

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

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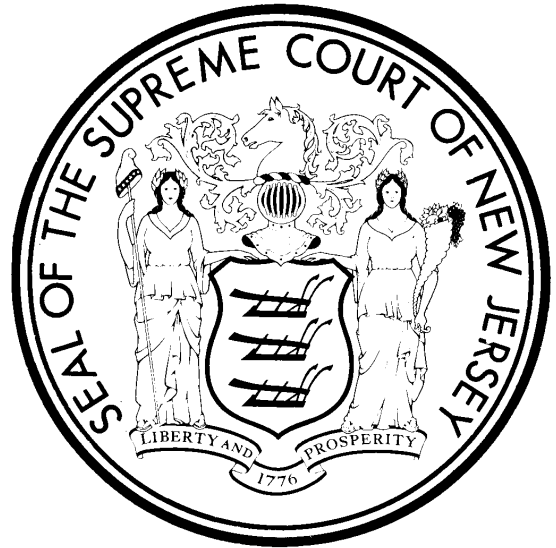
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## **2015-2017 REPORT**

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**2015-2017 REPORT  
OF THE  
SUPREME COURT COMMITTEE ON MINORITY CONCERNS  
January 30, 2017**

**Introduction and Executive Summary**

The Supreme Court Committee on Minority Concerns (hereafter the Committee on Minority Concerns or the SCCMC) is charged with advising the Supreme Court on matters affecting the Judiciary and how the Judiciary may best assure fairness, impartiality, equal access, and full participation of racial, ethnic and religious/cultural<sup>1</sup> minorities and economically disadvantaged justice-system stakeholder constituencies of this State in the judicial process. The Committee on Minority Concerns values the opportunity to offer his report and related recommendations.

*Our system of justice requires that all court users have equal access to services and equal treatment from judicial and administrative bodies. The New Jersey Judiciary has a strong reputation for the quality of our jurisprudence and the efficiency of our administration. We also have been leaders in developing policies and programs that improve the access and fairness of our courts.*

These words of Chief Justice Stuart Rabner, which introduced the Committee’s 2013-2015 report and continue to give direction to its ongoing work, express the principles that drive the SCCMC in its work to carry out the mandate first given to it by the late Chief Justice Robert N. Wilentz “to undertake a critical examination of the concerns of minorities with their treatment in and by the courts, to propose solutions to the identified problems that are within the power of the Judiciary to implement, to pursue its investigations wherever they may lead, set forth its findings

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<sup>1</sup> The Committee in this report has added the terms “religious” and “cultural” to “racial” and “ethnic” to be visibly inclusive of communities of color such as Muslims who by the race/ethnicity definitions of the U.S. E.E.O.C. may be classified as “White” but who, socially speaking, at the macro- and/or micro-level(s) may experience life in the United States as people of color.

with candor.” This biennial report highlights selected areas of engagement that correlate to institutional/organizational priorities and offers the Court insight into the SCCMC’s key focus areas and its continuing assessment of constituent/stakeholder needs relevant to its mission, mandate, and scope.

This term, the SCCMC engaged in several significant policy reviews such as the Language Access Plan and submitted to the Court several detailed comments on matters relevant to the mission and mandate of the SCCMC and the issues of access and fairness, including but not limited to the proposed rules changes necessary for the successful implementation of Criminal Justice Reform (CJR).

As is its longstanding practice, this biennial report again offers workforce data review and analyses in key areas relating to access to justice for racial/ethnic minorities, other historically marginalized groups, and new constituencies and stakeholder groups. These issues continue to be relevant to the Judiciary as it continues to innovate and maintain its reputation for excellence as a state court system in the twenty-first century.

The Supreme Court Committee on Minority Concerns is grateful for the opportunity to be of ongoing service to the Court and public served by the New Jersey Judiciary.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'Hany A. Mawla', with a large loop at the top and a horizontal stroke at the bottom.

Hany A. Mawla, P.J.F.P., Chair  
Supreme Court Committee on Minority Concerns  
January 30, 2017

**SUPREME COURT COMMITTEE ON MINORITY CONCERNS  
SUMMARY OF 2015-2017 RECOMMENDATIONS**

*Recommendation 2017:01*

The Supreme Court Committee on Minority Concerns recommends that the Judiciary include implicit bias training as a routinely-offered mandatory component of training for all Judiciary stakeholders, including judges, managers and staff.

*Recommendation 2017:02*

The Supreme Court Committee on Minority Concerns recommends that the Judiciary include sexual orientation and gender identity training as a regular mandatory component of training for all Judiciary stakeholders, including judges, managers and staff. The Committee also recommends that a course on sexual orientation and gender identity basics be added to the current diversity and inclusion training provided as part of New Judges Orientation.

*Recommendation 2017:03*

The Committee recommends that the Board of Continuing Legal Education modify New Jersey's mandatory continuing legal education requirements to include specified diversity requirements, including but not limited to implicit bias and diversity training on race, ethnicity, gender, religion, sexual orientation, gender identity, and other categories specified in Section 8.4(g) of the Rules of Professional Conduct.

*Recommendation 2017:04*

The Committee recommends, in light of the rolling basis on which judges are appointed to the bench, that the Judiciary develop a set of introductory, self-guided videos posted to the InfoNet to provide newly-assigned judges with an introductory overview of and orientation to the Judiciary's diversity and inclusion philosophy and internal diversity and inclusion resources, including but not limited to Minority Concerns, Access and Fairness, Sexual Orientation and Gender Identity (SOGI), Language Services, EEO/AA, and ADA.

*Recommendation 2017:05*

The Committee recommends that the Judiciary establish a working group on reentry issues to address relevant court-related procedural matters, including but not limited to child support issues and commutation credit. The Committee recommends that the working group include, at minimum, representation from Criminal Practice, Probation Services, Family Practice, Civil Practice, Municipal Practice, Communications and Community Relations (e.g., Minority Concerns, Access and Fairness, Publications), and selected representatives from New Jersey's various reentry support service programs.

## REPORT AND RECOMMENDATIONS

### **I. Focus Area: Diversity and Inclusion in the New Jersey Judiciary**

The New Jersey Judiciary is dedicated to the principles and goals of fairness, equality, courtesy, and respect for all individuals. These are the cornerstones of activities and operations in the court system and embody the Judiciary's commitment to equality under the law and fairness in the administration of Justice.<sup>2</sup>

The Judiciary developed and promulgated a Judiciary Equal Employment Opportunity/Affirmative Action and Anti-Discrimination Master Plan in the early 1980s. In addition to the Master Plan the Judiciary Policy Statement on Equal Employment Opportunity and Affirmative Action and Anti-Discrimination is also published. The latter Policy Statement prohibits all forms of unlawful bias, harassment and discrimination in all court operations, employment, and complaint procedures. These documents together provide the foundation for the Judiciary's Fairness Program.

