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**ORANGE COUNTY BAR ASSOCIATION**

**APPELLATE LAW and CRIMINAL LAW**

**JOINT SECTION WEBINAR**

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Fireside Chat Featuring Justice Martin Jenkins, the Newest  
Member of the California Supreme Court



Thursday, May 20, 2021

## Associate Justice Martin J. Jenkins



Justice Martin J. Jenkins was confirmed as an Associate Justice of the California Supreme Court on November 10, 2020 following his appointment by Governor Gavin Newsom. Previously, he served as Senior Judicial Appointments Advisor to Governor Newsom. Preceding his work for Governor Newsom, he served as an Associate Justice of the California Court of Appeal. Justice Jenkins' judicial experience includes service as a federal district judge for the Northern District of California; he was appointed by President William Clinton in May 1997 and confirmed by the United States Senate in November 1997. Earlier, he served as a trial judge on the Oakland Municipal and Alameda County Superior Courts.

After graduating from Santa Clara University and before entering the University of San Francisco (USF) School of Law, Justice Jenkins was briefly employed as a player by the NFL's Seattle Seahawks. He obtained his law degree from USF in May 1980, when he received the Judge Harold J. Haley Award for "exceptional distinction in scholarship, character, and activities." After graduation, Justice Jenkins worked as a prosecutor for the Alameda County District Attorney's Office. He subsequently served as a trial attorney for the United States Department of Justice, Civil Rights Division-Criminal Section in Washington D.C., and later was an attorney in Pacific Bell's Legal Department where he handled a wide variety of litigation matters.

Justice Jenkins has been the recipient of numerous awards, including The St. Thomas More Award, presented annually by the St. Thomas More Society of San Francisco, "In Recognition of His Distinguished Record of Service and Dedication to His Church, His Community, and His Family," and the 2009 Children's Advocacy Award, presented by Legal Services for Children, San Francisco, for "Outstanding leadership in public policy that protects children and youth from abuse and exploitation." In 2018, the USF Board of Trustees conferred upon Justice Jenkins an honorary degree, "The Degree of Doctor of Humane Letters Honoris Causa."



**AB-242 Courts: attorneys: implicit bias: training.** (2019-2020)

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## Assembly Bill No. 242

### CHAPTER 418

An act to add Section 6070.5 to the Business and Professions Code, and to amend Section 68088 of the Government Code, relating to implicit bias.

[ Approved by Governor October 02, 2019. Filed with Secretary of State October 02, 2019. ]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 242, Kamlager-Dove. Courts: attorneys: implicit bias: training.

(1) Existing law authorizes the Judicial Council to provide by rule of court for racial, ethnic, and gender bias, and sexual harassment training and training for any other bias based on sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation for judges, commissioners, and referees.

This bill would authorize the Judicial Council to develop training on implicit bias with respect to these characteristics. The bill would require all court staff who interact with the public to complete 2 hours of any training developed by the Judicial Council pursuant to this authorization every 2 years. The bill would authorize the Judicial Council to adopt a rule of court, effective January 1, 2021, to implement these requirements.

(2) Existing law requires the State Bar to request the California Supreme Court to adopt a rule of court authorizing the State Bar to establish and administer a mandatory continuing legal education (MCLE) program.

This bill would require the State Bar to adopt regulations to require the mandatory continuing legal education curriculum to include training on implicit bias and the promotion of bias-reducing strategies, as specified. The bill would require a licensee of the State Bar to meet the requirements for each MCLE compliance period ending after January 31, 2023.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

#### THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** (a) The Legislature finds and declares all of the following:

(1) All persons possess implicit biases, defined as positive or negative associations that affect their beliefs, attitudes, and actions towards other people.

(2) Those biases develop during the course of a lifetime, beginning at an early age, through exposure to messages about groups of people that are socially advantaged or disadvantaged.

(3) In the United States, studies show that most people have an implicit bias that disfavors African Americans and favors Caucasian Americans, resulting from a long history of subjugation and exploitation of people of African descent.

