation that local bias committees create informal complaint procedures has been eliminated in large part because of the many existing and updated avenues for making complaints regarding bias in court interactions, and to avoid creating conflicts between those procedures. For example, the authority and procedures for addressing complaints concerning judicial officers and subordinate judicial officers are outlined in rules 10.603 and 10.703 of the California Rules of Court and canon 3(D) of the California Code of Judicial Ethics. Similarly, rules 10.351 and 10.610 of the California Rules of Court, as well as Government Code section 71650 et seq., include authority and complaint resolution processes for addressing complaints against court employees. In practice, courts have developed robust procedures for addressing such complaints against judicial officers, subordinate judicial officers, and court employees, and the Commission on Judicial Performance provides detailed information

1 on its website at *cjp.ca.gov* about how to file complaints and the procedures it employs for
2 addressing such complaints.

3 In addition to the concerns regarding duplicative and conflicting complaint procedures, the
4 recommendation that local bias committees adopt informal complaint procedures created
5 additional concerns. For example, the earlier version of the standard envisioned using informal
6 complaint procedures to resolve incidents that do not warrant formal discipline; however, it is
7 often difficult to determine at the outset if a complaint is disciplinary in nature or can be
8 ameliorated by education. Other due process concerns were raised that local committees were not
9 necessarily resourced to make these determinations, and may not have had the expertise to
10 investigate and resolve these complaints. Additional concerns were raised that having local
11 committees oversee complaints against judicial officers and court employees created privacy and
12 confidentiality concerns for both complainants and respondents because any inquiry by a local
13 bias committee would be known and resolved by a group of local attorneys, judicial officers, and
14 other committee members who would necessarily need to know the particular facts of the
15 complaint, thereby significantly expanding the number of local individuals who were aware of the
16 existence or details of the complaint. Ethical concerns were also raised for judicial officers who
17 were members of the local bias committees because judicial officers who become aware of
18 complaints against other judicial officers may have ethical obligations that require them to take
19 appropriate corrective action, which may include reporting the information to the presiding judge
20 or justice or the Commission on Judicial Performance. Finally, there were concerns that local bias
21 committee complaint procedures would conflict with existing personnel policies and labor
22 relations agreements if the local committee attempted to resolve complaints against court
23 employees outside of the procedures outlined in these policy documents.

24 This standard does not prevent courts and local or regional bias committees from choosing to
25 create informal complaint resolution procedures. Some local bias committees have established
26 effective informal complaint resolution procedures for resolving complaints against judicial
27 officers, and each local court and local or regional bias committee should work to find solutions
28 that work best for that local community. If so, they should fully consider how best to address the
29 above concerns. Because of the specific labor and employment laws governing courts and court
30 employees, including the direction provided in rule 10.351 of the California Rules of Court, and
31 the fact that courts already have personnel policies and memorandums of understanding that
32 govern complaints against court employees, having local or regional bias committees resolve
33 complaints against court employees is not recommended.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	<p>A substantively similar version of this comment was submitted by the following commenters. The bottom of the comment displays additional information submitted by commenters, indicated with asterisks:</p> <ul style="list-style-type: none">▪ ACLU California Action▪ Alameda Contra Costa County Trial Lawyers Association▪ Alameda County Bar Association▪ Asian American Bar Association of Greater Bay Area▪ George Azadian, Attorney, Azadian Law Group, PC, La Canada▪ Bay Area Lawyers for Individual Freedom▪ Bet Tzedek Legal Services▪ Bohbot & Riles▪ Cecilia Brennan, Managing Partner, HKM Employment Attorneys LLP, San Diego▪ Darci Burrell, Levy Vinick Burrell Hyams LLP, Oakland▪ California Employment Lawyers Association	<p>NI</p> <p>NI</p> <p>NI</p> <p>NI</p> <p>N</p> <p>NI</p> <p>NI</p> <p>N</p> <p>N</p> <p>N</p> <p>NI</p>	<p>[We] strongly contest the proposed changes submitted to the Rules Committee by the Work Group to Enhance Administrative Standards Addressing Bias in Court Proceedings to California Rules of Court, Rule 10.20, Court's duty to prohibit bias. The court's duty to support the integrity and impartiality of the judicial system and to promote a courtroom environment free of bias or the appearance of bias is of utmost importance. Every effort should be taken to support these efforts. Found within 10.20 is the duty to establish a local bias committee staffed by diverse members of the local bar community which accepts complaints of bias. Said structure was born from the initial efforts of a 1987 Judicial Council Advisory Committee on Gender Bias in the Courts established by former Chief Justice Rose Elizabeth Bird, and grew thereafter, ultimately codified in the CRC. It was discovered in spring 2020, that nearly all of the Superior Courts in California were out of compliance with CRC 10.20(c)(d). Instead of coming into compliance, instead of taking steps to positively and proactively address bias in the courts, the Work Group shockingly eliminated the complaint procedure. This is unacceptable.</p>	<p>The work group appreciates the commenters' submission and notes the concerns regarding the elimination of the recommendation that local bias committees create informal complaint resolution procedures, and concerns regarding the Commission on Judicial Performance (CJP)'s ability to handle informal bias complaints. As discussed in both the accompanying report and the Advisory Committee Comments, the proposal eliminates the recommendation that local bias committees adopt an informal complaint process, in part because there are many existing, effective, and updated avenues for making complaints regarding bias in court interactions, including avenues through the CJP and to the presiding judge or justice of each court¹, and due to potential conflict between the multiple avenues for raising complaints.</p> <p>While the work group understands the commenters' concerns regarding retaliation, confidentiality, and creating safe places for complainants, the work group concluded that the existing procedures for resolving complaints against judges appropriately address those concerns. The CJP is best equipped to resolve complaints about judicial officer bias, given that the CJP has its own experienced investigators, established investigation procedures, and the</p>

¹ For simplicity, the term "presiding judge" is used in this comment chart and corresponding comment chart to refer to presiding judges, administrative presiding justices, or other supervising judges or justices to whom complaints of bias may be made pursuant to local court policy.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
	<ul style="list-style-type: none"> California Rural Legal Assistance Foundation) California Women's Law Center Grainne Callan, Esq. Sunnyvale Centro Legal de la Raza Church State Council Devin Coyle, Coyle Brown Law, Oakland Steven R. Diaz, Esq., Attorney Burbank Disability Rights Advocates Barbara DuVan-Clarke, Attorney, Los Angeles (see comment 1.1 for additional comment) East Bay La Raza Lawyers Association Equal Justice Society Equal Rights Advocates Matt Flynn, Attorney, Flynn Law Office, Oakland Joan Herrington, Bay Area Employment Law Office Rutger Heymann, Attorney, Law Offices of Rutger Heymann, San Jose Ryan Hicks, Attorney, Hoyer & Hicks, San Francisco 	<p>NI</p> <p>NI</p> <p>N</p> <p>NI</p> <p>NI</p> <p>N</p> <p>N</p> <p>NI</p> <p>N</p> <p>NI</p> <p>NI</p> <p>NI</p> <p>N</p> <p>NI</p> <p>N</p> <p>N</p>	<p>The Work Group made this change supposedly because a local bias complaint structure is not necessary because other complaint avenues exist, including the ability to complain to the Presiding Judge and the Commission on Judicial Performance. This is in error, as the evidence shows otherwise. A complaint to the Commission on Judicial Performance is nearly always likely to be dismissed without investigation, or the very small chance (nearly less than 1% chance it is investigated), it will be dismissed shortly thereafter. Statistics confirmed in recent reports including the Commission on Judicial Performance 2020 Case Statistics and Commission on Judicial Performance, "Weaknesses in Its Oversight Have Created Opportunities for Judicial Misconduct to Persist", Auditor of the State of California, April 2019, Report 2016-137. Accordingly, it is well understood that a complaint to the Commission is utterly futile. Further, a complaint to the Presiding Judge (PJ) in no manner protects the complaining party from retaliation, repeat offenses or from the PJ themselves if they are the alleged bad actor.</p> <p>Due to social and economic pressures, it is extremely difficult for an attorney to make a complaint of bias against a judge. Providing a safe space to do so, is of utmost importance to the proper administration of justice and to access to justice for all. Intentionally</p>	<p>ability to subpoena witnesses—tools that may not be available to local bias committees. Alternatively, complaints about judicial officers may also be made directly to the presiding judge or justice. Presiding judges, presiding justices, and judges with supervisory authority who are informed of complaints against other judicial officers have ethical obligations to handle those complaints appropriately. (See Code of Judicial Ethics, canon 3C(4); Cal. Rules of Court, rules 10.603(c)(4) and 10.703; California Judges Association Judicial Ethics Committee Op. No. 64.) Most courts have formal procedures for how complaints to the presiding judge or justice are processed, and the presiding judge or justice has the unique ability and responsibility to address issues of bias immediately and directly with the judicial officer, if warranted. Creating an alternative complaint resolution system through local bias committees may cause complaints to go unreported to the CJP and the presiding judges or justices, which may lead to inconsistent and less optimal handling of these complaints.</p> <p>In addition, having local bias committees resolve complaints may result in less confidentiality for the complainant and respondent. Any inquiry by a local bias committee would be known and resolved by a group of local attorneys, judicial officers, and other committee members who would necessarily need to know the particular facts of the complaint. The work group has</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
	<ul style="list-style-type: none"> ▪ Ji-In Houck, Managing Partner, Stalwart Law Group, Los Angeles ▪ Impact Fund ▪ EmilyRose Johns, Senior Associate, Siegel, Yee, Brunner & Mehta, Oakland ▪ Sharan Kangavari, Attorney, Los Angeles ▪ Benjamin K. Karpilow, Meechan, Rosenthal & Karpilow, PC, Santa Rosa ▪ Erin Kelly, Attorney, Law Offices of Scott R. Ames, P.C., Los Angeles ▪ Tuvia Korobkin, El Segundo ▪ Richard Koss, Owner, Law Offices of Richard N. Koss, Redwood City ▪ Debra Lauzon, Owner, Lauzon Law, El Segundo ▪ Law Offices of Moira C. McQuaid, San Mateo by Moira McQuaid, Owner (see comment 1.2 for additional comment) ▪ Law Office of Twila White, Hermosa Beach by Twila S. White, Principal Attorney ▪ Lebe Law, Los Angeles by Jonathan Lebe, Managing Attorney 	<p>N</p> <p>NI</p> <p>N</p> <p>N</p> <p>N</p> <p>N</p> <p>N</p> <p>N</p> <p>N</p> <p>N</p> <p>N</p>	<p>eliminating such a space is unconscionable. I strongly oppose the edits which eliminate the committee.</p>	<p>concerns that such an approach would significantly expand the number of individuals from the local legal community who were aware of the existence or details of the complaint. Conversely, a CJP complaint is processed and investigated by a CJP investigator outside of the local court system, and with no involvement from the local court. The CJP provides confidentiality for complainants, and has existing procedural safeguards in place to protect complainants from retaliation for asserting good faith complaints to the CJP. Retaliation complaints can be made to either the CJP or the presiding judge or justice. These processes better protect confidentiality of the complainant.</p> <p>The work group is also concerned that referring complaints against judicial officers and court employees to local bias committees might trigger various due process concerns, especially given that local bias committees might not be adequately resourced or experienced to conduct the highly specialized inquiries that may need to be undertaken in response to a bias complaint against a judicial officer or court employee. Likewise, referring complaints about court employees to local bias committees may create personnel and labor relations concerns, given that courts have existing personnel policies and labor relations agreements regarding resolution of employee complaints. In addition, referring complaints about court employees to local bias</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
	<ul style="list-style-type: none"> ▪ Legal Aid At Work ▪ Legal Aid of Marin ▪ Los Angeles LGBTQ Center ▪ Marin Trial Lawyers Association ▪ Sonya Mehta, Esq., Siegel, Yee, Brunner & Mehta, Oakland ▪ Eduard Meleshinsky, El Cerrito ▪ Mexican American Bar Association ▪ Beth Mora, Mora Employment Law, San Ramon ▪ Mia Munro, Attorney, Los Angeles ▪ National Employment Law Project ▪ Jason Oliver, Law Offices of Jason L. Oliver, Pasadena ▪ Open Door Legal ▪ Public Counsel ▪ Queen's Bench Bar Association ▪ Brent Robinson, Associate Attorney, Aiman-Smith & Marcy, PC, Oakland (see comment 1.3 for additional comment) ▪ Monique Rodriquez, Attorney, Lemon Grove 	<ul style="list-style-type: none"> NI NI NI NI N N NI N N NI N NI NI NI N N 		<p>committees deprives courts of the ability to address the complaint internally and comply with any legal obligations the courts may have arising from the complaints, including the need to take immediate corrective action in certain circumstances.</p> <p>In addition, recommending that local bias committees resolve complaints of bias against judicial officers may raise ethical conflicts for judicial officers who are members of the local bias committees. Judicial officers who become aware of complaints against other judicial officers have ethical obligations that require them to take appropriate corrective action, which may include reporting the information to the presiding judge or justice, or the CJP. (Canons of Judicial Ethics, canon 3D(1) and (2); See also, Committee for Judicial Ethics Opinions Formal Opinion 2020-15). A system where those complaints are handled informally, at a local level, could undercut those obligations.</p> <p>The commenters raised concerns that the CJP dismisses many complaints without investigation. The CJP is the independent state agency, established by the California Constitution, which is responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges. As stated on its website at cjp.ca.gov, "[t]he commission's mandate is to protect the public, enforce rigorous standards of</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
	<ul style="list-style-type: none"> ▪ San Francisco La Raza Lawyers Association ▪ San Francisco Trial Lawyers Association ▪ Olivia Sanders, Attorney, Law Office of Olivia Sanders ▪ Leonard H. Sansanowicz, Attorney, Sansanowicz Law Group, P.C., Los Angeles ▪ Sarah Schlehr, Schlehr Law Firm, Burbank ▪ Glicel Sumagaysay, Law Office of Glicel Sumagaysay, Walnut Creek ▪ Susan Swan, Owner and Attorney, Swan Employment Law, San Diego ▪ Wage Justice Center ▪ Women's Section of the Contra Costa County Bar Association 	<p>NI</p> <p>NI</p> <p>N</p> <p>N</p> <p>N</p> <p>N</p> <p>N</p> <p>NI</p> <p>NI</p>		<p>judicial conduct and maintain public confidence in the integrity and independence of the judicial system" and the CJP investigates "conduct in conflict with the standards set forth in the Code of Judicial Ethics." This includes responsibilities for performing judicial duties without bias, prejudice, or harassment (canon 3(B)(5)); for requiring attorneys in proceedings before the judicial officer to refrain from manifesting bias, prejudice, or harassment (canon 3(B)(6)); for discharging judicial administrative duties without bias or prejudice (canon 3(C)(1)); and for requiring staff and court personnel under the judicial officer's control to refrain from manifesting bias, prejudice, or harassment in the performance of their duties (canon 3(C)(3)).</p> <p>As discussed by the Director-Chief Counsel of the CJP at his presentation to the work group at its public meeting in May 2021, many of the complaints that do not result in CJP investigation are from litigants about the outcome of individual cases. These complaints do not relate to conduct set forth in the Canons of Judicial Ethics, and therefore are not appropriate for resolution by the CJP. There is no indication that the CJP is dismissing any significant number of bias or conduct complaints without inquiry or investigation.</p> <p>The work group recognizes that some local bias committees have established effective informal</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				<p>complaint resolution procedures to resolve complaints against judicial officers. As discussed in the accompanying report, the work group recognizes that there is no one correct way to eliminate bias in court interactions, and the work group advocates for each court and local bias committee to find solutions that work best for that local community. The work group's proposal does not prevent courts and local bias committees from choosing to create informal complaint resolution procedures for complaints against judicial officers if those courts and committees conclude that is the best way to address bias complaints in their communities. If so, the work group recommends that they fully consider how best to address the concerns raised above. However, given the existence of California Rules of Court, rule 10.351, and the fact that courts already have personnel policies and memorandums of understanding that govern complaints against court employees, having local bias committees resolve complaints against court employees is not recommended.</p> <p>Finally, the work group clarifies the commenters' statement that "[i]t was discovered in spring 2020, that nearly all of the Superior Courts in California were out of compliance with CRC 10.20(c)(d)." Standard 10.20 is a Standard of Judicial Administration, not a rule of court, and is non-binding in nature. As stated in rule 1.5(c), the Standards of Judicial Administration within the</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Moreover, I request a re-write of CRC 10.20 be conducted with a meaningful Work Group which includes employment attorneys, civil rights attorneys and members of diversity bar associations. This should be done with care and respect, with all appropriate voices included. Thank you for your time and attention to this matter.	<p>rules of court are guidelines or goals recommended by the Judicial Council. The nonbinding nature of the standards is indicated by the use of “should” in the standards instead of the mandatory “must” used in the rules. As a result, courts without local bias committees and informal complaint resolution processes were not in violation of a mandatory rule of court, but rather, had not adopted a non-binding recommendation.</p> <p>Amending standard 10.20 is a necessary step in renewing the branchwide commitment to the elimination of bias in all court interactions. The amended standard will provide a framework that will allow courts and local bias committees to do further work on the local level to build partnerships with the legal communities and engage in the process of conceptualizing outreach and educational programs.</p> <p>Given the need to promptly amend standard 10.20 to provide a framework and guidance that will allow courts to take these important steps to eliminate bias in all court interactions, Chief Justice Tani G. Cantil-Sakauye appointed a small work group comprised entirely of Judicial Council members, and gave it a limited charge, which enabled the work group to swiftly and efficiently propose amendments to update the standard. The work group includes judicial officers, attorneys,</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				and a court executive officer. Several members of the work group have experience in these and related issues from serving on the Work Group for the Prevention of Discrimination and Harassment and the committee to develop California Rules of Court, rule 10.351, creating standardized expectations for harassment prevention policies. The work group also had an early comment period specifically designed to seek input from interested groups and persons, met with various local bias committees, and met with interested groups throughout the process who wanted to share thoughts and ideas for amending the standard.
			1.1 This is unacceptable for many reasons, but will certainly have the greatest impact on those who need the complaint procedure the most, including but not limited to BIPOC.	1.1 The work group appreciates this additional perspective of one commenter, and incorporates the response above regarding the reasons for the elimination of the recommendation that local bias committees adopt informal complaint procedures.
			1.2 You might think that the issue of bias in the courtroom is no longer an issue! But let me assure you that bias in the courtroom is still a problem. I myself have experienced such bias firsthand as recently as last year, 2020. My own recent experience has motivated me to speak out now while the comment period is still open to make sure that this deadline does not pass "quietly" without me formally making a plea that the local bias committee system be	1.2 The work group appreciates this additional perspective from one commenter.

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>maintained so there is a forum for lawyers to register their concerns.</p> <p>1.3 [the ability to complain to the Presiding Judge and the Commission on Judicial Performance] forums are ineffective at resolving claims of bias, and are insufficient to maintain the appearance of impartiality by curbing conduct that members of the bar are willing to go on the record as saying undermines the Canons of Judicial Ethics.</p>	<p>1.3 The work group notes the commenter's concerns related to submitting complaints to the CJP or a presiding judge, and incorporates the response above regarding the effectiveness of the existing CJP and presiding judge complaint procedures.</p>
2.	Alameda County Superior Court Outreach and Elimination of Bias Judicial Committee by Hon. Clifford Blakely and Hon. Eumi Lee, committee co-chairs	A	<p>On behalf of the Alameda County Superior Court Outreach and Elimination of Bias Judicial Committee, we applaud the recent efforts of the Working Group and concur with the proposed amendments to California Standards of Judicial Administration, standard 10.20.</p> <p>The proposed amendments recognize the need to expand both the scope and reach of standard 10.20. It recognizes the urgent call by Chief Justice Tani Cantil-Sakauye after events last year as well as our nation's history for the courts to address conscious and unconscious bias and to strive for justice for all.</p> <p>The recent proposal is a step towards this. Of note is the substitution of "prevent" with "prohibit" and the replacement of "courtroom proceedings" with all "court interactions." Proposed Standard 10.20(b)(1). Also, equally important is the update and expansion of</p>	<p>The work group notes the commenter's support for the proposed amendments and appreciates this input.</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>protected classifications to reflect the true diversity of our society and the struggles faced by many.</p> <p>We also recognize and agree with the need for flexibility in the membership of local committees on bias to reflect the diverse nature of the counties within our State. We see the same flexibility being afforded by the changes concerning the complaint procedure. As Alameda County Superior Court, Local Rule 2.0 (Policy Against Bias) demonstrates, our court is strongly committed to ensuring an environment that strives to be free of all types of bias or prejudice. However, as the proposed amendments recognize, courts have an affirmative obligation to communicate information about the policies and procedures to the public. The proposed standard requires the courts to do so and builds upon the existing reporting structures such as each court's Executive Office and the Commission on Judicial Performance. The proposal establishes a baseline for all of our State's courts.</p> <p>In sum, we see the proposed amendments as an important step forward and encourages the Judicial Council to move forward with the Working Group's proposal.</p>	
3.	Morgan Baxter Self-Help Managing Attorney Superior Court of San Bernardino County	A	I think these proposed amendments are a step in the right direction. I believe ongoing education is essential and should be treated as such, especially for judicial officers, who bear the	The work group notes the commenter's support for the proposed amendments and appreciates this input.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			burden of representing justice. Unconscious bias is difficult to address without ongoing opportunities to learn and confront our own bias. Of course, a more diverse bench that better reflects the community would also be very helpful. I hope this is just one step in a larger framework of eliminating bias.	
4.	California Lawyers Association by Ona Alston Dosunmu, CEO/Executive Director and Emilio Varanini, President, Sacramento	A	<p>We write on behalf of the California Lawyers Association (CLA) in response to the Invitation to Comment – Court's Duty to Prevent Bias. CLA's mission is promoting excellence, diversity and inclusion in the legal profession and fairness in the administration of justice and the rule of law. Our work in the area of diversity, equity, and inclusion is facilitated by our Diversity Outreach Committee and Racial Justice Committee. These two Committees formed a joint working group that took a primary role in reviewing the Invitation to Comment.</p> <p>CLA strongly supports the overarching goal of this proposal and submits the following specific comments.</p> <p>1. <u>Standard 10-20(c) - Creation of local committees on bias</u></p> <ul style="list-style-type: none">• We support the change to allow more flexibility to allow for local culture.• We support the collaboration of the court with local bar associations to reinforce the role that bar associations	<p>The work group notes the commenter's support for the proposed amendments and appreciates this input. The work group addresses the specific suggestions raised by the commenter below.</p> <p>The work group appreciates the support for the specific proposals discussed by the commenter, and notes the commenter's suggestions that judges be encouraged to attend local bias trainings, and that local bias committees include participation from local agencies like the district attorney and public defender. The work group agrees that these</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>and local bars play; they are the conduit to share information and perceptions from lawyers to the court.</p> <ul style="list-style-type: none">• We support the Bias Committees providing education, and also believe the local bench should encourage judges to attend. Training on implicit bias that is limited to lawyers only will not fully address bias in the courts. <p>Any Bias Committee created by a county should allow for and favor participation by other local agencies, e.g., public defender and district attorney.</p>	<p>are helpful suggestions, and that these suggestions may benefit particular communities. While the work group did consider setting baseline recommendations on the number and type of education programs, community outreach activities, and composition of the local bias committees, it ultimately left those details to be evaluated by each individual committee within the framework created by the standard.</p> <p>The work group recognizes that counties vary greatly in size, demographics, needs, and viewpoints of the local bar community, and each county has unique and specific issues within its legal community. The intent of the proposed amendments is to provide courts and local bias committees with the framework to take the essential steps to engage their local communities in the important discussions that are required to prevent and eliminate bias. Thus, while the proposal broadly recommends that local bias committees engage in community outreach and educational opportunities, and while the proposal suggests various roles that these local committees might play in their communities, the work group also recognizes that there is not just one correct approach. The proposal allows local committees on bias the flexibility to adopt any number of the proposals suggested by the commenter, subject to the needs and input of the local community, including that judges be encouraged to attend local bias trainings and that local bias committees</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>2. <u>Standard 10-20(d) - Providing information regarding complaint procedures.</u></p> <ul style="list-style-type: none">The protections have been removed from the existing Standard that contains minimum components of a complaint procedure. For lawyers to file a complaint against a judicial officer or court staff, certain confidentiality protections need to be in place just as they are with formal complaints brought to the Commission on Judicial Performance or feedback provided to judicial evaluation instruments used to evaluate judges in retention elections. Without the protection of confidentiality, especially in smaller courts, or if a complaint is made about a judicial officer or court staff assigned to a specialty court, a lawyer may not feel safe to make constructive comment for fear of consequences or that it could impact bench-bar relations in general.	<p>include participation from local agencies like the district attorney and public defender.</p> <p>The work group notes the concern regarding the importance of ensuring that complaints are handled confidentially, and that the identity of the complainants will not be disclosed to the subject of the complaint. The need to promote privacy and confidentiality is one of the main reasons why the work group advocates using the existing complaint processes, rather than having local bias committees process complaints.</p> <p>Having local bias committees resolve complaints may result in less confidentiality for the complainant and respondent. Any inquiry by a local bias committee would be known and resolved by a group of local attorneys, judicial officers, and other committee members who would necessarily need to know the particular facts of the complaint. The work group has concerns that such an approach would significantly expand the number of individuals from the local legal community who were aware of the existence or details of the complaint. Conversely, a CJP complaint is processed and investigated by a CJP investigator outside of the local court system, and with no involvement from the local court. The CJP provides confidentiality for complainants, and has existing procedural safeguards in place to protect complainants from retaliation for asserting good faith complaints to</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				<p>the CJP. Retaliation complaints can be made to either the CJP or the presiding judge or justice. These processes better protect confidentiality of the complainant.</p> <p>Overall, the work group concludes that the CJP is best equipped to resolve complaints about judicial officer bias, given that the CJP has its own experienced investigators, established investigation procedures, and the ability to subpoena witnesses—tools that may not be available to local bias committees. Alternatively, complaints about judicial officers may also be made directly to the presiding judge or justice. Presiding judges, presiding justices, and judges with supervisory authority who are informed of complaints against other judicial officers have ethical obligations to handle those complaints appropriately. (See Code of Judicial Ethics, canon 3C(4); Cal. Rules of Court, rules 10.603(c)(4) and 10.703; CJA Jud. Ethics Committee Op. No. 64.) Most courts have formal internal procedures for how complaints to the presiding judge or justice are processed, and the presiding judge or justice has the unique ability and responsibility to address issues of bias immediately and directly with the judicial officer, if warranted.</p> <p>Similarly, courts have specific procedures for addressing complaints about court employees, and those procedures provide confidentiality to the extent allowed by due process and the</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none">• There is a need to clarify how complaints against bailiff's are processed as they are not court staff.• Beyond the formal complaint process we suggest there be an opportunity for	<p>investigatory process, as provided in court personnel policies and memorandums of understanding. Referring complaints about court employees to local bias committees may create personnel and labor relations concerns, which could create conflict with existing court personnel policies and labor relations agreements regarding resolution of employee complaints. In addition, referring complaints about court employees to local bias committees deprives courts of the ability to address the complaint internally and comply with any legal obligations the courts may have arising from the complaints, including the need to take immediate corrective action in certain circumstances.</p> <p>The work group also notes the commenter's request for clarification as to the procedure to submit complaints against bailiffs who are not court employees. Procedures for submitting complaints against bailiffs who are not court employees is beyond the scope of this proposal, and will likely vary depending on the particular county that employs the bailiffs. Complainants should inquire with the court regarding the procedure for making complaints against bailiffs or other non-employee justice partners at the court.</p> <p>The work group notes the commenter's suggestion that there be opportunities for annual input from</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>broad based legal community input annually, to help CJER and local courts with more pointed educational efforts.</p> <p>3. <u>Request for Specific Comments</u></p> <p>How well would this proposal work in courts of different sizes?</p> <ul style="list-style-type: none">• Same as above: Without the protection of confidentiality, especially in smaller courts, or if a complaint is made about a judicial officer or court staff assigned to a specialty court, a lawyer may not feel safe to make constructive comment. <p>We appreciate your consideration of our comments.</p>	<p>the legal community, especially on education efforts. The work group agrees that this type of community outreach, and providing a direct forum for community input is a helpful suggestion that may benefit particular communities. As discussed above, while the work group did consider outlining baseline education, outreach, and input recommendations, it ultimately left those details to be evaluated by each individual local court and bias committee, with consideration of the specific needs of that community, and within the framework created by the standard.</p> <p>The work group appreciates this additional feedback, and adopts its response made above regarding the need to promote confidentiality and privacy in the complaint process.</p>
5.	California Women Lawyers by Naomi Dewey, President, Sacramento	N	California Women Lawyers (CWL) respectfully submits these comments in response to Invitation to Comment ITC SP21-03,	The work group appreciates this submission, and notes the commenter's concerns regarding the elimination of the recommendation that local bias