All judges, administrators, managers and court employees, law clerks and court volunteers are required to receive training on these key court policies and the expectation is that court personnel will take the necessary steps to ensure that the Judiciary's workplace and the programs and services that the court provides are free of discrimination, prejudice and bias. It should also be noted that the Judiciary's Master Plan as well as the Judiciary Policy Statement are routinely updated to comply with the promulgation of new state and federal laws, case law, and government policies.

The Judiciary since 1984 has been compiling, analyzing, and reporting information on the Judiciary's workforce to the Court. The workforce analyses have expanded and become more

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<sup>2</sup> *New Jersey Judiciary EEO/AA Master Plan*, Statement by Richard J. Williams, Acting Administrative Director (May 2000).

inclusive of a broader-based workplace in terms of the scope of the database, such as judges at all court levels, law clerks, court employees at the AOC/Central Office and in all of the vicinages, and court volunteers. These self-critical analyses have proven to be invaluable assessment tools in helping the Judiciary measure its progress in diversifying the workforce as a whole, but also assessing discrete job bands and/or the representation of judges by court level. These data analyses serve as the lynchpin of the Judiciary's evaluative methodology and also help to define and refine Judiciary workplace policies and procedures.

These analyses are also critical management tools as they help the Judiciary to quantify and examine objectively where there are shortfalls or underrepresentation in the Judiciary's workforce so that steps can be put into place to remediate and address the underrepresentation of a particular race/ethnicity category and/or identify an issue where race/ethnicity and gender intersect. These data have provided the foundation for the Committee's evidence-based recommendations to the Judiciary on issues relating to the Judiciary's diversity profile.

#### **A. A View of the Diversity of the New Jersey Bench**

The New Jersey Constitution vests the authority to make judicial appointments in the Governor with the advice and consent of the New Jersey Senate. Once a judge is appointed to the bench, the Chief Justice has the authority to determine judicial assignments and to appoint judges from the Appellate Division to temporarily fill long-term vacancies on the Supreme Court; the latter assignments are made on an limited as-needed basis based on seniority in the Appellate Division. The Chief Justice is also responsible for elevating Superior Court-Trial judges to the Appellate bench. As one of the three co-equal branches of government, the Judiciary since 1984 has routinely shared the findings of the Committee on Minority Concerns describing the diversity of the state court bench with the Executive and Legislative branches. The Committee's discussion

of this issue for this biennial report focuses on the profile of judges on the New Jersey Supreme, Superior, and Tax Court benches.

For this report, all the data presented is as of January 2017. The data presented in *Table 1: Representation of Minorities and Women Among New Jersey Justices and Judges, All Levels Combined 1995-2017* shows that across a 22 year period for the discrete measuring points indicated there has been a tremendous improvement in the representation of women (including women of color) and the total numbers of judges of color (male and female) on the judicial branch bench.

**Table 1. Representation of Minorities Among New Jersey Justices and Judges, All Court Levels Combined, 1995-2017**

	<b>1995</b>		<b>2005</b>		<b>2010</b>		<b>2015</b>		<b>2017</b>	
	#	%	#	%	#	%	#	%	#	%
<b>White Jurists</b>	369	92.9	380	86.6	356	85.2	346	83.4	359	82.2
<b>Female Jurists</b>	65	16.4	108	24.6	121	28.9	147	35.4	153	35.0
<b>Minority Jurists</b>	28	7.1	52	11.8	62	14.8	69	16.6	78	17.8
<b>Total All Judges</b>	397		439		418		415		437	

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

The representation of females has steadily increased from 16.4 % (65) in 1995 to 35.0% (153) in 2017; a similar positive increase is also noted for the representation of jurists of color from 7.1% (28) in 1995 to 17.8% (78) as of January 3, 2017.



**Table 2. Representation of Judges of Color  
All Levels Combined, 1995-2017**

	<b>1995</b>		<b>2005</b>		<b>2010</b>		<b>2015</b>		<b>2017</b>	
	#	%	#	%	#	%	#	%	#	%
<b>Total Minorities</b>	28	7.1	52	11.8	62	14.8	69	16.6	78	17.8
<b>Blacks/African Americans</b>	18	4.5	31	7.1	35	8.4	35	8.4	40	9.2
<b>Hispanics/Latinos</b>	9	2.3	19	4.3	25	6.0	29	7.0	32	7.3
<b>Asians/American Indians/NHOPIs*</b>	1	0.3	2	0.5	2	0.5	5	1.2	6	1.4
<b>Total All Judges</b>	397		439		418		415		437	

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

*Table 2: Representation of Judges of Color, All Levels Combined, 1995-2017* presents the data for judges of color at the noted data points. The diversity profile of all the judges of color for each race and ethnicity category without exception shows positive increases over the course of the past 22 years. In 1995 the representation of Blacks/African Americans on the bench was 4.5% (18). The representation increased to 7.1% in 2005 (31) and held steady at 8.4% in 2010 (35) and 2015 (35) and increased to 9.2% (40) as of January 3, 2017.

The increase in the numbers of Hispanic/Latinos on the Superior Court bench was even greater. In 1995 the representation of Hispanics/Latinos on the bench was in the single digits (9) or 2.3%; by 2005 Hispanic/Latino judges had doubled their numbers on the bench to 19 (4.3%); by 2010 this number had risen to 25 (6.0%) judges. By 2015 there were 29 Hispanic/Latino (7.0%) judges, and as of 2017, the number of Hispanic/Latino jurists increased to 32 jurists, representing 41% of the total complement of judges of color on the Superior Court and 7.3% of the total overall complement of judges.

There is additional positive news to report regarding the representation of Asians/American Indians/NHOPIs: In 1995 there was only one judge of Asian heritage on the Superior Court and now there are six, representing 1.4% of judges statewide.

In total, there are as of January 2017 78 judges of color in the New Jersey Judiciary representing approximately 18% of the total number of justices and judges (437) on the bench statewide.

