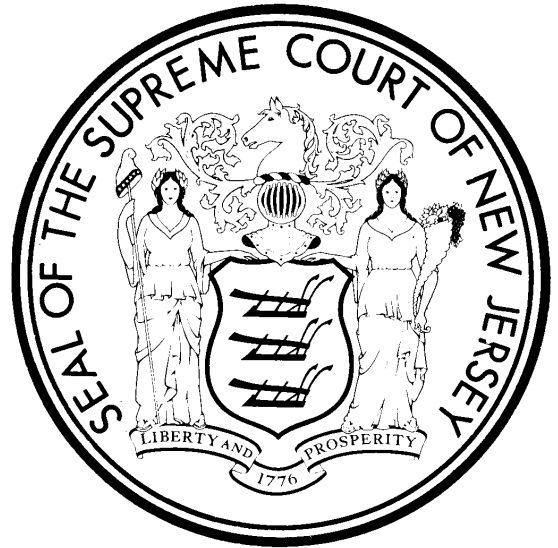


**NEW JERSEY
SUPREME COURT COMMITTEE
ON MINORITY CONCERNS**



**2017-2019
REPORT**

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**2017-2019 REPORT
OF THE
SUPREME COURT COMMITTEE ON MINORITY CONCERNS**

Introduction and Executive Summary

The Supreme Court Committee on Minority Concerns (SCCMC) is charged with advising the Supreme Court of New Jersey on matters affecting the Judiciary and how it may best assure fairness, impartiality, equal access, and full participation of racial, ethnic and religious/cultural minorities and the economically disadvantaged. This term, the SCCMC continued in its policy and rule change review role and submitted to the Court several detailed commentaries on matters relevant to its mission and mandate on the issues of access and fairness. At the local level, the Vicinage Advisory Committees on Minority Concerns (VACMCs), as an extension of the SCCMC, have continued to enhance the general public awareness and understanding of Criminal Justice Reform (CJR) through programming and community outreach. In a year's time, these efforts reached over 45,000 community members across the state.

This report is presented thematically in three parts:

- Part I contains twelve recommendations and addresses programmatic topics centering around procedural fairness and access to justice that have been the product of the work of the Subcommittees on Criminal Justice and the Minority Defendant, Juvenile Justice and the Family, and Access to Justice.
- Part II proposes a recommendation for the adoption of standard statewide procedures relating to the September 1, 2018 changes to R. 4:72-1 et seq. and has been informed by the direct work of the Subcommittee on Juvenile Justice and the Family coupled with the general interests of the SCCMC as a whole in this issue.
- Part III contains an informational presentation and highlights selected diversity and inclusion data regarding the bench, workforce, and law clerks and discussion of discrimination complaints with an analysis resulting from the work of the Subcommittee on Minority Participation in the Judicial Process.

The SCCMC looks forward to continuing its ongoing initiatives of innovating with the purpose of assuring the qualities of independence, integrity, fairness, and quality service, which define the Judiciary. The SCCMC appreciates the opportunity to be of service to the Court and the public served by the New Jersey Judiciary.

Respectfully submitted,

A handwritten signature in black ink, consisting of a large, stylized loop at the top and a horizontal line below it.

Hany A. Mawla, J.A.D., Chair
Supreme Court Committee on Minority Concerns
January 15, 2019

**SUPREME COURT COMMITTEE ON MINORITY CONCERNS
SUMMARY OF 2017-2019 RECOMMENDATIONS**

Recommendation 2019:01

The SCCMC recommends that the Judiciary continue to advance its coordinated, organizational efforts in the area of access to justice through a more concentrated focus on the role of judges in ensuring procedural fairness. These next steps should include expanded opportunities for judges to convene to discuss, share, and develop bench practices that continue to enhance access to justice through procedural fairness in the courtroom both during and outside of formal proceedings in the context of ever-expanding complexities in the lives of the parties that come before the courts seeking justice.

Recommendation 2019:02

The SCCMC, recognizing that court staff may render legal assistance but not legal advice and also may not refer matters to particular attorneys, recommends that the Judiciary work to ameliorate the gap in access to legal representation by developing a pilot “legal services” clinic model. Building off the original law school clinic-court partnership that was part of the original Ombudsman Offices in Camden, the Committee recommends that a pilot be developed for [re-] establishing such partnerships with local law schools.

Recommendation 2019:03

The SCCMC recommends that (a) when appropriate and beneficial to optimal case management and courtroom practice court operational procedures that are routinely communicated internally via assignment judge memorandum also be shared with practitioners via a Notice to the Bar or similar communique and (b) informational procedures and changes in practice also be made available to self-representing litigants and the general public, as applicable based on content and subject matter, either by (1) entitling notices to the bar as “Notice to the Bar and the Public” or (2) developing an alternate instrument to ensure that self-representing litigants are privy to the content of Notices to the Bar and have access to the information in plain language format.

Recommendation 2019:04

The SCCMC recommends that the AOC adopt an internal self-reporting census mechanism by which court-appointed committee members are invited and encouraged to share demographic information so that the Judiciary can more meaningfully assess the diversity and representativeness of Supreme Court Committees and related advisory bodies. The SCCMC also recommends that subsequent to the proposed initial committee member census the collection of these demographic data, albeit on a voluntary basis, be incorporated into the routine appointment/reappointment processes in order to be able to measure diversity, inclusion, and representativeness on an ongoing routine basis.

Recommendation 2019:05

The SCCMC recommends that (a) the AOC convene an interdivisional working group to review and make recommendations for consistency and best practices in collecting Judiciary-generated demographic data whether collected via interview or self-reported on court forms, and (b) the AOC create a working group to review all court forms that specifically solicit information on sex and/or gender in order to ensure that these are updated consistent with the current vital statistics options of M (male), F (female), and X (non-binary or neither is designated).

Recommendation 2019:06

The SCCMC recommends that the Judiciary institute periodic practice-area related immigration educational sessions for judges.

Recommendation 2019:07

The SCCMC recommends that the Judiciary explore development and promulgation of an immigration collateral consequences notification colloquy for children-in-court case proceedings when a parent/guardian is stipulating to or has been adjudicated of having committed abuse and/or neglect. The SCCMC also recommends that the Judiciary explore whether there are other Family Part matters, such as domestic violence cases, where a similar immigration collateral consequences notification colloquy would be appropriate and beneficial.

Recommendation 2019:08

The SCCMC recommends, when there is an immigration nexus to a policy, procedure, or practice that is pending review for promulgation, that the AOC incorporate into its standard internal review processes a review by the SCCMC to ensure that the proposals are sound state court practice that inform positive outcomes for litigants from this vulnerable community.

Recommendation 2019:09

The SCCMC recommends that the AOC convene a task force that includes various state court division representatives from the Central Office and across the vicinages and representatives of various state and county correctional facilities and immigration detention officials to develop standard operating procedures to ensure that immigrants either in immigration detention or in state or county custody on an immigration detainer can appear or be produced for pending Superior Court and municipal court matters.

Recommendation 2019:10

The SCCMC recommends that (a) the child support obligation flag on the Pre-Sentence Report (PSR) be highlighted and that sentencing judges be advised to reference any existing identified child support obligations on the record at sentencing and notice defendants verbally that child support obligations are not automatically suspended or modified upon sentencing to prison/jail and advise the defendant of the defendant's responsibility to file a motion to suspend or modify child support, and (b) the Pre-Sentence Report (PSR) thoroughly catalogue all outstanding Superior Court and Municipal Court matters so that sentencing judges can notify defendants on the record at the time of sentencing as to these pending matters and the Court can make the defendant aware of the need to resolve such matters prior to release from custody so as to avoid any related delays that would impact anticipated release.

Recommendation 2019:11

The SCCMC recommends that the Court explore the issue of how best to address and resolve pending out-of-county municipal detainers, particularly for pre-CJR defendants, and develop a set of standard protocols for addressing these in a timely and efficient manner that considers and balances the justice interests of the Court and the parties.

Recommendation 2019:12

The SCCMC recommends that Probation Services explore potential private foundation grant funding for the purposes of developing a pilot reentry support project for adult probationers with the intention of eventually developing a statewide model that includes a Reentry Navigator at the AOC and in each vicinage.

Recommendation 2019:13

The SCCMC recommends that in the matter of name changes of minors heard in the Family Part, not related to another Family Part matter such as a divorce or adoption within the preceding three years, the Court adopt the following as standard statewide practices in the interest of procedural fairness and access to justice:

- 1) use of initials and sealing of all unredacted records;
- 2) waiving of the publication requirements (including a temporary relaxation of the referenced rules followed by the corresponding amendments to become effective September 1, 2019);
- 3) the option of summary judgments on the papers where no best interest hearing is required; and
- 4) adoption of sample colloquies for the trial court's use both in summary proceedings on the record and, when applicable, required best interests hearings that will ensure that in matters involving trans-identified, gender non-conforming, and non-binary children appropriate language is used to create a record referencing the name assigned at birth experience without unnecessarily directly subjecting the child(ren) to compelled first-person self-identification with the names set forth on their birth certificates.

I. PROGRAMMATIC RECOMMENDATIONS

Procedural fairness and access to justice are the touchstones of fairness and equity in the New Jersey court system. These guideposts have informed the work of the Supreme Court Committee on Minority Concerns (SCCMC) in all of its undertakings over the course of thirty-five years. As noted in the New Jersey Supreme Court Statement on the Final Report and Action Plan on Minority Concerns (1993), central to the work of the SCCMC is the recognition that “ensuring that all vestiges of [racial and ethnic] bias, discrimination, and prejudice from court proceedings, programs, and services” results in a justice system that embraces all court users. Therefore, the ongoing work of delivering procedural fairness and ensuring equitable access to justice is inherent in the daily work of every court employee throughout New Jersey’s unified system.

A. Procedural Fairness

Recommendation 2019:01

The SCCMC recommends that the Judiciary continue to advance its coordinated, organizational efforts in the area of access to justice through a more concentrated focus on the role of judges in ensuring procedural fairness. These next steps should include expanded opportunities for judges to convene to discuss, share, and develop bench practices that continue to enhance access to justice through procedural fairness in the courtroom both during and outside of formal proceedings in the context of ever-expanding complexities in the lives of the parties that come before the courts seeking justice.

The New Jersey Courts have long been at the forefront of proactive initiatives designed to ensure that procedural fairness results in access to justice for all, and in particular to assure unencumbered access to justice for communities of color, the poor and working class, and other socially and historically marginalized constituencies such as religious and cultural minorities, newly arrived immigrants, non-native speakers of English, and LGBTQ people.¹

¹ For example, in the mid-1980s under the leadership of then Chief Justice Robert N. Wilentz, New Jersey was among the first in the nation to convene Task Forces on Language Access, Women in the Courts, and Minority Concerns.

Today the Supreme Committee Advisory Committee on Access and Fairness, the Supreme Court Committee on Women in the Courts, and the SCCMC, each with its own unique charge and scope, remain interlinked in their collective and collaborative work on procedural fairness and access to justice. This term the SCCMC centered its priorities on the concepts and practices of procedural fairness as the means to ensure access to justice. A key feature of these efforts was several presentations by former Newark Municipal Court Chief Judge Victoria Pratt and the team from Newark Community Solutions, including a three credit general/ethics CLE program moderated by the Hon. Arthur Batista, J.S.C., who serves on the SCCMC Subcommittee on Criminal Justice and is a former Newark Municipal Court judge. During this presentation to an audience that included SCCMC members and staff, members of the Conference of Vicinage Advisory Committee on Minority Concerns (VACMC) Chairs, and members of the Committee of VACMC Coordinators as well as several senior managers from the Central Office, Judge Pratt and the panelists provided open discussion through which the attendees enthusiastically embraced the central lesson learned by Newark Community Solutions: “To meet court users where they are in order to service their needs” and to provide access within the court facility to wraparound services that help court users navigate a sometimes complex social service system so that court users leave with a plan in place to access professional services prior to leaving the court.

