



IMPLICIT BIAS

TURNING AWARENESS INTO ACTION

Hon. Margaret Oldendorf (Ret.)
Hon. Marie Weiner (Ret.)

**ADR Services, Inc. 5th Annual MCLE Day
January 16, 2025**



What Is Implicit Bias?

- Unintentional and unconscious patterns of thought
- Not overt or intentional
- Common and natural aspect of human cognition



➔ Why It Matters

- Impact on decision-making, advocacy, and access to justice
- Ethical implications in the legal profession

What the Code Says



California Rules of Court, Standard 10.20

Requires The Court's Duty To Prevent Bias



California Rules of Professional Conduct, State Bar of California, Ethics Rule 8.4.1

Requires attorneys to refrain from discrimination



California Business & Professions Code Section 6070.5

Requires MCLE training for implicit bias

Defining Implicit Bias

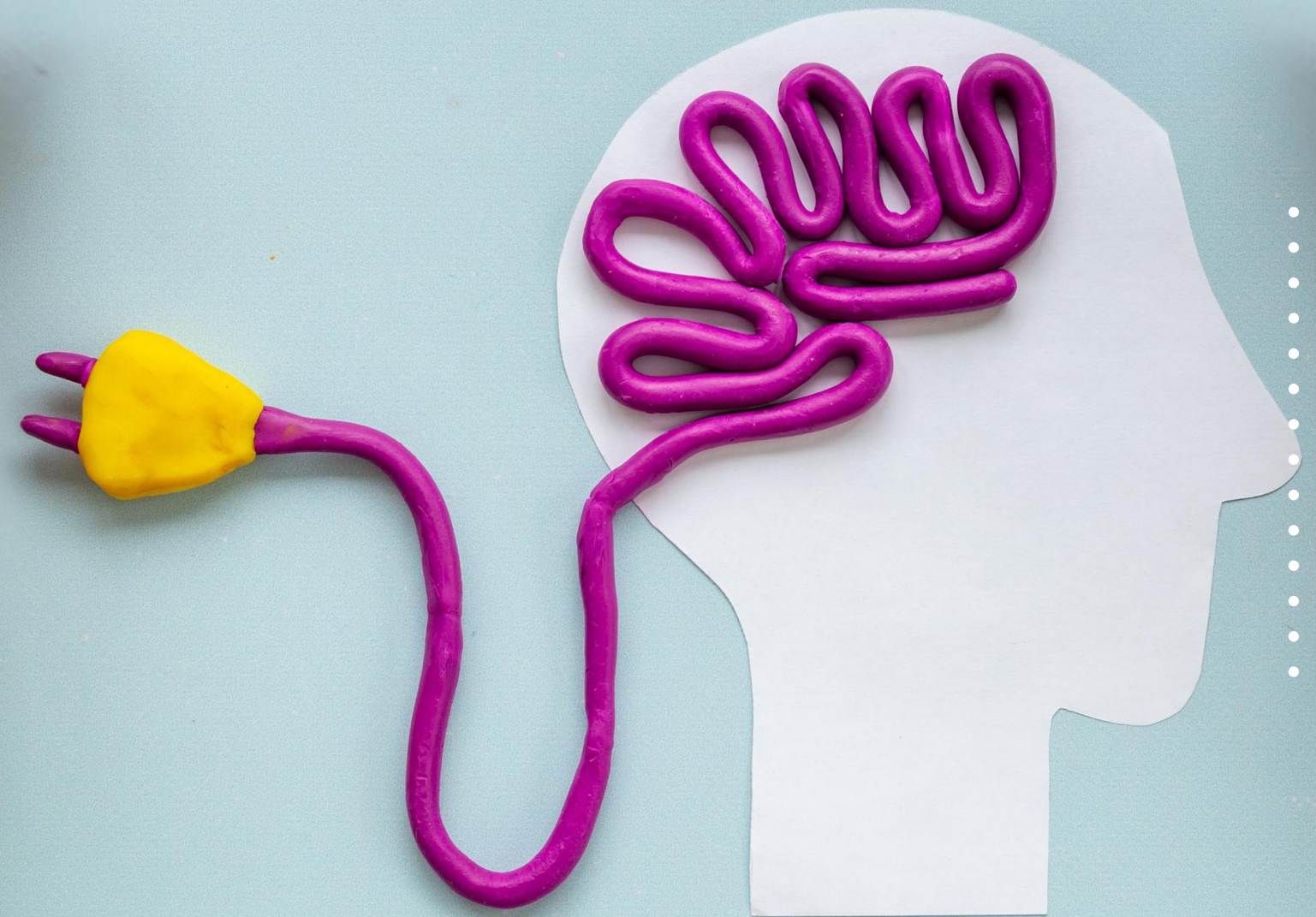
Definition derived from Supreme Court rulings and ethics guidelines:

No definitive definition, but the Department of Justice Community Relations Toolkit provides, “Implicit Bias involves all the subconscious feelings, perceptions, attitudes, and stereotypes that have developed as a result of prior influences and imprints. It is an automatic positive or negative preference for a group based on one’s subconscious thoughts”

Origins:

- Life experiences and lack thereof
- Biological predisposition to categorize
- Intelligence and pattern recognition

Important Note: Bias doesn’t make you a bad person—it’s about awareness and action.



Some Types of Implicit Bias

Affinity Bias

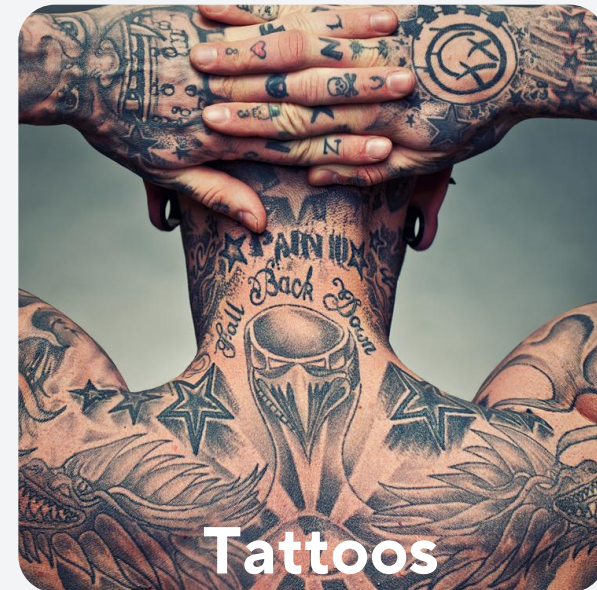
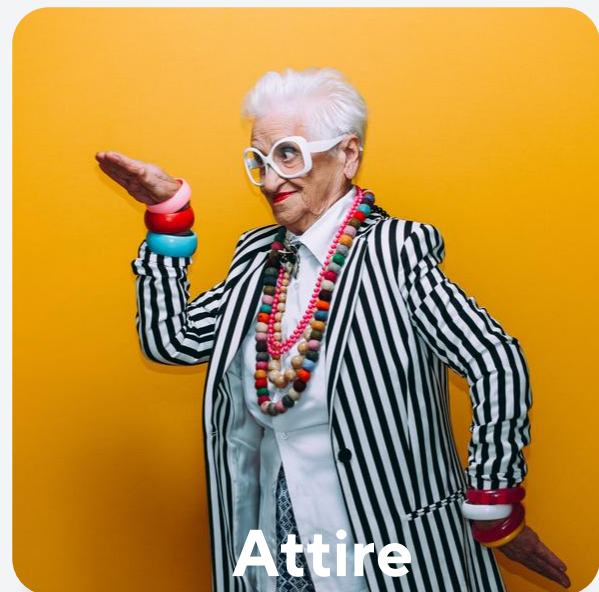
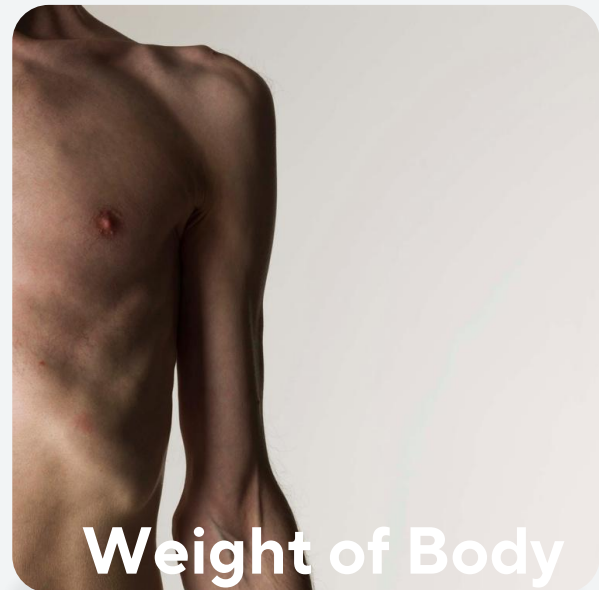
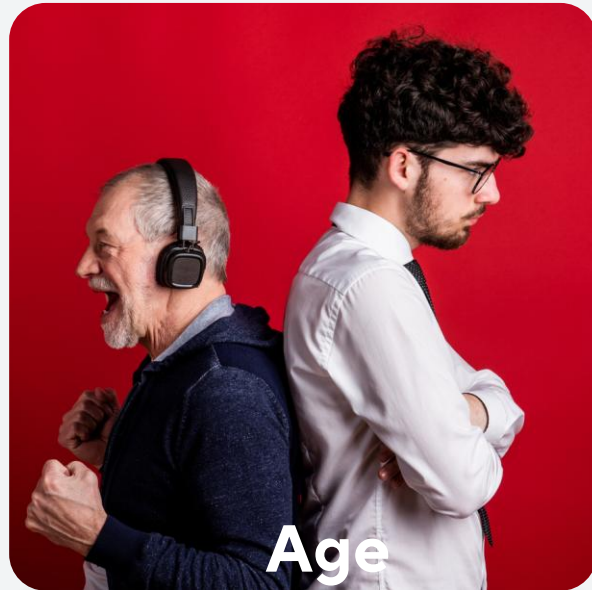
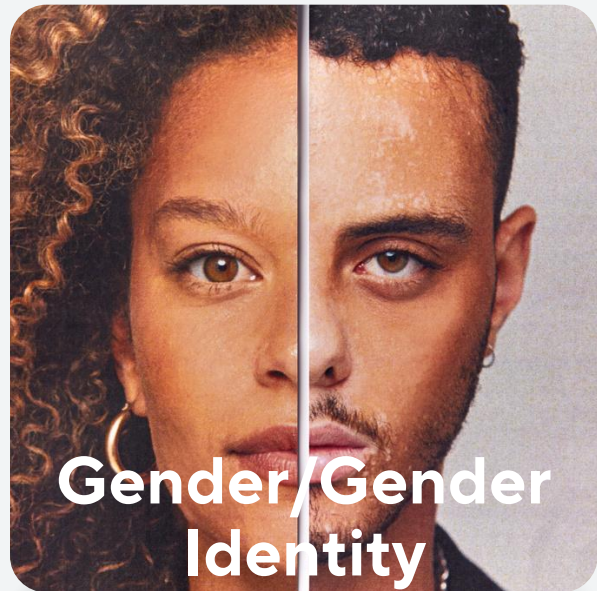
Favoring people
similar to yourself