**Table 3. New Jersey Judiciary: Justices and Judges by Court Race/Ethnicity and Gender (January 2017)**

Court	Total # of Judges	Total White		Totals by Race/Ethnicity						Total Minorities	
		#	%	Blacks		Hispanics/Latinos		Asians/Pacific Islanders		#	%
				#	%	#	%	#	%		
<b>Supreme Court<sup>3</sup></b>	7	6	85.7	0	0.0	1	14.3	0	0.0	1	14.3
<b>Appellate Division</b>	33	27	81.8	3	9.1	3	9.1	0	0.0	6	18.2
<b>Superior Court, Trial Division</b>	386	316	81.9	37	9.6	28	7.3	5	1.3	70	18.1
<b>Tax Court<sup>4</sup></b>	11	10	90.9	0	0.0	0	0.0	1	9.1	1	9.1
<b>TOTAL</b>	<b>437</b>	<b>359</b>	<b>82.2</b>	<b>40</b>	<b>9.2</b>	<b>32</b>	<b>7.3</b>	<b>6</b>	<b>1.4</b>	<b>78</b>	<b>17.8</b>

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

*Table 3: New Jersey Judiciary - Justices and Judges by Court and Race/Ethnicity (2017)* provides a detailed account of the various bench assignments by court levels, race/ethnicity and gender. With 284 of the 437 justices/judges statewide being male (65%), the distribution of male judges by race/ethnicity is White 56.8% (248); Black/African American 4.8% (21); Hispanics/Latinos 2.7% (12); and Asians/American Indians/NHOPIs 0.7% (3).

- There are no Black/African Americans males or females on the Supreme Court.

<sup>3</sup> Associate Justice Faustino Fernandez-Vina.

<sup>4</sup> There are six Tax Court judges including one racial/ethnic minority.

- Of the 33 judges in the Appellate Division, 6 (18.2%) are people of color with women and men equally represented (9.1%). Two (6.1%) of the judges are Black males and one is a Black female (3.0%). There are three Hispanics/Latinos (9.1%). One is a male (3.0%) and two are females (6.1%).
- In the Trial Court Division, there are 70 judges of color: 37 (9.6%) are Black/African American; 28 (7.3%) are Hispanic/Latino; and five (1.3%) are Asian/American Indians/NHOPIs.
- There is one person of color, an Asian American female (9.1%), on the Tax Court bench.

The percent representation of people of color on the bench of the Superior Court-Appellate and Trial Divisions is comparable to the representation of people of color serving in the judicial branch overall. With 78 of 437 judges statewide being men and women of color, this representation of nearly 18% reflects a slight increase from 16.6% noted in the 2015 biennial report.

Having reviewed longitudinal data, the progress of the representation of people of color on the bench over the course of the last 12 years does not appear to be as robust and consistent as it was over the longer 22 year-period. This trend may become a matter of concern for future appointments of people of color and women to the Court, both in terms of nominations/confirmations and reappointments to tenure.

## **B. Diversity at the Intersections of Race, Ethnicity, and Gender**

Over the course of the last 12 years, women judges have generally either enhanced their presence on the bench or held their ground at every level of the New Jersey Judiciary except the Supreme Court. The increase of women on the bench is no surprise as more women are choosing careers in the legal profession.

Currently of the seven Supreme Court justices, two are white females (28.6%) and it continues to be the case that no woman of color has ever served on, or even been nominated to, the New Jersey Supreme Court. Over the past 12 years the highest percentage representation of female jurists were found in the Appellate Division with 39.4% (13 out of 33 total judges): 10 (30.3%) are White; two (6.1%) are Hispanic/Latina and one is a Black/African American (3.0%).

In the Superior Court-Trial Division over one third 35.0% (134) of the judges on the bench are females: White women represent 25% (96) of the judges and women of color account for approximately 10% (38). There are equal numbers of Blacks/African Americans and Hispanic/Latina females among Trial Division judges (18); and there are three Asian/American Indian/NHOPI representing (0.5%) of the total cadre of females.

On the Tax Court the representation of female judges has improved over the last 12 years. Of the 11 Tax Court judges, three are white females (27.1%) and one is an Asian/American Indian/NHOPI (9.1%) representing a total of four female judges or 36.4% of the complement of Tax Court judges.

Regarding women jurists and jurists of color, the data reviewed for a twelve-year period presents four data snapshots.

- Supreme Court: The representation of White female justices in February 2005 on the bench was nearly 43% and by November 2010 this figure was

up to 50%. However, by December 2015 the representation had fallen to 33.3% and as of January 2017 the percent representation of female justices had declined even more- dropping down to 28.6%.

- Appellate Division: In contrast to the former pattern, the representation of females in the Appellate Division increased from 25% in 2005 to 42.9% in November 2010 and has held steady at around 40 % for the 2015 and 2017 measurement snapshots. The representation of female judges over the 12-year measurement period is the highest in the Appellate Division.
- Trial Division: A similar pattern in female representation is also observed in the Trial Division, although it is not as large as the increase seen in Appellate Division, where female judges represented 23.3% of the judges in 2005 and 27.2% in 2010, and then increased to 35% in 2015 and 2017.
- Tax Court: Female representation on Tax Court increased from 22.2% to 33.3 % in 2010 and to 45.5% in 2015. The representation of females on the Tax Court as of January 2017 leveled off at 36.4%.

*Table 4: New Jersey Judiciary-Superior Court Judges by County, Race/Ethnicity and Gender (January 2017)* provides information on the diversity profile of each vicinage/county in the state. The five counties with the highest number of sitting judges are Essex (57), Middlesex (36), Bergen (35), Hudson (32) and Monmouth and Union each with (27). The following counties have a diversity profile of 20.0% plus for judges of color on the bench according to current data. These counties include Salem with one (33.3%) judge of color out of 3; Hudson with 10 (31.4%) judges of color out of 32; Essex with 15 (26.3%) judges of color out of 57; Middlesex with 9

(25.0%) judges of color out of 36; Passaic with 6 (24.0%) judges of color out of 25; Camden with 5 (22.7%) judges of color out of 22 and Mercer with 5 judges of color out of 23 (21.7%).