The New Jersey Judiciary has had and continues to develop many valuable safeguards and resources to promote procedural fairness to address new circumstances and challenges. Tools such as statewide standards, best practices, and case management targets are exceptionally valuable and have ensured the optimal delivery of justice no matter the format or setting. These tools and

Chief Justice Deborah T. Poritz was the first to convene a Task Force on Gay and Lesbian Issues in the Courts. This legacy continues today under the leadership of Chief Justice Stuart Rabner who not only created the Supreme Court Advisory Committee on Access and Fairness but continues to lead many critical systems reforms that have kept the doors to justice open.

resources also contribute to a culture of continual evaluation and service enhancement. The SCCMC continued to explore procedural fairness with this guiding question as its central focus:

Given the central role of judges in ensuring procedural fairness, what tools and resources are available to assist individual judges to support them in their ongoing efforts to ensure procedural fairness in the context of ever-evolving diversity and related challenges to ensure equity and justice in outcomes?

The informational and discussion sessions during the Newark Community Solutions presentation demonstrated that judges welcome the opportunity to engage in discussions with one another about bench practices and courtroom management with the goal of assuring efficiency in the courts as well as equity and equal access to all court users.

B. Access to Justice and Legal Representation

Gaps in access to legal representation remain a challenge particularly for working class people who are above the qualifying threshold for free legal representation, yet without ample financial resources to secure the services of private counsel.² Many of these individuals when facing legal issues before the courts seemingly have no choice but to become self-represented.

Recommendation 2019:02

The SCCMC, recognizing that court staff may render legal assistance but not legal advice and also may not refer matters to particular attorneys, recommends that the Judiciary work to ameliorate the gap in access to legal representation by developing a pilot “legal services” clinic model. Building off the original law school clinic-court partnership that was part of the original Ombudsman Offices in Camden, the Committee recommends that a pilot be developed for [re-] establishing such partnerships with local law schools.

The Judiciary’s Ombudsman Offices and Court User Resource Centers across the state do a good job of providing self-represented litigants with access to the information they need both through a wide array of public education seminars and one-on-one direct assistance through the

² New Jersey’s Civil Legal Assistance Gap, Legal Services of New Jersey (2012)
<https://www.lsnj.org/NJCLAGAP2012.aspx>

Offices of the Ombudsman. Still, there is a gap that cannot be filled by court staff, no matter how skilled or well-intended, because in the interest of justice and fairness court staff can provide legal assistance but not legal advice. Often self-represented litigants, despite all the assistance rendered by court staff, still have questions, the answers to which require legal advice that cannot be offered by court staff.

In light of these realities the SCCMC explored the question of how could the Court maintain the necessary boundaries between legal assistance and legal advice while also playing a part in closing the gap in access to legal services. One particular way that would both meet the needs of self-represented litigants and promote the additional professional development of future attorneys is through the reprisal of the legal services clinic partnership that was part of the original Ombudsman Office pilot in Camden Vicinage. That program enabled court users in need of legal representation to connect to qualified eligible law school students working under the tutelage of a professor.

Now that the Judiciary’s Ombudsman Program is well-established statewide, the SCCMC believes the moment is ripe to revisit this former partnership, pilot a form of it in vicinages that volunteer to do so, and then evaluate its potential for statewide implementation.

Recommendation 2019:03

The SCCMC recommends that (a) when appropriate and beneficial to optimal case management and courtroom practice court operational procedures that are routinely communicated internally via assignment judge memorandum also be shared with practitioners via a Notice to the Bar or similar communique and (b) informational procedures and changes in practice also be made available to self-representing litigants and the general public, as applicable based on content and subject matter, either by (1) entitling notices to the bar as “Notice to the Bar and the Public” or (2) developing an alternate instrument to ensure that self-representing litigants are privy to the content of Notices to the Bar and have access to the information in plain language format.

Communications in all forms and via all media continues to be essential in keeping “an open door to justice.” As a matter of professional practice, “Notices to the Bar” are an essential

means of ensuring critical practice information is imparted to legal practitioners who represent litigants who come before the New Jersey Courts.

As the number of self-represented litigants grows, the SCCMC considered the question of whether individuals who are not attorneys, have no legal training, and are not familiar with court procedures, and who are putting together paperwork in their cases and are representing themselves in court would, in the course of their preparations, be aware of the possible need to consult the “Notices to the Bar” or would even consider that “Notices to the Bar” may contain information of relevance. This issue arose during the SCCMC’s preparation of several commentaries to the Court during the course of the term on matters posted for public comment.

The related discussion led to a similar point: *Does the general public understand that they too are welcome to submit comments on posted proposals to the Court, or do they feel that only licensed attorneys have standing to comment?* In actuality, some members of the public do and some do not believe they are welcome to comment on posted proposals, so the SCCMC began to consider these dynamics a bit further through the access and fairness lens. Then subsequent to rules changes that took effect September 1, 2018, several assignment judge memoranda were issued clarifying specific procedural aspects of selected rules changes. Assignment judge memoranda overall play a critical role in judicial operations and the clarifications proffered and procedural standards set forth in the referenced assignment judge memoranda do the same. This time, however, it was observed, in particular regarding several of the noted rules changes, that there were substantive procedural clarifications that would create a level playing field for litigants if members of the bar and self-representing litigants had access to the information on the procedural standards put into place. It is for these reasons the SCCMC also recommends, when appropriate, that vital directive, instructional, and procedural content in assignment judge

memoranda be excerpted and distributed via a “Notice to the Bar and Public” or in some other publicly communicated format such as the Court’s social media accounts.

C. Diversity and Inclusion: Equity in Opportunity

The collection and review of demographic data is a primary tool for assessing diversity, inclusion, and representativeness³ as well as ensuring equity through opportunity in the New Jersey court system. To that end, the SCCMC has engaged in an enhanced review and improved reporting of demographic data as it relates to the workforce, bench, law clerks, and volunteer corps. The SCCMC has also evaluated expanding the available demographic profiles to include appointees who serve on the numerous committees, task forces, and other bodies that advise the Supreme Court on the plethora of critical legal, professional and operational matters.

Recommendation 2019:04

The SCCMC recommends that the AOC adopt an internal self-reporting census mechanism by which court-appointed committee members are invited and encouraged to share demographic information so that the Judiciary can more meaningfully assess the diversity and representativeness of Supreme Court Committees and related advisory bodies. The SCCMC also recommends that subsequent to the proposed initial committee member census the collection of these demographic data, albeit on a voluntary basis, be incorporated into the routine appointment/reappointment processes in order to be able to measure diversity, inclusion, and representativeness on an ongoing routine basis.

The meaning and effectiveness of demographic data collection goes beyond numbers, percentages, and mathematical calculations and begins with the manner in which the information is solicited, i.e., the invitation to self-disclose, and the availability of an array of categories from which respondents can select. This is particularly so in terms of primary aspects of identity and experience such as race, ethnicity, gender, sexual orientation, gender identity, and (dis)ability. It

³ *Representativeness* is a diversity and inclusion term that is distinguishable and distinctive from *representation*. See, for example, [Assessing and Achieving Jury Pool Representativeness](https://www.americanbar.org/groups/judicial/publications/judges_journal/2016/spring/assessing_and_achieving_jury_pool_representativeness/) (American Bar Association, 2005), which discusses representativeness in the context of jury management.

is axiomatic to state that when people are asked to respond to requests for demographic data they want to understand the basis/purpose of inviting the disclosure and they also want to see more representative options from which they can select to reflect their identity.

Inviting members of Supreme Court advisory bodies to share select demographic data on a voluntary basis enables the Court to systematically and accurately assess the degree of diversity, inclusion, and representativeness of these bodies in terms of personal demographics across generations/years of practice as well as regional diversity, practice area experience, and subject matter expertise.

Recommendation 2019:05

The SCCMC recommends that (a) the AOC convene an interdivisional working group to review and make recommendations for consistency and best practices in collecting Judiciary-generated demographic data whether collected via interview or self-reported on court forms, and (b) the AOC create a working group to review all court forms that specifically solicit information on sex and/or gender in order to ensure that these are updated consistent with the current vital statistics options of M (male), F (female), and X (non-binary or neither is designated).

The SCCMC recognizes that some demographic data in the hands of the Judiciary is imported from external administrative agencies and that current data management systems outside the Judiciary's operational control may not be updated. However, to the degree that it is possible, the Judiciary should continue to ensure that the most current best practices are utilized in terms of how the information is requested. This is accomplished by assuring that inclusivity is reflected in the range of primary aspects of identity and experience queried, and that prospective respondents readily understand that the organization values diversity by expanding the range of response options proffered.

By convening an internal interdivisional working group on demographic data collection, the Judiciary will be able to (1) take stock of all of the work units and programs that are involved in demographic data collection and/or management; (2) evaluate the degree to which these data

are collected by the Judiciary itself; (3) explore the range of approaches to the solicitation of the data and the options provided in terms of answers for self-identification; and (4) work towards greater uniformity, when possible, in the use of expansive and more inclusive demographic data response options to requests for self-identification of primary aspects of identity and experience. Furthermore with the State's adoption of a third gender option effective February 1, 2019 for identity documents issued through the executive branch, it is vitally important for the Judiciary to ensure that its own forms reflect the inclusive and representative gender options that will soon become routine and standard business practice.

D. Immigration Issues

The SCCMC has a continued "interest in the experience of immigrants interfacing with the Courts and in particular with ensuring that non-citizens understand that they are entitled to equal justice and fair access to the state court system without regard to immigration status." (2013-2015 Report of the Supreme Court Committee on Minority Concerns, p. 16).

To that end, the Judiciary has assured compliance with the holdings in Padilla v. Kentucky, 559 U.S. 356, (2010) and State v. Nunez-Valdez, 200 N.J. 129 (2009) through the recent promulgation of a standard notice regarding potential immigration consequences for use in juvenile delinquency matters. The longstanding established protocols established in Criminal and Municipal Practice and now in juvenile delinquency matters continue to ensure "that non-citizens appearing before the Court as defendants in criminal or quasi-criminal proceedings [and juvenile delinquency matters] are alerted to the potential collateral consequences that a finding, plea, or adjudication of guilt [or delinquency] could have on their immigration standing and future options regarding immigration status in the United States, and the option to consult with an attorney." (2013-2015 Report of the Supreme Court Committee on Minority Concerns, p. 16).

During this term, the SCCMC worked on the access to justice needs of immigrants, including citizens and non-citizens without regard to immigration status or authorization. This work has been enhanced by the addition of a number of members with extensive experience working with immigrant populations and in legal practice before the federal immigration courts and in a range of municipal and state court matters. The SCCMC has continued its work on immigrant access to justice issues and offers the following recommendations to assure that appropriate services for this population of court users remains a focus point.

As the SCCMC observed in the conclusion of its 2013-2015 discussion on immigration, “[t]he ... concern about collateral consequences is but one of a number of relevant issues affecting non-citizen immigrants and their interaction with the Courts.” (2013-2015 Report of the Supreme Court Committee on Minority Concerns, p. 23). Specifically the 2013-2015 report raised four questions:

- *What internal expertise on immigration does the Judiciary have?*
- *What staff expertise in immigration is available through partner agencies or the Bar?*
- *Is there required training for judges on immigration, collateral consequences, and other related topics? If not, what informational resources are widely available to judges?*
- *Apart from the issue of collateral consequences, what might/do Superior Court judges need to know about the workings of the immigration system and the meaning of immigration status as these factors relate to state court matters before them, for example, when a parent needs to request the Court’s permission to take a child out of the country on an extended visit with family?*

Recommendation 2019:06

The SCCMC recommends that the Judiciary institute periodic practice-area related immigration educational sessions for judges.

The SCCMC recognizes that immigration law is complex and nuanced in its application to the circumstances of each individual case. Notwithstanding, the SCCMC continues to hold the view that judges and court staff should be educated about immigration law, immigrant experiences, and current immigration court practices and trends so as to better serve litigants. The SCCMC discussed a number of cases and scenarios across the practice areas that require or would require state court judges to have an understanding of immigration basics in order to make an informed ruling in the state court matter. For example:

Mother, father, and minor child are all residents of New Jersey. The mother has primary residential custody. The father, as parent of alternate residence, speaks with the child on a daily basis and enjoys parenting time every other weekend. A best interests custody evaluation concludes the father and child have a strong bond. The mother who is a “green card” holder/permanent resident of the United States, files a motion with the court for permission to relocate outside of New Jersey to her former country of residence.

The mother proposes that she and the child will return to the United States once every two years and the father would have the option of exercising parenting time abroad during the alternate year. At face value, this proposal may seem reasonable and, notwithstanding any other relevant factors, a court may be inclined to approve it.