Unconscious Categorization

Stereotyping based on
visible or perceived traits





Identifying Bias

Awareness of Bias is to Achieve Neutrality (not overcompensation)

Self-Awareness Exercises: [Take Harvard Implicit Association Tests \(IAT\)](#)

Age	Religion	Muslim
Gender	Transgender	Jewish
Weight	Disability	Hispanic
Weapons	Skin Tone	Native American
Race	Sexuality	Asian

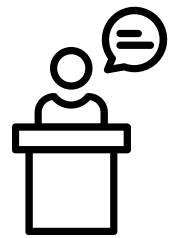
- ➔ Reflect on personal experiences and judgments
- ➔ Recognize biases as information, not moral failings
- ➔ Stay curious and open-minded

Bias in the Legal Practice



Rulings and judicial decisions

See *Merrick v. Lau* (Nov. 27, 2024, B322994) __ Cal.App.5th __ [2024 WL 5134943, at *1]



Witness credibility assessments



Client relationships and hiring practices

Effects

- Impacts on advocacy and procedural fairness
- Challenges to professional integrity

Overcoming Implicit Bias

Slow down decision-making processes

Actively consider and challenge initial impressions

Engage diverse perspectives in discussions



Professional Practices

- Reference [California Civil Jury Instructions \(CACI\)](#) and [CALCRIM](#)
- [Judicial ethics rules](#) and [attorney ethics guidelines](#)

CACI Civil Jury Instruction 5030



- **Part of the concluding instructions**
- **Added November 2023**
 - **Give on request, or sua sponte**
 - **Contains 3 “strategies” to help jurors**
- **Patterned after CALCRIM 209 (added September 2023)**
- **Compare with CACI 113 and CALCRIM 101, given at the beginning of the case**

Practical Tools for Mitigating Bias



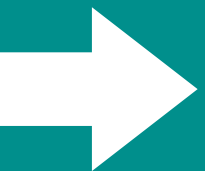
**Join Professional Equality
Committees (CA Rule of
Court Section 10)**