**Table 4. New Jersey Judiciary: Superior Court-Trial Division Judges  
By County and Race/Ethnicity, January 2017**

County	White		Total Minorities		Blacks/ African Americans		Hispanics/ Latinos		Asians/ American Indians/ NHOPIs		Female		Male		Total # of Judges
	#	%	#	%	#	%	#	%	#	%	#	%	#	%	
Atlantic	17	85.0	3	15.0	2	10.0	1	5.0	0	0.0	6	30.0	14	70.0	20
Bergen	31	88.6	4	11.4	2	5.7	2	5.7	0	0.0	14	40.0	21	60.0	35
Burlington	16	84.2	3	15.8	3	15.8	0	0.0	0	0.0	6	31.6	13	68.4	19
Camden	17	77.3	5	22.7	3	13.6	2	9.1	0	0.0	7	31.8	15	68.2	22
Cape May	5	83.3	1	16.7	0	0.0	1	16.7	0	0.0	1	16.7	5	83.3	6
Cumberland	8	100.0	0	0.0	0	0.0	0	0.0	0	0.0	2	25.0	6	75.0	8
Essex	42	73.7	15	26.3	11	19.3	3	5.3	1	1.8	23	40.4	34	59.6	57
Gloucester	12	92.3	1	7.7	1	7.7	0	0.0	0	0.0	6	46.2	7	53.8	13
Hudson	22	68.7	10	31.3	2	6.3	8	25.0	0	0.0	13	40.6	19	59.4	32
Hunterdon	4	100.0	0	0.0	0	0.0	0	0.0	0	0.0	2	50.0	2	50.0	4
Mercer	18	78.3	5	21.7	5	21.7	0	0.0	0	0.0	5	21.7	18	78.3	23
Middlesex	27	75.0	9	25.0	3	8.3	5	13.9	1	2.8	13	36.1	23	63.9	36
Monmouth	24	88.9	3	11.1	2	7.4	0	0.0	1	3.7	12	44.4	15	55.6	27
Morris	16	88.9	2	11.1	1	5.6	1	5.6	0	0.0	5	27.8	13	72.2	18
Ocean	20	90.9	2	9.1	2	9.1	0	0.0	0	0.0	6	27.3	16	72.7	22
Passaic	19	76.0	6	24.0	1	4.0	4	16.0	1	4.0	8	32.0	17	68.0	25
Salem	2	66.7	1	33.3	0	0.0	1	33.3	0	0.0	1	33.3	2	66.7	3
Somerset	12	92.3	1	7.7	0	0.0	0	0.0	1	7.7	5	38.5	8	61.5	13
Sussex	4	100.0	0	0.0	0	0.0	0	0.0	0	0.0	0	0.0	4	100.0	4
Union	22	81.5	5	18.5	2	7.4	3	11.1	0	0.0	9	33.3	18	66.7	27
Warren	4	100.0	0	0.0	0	0.0	0	0.0	0	0.0	2	50.0	2	50.0	4
<b>TOTAL</b>	<b>342</b>	<b>81.8</b>	<b>76</b>	<b>18.2</b>	<b>40</b>	<b>9.6</b>	<b>31</b>	<b>7.4</b>	<b>5</b>	<b>1.2</b>	<b>146</b>	<b>34.9</b>	<b>272</b>	<b>65.1</b>	<b>418</b>

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

The representation of females on the Superior Court bench has increased such that there are two counties where females are at least one half of the total complement of judges. In

Hunterdon and Warren Counties there are two female judges out of a total of four judges in each of these counties; these female judges represent 50.0% of the total complement of judges. In the following counties females judges account for a minimum of 40.0 % or more of judges on the bench: Gloucester County, six female judges representing 46.2 % (6) of the total number of 13 judges; in Monmouth County there are 12 (44.4%) female judges out of a total of 27; the contingent of female judges in Hudson County is 13 and they represent (40.6%) out of 32 jurists; Essex County with 23 (40.4%) out of 57 judges and Bergen County with 14 (40.0%) out of 35 jurists have nearly identical gender profiles. Somerset County has a gender diversity profile of 38.5% (5 out 13) followed by Middlesex County with 13 female judges (36.1%) out of 36 judges. Salem and Union Counties female diversity profiles are identical at 33.3%. The gender diversity profiles are Passaic County with 8 or (32.0%) female judges out of 25; Camden County with 7(31.8%) female jurists out of 22 judges; Burlington with 6 or (31.65%) females out of 19 judges and Atlantic County also with 6 (30.0%) female jurists out of 20 judges. This means that in the New Jersey Superior Court 15 of 21 counties have a minimum of at least 30% female representation among all judges on the bench as of January 2017.

### **C. Judges in Administrative Positions: Assignment Judges**

*Table 5: New Jersey Judiciary: Assignment Judges and Presiding Judges By Race/Ethnicity for 1995-2017, January 2017* presents data on assignment judges over a 22 year period. There are fifteen Assignment Judges positions, and as of January 2017 judges of color hold three or 20.0% of these positions. Of the three minority Assignment Judges, one is a Black/African American male (Middlesex); one is a Black/African American female (Monmouth); and one is a Hispanic/Latino male (Atlantic/Cape May). The proportional representation of judges of color among Assignment Judges has improved measurably over the course of the last 22 years

and the first woman of color was appointed to serve as an Assignment Judge when Chief Justice Rabner appointed Judge Lisa P. Thornton to lead the Monmouth Vicinage.

**Table 5. New Jersey Judiciary: Assignment Judges and Presiding Judges  
By Race/Ethnicity for 1995-2017, January 2017**

<b>ASSIGNMENT JUDGES</b>											
	Total	White		Total Minority		Black/ African American		Hispanic/ Latino		Asian/ American Indian/NHOPI	
		#	%	#	%	#	%	#	%	#	%
<b>2017 (January)</b>	15	12	80.0	3	20.0	2	13.3	1	6.7	0	0.0
<b>2015 (December)</b>	15	12	80.0	3	20.0	2	13.3	1	6.7	0	0.0
<b>2010 (November)</b>	15	13	86.7	2	13.3	2	13.3	0	0.0	0	0.0
<b>2005 (February)</b>	15	14	93.3	1	6.7	1	6.7	0	0.0	0	0.0
<b>1995 (September)</b>	15	14	93.3	1	6.7	1	6.7	0	0.0	0	0.0
<b>PRESIDING JUDGES</b>											
	Total	White		Total Minority		Black/ African American		Hispanic/ Latino		Asian/ American Indian/NHOPI	
		#	%	#	%	#	%	#	%	#	%
<b>2017 (January)</b>	69	60	87.0	9	13.0	4	5.8	4	5.8	1	1.4
<b>2015 (December)</b>	69	59	85.5	10	14.5	4	5.8	5	7.2	1	1.4
<b>2010 (November)</b>	69	57	82.6	12	17.4	6	8.7	5	7.2	1	1.4
<b>2005 (February)</b>	69	65	94.2	4	5.8	2	2.9	2	2.9	0	0.0
<b>1995 (September)</b>	55	53	96.4	4	7.3	4	7.3	0	0.0	0	0.0

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

#### **D. Judges in Administrative Positions: Presiding Judges**

There are 69 Presiding Judges, of whom 9 (13.0%) are minority judges. A review of *Table 5* shows that the representation, both in terms of number and percentage, of judges of color appointed as Presiding Judges has seen a positive increase over time, although there is some fluctuation in the percentage of representation. At its highest during this period (2010), the total representation of minority presiding judges was 17.4%; as of 2017 the representation decreased to 13.0% (9) with Blacks/African Americans (4) and Hispanics/Latinos (4) equally represented in number of presiding judges (5.8%). There is one (1.4%) Asian/American Indian/NHOPI represented in this group.