However, under immigration law, as a permanent resident the mother must re-enter the United States within one year of any exist. If she were to relocate to her home country and not return within one year, she would lose her permanent residency and not be authorized to re-enter the United States with the child thereby depriving the father of parenting time.

This scenario highlights how federal immigration law can affect the outcome of a litigant’s rights, and underscores the necessity for state court judges to possess a working knowledge of this body of law. Accordingly, the SCCMC proposes that periodic immigration law education sessions be held for judges by practice area to share relevant updates in immigration policy and law so that judges are equipped with requisite knowledge of the functioning of the immigration law system. In addition, the SCCMC suggests that consideration be given to identifying as internal resources

Superior Court judges and staff with subject matter expertise in federal immigration law for internal consultation when committees and practice areas have questions or issues arise relating to immigration status and/or immigration law.

Recommendation 2019:07

The SCCMC recommends that the Judiciary explore development and promulgation of an immigration collateral consequences notification colloquy for children-in-court case proceedings when a parent/guardian is stipulating to or has been adjudicated of having committed abuse and/or neglect. The SCCMC also recommends that the Judiciary explore whether there are other Family Part matters, such as domestic violence cases, where a similar immigration collateral consequences notification colloquy would be appropriate and beneficial.

The SCCMC continues to understand that the issue of collateral consequences is highly nuanced.

The landscape of federal immigration law has changed dramatically over the last 90 years. While once there was only a narrow class of deportable offenses and judges wielded broad discretionary authority to prevent deportation, immigration reforms over time have expanded the class of deportable offenses and limited the authority of judges to alleviate the harsh consequences of deportation. The ‘drastic measure’ of deportation or removal ... is now virtually inevitable for a vast number of noncitizens convicted of crimes. Padilla v. Kentucky, 559 U.S. 356, (2010)

While the Judiciary has in place the requisite notifications regarding potential immigration collateral consequences as a result of findings of guilt, guilty pleas, and adjudications of delinquency in criminal, quasi-criminal, and juvenile matters, there is a yet to be explored component of collateral consequences: There can be immigration collateral consequences resulting from other Family Part proceedings insofar as these are determined by USCIS to relate to evaluation of a non-citizen’s “good moral character” in relation to immigration

proceedings.⁴ Consistent with the spirit of Padilla and Nunez-Valdez, the SCCMC recommends that the Judiciary explore the appropriateness of similar notices in children-in-court matters that involve findings or stipulations of abuse and neglect as well as in domestic violence matters decided by the Family Part.

Recommendation 2019:08

The SCCMC recommends, when there is an immigration nexus to a policy, procedure, or practice that is pending review for promulgation, that the AOC incorporate into its standard internal review processes a review by the SCCMC to ensure that the proposals are sound state court practice that inform positive outcomes for litigants from this vulnerable community.

In terms of the questions raised by the SCCMC in its 2013-2015 report, specifically *What internal expertise on immigration does the Judiciary have?* and *What staff expertise in immigration is available through partner agencies or the Bar?*, Recommendation 2019:08 speaks to the need the SCCMC identified at the time to ensure that policies and procedures developed and adopted by the Judiciary not create unintended negative consequences for state court litigants in regard to their immigration status.

Indeed, a number of immigration protocols that were in place have been altered recently through agency directives that may not be in the public domain. As the Judiciary at present does not have an internal immigration law resource group, the SCCMC, in light of the collective immigration law expertise within its membership, is poised to serve the Court by reviewing policy proposals that have an immigration nexus.

⁴ USCIS (United States Citizenship and Immigration Services), an agency of the U.S. Department of Homeland Security charged with administering the federal naturalization and immigration system, considers “good moral character” in a range of its determinations. For example, evaluations by USCIS as to a non-citizen’s “good moral character” may impact access to immigration benefits, admissions to citizenship, and determinations regarding removal.

Recommendation 2019:09

The SCCMC recommends that the AOC convene a task force that includes various state court division representatives from the Central Office and across the vicinages and representatives of various state and county correctional facilities and immigration detention officials to develop standard operating procedures to ensure that immigrants either in immigration detention or in state or county custody on an immigration detainer can appear or be produced for pending Superior Court and municipal court matters.

Expanding on an issue raised during the 2015-2017 term, the SCCMC this term addressed the challenges courts across the state have in producing individuals in immigration detention or in state or county custody on an immigration detainer produced for appearances in state court or municipal matters. The SCCMC reviewed the strategies judges in various counties, divisions, and locales use to attempt to resolve these challenges with varying degrees of success. Accordingly, the SCCMC holds the view that it would be beneficial for the Court through the Administrative Director to convene a short-term task force, with input from the federal courts, to discuss this issue and collaboratively across agencies develop a set of statewide protocols and agreed upon solutions and processes to be followed along with a listing of relevant key contacts.

E. Reentry Issues

If [the court is] sentencing [people], [the court] ought to require them [access to] the full measure of knowledge to rebuild their lives. The [c]ourt holds a commensurate responsibility for [the] well-being of persons returning to society. (Supreme Court Committee on Minority Concerns 2007-2009 Biennial Report)

As noted at the outset of the SCCMC’s initial discussion on reentry issues in its 2015-2017 report, “[the statement above] exemplifies the position taken by the Supreme Court Committee on Minority Concerns in the context of its re-entry related discussion ...” (p. 34) and continues to reflect the springboard from which the SCCMC’s related work continues. The SCCMC observed:

The issues, challenges, and obstacles facing returning citizens (re-entry clients) disproportionately impact people of color interfacing with the justice system. In addition, re-entry service professionals in various settings have stated that the bridge among post-confinement services is

broken and unless the Court steps in to lead the repair or to facilitate work to overcome the breaks that exists, these issues will persist at the expense of returning citizens and ultimately society as a whole. (Ibid)

Recently, the Court has responded with the creation of the Supreme Court Committee on Municipal Court Operations, Fines, and Fees (SCCMCOFF), whose task has been to address many of the structural impediments that hinder successful reentry. The SCCMC looks forward to the continuing municipal court reform work that will result from the recommendations of the SCCMCOFF. Still, there remain a number of cross-cutting issues within the purview of the Court that can be specifically addressed at the state court level. These are the focus of the following three recommendations.

Recommendation 2019:10

The SCCMC recommends that (a) the child support obligation flag on the Pre-Sentence Report (PSR) be highlighted and that sentencing judges be advised to reference any existing identified child support obligations on the record at sentencing and notice defendants verbally that child support obligations are not automatically suspended or modified upon sentencing to prison/jail and advise the defendant of the defendant's responsibility to file a motion to suspend or modify child support, and (b) the Pre-Sentence Report (PSR) thoroughly catalogue all outstanding Superior Court and Municipal Court matters so that sentencing judges can notify defendants on the record at the time of sentencing as to these pending matters and the Court can make the defendant aware of the need to resolve such matters prior to release from custody so as to avoid any related delays that would impact anticipated release.

As the SCCMC's 2015-2017 report noted, "Re-entry service providers across agencies and across the country note that child support arrearages, followed by outstanding municipal matters and suspended or revoked driving privileges, are among the biggest hurdles to a reentry client moving forward in their reentry journey" (p. 34). The following passage from the SCCMC's 2015-2017 report bears highlighting:

The accrual of child support arrearages during jail/prison time poses a serious challenge for many community members returning from incarceration who are attempting to reintegrate fully into society. Because of the current statutory bar on the retroactive modification of child support and child support arrears, unless an incarcerated parent knows to make an

application to terminate or suspend child support while that parent is incarcerated (commonly referred to as a *Halliwell* application), that parent upon re-entry may be facing substantial arrears and/or incarceration for the failure to pay. (Ibid)

In the 2015-2017 report the SCCMC suggested that there are benefits of litigant education as a part of the services Probation provides to probationers. While there is ongoing value in such efforts, the SCCMC believes it is necessary for the Court to take further action to alert defendants to the functional logistics regarding their existing child support obligation, e.g., the actions required to modify or suspend child support obligations while in custody. The SCCMC recognizes that courts must remain neutral and cognizant that there are interests of the obligor and the obligee as well as the child(ren) involved in each case. However, the SCCMC believes that proactive notification by the Court pointing out the obligation and the need for an obligor who may not be able to meet payment obligations to file a request for modification prospectively rather than retroactively in fact fairly and justly balances the interests of all parties.

In a similar fashion, the ability of Probation Services to catalogue in the Pre-Sentence Report (PSR) all of the identifiable existing open matters involving a defendant pending sentence can help prevent the issuance of failure to appear notices (FTAs) emanating from other counties while a defendant is in custody. When the Court provides these notices from the bench and documents that notice has been given, defendants can address FTAs, warrants and detainers in an orderly fashion and prior to their release.

Recommendation 2019:11

The SCCMC recommends that the Court explore the issue of how best to address and resolve pending out-of-county municipal detainers, particularly for pre-CJR defendants, and develop a set of standard protocols for addressing these in a timely and efficient manner that considers and balances the justice interests of the Court and the parties.

The challenges posed by defendants' inability, particularly those in custody, to resolve out-of-county detainers has been a standing SCCMC agenda issue for at least two decades. Since the realization of CJR, it has come to the attention of the SCCMC through the Conference of Vicinage Advisory Committee on Minority Concerns Chairs that resolution of out-of-county municipal detainers, and in some cases in-county municipal detainers, remains a hurdle particularly for pre-CJR defendants. The challenges are partly structural insofar as the question of a Superior Court judge's jurisdiction to resolve municipal court detainer issues versus the municipal court or designated CJP judge. The issue has partly been time-contingent in terms of whether a defendant's matter is pre-CJR or CJR-eligible. The issue is also partly informational as there seems to be different opinions among judges as to what mechanisms are available in Superior Court for addressing these matters so that the detainers are lifted to enable a defendant to promptly resolve a municipal matter.

The SCCMC understands that there are numerous administrative, logistical, and relational aspects involved in potentially resolving these challenges. The SCCMC acknowledges that, in light of all the factors to be considered, it is best to recommend that the Court seek input from a collective of judges and staff to address this issue.

Recommendation 2019:12

The SCCMC recommends that Probation Services explore potential private foundation grant funding for the purposes of developing a pilot reentry support project for adult probationers with the intention of eventually developing a statewide model that includes a Reentry Navigator at the AOC and in each vicinage.

In the view of the SCCMC, Probation Services, both regular adult supervision and the Intensive Supervision Program (ISP), stands to play a very significant part in the Court's role in reentry preparation and support programming and services. For these reasons, the SCCMC

applauds the structural revisions that have been made, namely, that Probation Services now reports directly to the Administrative Director.

The goals and methods of probation supervision as a criminal sentence are much different from a sentence of incarceration. Yet probationers, in the context of the punitive aspects of a court-imposed sentence, experience certain restrictions of freedom and temporary losses of certain rights such as the right to vote. Probation as a practice reflects a process, not a transaction. While probationers certainly have tasks they must accomplish like securing appropriate housing and maintaining employment, the practice of supervision provides for continuous redirection of the person towards a better future.

For these reasons, the SCCMC recommends development of a pilot *Reentry Navigator* program through Probation Services to assist probationers in transitioning from daily life under supervision to an optimally successful post-supervision life. A reentry navigator serves as the designated point of contact to assist probationers in continuing successfully on their reentry journey. Over the course of several months, a reentry navigator serves as the bridge for the probationer between probation supervision and reentry support programs and services in the community. The reentry navigator would be a staff person who both helps shape the reentry development initiatives during a probationer's supervision and who assists in ensuring connections to reentry support in the local community to continue the successes realized during supervision. The SCCMC believes that as with CJR some supplemental funding will be required in order to develop a successful pilot that would be replicable and have the potential for statewide implementation in each vicinage. The SCCMC encourages the Judiciary to explore private and public grant funding to initiate and help implement a statewide Reentry Navigator program.

II. RULES-RELATED RECOMMENDATIONS

A. Implementation of September 2017 changes to R. 4:72-1: Procedural Recommendations for Statewide Promulgation

In December 2017 the Supreme Court Committee on Minority Concerns (SCCMC) submitted its comments to the Court relating to the proposed changes to R. 4:72-1 and recommended “consideration be given to establishing a statewide policy in these matters regarding waiver of the publication requirement, sealing of the records, and the standardized use of initials to protect a child’s privacy.” The SCCMC noted it had “members and staff who possess the relevant subject matter expertise [and] its willingness to assist the Court in drafting a policy for its review and consideration.” The following reflects the SCCMC’s work in this regard.