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>concerning amendments proposed by the Work Group to Enhance Administrative Standards Addressing Bias in Court Proceedings to California Rules of Court, Rule 10.20. CWL supports and applauds most of the amendments proposed by the Committee. CWL must, however, respectfully oppose the Committee's proposal to eliminate the provision of Rule 10.20 providing that local bias committees should "[d]evelop and maintain an informal procedure for receiving complaints relating to bias in the courtroom" in favor of encouraging access to information regarding other means of submitting complaints. The court's duty to support the integrity and impartiality of the judicial system and to promote a courtroom environment free of bias or the appearance of bias is of upmost importance. Every effort should be taken in support of these goals.</p> <p>It is not clear that the Committee had sufficient information to conduct an informed balancing of the potential costs and benefits of this proposed amendment. The cost is that redirecting complainants away from local bias committees undermines fundamental goals of Rule 10.20, such as facilitating discussion about, and learning from, unconscious bias that manifests within a particular courtroom. Hearing directly, and confidentially, from court users who experience bias is important to a local committee's ability to recognize (and help</p>	<p>committees adopt informal complaint resolution procedures, and the concerns regarding the CJP's ability to handle informal bias complaints. As discussed in both the accompanying report and the Advisory Committee Comments, the proposal eliminates the recommendation that local bias committees adopt an informal complaint process, in part because there are many existing, effective, and updated avenues for making complaints regarding bias in court interactions, including avenues through the CJP and to the presiding judges or justices of the local courts, and due to potential conflict between the multiple avenues for raising complaints.</p> <p>The CJP is best equipped to resolve complaints about judicial officer bias, given that the CJP has its own experienced investigators, established investigation procedures, and the ability to subpoena witnesses—tools that may not be available to local bias committees. Alternatively, complaints about judicial officers may also be made directly to the presiding judge or justice. Most courts have internal formal procedures for how complaints to the presiding judge or justice are processed, and the presiding judge or justice has the unique ability and responsibility to address issues of bias immediately and directly with the judicial officer, if warranted. Creating an alternative complaint resolution system through local bias committees may cause complaints to go unreported to the CJP and the presiding judges or</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<p>alleged offenders recognize) specific instances of unconscious and explicit biases when they occur. The informal complaint procedures provide an important and perhaps irreplaceable means for victims of bias to be heard, confidentially, about instances of bias that are harmful and worthy of the committee's attention, but which the complainant may not feel prepared to escalate through other processes. The costs of eliminating these complaint procedures are severe.</p> <p>The benefits of the proposed amendment, by contrast, are unproven and uncertain. One rationale for the proposed amendment provided in the ITC is that other avenues for complaints are adequate. But simply informing the public about other complaint processes is not likely to fulfill—and may undermine—efforts to identify and address bias in a particular courtroom. For example, a complaint to the Commission on Judicial Performance is nearly always likely to be dismissed without investigation. Over the past 10 years, less than 15% of all complaints filed resulted in a preliminary investigation or even a staff inquiry, and less than 1% resulted in any formal proceeding. These statistics are confirmed in recent reports including the Commission on Judicial Performance 2020 Case Statistics and the Commission on Judicial Performance, “Weaknesses in Its Oversight</p>	<p>justices, which may lead to inconsistent and less optimal handling of these complaints.</p> <p>The commenter also raises concerns that the CJP dismisses many complaints without investigation. The CJP is the independent state agency established by the California Constitution, which is responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges. As stated on its website at <i>cjp.ca.gov</i>, “[t]he commission’s mandate is to protect the public, enforce rigorous standards of judicial conduct and maintain public confidence in the integrity and independence of the judicial system” and the CJP investigates “conduct in conflict with the standards set forth in the Code of Judicial Ethics.” This includes responsibilities for performing judicial duties without bias, prejudice, or harassment (canon 3(B)(5)); for requiring attorneys in proceedings before the judicial officer to refrain from manifesting bias, prejudice, or harassment (canon 3(B)(6)); for discharging judicial administrative duties without bias or prejudice (canon 3(C)(1)); and for requiring staff and court personnel under the judicial officer’s control to refrain from manifesting bias, prejudice, or harassment in the performance of their duties (canon 3(C)(3)).</p> <p>As discussed by the Director-Chief Counsel of the CJP at his presentation to the work group at its</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Have Created Opportunities for Judicial Misconduct to Persist,” Auditor of the State of California, April 2019, Report 2016-137.</p> <p>A second rationale provided is that it is often difficult to determine at the outset if the complaint warrants discipline or would be appropriate for less formal resolution. However, this proposed amendment does not address that issue, instead it shifts the burden of making that difficult determination away from the local bias committee with its expertise in current law and current understandings of bias, entirely to the victim. The foreseeable result is that many victims will take no action at all, especially in cases where bias is evident, but formal discipline is not clearly required.</p>	<p>public meeting in May 2021, many of the complaints that do not result in CJP investigation are from litigants about the outcome of individual cases. These complaints do not relate to conduct set forth in the Canons of Judicial Ethics, and therefore are not appropriate for resolution by the CJP. There is no indication that the CJP is dismissing any significant number of bias or conduct complaints without inquiry or investigation.</p> <p>The work group also notes the potential ethical conflicts for judicial officers who are members of local bias committees. Judicial officers who become aware of complaints against other judicial officers have ethical obligations that require them to take appropriate corrective action, which may include reporting the information to the presiding judge or justice, or the CJP. (Canons of Judicial Ethics, canon 3D(1) and (2); See also, CJEO Formal Opinion 2020-15). Presiding judges, presiding justices, and judges with supervisory authority have additional judicial oversight and reporting responsibilities. (See Code of Judicial Ethics, canon 3C(4); Cal. Rules of Court, rules 10.603(c)(4) and 10.703; CJA Jud. Ethics Committee Op. No. 64). Judicial officers on the local committee making the determination as to whether a complaint is disciplinary or education in nature could face their own discipline for not</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>The third rationale provided in the ITC for the proposed amendment is that there are resource, capacity, privacy, and labor relations concerns associated with the informal complaint process. However, it is not clear that these concerns would materialize in practice or could not otherwise be addressed.</p>	<p>reporting a required complaint to CJP if they made the wrong determination as to whether the complaint was appropriate for informal resolution or merited discipline.</p> <p>Having local bias committees resolve complaints may result in less confidentiality for the complainant and respondent. Any inquiry by a local bias committee would be known and resolved by a group of local attorneys, judicial officers, and other committee members who would necessarily need to know the particular facts of the complaint. The work group has concerns that such an approach would significantly expand the number of individuals from the local legal community who were aware of the existence or details of the complaint. Conversely, a CJP complaint is processed and investigated by a CJP investigator outside of the local court system, and with no involvement from the local court. The CJP provides confidentiality for complainants, and has existing procedural safeguards in place to protect complainants from retaliation for asserting good faith complaints to the CJP. Retaliation complaints can be made to either the CJP or the presiding judge or justice. These processes better protect confidentiality of the complainant.</p> <p>The work group is also concerned that referring complaints against judicial officers and court employees to local bias committees might trigger</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				<p>various due process concerns, especially given that local bias committees might not be adequately resourced or experienced to conduct the highly specialized inquiries that may need to be undertaken in response to a bias complaint against a judicial officer or court employee.</p> <p>Likewise, referring complaints about court employees to local bias committees may create personnel and labor relations concerns, given that courts have existing personnel policies and labor relations agreements regarding resolution of employee complaints. In addition, referring complaints about court employees to local bias committees deprives courts of the ability to address the complaint internally and comply with any legal obligations the courts may have arising from the complaints, including the need to take immediate corrective action in certain circumstances.</p>
			<p>Due to social and economic pressures, it is extremely difficult for an attorney to make a complaint of bias against a judge. Providing a safe space to do so is of utmost importance to the proper administration of justice for all. Proposing to eliminate such a space is a move in the wrong direction and is likely to undermine the effectiveness of the local committees.</p>	<p>The work group appreciates the commenter's statement regarding the need for safe spaces for court users to make complaints about bias. The work group recognizes that some local bias committees have established effective informal complaint resolution procedures for complaints against judicial officers, and that there is no one correct way to eliminate bias in court interactions. The work group's proposal does not prevent courts and local bias committees from choosing to create informal complaint resolution procedures</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>For these reasons CWL must oppose the proposed edits which eliminate the informal complaint process to local bias committees.</p> <p>Thank you for your time and attention to this matter.</p>	<p>for complaints against judicial officers if those courts and committees conclude that is the best way to address bias complaints in their communities. If so, the work group recommends that they fully consider the above discussed concerns before deciding to create or continue an informal complaint resolution procedure. However, given the existence of California Rules of Court, rule 10.351, and the fact that courts already have personnel policies and memorandums of understanding that govern complaints against court employees, having local bias committees resolve complaints against court employees is not recommended.</p> <p>Finally, the work group notes the concern that it may be more difficult to facilitate discussions concerning bias if the local bias committee does not resolve informal complaints of bias. The proposed amendments task local bias committees with building partnerships between courts, local bias committees, and their communities to raise awareness regarding unconscious and explicit biases and to find ways to address and eliminate bias. While there would be no recommendation that local bias committees resolve informal complaints against specifically named judicial officer and employees, they would still play an important role in fostering discussions about bias, identifying and resolving systemic concerns, promoting community engagement, delivering formal and informal education about bias, and</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				discussing formal complaint mechanisms through the CJP or the presiding judge.
6.	Amitabho Chattopadhyay San Francisco	AM	<p>While I support the expansion of the protected classes, and the usage of the general 'protected by federal or state law' qualifier, the scope of protected classes should explicitly incorporate not only enumerated classes, but also the unenumerated classes protected by the Unruh Act (Civ. Code section 51 et. seq.), such as political affiliation, personal appearance (except to the extent circumscribed by court rules and decorum), etc.</p> <p>This could perhaps be accomplished by adding 'including all classes protected by the Unruh Act (Civil Code section 51 et. seq.) '.</p>	The work group appreciates this feedback. The proposal amends the list of protected classifications acknowledged in standard 10.20 by adopting the protected classifications that are recognized by existing law in similar areas, including Government Code section 12940(a) (for employment and housing discrimination, harassment, and retaliation) and Code of Judicial Ethics canon 3(B)(5) (for judicial bias). This amendment greatly expands and modernizes the list of protected classifications listed in standard 10.20. In addition, the decision to add that the protected classifications in standard 10.20 include any other classifications protected by state and federal law, including Government Code section 12940(a) and Code of Judicial Ethics, canon 3(B)(5), allows the list to stay updated, as the standard will automatically incorporate any new protected classifications that are recognized by state or federal law.
7.	Contra Costa Superior Court Bias Committee by Hon. Joni T. Hiramoto, Committee Chair, Superior Court of Contra Costa County	N	<p>[1] The Contra Costa County Superior Court Bias Committee submits the following comments on proposed changes to Standards of Judicial Administration, standard 10.20 (ITC SP21-03).</p> <p>The Contra Costa County Superior Court's Bias Committee is one of the first 10 established in the State of California, and has been in existence since 1992 – almost 30 years. Retired</p>	The work group appreciates the information provided by the commenter and applauds the work the commenter has done on the elimination of bias.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<p>Judge Barbara Zuniga was the first judge on this Committee, which was chaired by attorney Linda Debene. The MOU establishing this committee is attached. Two of the Committee's current members, Diana Becton (District Attorney of Contra Costa County, the first African American and first woman to hold this position) and Robin Pearson (partner at Ropers Majeski and recipient of the Contra Costa Bar Association's Outstanding Woman Lawyer of the Year award in 2019) were founding members of this Committee. The membership of our current committee also includes Judge Terri Mockler, who is currently on the CJA Ethics Committee and a past chair of that committee. Thus, this Court and this Committee have a particular interest in revisions to Standard 10.20 and, in particular, to the complaint process.</p> <p>[2] We oppose the proposal to eliminate the procedure for informal complaints of bias from Standard 10.20 for several reasons.</p> <p>[a] One concern expressed by the workgroup was the difficulty encountered by courts in creating a procedure or reviews of bias complaints. In our opinion, while creating a procedure unique to the needs of a particular county court certainly requires effort, the challenge is far from insurmountable. Our Committee has an</p>	<p>The work group appreciates the work that has been done by this commenter to create a functional complaint resolution procedure for complaints against judicial officers, as envisioned by the current version of standard 10.20. The work group recognizes that there is no one correct way to eliminate bias in court interactions, and the work group advocates for each court and local bias committee to find solutions that work best for that local community. Nothing in the proposed amendments to the standard prevents courts and local bias committees that have existing informal</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>established procedure for handling such complaints and has recently revised our Local Rule 2.150 to update that procedure. Additionally, our Committee has recently handled a complaint against a bench officer according to the guidelines set out in Standard 10.20.</p> <p>[b] Another concern expressed by the workgroup is the nebulousness surrounding the standard of complaints “not warranting discipline.” We believe the “not warranting discipline” standard could use some clarification but is not an entirely unworkable starting point. Bias Committee members are lawyers and judges who are used to working with difficult concepts.</p> <p>[c] Lastly, the workgroup was concerned that the bias process could cause conflict with labor laws, inasmuch as it might apply to complaints against employees. We agree with this concern, but do not agree that it is a basis for eliminating the complaint procedure entirely. For example, our complaint procedure applies only to bench officers and not to other court employees and thereby avoids the potential labor relations and human resources conflicts. A revised Standard 10.20 complaint process could be restricted so that it did not apply to employees.</p>	<p>complaint resolution processes for complaints against judicial officers, including the commenter, from continuing to use those processes, and other courts and committees may choose to create their own processes if those courts and committees conclude that is the best way to address bias complaints against judicial officers in their communities. If so, the work group recommends that they fully consider how best to address the concerns expressed below, and also outlined in the report and the Advisory Committee Comments. However, given the existence of California Rules of Court, rule 10.351, and the fact that courts already have personnel policies and memorandums of understanding that govern complaints against court employees, having local bias committees resolve complaints against court employees is not recommended.</p> <p>Yet despite the success of the commenter in creating an informal complaint resolution procedure, the work group is aware that many other courts and local bias committees have encountered struggles to do the same. For example, having local bias committees resolve complaints may result in less confidentiality for the complainant and respondent. Any inquiry by a local bias committee would often be known and resolved by a group of local attorneys, judicial officers, and other committee members who would necessarily need to know the particular facts of the complaint. While this has not</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>[3] Our Committee seeks clarification as to whether the proposed revisions would eliminate the complaint procedure that our county has worked so hard to develop and of which it is so justifiably proud. We believe the complaint process is a necessary avenue for ensuring the prevention and elimination of bias in our court. We feel the complete elimination of an informal complaint process would set back years of work and progress, in our court and in others, towards the goal of prevention of bias in the judicial system statewide.</p> <p>[4] Our Committee believes that the elimination of this informal complaint procedure would leave certain court users with no avenue other than filing a complaint with CJP, which would lead to underreporting of incidents of bias. We believe there are events which would not “warrant discipline” from CJP but would warrant corrective action on a more informal level. We also believe that leaving incidents in this category solely to the responsibility of the Presiding Judge of the County to take “corrective action” has disadvantages in that:</p> <p>[a] the public may have more confidence in the process of a committee that includes lawyers and non-judges than in the decision-making process of a single individual who is a colleague of the subject of the complaint;</p>	<p>impacted the commenter, the work group has concerns that such an approach, if adopted statewide, would significantly expand the number of individuals from the local legal community who were aware of the existence or details of the complaint.</p> <p>While the commenter agrees that the existing complaint resolution recommendations are unworkable for employees, similar concerns also exist for judicial officers. The work group is concerned that referring complaints against judicial officers to local bias committees might trigger various due process concerns, especially given that some local bias committees might not be adequately resourced or experienced to conduct the highly specialized inquiries that may need to be undertaken in response to a bias complaint against a judicial officer. In addition, recommending that local bias committees resolve complaints of bias against judicial officers may raise ethical conflicts for judicial officers who are members of the local bias committees. Judicial officers who become aware of complaints against other judicial officers have ethical obligations that require them to take appropriate corrective action, which may include reporting the information to the presiding judge or the CJP. (Canons of Judicial Ethics, canon 3D(1) and (2); See also, CJEO Formal Opinion 2020-15). A system where those complaints are handled informally, at a local level, could undercut those obligations.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>[b] a committee is better situated to be consistent in the actions taken, in contrast to a Presiding Judge whose tenure changes every two years; and</p> <p>[c] the conduct might have been committed by the Presiding Judge.</p> <p>In our Local Rules, we have adopted a policy that a judge who is a member of the Court's Bias Committee shall not take part in any discussion, investigation or vote on a complaint directed at that judge.</p> <p>[5] We attach a copy of our Local Rule, 2.150 which sets out the purview of the court's complaint procedure. (This is in the most recent revision of the Local Rules, to become effective July 1, 2021.)</p> <p>Thank you for your work and consideration.</p>	<p>The commenter suggests that the elimination of informal complaint procedures could leave court users with no forum within which to file a complaint. The work group disagrees. The work group concludes that the existing procedures for resolving complaints against judges appropriately address those concerns. The CJP is best equipped to resolve complaints about judicial officer bias, given that the CJP has its own experienced investigators, established investigation procedures, the ability to subpoena witnesses, confidentiality for complainants, and existing procedural safeguards to protect complainants from retaliation—tools that may not be available to local bias committees. Alternatively, complaints about judicial officers may also be made directly to the presiding judge or justice. Presiding judges, presiding justices, and judges with supervisory authority who are informed of complaints against other judicial officers have ethical obligations to handle those complaints appropriately. (See Code of Judicial Ethics, canon 3C(4); Cal. Rules of Court, rules 10.603(c)(4) and 10.703; CJA Jud. Ethics Committee Op. No. 64.) Most courts have formal internal procedures for how complaints to the presiding judge or justice are processed, and the presiding judge or justice has the unique ability and responsibility to address issues of bias immediately and directly with the judicial officer, if warranted. Creating an alternative complaint resolution system through local bias committees may cause complaints to go unreported to the CJP</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				and the presiding judges, which may lead to inconsistent and less optimal handling of these complaints.
8.	Disability Rights California by Aisha C. Novasky, Attorney and Tiffany Nocon, Attorney, Los Angeles	A	<p>Disability Rights California, the protection and advocacy system for the State of California, submits this letter in response to the Judicial Council's invitation to comment on the proposed amendments to Standard 10.20 of California's Standards of Judicial Administration, Court's Duty to Prevent Bias. DRC is in support of the proposed amendments that will support the integrity and impartiality of the judicial system and promote a courtroom environment free of bias or the appearance of bias.</p> <p>Disability Rights California (DRC) is the largest disability rights legal advocacy organization in the nation, and we work to ensure a barrier-free, inclusive, and diverse California that values each individual, their voice, and their right to equal opportunity. From 2018 to 2020, DRC advocated on behalf of 84 litigants with disabilities who were unable to access the courts because their reasonable accommodation requests were mishandled. Accordingly, DRC is encouraged by your efforts to amend Standard 10.20, as these amendments will improve reasonable accommodation processing for many of our clients and the communities we serve.</p>	The work group notes the commenter's support for the proposed amendments and appreciates this input.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<p>DRC is heartened that the proposed amended standard specifically includes litigants with disabilities, and we encourage courts to continue working with the disability community to appreciate their unique qualities and needs to access to the judicial system. The most common requested accommodations for people with disabilities are:</p> <ul style="list-style-type: none">• Extensions of time to submit documents• Telephonic or virtual appearances• American Sign Language interpretation• Transcripts and audio recordings of hearings• In-person mediation to be conduct via video• Permission to sit instead of standing in court• Permission to bring a service or support animal into a courthouse• Assistance with completing paperwork for reasonable accommodation requests <p>The proposed changes to Standard 10.20(b) will ensure many of aforementioned accommodations are met, and will enable litigants with disabilities fair access to the courts, which is especially important for litigants without attorneys.</p> <p>Thank you for your consideration of our comments. DRC incorporates by reference written comments submitted by the Legal Aid</p>	

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Association of California. Please do not hesitate to contact me at (213) 213-8092 or Aisha.Novasky@disabilityrightsca.org should you have any questions regarding these comments.	
9.	The Elimination of Bias Committee for the San Bernardino Superior Court by Hon. Khymberli Apaloo, Co-chair and Hon. John Pacheco, Co-chair	AM	<p>Thank you for your leadership on this statewide court initiative and thank you for the opportunity to provide comment on the proposed revisions to California Standards of Judicial Administration, standard 10.20. The Elimination of Bias Committee (EOBC) for the San Bernardino Superior Court supports the proposed revisions, and we agree that the proposed revisions to the Standard better align with current laws, data, literature, and best practices regarding bias. The EOBC has critically reviewed the proposed revised Standard and we offer the following comments:</p> <ul style="list-style-type: none"> The EOBC recommends that the first sentence in the Statement of Purpose be revised as follows: The California judicial branch is committed to ensuring, not only the integrity and impartiality of the judicial system, but also to ensure that the court interactions are free of bias as well as the appearance of bias. The EOBC believes that this revision more clearly articulates the Statement of Purpose. The EOBC does not recommend any 	<p>The work group notes the commenter's support for the proposed amendments and appreciates this input.</p> <p>The work group appreciates the commenter's suggested revisions to the Statement of Purpose. The work group concludes that the proposed amendment to the Statement of Purpose of standard 10.20 more accurately states the work group's intended purpose of standard 10.20, to ensure integrity and impartiality in the judicial system, and to commit that courtroom interactions, conducted at the local court level, should be free of bias and the appearance of bias.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>revisions to the remaining text in the Statement of Purpose.</p> <ul style="list-style-type: none">The EOBC agrees with the revisions to 10.20(c) for the reasons stated in the Work Group's request for comment. However, the elimination of bias is a lofty vision. To determine whether a court is attaining its vision, the court should identify measurable indicators of progress. Such indicators can inform the court of progress towards achieving its vision, and they can define areas where more targeted training is needed, whether to the group as a whole, or as recommendation regarding a particular judge. Therefore, some type of data collection requirement should remain in the Standard. That process could be as simple as tracking the types of complaints received by the court. The Presiding Judge could share the nature of bias-related complaints with the elimination of bias committees, and if appropriate, the committees could use the underlying anecdotes for training purposes. (No personally identifying information from the complaints would be shared with the elimination of bias committees.) Individual courts could collaborate with the Presiding Judge to determine the appropriate reporting	<p>The work group appreciates the recommendation that local bias committees be required to track data on the types of complaints received by the presiding judge, and for local bias committees to establish methods of compiling data to enable them to measure progress in addressing bias. While this approach might be helpful for certain courts and local bias committees, the work group refrains from making specific data collection either a requirement or statewide recommendation.</p> <p>While the work group did consider setting baseline recommendations on reporting requirements and data collection, it ultimately left those details to be evaluated by each individual committee within the framework created by the standard. The work group recognizes that counties vary greatly in size, demographics, needs, and viewpoints of the local bar community, and each county has unique and specific issues within its legal community. The intent of the proposed amendments is to provide courts and local bias committees with the framework to take the essential steps to engage their local communities in the important discussions that are required to prevent and eliminate bias. Thus, while the proposal broadly recommends that local bias committees engage in community outreach and</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>structure for the court, but the Standard should include a general requirement for courts to permit data collection regarding the types of complaints or underlying anecdotes that might be useful in educational programs.</p> <ul style="list-style-type: none">• Requiring courts to maintain and report complaint-related data to the elimination of bias committees also helps those committees maintain longitudinal data that reveals trends in the types of complaints made to the courts. Having this data will not only memorialize the committees' institutional knowledge as the constituency of the committees may change over the years, but it will also help the elimination of bias committees provide training that is targeted to rectify specific bias-related complaints that have been made to a particular court.• The Standard encourages courts to create local committees on bias, but given the courts' duty to prevent bias, the Standard should require courts to create elimination of bias committees, rather than making this crucial tool for eliminating bias elective.	<p>educational opportunities, and while the proposal suggests various roles that these local committees might play in their communities, the work group also recognizes that there is not just one correct approach. The proposed amendments allow local bias committees to establish their own methods of compiling data that enable the local committees to measure progress in addressing bias and assess issues in a way that is tailored to the communities served by the courts.</p> <p>The work group appreciates this suggestion to make creation of local bias committees mandatory, and the work group strongly recommends that local courts create local bias committees.</p> <p>However, as stated in Cal. Rules of Court, rule 1.5(c), the Standards of Judicial Administration</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				<p>within the rules of court are guidelines or goals recommended by the Judicial Council. The nonbinding nature of the standards is indicated by the use of “should” in the standards instead of the mandatory “must” used in the rules.</p> <p>Maintaining the recommendations in the standard as guidelines and goals is consistent with the work group’s overall goal of creating a framework within which courts can work with their local communities toward the elimination of bias in court interactions, rather than creating top-down mandates. The proposal recognizes that each community varies greatly in size, demographics, needs, and viewpoints, and that the issues that confront each local community are unique and require direct dialogue between the local bias committee and the community. The intent of the proposed amendments is to provide courts and local committees with the framework to take the essential steps to engage their local communities in the important discussions required to prevent and eliminate bias. Thus, while the proposal makes recommendations, the work group also recognizes that there is not just one correct approach. The current proposal gives courts the latitude to create customized processes, and partner with their local communities to find solutions that meet the unique and specific needs of each court and the local community that it serves.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none">As addressed above, the EOBC strongly believes that courts should identify accountability metrics that can guide the courts in their duty to prevent bias. To help accomplish this purpose, the EOBC recommends that revised sections (c)(2) and (c)(3) include a minimum requirement that courts must sponsor or support at least one educational program and at least one community engagement event annually. Merely recommending and not requiring courts to implement the training and community engagement that are critical to eliminating bias in the courts is inconsistent with the Standard's statement of purpose as well as the courts' duty to ensure integrity and impartiality of the judicial system. <p>The EOBC also offers the following responses to the specific questions posed in the invitation to comment:</p> <ul style="list-style-type: none">Does the amended standard appropriately address the stated goal of amending Standard 10.20 to reflect current law and current understandings regarding the elimination of bias and provide a framework for courts to work with their local bar communities to address courtroom bias? Yes	<p>The work group appreciates the suggestion that local bias committees be required to sponsor or support at least one educational and one community engagement event each year. The work group adopts the response given to this comment above. Specifically, while the work group did consider setting baseline minimum requirements on education, outreach, and data collection, it ultimately left those details to be evaluated by each individual committee within the framework created by the standard, for the reasons outlined above. The proposed amendments allow local bias committees to establish their own type and number of education and outreach programs that are tailored to the needs and unique circumstances of the communities served by that court.</p> <p>The work group appreciates the feedback provided by the commenter on the specific questions asked by the work group in its Invitation to Comment.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"> Does the proposal create any additional workload not considered by this Invitation to Comment? The invitation to comment adequately identifies fiscal and operational impacts. However, based on the Court's experience in creating and maintaining its EOBC, the Court suggests that a high-functioning elimination of bias committee may require more administrative support than is anticipated in the invitation to comment. How well would this proposal work in courts of different sizes? The proposed revisions to the Standard maintain an appropriate balance of carrying out the Standard's purpose of eliminating bias in the courts with allowing individual courts enough flexibility to implement the Standard. 	
10.	Equal Rights Advocates by Brenda Star Adams, Senior Counsel, Education Equity and Litigation, San Francisco	N	<p>Madame Chief Justice and Members of the Judicial Council, Equal Rights Advocates respectfully submits this comment in opposition to proposed changes to the California Rules of Court, Rule 10.20 currently under consideration.</p> <p>Background Responding to findings by the 1987 Advisory Committee on Gender Bias, the California Supreme Court issued guidance requiring courts to establish local bias committees (LBCs) to</p>	The work group appreciates this submission and agrees that there is a need to protect court users from bias, and acknowledges that the efforts to amend standard 10.20 originated from this need. The work group concludes that amending standard 10.20 is a necessary step in renewing the branchwide commitment to the elimination of bias in all court interactions. The amended standard will provide a framework that will allow courts and local bias committees to do further work on the local level to build partnerships with legal

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>serve as engines of community education and to help review and resolve complaints of bias regarding members of the judiciary. The Judicial Council codified this requirement in CRC 10.20 in 1996, mandating that these committees and their functions be “memorialized in local rules of court.” As of April 2020, after 25 years, thirty-one out of fifty-eight superior courts still had no reference to bias in their local rules of court at all, and only a handful were in full compliance with CRC 10.20. When advocates brought attention to this lack of compliance, several courts quickly announced newly-established LBCs. In November 2020, Chief Justice Cantil-Saukaye convened a Work Group to update the protected classifications listed in CRC 10.20, consider the optimal role and composition of the LBCs, and recommend other changes to better assist courts in maintaining a courtroom environment free of bias and the appearance of bias.</p> <p>The need for robust protections against bias—and accessible avenues for attorneys and litigants to seek recourse against it—remains significant in California’s courts. The following table, displaying data from the Judicial Council of California and the California Bar Association reveals the extent to which the demographics of the bench do not match the California legal community or the California population as a</p>	<p>communities and engage in the process of conceptualizing outreach and educational programs.</p> <p>While the work group acknowledges the data regarding the demographics of judicial officers, addressing that disparity is beyond the scope of this work group. However, the work group notes the commenter’s concern that those demographic disparities potentially increase incidents of bias concerning certain attorneys and court users from historically marginalized communities, and has been mindful of that disparity in making its proposal and in responding to the further concerns raised by this commenter.</p> <p>The work group appreciates the commenter’s concern that the proposed amendment to replace a specific list of recommended members for makeup of local bias committees might lead to underrepresentation of certain groups. The work group considered making recommendations that certain demographic groups be included in local bias committees. While the work group promotes diverse membership in local committees, it also recognizes that identifying certain groups for inclusion can have the opposite effect—leading to exclusion of some groups and viewpoints, and creating a false sense of diversity that is antithetical to the elimination of bias.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<p>whole. As is evidenced by the below chart, Latinx individuals, AAPI individuals, and women are underrepresented in both the California judiciary and the bar.²</p> <p>Representation matters when it comes to receiving fair treatment in court. This chart makes clear that attorneys and court users from historically marginalized communities have good reason for concern about bias from a judiciary that continues to disproportionately exclude them. “[A]lthough judges may pledge to be free from any bias or other improper influence when deciding cases, this pledge may be undermined when a judiciary is racially unrepresentative. Overt or subconscious bias in favor of one’s own racial group often constitutes insensitivity to the plight of other racial groups that are not represented in the judiciary.” A. Leon Higginbotham, <i>Seeking Pluralism in Judicial Systems: The American Experience and the South African Challenge</i>, 42 Dula 14 1028, 1059 (1993). The same logic applies to gender. While we applaud the Work Group's effort to ensure “court users feel that they have an avenue to discuss issues of bias in court interactions and inform the court,” several</p>	<p>Instead, the proposal recognizes that each community varies greatly in size, demographics, needs, and viewpoints, and that the issues that confront each local community are unique. The proposal allows courts to recognize and build on the unique aspects of their communities and gives those courts the flexibility to create committees within the broad framework and guidelines of standard 10.20 that address those unique viewpoints and needs.</p>

2

	White	Black	Latinx	Asian/Pacific Islander	Native	Women	LGB	Trans
Judges	64%	8%	1%	8.5%	0.4%	38%	4%	0.1%
Attorneys	68%	4%	7%	13%	0.4%	42%	7%	Bar did not split LGB from T
Public	40%	6%	36%	16%	0.4%	50%	5%	0.4%