## E. Law Clerks

**Table 6. State of New Jersey Judicial Law Clerks, Court Year 2016-2017, January 2017**

Court Year 2016-2017			
	#	%	Availability % <sup>5</sup>
<b>Total Law Clerks</b>	519	100.0	
<b>Total Minorities</b>	126	24.3	26.8
<b>Blacks/African Americans</b>	49	9.4	9.4
<b>Hispanics/Latinos</b>	35	6.7	9.1
<b>Asians/American Indians/ NHOPIs</b>	42	8.1	8.3
<b>Total Females<sup>6</sup></b>	266	51.3	46.3

Data Source: Payroll Management Information System, AOC/Central Clerks' Offices EEO/AA Unit

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

*Table 6: New Jersey Judicial Law Clerks for Court Term 2016-2017 (January 2017)*

shows the total number of law clerks at all court levels combined is 519. Of this number, 126 (24.3%) are racial/ethnic minorities: 49 (9.4%) are Black/African American; 35 (6.7%) are Hispanic/Latino; 42 (8.1%) are Asian/American Indian/NHOPI. Females account for 51.3% of the 2016-2017 law clerk class (n=266). Blacks/African Americans at 9.4% meet the estimated availability rate<sup>7</sup> and Asians/American Indians/NHOPIs (8.1%) are slightly below the estimated availability rate and Hispanics/Latinos (6.7%) are measurably below the estimated availability rate. The total for all racial/ethnic minority law clerks combined falls below the combined

<sup>5</sup> Availability is based on the demographics of the graduating classes at the two New Jersey law schools (Rutgers University Law School and Seton Hall University School of Law) for FY 2016. These data were provided by the New Jersey Commission on Higher Education.

<sup>6</sup> Total females include minorities and non-minorities.

<sup>7</sup> For law clerks, the estimated availability rate is calculated by the demographic data on the graduating classes of the two New Jersey law schools combined. However, it is an imprecise measure since the Judiciary's law clerk program is a national program. In the absence of more refined data, this measure continues to be helpful in assessing the diversity and representativeness of the annual law clerk class for the purposes of this Committee's work.

estimated availability rate of 26.8%. Total females combined, however, exceed the estimated availability of 46.3% by five percentage points.

**Table 7. New Jersey Judicial Law Clerks by Court Level for Court Term, Court Term 2016-2017, January 4, 2017**

Court	Whites		Total Minorities		Blacks/African Americans		Hispanics/Latinos		Asians/ Amer. Indians/NHOPIs		Total	
	#	%	#	%	#	%	#	%	#	%	#	%
<b>Supreme Court</b>												
Females	11	52.4	0	0.0	0	0.0	0	0.0	0	0.0	11	52.4
Males	7	33.3	3	14.3	2	9.5	0	0.0	1	4.8	10	47.6
<b>Total</b>	18	85.7	3	14.3	2	9.5	0	0.0	1	4.8	21	100.0
<b>Superior Court-Appellate</b>												
Females	20	31.3	8	12.5	4	6.3	3	4.7	1	1.6	28	43.8
Males	30	46.9	6	9.4	0	0.0	2	3.1	4	6.3	36	56.3
<b>Total</b>	50	78.1	14	21.9	4	6.3	5	7.8	5	7.8	64	100.0
<b>Superior Court-Trial</b>												
Females	162	38.0	62	14.6	28	6.6	15	3.5	19	4.5	224	52.6
Males	155	36.4	47	11.0	15	3.5	15	3.5	17	4.0	202	47.4
<b>Total</b>	317	74.4	109	25.6	43	10.1	30	7.0	36	8.5	426	100.00
<b>Tax Court</b>												
Females	3	37.5	0	0.0	0	0.0	0	0.0	0	0.0	3	37.5
Males	5	62.5	0	0.0	0	0.0	0	0.0	0	0.0	5	62.5
<b>Total</b>	8	100.0	0	0.0	0	0.0	0	0.0	0	0.0	8	100.0
<b>All Courts Combined</b>												
Females	196	37.8	70	13.5	32	6.2	18	3.5	20	3.9	266	51.3
Males	197	38.0	56	10.8	17	3.3	17	3.5	22	4.2	253	48.7
<b>Total</b>	393	75.7	126	24.3	49	9.4	35	6.7	42	8.1	519	100.0

Data Source: Payroll Management Information System, AOC EEO/AA Unit

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

*Table 7: New Jersey Judicial Law Clerks by Court Level for Court Term 2016-2017 (January 2017)* shows interesting contrasts.

- Supreme Court: There are similar positive results for total female law clerk hires at the Supreme Court, where eleven out of 21 law clerks are White females (52.4%). White

females exceed the availability by 6.1 percentage points. There are 3 (14.3%) law clerks of color at the Supreme Court level this term.

- Superior Court-Appellate Division: The representation of females in the Appellate Division at 43.8% statewide for all court levels combined falls below the estimated availability rate of 46.3% by 2.5 percentage points. Blacks at 6.3%, Hispanics/Latinos at 7.8%, and Asians/American Indians/NHOPIs at 7.8% are below the estimated availability for each of these groups. Total racial/ethnic minority representation at 12.5% falls below the estimated availability by 33.8 percentage points.
- Superior Court-Trial Division: Female law clerks at the Superior Court level also exceed the estimated availability, with female law clerks overall accounting for 52.6% of all law clerks statewide. The breakdown of racial/ethnic minority law clerks for the 2016-2017 court term is 10.1% (n=43) Black/African American, 7.0% (n=30) Hispanic/Latino, and 8.5% (n=36) Asian/American Indian/NHOPI. Blacks/African Americans and Asians/American Indians/NHOPIs exceed the estimated availability while Hispanics/Latinos are measurably below the estimated availability.
- Tax Court: Female law clerks represent 37.5% of the Tax Court law clerks, which falls below the estimated availability by 8.8 percentage points. There are, at present, no female law clerks of color in the Tax Court this court term.

## **F. Workforce Demographics**

### **1. Judiciary Workforce: Methodology for Measuring Diversity & Inclusion**

The workforce analysis data are captured in the Judiciary Human Resources Personal Management System (PMIS). These data are processed and analyzed using Peopleclick software. The workforce data included in this report is the most recent data “snapshot” currently available

for an identified category of the Judiciary workforce. These data are provided by the Administrative Office of the Courts EEO/AA Unit and are generally reported by race/ethnicity, gender, job band, and location (AOC or county/vicinage).