As the Court is aware, the changes to R. 4:72-1(b) that reflect the spirit of the SCCMC’s comments regarding the proposed changes took effect on September 1, 2018. Since the changes to the Rule became effective, the SCCMC has learned that there continues to be a variation in practice across the vicinages and variations in administering these filings continues. Accordingly, the following proposed procedures have been developed under the leadership of the SCCMC Subcommittee on Juvenile Justice and the Family. The Subcommittee is chaired by Judge Maritza Berdote Byrne who had been serving as the designee of the Conference of Family Part Presiding Judges, includes among its members Judge Paula T. Dow, Co-Dean Kimberly Mutcherson, and attorney Robyn B. Gigl, and is co-staffed by Minority Concerns Program Coordinator Lisa Burke and Family Practice Liaison Jacqueline Draper. The proposed procedures are well-informed by the collective expertise of the judges, committee members, and staff subject matter experts who worked on developing them. The Subcommittee in particular worked rigorously to evaluate all aspects of the issues to develop realistic hypotheticals to “test” the applicability of the recommended procedures. The SCCMC is confident these proposals represent valuable best

practices that in the context of procedural fairness and ensuring access to justice preserve the general privacy interests of youth, who for a myriad of reasons now have their requests for name changes considered by the Family Part. Moreover, these proposals protect the particular privacy interests of trans-identified, gender non-confirming, and non-binary youth⁵ that the SCCMC highlighted in its December 2017 commentary letter.⁶

Recommendation 2019:13

The SCCMC recommends that in the matter of name changes of minors heard in the Family Part, not related to another Family Part matter such as a divorce or adoption within the preceding three years, the Court adopt the following as standard statewide practices in the interest of procedural fairness and access to justice:

- 1) use of initials and sealing of all unredacted records;
- 2) waiving of the publication requirements (including a temporary relaxation of the referenced rules followed by the corresponding amendments to become effective September 1, 2019);
- 3) the option of summary judgments on the papers where no best interest hearing is required; and
- 4) adoption of sample colloquies for the trial court's use both in summary proceedings on the record and, when applicable, required best interests hearings that will ensure that in matters involving trans-identified, gender non-confirming, and non-binary children appropriate language is used to create a record referencing the name assigned at birth experience without unnecessarily directly subjecting the child(ren) to compelled first-person self-identification with the names set forth on their birth certificates.

⁵ *Trans-identified* and *transgender* refer to people whose gender identity (internal sense of self) and/or gender expression does not match the socially expected gender roles corresponding to the person's sex assigned or assumed at birth. *Gender non-conforming* refers to people whose gender expression does not recognizably conform to sex-based gender roles. *Non-binary* refers to people whose gender identity does not match the binary model of man/woman or male/female.

⁶ Subsequent to the submission of this biennial report, leadership and staff of the SCCMC will address these recommendations in detail with the Conference of Family Part Presiding Judges and the Family Practice Committee so that these two critical policy committees are well-positioned to contribute their perspectives to the Court on these proposals. In addition, Minority Concerns Program Coordinator Lisa Burke, also a SOGI/LGBTQ subject matter resource navigator within the Central Office, will serve as a resource for any additional background information that may be helpful to the Court in its review of this recommendation. If the recommendation is approved, she will assist in the collaborative preparation of the draft of the corresponding promulgation memo with Family Practice in light of the enclosed particulars.

B. OVERVIEW

Parents enjoy the freedom to name their child(ren). Every day hundreds of children are born in the State of New Jersey, and every day these children are given names by their parent(s) or guardians without any need for court intervention. The matter of naming a child is profoundly personal. Parents/guardians⁷ filing name change applications for children find themselves and their child(ren) in a situation where they believe the privacy of the child(ren) is in the best interest of the child and far outweighs any public interest in access to the documents. If parents consent as to any other aspect of child-rearing, the court does not insert itself, but rather respects parental autonomy. Even in a custody matter, if the parties enter a consent order or settlement agreement with respect to custody, parenting time, religious upbringing, extracurricular activities, or any other aspect of their children's lives, the court does not make an evaluation as to the appropriateness of the relief agreed to, but rather respects the parents' independent decision-making and enters a judgment. Simply put, the general public has no interest in the decision on a child's name.

However, all judges, whether they are sitting in the Family Part or the Law Division, have judicial discretion and the obligation to exercise *parens patrie* authority to protect a child. The following proposed procedures emphasize that the parent's right to name and the child's privacy rights are best interest considerations.⁸

⁷ All references herein to parents/guardians apply equally to a single parent or a sole guardian.

⁸ In an August 20, 2018 "Assignment Judge Memo" the Administrative Director summarized a number of significant rules changes that would become effective in September 1, 2018 and where applicable offered clarifications as to related procedures. With regard to the implementation of the changes to R. 4:72-1 the Administrative Director notes, in pertinent part, "... Additionally, the rule provides that absent extraordinary circumstances, where the parents/guardians and the minor consent to the name change, the court will conduct a summary hearing for the limited purpose of creating a record and confirming the information in the complaint. A "best interests" analysis is only necessary in a dispute between parents or if a minor objects ..."

C. LEGAL BASES FOR PROPOSED PROCEDURES

At present, attorneys representing (a) parent(s)/guardian(s) petitioning for a name change for a minor often file individual motions for the use of initials, the sealing of records, and the waiver of publication requirements. In many of these cases, the trial court grants these motions; however, the underlying legal rationale for the motions may vary in application and result, and the promulgation of a statewide practice is necessary. Accordingly, in the interest of ensuring procedural fairness through consistent statewide practice and to preserve the privacy interests of minors, the SCCMC recommends the Court adopt uniform practices as presented herein and, as applicable, makes the corresponding adjustments to the relevant sections of R. 4:72.

1. Use of Initials and Sealing of Records

Procedural Analysis

R. 5:3-2 provides:

(a) Hearings on Welfare or Status of a Child. Except as otherwise provided by rule or statute requiring full or partial in camera proceedings, the court, in its discretion, may on its own or party's motion direct that any proceeding or severable part thereof involving the welfare or status of a child be conducted in private. In the child's best interests, the court may further order that a child not be present at a hearing or trial unless the testimony, which may be taken privately in chambers or under such protective orders as the court may provide, is necessary for the determination of the matter. In matters brought by the Division of Child Protection and Permanency, the court shall accommodate the rights of the child as provided by N.J.S.A. 30:4C-61.2, prior to entering a permanency order. A verbatim record shall, however, be made of all in camera proceedings, including in-chamber testimony by or interrogation of a child.

(b) Sealing of Records. The court, upon demonstration of good cause and notice to all interested parties, shall have the authority to order that a Family Part file, or any portion thereof, be sealed. Ibid

Additionally, R. 1:38-11, which pertains to the sealing of court records, provides:

(a) Information in a court record may be sealed by court order for good cause as defined in this section. The moving party shall bear the burden of proving by a preponderance of the evidence that good cause exists.

(b) Good cause to seal a record shall exist when:

(1) Disclosure will likely cause a clearly defined and serious injury to any person or entity; and

(2) The person's or entity's interest in privacy substantially outweighs the presumption that all court and administrative records are open for public inspection pursuant to R. 1:38.

(c) The provisions of this rule do not apply to actions required to be sealed pursuant to the New Jersey False Claims Act (N.J.S.A. 2A:32C-5(c) and 2A:32C-5(f)).

(d) Documents or other materials not exempt from public access under R. 1:38 may not be filed under seal absent a prior court order mandating the sealing of such documents, and should not be submitted to the court with the motion, which may be filed on short notice, requesting an order to seal.

The New Jersey Courts have recognized that the aforementioned rules may be utilized to protect the best interest of a child and where there is publicity concerning legal proceedings that involve solely the private issues of a minor the court may utilize R. 5:3-2 to protect the best interest of the child. See In the Matter of Baby M, 225 N.J. Super. 267 (Ch. Div. 1988). With respect to the name changes for minors, the only parties who have any interest in the name utilized by the minor child are the parents and the child. Certainly, the decision on what a child's name is does not generally impact the general public's right to know.

Therefore, the disclosure of a name change application in such circumstances would be not only an invasion of the child's privacy but also potentially subject the child to harassment, intimidation, and bullying. As such, it is respectfully submitted that the Court should allow these

matters as a principle of standard practice to proceed utilizing only the initials of the parties and the child and that all pleadings that utilize the full name of the parties be filed under seal.

2. Waiving of Publication Requirements (R. 4:72-3 and R. 4:72-4)

Procedural Analysis

A related recommendation is that the Court consider waiving the publication requirements for court-approved name changes for minors. There are significant privacy concerns for minors, and there is no tangible public interest served by requiring publication. Any remnant concerns regarding notice are addressed through filing procedures and court processes. Indeed, motions made for waiver of publication in these types of matters are often granted. Accordingly, in name changes requested for minors it is recommended that the publication requirement be eliminated and the relevant section of R. 4:72 be modified in the interest of procedural fairness through statewide standard practice. Making this rule change will also assist parents who may endeavor to seek name changes for their child(ren) but who may not have sufficient knowledge of the legal process nor awareness of the ability to file a motion for waiver of the publication requirement. Eliminating the publication requirement will also eliminate the attendant cost of publication for litigants of limited economic means and further assure equal access and fairness. Furthermore, online publication, which is common today, would have the inadvertent effect of reaching an unintended audience and allow the information also to remain accessible online potentially for years.

R. 4:72-3 provides in pertinent part:

The Court by order shall fix a date for hearing not less than 30 days after the date of the order. Notice of application shall then be published in a newspaper of general circulation in the county of plaintiff's residence once at least two weeks preceding the date of the hearing.

R. 4:72-4 provides in pertinent part:

Within twenty days after entry of judgment, from which plaintiff's social security number shall be redacted, a copy thereof shall be published in a newspaper of general circulation in the county of plaintiff's residence and within 45 days after entry of judgment, the unredacted judgment and affidavit of publication of the judgment shall be filed with the Deputy Clerk of the Superior Court in the county of venue

Pursuant to R. 1:1-2, "any rule may be relaxed or dispensed with by the Court in which the action is pending if adherence to it would result in an injustice."

The Appellate Division has held that, in certain circumstances, the relaxation requirement of R. 1:1-2 may be applied in a proceeding for a name change. In making a determination as to whether or not to dispense with the publication requirement of R. 4:72-3 and 4:72-4, the Court in In Re E.F.G., 398 N.J. Super. 539 (App. Div. 2008), held that a trial court must identify and balance the interests that are at stake in relaxing the requirement of publication. Id. at 545. In that matter, the plaintiff, a victim of domestic violence, sought to maintain the privacy of her new name out of a well-founded concern for her personal safety as a result of prior domestic abuse. Id. at 545-547. The Court in E.F.G. noted the factors that would weigh against relaxation of publication would be whether or not a waiver "would somehow provide an avenue for an applicant to obtain a new name so as to avoid or obstruct criminal prosecution, avoid creditors or perpetrate a fraud." Id. at 546.

Although parents(s) or guardian(s) may seek to change their child's name for many reasons, the concerns for personal safety expressed by the Court in E.F.G. are particularly relevant in cases involving trans-identified or non-binary children. The SCCMC sees no benefit in a published legal ad revealing a child as trans-identified or non-binary. In effect, the publication requirement forces the parents(s) or guardian(s) of these children to "out" them as trans-identified or non-binary and potentially expose them to the bias and prejudice that still exists in society

against these individuals. The proposed recommendation preserves the privacy and safety interests of trans-identified and non-binary youth as well as impacted minors overall.⁹

3. Ruling on the Papers

Parental autonomy should also take precedence where both parents or guardians¹⁰ agree to change the name of their child(ren). Parents have the freedom to name their child without State or Court intervention. Obviously this generally occurs at birth, but there is no reason why parents or guardians who agree to change the name of their child should not have the same freedom.¹¹ Under R. 4:72(b) the parent(s) or guardian(s) must file a Verified Complaint stating the date of birth of the minor and

- (1) that the application is not made with the intent to avoid creditors or to obstruct criminal prosecution or for other fraudulent purposes;
- (2) whether the minor has ever been adjudicated delinquent or convicted of a crime and, if so, the nature of the crime and the disposition/sentence imposed; and
- (3) whether any criminal charges are pending against the minor.