**Participate in local bar and
community programs
addressing bias**



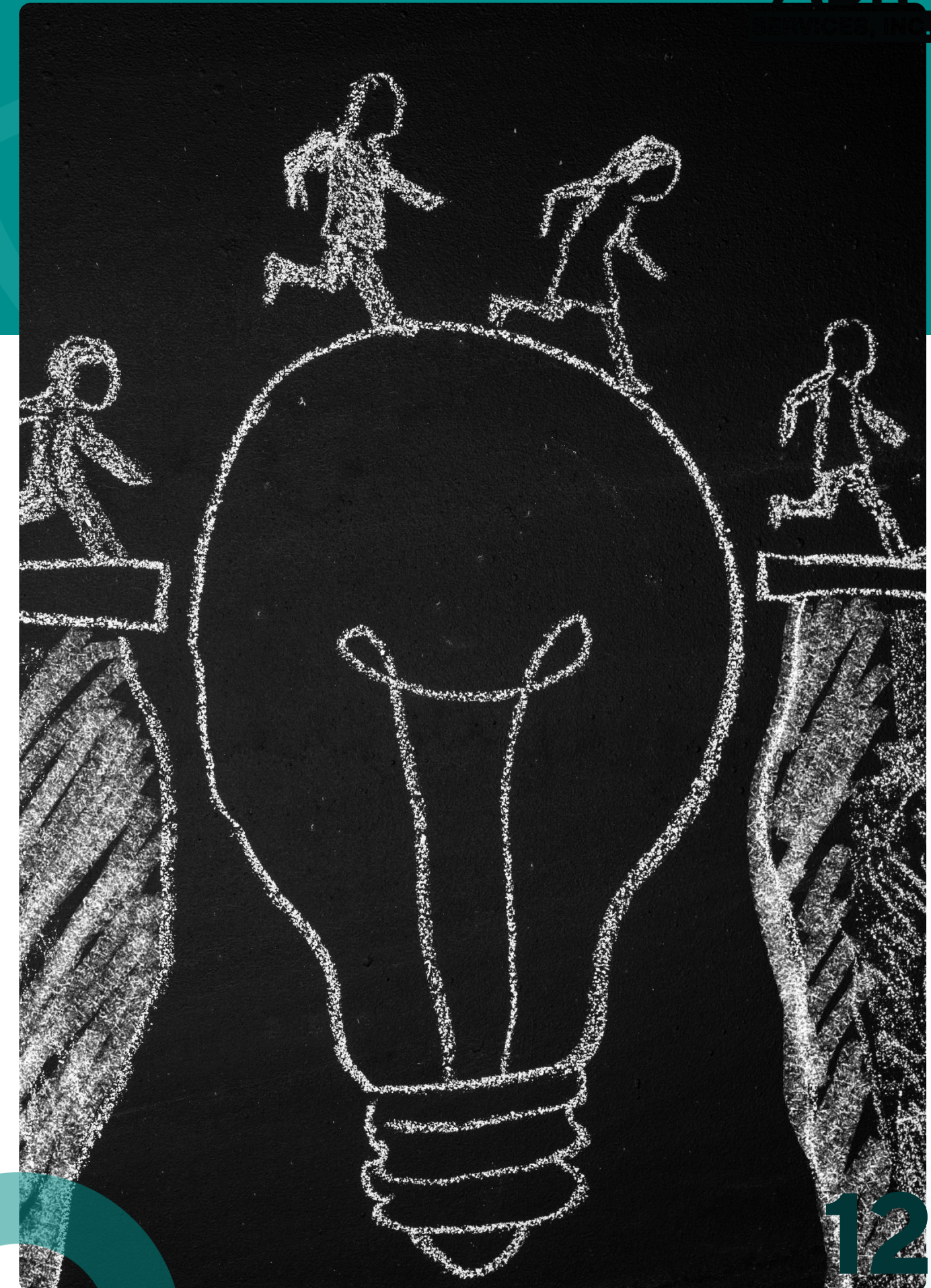
**Example: San Mateo County
Superior Court Rule 2.13 and
to San Mateo County Bar
Association Committee for
Professional Equality**