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>recommended changes fall short of advancing this goal, or actually work against this objective. ERA supports creating a broader and more inclusive duty on the part of court officers to prevent bias, but, as discussed in further detail below, we oppose diluting obligations to ensure representation of historically-marginalized groups on LBCs and the elimination of these committees' role in receiving and reviewing complaints of bias.</p> <p>Diverse Representation on LBCs is Crucial to Eliminating Bias in the Judiciary The addition in subsection (b)(1) of gender expression and gender identity as protected classifications is a laudable change to more comprehensively protect California's court users from bias. Similarly, the shift from "prohibiting" to "preventing" bias in "all court interactions" not just "court proceedings" places appropriate burdens on court officers to proactively eliminate bias wherever they have purview to do so. However, the amendments in subsection (c)(1) undercut this commitment by eliminating directives to ensure representation on LBCs by women, members of minority and immigrant communities, LGBTQI+ individuals, and individuals with disabilities. The proposed amendment replaces an express list of historically marginalized communities that LBCs must work to include with a general call for "individuals who interact with the court and</p>	

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>reflect and represent the diverse and various needs and viewpoints of court users.” This new, vague standard removes key guidance to maintain diverse, representative LBCs, and denies community members a clear standard for holding courts accountable to this goal.</p> <p>LBCs are Crucial to Ensure Complaint Procedures are Accessible and Equitable</p> <p>Equal Rights Advocates also opposes the Work Group’s proposal to abandon CRC 10.20’s required LBC bias complaint procedures in favor of “ensur[ing] that court users can access existing complaint resolution procedures.” This would leave those who have experienced bias only two options: (1) complain directly to the presiding judge of the relevant court, or (2) complain to the Commission on Judicial Performance (CJP). The Work Group’s concerns about redundancy or creating a conflict with the existing CJP procedures fail to address a troubling reality: each year since 2011, nearly 1,200 complaints have been brought to the CJP, accounting for about half of all California judges. Approximately 90% of these complaints are closed without investigation, and fewer than 5% result in discipline. State of California Commission on Judicial Performance 2020 Annual Report, pp. 18-20.</p>	<p>The work group notes the commenter’s concerns regarding the elimination of the recommendation that local bias committees adopt informal complaint resolution procedures, and concerns regarding the CJP’s ability to handle informal bias complaints. As discussed in both the accompanying report and the Advisory Committee Comments, the proposal eliminates the recommendation that local bias committees adopt an informal complaint process, in part because there are many existing, effective, and updated avenues for making complaints regarding bias in court interactions, including avenues through the CJP and to the presiding judge or justice of the local courts, and due to potential conflict between the multiple avenues for raising complaints.</p> <p>The commenter has raised specific concerns that the CJP dismisses many complaints without investigation. The CJP is the independent state agency established by the California Constitution, which is responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges. As stated on its website at cjp.ca.gov, “[t]he commission’s mandate is to</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>The CJP, which is disproportionately white (64%) and male (64%), explained that “a substantial percentage [of complaints] alleged legal error not involving misconduct or expressed dissatisfaction with a judge’s decision.” While this justification sounds reasonable, its explanation for the cases where no discipline was given is less compelling. In those cases, the CJP claimed that the allegations were unfounded or unprovable, or the judge in question gave an “adequate” explanation of the situation. Id. at 16. However, a 2019 report by the Auditor of the State of California found that the CJP does not consistently take all reasonable steps when it investigates alleged misconduct, its structure and disciplinary processes do not align with best practices, and it has not worked sufficiently to increase transparency and accessibility. Commission on Judicial Performance, Report 2016-137, pp. 2-3 (emphasis added). The report further found that the CJP failed to detect warning signs and patterns of ongoing misconduct, and their pattern of investigating a very small percentage of reports hindered their ability to identify trends and root out bias. Id. at 23. These low rates of investigation or sanction have an unclear impact on individuals’ willingness to report, but over a decade, this dynamic has likely discouraged reporting and limited the judiciary’s overall understanding of the prevalence of bias. Given that the CJP has not</p>	<p>protect the public, enforce rigorous standards of judicial conduct and maintain public confidence in the integrity and independence of the judicial system” and the CJP investigates “conduct in conflict with the standards set forth in the Code of Judicial Ethics.” This includes responsibilities for performing judicial duties without bias, prejudice, or harassment (canon 3(B)(5)); for requiring attorneys in proceedings before the judicial officer to refrain from manifesting bias, prejudice, or harassment (canon 3(B)(6)); for discharging judicial administrative duties without bias or prejudice (canon 3(C)(1)); and for requiring staff and court personnel under the judicial officer’s control to refrain from manifesting bias, prejudice, or harassment in the performance of their duties (canon 3(C)(3)).</p> <p>As discussed by the Director-Chief Counsel of the CJP at his presentation to the work group at its public meeting in May 2021, many of the complaints that do not result in CJP investigation are from litigants about the outcome of individual cases. These complaints do not relate to conduct set forth in the Canons of Judicial Ethics, and therefore are not appropriate for resolution by the CJP. There is no indication that the CJP is dismissing any significant number of bias or conduct complaints without inquiry or investigation.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>implemented any suggested improvements from this 2019 report, routing complaints through robust local procedures managed by diverse and independent LBCs could allow for more thorough investigation of a greater proportion of complaints. In light of the CJP's shortcomings, providing multiple avenues for complaint is not redundant; the best employers make various methods available for reporting sexual harassment and other discrimination because they want to reduce barriers to reporting and end such discrimination. If the judiciary shares these same goals, it should maintain alternative reporting processes like LBC-managed complaint procedures.</p> <p>The Work Group's Concerns about Privacy Do Not Outweigh the Need for Diverse LBCs</p> <p>The Work Group further cites privacy, personnel, or labor relations concerns with having local bar members and community representatives review complaints of judicial bias. First, reporting to the Presiding Judge—which the Work Group endorses as one of the “existing procedures” about which courts should better educate their users—raises even greater concerns. The risks to privacy or sensitive working relationships are potentially even greater when reporting to the Presiding Judge, especially where they or their colleague are the subject of the complaint. Moreover, discrimination is already so severely</p>	<p>The commenter also suggests that “routing complaints through robust local procedures managed by diverse and independent LBCs could allow for more thorough investigation” than what is provided by CJP. The work group acknowledges that may be the case for some of the largest, most experienced, and best resourced local bias committees, but has significant concerns whether this would be the result in all communities throughout the state. The work group is concerned that referring complaints against judicial officers to local bias committees might trigger various due process concerns, especially given that local bias committees might not be adequately resourced or experienced to conduct the highly specialized inquiries that may need to be undertaken in response to a bias complaint against a judicial officer or court employee.</p> <p>The work group concludes that the existing procedures for resolving complaints against judges appropriately address those concerns. The CJP is best equipped to resolve complaints about judicial officer bias, given that the CJP has its own experienced investigators, established investigation procedures, and the ability to subpoena witnesses—tools that may not be available to local bias committees. Alternatively, complaints about judicial officers may also be made directly to the presiding judge or justice. Presiding judges, presiding justices, and judges</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>underreported, it is unreasonable to presume that the average litigant would feel comfortable making an accusation of judicial bias directly to the Presiding Judge of the court in which the bias took place. Even if they were comfortable making such a complaint, because of the Presiding Judge's position as a member of the judiciary and likely colleague of the subject of the complaint, litigants may lack faith that anything will come of their complaint and may choose not to report for that reason.</p> <p>The same logic applies to the CJP, especially given its dismally low numbers of complaints investigated, let alone resulting in discipline. With these as the only two options available to litigants experiencing judicial bias, complaints of judicial bias will continue to be chilled and go unremedied. As with sexual harassment, providing additional options could help counter substantial under-reporting of the discriminatory conduct the rules aim to prevent. For example, the EEOC found that approximately 70% of people who experience sexual harassment never report to any authority figure who can help, and that 75% of those who did report faced retaliation. They further found that "organizational indifference or trivialization of the harassment complaint" was a common response and discouraged reporting overall. Chai R. Feldblum & Victoria A. Lipnic, June 2016 Report of the Co-Chairs of the Select Task</p>	<p>with supervisory authority who are informed of complaints against other judicial officers have ethical obligations to handle those complaints appropriately. (See Code of Judicial Ethics, canon 3C(4); Cal. Rules of Court, rules 10.603(c)(4) and 10.703; CJA Jud. Ethics Committee Op. No. 64.) Most courts have formal internal procedures for how complaints to the presiding judge or justice are processed, and the presiding judge or justice has the unique ability and responsibility to address issues of bias immediately and directly with the judicial officer, if warranted. Creating an alternative complaint resolution system through local bias committees may cause complaints to go unreported to the CJP and the presiding judges or justices, which may lead to inconsistent and less optimal handling of these complaints.</p> <p>In addition, recommending that local bias committees resolve complaints of bias against judicial officers may raise ethical conflicts for judicial officers who are members of the local bias committees. Judicial officers who become aware of complaints against other judicial officers have ethical obligations that require them to take appropriate corrective action, which may include reporting the information to the presiding judge or justice, or the CJP. (Canons of Judicial Ethics, canon 3D(1) and (2); See also, CJEO Formal Opinion 2020-15). A system where those complaints are handled informally, at a local level, could undercut those obligations.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			Force on the Study of Harassment in the Workplace, EEOC 2016. Thus, providing a safe, inclusive, and representative option for reporting judicial bias will likely result in an increase in reports made and adequately processed. Any concerns the Work Group has regarding confidentiality and privacy can be addressed with policies and procedures limiting the disclosure of sensitive information, and do not warrant completely abandoning the complaint management role of the LBCs.	<p>While the commenter suggests that privacy and confidentiality concerns will be heightened if local bias committees no longer resolve informal bias complaints, the work group concludes the opposite is true. Having local bias committees resolve complaints may result in less confidentiality for the complainant and respondent. Any inquiry by a local bias committee would be known and resolved by a group of local attorneys, judicial officers, and other committee members who would necessarily need to know the particular facts of the complaint. The work group has concerns that such an approach would significantly expand the number of individuals from the local legal community who were aware of the existence or details of the complaint. Unlike entities such as the CJP, members of local bias committees may not necessarily be bound by ethical or statutory obligations to maintain the confidentiality of complainants.</p> <p>Conversely, a CJP complaint is processed and investigated by a CJP investigator outside of the local court system, and with no involvement from the local court. The CJP provides confidentiality for complainants, and has existing procedural safeguards in place to protect complainants from retaliation for asserting good faith complaints to the CJP. Retaliation complaints can be made to either the CJP or the presiding judge or justice. These processes better protect confidentiality of the complainant.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				Yet for those local bias committees that do have the resources, experience, and ability to create informal complaint resolution procedures, creating an informal complaint resolution process to resolve bias complaints against judicial officers is still an option. The work group recognizes that some local bias committees have established effective informal complaint resolution procedures for complaints against judicial officers. As discussed in the accompanying report, the work group recognizes that there is no one correct way to eliminate bias in court interactions, and the work group advocates for each court and local bias committee to find solutions that work best for that local community. The work group's proposal does not prevent courts and local bias committees from choosing to create informal complaint resolution procedures for complaints against judicial officers, if those courts and committees conclude that is the best way to address bias complaints in their communities. If so, the work group recommends that they fully consider how best to address the concerns raised above. However, given the existence of California Rules of Court, rule 10.351, and the fact that courts already have personnel policies and memorandums of understanding that govern complaints against court employees, having local bias committees resolve complaints against court employees is not recommended.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>The Work Group convened in response to widespread non-compliance with CRC 10.20 and a failure by courts throughout the state to establish LBC-led bias complaint procedures. Their recommendation that Californians jettison a complaint procedure that was never properly implemented and instead rely on two processes that are demonstrably flawed will not meet the judiciary's purported goals of preventing bias and remedying it when it occurs. Therefore, Equal Rights Advocates must respectfully oppose rule changes which eliminate the complaint procedures administered by LBCs and dilute requirements that LBCs be representative of historically marginalized communities. We request a re-write of CRC 10.20 to be conducted with a more diverse Work Group which includes employment attorneys, civil rights attorneys, and members of diversity bar associations, reflecting the laudable aims and broadening of anti-bias protections articulated elsewhere in these proposed changes.</p>	<p>Amending standard 10.20 is a necessary step in renewing the branchwide commitment to the elimination of bias in all court interactions. The amended standard will provide a framework that will allow courts and local bias committees to do further work on the local level to build partnerships with the legal communities and engage in the process of conceptualizing outreach and educational programs.</p> <p>Given the need to promptly amend standard 10.20 to provide a framework and guidance that will allow courts to take these important steps to eliminate bias in all court interactions, Chief Justice Tani G. Cantil-Sakauye appointed a small work group comprised entirely of Judicial Council members, and gave it a limited charge, which enabled the work group to swiftly and efficiently propose amendments to update the standard. The work group includes judicial officers, attorneys, and a court executive officer. Several members of the work group have experience in these and related issues from serving on the Work Group for the Prevention of Discrimination and Harassment and the committee to develop California Rules of Court, rule 10.351, creating standardized expectations for harassment prevention policies. The work group also had an early comment period specifically designed to seek input from interested groups and persons, met with various local bias committees, and met with interested groups</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				throughout the process who wanted to share thoughts and ideas for amending the standard.
11.	Fabrice Dejean, Wilmington	AM	<p>The court's MISSION is to prevent bias, the court's DUTY is to REPORT bias. To reach this goal, the Court must implement new RULES OF COURT that DEFINE bias and PROHIBIT the behavior.</p> <p>PUNISHING violators will WARN attempters, and PREVENT future bias to the best of OUR abilities.</p>	<p>The work group appreciates this submission and notes the commenter's suggestion that the work group create a mandatory rule of court with applicable punishments for bias. As stated in California Rules of Court, rule 1.5(c), the Standards of Judicial Administration within the rules of court are guidelines or goals recommended by the Judicial Council. The nonbinding nature of the standards is indicated by the use of "should" in the standards instead of the mandatory "must" used in the rules.</p> <p>Maintaining the recommendations in the standard as guidelines and goals is consistent with the work group's overall goal of creating a framework within which courts can work with their local communities toward the elimination of bias in court interactions, rather than creating top-down mandates. The proposal recognizes that each community varies greatly in size, demographics, needs, and viewpoints, and that the issues that confront each local community are unique and require direct dialogue between the local bias committee and the community. Thus, while the proposal makes recommendations, the work group also recognizes that there is not just one correct approach. The current proposal gives courts the latitude to create customized processes, and partner with their local communities to find solutions that meet the unique and specific needs</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				of each court and the local community that it serves.
12.	Family Violence Appellate Project by Cory Hernandez, Staff Attorney, San Francisco	AM	<p>The following comments are submitted by Family Violence Appellate Project (FVAP) regarding the Judicial Council's (Council) Invitation to Comment proposal number SPR21-03, concerning proposed changes to standard 10.20 of the California Standards of Judicial Administration.</p> <p>FVAP is a California and Washington state nonprofit legal organization whose mission is to ensure the safety and well-being of survivors of domestic violence and other forms of intimate partner, family, and gender-based abuse by helping them obtain effective appellate representation. FVAP provides legal assistance to survivors of abuse at the appellate level through direct representation, collaborating with pro bono attorneys, advocating for survivors on important legal issues, and offering training and legal support for legal services providers and domestic violence, sexual assault, and human trafficking counselors. FVAP's work contributes to a growing body of case law that provides the safeguards necessary for survivors of abuse and their children to obtain relief from abuse through the courts. Because of FVAP's connections to survivors of abuse who have engaged with the courts, it is uniquely positioned to assess the impact of the Council's</p>	The work group appreciates the commenter's feedback that it supports much of the proposal, and addresses the commenter's concerns below.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>proposed changes to the judicial standards regarding preventing bias in court interactions.</p> <p>Notwithstanding concerns and suggested amendments discussed below, FVAP supports much of this proposal. For instance, shifting the focus from prohibition to prevention of bias will, as the proposal notes on page 3, require courts to move beyond “simply forbidding” bias and more comprehensively taking actions “to combat” it. And shifting the focus from solely courtroom proceedings to all interactions with court employees will ensure coverage of more instances of potential bias, especially since most litigants interact more with court employees other than their assigned judicial officer. Still, there is room and need for improvement on the proposal, as detailed below in five points.</p> <p>First, removing the requirement for committees to implement a local informal complaint procedure without requiring an alternative seems ill-advised. Although the local committees under the current standard 10.20 may not be the best option to handle such complaints, given the reasons outlined in the proposal at page 7, at least the court itself should be required to institute and maintain such a complaint procedure by litigants against court employees (and others who work at and for the court, as explained further below). True, complaints against judges are resolved by the</p>	<p>The work group notes the commenter’s concern that the elimination of the recommendation that local bias committees adopt informal complaint procedures without requiring an alternative will leave court users without options to raise concerns, but also notes that each court may implement alternative options appropriate to the conditions in their local community.</p> <p>The work group concludes that the existing procedures for resolving complaints against judges appropriately address those concerns. As noted on its website, <i>cjp.ca.gov</i>, the CJP has</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Commission on Judicial Performance, but that does not allow for any informal resolution and the Commission's procedures themselves are opaque and difficult for many to understand. Plus, complaints about other judicial officers are handled differently, if at all. For instance, the Commission has no jurisdiction over temporary or private judges, nor, it seems, does the court because neither is considered a court employee—although, as discussed below, there may be other ways for courts to in some ways control or influence non-court employees. And of course the Commission has nothing to do with non-judicial officer court employees.</p> <p>Moreover, there is no requirement in the proposal for the courts (or anyone) to address complaints by litigants against court employees.</p> <p>On page 12 of the proposal, the proposed advisory committee comments to standard 10.20 read in pertinent part, "Similarly, rules 10.351 and 10.610 of the California Rules of Court, as well as Government Code section 71650 et seq., create authority and complaint resolution processes for addressing complaints against court employees." However, the cited authority do not in fact create or require any process for litigant complaints against court employees and other workers. Rule 10.351 of the California Rules of Court, for instance, does not apply to litigant complaints as it only applies to</p>	<p>authority over all superior court judges, all justices of the Courts of Appeal and Supreme Court, and has joint authority with the local court over referees, commissioners, and other subordinate judicial officers. The CJP is well equipped to resolve complaints about judicial officer bias, given that the CJP has its own experienced investigators, established investigation procedures, and the ability to subpoena witnesses—tools that may not be available to local bias committees. The CJP provides confidentiality for complainants, and has existing procedural safeguards in place to protect complainants from retaliation.</p> <p>In addition, complaints against both judicial officers and court employees may be made at the local court level. Complaints about judicial officers, including subordinate judicial officers and temporary judges assigned to the court, may be made directly to the presiding judge or justice. Presiding judges, presiding justices, and judges with supervisory authority who are informed of complaints against other judicial officers have ethical obligations to handle those complaints appropriately. (See Code of Judicial Ethics, canon 3C(4); Cal. Rules of Court, rules 10.603(c)(4) and 10.703; CJA Jud. Ethics Committee Op. No. 64.) Most courts have formal internal procedures for how complaints to the presiding judge or justice are processed, and the presiding judge or justice has the unique ability and responsibility to address</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>employee complaints of workplace conduct. And rule 10.610 merely provides general duties of the court executive officer, including the duty to create and follow a personnel plan as per rule 10.670. Yet the requirements of the personnel plan in rule 10.670 do not include a complaint procedure for litigants against court employees; again, the only complaint procedure mentioned is for the “treatment of employees,” i.e., for court employees to complain of workplace conduct. Finally, Government Code section 71650 et seq. does not require creation of a complaint procedure for litigants against court employees. Rather, that article merely provides for an “employment protection system” by establishing minimum procedural requirements for employee discipline. (Gov. Code, § 71650, subd. (a).) Separately and additionally, that article does not apply to subordinate judicial officers or certain employees not within the court’s employment protection system. (Id., § 71650, subds. (d)(1)-(2).) This proposal should require courts to have a procedure for resolving complaints by litigants against court employees, and not rely on good faith of courts to institute one on their own.</p>	<p>issues of bias immediately and directly with the judicial officer, if warranted. Creating an alternative complaint resolution system through local bias committees may cause complaints to go unreported to the CJP and the presiding judges or justices, which may lead to inconsistent and less optimal handling of these complaints.</p> <p>Likewise, local courts have robust procedures for dealing with complaints against court employees, including those raised by court users. While the commenter notes that not every statutory authority cited by the work group in its Invitation to Comment actually contains a complaint resolution process, these statutes and rules provide the authority for courts to address employee conduct and create complaint resolution procedures. These procedures are often codified in personnel policies, memorandums of understanding, or other similar documents that govern the terms and conditions of employment. Courts have a legal responsibility to take immediate corrective action on certain types of complaints against court employees. Generally, those complaints can be made to the employee’s supervisor or court management and are ultimately the responsibility of the court executive officer.</p> <p>Finally, the work group recognizes that some local bias committees have established effective informal complaint resolution procedures to address complaints against judicial officers. As</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				<p>discussed in the accompanying report, the work group recognizes that there is no one correct way to eliminate bias in court interactions, and the work group advocates for each court and local bias committee to find solutions that work best for that local community. The work group's proposal does not prevent courts and local bias committees from choosing to create informal complaint resolution procedures to address complaints against judicial officers if those courts and committees conclude that is the best way to address bias complaints in their communities. If so, the work group recommends that they fully consider how best to address the concerns regarding local complaint resolution procedures outlined in the report. However, given the existence of California Rules of Court, rule 10.351, and the fact that courts already have personnel policies and memorandums of understanding that govern complaints against court employees, having local bias committees resolve complaints against court employees is not recommended.</p> <p>Given the wide array of avenues for court users to file complaints against judicial officers and court employees, the work group recognizes that educating the public about those methods is critical. As a result, the work group opted to recommend that each court effectively communicate information to its court users regarding existing procedures to submit</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Second, the list of protected classifications in the proposed standard should be expanded to include the status of being a victim of abuse, including domestic or sexual violence. Domestic and sexual violence are grievous problems in our state that cut across all genders, sexual orientations, races, ethnicities, ability levels, socioeconomic levels, and professions.</p>	<p>complaints regarding bias in court interactions. While many courts already provide this information on their court websites, in their local rules, or displayed in courthouses, the revised standard recommends that all courts take similar steps to ensure that they are providing complaint procedure information to court users in a meaningful and accessible manner.</p> <p>The work group notes the suggestion to include victims of abuse as a protected classification under the standard. The proposal, however, amends the list of protected classifications acknowledged in standard 10.20 by specifically adopting the protected classifications that are recognized by existing law in similar areas, including Government Code section 12940(a) (for employment and housing discrimination, harassment, and retaliation) and Code of Judicial Ethics canon 3(B)(5) (for judicial bias). This amendment greatly expands and modernizes the list of protected classifications listed in standard 10.20. In addition, the decision to add that the protected classifications in standard 10.20 include any other classifications protected by state and federal law, including Government Code section 12940(a) and Code of Judicial Ethics, canon 3(B)(5), allows the list to stay updated, as the standard will automatically incorporate any new protected classifications that are recognized by state or federal law.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Third, the last sentence of revised standard 10.20(b)(1), at page 8 of the proposal, seems to set an overly broad standard for an exception that seems to swallow the rule: “The court, judicial offices, and court employees may consider such classifications only if necessary or relevant to the proper exercise of their adjudicatory or administrative functions.” We would strongly suggest removing the phrase “or relevant.” If the consideration is necessary, it must be relevant. But if the consideration is only relevant, it may not be necessary. Leaving the decision of what is relevant for consideration up to the individual employee seems problematic as it could in some circumstances effectively nullify the prohibition of bias that was established in the first place. For example, if a transwoman presents a court clerk with a petition for a domestic violence restraining order and selects “F” for female on her request form (DV-100), but the clerk accepting the petition does not believe she presents as female for some reason, the clerk may feel it “relevant” to ask, “You checked the F here for gender, but are you really a woman?” This question is not necessary: the clerk does not need to ask it to properly file the request. The question is also plainly transphobic and harmful. Such interactions could be avoided by disallowing circumvention of the prohibition on considering those protected characteristics,</p>	<p>The work group notes the commenter’s suggestion to remove the phrase “or relevant” from standard 10.20(b)(1). The terms “necessary” and “relevant” are not redundant. “Necessary” and “relevant” are different standards with different definitions, and the work group notes that there could be circumstances where it may not be “necessary” (e.g. required) to consider a classification, but that the classification could still be relevant to the proceeding.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>unless necessary to the proper exercise of power.</p> <p>Fourth, while covering all court employees in this standard is a good and necessary step forward, that does not necessarily include everyone who may work in and for the court and interact with a litigant. For instance, employees of a local government or agency may work at and for the court, such as security guards or child custody evaluators or mediators, who would not otherwise be characterized as court employees. And the court may hire independent contractors or temporary workers who may not otherwise be classified as employees. As such, these other workers do not appear to be covered by this proposal but everyone should be held to the same standards of preventing bias. While courts may not be able to directly influence individuals who are not their employees, at the least the Council's rules and standards of court should require courts to take certain actions before deciding whether to hire a non-employee, such as providing training for them and engaging in a memorandum of understanding to ensure all those working within the courts are held to the same standards.</p> <p>Fifth, requiring courts to implement these changes "as soon as possible," as per proposed standard 10.20(f), is not strong enough. What</p>	<p>The work group agrees with this comment, but notes that no further amendment is necessary. The proposal is very broadly worded to apply to "each court, its judicial officers, and its employees." The inclusion of "each court," listed separately from its judicial officers and employees, is meant to emphasize that the court itself has an obligation to refrain from bias and prevent biased behaviors. The "court" may include people beyond its judicial officers and employees, and the court should take steps to make sure that all people who work at or conduct business at the court, including contractors, judicial partners, government agency employees, and volunteers, act in an appropriate manner while engaging in court interactions. The work group leaves decisions regarding policy creation, notice, and enforcement to the local courts, consistent with the unique circumstances of that court.</p> <p>The work group notes the commenter's concern regarding the absence of a specific timeline to implement standard 10.20. The proposal</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>constitutes “as soon as possible” and who decides? When directing the Council, the Legislature often sets deadlines in its legislation; the Council should do the same here for courts, to ensure the changes take effect in a reasonable timeframe.</p> <p>In short, FVAP supports the spirit and many provisions of this proposal, but as outlined above, more and revised provisions are needed to improve litigants’ fair access to the court.</p>	<p>encourages courts to implement the revised standard “as soon as possible.” This acknowledges the importance of addressing bias in court interactions. If the Judicial Council adopts the proposed amendments to standard 10.20, the amended standard will go into effect on January 1, 2022, and courts may begin immediate implementation. The work group has not identified a specific implementation date because it recognizes that each court will follow a unique process in forming a local or regional committee on bias and that, as a result, the timeframes for forming local or regional committees in each community may vary.</p>
13.	Filipino Bar Association of Northern California by Jennifer Sta.Ana, President, San Francisco	N	<p>The Filipino Bar Association of Northern California (FBANC) opposes the Work Group’s proposed changes to California Rules of Court, Rule 10.20, Court’s duty to prohibit bias. In November 2020, the Chief Justice of California appointed the Work Group to identify improvements and proposed amendments to Rule 10.20. The result: one central proposal is the elimination of the local bias committees in favor of obligating courts to direct complainants to existing complaint resolution processes.</p> <p>FBANC opposes these proposals for the following reasons.</p> <p>Rule 10.20 imposes a duty on California courts to establish a local bias committee staffed by diverse members of the local bar community.</p>	<p>The work group appreciates this submission and notes the commenter’s concerns regarding the elimination of the recommendation that local bias committees adopt informal complaint resolution procedures, and concerns regarding the CJP’s ability to handle informal bias complaints. As discussed in both the accompanying report and the Advisory Committee Comments, the proposal eliminates the recommendation that local bias committees adopt an informal complaint process, in part because there are many existing, effective, and updated avenues for making complaints regarding bias in court interactions, including avenues through the CJP and to the presiding judge or justice of the local courts, and due to potential conflict between the multiple avenues for raising complaints.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<p>One of the critical functions of the local bias committees is to accept and resolve complaints of bias in courts. Rule 10.20(c)(d), for instance, requires that courts have “[m]inimum components of a complaint procedure.” Although it came to light in spring 2020 that nearly all of the Superior Courts in California were out of compliance with California Rule of Court 10.20(c)(d), the Work Group has proposed to eliminate the complaint procedure. This proposal is inexplicable in light of the fact that such a rule has never been widely adopted and effectively implemented.</p> <p>The Work Group asserts that eliminating the local bias complaint structure is preferable to strengthening Rule 10.20(c)(d). According to the Work Group, other existing complaint resolution processes renders redundant the local bias committee required under 10.20(c)(d). Not so. Even the annual reports by the Commission on Judicial Performance show that a complaint filed with their body is in fact no resolution at all. Rather, a complaint to such a body is almost always likely to be dismissed without an investigation. And even in the rare instance where a complaint is actually investigated, the complaint is shortly dismissed without any meaningful resolution for the complainant or changes to courtroom conduct. See Commission on Judicial Performance 2020 Case Statistics and Commission on Judicial Performance,</p>	<p>The work group concludes that the existing procedures for resolving complaints against judicial officers appropriately address those concerns. The CJP is best equipped to resolve complaints about judicial officer bias, given that the CJP has its own experienced investigators, established investigation procedures, and the ability to subpoena witnesses—tools that may not be available to local bias committees. Alternatively, complaints about judicial officers may also be made directly to the presiding judge or justice. Presiding judges, presiding justices, and judges with supervisory authority who are informed of complaints against other judicial officers have ethical obligations to handle those complaints appropriately. (See Code of Judicial Ethics, canon 3C(4); Cal. Rules of Court, rules 10.603(c)(4) and 10.703; CJA Jud. Ethics Committee Op. No. 64.) Most courts have formal internal procedures for how complaints to the presiding judge or justice are processed, and the presiding judge or justice has the unique ability and responsibility to address issues of bias immediately and directly with the judicial officer, if warranted. Creating an alternative complaint resolution system through local bias committees may cause complaints to go unreported to the CJP and the presiding judges or justices, which may lead to inconsistent and less optimal handling of these complaints.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<p>“Weaknesses in Its Oversight Have Created Opportunities for Judicial Misconduct to Persist”, Auditor of the State of California, April 2019, Report 2016-137.</p> <p>Another example of this proposal’s shortcoming is the elimination of Rule 10.20(e)(7). This provision provides guidance to each local committee on bias because it clearly identifies which groups are protected and what kind of conduct is reportable. As it stands, complaint procedures apply to “incidents of bias whether they relate to race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status.” Eliminating this clear and specific language in favor of merely ensuring that “court users can access information regarding how they can submit complaints regarding bias” confuses rather than clarifies. Consequently, the Work Group’s proposals must be rejected.</p> <p>In light of the lack of viable alternatives, Rule 10.20 should be strengthened, not weakened. Eliminating the minimal procedures and approving what the Work Group proposes, however, weakens Rule 10.20 in its entirety.</p> <p>One example of how Rule 10.20 may be strengthened is by ensuring confidentiality to potential complainants. The Work Group proposes as another alternative to the local bias</p>	<p>Having local bias committees resolve complaints may result in less confidentiality for the complainant and respondent. Any inquiry by a local bias committee would be known and resolved by a group of local attorneys, judicial officers, and other committee members who would necessarily need to know the particular facts of the complaint. The work group has concerns that such an approach would significantly expand the number of individuals from the local legal community who were aware of the existence or details of the complaint. Conversely, a CJP complaint is processed and investigated by a CJP investigator outside of the local court system, and with no involvement from the local court. The CJP provides confidentiality for complainants, and has existing procedural safeguards in place to protect complainants from retaliation for asserting good faith complaints to the CJP. Retaliation complaints can be made to either the CJP or the presiding judge or justice. These processes better protect confidentiality of the complainant.</p> <p>The work group is also concerned that referring complaints against judicial officers and court employees to local bias committees might trigger various due process concerns, especially given that local bias committees might not be adequately resourced or experienced to conduct the highly specialized inquiries that may need to be undertaken in response to a bias complaint</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		committee the fact that “courts have developed robust procedures for addressing such complaints.” For instance, in many courts, “complaints against judicial officers . . . are made to the court’s presiding judge.” This is not enough. The purpose of Rule 10.20 is to establish a neutral third-party composed of disinterested attorneys from the community. Complainants must feel confident that even though they may file a complaint of bias about a presiding judge or their staff in connection with a present case, they are not risking their client’s interest, nor their own reputation before the judiciary. Aside from failing to shield complainants from potential retaliation and other adverse actions, it is not in the spirit of Rule 10.20 to leave complainants relying on presiding judges to accept complaints and to regulate themselves regarding their own biases.	<p>against a judicial officer or court employee. Likewise, referring complaints about court employees to local bias committees may create personnel and labor relations concerns, given that courts have existing personnel policies and labor relations agreements regarding resolution of employee complaints. In addition, referring complaints about court employees to local bias committees deprives courts of the ability to address the complaint internally and comply with any legal obligations the courts may have arising from the complaints, including the need to take immediate corrective action in certain circumstances.</p> <p>In addition, recommending that local bias committees resolve complaints of bias against judicial officers may raise ethical conflicts for judicial officers who are members of the local bias committees. Judicial officers who become aware of complaints against other judicial officers have ethical obligations that require them to take appropriate corrective action, which may include reporting the information to the presiding judge or the CJP. (Canons of Judicial Ethics, canon 3D(1) and (2); See also, CJEO Formal Opinion 2020-15). A system where those complaints are handled informally, at a local level, could undercut those obligations.</p> <p>The commenter raises concerns that the CJP dismisses many complaints without investigation. The CJP is the independent state agency</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				<p>established by the California Constitution, which is responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges. As stated on its website at <i>cjp.ca.gov</i>, “[t]he commission’s mandate is to protect the public, enforce rigorous standards of judicial conduct and maintain public confidence in the integrity and independence of the judicial system” and the CJP investigates “conduct in conflict with the standards set forth in the Code of Judicial Ethics.” This includes responsibilities for performing judicial duties without bias, prejudice, or harassment (canon 3(B)(5)); for requiring attorneys in proceedings before the judicial officer to refrain from manifesting bias, prejudice, or harassment (canon 3(B)(6)); for discharging judicial administrative duties without bias or prejudice (canon 3(C)(1)); and for requiring staff and court personnel under the judicial officer’s control to refrain from manifesting bias, prejudice, or harassment in the performance of their duties (canon 3(C)(3)).</p> <p>As discussed by the Director-Chief Counsel of the CJP at his presentation to the work group at its public meeting in May 2021, many of the complaints that do not result in CJP investigation are from litigants about the outcome of individual cases. These complaints do not relate to conduct set forth in the Canons of Judicial Ethics, and therefore are not appropriate for resolution by the CJP. There is no indication that the CJP is</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				<p>dismissing any significant number of bias or conduct complaints without inquiry or investigation.</p> <p>The work group recognizes that some local bias committees have established effective informal complaint resolution procedures for complaints against judicial officers. As discussed in the accompanying report, the work group recognizes that there is no one correct way to eliminate bias in court interactions, and the work group advocates for each court and local bias committee to find solutions that work best for that local community. The work group's proposal does not prevent courts and local bias committees from choosing to create informal complaint resolution procedures for complaints against judicial officers if those courts and committees conclude that is the best way to address bias complaints in their communities. If so, the work group recommends that they fully consider how best to address the concerns raised above. However, given the existence of California Rules of Court, rule 10.351, and the fact that courts already have personnel policies and memorandums of understanding that govern complaints against court employees, having local bias committees resolve complaints against court employees is not recommended.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>In short, FBANC proposes that the Rule Committee reject these proposals. Instead, the Rule Committee may consider re-constituting the Work Group. FBANC proposes that amendments to Rule 10.20 be conducted with a Work Group comprised of civil rights attorneys, employment attorneys, and members of diversity bar associations, if possible. FBANC would encourage this reconstituted Work Group to identify proactive measures for eliminating bias in the courts and in court interactions. Court personnel, for instance, should have clearer guidance and authority in prohibiting and preventing bias in courts and in interactions with the court. The importance of eliminating bias in the courts demands that the Rule Committee approach this with care, respect, and inclusion of appropriate voices.</p> <p>Thank you for your consideration of public comment.</p>	<p>Amending standard 10.20 is a necessary step in renewing the branchwide commitment to the elimination of bias in all court interactions. The amended standard will provide a framework that will allow courts and local bias committees to do further work on the local level to build partnerships with the legal communities and engage in the process of conceptualizing outreach and educational programs.</p> <p>Given the need to promptly amend standard 10.20 to provide a framework and guidance that will allow courts to take these important steps to eliminate bias in all court interactions, Chief Justice Tani G. Cantil-Sakauye appointed a small work group comprised entirely of Judicial Council members, and gave it a limited charge, which enabled the work group to swiftly and efficiently propose amendments to update the standard. The work group includes judicial officers, attorneys, and a court executive officer. Several members of the work group have experience in these and related issues from serving on the Work Group for the Prevention of Discrimination and Harassment and the committee to develop California Rules of Court, rule 10.351, creating standardized expectations for harassment prevention policies. The work group also had an early comment period specifically designed to seek input from interested groups and persons, met with various local bias committees, and met with interested groups</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				throughout the process who wanted to share thoughts and ideas for amending the standard.
14.	Tara Repka Flores Yuba City	AM	<p>The term “Bias” is a polite term for a much uglier truth. Blatant racism and mistreatment of people of color in the court system flourishes in the dark and undermines the validity of the entire system, which in turn destabilizes our society. The work you are undertaking here is of the utmost importance.</p> <p>Given the importance of your work, it is vital that you make meaningful changes. Stop making recommendations and start making requirements; every court needs to have a bias committee or you end up in the ridiculous situation of allowing the people responsible for perpetrating the bias be responsible for controlling the elimination of bias and even worse for handling complaints of bias – this will never work.</p>	<p>The work group appreciates the commenter’s position and agrees that the efforts to combat bias in court interactions are of the utmost importance.</p> <p>The commenter suggests that the work group mandate certain actions in standard 10.20, rather than making recommendations. As stated in California Rules of Court, rule 1.5(c), the Standards of Judicial Administration within the rules of court are guidelines or goals recommended by the Judicial Council. The nonbinding nature of the standards is indicated by the use of “should” in the standards instead of the mandatory “must” used in the rules.</p> <p>Maintaining the recommendations in the standard as guidelines and goals is consistent with the work group’s overall goal of creating a framework within which courts can work with their local communities toward the elimination of bias in court interactions, rather than creating top-down mandates. The proposal recognizes that each community varies greatly in size, demographics, needs, and viewpoints, and that the issues that confront each local community are unique and require direct dialogue between the local bias</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				committee and the community. The intent of the proposed amendments is to provide courts and local committees with the framework to take the essential steps to engage their local communities in the important discussions required to prevent and eliminate bias. Thus, while the proposal makes recommendations, the work group also recognizes that there is not just one correct approach. The current proposal gives courts the latitude to create customized processes, and partner with their local communities to find solutions that meet the unique and specific needs of each court and the local community that it serves.
			Please take consideration of a more global perspective of how to eliminate bias as well. While training and a complaint process and body are the bare minimum to make an attempt at addressing bias, consider how very ugly forms of bias flourish in the dark and are enabled by secrecy. Our courts are allowed to operate in a state of quasi secrecy.	The work group appreciates the suggestions regarding transparency and access. The work group notes that addressing issues such as livestreaming proceedings, access to court records, and press access to court proceedings is beyond the work group's charge to propose amendments to standard 10.20. Public access to court proceedings is addressed in California Rules of Court, rule 1.150, which pertains to photographing, recording and broadcasting court proceedings, the use of personal recording devices, and media coverage of court proceedings. Public access to court records is addressed in California Rules of Court, rules 2.503 – 2.507.
			Implement transparency.	
			Eliminate the situation where courts can limit the number of people in a court room, limit access to media both by denying media coverage requests and by rescheduling procedures over and over to discourage media coverage, and have blatant displays of bias	The work group also notes the suggestion that it make specific recommendations regarding court