Since these are the discrete issues the court must address and because this information is already contained within a Verified Complaint, requiring the parent(s) or guardian(s) and the minor to appear at a hearing to review the same information is an inefficient use of the Court's resources and creates additional expense for the parent(s) or guardian(s) in attorneys' fees and/or time taken

⁹ If in a particular matter a party with standing believes there to be cause for publication, nothing in these proposed procedures precludes that party from filing a motion requesting the Court to order publication. In such cases, the Court would need to evaluate both the merits of the arguments for requiring publication and weight it against the potential impact on the minor child(ren) in light of the principles set forth here.

¹⁰ As noted, all references herein to parents/guardians apply equally to a single parent or a sole guardian.

¹¹ In fact, the current Regulations guiding the Bureau of Vital Statistics (BVS) of the State of New Jersey allow parents to make changes to a child's first and/or middle name on the birth record up to the age of seven years old without any court order, administrative document, or any proof. The only thing required is the completion of the standard BVS REG-15 form with payment of the noted fees. <https://www.nj.gov/health/forms/reg-15.pdf>

off from work to appear in Court. For these reasons, the SCCMC recommends the Court adopt a protocol that encourages judges to decide uncontested names changes for minors on the papers.

4. Adoption of Sample Colloquies for Judges

It is recognized that for purposes of the record the caption of the matter must be read into the record by the judge. However, after that has taken place, in the case of trans-identified or non-binary children (but not necessarily limited to these cases), the court should proceed subsequently to refer to the child by the name the child wishes to be known by going forward.

Providing judges with sample colloquies, particularly reflecting best practices in cases involving trans-identified and non-binary children, will assist the bench greatly in comfortably and smoothly conducting these matters. The adoption of court-approved sample colloquies for the trial court's use both in summary proceedings on the record and, when applicable, required best interests hearings will ensure that in matters involving trans-identified, gender non-conforming, and non-binary children appropriate language is used to create a record referencing the name assigned at birth without unnecessarily compelling the child(ren) to first-person identification with the name on the original birth certificate. The SCCMC is prepared to work collaboratively to provide the Court with proposed sample colloquies for the Court's consideration as a resource for judges.

**III. REVIEW OF SELECT DEMOGRAPHIC DATA
ON DIVERSITY AND INCLUSION
ON THE BENCH, WITHIN THE WORKFORCE, AND AMONG LAW CLERKS**

Presentation and analyses of workforce diversity and inclusion data is a key feature in the SCCMC's biennial report to the Court. The selected sample views herein illustrate both the progress the Judiciary continues to make and the challenges it continues to face. This report presents selected demographic data in relation to four key areas: the Bench, the workforce, law clerks, and discrimination complaints. The following data offer the public access to the Judiciary's ongoing progress regarding diversity and inclusion within the Judiciary and legal profession as well as the Judiciary's efforts to ensure an equitable and inclusive workplace.

A. Diversity of the Bench

The New Jersey Judiciary maintains a well-earned national reputation for its excellence. The SCCMC recognizes that this excellence is enriched by the diversity of New Jersey's bench. This has been the result of the ongoing commitment of the State's Executive and Legislative branches to provide New Jersey residents with a bench that continues this longstanding tradition of excellence. The following data snapshots are reflective of New Jersey's ever-evolving diversity but also highlight where more work towards diversifying the bench is required.

**Table 1. New Jersey Judiciary: Justices and Judges by Court and Race/Ethnicity,
January 2019**

	Total	Total Minorities		White		African American/ Black		Hispanic/Latino(a)		Asian/Amer. Ind/ NHOPI*	
		#	%	#	%	#	%	#	%	#	%
Supreme Court											
Male	5	1	14.3%	4	57.1%	0	0.0%	1	14.3%	0	0.0%
Female	2	0	0.0%	2	28.6%	0	0.0%	0	0.0%	0	0.0%
Total Supreme Court	7	1	14.3%	6	85.7%	0	0.0%	1	14.3%	0	0.0%
Appellate Division											
Male	20	3	8.8%	17	50.0%	2	5.9%	1	2.9%	0	0.0%
Female	14	2	5.9%	12	35.3%	1	2.9%	1	2.9%	0	0.0%
Total Appellate Division	34	5	14.7%	29	85.3%	3	8.8%	2	5.9%	0	0.0%
Superior Court, Trial Division (excluding Appellate)											
Male	253	28	7.1%	225	57.0%	16	4.1%	9	2.3%	3	0.8%
Female	142	39	9.9%	103	26.1%	19	4.8%	18	4.6%	2	0.5%
Total Superior Court, Trial Division	395	67	17.0%	328	83.0%	35	8.9%	27	6.8%	5	1.3%
Tax Court											
Male	6	0	0.0%	6	54.5%	0	0.0%	0	0.0%	0	0.0%
Female	5	1	9.1%	4	36.4%	0	0.0%	0	0.0%	1	9.1%
Total Tax Court**	11	1	9.1%	10	90.9%	0	0.0%	0	0.0%	1	9.1%
Total All Judges											
Male	284	32	7.2%	252	56.4%	18	4.0%	11	2.5%	3	0.7%
Female	163	42	9.4%	121	27.1%	20	4.5%	19	4.3%	3	0.7%
Total All Judges	447	74	16.6%	373	83.4%	38	8.5%	30	6.7%	6	1.3%

* NHOPI = Native Hawaiian/Other Pacific Islander

** The Tax Court total includes one white male judge who is splitting duty between the Tax Court and the Cumberland County Civil Division, one white female judge who is splitting duty between the Tax Court and the Bergen County General Equity, and one white female judge who is splitting duty between the Tax Court and the Burlington County General Equity and Family Divisions. These three judges are not included under the Superior Court section of this table.

(Data Source: Administrative Office of the Courts, EEO/AA Unit)

In terms of the overall diversity of the bench, there is as per the data presented in *Table 1*.

New Jersey Judiciary: Justices and Judges by Court and Race/Ethnicity, January 2019:

- one Hispanic/Latino associate justice on the Supreme Court;
- one Asian/Amer. Ind./NHOPI judge in the Tax Court;
- three African American/Black judges and two Hispanic/Latino(a) judges in the Superior Court-Appellate Division; and

- thirty-five African American/Black judges, twenty-seven Hispanic/Latino(a) judges, and five Asian/Amer. Ind./NHOPI judges in the Superior Court-Trial Division.

B. Demographic Profile of the Superior Court-Trial Division

Table 2. New Jersey Judiciary: Superior Court-Trial Division Judges by County, Race/Ethnicity, and Gender, January 2019

County	Total	Minorities		African American/Black		Hispanic/Latino(a)		Asian/Amer. Ind./NHOPI*		Female		Male	
		#	%	#	%	#	%	#	%	#	%	#	%
Atlantic	21	3	14.3%	2	9.5%	1	4.8%	0	0.0%	7	33.3%	14	66.7%
Bergen**	33	5	15.2%	3	9.1%	2	6.1%	0	0.0%	13	39.4%	20	60.6%
Burlington**	20	3	15.0%	3	15.0%	0	0.0%	0	0.0%	6	30.0%	14	70.0%
Camden	26	6	23.1%	3	11.5%	3	11.5%	0	0.0%	10	38.5%	16	61.5%
Cape May	5	0	0.0%	0	0.0%	0	0.0%	0	0.0%	2	40.0%	3	60.0%
Cumberland**	10	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	10.0%	9	90.0%
Essex	46	11	23.9%	8	17.4%	2	4.3%	1	2.2%	19	41.3%	27	58.7%
Gloucester	12	1	8.3%	1	8.3%	0	0.0%	0	0.0%	3	25.0%	9	75.0%
Hudson	30	8	26.7%	2	6.7%	6	20.0%	0	0.0%	14	46.7%	16	53.3%
Hunterdon	4	0	0.0%	0	0.0%	0	0.0%	0	0.0%	2	50.0%	2	50.0%
Mercer	21	4	19.0%	4	19.0%	0	0.0%	0	0.0%	5	23.8%	16	76.2%
Middlesex	35	9	25.7%	3	8.6%	5	14.3%	1	2.9%	11	31.4%	24	68.6%
Monmouth	25	3	12.0%	1	4.0%	1	4.0%	1	4.0%	12	48.0%	13	52.0%
Morris	17	2	11.8%	1	5.9%	1	5.9%	0	0.0%	4	23.5%	13	76.5%
Ocean	22	2	9.1%	2	9.1%	0	0.0%	0	0.0%	9	40.9%	13	59.1%
Passaic	23	5	21.7%	1	4.3%	3	13.0%	1	4.3%	8	34.8%	15	65.2%
Salem	3	1	33.3%	0	0.0%	1	33.3%	0	0.0%	3	100.0%	0	0.0%
Somerset	12	0	0.0%	0	0.0%	0	0.0%	0	0.0%	4	33.3%	8	66.7%
Sussex	6	0	0.0%	0	0.0%	0	0.0%	0	0.0%	1	16.7%	5	83.3%
Union	24	3	12.5%	1	4.2%	2	8.3%	0	0.0%	9	37.5%	15	62.5%
Warren	3	1	33.3%	0	0.0%	0	0.0%	1	33.3%	1	33.3%	2	66.7%
Total	398	67	16.8%	35	8.8%	27	6.8%	5	1.3%	144	36.2%	254	63.8%

*NHOPI = Native Hawaiian/Other Pacific Islander

**This table includes the three judges who are splitting duties between Tax Court and Superior Court: one white male judge who is splitting duty between the Tax Court and the Cumberland County Civil Division, one white female judge who is splitting duty between the Tax Court and the Bergen County General Equity, and one white female judge who is splitting duty between the Tax Court and the Burlington County General Equity and Family Divisions.

(Data Source: Administrative Office of the Courts, EEO/AA Unit & Quantitative Research Unit)

Table 2. New Jersey Judiciary: Superior Court-Trial Division Judges by County, Race/Ethnicity, and Gender shows that minority judges account for 16.8% of the trial court bench as of January 2019. Women comprise 36.2% of the total compliment of judges on the trial court bench.

The larger urban centers such as Camden, Essex, Hudson, Middlesex, and Passaic have the highest number and percentages of minority judges. Five counties have no minorities on the bench, and there are no vicinages without at least one female judge, representing a decrease in the number of counties and vicinages with no female judges. Furthermore, every county has at least one female jurist with Essex Vicinage having the highest number (19) followed by Bergen (13).

C. Demographic Profile of Judges in Administrative Leadership

1. Appellate Division

Appellate Division Judge Glenn A. Grant continues to serve as the first minority ever appointed to the role of Administrative Director of the Courts. In addition, there are two minority judges serving as presiding judges, both of whom are Hispanic/Latino(a): Judge Carmen H. Alvarez and Judge Jose L. Fuentes.

2. Tax Court

There is no minority presiding judge in the Tax Court, and there has been none to date.

3. Assignment Judges

Minority judges serve as three of the fifteen assignment judges representing 20% of assignment judges statewide. These judges administer Atlantic/Cape May, Middlesex, and Monmouth Vicinages. Of these three assignment judges, one is an African American/Black female and two are Hispanic/Latino males.

4. Presiding Judges-Trial Division

Table 3. Roster of Presiding Judges Superior Court-Trial Division, January 2019

Trial Court Division	White		Total Minority Presiding Judges By Division		Black/African American		Hispanic/Latino(a)		Asian/American Indian/NHOPI		Total Presiding Judges by Division
	#	%	#	%	#	%	#	%	#	%	
Civil	15	100.0	0	0.0	0	0.0	0	0.0	0	0.0	15
General Equity	14	93.3	1	6.7	1	6.7	0	0.0	0	0.0	15
Criminal	11	73.3	4	26.7	2	13.3	1	6.7	1	6.7	15
Family	13	86.7	2	13.3	1	6.7	1	6.7	0	0.0	15
TOTALS	53	88.3	7	11.7	4	6.7	2	3.3	1	1.7	60

Table 3. Roster of Presiding Judges of the Superior Court-Trial Division shows that as of January 2019 there are currently seven judges of color serving as presiding judges representing 11.7% of the total complement of presiding judges (n=60).

- There are four judges of color serving as presiding judges in the Criminal Division (26.7%).¹²
- There are two judges of color serving as presiding judges in the Family Part (13.3%).¹³
- There is one judge of color serving as presiding judges in the General Equity Division (6.7%).¹⁴
- There are no judges of color serving as presiding judges in the Civil Division.