The race/ethnicity categories utilized by the Judiciary are defined by the Equal Employment Opportunity Commission (EEOC). Judiciary workforce data prior to 2010 used the former EEOC race category “Asian/Pacific Islander.” As of 2010, Judiciary workforce data reflect the EEOC revised race categories of “Asian” and “Native Hawaiian/Other Pacific Islander.” Since American Indians/Alaska Natives comprise less than 0.1 % of the Judiciary workforce these two groups are combined into the former category.<sup>8</sup>

The availability data used in the Judiciary’s workforce analysis is the percentage of minorities and/or women in the external labor force who reside within the Judiciary’s labor market area and who possess a job title relevant to a specific Judiciary job group. The Judiciary establishes the availability for each job group by taking the relevant Equivalent Civilian Labor Force (ECLF) from U.S. Census analogous occupational job code for each Judiciary job group within reasonable geographical areas of recruitment based on commuting patterns. Each Judiciary job group is matched with analogous U.S. Census occupational titles/categories depending on the job title. The Judiciary EEO/AA Unit then assigns a specific geographical reasonable recruiting area to each job group at each location based on the normal recruiting area for a particular level or position. To make this determination, the Judiciary EEO/AA Unit examined the commuting patterns of employees in each job group at each worksite location and in some cases where job applicants for those job groups reside. Each reasonable recruiting area has its own ECLF.

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<sup>8</sup> See the *New Jersey Judiciary Workforce Report 2015*, EEO/AA Unit, page A (January 2017).

**Table 8. New Jersey Judiciary: Employees by Race/Ethnicity (Excluding Judges, Bar Examiners, and Part-time Employees), AOC/Central Clerks' Offices and Vicinages, 2015 and 2000<sup>a</sup>**

2015	Total	Whites		Total Minorities		Blacks/African Americans		Hispanics/Latinos		Asians/Amer. Indians/NHOPIs	
		#	%	#	%	#	%	#	%	#	%
AOC/Central Clerks' Offices	1,454	945	65.0	509	35.0	284	19.5	112	7.7	113	7.8
Vicinages	6,987	3,901	55.8	3,086	44.2	1,759	25.2	1,093	15.6	234	3.3
Total Judiciary	8,841	4,846	57.4	3,595	42.6	2,043	24.2	1,205	14.3	347	4.1
U.S. Census 2000 <sup>b</sup>											
NJ Experienced Civilian Labor Force <sup>c</sup>		61.6%		38.4%		12.5%		16.7%		8.6%	
NJ Total Population	8,414,350	72.6%		32.8%		13.6%		13.3%		5.9%	
2000	Total	Whites		Total Minorities		Blacks		Hispanics/Latinos		Asians/Amer. Indians/NHOPIs	
		#	%	#	%	#	%	#	%	#	%
AOC/Central Clerks' Offices	1,301			360	27.7	268	20.6	62	4.8	30	2.3
Vicinages	7,510			2,364	31.5	1,626	21.7	615	8.2	123	1.6
Total Judiciary	8,811			2,724	30.9	1,894	21.5	677	7.7	153	1.7
U.S. Census 2000 <sup>b</sup>											
NJ Experienced Civilian Labor Force		68.3%		31.7%		11.9%		12.1%		6.5%	
NJ Total Population	8,414,350	72.6%		32.8%		13.6%		13.3%		5.9%	

<sup>a</sup> Data Source: AOC Central Clerks' Offices, EEO/AA Unit

<sup>b</sup> In order to match the available census data to the data categories currently in use by the Judiciary, calculations for the New Jersey Experienced Civilian Labor Force and the New Jersey Total Population were drawn from using the totals listed for White, Black/African American, and American Indian/Alaskan Native and Asian (combined) under one race and Hispanic/Latino of any race from *Table 1. Population by Race and Hispanic Origin for All Ages and for 18 Years and Over for New Jersey, 2000*. The ECLF includes only those 16 years of age and older; the total population includes all ages. (<http://www.census.gov/acs/www/UseData/Def/Employme.htm>) Data Source: U.S. Census, 2000

<sup>c</sup> ECLF for 2015 is based on 2006-2010 U.S. Census data, and ECLF for 2000 is based on Civilian Labor Force per 2000 U.S. Census.

In order to match the available census data to the data categories currently in use by the Judiciary, calculations for the New Jersey Experienced Civilian Labor Force (ECLF) and the New Jersey Total Population were drawn from using the totals listed for White, Black/African

American, and American Indian/Alaskan Native and Asian (combined) under one race and Hispanic/Latino of any race from *Table 8. Population by Race and Hispanic Origin for All Ages and for 18 Years and Over for New Jersey, 2000*. The ECLF includes only those 16 years of age and older; the total population includes all ages.<sup>9</sup>

The utilization analyses for women and racial/ethnic minorities are determined by comparing the representation in the Judiciary workforce with their availability in the labor market based on the 2006-2010 U.S. Census. Based on the differences in the percentages, a calculation is then made about the number of women and minority positions needed to reach parity utilizing the Whole Person Rule. No ECLF/availability has been established for judges as currently race/ethnicity and other demographic data are not presently collected from members of the New Jersey Bar.

**Table 9. Minority Representation for Selected Job Bands  
with 2013-2015 Gains Noted, AOC/Central Clerks' Offices and Vicinages Combined  
(Excluding Judges, Law Clerks, Bar Examiners, and Part-time Employees) January 2017**

JOB BAND	2013 %	2015 %	GAINS
Court Executive	29.9	30.4	+0.5
Professional Supervisory	28.8	32.5	+3.7
Support Staff Supervisory	54.4	57.7	+3.3
Legal (Attorneys)	14.1	21.6	+2.5
Information Technology	39.9	42.3	+2.4
Judge's Secretary	21.7	25.4	+3.7

Data Source: AOC Central Clerks' Offices, EEO/AA Unit

<sup>9</sup> (<http://www.census.gov/acs/www/UseData/Def/Employme.htm>) Data Source: U.S. Census, 2000

*Table 9. Minority Representation for Selected Job Bands with 2013-2015 Gains Noted*

shows that that greatest representation of racial/ethnic minorities as of 2015 is in the following six job bands in descending order: Support Staff Supervisory (57.7%); Information Technology (42.3%); Professional Supervisory (32.5%); Court Executive (30.4%); Judge's Secretary (25.4%); and Legal (Staff Attorneys) (21.6%). These data, and the significant representations of Asians in the Information Technology job band and Hispanics/Latinos in the Court Interpreter job band, are of interest to the Committee given its longstanding interest in the underrepresentation of Hispanics/Latinos and Asians in the Judiciary workforce.

The Committee is pleased with the ongoing and successful efforts to remedy the identified underrepresentation. The Judiciary has taken proactive steps to address the issue of underrepresentation of Hispanics/Latinos and Asians within the Judiciary workforce by establishing a statewide working group that meets periodically to provide the Administrative Director with tools and strategies to address the underutilization issue. Many of the working group members themselves are members of the identified-underrepresented groups in the Judiciary. As part of this initiative, a statewide program was planned and launched several years ago targeting middle and high school public schools with high Hispanic/Latino and Asian populations. This program, which is still in place today, focuses on advising students at an early age in the student's own school environment of the diverse career opportunities available with the Judiciary.