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>observed only by a small number of people which are not recorded in the official record.</p> <p>Have standard requirements for allowing access to court records – allowing extreme limitations on how many people can attend court in person, coupled with the lack of live streaming, and adding a challenging environment for gaining access to court records in a timely manner creates the perfect storm for bias to flourish. Change the foundation of how we are doing things to disallow this environment to exist.</p> <p>Half of our courts in California already live stream proceedings. Bring the rest of the courts out of the dark and require live streaming of all proceedings so that the public can see what is happening. Require audio recordings of all proceedings including chambers proceedings and have the bias committee audit a random sample of those proceedings, rather than waiting for people being mistreated to navigate how to make a complaint. Bring court proceedings out of the dark! Shine light on biased behaviors and make the perpetrators of those behaviors feel the need to hide instead of allowing the behaviors to be blatantly out in the open. Through simple transparency, make those who would lead with bias uncomfortable enough to change.</p> <p>Require your bias committees to obtain and report out relevant data to hold the institution</p>	<p>access and transparency of proceedings. The work group considered setting baseline recommendations for courts and local bias committees on various topics such as education, outreach, and transparency. However, it ultimately left those details to be evaluated by each individual committee within the framework created by the standard. The work group recognizes that counties vary greatly in size, demographics, needs, and viewpoints of the local bar community, and each county has unique and specific issues within its legal community. The intent of the proposed amendments is to provide courts and local bias committees with the framework to take the essential steps to engage their local communities in the important discussions that are required to prevent and eliminate bias. Thus, while the proposal broadly recommends that local bias committees engage in community outreach and educational opportunities, and while the proposal suggests various roles that these local committees might play in their communities, the work group also recognizes that there is not just one correct approach. The proposed amendments to standard 10.20 allow courts and local bias committees the flexibility to establish proposals specific to the local community's needs and to obtain input from the local community.</p> <p>Likewise, the work group has left the decision to collect and report data, and the details of that</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>accountable. Without this information a bias committee is also in the dark, doing things for feel good reasons, without any reality mixed in.</p> <p>Finally, remember crime victims of color. So much of the focus of bias in the system looks at bias focused on perpetrators, but victims of crime experience bias in the court system in a way that is really disturbing and is often overlooked. You must include victims of color in your attempts at addressing bias.</p>	<p>decision, to the local courts and local bias committees. The proposed amendments to standard 10.20 allow courts and local bias committees the flexibility to establish proposals specific to the local community's needs and to obtain input from the local community.</p> <p>The work group appreciates the suggestion to increase focus on victims, especially victims of color. The proposal amends the list of protected classifications acknowledged in standard 10.20 by adopting the protected classifications that are recognized by existing law in similar areas, including Government Code section 12940(a) (for employment and housing discrimination, harassment, and retaliation) and Code of Judicial Ethics canon 3(B)(5) (for judicial bias). The decision to add that the protected classifications in standard 10.20 include any other classifications protected by state and federal law, including Government Code section 12940(a) and Code of Judicial Ethics, canon 3(B)(5), allows the list to stay updated, as the standard will automatically incorporate any new protected classifications that are recognized by state or federal law. There is no restriction that protected classifications apply only to perpetrators and not victims. It is the work group's intention that a victim of a crime would be included within the protections of the standard so long as the conduct was based on an included protected classification, such as color.</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
15.	Hogue & Belong by Jeffrey Hogue San Diego	A	This rule change was brought to my attention by a listserv where I am a member. The chair was unhappy with the changes and requested her members to take action. So, I reviewed the memo and the proposed changes to the rule. I am of the opinion that the proposed changes are fine, but I know it is next to impossible for everyone to agree with any proposed change. I particularly liked the fact the commission did away with quotas in establishing diversity, as explained on page 5 of the memo.	The work group notes the commenter's support for the proposed amendments and appreciates this input.
16.	Hon. Colette Humphrey Presiding Judge, Superior Court of Kern County	A	I approve of the recommendations and thank the community for their work on this important issue.	The work group notes the commenter's support for the proposed amendments and appreciates this input.
17.	Hon. Stephanie Jones Judge, Superior Court of Solano County	A	No specific comment.	The work group notes and appreciates the commenter's support for the proposed amendments.
18.	Hon. John Monterosso Presiding Judge, Superior Court of Riverside County	A	The committee did an excellent job updating 10.20 to reflect current circumstances. The current standard creates confusion by creating another process for investigating complaints that overlaps and interferes with existing processes. The committee correctly pointed out the pitfalls of having local committees (consisting partly of lawyers and community members) concurrently investigate judges and other employees of the court when there already exist robust processes to do so. I fully support the proposal to have courts prominently post on their websites how and where to file complaints.	The work group notes the commenter's support for the proposed amendments and appreciates this input.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
19.	Hon. Dylan Sullivan Judge, Superior Court of El Dorado County	AM	“The court <i>should</i> establish a local committee...” I think the rule should say, “ <i>shall</i> .” This is a strong message to all the local courts. Many small and rural counties (and maybe bigger counties) do not have elimination of bias committees. If we do not mandate, then we will not eradicate bias in our courts. This is the first step.	<p>The work group appreciates this submission and notes the commenter’s suggestion that standard 10.20 require local bias committees, rather than recommend them. As stated in California Rules of Court, rule 1.5(c), the Standards of Judicial Administration within the rules of court are guidelines or goals recommended by the Judicial Council. The nonbinding nature of the standards is indicated by the use of “should” in the standards instead of the mandatory “must” used in the rules.</p> <p>Maintaining the recommendations in the standard as guidelines and goals is consistent with the work group’s overall goal of creating a framework within which courts can work with their local communities toward the elimination of bias in court interactions, rather than creating top-down mandates. The proposal recognizes that each community varies greatly in size, demographics, needs, and viewpoints, and that the issues that confront each local community are unique and require direct dialogue between the local bias committee and the community. The intent of the proposed amendments is to provide courts and local committees with the framework to take the essential steps to engage their local communities in the important discussions required to prevent and eliminate bias. Thus, while the proposal makes recommendations, the work group also recognizes that there is not just one correct approach. The current proposal gives courts the latitude to create customized processes, and</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>The counties can create regional committee to leverage the resources and the time.</p> <p>Please consider my suggestion.</p>	<p>partner with their local communities to find solutions that meet the unique and specific needs of each court and the local community that it serves.</p> <p>The work group also notes that the current proposal allows courts to create regional committees.</p>
20.	Hon. David Wolf Judge, Superior Court of Kern County	A	<p>I would like to thank the Chief Justice and members of the working group for their hard work and outstanding suggestions for improving the current rule.</p> <p>Elimination of Bias is a very important topic and is critical to our system of justice. I have been working with our local bar association with judges and attorneys from another county trying to work within the former guidelines. The former framework was very difficult to work with and detracted from the time and energy available to work on some training and educational programs.</p> <p>Thank you again for what clearly took a significant amount of time, energy and thought. You should be very proud of your hard work. I am grateful for the outstanding work done improving standard 10.20.</p> <p>These improvements will allow those of us working to achieve the Elimination of Bias from our judicial system to focus our time and</p>	The work group notes the commenter's support for the proposed amendments and appreciates this input.

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			energies on training and educational opportunity.	
21.	Hon. Robin L. Wolfe Judge, Superior Court of Tulare County	A	I would like to commend the Chief Justice and work group for their hard work and dedication in tackling the Court's duty to prohibit bias. The proposed amendments to 10:20 are a significant improvement and address all the concerns we have been struggling with to update our local rules of court. We agree the focus of the local committee should be on education, transparency and accessibility rather than creating or overseeing a disciplinary/complaint procedure with limited resources and potential conflicts of interest. We also appreciate the consideration and flexibility the amendments allow to smaller courts to take into consideration their unique circumstances and demographics in forming their committees as well as the ability to join other small courts to allow for more diversity, shared resources, and resolve potential conflicts of interest.	The work group notes the commenter's support for the proposed amendments and appreciates this input.
22.	John Hsu Paralegal Member, California Employment Lawyers Association, Berkeley	AM	<p>Background 1987 – 2021 Alternating between “prevent bias” and “prohibit bias.”</p> <p>Bias, intentional discrimination, harassment have origin in learned behaviors, attitudes, & stereotyping.</p> <p>The Proposal</p> <ul style="list-style-type: none"> • Limiting “bias” to “protected classifications” <p>Is this necessary?</p>	<p>The work group appreciates the comments regarding the proposal, and will address the specific comments it believes are raised by the commenter.</p> <p>The commenter notes the proposed change to “prevent” bias. As discussed in the accompanying report, and as outlined in the Advisory Committee Comments that accompany standard 10.20, this is a significant change. The advisory comment to this revision notes that: “the standard now asks</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<ul style="list-style-type: none"> Addressing all “court interactions” Local bias committees’ optimal role is informal, secondary, supportive, and optional. But, does the collaborative process not induce mutual respect and long-term harmony? Availability of resources and expertise requires that CJP examine, investigate, and evaluate formal complaints about judicial officers. <p>“Prevent” vs “prohibit” “Prohibit” disallows, forbids, and eliminates bias. “Prevent” permits, allows, tolerates, and shelters bias. Must the Code of Judicial Ethics and Justice be compromised?</p> <p>Statement of purpose Ensure the integrity and impartiality of the judicial system.</p> <p>How an exception may swallow the rule</p> <p>California Code of Judicial Ethics</p> <p>Canon 1. A judge shall uphold the integrity and independence of the judiciary.</p>	<p>courts, judicial officers, and court employees to take actions to prevent bias rather than prohibit bias. This change reflects a more comprehensive approach in how courts are to combat bias, focusing on understanding the many forms, causes, and impacts of bias rather than simply forbidding it. Preventing bias may include, for example, prohibiting bias; encouraging judicial officers, employees, and court users to report bias; being open to discussing and learning from real misunderstandings and instances of unconscious bias; and focusing on robust education regarding how unconscious and explicit biases develop, how to recognize them, and how to address and eliminate bias.” This change in focus should provide clear guidance to courts and local bias committees as to the intention of the work group in how courts can best address bias in court interactions.</p> <p>The work group also notes that the commenter has mentioned the proposal to define protected classifications more broadly. The work group is of the view that this too is a positive change. The proposal amends the list of protected classifications acknowledged in standard 10.20 by adopting the protected classifications that are recognized by existing law in similar areas, including Government Code section 12940(a) (for employment and housing discrimination, harassment, and retaliation) and Code of Judicial Ethics canon 3(B)(5) (for judicial bias). This</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>An independent, impartial, and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary is preserved. The provisions of this code are to be construed and applied to further that objective. A judicial decision or administrative act later determined to be incorrect legally is not itself a violation of this code.</p> <p>ADVISORY COMMITTEE COMMENTARY: Canon 3B(2) Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office. Canon 1 provides that an incorrect legal ruling is not itself a violation of the law.</p> <p>The Commission on Judicial Performance has provided an important Qualifier to this Exception:</p> <p>"A judge's legal error might be a basis for investigation by this commission if there is sufficient evidence of bad faith, bias, abuse of authority, disregard for fundamental rights, intentional disregard of the law or any purpose</p>	<p>amendment greatly expands and modernizes the list of protected classifications listed in standard 10.20. In addition, the decision to add that the protected classifications in standard 10.20 include any other classifications protected by state and federal law, including Government Code section 12940(a) and Code of Judicial Ethics, canon 3(B)(5), allows the list to stay updated, as the standard will automatically incorporate any new protected classifications that are recognized by state or federal law.</p> <p>The work group also notes that the commenter has referred to the intended role of local bias committees as "informal, secondary, supportive, and optional." That is not the intention of the work group. To the contrary, the proposed amendments empower local courts and local bias committees to partner with their communities and adopt meaningful changes that are tailored to the specific needs of the community. The work group recognizes that counties vary greatly in size, demographics, needs, and viewpoints of the local bar community, and each county has unique and specific issues within its legal community. The intent of the proposed amendments is to provide courts and local bias committees with the framework to take the essential steps to engage their local communities in the important discussions that are required to prevent and eliminate bias. Thus, while the proposal broadly recommends that local bias committees engage in</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<p>other than the faithful discharge of judicial duty.”</p> <p>The California Supreme Court’s Advisory Committee is therefore urged to incorporate this Qualifier into the Committee’s ADVISORY COMMITTEE COMMENTARY.</p> <p>Re: SP21-03 California Code of Judicial Ethics Violations of Judicial Canons Rehab judges Judicial Council PJ Institutes Presiding Judges, assisting in rehab Classes Types? How the “vexations litigant statute “can come to judges’ rescue?</p> <p>Education, in place of discipline Relaxing the Code of Judicial Ethics?</p> <p>Issues considered: Bias Discrimination Harassment Retaliation</p> <p>Origin of bias Learned behavior Attitudes</p>	<p>community outreach and educational opportunities, and while the proposal suggests various roles that these local committees might play in their communities, the work group also recognizes that there is not just one correct approach. The proposed amendments to standard 10.20 allow courts and local bias committees the flexibility to establish standards specific to the local community’s needs, to obtain input from the local community, and to drive meaningful change.</p> <p>The commenter also appears to make a specific recommendation regarding changes that the California Supreme Court’s Advisory Committee can incorporate into the Advisory Committee Comments for the Canons of Judicial Ethics, and for the rehabilitation and discipline of judicial officers. These comments and recommendations are beyond the scope of this work group, and the comment will be forwarded to the California Supreme Court Advisory Committee for their additional consideration.</p> <p>The work group has redacted part of this comment discussing the commenter’s own personal complaint of bias due to privacy concerns, and also because the comment is outside the scope of this work group.</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Stereotyping</p> <p>Behaviors manifested</p> <p>Supremacy</p> <p>Lack of patience</p> <p>Dominance</p> <p>Brutality</p> <p>Criminal offense</p> <p>Lack of respect for others</p> <p>Trickery</p> <p>Substance abuse</p> <p>Beyond hope</p> <p>Treatments needed:</p> <p>Psychological assessment</p> <p>Medication</p> <p>Who is responsible for paying for the prolonged treatments?</p> <p>Judicial Council of California?</p> <p>Taxpayers?</p> <p>The Judges themselves?</p> <p>Discipline</p> <p>CJP</p> <p>Resources</p> <p>Expertise</p> <p>2019</p> <p>State Auditor's Report on CJP</p> <p>Big progress is being made at CJP</p> <ul style="list-style-type: none"> Filing Complaint online, providing for submission of supporting documents 	

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<ul style="list-style-type: none"> • Promptly acknowledging receipt of Complaint • Clear Guidance is provided on: <ul style="list-style-type: none"> ○ The Types of Conduct that are considered; ○ The circumstances under which a judge's legal error might become the basis for CJP's investigation. <p>A real-life example of Judicial Misconduct</p> <ul style="list-style-type: none"> • Has the Work Group anticipated such outrage? • Is the Work Group prepared to deal with it? <p>[* The remainder of the comment has been redacted because it is the commenter's own personal complaint of bias. This raises privacy concerns and the comment is outside the scope of this work group. The work group is unable to resolve individual complaints of bias and the commenter may want to consider pursuing recourse through the avenues available at the local court or through the CJP.]</p>	
23.	Legal Aid Association of California by Selena Copeland, Executive Director, San Francisco	A	I am writing on behalf of the Legal Aid Association of California (LAAC) to express our support for SP21-03 (Judicial Administration). We support SP21-03 because it would amend California Standard of Judicial Administration (Standard 10.20) to support the integrity and impartiality of the judicial system by promoting a courtroom environment both free of bias as well as the appearance of bias.	The work group notes the commenter's support for the proposed amendments and appreciates this input.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>LAAC is a statewide membership association of over 100 public interest law nonprofits that provide free civil legal services to low-income people and communities throughout California. LAAC member organizations provide legal assistance on a broad array of substantive issues, ranging from general poverty law to civil rights to immigration, and also serve a wide range of low-income and vulnerable populations. LAAC serves as California's unified voice for legal services and is a zealous advocate advancing the needs of the clients of legal services on a statewide level regarding funding and access to justice.</p> <p>We support the working group's proposal to (1) update the list of protected classifications enumerated in the standard, (2) more broadly define the scope of the standards and its applicability to all court interactions, (3) define the optimal role for local bias committees and outline contemporary considerations for the makeup of those committees, and (4) ensure that court users can access information regarding how they can submit complaints regarding bias about court employees and judicial officers in court interactions.</p> <p>The elimination of bias at the judicial level is critical and fundamental to access to justice. The enhancement of Standard 10.20 demonstrates the Council's commitment to the elimination of bias not only in the courtroom</p>	

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>but during all court interactions by regularly reviewing that commitment to ensure it is modernized to accurately reflect current understandings of elimination of bias and that those standards are realistically applicable. Bias contributes to staggering disparities in our justice system and revising the 10.20 standard is one essential step to take when addressing and eliminating bias that exists in all courtrooms around the state.</p> <p><u>1. More Broadly Define the Scope of the Standards and its Applicability to All Court Interactions</u></p> <p>Although we support all of the recommendations made by the work group, we especially approve of the proposal to expand the responsibility to ensure integrity and impartiality beyond “courtroom proceedings” to all “court interactions” including interactions in the clerk’s offices, at public counters, and in other places where court users may interact with judicial officers and court staff. This is particularly important because the legal system is not only made up of attorneys and judges; bias can be found preliminarily in one’s legal journey and every step of the process should be free of any biased decisions.</p>	

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p><u>2. Define the Optimal Role for Local Bias Committees and Outline Contemporary Considerations for the Makeup of Those Committees</u></p> <p>Another essential step in addressing bias is education and training for those who work in the judicial system and those making important decisions. Research shows that trial court judges often rely on intuition, rather than deliberative judging, in deciding matters before the bench, fostering unconscious and explicit bias results. We approve of the recommendations regarding local committees, mandating that they not only engage in regular outreach to their local communities to learn about the issues of importance—including ongoing dialogue regarding concerns related to bias in court interactions—but to also sponsor and support educational programs designed to eliminate unconscious and explicit biases within the court. SP21-03 will hopefully reduce the impact of bias in the courtroom and make the justice system more just. We support SP21-03. Thank you again for this opportunity to comment. Please do not hesitate to reach out to me with questions or comments.</p>	
24.	Los Angeles County Bar Association (name not provided)	AM	In 1990, the Judicial Council Advisory Committee on Gender Bias in the Courts published a comprehensive report on bias in the judicial system, and issued 68 recommendations all unanimously adopted by the Judicial	The work group appreciates this submission and notes the commenter's concern that eliminating the recommendation that local bias committees adopt informal complaint resolution procedures is premature, and that there has not been sufficient

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Council.³ This led to the creation of local bench/bar committees on bias in the courtroom, and the adoption of Standard of Judicial Administration 10.20 ("Standard 10.20"). The rationale behind the rule was explained as follows:</p> <p>"the Advisory Committee on Gender Bias in the Courts found that attorneys frequently noted incidents of gender bias for which there were no appropriate remedies. These incidents were not severe enough to warrant submission of complaints to the responsible disciplinary bodies but were nevertheless annoying and unwarranted from the complainants' perspectives. The advisory committee therefore recommended that local groups be formed to experiment with informal complaint resolution methods and educational programs designed to address these less egregious incidents of bias."⁴</p> <p>In spring 2020, the California Employment Lawyers Association surveyed the Superior Courts in California and discovered nearly all of them were out of compliance with Standard 10.20. The Daily Journal also conducted a survey finding that "at least 22 of 58 superior</p>	<p>time to determine if these informal complaint processes are helpful.</p> <p>The work group also notes that it spoke to a number of local bias committees and interested groups during its deliberative and drafting process. Members of the work group met with many local bias committees to gather their thoughts on a myriad of topics, including whether local bias committees should handle informal bias complaints. While the work group featured two local bias committees at its public meeting, work group members were provided briefings about the additional meetings with other local bias committees. Similarly, work group members met with a number of interested persons and groups throughout the process, including members of the California Employment Lawyers Association and the California Judges Association, and provided briefing to the full work group on those meetings as well. The work group also had an early comment period, in addition to this public comment period, so that it could gather feedback from further interested parties who had not met personally with the work group. As a result, the work group was adequately informed in making these recommendations.</p>

³ Advisory Committee to Implement Gender Fairness Proposals Subcommittee on Local Fairness Groups, Workshop for Local Fairness Committees Report and Recommendations (July 12, 1992).