The SCCMC notes that this is the largest contingent (11.7%) of racial/ethnic minorities serving as presiding judges. Advancements in representation such as these reflect the Chief Justice’s recognition of the value of diversity in experience and perspective in the daily work of administering the New Jersey Courts. The SCCMC encourages ongoing efforts to ensure diversity

¹² Judges David F Bauman, Monmouth; Terrence R. Cook, Burlington; Wendel E. Daniels, Ocean; and Mitzy Galis-Menendez, Hudson.

¹³ Judges Charles W. Dortch, Jr., Camden; and Nesle A. Rodriguez, Hudson.

¹⁴ Judges Paula T. Dow, Burlington; Judge Maritza Berdote Byrne, Morris/Sussex, will also become a Presiding Judge in the General Equity Division effective 3/10/19.

and inclusion in the administration of all trial court divisions and to provide opportunities for judges interested in these opportunities to avail themselves of professional development that would make them ready for consideration when these opportunities for service present themselves.

D. Workforce Diversity, Inclusion, and Representativeness

**Table 4. New Jersey Judiciary: Employees by Race/Ethnicity and Job Band
AOC/Central Clerks’ Offices and Vicinages Combined (Excluding Judges, Law Clerks,
Bar Examiners, and Part-time Employees), January 11, 2018**

	Total	White		Total Minorities		Black/ African American		Hispanic/ Latino(a)		Asian/ Amer. Indian /NHOPI	
		#	%	#	%	#	%	#	%	#	%
Court Executive	519	354	68.2	165	31.8	94	18.1	48	9.2	23	4.4
Professional Supervisory	814	503	61.8	311	38.2	174	21.4	108	13.3	29	3.6
Support Staff Supervisory	51	21	41.2	30	58.8	24	47.1	5	9.8	1	2.0
Legal (Attorneys)	80	64	80.0	16	20.0	9	11.3	3	3.8	4	5.0
Official Court Reporter	14	14	100.0	0	0.0	0	0.0	0	0.0	0	0.0
Court Interpreter	55	18	32.7	37	67.3	0	0.0	36	65.5	1	1.8
Information Technology	320	165	51.6	155	48.4	46	14.4	34	10.6	75	23.4
Administrative Professional	719	458	63.7	261	36.3	150	20.9	82	11.4	29	4.0
Case Processing	2,699	1,294	47.9	1,405	52.1	800	29.6	541	20.0	64	2.4
Judge’s Secretary	458	335	73.1	123	26.9	55	12.0	63	13.8	5	1.1
Support Staff	2,228	997	44.7	1,231	55.3	731	32.8	391	17.5	109	4.9
Total	7,957	4,223	53.1	3,734	46.9	2,083	26.2	1,311	16.5	340	4.3

Data Source: Administrative Office of the Courts, EEO/AA Unit

A review of *Table 4. New Jersey Judiciary: Employees by Race/Ethnicity and Job Band, AOC/Central Clerks’ Offices and Vicinages Combined (Excluding Judges, Law Clerks, Bar Examiners, and Part-time Employees), January 11, 2018* shows that there are nearly 8,000 Judiciary employees. The majority of the employees perform tasks in case processing and support staff job bands.

The Case Processing and Support Staff job bands combined include 4,927 employees and represent 61.9% of the workforce. The demographic profile of these two job bands combined, which includes 2,636 racial and ethnic minorities (53.5% of the two job bands combined), is 31.1% Black/African American (1,531), 18.9% Hispanic/Latinos (932), and 3.5% Asian/American Indian/NHOPI employees (173).

In contrast, the senior most job bands, i.e., Court Executive and Professional Supervisory, combined include 1,333 employees (managers and supervisors) and represent 16.8% of the workforce and 96.3% of the managers/supervisors (the remaining are support staff supervisors). The demographic profile of these two job bands combined, which includes 476 racial and ethnic minorities (35.7% of the two job bands combined), is 20.1% Black/African American (268), 11.7% Hispanic/Latinos (156), and 3.9% Asian/American Indian/NHOPI employees (52).

These contrasts are notable and the SCCMC will continue analysis of these data to develop a means of increasing diversity within the Judiciary across job bands.

**Table 5. New Jersey Judiciary: Salary Comparisons by Race/Ethnicity of Employees
AOC and Vicinages Combined, January 11, 2018**

AOC	Total	White		Total Minorities		Black/African American		Hispanic/Latino(a)		Asian/Amer. Indian/NHOPI	
		#	%	#	%	#	%	#	%	#	%
Over \$100,000	957	666	69.6	291	30.4	172	18.0	71	7.4	48	5.0
\$90,000-\$99,999	889	532	59.8	357	40.2	230	25.9	106	11.9	21	2.4
\$80,000-\$89,999	638	351	55.0	287	45.0	168	26.3	81	12.7	38	6.0
\$70,000-\$79,999	837	422	50.4	415	49.6	248	29.6	132	15.8	35	4.2
\$60,000-\$69,999	1,266	689	54.4	577	45.6	300	23.7	233	18.4	44	3.5
\$50,000-\$59,999	1,412	711	50.4	701	49.6	405	28.7	220	15.6	76	5.4
\$40,000-\$49,999	1,734	958	55.2	776	44.8	379	21.9	311	17.9	86	5.0
\$30,000-\$39,999	411	169	41.1	242	58.9	106	25.8	113	27.5	23	5.6
\$20,000-\$29,999	346	129	37.3	217	62.7	114	32.9	88	25.4	15	4.3
Total	8,490	4,627	54.5	3,863	45.5	2,122	25.0	1,355	16.0	386	4.5

Data Source: Administrative Office of the Courts, EEO/AA Unit

Table 5. New Jersey Judiciary: Salary Comparisons by Race/Ethnicity of Employees, AOC and Vicinages Combined, January 11, 2018 can be viewed from a number of different vantage points. In past terms, the SCCMC has considered the salary distribution in three tiers; however, this term the most striking view is the observation that 62.7% of employees in the \$20,000-\$29,999 annual salary range are racial and ethnic minorities whereas 69.6% of employees in the over \$100,000 range are White and 30.4% of the top salary earners are racial/ethnic minorities. The SCCMC believes exploring the reasons for this discrepancy is both beneficial and necessary.

**Table 6. New Jersey Judiciary: Court Executives by Race/Ethnicity, Gender, and Band Level, AOC/Central Clerks Office and Vicinages Combined
January 11, 2018**

		White		Total Minorities		Black/ African American		Hispanic/ Latino(a)		Asian/ Amer. Indian/ NHOPI		Total
		#	%	#	%	#	%	#	%	#	%	#
Court Exec 4	Females	2	25.0	1	12.5	0	0.0	1	12.5	0	0.0	3
	Males	4	50.0	1	12.5	1	12.5	0	0.0	0	0.0	5
	Total	6	75.0	2	25.0	1	12.5	1	12.5	0	0.0	8
Court Exec. 3B	Females	13	41.9	5	16.1	1	3.2	2	6.5	2	6.5	18
	Males	12	38.7	1	3.2	0	0.0	1	3.2	0	0.0	13
	Total	25	80.6	6	19.4	1	3.2	3	9.7	2	6.5	31
Court Exec. 3A	Females	9	39.1	4	17.4	3	13.0	1	4.3	0	0.0	13
	Males	8	34.8	2	8.7	2	8.7	0	0.0	0	0.0	10
	Total	17	73.9	6	26.1	5	21.7	1	4.3	0	0.0	23
Court Exec. 2B	Females	87	43.3	35	17.4	22	10.9	9	4.5	4	2.0	122
	Males	61	30.3	18	9.0	6	3.0	6	3.0	6	3.0	79
	Total	148	73.6	53	26.4	28	13.9	15	7.5	10	5.0	201
Court Exec. 2A	Females	18	40.9	10	22.7	6	13.6	3	6.8	1	2.3	28
	Males	12	27.3	4	9.1	4	9.1	0	0.0	0	0.0	16
	Total	30	68.2	14	31.8	10	22.7	3	6.8	1	2.3	44
Court Exec. 1B	Females	86	46.0	55	29.4	35	18.7	13	7.0	7	3.7	141
	Males	26	13.9	20	10.7	10	5.3	8	4.3	2	1.1	46
	Total	112	59.9	75	40.1	45	24.1	21	11.2	9	4.8	187
Court Exec. 1A	Females	11	44.0	8	32.0	4	16.0	4	16.0	0	0.0	19
	Males	5	20.0	1	4.0	0	0.0	0	0.0	1	4.0	6
	Total	16	64.0	9	36.0	4	16.0	4	16.0	1	4.0	25
All Court Executives	Females	226	43.5	118	22.7	71	13.7	33	6.4	14	2.7	344
	Males	128	24.7	47	9.1	23	4.4	15	2.9	9	1.7	175
TOTALS		354	68.2	165	31.8	94	18.1	48	9.2	23	4.4	519

Data Source: Administrative Office of the Courts, EEO/AA Unit

In examining *Table 6. New Jersey Judiciary: Court Executives by Race/Ethnicity, Gender, and Band Level, AOC/Central Clerks Office and Vicinages Combined, January 11, 2018*, the SCCMC highlights the following observations:

- The Court Executive 4 job band has a total of 8 employees. 75% (6) are White and 25% (2) are racial/ethnic minorities. Of these two, one is a Black male and one is a Latina female.
- The Court Executive 3B job band has a total 31 employees. 80.6% are White and the remaining 19.4% are racial/ethnic minorities.

- The Court Executive 2B job band has a total of 201 employees (26.4% are racial/ethnic minorities). This level is where the highest number of court executives are positioned, followed by the Court Executive 1B job band (187 total employees; 40.1% are racial/ethnic minorities).

E. LAW CLERKS

Table 7. New Jersey Judicial Law Clerks, Court Year 2017-2018, January 11, 2018

Court Year 2017-2018			
	#	%	Availability %¹⁵
Total Law Clerks	533	100.0%	
Total Minorities	128	24.0%	24.1%
Black/African American	39	7.3%	8.6%
Hispanic/Latino(a)	44	8.3%	9.7%
Asian/American Indian/ NHOPI	45	8.4%	5.9%
Total Female	279	52.3%	44.6%

Data Source: Administrative Office of the Courts, EEO/AA Unit

Note: Percentages are percent of total in each major category and may not always sum to 100 due to rounding.

NHOPI = Native Hawaiian/Other Pacific Islander

Table 7. New Jersey Judicial Law Clerks, Court Year 2017-2018, January 11, 2018 shows that minority law clerks overall and in each of the race/ethnicity categories, except Asian/American Indian/NHOPI, are represented in the 2017-2018 law clerk class at a rate lower than the estimated availability based on the law school graduation data provided by the New Jersey Commission on Higher Education.

¹⁵ Availability is based on the demographics of the graduating classes at the two New Jersey law schools (Rutgers Law School and Seton Hall University School of Law) for FY 2017. These data were provided by the New Jersey Commission on Higher Education.

**Table 8. New Jersey Judicial Law Clerks by Court Level for Court Term,
Court Term 2017-2018, January 11, 2018**

	Totals		White		Total Minorities		Black/ African American		Hispanic/ Latino(a)		Asian/ American Indian/ NHOPI	
	#	%	#	%	#	%	#	%	#	%	#	%
Supreme Court												
Females	8	38.1%	6	28.6%	2	9.5%	1	4.8%	0	0.0%	1	4.8%
Males	13	61.9%	12	57.1%	1	4.8%	0	0.0%	1	4.8%	0	0.0%
Total	21	100.0%	18	85.7%	3	14.3%	1	4.8%	1	4.8%	1	4.8%
Appellate Division												
Females	34	54.0%	27	42.9%	7	11.1%	1	1.6%	2	3.2%	4	6.3%
Males	29	46.0%	23	36.5%	6	9.5%	1	1.6%	1	1.6%	4	6.3%
Total	63	100.0%	50	79.4%	13	20.6%	2	3.2%	3	4.8%	8	12.7%
Superior Court - Trial Division												
Females	234	53.3%	157	35.8%	77	17.5%	25	5.7%	26	5.9%	26	5.9%
Males	205	46.7%	171	39.0%	34	7.75%	11	2.5%	13	3.0%	10	2.3%
Total	439	100.0%	328	74.7%	111	25.3%	36	8.2%	39	8.9%	36	8.2%
Tax Court												
Females	3	30.0%	3	30.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Males	7	70.0%	6	60.0%	1	10.0%	0	0.0%	1	10.0%	0	0.0%
Total	10	100.0%	9	90.0%	1	10.0%	0	0.0%	1	10.0%	0	0.0%
Grand Total – All Law Clerks												
Females	279	52.3%	193	36.2%	86	16.1%	27	5.1%	28	5.3%	31	5.8%
Males	254	47.7%	212	39.8%	42	7.9%	12	2.3%	16	3.0%	14	2.6%
Total	533	100.0%	405	76.0%	128	24.0%	39	7.3%	44	8.3%	45	8.4%

Note: Percentages are % of total in each major category. Percentages may not always add due to rounding.