(4) People also have negative biases toward members of other socially stigmatized groups, such as Native Americans, immigrants, women, people with disabilities, Muslims, and members of the LGBTQ community.

(5) Judges and lawyers harbor the same kinds of implicit biases as others. Studies have shown that, in California, Black defendants are held in pretrial custody 62 percent longer than White defendants and that Black defendants receive 28 percent longer sentences than White defendants convicted of the same crimes.

(6) Research shows individuals can reduce the negative impact of their implicit biases by becoming aware of the biases they hold and taking affirmative steps to alter behavioral responses and override biases.

(b) It is the intent of the Legislature to ameliorate bias-based injustice in the courtroom.

**SEC. 2.** Section 6070.5 is added to the Business and Professions Code, to read:

**6070.5.** (a) The State Bar shall adopt regulations to require, as of January 1, 2022, that the mandatory continuing legal education (MCLE) curriculum for all licensees under this chapter includes training on implicit bias and the promotion of bias-reducing strategies to address how unintended biases regarding race, ethnicity, gender identity, sexual orientation, socioeconomic status, or other characteristics undermine confidence in the legal system. A licensee shall meet the requirements of this section for each MCLE compliance period ending after January 31, 2023.

(b) When approving MCLE providers to offer the training required by subdivision (a), the State Bar shall require that the MCLE provider meets, at a minimum, all of the following requirements:

(1) The MCLE provider shall make reasonable efforts to recruit and hire trainers who are representative of the diversity of persons that California's legal system serves.

(2) The trainers shall have either academic training in implicit bias or experience educating legal professionals about implicit bias and its effects on people accessing and interacting with the legal system.

(3) The training shall include a component regarding the impact of implicit bias, explicit bias, and systemic bias on the legal system and the effect this can have on people accessing and interacting with the legal system.

(4) The training shall include actionable steps licensees can take to recognize and address their own implicit biases.

(c) As part of the certification, approval, or renewal process for MCLE-approved provider status, or more frequently if required by the State Bar, the MCLE provider shall attest to its compliance with the requirements of subdivision (b) and shall confirm that it will continue to comply with those requirements for the duration of the provider's approval period.

**SEC. 3.** Section 68088 of the Government Code is amended to read:

**68088.** (a) The Judicial Council may provide by rule of court for racial, ethnic, and gender bias, and sexual harassment training and training for any other bias based on any characteristic listed or defined in Section 11135 for judges and subordinate judicial officers.

(b) (1) The Judicial Council may also develop training on implicit bias with respect to the characteristics listed or defined in Section 11135. The course shall include, but not be limited to, all of the following:

(A) A survey of the social science on implicit bias, unconscious bias, and systemic implicit bias, including the ways that bias affects institutional policies and practices.

(B) A discussion of the historical reasons for, and the present consequences of, the implicit biases that people hold based on the characteristics listed in Section 11135.

(C) Examples of how implicit bias affects the perceptions, judgments, and actions of judges, subordinate judicial officers, and other court staff, and how those perceptions, judgments, and actions result in unacceptable disparities in access to justice.

(D) The administration of implicit association tests to increase awareness of one's unconscious biases based on the characteristics listed in Section 11135.

(E) Strategies for how to reduce the impact of implicit bias on parties before the court, members of the public, and court staff.

(F) Inquiry into how judges and subordinate judicial officers can counteract the effects of juror implicit bias on the outcome of cases.

(2) As of January 1, 2022, all court staff who are required, as part of their regular job duties, to interact with the public on matters before the court, shall complete two hours of any training program developed by the Judicial Council pursuant to this subdivision every two years.

(3) The Judicial Council may adopt a rule of court, effective January 1, 2021, to implement this subdivision.

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Additional Resource

**Getting up to speed on implicit bias**

<http://jerrykang.net/2011/03/13/getting-up-to-speed-on-implicit-bias/>

**Jerry Kang**

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Inaugural Korea Times – Hankook Ilbo Endowed Chair (2010-20)  
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