⁴ Ibid.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>courts are not complying with a decade-old California Judicial Council recommendation that they establish committees to address courtroom bias.”⁵ Throughout the year, courts all across the state started forming committees.⁶</p> <p>The Work Group to Enhance Administrative Standards Addressing Bias in Court Proceedings now invites the public to comment on its proposed amendments to Standard 10.20, the majority of which are welcome updates to the rule. We write now only to raise concern about the elimination of the complaint procedure in Standard 10.20.</p> <p>Many counties have just begun to form committees pursuant to Standard 10.20, and there has not yet been a comprehensive study of the success of the disparate counties’ efforts to implement this rule. In the fall of last year, the California Judges Association announced that its task force on “allegations of bias and inequality in the justice system” intended to become a resource for county courts to share information about Standard 10.20 committees.⁷ Such a task force is well positioned to survey the counties about the effectiveness of the 10.20 complaint procedure, and perhaps identify best</p>	<p>The work group recognizes that some local bias committees have established effective informal complaint resolution procedures for complaints against judicial officers. As discussed in the accompanying report, the work group recognizes that there is no one correct way to eliminate bias in court interactions, and the work group advocates for each court and local bias committee to find solutions that work best for that local community. The work group’s proposal does not prevent courts and local bias committees from choosing to create informal complaint resolution procedures for complaints against judicial officers if those courts and committees conclude that is the best way to address bias complaints in their communities. If so, the work group recommends that they fully consider how best to address the specific concerns posed by informal complaint procedures that are outlined in the report and mentioned below. However, given the existence of California Rules of Court, rule 10.351, and the fact that courts already have personnel policies and memorandums of understanding that govern complaints against court employees, having local bias committees resolve complaints against court employees is not recommended.</p>

⁵ Jessica Mach, Daily Journal, “22 Counties not in compliant with bias committee recommendations” (July 6, 2020).

⁶ See, i.e., Jessica Mach, Daily Journal, “3 county courts have plans to launch bias committees” (August 5, 2020).

⁷ Jessica Mach, Daily Journal, “New head of Judges Association targets budgets, pensions” (Sept. 29, 2020).

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>practices. While the present work group invited two of these county committees to speak at a meeting, we believe a more comprehensive review is warranted before eliminating the complaint procedure.</p> <p>We conclude by observing that the purpose of Standard 10.20 was to capture information about incidents at bias at the courts, incidents which did not rise to the level of a report to a disciplinary authority. Without further study into whether litigants and lawyers are bringing these incidents to the courts' attention, we believe it is premature to eliminate the "informal procedure" in Standard 10.20.</p> <p>Thank you for your consideration,</p>	<p>The work group, however, is proposing that standard 10.20 no longer recommend that local bias committees create informal complaint resolution procedures to resolve complaints that accuse an individual of bias. The work group makes this proposal because of the many existing and updated avenues for making complaints against individuals regarding bias in court interactions, including avenues at both the local court level and through the CJP. The work group is concerned that recommending another procedure—undertaken by variously sized, experienced, and resourced committees who may be unable to guarantee confidentiality in the complaint process—might create conflicts between procedures, and may trigger privacy, personnel, due process or labor-relations issues. The work group, however, does envision that local bias committees will engage in education, community outreach, and discussion about courtwide and systemic bias issues that do not directly accuse an individual of wrongdoing.</p> <p>Given that some courts and local bias committees have created informal complaint resolution procedures and intend to keep using them for complaints against judicial officers, and that others will likely continue to rely on internal court complaint procedures and CJP procedures for resolution of such complaints, this should allow courts and local bias committees to gather</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				information to compare the merits of different processes.
25.	Shannon McHenry Connorsville, Indiana	N	I would like to see the Commission take a look at Britney Spears. She is being kept as a modern day slave. She has no medical evaluation saying a conservatorship is necessary, and while they say it is "voluntary", she clearly told judge Brenda Penny she wanted the conservatorship dissolved and it was not- in fact it was disregarded and Judge Penny went on to discuss a new "careplan" with a provider! I am in shock this is allowed to continue. Please, just look at the documents, you will be shocked at what she has had to live through.	Evaluating conservatorship proceedings is beyond the scope of the proposal. Information regarding conservatorship proceedings can be found here: https://www.courts.ca.gov/7813.htm
26.	Michael [No last name provided] San Francisco	AM	Annually, convene local court racial bias commissions and committees to discuss progress, share local efforts and discuss plans moving forward.	The work group appreciates the commenter's suggestion that local bias committees meet annually to discuss local efforts. While the work group did consider setting baseline recommendations on the number and types of meetings for local bias committees, it ultimately left those details to be evaluated by each individual committee within the framework created by the standard. The work group recognizes that counties vary greatly in size, demographics, needs, and viewpoints of the local bar community, and each county has unique and specific issues within its legal community. The intent of the proposed amendments is to provide courts and local bias committees with the framework to take the essential steps to engage their local communities in the important discussions that are required to prevent and eliminate bias. Thus, while the

SP21-03**Judicial Administration: Court's Duty to Prevent Bias** (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				proposal broadly recommends that local bias committees engage in community outreach and educational opportunities, and while the proposal suggests various roles that these local committees might play in their communities, the work group also recognizes that there is not just one correct approach. The proposed amendments to standard 10.20 allow courts and local bias committees the flexibility to establish meetings and standards specific to the local community's needs, and to obtain input from the local community.
27.	Marcie Phillips advocate/member One moms battle, Newport Beach	A	Are you agree with the proposed changes and I'm glad this is being addressed in Family Court. [* The remainder of the comment has been redacted because it is the commenter's own personal complaint of bias. This raises privacy concerns and the comment is outside the scope of this work group. The work group is unable to resolve individual complaints of bias and the commenter may want to consider pursuing recourse through the avenues available at the local court or through the CJP.]	The work group notes the commenter's support for the proposed amendments and appreciates this input. The work group has redacted the remainder of this comment discussing the commenter's own personal complaint of bias due to privacy concerns, and also because the comment is outside the scope of this work group.

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
28.	Deborah Blair Porter Manhattan Beach	AM	<p>Dear Sir or Madam - Please see my attached comments to the proposal reflected in Invitation to Comment SP21-03 (Work Group to Enhance Administrative Standards Addressing Bias in Court Proceedings).</p> <p>Based on the court's website, I understand these comments are due today (June 25, 2021) and that this comment is timely submitted. (https://www.courts.ca.gov/policyadmin-invitationstocomment.htm)</p> <p>I would appreciate your confirming this comment has been received. Thanks in advance for your assistance.</p> <p><u>Introduction</u></p> <p>On June 8, 2020, Chief Justice Tani Cantil-Sakauye, responding to demonstrations in California's streets, issued a statement decrying the deaths of George Floyd and others:</p> <p>“Justice is the first need addressed by the People in the preamble of our nation's Constitution. As public servants, judicial officers swear an oath to protect and defend the Constitution. We must continue to remove barriers to access and fairness, to address conscious and unconscious bias – and yes, racism. All of us, regardless of gender, race, creed, color, sexual orientation or identity, deserve justice. Our</p>	<p>The work group appreciates the commenter's perspectives on the proposal and addresses the specific concerns raised by the commenter below. The work group notes that it has redacted portions of this comment because those portions reflect the commenter's own personal complaint of bias. This raises privacy concerns and the comment is outside the scope of this work group. The work group is unable to resolve individual complaints of bias and the commenter may want to consider pursuing recourse through the avenues available at the local court or through the CJP.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>civil and constitutional rights are more than a promise, a pledge, or an oath – we must enforce these rights equally. Being heard is only the first step to action as we continue to strive to build a fairer, more equal and accessible justice system for all.”¹</p> <p>[* A portion of the comment has been redacted because it is the commenter’s own personal complaint of bias. This raises privacy concerns and the comment is outside the scope of this work group. The work group is unable to resolve individual complaints of bias and the commenter may want to consider pursuing recourse through the avenues available at the local court or through the CJP.]</p> <p>As a result of Chief Justice Cantil-Sakauye’s June 8, 2020 statement, I first became aware of Standard 10.20 and the court’s duty to prohibit bias, as well as its lack of implementation and enforcement for over two decades. When Chief Justice Cantil-Sakauye appointed the Work Group to “Enhance Administrative Standards Addressing Bias in Court Proceedings,” and called for the Standard to be enhanced, updated, and improved, and brought into modern-day usage and alignment with California Rule of Court [“CRC”] 10.351, I committed to following the new Work Group’s activities.</p>	<p>The proposal was broadly disseminated for public comment, including posting on the Judicial Council webpage for public comments, a press release notifying the public that an Invitation to Comment on the proposal was posted, reference to the fact that the proposal had been posted for public comment at the May 21, 2021 Judicial Council meeting, and direct communication with many individuals and groups that had requested notification when the proposal was posted for comment.</p>

¹ California Chief Justice Speaks Out on Addressing Racism and Bias,” June 8, 2020.

<https://newsroom.courts.ca.gov/news/california-chief-justice-speaks-out-addressing-racism-and-bias>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>After contacting the court about the status of the Work Group, in late April, I received an email informing me the Work Group would hold a public meeting May 4, 2021. I listened to this meeting and was heartened by the reports from various county courts which had undertaken the process of establishing local bias committees in their communities. While the meeting involved discussion of Standard 10.20, there was no indication when any proposal would be forthcoming and the only information I had received from the court's representative was that another call for comments would occur when the Work Group made its proposal in the next few months.</p> <p>On May 21, 2021, I happened to listen to the Judicial Council's public online meeting. During the report of the Rules Committee, I was surprised to hear mention of the word "bias" and realized Standard 10.20 was being discussed, although I had seen nothing on the agenda about it. I was also surprised to learn a proposal had been issued May 13, 2021, only nine days after the Work Group's public meeting at which no forthcoming proposal was mentioned.</p> <p>While the Judicial Council meeting was ongoing, I checked the Work Group's public webpage,² but found nothing regarding an</p>	<p>Further, the work group made substantial efforts to assure that the process for reviewing and proposing amendments to standard 10.20 was an inclusive process. Given the need to promptly amend standard 10.20 to provide a framework and guidance that will allow courts to take these important steps to eliminate bias in all court interactions, the Chief Justice created a limited charge and appointed a small work group comprised entirely of Judicial Council members, which enabled the work group to swiftly and efficiently update the standard. Several members of the work group served on the Work Group for the Prevention of Discrimination and Harassment and the committee to develop California Rules of Court, rule 10.351, creating standardized expectations for harassment prevention policies. The work group also had an early comment period specifically designed to seek input from interested groups and persons, met with interested groups throughout the process who wanted to share thoughts and ideas for amending the standard, hosted a public meeting to discuss its ideas, and sought input through this public comment process.</p>

² https://www.courts.ca.gov/biasworkgroup.htm?fbclid=IwAR223W0axe4GQ8BAcV3yXYkWR1QKDhuKIxwKyA--lwrfdFDc__D9RDZr_n8#panel44784

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>invitation to comment or an opportunity for public input. I actually went back through the Judicial Council website to access the Rules Committee Report³ to trace back to the May 13, 2021 Invitation to Comment⁴ (which at that point only allowed comments through June 11th). As of the date of this submission, more than a month and a half after the Invitation to Comment SP21-03 was issued, it still does not appear on the Work Group's public web page and members of the community who may be interested in the Work Group's efforts have no idea an "Invitation to Comment" was issued or that they have been foreclosed from providing input.</p> <p>This does not reflect an inclusive process. This does not ensure the involvement of interested stakeholders. This is not how a process ostensibly focused on overhauling a standard to eliminate bias should be undertaken. Ironically, at the same May 21st Judicial Council meeting, Chief Justice Cantil-Sakauye touted the <i>National Center for Access to Justice</i> ranking California 4th in terms of access to justice (behind Washington DC, Massachusetts and Connecticut). In reality, the <i>National Center's</i> website statistics show that while California may be ranked as the 4th highest state (it is actually in the 5th position considering</p>	

³ <https://jcc.legistar.com/View.ashx?M=F&ID=9414363&GUID=004D74FB-D3FF-4177-8711-377C09559A70>

⁴ <https://www.courts.ca.gov/documents/sp21-03.pdf>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Washington, DC), its rubric score is only 61 out of 100. Grading on a purely objective scoring system, this means California is barely passing with a low D in terms of access to justice.⁵</p> <p>On closer examination, the <i>National Center's</i> statistics makes it apparent California is doing even worse in terms of disability access.⁶ In the May 21, 2021 Judicial Council meeting, the Chief Justice stated that the mantra for California's courts over the past several decades has been "access to justice." Unfortunately, as parents of an adult with disabilities, this has not been our experience in California's courts. In fact, it was because our frontline perspective has been so different from what the Chief Justice described that I decided to follow the activities of this Work Group. Despite listening to the Work Group's May 4th public hearing, it was only by sheer luck and happenstance that I learned of this opportunity for comment. That is extremely unfortunate for those who may have been foreclosed from this opportunity, as well as for the Court.</p> <p><u>Work Group's Charge</u></p> <p>Based on court press statements, as well as the Work Group's website, the Work Group's charge was to "enhance Administrative</p>	<p>The proposed standard 10.20(a) sets a high bar for California courts, stating that "The California judicial branch is committed to ensuring the integrity and impartiality of the judicial system and to court interactions free of bias and the</p>

⁵ See, <https://ncaj.org/state-rankings/2021/justice-index>.

⁶ <https://ncaj.org/state-rankings/2020/disability-access>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<p>Standards Addressing Bias in Court Proceedings,” “identify improvements” and “propose amendments to existing Standards of Judicial Administration, standard 10.20 – Court’s duty to prohibit bias”, to “ensure that standard 10.20, last substantively amended in 1997, reflects - current law and current understandings regarding the elimination of bias.” The Work Group was also to “augment” the Judicial Council’s recent actions and recommendations related to the Work Group on Prevention of Discrimination and Harassment, adopted in July 2019, reflected in CRC 10.351, and adopted by the Judicial Council in January 2020.⁷</p> <p>The Work Group was given topics to evaluate, including CRC 10.351, and told to specifically consider “updating the list of protected classifications “ in the current standards; “the optimal role and composition of local bias committees” and “other changes to better assist courts in maintaining a courtroom environment free of bias and the appearance of bias.”⁸</p> <p><u>Work Group’s Proposal</u></p> <p>At page 8 of ITC SP21-03, the Work Group’s “Request for Specific Comments,” queries</p>	<p>appearance of bias.” Critical to that commitment is that each court “work within its community to improve dialogue and engagement with members of various cultures, backgrounds, and groups, to learn, understand, and appreciate the unique qualities and needs of each group.” In addition, subdivision (b) gives each court, its judicial officers, and court employees the “duty” to “ensure integrity and impartiality” in court interactions. These standards provide a framework that will allow courts and local bias committees to do further work on the local level to build partnerships with the legal communities and engage in the process of conceptualizing outreach and educational programs. Amending standard 10.20 is a necessary <i>first</i> step in renewing the branchwide commitment to the elimination of bias in all court interactions. It is clear that the emphasis now turns to courts and local bias committees to build on this framework to create their own meaningful processes.</p> <p>While the work group did consider setting firm baseline recommendations or mandates on the role of local bias committees, including the number and type of education programs, specific required community outreach activities, mandatory reporting requirements by local bias committees, and specific complaint resolution processes, it</p>

⁷ <https://newsroom.courts.ca.gov/news/california-chief-justice-appoints-new-work-group-address-bias-court-proceedings;https://www.courts.ca.gov/biasworkgroup.htm#panel44783>.

⁸ *Ibid.*

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>“Does the amended standard appropriately address the stated goal of amending Standard 10.20 to reflect current law and current understandings regarding the elimination of bias.” This comment responds to that query.</p> <p>After reviewing ITC SP21-03, my answer to this query is a resounding no. While the Work Group’s amendment and proposal includes a few good suggestions, it misses the mark in terms of achieving the overarching goal of updating, enhancing and improving Standard 10.20 so as to address and eliminate bias in California’s courts.</p> <p>The proposed amendment does nothing to remove barriers to access and fairness, address conscious and unconscious bias, including racism, or take steps to enforce rights equally or equitably. In fact, the proposal the Work Group has presented not only will not ensure progress toward eliminating bias, it proposes changes to the Standard that are not in keeping with the historical trend of the Standard, or other actions toward accountability the Judicial Council has taken, including CRC 10.351, which arose out of the efforts of the Prevention of Discrimination and Harassment Work Group. Instead, the proposed amendments would actually lessen the authority and strength of Standard 10.20.</p>	<p>ultimately left those details to be evaluated by each individual committee within the framework created by the standard. The work group recognizes that counties vary greatly in size, demographics, needs, and viewpoints of the local bar community, and each county has unique and specific issues within its legal community. The work group expects courts and local bias committees to take the essential steps to engage their local communities in the important discussions that are required to prevent and eliminate bias. Thus, while the proposal broadly recommends that local bias committees engage in community outreach and educational opportunities, and while the proposal suggests various roles that these local committees might play in their communities, the work group also recognizes that there is not just one correct approach. The proposed amendments to standard 10.20 allow courts and local bias committees the flexibility to establish standards specific to the local community’s needs and to obtain input from the local community. The work group expects that courts will do just this; otherwise, they may not be able to meet the ambitious statement of purpose and duties outlined in the amended standard 10.20(a) and (b).</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>The proposed amendment does not encourage or require greatly needed bias education by or for the courts, and in fact does not seem to require any action or change on the part of California's judicial officers. It actually eliminates the complaint process in the current standard that has gone unenforced for over two decades and fails to replace it with anything other than cavalier references toward complaint processes it asserts are plentiful, "existing" and "robust," ignoring that such processes are not readily available or accessible to those who do not regularly use the courts or that they may be even more inaccessible to individuals with disabilities, including those with visual, language, cognitive or other disabilities that may preclude them from accessing such "existing" complaint systems.</p> <p>Most troubling is that despite the charge to the Work Group that it look to the efforts undertaken by the Prevention and Elimination of Harassment and Discrimination Work Group, which resulted in the enactment of CRC 10.351, the framework of that Rule, which could serve as a good model and the complaint process it includes, were considered but then ignored. The proposed amendment as it stands does not meet the charge, and actually does not seem to establish any goals that will result in any action or outcome that will eliminate bias.</p>	

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>The proposed amendment will not build the “fairer, more equal and accessible justice system for all,” Chief Justice Cantil-Sakauye called for nor does it ensure all citizens, including those in various protected classes, are “heard” in California’s courts. While it uses the words “fairness and integrity in California’s judicial system,” language from the Judicial Canons, this language alone, without goals or action will not lead to improvement or foster confidence in California’s court system.</p> <p>If adopted, the bar will be set so low that the net effect of this proposal will be to allow bias to continue unchecked in California’s courts, without accountability or redress. This does nothing to ensure the fairness and integrity promised by California’s judicial canons and will only lead to greater inequity, denial of access to justice and greater dissatisfaction overall on the part of California’s citizens.</p> <p>[* A portion of the comment has been redacted here because it relates to the commenter’s own personal complaint of bias, as discussed above].</p> <p>Based on what has happened [in our experience], we do not believe the Work Group’s proposed amendment comes close to being effective in terms of eliminating bias nor will it lead to systemic change in California’s courts.</p>	

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>While we recognize that what happened to [us] may be a unique circumstance, and certainly hope that is the case, so long as California's courts fails to count and account for people with disabilities in cases in the courts, problems such as we experienced will persist, despite the status of this group as a "protected class" under California law.</p> <p>For these reasons we do not agree with the approach of the Work Group's proposal. What follows is our input and recommendations regarding what the Work Group and the Judicial Council should do instead and an analysis of the lack of data regarding disability in California's court system. We have also included a document entitled "Judicial Officer Actions Reflecting Bias Based on Disability" which lists the actions by judicial officers in [our case] we believe reflected bias.</p> <p><u>Input</u></p> <p>The Work Group needs to examine and utilize "The Evolving Science on Implicit Bias,"⁹ discussed in greater detail below.</p> <p>The Work Group should recognize that current Standard 10.20 does not "<i>recommend</i>" judicial officers do not engage in bias, it <i>prohibits bias</i>, that "prohibit" is a far more preferable and</p>	<p>The work group acknowledges the commenter's concern that changing standard 10.20 from "prohibiting bias" to "preventing bias" may weaken the standard. As discussed in the</p>

⁹ <https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/911>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>powerful word than “prevent” as “prohibit” carries the power and authority of the law and the Judicial Canons of Ethics, which also use that term. CRC 10.351, which the Work Group was to rely on to <i>augment</i> Standard 10.20 also uses the term “prohibit.” The only issue with the term “prohibit” in the Standard is that it has not been sufficiently implemented or enforced. The rationale and explanations the Work Group uses to justify using “prevent” over “prohibit” do not make sense or measure up.¹⁰</p> <p>The Work Group needs to adhere to the Standard’s historical trend toward greater prohibition, especially as there has been no implementation or compliance that would justify such a rollback. It is fruitless and counterproductive to prevent progress particularly as Chief Justice’s June 8, 2020 statement stated the need for change.</p> <p>The Work Group proposal actually uses language that will weaken the standard, do nothing to reduce or eliminate bias, will not lead to systemic improvements or change nor will it lead to greater fairness or integrity and thus will not foster confidence in California’s courts.</p>	<p>accompanying report, and as outlined in the Advisory Committee Comments that accompany standard 10.20, the opposite is true. The advisory comment to this revision notes that: “the standard now asks courts, judicial officers, and court employees to take actions to prevent bias rather than prohibit bias. This change reflects a more comprehensive approach in how courts are to combat bias, focusing on understanding the many forms, causes, and impacts of bias rather than simply forbidding it. Preventing bias may include, for example, prohibiting bias; encouraging judicial officers, employees, and court users to report bias; being open to discussing and learning from real misunderstandings and instances of unconscious bias; and focusing on robust education regarding how unconscious and explicit biases develop, how to recognize them, and how to address and eliminate bias.” This change in focus should provide clear guidance to courts and local bias committees as to the intention of the work group in how courts can best address bias in court interactions.</p>

¹⁰ The current proposal will do nothing to prevent the sort of bias [we] experienced, as it not only rolls back the standard, but fails to ensure accountability, even eliminating the complaint procedures the current Standard required in collaboration with local bar associations and failing to replace it. As history shows, the local bar association complaint processes never materialized and there has been no accountability whatsoever. The current proposal would, in fact, enable bias to continue without review, as it proposes relaxing the current Standard which was simply not implemented or enforced.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>The Work Group needs to understand that to eliminate bias, judicial officers should not avoid considering protected classes or classifications (as the Proposal suggests at page 4; in the proposed amendment at 10.20(b)(1) and in the Advisory Comment), <i>but instead focus on them, consider them, acknowledge them and learn about them.</i>¹¹</p> <p>The Work Group needs to examine the language of its proposal and the bias and deflection reflected in its use of language, including language which actually seeks to avoid addressing bias, requiring education or any meaningful actions on the part of judicial officers, and instead suggests the law is discretionary or that judges need to be “asked,” “encouraged,” or otherwise cajoled to do what the law and rules require.</p> <p>The Work Group needs to take a lesson from the processes of the Work Group on Prevention of Discrimination and Harassment which led to the issuing of CRC 10.351 and the CLASP “Strategic Plan for Language Access in the California Courts” and the processes each reflect with regard to redressing complaints through structured and documented complaint processes that have meaning and capacity.</p>	<p>The work group notes the commenter’s position that the amended standard 10.20 should mandate requirements. However, as stated in California Rules of Court, rule 1.5(c), the Standards of Judicial Administration within the rules of court are guidelines or goals recommended by the Judicial Council. The nonbinding nature of the standards is indicated by the use of “should” in the standards instead of the mandatory “must” used in the rules.</p> <p>Maintaining the recommendations in the standard as guidelines and goals is consistent with the work group’s overall goal of creating a framework within which courts can work with their local communities toward the elimination of bias in court interactions, rather than creating top-down mandates. The proposal recognizes that each community varies greatly in size, demographics, needs, and viewpoints, and that the issues that confront each local community are unique and</p>

¹¹ [*A portion of the comment has been redacted here because it relates to the commenter’s own personal complaint of bias, as discussed above].

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>The Work Group needs to consider a far more comprehensive process overall that will include stakeholders not just from outside the court system but also specifically from protected classes the Work Group presumes to speak for. The Work Group needs to give this effort a far more concerted, thoughtful, organized and inclusive effort than what has occurred and not rush to put something out because of a deadline, but because it has thoroughly vetted and completed the task at hand.¹²</p> <p>Most importantly, the Work Group should be providing notice to interested parties, including those outside the court system, and not pushing out a “proposal” under the radar by using the Rules Committee, as it did with the May 13th proposal, failing to publicly post its proposal on the Work Group website to this day.</p> <p>Standard 10.20 has not been implemented or enforced for over twenty years. This is a problem and a reflection of the underlying reality that there is no real, meaningful complaint system in place in California that allows court users to redress grievances against judicial officers who engage in bias and other misconduct and holds judicial officers truly</p>	<p>require direct dialogue between the local bias committee and the community. The intent of the proposed amendments is to provide courts and local committees with the framework to take the essential steps to engage their local communities in the important discussions required to prevent and eliminate bias. Thus, while the proposal makes recommendations, the work group also recognizes that there is not just one correct approach. The current proposal gives courts the latitude to create customized processes, and partner with their local communities to find solutions that meet the unique and specific needs of each court and the local community that it serves.</p> <p>The work group notes the commenter’s concerns regarding the composition of the work group, the commenter’s concern with the openness and thoroughness of the work group’s process, and that there is still work to be done on eliminating bias in court proceedings. As discussed in response to the commenter’s remarks above, the work group’s process was open and inclusive, consistent with legal requirements and Judicial Council policies and procedures. Although its work to amend standard 10.20 has been thorough, the work group also acknowledges that this</p>

¹² Also, what is the basis for the assertion at page 6 of the proposal that “identifying certain groups for inclusion” in local bias committees or any group working to effect change will necessarily create “a false sense of diversity” or will lead to “exclusion of some groups and viewpoints”? Most likely groups were referenced in the Standard because of the recognition at the time of the historical exclusion of these groups from such committees. Not identifying groups, presuming to speak for them and excluding them from processes such as this invitation to comment seems far more contrary to diversity.