Data Source: Administrative Office of the Courts, EEO/AA Unit

NHOPI – Native Hawaiian/Other Pacific Islander

Supreme Court: The representation of females clerking at the Supreme Court level of 38.1% is 6.5 percentage points less than the availability rate of 44.6%. Blacks, Hispanics/Latinos and Asians/American Indians/NHOPI are 4.8% each, which is below the availability for each of these groups. The total racial/ethnic minority representation is 14.3%, which is 9.8 percentage points below the 24.1% availability.

Appellate Division: The representation of females in the Appellate Division is 54.0% statewide and exceeds the availability rate of 44.6% by 9.4 percentage points. Blacks are represented at 3.2% and Hispanics/Latinos at 4.8%, which falls below the availability for these two groups.

Asians/American Indians/NHOPI represent at 12.7% and exceed the availability of 5.9% by 6.8 percentage points. Total racial/ethnic minority representation is 20.6%, which is 3.5 percentage points below the 24.1% availability.

Superior Court-Trial Division: Female law clerks in the Trial Division at 53.3% exceed the availability rate of 44.6% by 8.7 percentage points. Blacks at 8.2% and Hispanics/Latinos at 8.9% fall below the availability for these two groups. Asians/American Indians/NHOPI at 8.2% exceed the availability of 5.9% by 2.3 percentage points. Total racial/ethnic minority representation at 25.3% exceeds the 24.1% availability by 1.2 percentage points.

Tax Court: Female law clerks in the Tax Court represent 30.0% and fall below the availability rate of 44.6% by 14.6 percentage points. For the 2017-18 term, Blacks and Asians/American Indians/NHOPIs are not represented in Tax Court clerkships. Hispanics/Latinos are 10.0%, which exceeds the 9.7% availability by 0.3 percentage points. The total racial/ethnic minority representation is 10.0%, which is 14.1 percentage points below the 24.1% availability.

**Table 9. New Jersey Judiciary Law Clerks for Court Year 2017-2018
by Location, Race/Ethnicity, and Gender (January 11, 2018)**

LOCATION	Total Minorities		Black/African American		Hispanic/Latino(a)		Asian/Amer. Indian/NHOPI*		Female		Male		Total Law Clerks
	#	%	#	%	#	%	#	%	#	%	#	%	
AOC**	21	19.8	6	5.7	5	4.7	10	9.4	49	46.2	57	53.8	106
Atlantic	6	27.3	1	4.5	3	13.6	2	9.1	9	40.9	13	59.1	22
Bergen	13	37.1	3	8.6	5	14.3	5	14.3	16	45.7	19	54.3	35
Burlington	4	22.2	4	22.2	0	0.0	0	0.0	12	66.7	6	33.3	18
Camden	4	14.8	0	0.0	1	3.7	3	11.1	13	48.1	14	51.9	27
Cape May	1	20.0	1	20.0	0	0.0	0	0.0	4	80.0	1	20.0	5
Cumberland	3	33.3	1	11.1	1	11.1	1	11.1	7	77.8	2	22.2	9
Essex	15	27.8	8	14.8	2	3.7	5	9.3	30	55.6	24	44.4	54
Gloucester	4	28.6	1	7.1	2	14.3	1	7.1	7	50.0	7	50.0	14
Hudson	9	28.1	1	3.1	6	18.8	2	6.3	15	46.9	17	53.1	32
Hunterdon	0	0.0	0	0.0	0	0.0	0	0.0	2	50.0	2	50.0	4
Mercer	8	36.4	3	13.6	2	9.1	3	13.6	15	68.2	7	31.8	22
Middlesex	7	18.9	2	5.4	3	8.1	2	5.4	18	48.6	19	51.4	37
Monmouth	5	18.5	2	7.4	1	3.7	2	7.4	12	44.4	15	55.6	27
Morris	3	15.0	1	5.0	1	5.0	1	5.0	10	50.0	10	50.0	20
Ocean	6	27.3	0	0.0	4	18.2	2	9.1	14	63.6	8	36.4	22
Passaic	7	25.0	0	0.0	5	17.9	2	7.1	14	50.0	14	50.0	28
Salem	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	3	100.0	3
Somerset	2	14.3	2	14.3	0	0.0	0	0.0	7	50.0	7	50.0	14
Sussex	0	0.0	0	0.0	0	0.0	0	0.0	4	80.0	1	20.0	5
Union	8	32.0	2	8.0	3	12.0	3	12.0	19	76.0	6	24.0	25
Warren	2	50.0	1	25.0	0	0.0	1	25.0	2	50.0	2	50.0	4
Total	128	24.0	39	7.3	44	8.3	45	8.4	279	52.3	254	47.7	533

Data Source: Administrative Office of the Courts, EEO/AA Unit

Note: Percentages are % of total in each major category. Percentages may not always add due to rounding

*NHOPI = Native Hawaiian/Other Pacific Islander

**AOC Law Clerks includes law clerks for the Supreme Court, Appellate Division, Superior Court Foreclosure Mediation Program, and Tax Court. The total number of minorities reflects 3 in Supreme, 13 in Appellate, 4 in Superior Court Foreclosure Mediation, and 1 in Tax Court.

Law Clerks by Location (AOC and Vicinages): The representation of female law clerks exceeds the 44.6% availability in most locations. While Atlantic (40.9%) and Monmouth (44.4%) fall below 44.6% availability, Salem is the only county with a significant underutilization of female law clerks (0.0%).

The representation of total racial/ethnic minority law clerks exceeds the 24.1% availability in the following locations: Atlantic, Bergen, Cumberland, Essex, Gloucester, Hudson, Mercer, Ocean, Passaic, Union, and Warren. The representation falls short of the 24.1% availability in the following locations: AOC, Burlington, Camden, Cape May, Hunterdon, Middlesex, Monmouth, Morris, Salem, Somerset, and Sussex.

The number of law clerks increased from 519 for the 2016-2017 court term to 533 for the 2017-2018 court year. For this same period, the number of female, racial/ethnic minorities combined, Hispanic/Latino, and Asian/American Indian/NHOPIs law clerks increased while the number of Black/African American law clerks decreased.

F. DISCRIMINATION COMPLAINTS

1. Background Information

In 1992, the Supreme Court Task Force on Minority Concerns Final Report noted that the “Court system lacks sufficient complaint procedures to enable persons to overcome unfair treatment in the court.” (Finding #32 at p. 248) Thereafter, the SCCMC conveyed in each of its biennial reports to the Court the following recommendations focusing on discrimination complaint procedures that the Judiciary: (1) issue updated complaint procedures (in English and Spanish) and intake forms; (2) publicize the complaint procedures; (3) offer training to judges, managers and staff on the complaint procedures; and (4) develop a computerized information system to track complaints.

As noted in this Committee’s previous three reports, the Judiciary has addressed many, but not all, of the Committee’s recommendations by (1) issuing via Directive #5-04 the *EEO Complaint Procedures Manual* (hereafter referred to as the “Manual”) to be used in cases involving allegations of discrimination and/or sexual harassment in the Judiciary and to be utilized

by any Judiciary employee, applicant for employment, court user, volunteer, attorney, litigant, witness, vendor, contractor, or any other person who comes into contact with the court system who believes that a violation of the Judiciary's Policy Statement on Equal Employment Opportunity/Affirmative Action and Anti-Discrimination³⁸ (hereafter referred to as "the Policy Statement") has occurred; (2) developing an explanatory booklet for all employees entitled *Employee Guide to Reporting and Handling Complaints of Discrimination or Harassment in the Judiciary*; (3) completing statewide training of all EEO Officers, EEO Regional Investigators, managers and supervisors on the EEO Complaint Procedures as of September 30, 2004, and making the course mandatory for all subsequent managers and supervisors; (4) implementing a computerized complaint tracking system and mandated training for EEO/AA Officers on the system; and (5) widely publicizing the complaint procedures so that judiciary employees and the public will be knowledgeable about their rights, responsibilities, and the tools available to them to address discrimination complaints.

2. Complaint Procedures Update

As a reminder, in October 2008, the Judiciary announced a new outreach initiative aimed at informing the public of various avenues available for filing complaints about discriminatory or unfair treatment. As a result of this new initiative, each vicinage has signs posted and brochures available for distribution about how court users can report concerns about fair treatment including contact information for the statewide and vicinage EEO/AA Officers, Ombudsman, and the Advisory Committee on Judicial Conduct. As of 2010, the EEO/AA and Anti-Discrimination Policy Statement has been translated into Spanish and disseminated to all court locations

³⁸ The Judiciary's Policy Statement on Equal Employment Opportunity/Affirmative Action and Anti-Discrimination was most recently revised on January 23, 2018 to include breastfeeding, an additional protected activity under New Jersey's Law Against Discrimination.

(including the municipal courts). The "Concerned About Fair Treatment?" flyer has been translated into Spanish and is available online. In addition, the Judiciary has provided information about the complaint procedures to bar associations, agencies, and community groups whose members deal frequently with the Court.

In the SCCMC's most recent report it was noted that complaint forms could not be easily found by navigating the main page of the Judiciary website. A recommendation was made regarding how to make these resources more accessible to users. The SCCMC is pleased to report that in subsequent website revisions the Judiciary's commitment to fair treatment has been given increased prominence on the Judiciary's home page as "Concerns about Fair Treatment" is listed under the heading "Need Help With...?" When users click on the link they are taken to a page with important EEO/AA information, including links to the EEO Complaint Form and the EEO Complaint Procedures Manual.

3. Discrimination Complaints

The last formal report issued by the committee regarding complaints data was fiscal years 2012 and 2013. This report will analyze complaints data for fiscal years 2016 and 2017. Additionally, the SCCMC presents a ten year retrospective of Judiciary-wide complaints data, grouped by nature of complaint, for the 2008-2017 period.

a. Fiscal Year 2016: Summary

Table 10. New Jersey Judiciary: Discrimination Complaints Filed at the AOC/Central Clerks' Offices and Vicinages Combined July 1, 2015 to June 30, 2016 indicates that during this one year period 179 complaints were filed statewide.

Table 10. New Jersey Judiciary: Discrimination Complaints Filed at the AOC/Central Clerks' Offices and Vicinages Combined July 1, 2015 to June 30, 2016

Summary		
	Number	Complaint Rate
AOC/Central Clerks' Offices	9	0.62%
Vicinages Combined	170	2.43%
Total Complaints	179	2.12%
Breakdown of Complaints by Location		
	Number	Complaint Rate
AOC/Central Clerks' Offices	9	0.62%
Atlantic/Cape May	11	2.42%
Bergen	4	0.81%
Burlington	6	1.83%
Camden	9	1.60%
Gloucester/Cumberland/Salem	27	5.15%
Essex	23	2.69%
Hudson	21	3.93%
Mercer	2	0.58%
Middlesex	10	1.93%
Monmouth	18	4.35%
Morris/Sussex	10	2.79%
Ocean	2	0.49%
Passaic	9	2.07%
Somerset/Hunterdon/Warren	14	4.17%
Union	4	0.94%
Total Discrimination Complaints Filed	179	2.12%

Data Source: Administrative Office of the Courts, EEO/AA Unit

Following recommendations made in the 2007-2008 report, it is now the Committee's standard practice to examine the number of complaints relative to employment. As stated in the 2007-2009 report:

As a next step, the Committee recommends looking at the number of complaints filed in relation to the size of the respective workforce to gain a better understanding of the prevalence of complaints. It is quite possible that the vicinages showing the largest numbers of complaints may in fact have the lowest proportional complaint rate.

Therefore, in this report as in the 2013-2015 and 2015-2017 reports, the SCCMC presents *complaint rates* along with the raw number of complaints. The *complaint rate* is the number of complaints divided by total employment. For example, the complaint rate within the AOC is equal to the 9 complaints filed divided by AOC employment of 1454 for a complaint rate of 0.62%.