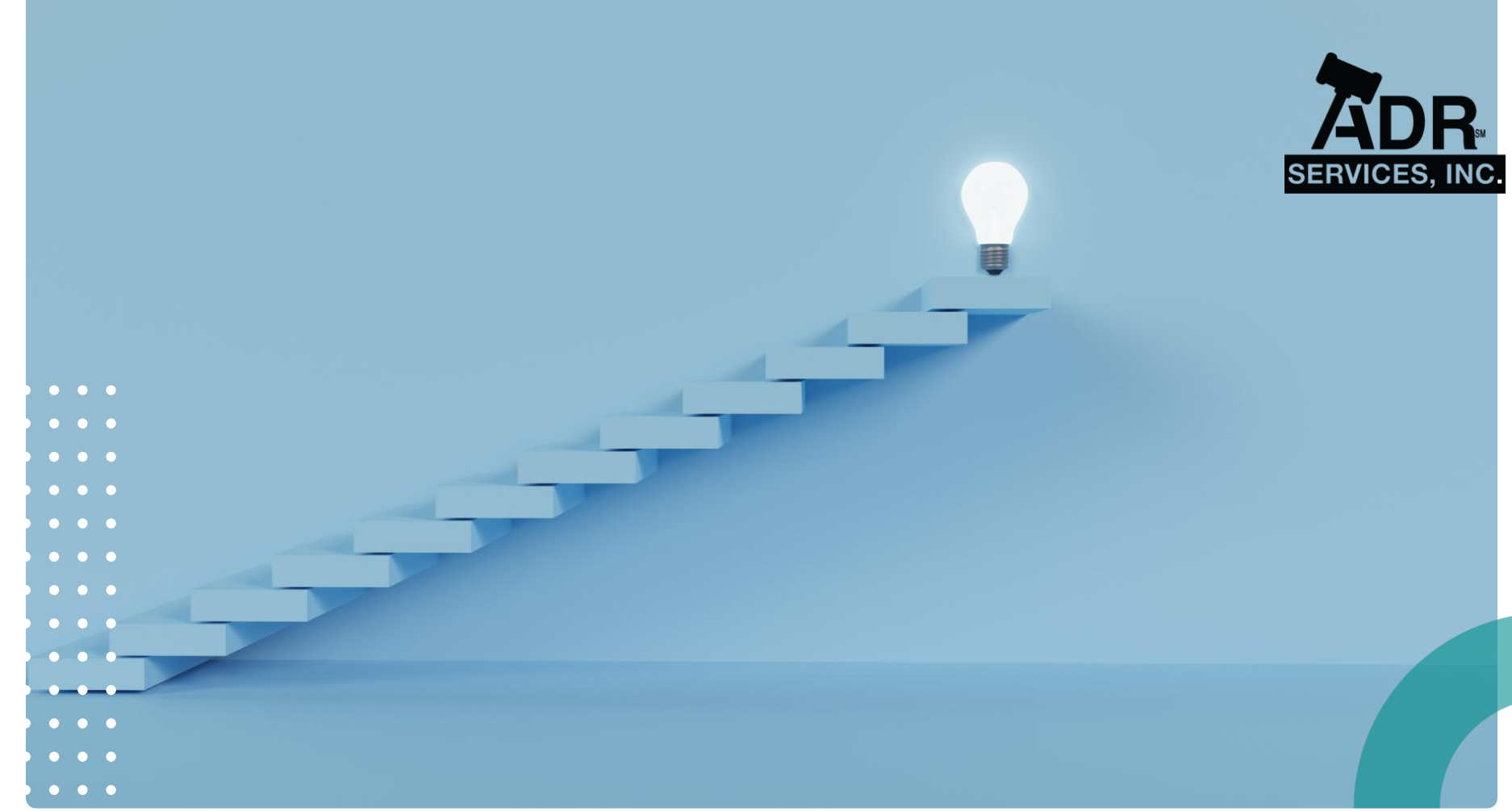


San Mateo 2.13(c)

▶ Committee for Professional Equality

(c) Consistent with Standard 10.20(c) of the Standards of Judicial Administration, and in collaboration with the San Mateo County Bar Association, the Committee for Professional Equality is and was established, co-sponsored by this Court. The purpose of the Committee for Professional Equality is to increase awareness and educate members of the legal profession about issues of bias, including sponsoring and supporting educational programs designed to eliminate unconscious and explicit biases within the courts and legal communities. The members of the Committee shall include at least one active San Mateo County judge and one retired San Mateo County judge, one court administrator, one attorney member of the San Mateo County Bar Association, one non-attorney community member, and one attorney member of the San Mateo County Bar Association's Women Lawyers Section. The members shall sit for three years on rotating terms.





Next Steps



Community Involvement: Seek diverse interactions and viewpoints



Commit to self-awareness and ongoing education



Share lessons with peers to foster equitable practices



Explore additional resources (e.g., implicit bias training, books, and articles)

Thank You



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