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>accountable for their actions on the bench with any consistency, accountability or transparency. The result is that today too many judicial officers seem to believe California laws and rules are discretionary, including laws and rules intended to ensure access to the courts through accommodations for individuals with disabilities. In order to eliminate bias, the Standard needs to address these attitudes, have goals that will lead to action that will require accountability for bias, and require California's judicial officers to meaningfully ensure the rights of protected classes and be held accountable for their failure to do so.</p> <p>The present proposal also changes language that doesn't need changing, inserts superfluous unnecessary language already stated in the Judicial Canons of Ethics, and avoids addressing the meat of the subject - how to prohibit bias, how to educate judicial officers and court employees about it and what complaint procedures are needed for when they don't learn the lessons intended by the Standard.</p> <p>Included below is a list of recommendations regarding the proposal and the process undertaken, as well as for California's court system overall.</p> <p>The Work Group and California's courts as a whole must recognize that individuals with developmental or other cognitive disabilities, as</p>	<p>proposal is just the first step in the process of eliminating and preventing bias in court interactions, and now the focus shifts to courts and local bias committees to take specific actions within the guidelines set by the amended standard.</p> <p>As to concerns regarding the composition of the work group, the work group is a diverse group of judicial officers, attorneys, and a court executive officer. Several members of the work group served on the Work Group for the Prevention of Discrimination and Harassment and the committee to develop California Rules of Court, rule 10.351, creating standardized expectations for harassment prevention policies. The fact that the work group was so experienced in these matters allowed it to work quickly and efficiently. The work group members supplemented their own personal experiences and work on prior work groups by implementing an early comment period specifically designed to seek input from interested groups and persons, and also meeting with interested groups who wanted to share thoughts and ideas for amending the standard. The work group was well informed in undertaking its charge.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>well as language comprehension and processing challenges, need and are entitled to effective communication¹³ and that parents and companions assisting such individuals are a necessary part of the access process that judicial officers should not deny, but instead encourage. Effective communication and facilitation not only ensures an individual's access to the court, but leads to greater clarity for the individual with disabilities and the court itself, with everyone on the same page and better understanding all around.</p> <p>The Work Group should also examine its privilege in terms of its familiarity with court processes and procedures and recognize that just saying "there are existing complaint processes" or "see code section or rule x, y and z" does not mean complaint processes are available or accessible, especially for people with language, visual, print or other disabilities who may not have access to such processes. This does not begin to address challenges individuals with developmental disabilities or cognitive impairments face in accessing the courts,¹⁴ as</p>	<p>The work group agrees with the commenter that complaint procedures should be readily available to court users. The work group's proposed amendment states that each court should ensure that court users can access information regarding how to submit complaints regarding bias, including information regarding how to submit complaints about court employees directly to the court and how to submit complaints about judicial officers either directly to the court or to the CJP. The work group also notes in its report that while many courts already provide this information on</p>

¹³ See, ADA 28 CFR §35.160. <https://www.ada.gov/effective-comm.htm>

¹⁴ See 09/24/19 letter, Spectrum Institute to Judicial Council: "Spectrum Institute believes that the Judicial Council has engaged in unlawful discrimination by indicating that the duty of courts to offer disability accommodations is dependent on a request. Rule 1.100, educational presentations by Judicial Council staff, and materials developed for attorneys, court staff, and the public all convey such an impression. For example, a recently published benchguide is conspicuously silent regarding the duties of judges when a self-represented litigant with obvious disabilities fails to make an ADA accommodation request. ("Handling Cases Involving Self-Represented Litigants," Judicial Council (April 2019) There are no court rules, webpages, or educational materials clarifying that local courts do have sua sponte ADA duties

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>well as how such individuals are precluded from independently presenting complaints regarding the court or judicial officers due to difficulty in accessing such processes, beyond the complex process of redressing grievances regarding denial of accommodations, which in the case of rulings by judicial officers require multiple court proceedings in multiple courts just to “be heard.”</p> <p>[* A portion of the comment has been redacted here because it relates to the commenter’s own personal complaint of bias, as discussed above].</p> <p>I appreciate the opportunity to provide this comment, for the Work Group, the Judicial Council and California’s courts as a whole need to understand what is happening on the front lines of California’s court system at the hands of California’s judicial officers. It is our experience that California’s courts are NOT ensuring access to individuals in the various protected classes listed in the current Standard 10.20 or the proposed revision and from our perspective this is especially true for individuals with disabilities because, as discussed at the conclusion of this response, <i>no one is even</i></p>	<p>their court websites, in their local rules, or displayed in courthouses, the revised standard recommends that all courts take similar steps to ensure that they are providing complaint procedure information to court users in a meaningful and accessible manner.</p> <p>Included in this recommendation is that the information be provided in an “accessible” manner. The California court system complies with the Americans with Disabilities Act, which requires providing information in a format that is accessible to disabled individuals. Thus, local courts should publish information regarding complaint procedures in a format that is accessible to disabled individuals.</p> <p>The work group agrees with the commenter that there was a significant need to amend standard 10.20, and the work group views this as an opportunity to renew the judicial branch’s commitment to ensuring the integrity and impartiality of the judicial system and to court interactions free of bias and the appearance of bias. All proposed amendments to the standard are focused on that goal.</p> <p>The work group also agrees that the absence of any reference to individuals with disabilities in the existing standard is problematic and could leave</p>

even when no request is made. This misleading omission is causing actual and potential harm to disabled litigants. <https://tomcoleman.us/publications/2019-ada-compliance.pdf> -

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p><i>considering or acknowledging the presence of this demographic or how our court system is or isn't ensuring access for this group. California's courts are NOT living up to the Judicial Canons of Ethics, NOT abiding by the various opinions requiring judicial officers adhere to strict ethical requirements, not exercising oversight and accountability with regard to such judicial officers and NOT ensuring fairness and integrity in California's courts.</i></p> <p>Chief Justice Tani Cantil-Sakauye has made two separate statements over the past several years that I consider "lodestar" in terms of access and fairness for people with disabilities. They both articulate goals the Work Group needs to aim for.</p> <p>In the CLASP Report which discusses steps intended to ensure Language Access to millions of Californians, the Chief Justice said:</p> <p>"Access to our justice system must be examined through a framework that looks at equal access, physical access, and remote access. We ensure physical access by keeping courthouses and courtrooms open, well-maintained and accessible to persons with disabilities; we ensure remote access by providing online resources and electronic access to our court system; and we ensure equal access by making judicial proceedings and all related court contacts available and</p>	<p>those individuals excluded from the broad protections of the standard. The proposal seeks to rectify that problem by amending the standard to include all protected classifications recognized by existing law in similar areas, including Government Code section 12940(a) (for employment and housing discrimination, harassment, and retaliation) and Code of Judicial Ethics canon 3(B)(5) (for judicial bias). This amendment greatly expands and modernizes the list of protected classifications listed in standard 10.20, and specifically includes individuals with mental and physical disabilities. In addition, the decision to add that the protected classifications in standard 10.20 include any other classifications protected by state and federal law, including Government Code section 12940(a) and Code of Judicial Ethics, canon 3(B)(5), allows the list to stay updated, as the standard will automatically incorporate any new protected classifications that are recognized by state or federal law.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<p>comprehensible to all. Efforts to enhance language access for LEP court users are a critical component of this Access 3D framework.”¹⁵</p> <p>As laudable as this statement may be, it confirms that in California, people whose disabilities are not physical, i.e., those with visual impairments, hearing impairments, cognitive and developmental disabilities, autism, Asperger's, learning disabilities, language impairment, and what the court's own documents refer to as “hidden disabilities,” <i>are effectively “disappeared” by the current approach of California's courts and these individuals are not enjoying the same access those protected by the LAP enjoy, at the same time they experience similar impacts.</i> As the parent of an individual with diagnosed language disabilities and autism, I think the reason is apparent in the Court's own records.</p> <p>According to “reports and publications” for the Judicial Council's “Advisory Committee on Providing Access and Fairness,” no study of access for individuals with disabilities has been undertaken since 1997.¹⁶ What this means is that none of the research related to autism and brain development from the past few decades has been factored into California's procedures for</p>	

¹⁵ https://www.courts.ca.gov/documents/CLASP_report_060514.pdf

¹⁶ <https://www.courts.ca.gov/7769.htm>.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>ensuring access for persons with disabilities.¹⁷ Combined with the failure to implement and enforce Standard 10.20, this has inevitably led to what our son and others like him whose disabilities are not physical in nature are experiencing in California's courts in the form of denial of access.</p> <p>It is the Chief Justice's second statement on June 8, 2020, that is seminal, particularly "Our civil and constitutional rights are more than a promise, a pledge, or an oath – we must enforce these rights equally. Being heard is only the first step to action as we continue to strive to build a fairer, more equal and accessible justice system for all."¹⁸</p> <p>[* A portion of the comment has been redacted here because it relates to the commenter's own personal complaint of bias, as discussed above].</p> <p>Therefore I write to the Work Group and the Judicial Council, despite the failure to meaningfully disseminate the invitation to comment [*Redacted]. Please- PLEASE- do the right thing and meaningfully and comprehensively address the bias we've seen</p>	

¹⁷ This despite California judicial officers participating in studies involving individuals with autism. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4392381/> "Purpose The purpose of this paper is to explore how judges perceive High Functioning Autistic Spectrum Disorders (hfASDs) and the disorders' effects on an offender's ability to formulate criminal intent and control behaviour. **Design/methodology/approach.** Semi-structured interviews on topics related to offenders with hfASDs were conducted with 21 California Superior Court Judges."

¹⁸ California Chief Justice Speaks Out on Addressing Racism and Bias," June 8, 2020.

<https://newsroom.courts.ca.gov/news/california-chief-justice-speaks-out-addressing-racism-and-bias>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>first-hand in California's courts. While we cannot say how extensive bias against individuals with disabilities is, nor does California's court system have any idea given the absence of data, our personal experience confirms it is real and having devastating consequences for California's citizens, including people like [* Redacted] our family.</p> <p><u>Recommendations for Updating Standard</u></p> <p>I strongly urge the Judicial Council NOT to adopt the proposed amended Standard 10.20 as submitted by the Working Group, for it will not eliminate bias or achieve the charge to the Work Group. Instead, it lowers the standard and will ensure no change at all. I urge the Judicial Council to urge the Work Group to go back to the original language of the current Standard 10.20 as a starting point to make the straightforward changes the court requested, to enhance, improve and augment the Standard to ensure that bias is acknowledged and addressed, there are complaint processes for redressing grievances with regard to such bias and that there is meaningful accountability with regard to same.</p> <p>In light of the significant overlap between discrimination/harassment and bias (implicit and explicit) the Work Group should revise Standard 10.20 to align with and correspond to the language of CRC 10.351 – particularly to ensure</p>	<p>The work group appreciates the commenter's perspective. The amendments to standard 10.20 ensure the standard reflects current law and understandings regarding the elimination of bias and provides a framework for courts to work with local communities to address this important issue. These include amendments to emphasize the goal for courts to prevent bias, rather than simply prohibit bias; more broadly define the scope of the standard and its applicability to all court interactions; update the list of protected classifications enumerated in the standard; define the optimal roles for local bias committees and outline contemporary considerations for the composition of those committees; and ensure that court users can access information regarding how they can submit complaints regarding bias about court employees and judicial officers in court interactions.</p> <p>While the commenter desires that these amendments result in requirements similar to California Rules of Court, rule 10.351; as described in response to this commenter above, a</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>there are</p> <p>(a) Prohibition policies (<i>not “prevention” which is a lowering of the standard</i>);</p> <p>(b) Complaint reporting processes;</p> <p>(c) Court responsibility on receipt of complaint or knowledge of potential misconduct;</p> <p>(d) Implementation (<i>so that another twenty years does not go by without implementation and enforcement, while bias runs rampant throughout California’s courts, both civil, criminal, family law, dependency, probate, etc.</i>)</p> <p>Aligning Standard 10.20 with CRC 10.351 does more to meet the charge to “augment” the standard. Standard 10.20 does not need to be weakened. It is not working not because it was implemented and enforced and went too far. It has not been implemented and enforced and it needs language to ensure that it is. It also needs language to ensure bias can be and is redressed through meaningful complaint procedures, with robust accountability for those who engage in bias, not just education programs that fall on deaf ears.</p> <p>The “protected classes” should not be in alphabetical order. Placing them in that order eliminates the historical evolution of protected classes, makes no categorical sense or meaning and frankly is disrespectful. The language of the “protected classes” in the current Standard 10.20 can be used as a starting point and</p>	<p>Standard of Judicial Administration is quite different than a rule of court. As stated in California Rules of Court, rule 1.5(c), the Standards of Judicial Administration within the rules of court are guidelines or goals recommended by the Judicial Council. The nonbinding nature of the standards is indicated by the use of “should” in the standards instead of the mandatory “must” used in the rules.</p> <p>The work group’s amendments are consistent with the parameters of a Standard of Judicial Administration and further are consistent with the work group’s goal to create a framework and expectations for the elimination of bias, while also recognizing the diversity of size, demographics, needs, and viewpoints of the various legal communities in the state, and the need to allow them to develop customized approaches that will best result in the prevention of bias in court interactions.</p> <p>The work group substantively addresses the specific recommendations outlined by the commenter in the other sections of this comment.</p> <p>The list of protected classifications is organized alphabetically for ease of reference, and no additional significance is given to any protected classification based on where it appears in the list. All listed protected classifications are equally protected regardless of where they are listed in order.</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>supplemented by cross reference to Cal. Civ. Code §51, which in turn cites to GC §12926 (not GC §12940 which is an employment reference and not as applicable).</p> <p>Do not deconstruct the term “disability,” rather supplement it, if that. “Disability” is a comprehensive umbrella description for all the varying types of disabilities, be they mental, physical, medical, or a combination. It is a description that is inclusive in its simplicity and will ensure that people of varying disabilities will see themselves in it and not feel “disappeared” or disregarded as may happen if it is broken into only “physical” or “mental” disabilities. This is particularly true since many people may not see themselves in either category while others find themselves in both.</p>	<p>More importantly, the proposal amends the list of protected classifications by adopting all protected classifications that are recognized by existing law in similar areas, including Government Code section 12940(a) (for employment and housing discrimination, harassment, and retaliation) and Code of Judicial Ethics canon 3(B)(5) (for judicial bias). This amendment greatly expands and modernizes the list of protected classifications listed in standard 10.20. In addition, the decision to add that the protected classifications in standard 10.20 include any other classifications protected by state and federal law, including Government Code section 12940(a) and Code of Judicial Ethics, canon 3(B)(5), allows the list to stay updated, as the standard will automatically incorporate any new protected classifications that are recognized by state or federal law.</p> <p>The work group specifically incorporated the protected classifications used by the Fair Employment and Housing Act (FEHA). “Mental disability” and “physical disability” are separate protected classifications enumerated under the FEHA, listed in Government Code section 12940(a), and the definition section of the statute, Government Code section 12926, separately lists both physical and mental disability.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>There needs to be significantly more education for judicial officers and court employees with regard to the numerous types and categories of disability, particularly with regard to those that are not as obvious or apparent as physical disabilities, i.e., "hidden disabilities".¹⁹</p> <p>Judicial officers also need significant and ongoing education and training with regard to individuals, including those with hidden disabilities, who may seek to cover up their disability due to stigma or in order to avoid being identified as disabled as they want to appear to be as typical as the next person. Individuals with diagnoses such as, for example, autism, Asperger's syndrome, learning disabilities, language processing and comprehension deficits, developmental and intellectual disabilities, etc., often present typically, yet can have significant challenges and difficulty accessing and processing courtroom proceedings, interacting with people and understanding such interactions. Some of these individuals often remain quiet to avoid being found out.</p>	<p>The work group agrees that training and education for both judicial officers and court employees are critical for the elimination of bias in court interactions. As outlined in the proposed standard 10.20(c)(2), the work group has specifically recommended that local bias committees engage in education programs designed to eliminate unconscious and explicit biases within the court and legal communities. Education should include information as to bias based on protected classifications and information regarding how unconscious and explicit biases based on these classifications develop, how to recognize unconscious and explicit biases, and how to address and eliminate unconscious and explicit biases.</p> <p>As discussed, while the work group has recommended these education programs, it ultimately left the specific details to be evaluated by each individual committee within the framework created by the standard. The intent of the proposed amendments is to provide courts and local bias committees with the framework to take the essential steps to engage their local communities in the important discussions that are required to prevent and eliminate bias. Thus,</p>

¹⁹ <https://www.courts.ca.gov/documents/access-fairness-etiquette-2009.pdf> (Persons With Hidden Disabilities - Not all disabilities are apparent. A person may have difficulty following a conversation, may not respond when you call or wave, or may say or do something that seems inappropriate. The person may have a hidden disability such as poor vision, a seizure disorder, a hearing loss, a learning disability, a brain injury, a mental disability, or a health condition. These are just a few of the many different types of hidden disabilities).

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>The Penal Code specifically states that if it is “suspected” an individual has a developmental disability the Court shall appoint Regional Center to examine the individual to determine if they are developmentally disabled and in need of services. (See, PC §1001.22 and PC §1369(a)(3)). Despite these requirements, it has been our experience that judicial officers fail and refuse to make such appointments, for a multitude of reasons, including time constraints, lack of knowledge, etc. As a result, the right of an individual with disabilities not to be adjudged to punishment while incompetent is placed at risk and violations of due process result.</p> <p>Bureau of Justice Statistics [“BJS”] from the U.S. Department of Justice confirms “Cognitive disability was the most commonly reported disability among inmates. About 2 in 10 prisoners and 3 in 10 jail inmates reported a cognitive disability, the most common disability reported by each population.”²⁰ This appears just as true in California’s prisons and jails, demonstrating that too many judicial officers are not complying with the statutory requirements of PC §1369 or Rule 4.130 when a concern arises regarding the competency of an individual who has cognitive impairments, so that they fly under the radar due to their cognitive impairments and failure to access the process, and end up in jail and prison, where they don’t belong and</p>	<p>while the proposal broadly recommends that local bias committees engage in educational opportunities, the work group also recognizes that there is not just one correct approach. The proposed amendments to standard 10.20 allow courts and local bias committees the flexibility to establish education programs specific to the local community’s needs and to obtain input from the local community.</p> <p>The work group notes that the commenter suggests that complaint resolution procedures be posted prominently. The work group incorporates its prior response to this commenter on this issue, included above, and notes that the proposal recommends that courts broadly disseminate complaint procedures for court users.</p>

²⁰ <https://bjs.ojp.gov/content/pub/pdf/dpji1112.pdf> -

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>languish for years because they cannot navigate the processes that will get them out.²¹</p> <p>The Work Group should use the language of the complaint procedures set forth in CRC 10.351 along with the CLASP process and complaint requirements, as an existing model of guidance for court users, including individuals with disabilities, on the filing of complaints. This will allow all parties, including court users and court employees to know them and readily use them.²²</p> <p>Post these procedures conspicuously in clearly marked locations in every single courthouse and judicial building in the state of California so that all court users are aware of them and can access and use such procedures along with guidance on how to use them whenever the need arises. Make such notices available in multiple languages, as well as in accessible formats so that ALL people can access them, including people with disabilities, visual and print impairments, those with intellectual and developmental disabilities or other cognitive issues.</p> <p>Enhance the complaint system by combining and equalizing the systems for Language Access</p>	

²¹ <https://thearc.org/wp-content/uploads/2021/05/Criminal-Justice-System.pdf>

²² https://www.courts.ca.gov/documents/CLASP_report_060514.pdf “Stakeholders participating throughout the planning process agreed that, in order to ensure the success of a statewide language access plan, it is necessary to create systems for implementing the plan, for compliance and monitoring its effects on language access statewide, and for tracking the need for ongoing adjustments and improvements. Participants in the court system, from legal services providers to interpreters to court users themselves, emphasized the need for quality control measures, including mechanisms for making and resolving complaints about all aspects of the courts’ language access services.” Page 74; *see also* Pages 75-77, 87, 92, 94.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<p>Complaints (https://www.courts.ca.gov/LAPcontact.htm) with bias complaints, as well as for individuals with disabilities so that they are all adequately supported in having access to the judicial system.</p> <p>Make the process for complaints involving a judicial officer's denial of accommodations for people with disabilities as equitable as the Language Access process. As it stands, a person whose "Request for Accommodations" was denied or not ruled on or otherwise granted by a judicial officer, despite the requirements of CRC 1.100, is forced to file a petition for writ to the Court of Appeal to redress what is often a result of ignorance or bias. The notion that redress for the denial of access to one court proceeding is another far more complex court proceeding is not only exceedingly unfair, it makes no sense, particularly in light of the challenges faced by those with more complex or significant disabilities. Also, it is our experience, that Court of Appeal judicial officers find it more preferable to ignore or excuse the improper behavior of a Superior Court judge than chastise them for failing to ensure the rights of the disabled to have access to the courts, ensuring compliance with Rule 1.100 or effective communication under the ADA.²³</p>	<p>The proposal to amend standard 10.20 specifically addresses eliminating bias in court interactions. The commenter raises additional concerns regarding disability accommodations for court users and access for persons with disabilities. The process for asserting complaints regarding the denial of requests for accommodations under California Rules of Court 1.100 is beyond the scope of this proposal. Information regarding Rule 1.100 may be found here: https://www.courts.ca.gov/documents/access-fairness-QandA-for-persons-with-disabilities.pdf</p> <p>Likewise, addressing access issues for persons with disabilities is beyond the scope of this proposal. Information regarding access to the California court system may be found here: https://www.courts.ca.gov/24647.htm?rdeLocaleAttr=en</p>

²³ <https://www.ada.gov/effective-comm.htm>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>It is also inequitable and incomprehensible that California has a Strategic Plan for Language Access in California courts to ensure language access for non-English speakers through the Court's Language Access Plan, but has no corollary plan in place for individuals with disabilities whose disabilities are not physical, rather language or processing challenges and /or cognitive impairments that negatively impact their access, yet they are denied the assistance and benefits routinely granted to those granted language access. An equitable system needs to be implemented for people with disabilities where they have the same right to access, support and assistance as is reflected in Rule 1.300, and through the LAP complaint process.²⁴</p> <p>The CLASP "Strategic Plan" at page 21 states: "California's Language Access Plan effort supports Goal I of the Judicial Council's most recent strategic plan—Access, Fairness, and Diversity—which sets forth that:</p> <ul style="list-style-type: none">• All persons will have equal access to the courts and court proceedings and programs;• Court procedures will be fair and understandable to court users; and• Members of the judicial branch community will strive to understand and be responsive to the needs of court users from diverse cultural backgrounds.	

²⁴ <https://www.courts.ca.gov/LAPcontact.htm>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<p>The Language Access Plan also aligns with the most recent operational plan for the judicial branch, which identifies additional objectives in support of Goal I, including:</p> <ul style="list-style-type: none">• Increase qualified interpreter services in court-ordered/court-operated proceedings and seek to expand services to additional court venues; and• Increase the availability of language access services to all court users”²⁵ <p>These goals and objectives are just as applicable to persons with disabilities accessing the court and until California ensures this level of access to individuals with disabilities, California’s judicial system is an inequitable system.</p> <p>Include stakeholders from the community in the process of revising Standard 10.20. The failure to include stakeholders from the protected classes and from the organizations interested in advancing civil rights and access to the courts is one reason the Work Group’s proposal will not be successful. It has created a proposal which may reflect the Court’s perspective on such protected classes, but does not include the community’s perspective.²⁶</p>	<p>As discussed, amending standard 10.20 is a necessary step in renewing the branchwide commitment to the elimination of bias in all court interactions. The amended standard will provide a framework that will allow courts and local bias committees to do further work on the local level to build partnerships with the legal communities and engage in the process of conceptualizing outreach and educational programs.</p>

²⁵ https://www.courts.ca.gov/documents/CLASP_report_060514.pdf

²⁶ See “*The Evolving Science on Implicit Bias*” pages 11-12 (“The Multiple Levels of Inequality: Privilege”) and Page 13 (Intergroup Contact).
<https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/911>.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Those involved in this process should also review the archived document “Bias in the Courts! Focusing on the Behavior of Judges, Lawyers, and Court Staff in Court Interactions (Access to Justice for Persons of Color: Selected Guides and Programs for Improving Court Performance Bias in the Court).”²⁷ While several years old, its materials still appear relevant and are and at least as a starting point would be useful in any training undertaken. And comprehensive training is needed.</p> <p>As part of any process seeking to address and resolve bias, the courts should institute an “ombudsman” program, such as that described in “Bias in the Courts!”²⁸</p> <p>Institute a training program, such as that suggested in this guide. “In response to Recommendation 4-8, the Oregon Judicial</p>	<p>Given the need to promptly amend standard 10.20 to provide a framework and guidance that will allow courts to take these important steps to eliminate bias in all court interactions, Chief Justice Tani G. Cantil-Sakauye appointed a small work group comprised entirely of Judicial Council members, and gave it a limited charge, which enabled the work group to swiftly and efficiently propose amendments to update the standard. The work group includes judicial officers, attorneys, and a court executive officer. Several members of the work group have experience in these and related issues from serving on the Work Group for the Prevention of Discrimination and Harassment and the committee to develop California Rules of Court, rule 10.351, creating standardized expectations for harassment prevention policies. The work group also had an early comment period specifically designed to seek input from interested groups and persons, which included comments from people in protected classes, met with various local bias committees, and met with interested groups (including groups representing people from various protected classes) throughout the process who wanted to share thoughts and ideas for amending the standard.</p> <p>As discussed above, the work group promotes and recommends training programs as an essential part of eliminating bias in court proceedings. The work</p>

²⁷ <https://www.ojp.gov/pdffiles1/Digitization/173729NCJRS.pdf>

²⁸ *Ibid.* Recommendations 3-7 and 3-8, Handout 1-1.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Department has developed and provided diversity educational training for all court personnel.”²⁹ The trainings can be self-directed as well as continuing education programs.</p> <p>The lack of minimum complaint procedures in the revised Standard will lead to a lack of information and lack of redress and will ensure that problems with bias will persist. It will also result in second-class status for members of the public, compared to court employees and language access users, who have protections under CRC 10.351, CRC 1.300 and California’s Language Access Plan, which provides for local complaints.³⁰ By not conforming standard 10.20 to processes under Rule 10.351 and the Language Access Plan, the Work Group fails to update the standard to current law and understanding regarding bias, preventing harassment, discrimination, etc. based on protected classes. The current Standard 10.20 shows that a complaint process is the expectation. The Work Group’s charge included using Rule 10.351 to “augment” Standard 10.20, not completely eliminate complaint processes altogether.</p>	<p>group has left the specific details regarding the number and type of training programs to be resolved by each local bias committee, based on the unique needs of the community.</p> <p>The work group notes the commenter’s concern that eliminating the recommendation that local bias committees adopt informal complaint procedures will diminish the importance of complaints from members of the public. As discussed in both the accompanying report and the Advisory Committee Comments, the proposal eliminates the recommendation that local bias committees adopt an informal complaint process, in part because there are many existing, effective, and updated avenues for making complaints regarding bias in court interactions, including avenues through the CJP and to the presiding judge or justice of the local courts, and due to potential conflict between the multiple avenues for raising complaints.</p> <p>The CJP is best equipped to resolve complaints about judicial officer bias, given that the CJP has its own experienced investigators, established investigation procedures, and the ability to subpoena witnesses—tools that may not be available to local bias committees. Alternatively, complaints about judicial officers may also be made directly to the presiding judge or justice.</p>

²⁹ Ibid. Handout 1-1.

³⁰ http://www.lacourt.org/generalinfo/courtinterpreter/GI_IN006.aspxhttp://www.lacourt.org/generalinfo/courtinterpreter/GI_IN006.aspx

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				<p>Presiding judges, presiding justices, and judges with supervisory authority who are informed of complaints against other judicial officers have ethical obligations to handle those complaints appropriately. (See Code of Judicial Ethics, canon 3C(4); Cal. Rules of Court, rules 10.603(c)(4) and 10.703; CJA Jud. Ethics Committee Op. No. 64.) Most courts have formal procedures for how complaints to the presiding judge or justice are processed, and the presiding judge or justice has the unique ability and responsibility to address issues of bias immediately and directly with the judicial officer, if warranted. Creating an alternative complaint resolution system through local bias committees may cause complaints to go unreported to the CJP and the presiding judges or justices, which may lead to inconsistent and less optimal handling of these complaints.</p> <p>In addition, having local bias committees resolve complaints may result in less confidentiality for the complainant and respondent. Any inquiry by a local bias committee would be known and resolved by a group of local attorneys, judicial officers, and other committee members who would necessarily need to know the particular facts of the complaint. The work group has concerns that such an approach would significantly expand the number of individuals from the local legal community who were aware of the existence or details of the complaint. Conversely, a CJP complaint is processed and investigated by a CJP investigator outside of the</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				<p>local court system, and with no involvement from the local court. The CJP provides confidentiality for complainants, and has existing procedural safeguards in place to protect complainants from retaliation for asserting good faith complaints to the CJP. Retaliation complaints can be made to either the CJP or the presiding judge or justice. These processes better protect confidentiality of the complainant.</p> <p>The work group is also concerned that referring complaints against judicial officers and court employees to local bias committees might trigger various due process concerns, especially given that local bias committees might not be adequately resourced or experienced to conduct the highly specialized inquiries that may need to be undertaken in response to a bias complaint against a judicial officer or court employee. Likewise, referring complaints about court employees to local bias committees may create personnel and labor relations concerns, given that courts have existing personnel policies and labor relations agreements regarding resolution of employee complaints. In addition, referring complaints about court employees to local bias committees deprives courts of the ability to address the complaint internally and comply with any legal obligations the courts may have arising from the complaints, including the need to take immediate corrective action in certain circumstances.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				<p>In addition, recommending that local bias committees resolve complaints of bias against judicial officers may raise ethical conflicts for judicial officers who are members of the local bias committees. Judicial officers who become aware of complaints against other judicial officers have ethical obligations that require them to take appropriate corrective action, which may include reporting the information to the presiding judge or the CJP. (Canons of Judicial Ethics, canon 3D(1) and (2); See also, CJEO Formal Opinion 2020-15). A system where those complaints are handled informally, at a local level, could undercut those obligations.</p> <p>The work group recognizes that some local bias committees have established effective informal complaint resolution procedures for complaints against judicial officers. As discussed in the accompanying report, the work group recognizes that there is no one correct way to eliminate bias in court interactions, and the work group advocates for each court and local bias committee to find solutions that work best for that local community. The work group's proposal does not prevent courts and local bias committees from choosing to create informal complaint resolution procedures for complaints against judicial officers if those courts and committees conclude that is the best way to address bias complaints in their communities. If so, the work group recommends that they fully consider how best to address the</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>In order to foster confidence in the judicial system, I would suggest you open up the activities of this Work Group and expand its process to include the public. The Work Group did not hold public meetings, with the exception of the May 4th meeting and in that meeting did not notify those observing the meeting that a proposal was forthcoming. Only nine days later a proposal was issued, without any notice on the Work Group's public page, through a Rules Committee member in a Judicial Council meeting that very few members of the public access. To be sure this was without notice to those interested in the subject matter and activities of the Work Group, for even if they regularly checked the Work Group page they would not be notified of ITC SP21-03, as it is not published or otherwise posted there to this day.</p> <p>Again, this is not an open or inclusive process. If the Court truly wishes to foster confidence in the integrity of the court, it needs openness and transparency, neither of which are a hallmark of California's court system today. Do not</p>	<p>concerns raised above. Given the existence of California Rules of Court, rule 10.351, and the fact that courts already have personnel policies and memorandums of understanding that govern complaints against court employees, having local bias committees resolve complaints against court employees is not recommended.</p> <p>The commenter raised this issue in an earlier portion of the comment, and the work group incorporates its earlier response.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>continue to hold this information close, but instead disseminate information about the updates to the standard widely so the general public is aware of it and can participate. California's court system is not seen by the general public as fair or impartial nor do I consider it so based on the experiences we have been forced to endure at the hands of biased judicial officers who do not follow the law.</p> <p>We believe in the rule of law. [* A portion of the comment has been redacted here because it relates to the commenter's own personal complaint of bias, as discussed above].</p> <p>Enforce, enforce, enforce.</p> <p>[* A portion of the comment has been redacted here because it relates to the commenter's own personal complaint of bias, as discussed above].</p> <p>The most recent Judicial Council "2020 Court Statistics Report Statewide Caseload Trends 2009–10 Through 2018–19" indicates California's court system, which serves a population of more than 39 million people—about 12.1 percent of the total U.S. population—processed about 5.9 million cases in fiscal year (FY) 2018–19.³¹ Statewide criminal filings totaled 4,503,153 with 178,244</p>	<p>The work group appreciates the information provided by the commenter. The work group notes the commenter's concern that the proposed amendments to standard 10.20 do not appropriately consider disability status. However, the proposed amendments to standard 10.20 include both physical disability and mental disability as protected classifications. In addition, the decision to tie the protected classifications in standard 10.20 to those in Government Code</p>

³¹ <https://www.courts.ca.gov/documents/2020-Court-Statistics-Report.pdf> at Page 1.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

Commenter	Position	Comment	Committee Response
		<p>of those felonies.³² Los Angeles County accounted for approximately a quarter of those total and felony filings. Yet, this Court Statistics Report does not account for disability or provide data regarding how many of those files involve individuals with disabilities.</p> <p>How many of California's criminal filings involved an individual with disabilities? Cognitive disabilities? A hidden disability? Statistically, upwards of 20% percent of the U.S. population has a disability.³³ Most recent data from the U.S. Department of Justice Bureau of Justice Statistics indicates numbers of individuals with disabilities are significantly higher among the jail and prison populations, with 30-40% and upwards of 50% of those incarcerated having one or more disabilities. The December 2015 Special Report by the U.S. Department of Justice, Office of Justice Programs, titled "Disabilities Among Prison and Jail Inmates, 2011-2012" indicates "About 2 in 10 prisoners and 3 in 10 jail inmates reported a cognitive disability," as distinguished from mental disorders.³⁴</p> <p>Yet, despite the prevalence of disability, courts and judicial officers regularly fail to consider,</p>	<p>section 12940(a) and Code of Judicial Ethics canon 3(B)(5), allows the list to stay updated, as the standard will automatically incorporate any new protected classifications that are recognized in either the statute or the canon.</p> <p>The commenter also raises concern that the proposed amendments allow judicial officers to consider protected classifications in court interactions "only if necessary or relevant to the proper exercise of their adjudicatory functions, such as considering military and veteran status in criminal sentencing, or age in juvenile proceedings." The commenter then suggests that protected classifications should be considered in more situations, and that disability status should be fully considered by judicial officers in court proceedings.</p> <p>The "only if" language is newly added to standard 10.20 in the proposed amendment. In the existing standard, judicial officers are advised to not consider protected classifications, including disability status, in any context. The proposed amendment seeks to create a workable exception for judicial officers; giving those judicial officers the discretion to consider disability status, or other protected classification status, when necessary or</p>

³² *Ibid.* Page 123.