## **II. Focus Area: Education and Training – Diversity and Inclusion Philosophy**

The 1993 Action Plan for Minority Concerns adopted by the New Jersey Supreme Court identified seven overarching goals for the New Jersey Judiciary's Minority Concerns Initiative:

- to enhance competency and awareness of court personnel;
- to assure public accountability and responsiveness;
- to provide equal access for linguistic minorities;
- to improve trial court procedures;
- to heighten public understanding of and access to the judicial system;
- to increase minority representation in the workforce, appointees, Bar, volunteers, and among vendors; and
- to interact with other branches of government.

The Minority Concerns initiatives in the areas of training, education, and outreach stem from the Action Plan on Minority Concerns approved by the Supreme Court in 1993. Twelve of the fifty-three recommendations in this plan address some aspect of training for the court, community and the public. Minority Concerns Committee members, Administrative Office of the Courts (AOC) Minority Concerns Unit staff, and vicinage staff liaisons provide valuable training and education to judges, law clerks and court staff at all levels as well as to members of the public. Recognizing the strong dynamic correlation between access to accurate information and access to the services provided by the Courts, this area remains a key component of the work of Minority Concerns at all levels within the New Jersey Judiciary. Throughout the 2015-2017 term, the Minority Concerns Program has been actively, consistently, and vigorously engaged in education, training, and outreach programming and initiatives consistent with its mission and charge.



Judicial Education for the New Jersey Judiciary, as it is for most state court systems, is a major undertaking. In New Jersey, these efforts are coordinated by the Judicial Education and Development Unit at the Administrative Office of the Courts, and Minority Concerns plays a valuable role in this formal process through its presentation of seminars, workshops, and training modules for the Comprehensive Judicial Orientation Program and at the annual Judicial College. In addition, the Minority Concerns Program has obtained CLE provider status both for the purposes of providing robust and meaningful education and training to committee members, staff, and community partners, but also as a vehicle for the vicinages to enhance their own local educational and outreach programming efforts so as to offer valuable resources to local level partners and stakeholders on issues and topics that are of institutional importance to the Judiciary. As a recognized CLE provider, the Minority Concerns Program has offered eight (8) 3.0 credit courses satisfying general or ethics requirements during the past two years. Having offered a total of 24.0 credits, these CLE programs directly produced via the Minority Concerns Program, many in partnership with the vicinages, have served over 500 course participants in total. The courses offered include:

- *Racial Identities in America: Myths, Facts and the Power of an Illusion;*
- *The Life and Impact of John S. Rock, Esq.: Raising the Bar for Justice and Achievement;*
- *The Anomaly of School Segregation in New Jersey in the 21<sup>st</sup> Century;*
- *Tools and Resources for Ensuring Access to Justice and Equity in Services for LGBTQI Youth;*
- *Tools and Resources for Advancing Access to Justice and Procedural Fairness for LGBTQI Court Users;*

- *Presidential Perspectives on Access to Justice, Procedural Fairness and the State of the Legal Profession: A Session with ABA President Paulette Brown, Esq.; and*
- *Understanding the Changing Demographics of Mercer County.*

In addition, the Minority Concerns Program has been an active educational partner with the Judiciary's own Judicial Institute for Staff Attorneys (JISA), the practice area education conferences and programmatic training programs, and the New Jersey State Bar Association annual convention. These educational initiatives are not only important in terms of the information shared but also in terms of the feedback received from participants and the topics and issues identified for future courses.

Several lessons have been learned through the presentation of these and other educational programming:

- Directly addressing implicit bias through training programs is an important addition to the Judiciary's training programs. The Committee, at the 2010 conference of the National Consortium on Racial and Ethnic Fairness in the Courts (NCREFC), offered a three hour interactive seminar on implicit bias presented by Mahzarin Banaji, Ph.D. This program was very well-received and the NCREFC board decided, in collaboration with the National Center for State Courts, to develop a national training program on implicit bias. This program, which included a minimum of three hours per training session, was presented to a number of court jurisdictions across the country at no charge due to grant funding. The work of addressing explicit bias and discrimination is known through laws, policies, and institutional culture. However, to truly meet the charge to the Minority Concerns Program and

to ensure the goal of eliminating any “vestiges of bias and discrimination” (Chief Justice Robert N. Wilentz) the SCCMC believes that it is essential that the issue of implicit bias be addressed directly and consistently in all the facets of the Judiciary’s extensive training programs. (See Recommendation 2017:01)

- In terms of significant aspects of diverse identities and experiences, it is clear that knowledge and information about sexual orientation and gender identity (SOGI) generally and LGBTQI issues is not sufficiently provided across stakeholder groups within the Judiciary and yet, given the significant LGBTQI population in New Jersey, it is necessary. Attendees at each of the SOGI/LGBTQI programs Minority Concerns has presented, including judges, attorneys, court staff, committee members, and community members, have expressly confirmed the need for these trainings, requested the offering of additional training, and proposed the development of tools and resources including but not limited to benchcards and identification of an internal resource person. (See Recommendation 2017:02)
- The Judiciary took a significant step in 2010 by instituting mandatory continuing legal education requirements. The requirement for 4.0 credits in ethics, which can be satisfied through a range of diversity-focused trainings, is valuable. However, looking at the many aspects of diversity and inclusion that intersect with the justice system in this state, the Committee recognizes that there are certain dimensions of diversity and inclusion that

should be a required component of education for licensed attorneys in New Jersey via CLE courses. (See Recommendation 2017:03)

- The Committee recognizes that given the rolling basis on which judges are nominated and confirmed to the Court there may be a significant time gap between a judge's first assignment and his/her opportunity to participate in New Judges Orientation. Consequently, judges may be navigating courtroom issues relating to Minority Concerns, Access and Fairness, and related programs and services without knowledge of the existing resources that are available to them within the Judiciary. Therefore, the Committee proposes that a bank of self-guided videos be made available via the InfoNet so that new judges have the ability to orient themselves to the basics of key programs and services relating to access to justice and procedural fairness. (See Recommendation 2017:04)

In light of these observations and the Committee's discussions and assessments on these issues and topics, the Committee proffers four related recommendations.

**RECOMMENDATION 2017:01**

The Supreme Court Committee on Minority Concerns recommends that the Judiciary include implicit bias training as a routinely-offered mandatory component of training for all Judiciary stakeholders, including judges, managers and staff.

**RECOMMENDATION 2017:02**

The Supreme Court Committee on Minority Concerns recommends that the Judiciary include sexual orientation and gender identity training as a regular mandatory component of training for all Judiciary stakeholders, including judges, managers and staff. The Committee also recommends that a course on sexual orientation and gender identity basics be added to the current diversity and inclusion training provided as part of New Judges Orientation.