Historically “percent of complaints” was presented as well. However, as noted in the previous two reports, the “percent of complaints” figures may mislead the reader. Thus, in this report the SCCMC ceases utilizing the “percent of complaints” figure, and the discussion of the data focuses on complaint rate.

Examination of these data as presented in *Table 10*. reveals a higher complaint rate in the vicinages than in the AOC/Central Clerks’ Offices, as less than 0.7% of employees in the AOC/Central Clerks’ Offices filed complaints, while over 2.4 % of employees on average filed complaints at the vicinage level. The average complaint rate within the vicinages overall was more than three times that at the AOC. While the *average* complaint rate was higher at the vicinage level, there was considerable variation among vicinages.

The Gloucester/Cumberland/Salem Vicinage had the highest complaint rate, at 5.15%. The Atlantic/Cape May Vicinage, which had the highest complaint rate in the previous report (2.70%), is still experiencing an above-average complaint rate at 2.42%. Ocean Vicinage had the lowest complaint rate at 0.49%. System-wide, including the AOC, the average complaint rate was 2.12%. A statistical analysis of the variation in complaint rates reveals that, while several vicinages appeared to have relatively large complaint rates (Gloucester/Cumberland/Salem, Hudson,

Monmouth, and Somerset/Hunterdon/Warren are particularly noteworthy), only the Gloucester/Cumberland/Salem Vicinage complaint rate was so large as to be statistically significantly outside the norm.¹⁶

b. Fiscal Year 2017: Summary

Table 11. New Jersey Judiciary: Discrimination Complaints Filed at the AOC/Central Clerks’ Offices and Vicinages Combined July 1, 2016 to June 30, 2017 indicates that during this one year period 157 complaints were filed statewide.

Table 11. New Jersey Judiciary: Discrimination Complaints Filed at the AOC/Central Clerks’ Offices and Vicinages Combined July 1, 2016 to June 30, 2017

Summary		
	Number	Complaint Rate
AOC/Central Clerks’ Offices	16	1.10%
Vicinages Combined	141	2.02%
Total Complaints	157	1.86%
Breakdown of Complaints by Location		
	Number	Complaint Rate
AOC/Central Clerks’ Offices	16	1.10%
Atlantic/Cape May	11	2.34%
Bergen	3	0.60%
Burlington	4	1.20%
Camden	10	1.81%
Gloucester/Cumberland/Salem	27	5.13%
Essex	18	2.15%
Hudson	16	3.06%
Mercer	1	0.29%
Middlesex	8	1.57%
Monmouth	15	3.55%
Morris/Sussex	5	1.39%
Ocean	3	0.74%
Passaic	5	1.14%
Somerset/Hunterdon/Warren	7	2.08%
Union	8	1.91%
Total Discrimination Complaints Filed	157	1.86%

Data Source: Administrative Office of the Courts, EEO/AA Unit

¹⁶ The Gloucester/Cumberland/Salem vicinage was statistically significantly “overrepresented” in complaints at the 5% confidence level. This is the standard commonly used in courts for statistical evidence.

Again it is observed that the complaint rate is higher, on average, at the vicinage level (2.02%) than at the AOC (1.10%), and there remains significant variation across vicinages. Examining two consecutive fiscal years (FY) allows the reader to see the variability in complaint rates across time as well, and highlights the fact that with relatively small numbers it is easy for seemingly large deviations from the norm to occur. For example, as depicted in *Table 11*, the Gloucester/Cumberland/Salem Vicinage, which had a complaint rate that was statistically significantly above the norm in fiscal year 2016, continued to have a high complaint rate in fiscal 2017 (5.13%).¹⁷ Yet the FY 2017 data show year-to-year variation for other vicinages such as Somerset/Hunterdon/Warren, which though exceeding the mean complaint rate by more than a standard deviation in fiscal 2016 (4.17%), reverted to near-mean levels in FY 2017 (2.08%). Other vicinages with significantly above-average complaint rates in FY 2016, such as Hudson and Monmouth, remain well above the average complaint rate in FY 2017.

This pattern can be clearly observed in *Table 12. New Jersey Judiciary Discrimination Complained Files at the AOC/Central Clerks' Offices and Vicinages Combined, July 1, 2015 to June 30, 2017*, wherein the SCCMC presents data on complaints for FYs 2016 and 2017 combined, along with average annual complaint rates.

¹⁷ This complaint rate is again statistically significantly higher than the average based on a 5% significance level.

**Table 12. New Jersey Judiciary: Discrimination Complaints Filed
at the AOC/Central Clerks' Offices and Vicinages Combined
July 1, 2015 to June 30, 2017**

Summary			
	Number	Average per Year	Average Annual Complaint Rate
AOC/Central Clerks' Offices	25		
Vicinages Combined	311	155.5	2.23%
Total Complaints	336	168	1.99%
Breakdown of Complaints by Location			
	Number	Average per Year	Average Annual Complaint Rate
AOC/Central Clerks' Offices	25	12.5	0.86%
Atlantic/Cape May	22	11	2.38%
Bergen	7	3.5	0.71%
Burlington	10	5	1.52%
Camden	19	9.5	1.71%
Gloucester/Cumberland/Salem	54	27	5.14%
Essex	41	20.5	2.42%
Hudson	37	18.5	3.50%
Mercer	3	1.5	0.43%
Middlesex	18	9	1.75%
Monmouth	33	16.5	3.95%
Morris/Sussex	15	7.5	2.09%
Ocean	5	2.5	0.62%
Passaic	14	7	1.60%
Somerset/Hunterdon/ Warren	21	10.5	3.12%
Union	12	6	1.42%
Total Discrimination Complaints Filed	336	168	1.99%

Data Source: Administrative Office of the Courts, EEO/AA Unit

The SCCMC recommends that vicinages with complaint rates that are statistically significantly greater than the norm be tracked over time and, if such over-representation recurs, that a more detailed employment study be conducted in those vicinages. That said, the SCCMC does note that a relatively high complaint rate may indicate that the procedures for filing complaints are well publicized, and that employees know that complaints are welcomed. Conversely, a very low complaint rate could reflect poorly understood complaint procedures or a climate where employees are not encouraged to register complaints. Hence, vicinages with zero, or near-zero, complaint rates may deserve additional attention as well.

c. Complaints by Category: Fiscal Years 2016 and 2017

The single most common form of complaint filed over the July 1, 2015 to June 30, 2017 period was on the basis of race with gender-related complaints following closely behind. A total of 89 race-related complaints were filed during FY 2016 and 2017 combined, with 7 race-related complaints filed in the AOC and 82 race-related complaints filed within the vicinages. Given that complaints filed on the basis of race made up more than 25% of all EEO complaints filed over the period, the SCCMC has explored these complaints in more detail.

Table 13. New Jersey Judiciary: Race-Related Discrimination Complaints Filed at the AOC/Central Clerks' Offices and Vicinages Combined July 1, 2015 to June 30, 2017 details the race-related complaints filed during FY 2016 and 2017 combined by location.

**Table 13. New Jersey Judiciary:
Race-Related Discrimination Complaints Filed at the AOC/Central
Clerks' Offices and Vicinages Combined July 1, 2015 to June 30, 2017**

Summary of Race-Based Complaint Rates				
	2016	2017	Total Number	Average Annual Complaint Rate
AOC/Central Clerks' Offices	3	4	7	0.24%
Vicinages Combined	45	37	82	0.59%
Total Complaints	48	41	89	0.53%
Breakdown of Complaints by Location				
	2016	2017	Total Number	Average Annual Complaint Rate
AOC/Central Clerks' Offices	3	4	7	0.24%
Atlantic/Cape May	1	2	3	0.32%
Bergen	2	2	4	0.40%
Burlington	5	3	8	1.21%
Camden	3	4	7	0.63%
Gloucester/Cumberland/Salem	7	5	12	1.14%
Essex	3	6	9	0.53%
Hudson	7	3	10	0.95%
Mercer	1	0	1	0.14%
Middlesex	4	3	7	0.68%
Monmouth	3	3	6	0.72%
Morris/Sussex	1	1	2	0.28%
Ocean	0	0	0	0.00%
Passaic	3	1	4	0.46%
Somerset/Hunterdon/ Warren	1	0	1	0.15%
Union	4	4	8	0.95%
Total Discrimination Complaints Filed	48	41	89	0.35%

Data Source: Administrative Office of the Courts, EEO/AA Unit

For the most part, the same pattern the SCCMC observed when looking at all EEO complaints combined holds true for race-related complaints. Once again there is a higher average complaint rate within the vicinages than is found at the AOC. Though the combined average complaint rate is higher at the vicinage level, there is considerable variation within vicinages. Ocean Vicinage reported no complaints on the basis of race, while Mercer and Somerset/Hunterdon/Warren Vicinages reported just one complaint each on the basis of race. At

the opposite end of the spectrum, Gloucester/Cumberland/Salem Vicinage reported twelve race discrimination complaints.

A statistical analysis of the variation in complaint rates reveals that the race-related complaint rate within the Gloucester/Cumberland/Salem Vicinage is statistically significantly higher than the norm as is that in the Burlington Vicinage. The SCCMC does not currently have information at its disposal to further investigate these areas of concern further.

d. Complaints by Category: A Decade Retrospective

**Table 14. New Jersey Judiciary:
Complaints Filed by Nature of Complaint – Selected Categories,
AOC/Central Clerk’s Offices and Vicinages Combined
FY 2008 through FY 2017**

Fiscal Year	Age	Disability	Nationality/ National Origin	Race	Retaliation	Sex/Gender/ Sexual Harassment	All Other	Total
2008	5	20	17	37	15	32	11	137
2009	8	17	5	49	9	32	6	126
2010	4	14	6	51	10	35	3	123
2011	3	11	6	28	9	25	7	89
2012	5	12	13	30	2	27	8	97
2013	7	9	14	29	10	17	7	93
2014	6	6	12	37	0	17	4	82
2015	3	14	11	26	6	23	6	89
2016	13	23	19	48	19	35	22	179
2017	18	22	8	41	15	39	14	157
Totals	72	148	111	376	95	282	88	1172

Data Source: Administrative Office of the Courts, EEO/AA Unit

Race and gender-related complaints (encompassing gender and sexual harassment) were the two most prevalent types of complaints over the past decade followed by disability complaints.

Table 14. New Jersey Judiciary: Complaints Filed by Nature of Complaint-Selected Categories, AOC/Central Clerk’s Offices and Vicinages Combined, FY 2008 - FY 2017 provides greater detail on the nature of the discrimination complaints. An examination of the data reveals that

approximately one-third of all discrimination complaints filed over the 2008 to 2017 period were race-related (376). The next most common type of complaint was gender related (including sexual harassment), accounting for about 25% of all complaints (282). Disability complaints (148) accounted for over 12% of complaints over this period, and national origin complaints comprised just under 10% (111). Retaliation complaints (95) were also notable, making up approximately 8% of total complaints. Complaints related to age (72), religion (48), sexual orientation (22), marital status (6), veteran status (2), color (3), and pregnancy (1) were all recorded as well.

Complaints dipped during the 2011 to 2015 period, averaging 90 total complaints per year. However, complaints have increased sharply during FY 2016 and 2017, averaging 168 total complaints per year over these two years. This is concerning, but the SCCMC lacks sufficient information at this time to determine the cause for the sharp rise in the number of complaints. There has not been a correspondingly large increase in the size of the workforce, thus the SCCMC cannot conclude that complaint rates have increased significantly. It is possible that changes in reporting procedures, an environment more solicitous to complaints (such as may follow renewed training initiatives), or changing economic conditions could explain the increased number of complaints. However, the SCCMC cautions that this sharp uptick in complaints may require an evaluation of Judiciary employment processes and a systematic review of employment outcomes.

G. Conclusion to the Presentation of the Workforce Data

The SCCMC's presentation and analysis of the aforementioned data provides the public with access to the Judiciary's ongoing progress towards diversity and inclusion. The SCCMC believes the New Jersey Judiciary's national reputation and its role as leader of New Jersey's legal profession require the Judiciary to maintain the vanguard through ongoing proactive efforts to assure a fair, equitable, diverse and inclusive workplace to guarantee the delivery of justice.

2017-2019 Supreme Court Committee on Minority Concerns

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