³³ <http://www.serviceandinclusion.org/index.php?page=basic>

³⁴ <https://www.bjs.gov/content/pub/pdf/dpji1112.pdf>. "Examples of cognitive disabilities include Down syndrome, autism, attention deficit disorder, learning disorders, intellectual disabilities or traumatic brain injuries."

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>acknowledge or address disability in general, including cognitive disabilities and their impact on individuals who appear before them, despite California laws which specifically address developmental disability and require intervention and expertise. The Work Group proposal at page 4, actually seems to believe this is how things should be handled³⁵ when it is the failure to consider, acknowledge or address disability that has exacerbated the problems my son faced. It is our perspective that this accounts for the fact that so many individuals with disabilities, including developmental disabilities, are incarcerated rather than receiving services in appropriate settings, as both the Penal Code and Welfare and Institutions Code contemplate, i.e., because no one stopped to consider disability or whether the criminal system was the proper place for what may have been caused by or is a function of disability.</p> <p>In its May 21, 2021 meeting, the April 23, 2021 “Report to the Legislature: Disposition of Criminal Cases According to Race and Ethnicity of Defendant.” was submitted,³⁶ reflecting data collected pursuant to Penal Code section 1170.45, on the statewide disposition of</p>	<p>relevant to the adjudication of proceeding. This is a meaningful step to addressing the concern raised by the commenter and will give judicial officers discretion to consider a protected classification if it is necessary or relevant to resolving the matter before the court.</p> <p>The commenter also raises comments about education and police reform that are beyond the scope of this proposal and the work group.</p>

³⁵ The proposal, amendment and advisory comment includes the language “that a court, judicial officers, and court employees may consider such classifications *only if* necessary or relevant to the proper exercise of their adjudicatory functions, such as considering military and veteran status in criminal sentencing, or age in juvenile proceedings.” (Emphasis added)

³⁶ <https://jcc.legistar.com/View.ashx?M=F&ID=9342579&GUID=75503F08-8A46-4067-BB8F-20F76328278C>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>criminal cases according to defendants' race and ethnicity. This Report states that "In addition to looking at the race/ethnicity breakdown of the data, several other legal and demographic features that may relate to outcomes are also described and analyzed, including gender, age, county, prior criminal history, and features of the current offense or offenses." Beyond these additional factors, however, the Report provides NO information or data related to disability nor does it appear to contemplate collecting it, despite over 20% of the population having a disability and one third of all families being affected by disability in their family.³⁷</p> <p>Under the ADA, "Nondiscrimination requirements, such as providing reasonable modifications to policies, practices, and procedures and taking appropriate steps to communicate effectively with people with disabilities, also support the goals of ensuring public safety, promoting public welfare, and avoiding unnecessary criminal justice involvement for people with disabilities."³⁸ In other words, courts and judicial officers must focus their attention on disability as a "protected class," including considering and acknowledging people with disabilities when they come into courthouses, particularly when</p>	

³⁷ <http://www.serviceandinclusion.org/index.php?page=basic> "An estimated 20.3 million families, or 29% of all families in the United States, have at least one member with a disability."

³⁸ "Examples and Resources to Support Criminal Justice Entities in Compliance with Title II of the Americans with Disabilities Act," <https://www.ada.gov/cjta.html>.

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>charged as defendants. Otherwise, too often, their right to modifications of policies and practices, as well as accommodations to ensure their effective communication in proceedings are not recognized, supported, granted or even understood so that they are able to enjoy the same right to access proceedings as those without disabilities routinely enjoy. As a result, as the BJS statistics confirm, far too many people with disabilities are ending up in California's jails and prisons when simple modifications and accommodations will make all the difference in the world in the lives of defendants, and for the courts overall.</p> <p>Collecting such data is a critical first step that must be taken to begin to ameliorate implicit and explicit bias people with disabilities experience in California's courts. This step, on the path to ensuring that individuals with disabilities have the right "to be heard", as Chief Justice Cantil-Sakauye stated and as the Judicial Canons promise, is necessary in order to reduce the present and persistent reality that disability is not being acknowledged or considered and instead is often being criminalized, with California's courtrooms and jail cells unnecessarily far too full because of it.</p> <p>We must also acknowledge that it is not just courts that are responsible for the charging and incarceration of untold numbers of individuals with disabilities. Colleges and education</p>	<p>While the work group did consider setting baseline recommendations on data collection, it ultimately left those details to be evaluated by each individual committee within the framework created by the standard. The work group recognizes that counties vary greatly in size, demographics, needs, and viewpoints of the local bar community, and each county has unique and specific issues within its legal community. The intent of the proposed amendments is to provide courts and local bias committees with the framework to take the essential steps to engage their local communities in the important discussions that are required to prevent and eliminate bias. The proposed amendments to standard 10.20 allow courts and local bias committees the flexibility to establish data</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>institutions, as well as police agencies and district attorneys who are undereducated when it comes to disability, are just as culpable. Far too often, rather than acknowledge, address, and accommodate disability or take steps to ensure effective communication for people with disabilities so that they are “heard”, these agencies ignore and talk over individuals with disabilities or make assumptions or presumptions based on bias, failing to see that what they see as a function of crime, may instead be a function of disability and that they are, in fact, criminalizing an action or behavior that is often beyond the ken or control of such individuals. While this is certainly not always the case, our eyes have been opened to how readily those in positions of authority do not even take the time to listen to the simplest explanation. [* A portion of the comment has been redacted here because it relates to the commenter’s own personal complaint of bias, as discussed above].</p> <p>Under Section 504 and the ADA, as well as California law, students have rights and unfortunately, education agencies do not follow them, preferring to see courts as the last stop on the “school to prison pipeline, even when Superior Court judges order them not to resort to the courts. Students with disabilities need education, not incarceration. Individuals with disabilities do not deserve to be jailed because</p>	collection specific to the local community’s needs and to obtain input from the local community.

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>they are disabled. Acknowledging this is an issue is the first step toward eliminating bias.</p> <p>This is where California's courts are, in part, because of significant bias against people with disabilities in society as a whole. A recent report by the National Center for State Courts, entitled "The Evolving Science of Implicit Bias" addresses the role implicit bias plays in the court system as well as other fields.</p> <p>Implicit biases can influence a number of judgments and actions in professional settings, where they have significant impacts on people's lives.[fn 38] In the legal domain, for example, researchers have demonstrated correlations between judges' implicit biases and their sentencing decisions, . . ." [fn 39]³⁹</p> <p>The American Bar Association's "Implicit Bias Guide" (January 2019), cites to multiple studies showing implicit bias is a part of who we are, and despite what we often consider to be our core values, "[i]mplicit biases about persons with disabilities are pervasive."⁴⁰</p>	

³⁹ <https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/911> citing fn. 38 Greenwald, A. G., Banaji, M. R., & Nosek, B. A. (2015). Statistically small effects of the Implicit Association Test can have societally large effects. *Journal of Personality and Social Psychology*, 108(4), 553–561. Fn. 39 Rachlinski, J., Johnson, S., Wistrich, A., & Guthrie, C. (2009). Does Unconscious Racial Bias Affect Trial Judges? *Notre Dame Law Review*, 84, 1195–1246.

⁴⁰ https://www.americanbar.org/groups/diversity/disabilityrights/resources/implicit_bias/ "A 2007 study found that "[p]reference for people without disability compared to people with disabilities was among the strongest implicit and explicit effects across the social group domains" (e.g., gender, race, religion, sexuality, weight, political orientation, etc.), with only age showing more implicit bias. (3) *See* Brian A. Nosek et al., *Pervasiveness and Correlates of Implicit Attitudes and Stereotypes*, 18 *Eur. Rev. Soc. Psychol.* 36, 54 (2007) (the study examined data obtained between July 2000 and May 2006 from more than 2.5 million test takers who completed the Implicit Association Test and self-reports across 17 topics). Significantly, 76 percent of respondents showed an implicit preference for people without disabilities, compared to nine percent for people with disabilities. (Id)

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Therefore, we need to be counting, and accounting for, disability just as we do race, ethnicity, gender and age, particularly considering that disability is supposed to be a natural part of the human experience⁴¹ and statistically, a part of American life. This point is made clear in “The Evolving Science on Implicit Bias” and its discussion of “Implications for Courts and Their Communities.” This is something this Work Group and the Judicial Council as a whole need to address if California intends to undertake an honest effort to address bias and reform California’s courts.</p> <p>Beyond leading by example and reaffirming commitments to identifying and addressing systemic injustice, courts must “[e]ducate not just to raise awareness, but to build capacity for change” and, perhaps most importantly, “[g]ather information to understand what is really happening in your court and community.”⁴² As noted above, what is missing with regard to the various “protected classes,” and in my experience what has happened with regard to disability specifically, is that this demographic is wholly ignored, “disappeared” from the landscape, so that for the most part no one knows what is happening with this group and how they are experiencing bias. What we</p>	

⁴¹ 42 USC 15001. SEC. 101. (*Public Law 106–402, 106th Congress*).

⁴² <https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/911> (Page 21).

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>need with regard to disability is “data that can shed light on the specific types, direction, and magnitude of disparities – and their root causes – in a particular jurisdiction.”⁴³ In other words, we can’t know where we’re going, if we don’t know where we are.⁴⁴</p> <p>Ultimately, the ABA’s Report on bias shows the challenges bias presents, yet the promise addressing it can bring. Citing a 13-year study which showed that implicit bias increased over time and with age, meaning they had less favorable feelings toward people with disabilities,⁴⁵ “when participants were asked explicitly how much they preferred people with individuals, they shared more positive responses with time and age.”⁴⁶ It also showed that “people who had contact with disabled individuals had lower prejudice.” What does it all mean? “When you interact more with a stigmatized group, you may develop positive associations with them, challenging your biases and, thus, resulting in attitudinal changes.”⁴⁷ If California’s courts are actually, truly focused on</p>	

⁴³ *Ibid.* page 22, Fn. 141 E.g., see Livingston, R. (2020). How to promote racial equity in the workplace: a five-step plan. Harvard Business Review. Available at <https://hbr.org/2020/09/how-to-promote-racialequity-in-the-workplace>.

⁴⁴ *Ibid.* “Understanding the nature of the problem is crucial for determining which types of interventions are needed and which are likely to be successful. The more the court can use data to inform its strategy, the better positioned it will be to channel resources toward the interventions with the biggest impact”.

⁴⁵ https://www.americanbar.org/groups/diversity/disabilityrights/resources/implicit_bias/ Fn. 6 Jenna A. Harder, Victor N. Keller & William J. Chopik, *Demographic, Experiential, and Temporal Variation in Ableism*, 75, No.: 3 J. Soc., Issues 683-706 (July 12, 2019), <https://spss.onlinelibrary.wiley.com/doi/abs/10.1111/josi.12341>)

⁴⁶ https://www.americanbar.org/groups/diversity/disabilityrights/resources/implicit_bias/

⁴⁷ This is confirmed by the “The Evolving Science on Implicit Bias” and what it refers to as “Intergroup Contact.”

<https://ncsc.contentdm.oclc.org/digital/collection/accessfair/id/911> (Page 13).

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>addressing bias against protected classes, including based on disability, this approach bodes well for people with disabilities who come into its courts.</p> <p>[* A portion of the comment has been redacted here because it relates to the commenter's own personal complaint of bias, as discussed above].</p> <p>We appreciate the opportunity to comment and your consideration of these comments. We are happy to answer any questions or provide clarification with regard to the information we have provided and can also provide documentation with regard to any of the events described.</p> <p>Respectfully submitted: June 25, 2021</p> <p>[* A portion of the comment has been redacted because it relates to the commenter's own personal complaint of bias, as discussed above].</p> <p>Essentially, an individual with disabilities denied access to the court by a judicial officer can only challenge the bias and ignorance that denial reflects by pursuing another court proceeding in another higher court. On its face this appears to be a form of bias, as it does not consider the challenges this presents to people with disabilities related to access, cost or complexity of such processes. That this is California court's expectation for individuals who may have significant language challenges,</p>	

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>developmental disabilities or cognitive impairment not only adds insult to injury, it reflects a level of disregard and disparate treatment when compared to those who benefit from the court's Language Access Plan, which provides significant resources and supports to ensure access for non-English speakers who experience similar access issues based on language challenges.</p> <p>In addition, we found that Court of Appeal judicial officers engage in "judicial realism," politics and protection for judicial officers, by refusing to address front and center legal issues on appeal related to accommodation, effective communication and access, in order to avoid political or social consequences and to cover for the misconduct and conflict of lower court judges, rather than ensure accountability and extinguish bias [* Redacted].</p>	
29.	Public Law Center by Leigh E Ferrin, Director of Litigation and Pro Bono, Santa Ana	AM	<p>The Public Law Center (PLC) writes in support of SP21-03 (Judicial Administration), which will amend the Cal. Standards of Judicial Administration, standard 10.20 to address bias in court proceedings. PLC staff and clients have both witnessed and experienced bias in the court system, and greatly appreciates the work group's efforts to decrease, and hopefully one day eliminate the existence of bias in the court.</p> <p>PLC is a 501(c)(3) legal services organization that provides free civil legal services to low-income individuals and families in Orange</p>	<p>The work group appreciates the commenter's support for the majority of the proposal and will address the specific suggestions made by the commenter.</p> <p>The commenter suggests that the list of protected classifications in the standard be further expanded to include litigants who cannot speak English fluently and who need interpreters. The work group appreciates this feedback, but is only including protected classifications that are otherwise recognized by law. The proposal amends the list of protected classifications</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>County, California. PLC staff and volunteers provide assistance across a range of substantive areas of law, including consumer, family, immigration, housing, and health law. Additionally, PLC provides legal assistance to low-income small business owners and nonprofits serving clients similar to those of PLC. The services include counseling, individual representation, community education, and strategic litigation and advocacy to challenge societal injustices.</p> <p>Overall PLC strongly supports the purpose and recommendations of the work group. Bias in court proceedings, whether actual or believed, is one of the main reasons the public loses faith in the court system. The efforts of the work group to standard 10.20 to better reflect the current reality, including adding in the education needed to fully eliminate bias, are commendable. We have a few specific comments, addressing both the experience of self-represented litigants, but also clients represented by PLC and PLC staff and volunteers:</p> <p>Expansion of scope of standard</p> <p>PLC applauds the expansion of the applicability of the standard to all “court interactions” rather than just “courtroom proceedings” is particularly important. Many litigants will spend as much or more time in the clerk’s office, the</p>	<p>acknowledged in standard 10.20 by adopting the protected classifications that are recognized by existing law in similar areas, including Government Code section 12940(a) (for employment and housing discrimination, harassment, and retaliation) and Code of Judicial Ethics canon 3(B)(5) (for judicial bias). This amendment greatly expands and modernizes the list of protected classifications listed in standard 10.20. In addition, the decision to add that the protected classifications in standard 10.20 include any other classifications protected by state and federal law, including Government Code section 12940(a) and Code of Judicial Ethics, canon 3(B)(5), allows the list to stay updated, as the standard will automatically incorporate any new protected classifications that are recognized by state or federal law.</p> <p>The work group acknowledges the commenter’s concerns regarding interpreter services in the courts. Addressing interpreter issues is beyond the scope of this proposal; however, information regarding how to submit complaints regarding interpreters can be found here: https://www.courts.ca.gov/42807.htm</p> <p>The work group also acknowledges the commenter’s concerns about potential consequences of raising complaints regarding judicial officers, and the need for such complaints to be addressed anonymously. The work group agrees, and the need to promote privacy and</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>records department, or the self-help center than they will actually in front of a judge. Therefore, a litigant's perspective of bias in the court system is rarely limited to interactions in the courtroom. That being said, it is difficult to deny that the interaction that matters the most is the one with the judge and courtroom staff, since those are the parties that will ultimately determine the outcome of the case.</p> <p>Expansion of covered classifications</p> <p>PLC also applauds the inclusion of additional categories of protected classifications. Notably missing from the list is language capacity, and specifically the ability to speak English fluently. PLC's attorneys routinely see litigants who request an interpreter face discriminatory, or biased, conduct by the bench officers and court staff. Often, litigants who need an interpreter are moved to the end of the calendar, forcing those litigants to wait longer in the courtroom, possibly missing more work and losing more income. Bench officers have flat out told PLC attorneys that an interpreter will not be provided. In those cases, the litigant has been represented by a lawyer and we have been able to navigate the situation with the client. But what happens when the litigants are representing themselves?</p>	<p>confidentiality is one of the main reasons why the work group advocates using the existing complaint processes, rather than having local bias committees process complaints.</p> <p>Having local bias committees resolve complaints may result in less confidentiality for the complainant and respondent. Any inquiry by a local bias committee would be known and resolved by a group of local attorneys, judicial officers, and other committee members who would necessarily need to know the particular facts of the complaint. The work group has concerns that such an approach would significantly expand the number of individuals from the local legal community who were aware of the existence or details of the complaint. Conversely, a CJP complaint is processed and investigated by a CJP investigator outside of the local court system, and with no involvement from the local court. The CJP provides confidentiality for complainants, and has existing procedural safeguards in place to protect complainants from retaliation for asserting good faith complaints to the CJP. Retaliation complaints can be made to either the CJP or the presiding judge or justice. These processes better protect confidentiality of the complainant.</p> <p>Overall, the CJP is best equipped to resolve complaints about judicial officer bias, given that the CJP has its own experienced investigators,</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Self-represented litigants may not be so lucky. The availability and quality of interpretation services has also been a challenge. In order to meaningfully access the court system, litigants in need of an interpreter must have the entire court proceeding interpreted, and must still be able to share their story with the court. PLC clients have recounted instances where the interpreter only interpreted what they said and what the bench officer said, but not what the opposing counsel said. The bench officer in that case made no effort to correct the problem. It is close to impossible to imagine how those litigants did not feel some measure of bias in the legal system when they had no meaningful opportunity to respond to opposing counsel's statements.</p> <p>While PLC appreciates the expansion of protected classifications, as well as the intent that this covers bias not just towards litigants, but also towards counsel, court staff, witnesses, jurors or other persons, the power relationship is still difficult to navigate. PLC has noticed disparate treatment for some of its attorneys of color, compared to its white attorneys, but for counsel to raise such an issue is a risky undertaking. Reputations are easily made, but not easily rehabilitated. For better or for worse, the legal community often downplays claims of discrimination, particularly in court proceedings because of the high esteem in which it holds judges. The ability to report anonymously is one</p>	<p>established investigation procedures, and the ability to subpoena witnesses—tools that may not be available to local bias committees. Alternatively, complaints about judicial officers may also be made directly to the presiding judge or justice. Presiding judges, presiding justices, and judges with supervisory authority who are informed of complaints against other judicial officers have ethical obligations to handle those complaints appropriately. (See Code of Judicial Ethics, canon 3C(4); Cal. Rules of Court, rules 10.603(c)(4) and 10.703; CJA Jud. Ethics Committee Op. No. 64.) Most courts have formal procedures for how complaints to the presiding judge or justice are processed, and the presiding judge or justice has the unique ability and responsibility to address issues of bias immediately and directly with the judicial officer, if warranted.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>tool, but it is often difficult to provide specific instances of bias without disclosing the complainant's identity.</p> <p>PLC suggests that, if this does not already exist, that complaint systems allow for complaints of witnessed behavior, in addition to experienced behavior. For instance, if an attorney or other user identifies bias in a court hearing, or in a courthouse generally, that witness could report the incident as well.</p> <p>Expansion of Judicial Officer Responsibility PLC appreciates the clarification that standard 10.20 applies not just to judges, but to all judicial officers, even temporary judges. While most temporary judges mean well, they inevitably have less experience and training in</p>	<p>Standard 10.20, as amended, would permit individuals who witness bias to report those incidents. A proposed amendment to standard 10.20, subdivision (b) changes the court's duty to prohibit bias to the court's duty to prevent bias. The advisory comment to this revision notes that: "the standard now asks courts, judicial officers, and court employees to take actions to prevent bias rather than prohibit bias. This change reflects a more comprehensive approach in how courts are to combat bias, focusing on understanding the many forms, causes, and impacts of bias rather than simply forbidding it. Preventing bias may include, for example, prohibiting bias; encouraging judicial officers, employees, and court users to report bias; being open to discussing and learning from real misunderstandings and instances of unconscious bias; and focusing on robust education regarding how unconscious and explicit biases develop, how to recognize them, and how to address and eliminate bias."</p> <p>As stated in the advisory committee comments: "Judge" has been expanded to "judicial officers," which includes all judges as defined by California Rules of Court, rule 1.6, and all appellate and Supreme Court justices. The expanded phrase broadly covers any judge, justice, subordinate</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>ruling from the bench that justices, judges, or commissioners. All levels of judicial officers will benefit from the education, as well as the obligation to prevent bias, since that will ultimately create more confidence in the system as a whole.</p> <p>Creation of Local Bias Committees The work group's recommendations that courts create bias committees is well-taken. While we appreciate the reasons that the work group did not provide specific requirements for the creation of the bias committees, we also believe it is important that courts be held accountable if the committees are not created – or if they are not effective. PLC has seen entities (not just courts) create a committee or work group with good intentions, but with limited or no effectiveness if it has no funding or no power to create change.</p>	<p>judicial officer, or temporary judge who might conduct a courtroom proceeding. Accordingly, the standard as amended will apply to temporary judges.</p> <p>The work group notes the commenter's suggestion that courts that do not create local bias committees be held accountable in some manner. As stated in California Rules of Court, rule 1.5(c), the Standards of Judicial Administration within the rules of court are guidelines or goals recommended by the Judicial Council. The nonbinding nature of the standards is indicated by the use of "should" in the standards instead of the mandatory "must" used in the rules.</p> <p>Maintaining the recommendations in the standard as guidelines and goals is consistent with the work group's overall goal of creating a framework within which courts can work with their local communities toward the elimination of bias in court interactions, rather than creating top-down mandates. The intent of the proposed amendments is to provide courts and local committees with the framework to take the essential steps to engage their local communities in the important discussions required to prevent and eliminate bias. Thus, while the proposal makes recommendations, the work group also recognizes that there is not just one correct approach. The current proposal gives courts the latitude to create</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>PLC also suggests that the work group propose a preferred (or model) makeup of the bias committee, consisting of local bar association leaders, legal services providers, members of the public, and attorneys. The variety of perspectives will allow for creative solutions and discovery of unique issues that may not otherwise come to light.</p> <p>PLC agrees with the work group that utilizing existing complaint procedures, and ensuring the processes are available to the public is best practices. For instance, it was only this year that PLC staff became aware that there was a</p>	<p>customized processes, and partner with their local communities to find solutions that meet the unique and specific needs of each court and the local community that it serves.</p> <p>The work group considered making specific recommendations that certain demographic groups be included in local bias committees, and also considered specifying a model committee membership. While the work group promotes diverse membership in local committees, it also recognizes that identifying certain groups for inclusion can have the opposite effect—leading to exclusion of some groups and viewpoints, and creating a false sense of diversity that is antithetical to the elimination of bias. Instead, the proposal recognizes that each community varies greatly in size, demographics, needs, and viewpoints, and that the issues that confront each local community are unique. The proposal allows courts to recognize and build on the unique aspects of their communities and gives those courts the flexibility to create committees within the broad framework and guidelines of standard 10.20 that address those unique viewpoints and needs.</p> <p>The work group agrees with the commenter that information regarding complaint procedures should be readily available to court users. The proposal provides that each court should ensure that court users can access information regarding</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>complaint process for issues with interpretation within the Orange County Superior Court. In the past, PLC attorneys would navigate the interpretation issues on their own, attempting to use legal arguments to address systemic issues. This can be effective for the individual clients, but does not result in progress towards systemic change. The complaint processes should be publicized, and not just to the attorneys who practice in the court, but also to the public generally. As courts reopen to in-person visits, signage in the clerk's office, in self-help centers, and in or near courtrooms would be appropriate. Flyers could also be available at the self-help centers, and there should be easily accessible information on the court's website directing court users to the complaint system(s).</p> <p>PLC recommends that the courts also publicize the complaint process, so that users know where their complaints are going, and when and/or whether they can expect to receive a response. Court users will have substantially more confidence in the system and the court process if they are clear on how their complaints will be handled.</p> <p>While any litigant may experience bias, the experience of self-represented litigants in the system is substantially different than those who are represented. PLC believes strongly that the perspective of legal services providers and the general public who access the court system is</p>	<p>how to submit complaints regarding bias, including information regarding how to submit complaints about court employees directly to the court and how to submit complaints about judicial officers either directly to the court or to the CJP. While many courts already provide this information on their court websites, in their local rules, or displayed in courthouses, the revised standard recommends that all courts take similar steps to ensure that they are providing complaint procedure information to court users in a meaningful and accessible manner. In doing so, courts may include additional information regarding complaint processes, including timelines, if any.</p> <p>The work group notes the commenter's concern regarding self-represented litigants. The proposed amendments to standard 10.20 protect self-represented litigants. Standard 10.20(b)(2) states: "Each judicial officer should ensure that courtroom interactions are conducted in a manner</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>particularly important. While there is an imbalance of power with attorneys and judicial officers already, the imbalance with self-represented litigants is substantially more pronounced.</p> <p>PLC again thanks the work group for their thoughtful approach to the revisions, and believes that the proposals can effect meaningful change in the California courts, with just a few adjustments. Should additional information be needed, please feel free to contact me.</p>	<p>that is fair and impartial to all persons.” Standard 10.20(b)(3) states: “Each judicial officer should ensure that all orders, rulings, and decisions are based on the sound exercise of judicial discretion and the balancing of competing rights and interests and are not influenced by stereotypes or biases.”</p> <p>Information regarding resources available to self-represented litigants can be found here: https://www.courts.ca.gov/7648.htm.</p>
30.	Superior Court of El Dorado County by Hon. Dylan Sullivan, Judge	AM	<p>We formed an Elimination of Bias Committee in El Dorado County in July 2021. We have been working diligently to make our courts fair. This is from our Committee.</p> <p>The Judicial Council proposal states in part:</p> <p>“[T]he work group recommends that each court communicate to its users how they can use the existing procedures to make complaints about bias in court interactions based on a protected classification. While many courts already provide this information on their court websites, in their local rules, or in courthouses, the revised standard recommends that all courts take similar steps to ensure that they are providing complaint procedure information to court users in a meaningful and accessible manner.”</p>	<p>The work group appreciates the commenter’s suggestion to shift the emphasis from “complaints” to “reporting,” and agrees with the commenter’s stated goals of gathering information to guide education and outreach, and to recognize various systemic issues in the court.</p> <p>The commenter’s proposal harmonizes with the work group’s goal of facilitating partnerships between courts and their communities through local bias committees, and focusing those local bias committees on education, outreach, and discussing issues, rather than tasking local bias committees with disciplinary and investigatory goals. Local bias committees will play an important role in fostering discussions about bias, identifying and resolving systemic concerns, promoting community engagement, and delivering formal and informal education about bias.</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>It occurred to us in our discussion that our Committee as a whole, and the Complaint Subcommittee in particular, should consider whether reimagining and renaming our process of gathering information about specific bias incidents or recurring systemic biases from a "complaint" process to a "reporting" process.</p> <p>Our concern is that by calling it a "complaint" process we are creating an expectation of corrective action that is beyond the authority granted to the committee by the Rule of Court. In contrast, by calling it a "reporting" process we are expressing that we are primarily gathering information for purposes of providing education.</p> <p>Our intention is to use reporting information to:</p> <ol style="list-style-type: none"> 1) Guide our education and outreach efforts with respect to the individuals, groups, or agencies involved in individual incidents (as opposed to taking corrective action); 2) To inform the court of specific issues to enable it to correct itself systemically; and 3) To enable the Committee to direct a reporting party to the appropriate existing "complaint" procedure administered by a body other than the Committee. <p>We know that many bias issues (particularly implicit biases) are rooted in a lack of information or awareness. The "reporting"</p>	

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>process will address that foundational cause and direct the Committee's attention to targeted solutions that are separate from and in addition to any corrective actions that may result from existing "complaint" processes. This reporting process will assist the committee by providing further information for those situations where a "complaint" process does not already exist and give guidance to the committee of areas where education and outreach efforts are needed but might not otherwise be known without a means of reporting instances of bias. We will of course refer reporting parties to specific existing "complaint" processes as the Judicial Council has suggested. However, we must have reports to work with to target those referrals.</p> <p>Thank your for our consideration.</p>	
31.	Superior Court of Los Angeles County by Hon. Eric C. Taylor, Presiding Judge and Sherri R. Carter, Executive Officer/Clerk of Court	A	<p>We write in support of Invitation to Comment SP21-03, Judicial Administration: Court's Duty to Prevent Bias.</p> <p>Recognizing the need for public trust and confidence in the judiciary, the Superior Court of Los Angeles County has long sponsored programs that seek to achieve these goals through, among other means, the recruitment and preparation of a more diverse population of attorneys and judicial officers. The framework anticipated and promoted by a newly amended Standard 10.20 is a useful support for these and other such efforts. We see no additional</p>	The work group notes the commenters' support for the proposed amendments and appreciates this input.

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			workload not considered by the <i>Invitation to Comment</i> .	
32.	Superior Court of Mendocino County by Kim Turner, Court Executive Officer	AM	Generally, I agree with the proposed changes. The goal of preventing bias is laudable and the expansion of the SJA to cover all court staff and judicial officers is a positive change. Regarding the creation of local bias committees, I am concerned that many courts will not have time or resources to prioritize creation of these committees, especially small and rural courts. Rather than having a number of local efforts that may not be equipped to really address these issues, I would like to suggest that the appellate districts take the lead on setting up bias committees for each district and all courts that file in that district. The appellate district could then request representatives from courts and bar associations and other legal services providers to join these more centralized committees. This would provide more structure to the work, would offer a wider range of differing perspectives from stakeholders and would also create better opportunities for the education activities to be sponsored, procured and supported. Thank you for the opportunity to comment.	<p>The work group appreciates the commenter's concern that small and rural courts may not have the resources to devote to forming and supporting local bias committees. Under the revised standard, trial courts may form regional committees if they so choose. Appellate courts may form separate or joint appellate court committees or may join a trial court committee or regional committee formed by or composed of trial courts within the appellate courts' districts.</p> <p>The work group, however, does not require or recommend any particular structure for these committees. Some courts have already created local bias committees and may not wish to change their committees to include other courts, and some courts may wish to have the flexibility to continue with their own unique committees. The work group's overall goal is to create a framework within which courts can work with their local communities toward the elimination of bias in court interactions, rather than creating top-down mandates. The proposal recognizes that each community varies greatly in size, demographics, needs, and viewpoints, and that the issues that confront each local community are unique. The intent of the proposed amendments is to provide courts and local committees with the framework to take the essential steps to engage their local communities in the important discussions required to prevent and eliminate bias. Thus, while the</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				proposal makes recommendations, the work group also recognizes that there is not just one correct approach. The current proposal gives courts the latitude to create local bias committees as they see fit, consistent with the unique needs of their community.
33.	Superior Court of Orange County by Hon. Erick Larsh, Presiding Judge	A	<p>Does the amended standard appropriately address the stated goal of amending Standard 10.20 to reflect current law and current understandings regarding the elimination of bias and provide a framework for courts to work with their local bar communities to address courtroom bias?</p> <p>We believe that the amended standard appropriately addresses the stated goal of amending Standard 10.20 to reflect current law and current understandings regarding the elimination of bias and provides a framework for courts to work with their local bar communities to address courtroom bias. We interpret the proposal as a reaffirmation of the principle that the judicial branch is not an advocacy body, but rather a neutral adjudicative body. The amended standard demonstrates that the court as a whole is committed to providing an environment that ensures the integrity and impartiality of the judicial system and promotes interactions free from bias, discrimination, harassment, the appearance of bias, and other inappropriate conduct based on a protected classification.</p>	The work group notes the commenter's support for the proposed amendments and appreciates this input.

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>We support eliminating the outdated complaint resolution procedure outlined in current Standard 10.20. Local bias committees might not have sufficient resources or expertise to investigate and resolve complaints. A complaint procedure run by a local bias committee while a case is ongoing could also raise disqualification, ex parte communication, and comment on pending matters ethics issues for judicial officers. In addition, since the standard was last amended over two decades ago, significant changes in laws, rules, and procedures provide mechanisms to address complaints of bias based on protected classifications during court interactions. The current standard in some ways duplicates, and in other ways, conflicts with existing systems to address complaints of bias and discrimination.</p> <p>Although existing Standard 10.20 requires a complaint to be kept confidential, a complaint cannot be kept confidential when judges, attorneys, and court administrators have legal or regulatory obligations to report bias and harassment to the appropriate authority. For example, the Code of Judicial Ethics defines the “appropriate authority” to mean “the authority with responsibility for initiation of the disciplinary process with respect to a violation to be reported.” (Code of Judicial Ethics, Advisory Comm. Commentary to canons 3D(1) & 3D(2).) Disclosure of the complaints could be compelled by subpoenas or legal processes</p>	

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>issued by courts, the Commission on Judicial Performance, the State Bar Court, or regulatory agencies. The investigative materials may also be subject to requests for access under the California Public Records Act, California Rules of Court, rule 10.500, or requests by executive agencies.</p> <p>Existing systems provide adequate and comprehensive methods to address complaints of bias, prejudice and harassment in court interactions. Numerous authorities prohibit judges, attorneys, court staff and others from engaging in speech, gestures, or other conduct that would reasonably be perceived as sexual harassment or bias, prejudice, or harassment based upon race, sex, gender, gender identity, gender expression, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation. (See Code of Judicial Ethics, canons 3B(5), 3B(6), 3C(1), 3C(3), 6D(1), 6D(3); Cal. Rules of Court, rules 10.351 & 10.670; Rules of Prof. Conduct, rule 8.4.1.)</p> <p>Differing systems address complaint reporting and resolution procedures for violations of the authorities prohibiting discrimination, bias, and harassment. The Commission on Judicial Performance is responsible for investigating complaints of judicial misconduct and judicial incapacity and for disciplining judges. (Cal. Const., art. 1, § 18.) The State Bar of California</p>	

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>is responsible for prosecuting complaints of lawyer misconduct, including bias. (See Bus. & Prof. Code § 6077 et seq.) A comprehensive personnel system addresses complaints of bias and misconduct by court employees. (Gov. Code, § 71651 et seq.; Cal. Rules of Court, rules 10.351, 10.610(c)(1), & 10.670.) In addition, the reporting systems and complaint resolution procedures vary by roles.</p> <p>A judge who has reliable information that another judge has violated any provision of the Code of Judicial Ethics must take appropriate corrective action, which may include reporting the violation to the appropriate authority, which may include the Commission on Judicial Performance. (Code of Judicial Ethics, canon 3D(1).) Presiding judges and judges with supervisory authority have additional judicial oversight and reporting responsibilities. (See Code of Judicial Ethics, canon 3C(4); Cal. Rules of Court, rules 10.603(c)(4) & 10.703; CJA Jud. Ethics Committee Op. No. 64.)</p> <p>Court employees are subject to a court personnel plan and progressive discipline procedures. (Gov. Code, § 71651; Cal. Rules of Court, rule 10.610(c)(1).) “Each court must adopt a process for employees to report complaints of harassment, discrimination, retaliation, and inappropriate workplace conduct based on a protected classification.” (Cal. Rules of Court, rule 10.351(b).) “Each court must</p>	

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>develop processes to intake, investigate, and respond to complaints or known instances of harassment, discrimination, retaliation, or inappropriate workplace conduct based on a protected classification.” (Cal. Rules of Court, rule 10.351(c).) In addition, each court must have a grievance or complaint procedures covering, among other things, sexual harassment and discrimination. (Cal. Rules of Court, rule 10.670(c)(5).) Finally, court administrators who have knowledge of harassment, discrimination or inappropriate workplace conduct based on a protected classification have a duty to report this information to the presiding judge, court executive officer, human resources, or other appropriate judicial officer. (Cal. Rules of Court, rule 10.351(b)(5).) Court employees have constitutionally-protected privacy rights in their employment records. (See Cal. Const., art. 1, § 1; Braun v. City of Taft (1984) 154 Cal.App.3d 332, 347; BRV, Inc. v. Superior Court (2006) 143 Cal.App.4th 742, 757.) In some cases, they also have rights to evidentiary due process hearings to review disciplinary decisions and review procedures. (Gov. Code, §§ 71653 to 71655.)</p> <p>Law firms and lawyers with supervisory authority over another lawyer are required to make reasonable efforts to ensure that the other lawyer complies with the Rules of Professional Conduct and the State Bar Act. (Rules Prof.</p>	

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Conduct, rules 5.1(b), 5.1(c).) A judge who has personal knowledge of an attorney's violation of the Rules of Professional Conduct must take appropriate corrective action, which may include reporting the violation to the appropriate authority. (Code of Jud. Ethics, canon 3D(2).)</p> <p>Given all these existing comprehensive processes, we believe the amended standard appropriately eliminates the suggestion that local bias committees create their own complaint resolution procedures, and instead recommends that courts ensure that the public can easily access existing information about how to make a complaint regarding bias in court interactions based on a protected classification.</p> <p>Does the proposal create any additional workload not considered by this Invitation to Comment?</p> <p>Implementation of Standard 10.20 will require significant investment of time and resources, to update our website, to post information throughout our courthouses, and to educate the bench, court staff, and court users about the amended standard.</p>	
34.	Superior Court of Sacramento County by Hon. Russell L. Hom, Presiding Judge	A	I appreciate the opportunity to submit comments regarding proposed revisions to Rule 10.20 of the Standards for Judicial Administration. I strongly support the goal of enhancing efforts on the part of the judicial branch to prohibit and	The work group notes the commenter's support for the proposed amendments and appreciates this input.

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>eliminate bias in our court system. The proposed rule changes accomplish that purpose.</p> <p>Although existing Rule 10.20 has been in place for a number of years, the inclusion of the informal complaint process encompassed in the current rule (Standard 10.20 sections (b)(3) and (c)(1)-(12)) proves to be an impediment to acceptance on the part of judicial officers. I have been involved in diversity and inclusion efforts much of my legal career both as a bench officer and as a private citizen. The elimination of bias requires educating and often times changing the mindset of individuals. The inclusion of the informal complaint process in the current rule not only serves as an obstacle to that educational process but adopts a potentially punitive approach towards eliminating bias. Although the formation of standing committees to address bias and protocols for shareholders, employees and members of the public who access the court to identify incidents of bias in our legal system are arguable equally important tools, combining both into one rule fosters neither. The inclusion of the informal complaint process becomes the proverbial "poison pill." Although in some form, this Standard has been in place for more than two decades, widespread implementation of the Standard has not taken place.</p> <p>It is my belief that the informal complaint process is unnecessary. The ability to identify</p>	

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>incidents of bias is accomplished by existing protocols in place at most courts. Some local bar associations have committees addressing bar/court relations where complaints about judicial officers and staff are brought to the attention of court leadership. In many counties, the public is able to anonymously raise concerns regarding treatment in our court system by directing complaints through a court website, electronic form or correspondence. Those complaints are brought to the attention of either the Court Executive Officer or the Presiding Judge. All Courts should have policies and protocols in place to address employee related complaints. Lastly, complaints involving a possible violation by a judicial officer of their ethical responsibilities, including Canon 3B(5) are properly directed to the Commission on Judicial Performance. The continued inclusion of the informal complaint process is duplicative of vehicles already in place by most courts to identify, report and resolve incidents of bias. The complaint process itself proves to be a barrier to widespread acceptance by judicial officers.</p> <p>Although I have no doubt that Standard 10.20 was well intended, its efficacy as a vehicle to promote fairness and impartiality in the courtroom is hindered by the continuing inclusion of sections (b)(3) and (c)(1)-(12).</p>	

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			I urge the Working Group to recommend the adoption of the proposed rule change to Standard 10.20.	
35.	Superior Court of San Bernardino County by Hon. Michael Sachs, Presiding Judge	A	<p>Thank you for the opportunity to provide comment to the proposed revisions of Standard 10.20 by identifying improvements, updating the standard to reflect current law and understanding of modern information on the elimination of bias.</p> <p>The Superior Court of California, County of San Bernardino, supports the proposed revisions and applauds the efforts of the workgroup to modernize Standard 10.20. California Code of Judicial Ethics, canon 38 well documents judicial officers are bound to perform their duties without bias or prejudice and to ensure decorum in the courtroom. Pre-existing policies and procedure provide a pathway to remedial action in the event a judicial officer runs afoul of this canon. Any member of the public may submit a judicial complaint to the office of the Presiding Judge. The Presiding Judge is charged with the obligation to investigate that complaint. If the complaint is substantiated, the Presiding Judge must impose appropriate discipline. Additionally, the Presiding Judge may refer the complaint to the Commission on Judicial Performance for their investigation and possible imposition of discipline. As currently written, Standard 10.20 is vague, at best, and potentially would contradict long standing Rules of Court.</p>	The work group notes the commenter's support for the proposed amendments and appreciates this input.

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Changes in the Rules of Court and the Commission on Judicial Performance, along with companion requirements for court employees, have formalized complaint procedures in a way that is effective and transparent. Your proposed standard to provide information regarding complaint procedures provides improvement in transparency and ease of access. The modern Elimination of Bias Committee's charge best serves the court and community by identifying and providing outreach and communication opportunities in a way that educates, supports and prevents bias in a positive and forward focused manner.</p> <p>In regards to general comments and responsive to your request for specific comments:</p> <p><i>Does the standard appropriately address the state goal of amending Standard 10.20 to reflect current Jaw and current understanding regarding the elimination of bias and provide a framework for courts to work with their local bar communities to address courtroom bias?</i> Yes</p> <p><i>Does the proposal create additional workload not considered in this Invitation to Comment?</i> Impacts are generally defined in the invitation to comment. Specifically, we anticipate some courts may experience a workload/staffing/reallocation of resources impact in setting up a local committee, staffing</p>	

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>the committee and providing ongoing clerical and administrative cost. Cost for technology, office supplies and space is a factor. Website updates must be considered as well as other communications to provide access to complaint procedures and forms. Training in the new standards can be expected.</p> <p><i>How well would this proposal work in courts of different sizes?</i> The flexibility for joint and regional committees provides the needed flexibility to accommodate both small and large courts and provides the diversity needed for a robust team.</p> <p>Please do not hesitate to contact me if you have any questions.</p>	
36.	Superior Court of San Diego County by Hon. Lorna Alksne, Presiding Judge	A	<p>I agree that local bias committees should not create their own complaint resolution procedures. As noted in the Invitation to Comment, in addition to the CJP's existing comprehensive procedures for handling complaints against judicial officers, courts also have processes and procedures in place to receive, investigate and respond to complaints against judicial officers and court staff. Including a complaint resolution procedure and an investigatory role by a local committee raises a number of significant legal, ethical and liability issues for a court and the committee members, because it: (1) would overlap and conflict with CJP procedures and also court employee disciplinary procedures that are</p>	The work group notes the commenter's support for the proposed amendments and appreciates this input.

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			governed by statute, case law and collective bargaining agreements which provide employees with due process rights; (2) may allow litigants to circumvent or undermine the CCP § 170.1 process; (3) may result in unintended ex parte communications between a litigant and a judicial officer who is a member of the committee; (4) create confidentiality issues for the complainant and others involved in the process; (5) would give rise to potential liability and litigation for a court, committee and its members; and (6) opens the door for committee members to be called as witnesses at depositions, disciplinary proceedings and trials.	
37.	Superior Court of San Diego County by Mike Roddy, Court Executive Officer	A	<ul style="list-style-type: none"> Does the amended standard appropriately address the stated goal of amending Standard 10.20 to reflect current law and current understandings regarding the elimination of bias and provide a framework for courts to work with their local bar communities to address courtroom bias? <p>Yes. (See General Comments below)</p> <ul style="list-style-type: none"> Does the proposal create any additional workload not considered by this Invitation to Comment? <p>No</p> <ul style="list-style-type: none"> How well would this proposal work in courts of different sizes? 	The work group notes the commenter's support for the proposed amendments and appreciates this input.

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Unknown</p> <p><u>General Comments</u></p> <p>The San Diego Superior Court agrees with the current proposal, which eliminates the prior suggestion that the local bias committee create its own complaint resolution procedure. As noted in the Invitation to Comment, in addition to the CJP's existing comprehensive procedures for handling complaints against judicial officers, courts also have processes and procedures in place to receive, investigate and respond to complaints against judicial officers and court staff. Including a complaint resolution procedure and an investigatory role by a local committee raises a number of significant legal, ethical and liability issues for a court and the committee members, because it: (1) would overlap and conflict with CJP procedures and also court employee disciplinary procedures that are governed by statute, case law and collective bargaining agreements which provide employees with due process rights; (2) may allow litigants to circumvent or undermine the CCP § 170.1 process; (3) may result in unintended ex parte communications between a litigant and a judicial officer who is a member of the committee; (4) create confidentiality issues for the complainant and others involved in the process; (5) would give rise to potential liability and litigation for a court, committee and its members; and (6) opens the door for</p>	

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			committee members to be called as witnesses at depositions, disciplinary proceedings and trials. No additional Comments.	
38.	Superior Court of Santa Clara County by Rebecca Fleming, Court Executive Officer	A	<p>Santa Clara Superior Court very much supports the efforts of this committee in updating and making current the application and role intended of Standard of Administration 10.20. We respectfully submit the following comments:</p> <ol style="list-style-type: none"> 1) SCSC agrees with extending the responsibility broadly to all court transactions. We feel this will create consistency for the court user. 2) There may be an initial void in court staffing for the support of the educational events and training. We are hopeful that partnerships locally and with CJER will be able to provide that expertise for local committees. 3) We believe that there is continued room to work on a consistent complaint processing approach while recognizing court individuality. Santa Clara consistently hears from users about the inconsistencies with neighboring courts. To the extent possible, alignment of initial steps in the process is preferable. 	The work group notes the commenter's support for the proposed amendments and appreciates this input. The work group agrees that courts and local bias committees should work together, and also use available resources to provide education and training. The work group also agrees that all courts and local bias committees should be continually reevaluating their processes and complaint resolution procedures to avoid inconsistencies.
39.	Lisa J. Wilbur Mountain View	N	More needs to be done based upon experiences of people subjected to bias in the courts since the early 1990's. Lawyers, Judges, Bailiffs, and	The work group appreciates this submission and notes the commenter's suggestion regarding

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>all Court connected workers or employees need to undergo Critical Race Training so that there are no incidents of bias to be reported. No qualified or absolute immunity for reported bias after said training, not even for judges.</p> <p>[* A portion of the comment has been redacted because it is the commenter's own personal complaint of bias. This raises privacy concerns and the comment is outside the scope of this work group. The work group is unable to resolve individual complaints of bias and the commenter may want to consider pursuing recourse through the avenues available at the local court or through the CJP.]</p> <p>Then formulate your proposals based upon the reality of the dominance of white privilege in and about the CA Courts.</p>	<p>increasing training of court personnel, attorneys, and bailiffs.</p> <p>While the work group did consider setting baseline recommendations on the number and type of education and training programs, it ultimately left those details to be evaluated by each individual committee within the framework created by the standard. The work group recognizes that counties vary greatly in size, demographics, needs, and viewpoints of the local bar community, and each county has unique and specific issues within its legal community. The intent of the proposed amendments is to provide courts and local bias committees with the framework to take the essential steps to engage their local communities in the important discussions that are required to prevent and eliminate bias. Thus, while the proposal broadly recommends that local bias committees engage in educational opportunities, and while the proposal suggests various roles that these local committees might play in their communities, the work group also recognizes that there is not just one correct approach. The proposed amendments to standard 10.20 allow local bias committees the flexibility to sponsor educational presentations directed at members of the local legal community, including attorneys and county employees, such as bailiffs.</p> <p>The work group has redacted a portion of this comment discussing the commenter's own personal complaint of bias due to privacy</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				concerns, and also because the comment is outside the scope of this work group. The work group is unable to resolve individual complaints of bias and the commenter may want to consider pursuing recourse through the avenues available at the local court or through the CJP.
40.	Kailin Wang Spanish Fork, Utah	AM	There is extreme bias, and prejudice against Pro Per's if the other party is represented.	<p>The work group appreciates this submission and notes the commenter's concern regarding self-represented litigants.</p> <p>The proposed amendments to standard 10.20 protect all persons, which includes self-represented litigants. Standard 10.20(b)(2) states: "Each judicial officer should ensure that courtroom interactions are conducted in a manner that is fair and impartial to <i>all</i> persons." (Emphasis added.) Standard 10.20(b)(3) states: "Each judicial officer should ensure that all orders, rulings, and decisions are based on the sound exercise of judicial discretion and the balancing of competing rights and interests and are not influenced by stereotypes or biases." These protections would include self-represented litigants.</p> <p>Information regarding resources available to self-represented litigants can be found here: https://www.courts.ca.gov/7648.htm.</p>
41.	Women Lawyers of Alameda County by Amy Blair, Board Member, Oakland	N	We write to oppose certain of the proposed changes to Standards of Judicial Administration, standard 10.20. Specifically, we oppose (1) eliminating a complaint resolution process,	The work group appreciates this submission and addresses the commenter's concerns below.

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>(2) characterizing the creation of local bias committees as a recommendation rather than a requirement, and (3) the absence of a timeline by which courts must implement the standard.</p> <p>Courts have failed to form the local bias committees suggested by this Council since 1993. The newly proposed changes to standard 10.20 cause concern that the judicial branch will further avoid its duty to ensure the unbiased administration of justice. Current public sentiment and the fair administration of justice call for a dismantling of the institutional bias which impedes the success of so many participants in the justice system. Therefore, we have chosen to articulate our opposition.</p> <p>We oppose the elimination of the complaint resolution process through bias committees. The Work Group has erroneously concluded that other complaint avenues such as filing a complaint with the Presiding Judge or the Commission on Judicial Performance are adequate measures for addressing bias. Complaints made to the Presiding Judge or Commission on Judicial Performance carry the threat of retribution against the complaining parties or their attorneys. Further, these complaint processes are not specifically designed to address bias as would be a complaint process provided by a committee formed for the sole purpose of addressing bias. Moreover, eliminating the ability for members</p>	<p>The work group notes the commenter's concerns that eliminating the recommendation that local bias committees adopt informal complaint processes could result in retribution toward parties or attorneys who complain to the CJP. The work group is concerned that having local bias committees resolve complaints may result in less confidentiality for the complainant and respondent. Any inquiry by a local bias committee would be known and resolved by a group of local attorneys, judicial officers, and other committee members who would necessarily need to know the particular facts of the complaint. The work group has concerns that such an approach would significantly expand the number of individuals from the local legal community who were aware</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			of the public to voice concerns through the bias committees is a lost opportunity for honest communication with the community the judiciary serves.	<p>of the existence or details of the complaint. Conversely, a CJP complaint is processed and investigated by a CJP investigator outside of the local court system, and with no involvement from the local court. The CJP provides confidentiality for complainants, and has existing procedural safeguards in place to protect complainants from retaliation for asserting good faith complaints to the CJP. Retaliation complaints can be made to either the CJP or the presiding judge or justice. These processes better protect confidentiality of the complainant.</p> <p>The work group is also concerned that referring complaints against judicial officers to local bias committees might trigger various due process concerns, especially given that local bias committees might not be adequately resourced or experienced to conduct the highly specialized inquiries that may need to be undertaken in response to a bias complaint against a judicial officer or court employee. Likewise, recommending that local bias committees resolve complaints of bias against judicial officers may raise ethical conflicts for judicial officers who are members of the local bias committees. Judicial officers who become aware of complaints against other judicial officers have ethical obligations that require them to take appropriate corrective action, which may include reporting the information to the presiding judge or justice or the CJP. (Canons of Judicial Ethics, canon 3D(1) and (2); See also, CJEO Formal Opinion 2020-15). A system where</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				<p>those complaints are handled informally, at a local level, could undercut those obligations.</p> <p>Conversely, the existing procedures for resolving complaints against judges appropriately address those concerns. The CJP is best equipped to resolve complaints about judicial officer bias, given that the CJP has its own experienced investigators, established investigation procedures, and the ability to subpoena witnesses—tools that may not be available to local bias committees. Alternatively, complaints about judicial officers may also be made directly to the presiding judge or justice. Presiding judges, presiding justices, and judges with supervisory authority who are informed of complaints against other judicial officers have ethical obligations to handle those complaints appropriately. (See Code of Judicial Ethics, canon 3C(4); Cal. Rules of Court, rules 10.603(c)(4) and 10.703; CJA Jud. Ethics Committee Op. No. 64.) Most courts have formal procedures for how complaints to the presiding judge or justice are processed, and the presiding judge or justice has the unique ability and responsibility to address issues of bias immediately and directly with the judicial officer, if warranted. Creating an alternative complaint resolution system through local bias committees may cause complaints to go unreported to the CJP and the presiding judges or justices, which may lead to inconsistent and less optimal handling of these complaints.</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				<p>However, the work group acknowledges that some local bias committees have established effective informal complaint resolution procedures for complaints against judicial officers. As discussed in the accompanying report, the work group recognizes that there is no one correct way to eliminate bias in court interactions, and the work group advocates for each court and local bias committee to find solutions that work best for that local community. The work group's proposal does not prevent courts and local bias committees from choosing to create informal complaint resolution procedures for complaints against judicial officers if those courts and committees conclude that is the best way to address bias complaints in their communities. If so, the work group recommends that they fully consider how best to address the concerns raised above. However, given the existence of California Rules of Court, rule 10.351, and the fact that courts already have personnel policies and memorandums of understanding that govern complaints against court employees, having local bias committees resolve complaints against court employees is not recommended.</p> <p>The commenter also raises concerns that the CJP complaint process is not designed to address judicial officer bias. However, CJP complaints include judicial misconduct, which may involve conduct in conflict with the standards set forth in the California Code of Judicial Ethics. The California Code of Judicial Ethics addresses</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				<p>judicial officer responsibilities for performing judicial duties without bias, prejudice, or harassment (canon 3(B)(5)); for requiring attorneys in proceedings before the judicial officer to refrain from manifesting bias, prejudice, or harassment (canon 3(B)(6)); for discharging judicial administrative duties without bias or prejudice (canon 3(C)(1)); and for requiring staff and court personnel under the judicial officer's control to refrain from manifesting bias, prejudice, or harassment in the performance of their duties (canon 3(C)(3)).</p> <p>The work group notes the commenter's position that eliminating the informal complaint procedure is a lost opportunity for communications within the local community. One purpose of the proposed amendments to standard 10.20 is to facilitate partnerships between courts and their communities through the local bias committees to raise awareness regarding unconscious and explicit biases and to find ways to address and eliminate bias. While local bias committees would not be explicitly tasked with resolving informal complaints against specifically named judicial officers and employees, they would still play an important role in fostering discussions about bias, identifying and resolving systemic concerns, promoting community engagement, delivering formal and informal education about bias, and discussing formal complaint mechanisms through the CJP or the presiding judge.</p>

SP21-03

Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>We are further disappointed that the revised standard 10.20 does not make the formation of bias committees mandatory. By drafting the subsection (c) to state “To assist in providing court interactions free of bias and the appearance of bias, courts should collaborate with local bar associations to establish a local or regional committee” (emphasis added), the bias committees appear to be a mere suggestion. The bias committees are necessary to field bias complaints and to further educate the judiciary on diversity.</p>	<p>The work group notes the commenter’s concern that standard 10.20 does not make local bias committees mandatory. As stated in California Rules of Court, rule 1.5(c), the Standards of Judicial Administration within the rules of court are guidelines or goals recommended by the Judicial Council. The nonbinding nature of the standards is indicated by the use of “should” in the standards instead of the mandatory “must” used in the rules.</p> <p>Maintaining the recommendations in the standard as guidelines and goals is consistent with the work group’s overall goal of creating a framework within which courts can work with their local communities toward the elimination of bias in court interactions, rather than creating top-down mandates. The proposal recognizes that each community varies greatly in size, demographics, needs, and viewpoints, and that the issues that confront each local community are unique and require direct dialogue between the local bias committee and the community. The intent of the proposed amendments is to provide courts and local committees with the framework to take the essential steps to engage their local communities in the important discussions required to prevent and eliminate bias. Thus, while the proposal makes recommendations, the work group also recognizes that there is not just one correct approach. The current proposal gives courts the latitude to create customized processes, and</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			<p>Last, we are disappointed that the proposed changes to standard 10.20 do not provide a concrete timeline to act upon the suggestion to form bias committees. The nebulous requirement that bias committees be formed “as soon as possible” could result in this being ignored as it has been since 1997 when the standard was last revised. We suggest that the committee consider revising the standard to require the formation of bias committees and set a reasonable timeline to do so (e.g., within a year of when the rule takes effect).</p> <p>We echo the voices of other respected organizations in opposition to the proposed changes and request that a revision of standard 10.20 in the California Rules of Court be conducted with a meaningful Work Group which includes employment attorneys, civil rights attorneys, and members of diversity bar associations. This should be done with care and with all appropriate voices included. Thank you for your time and attention to this matter.</p>	<p>partner with their local communities to find solutions that meet the unique and specific needs of each court and the local community that it serves.</p> <p>The proposal encourages courts to implement the revised standard “as soon as possible.” This acknowledges the importance of addressing bias in court interactions. If the Judicial Council adopts the proposed amendments to standard 10.20, the amended standard will go into effect on January 1, 2022, and courts may begin immediate implementation. The work group has not identified a specific implementation date because it recognizes that each court will follow a unique process in forming a local or regional committee on bias and that, as a result, the timeframes for forming local or regional committees in each community may vary.</p> <p>Amending standard 10.20 is a necessary step in renewing the branchwide commitment to the elimination of bias in all court interactions. The amended standard will provide a framework that will allow courts and local bias committees to do further work on the local level to build partnerships with the legal communities and engage in the process of conceptualizing outreach and educational programs.</p> <p>Given the need to promptly amend standard 10.20 to provide a framework and guidance that will allow courts to take these important steps to</p>

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
				eliminate bias in all court interactions, Chief Justice Tani G. Cantil-Sakauye appointed a small work group comprised entirely of Judicial Council members, and gave it a limited charge, which enabled the work group to swiftly and efficiently propose amendments to update the standard. The work group includes judicial officers, attorneys, and a court executive officer. Several members of the work group have experience in these and related issues from serving on the Work Group for the Prevention of Discrimination and Harassment and the committee to develop California Rules of Court, rule 10.351, creating standardized expectations for harassment prevention policies. The work group also had an early comment period specifically designed to seek input from interested groups and persons, met with various local bias committees, and met with interested groups throughout the process who wanted to share thoughts and ideas for amending the standard.
42.	David Yamasaki, Court Executive Officer, Superior Court of Orange County	A	Thank you for overseeing the work of the Work Group tasked with enhancing administrative standards to address bias in court proceeding. I support the proposed changes contained in Standard 10.20 and believe they very appropriately provide important direction to courts on this evolving subject matter and further recognizes the extensive and effective mechanisms already in place throughout the judicial branch in addressing issues that arise. While there may be additional responsibilities assumed by courts to comply with changes to Standard 10.20, I believe they will be	The work group notes the commenter's support for the proposed amendments and appreciates this input.

SP21-03**Judicial Administration: Court's Duty to Prevent Bias (Amend Cal. Standards of Judicial Administration, standard 10.20)**

All comments are verbatim unless indicated in brackets, with omissions indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
			reasonable and achievable within existing resources.	