### **RECOMMENDATION 2017:03**

The Committee recommends that the Board of Continuing Legal Education modify New Jersey's mandatory continuing legal education requirements to include specified diversity requirements, including but not limited to implicit bias and diversity training on race, ethnicity, gender, religion, sexual orientation, gender identity, and other categories specified in Section 8.4(g) of the Rules of Professional Conduct.

### **RECOMMENDATION 2017:04**

The Committee recommends, in light of the rolling basis on which judges are appointed to the bench, that the Judiciary develop a set of introductory, self-guided videos posted to the InfoNet to provide newly-assigned judges with an introductory overview of and orientation to the Judiciary's diversity and inclusion philosophy and internal diversity and inclusion resources, including but not limited to Minority Concerns, Access and Fairness, Sexual Orientation and Gender Identity (SOGI), Language Services, EEO/AA, and ADA.

### **III. Focus Area: Minority Concerns Networking and Consultancy Services**

The New Jersey Judiciary enjoys a unique model for engaging with the community and the public as a way of demonstrating that persons who are not members of the judicial and legal communities are also stakeholders in sustaining the rule of law. Not only are members of the public invited to attend court-sponsored educational seminars and workshops but also, and in some views more importantly, the community is invited to participate with the court in the process of ensuring fairness, impartiality, equal access, and full participation in the judicial system.

The Minority Concerns Program, as approved by the New Jersey Supreme Court in 1993 and still in place today, models best practices in court-community partnerships, communication, and collaboration. The mission and mandate of the Judiciary's Minority Concerns Program, particularly as it is carried out collaboratively and interactively among the Supreme Court Committee on Minority Concerns, the fifteen Vicinage Advisory Committees, and the Minority Concerns Unit, tangibly involves the community -- including legal professionals and community members equally -- as stakeholders in the rule of law and the fair and equitable exercise of justice,

and characterizes the court-community partnership in action. The ways in which Minority Concerns-sponsored initiatives and programs are delivered further demonstrate these principles in action.

The Supreme Court Committee on Minority Concerns, the fifteen Vicinage Advisory Committees on Minority Concerns, and the Administrative Office of the Courts Minority Concerns Unit support the program's goals by:

- advising the Court on goals, objectives, and implementation timetables;
- advising the Court how the Judiciary may best ensure fairness, impartiality, equal access, and full participation for racial and ethnic minorities;
- reviewing and advising the Court on major emerging policies and procedures;
- monitoring statewide execution of the program and related initiatives; and
- conducting relevant research and studies.

Since the inception of the New Jersey Judiciary's Minority Concerns Program, the SCCMC and the VACMCs have been actively involved in the planning and/or development of major court policy and procedures such as the EEO/AA Master Plan, the Judiciary's Strategic Plan, the Language Access Plan, Criminal Justice Reform, and the development and implementation of the Ombudsman Program, providing valuable feedback and insight on proposed actions and recommendations on implementation timetables and activities. Today Minority Concerns remains involved in this critical work through a broad range of activities such as the review and comment on various policies and procedures, periodic review of the self-critical workforce analysis and related workforce data, and participation in various internal working groups and interagency initiatives.

Training, education, and outreach efforts assist the Court to enhance competency and awareness on the part of court personnel regarding the communities served by the Court, assure public accountability and responsiveness, heighten public understanding of and access to the judicial system, increase minority representation in the work- and volunteer forces, and strengthen collaboration with other branches of government on joint projects. The Vicinage Advisory Committees on Minority Concerns play a significant role in the exchange of information between the court and the community and in the development of local initiatives and educational programs that later become adopted or modified by the Judiciary for statewide implementation.

#### **IV. Focus Area: Criminal Justice**

##### **A. Ongoing Promotion and Support of Criminal Justice Reform**

The Committee on Minority Concerns has long recognized the need for broad-reaching reform of New Jersey's criminal justice system particularly in relation to pre-trial release and speedy trial. The *Coleman* Committee in 1984 raised concerns about the inability of minorities to pay bail. In the *Interim Report of the Supreme Court Task Force on Minority Concerns* (1989) and numerous SCCMC biennial reports thereafter, some of the same issues addressed by the Joint Committee on Criminal Justice had been considered by the Committee on Minority Concerns.

Building on its work during the 2013-2015 term, which included preparing extensive commentary on the *Report of the Joint Committee on Criminal Justice*, the Committee this term focused on supporting and contributing in multiple ways to the preparations necessary for successful implementation of criminal justice reform. The Committee's work this term included preparation and submission of extensive commentaries regarding proposed rules changes necessary for implementation of criminal justice reform in addition to the education and training of SCCMC members, Vicinage Advisory Committee on Minority Concerns (VACMC) chairs and VACMC coordinators regarding the criminal justice reforms that became effective January 1, 2017.

To ensure the ability of the Committee on Minority Concerns and other components of the Judiciary's Minority Concerns Program to continue to make significant contributions to the roll out and implementation of criminal justice reform, significant hands-on training and professional development for SCCMC members and staff, Vicinage Advisory Committee on Minority Concerns (VACMC) chairs, and VACMC coordinators has been continuous at every meeting throughout this term. Presentations and updates have been included in SCCMC plenary sessions,



special joint SCCMC/VACMC Chairs meetings, and VACMC coordinator trainings, and “CJR train-the-trainer” certification sessions and overviews of the CJR Toolkit have been provided for Minority Concerns Program staff and VACMC Coordinators. The Committee of VACMC Coordinators has developed a framework for general community CJR education and outreach, and Minority Concerns Program staff are currently working on a substantive proposal to roll out several regional general community CJR forums to supplement efforts that have been rolled out by individual vicinages.

As implementation and institutionalization of pretrial services and bail reform take place, the Committee acknowledges that attention to the speedy trial aspects of the reforms is also necessary. The Committee strongly urges the Court to ensure that compliance with speedy trial rights for eligible defendants does not inadvertently cause lengthier waits for defendants in custody under the former statutory framework. The Committee reiterates its continued concern that conscious and consistent consideration be given to unintended consequences of all aspects of criminal justice reform so that they are addressed proactively in the present to prevent harm rather than be embedded into the revised system whereby they must be addressed reactively in the future to remedy a harm. The Committee believes that the proactive collection and review of data will render great assistance in this regard.

The Committee on Minority Concerns recognizes that the issue of peremptory challenges remains unsettled. As noted in the Committee’s comments on proposed rules changes:

- The Committee sees a valuable opportunity for the Court to address this issue concomitantly with the enactment of rule changes offered in the *Report of the Joint Committee*. Although the success of the proposed reforms in this Report is not dependent on resolving the issue of peremptory challenges, it may be appropriate to consider resolving that issue at this time.”
- The Committee on Minority Concerns recognizes the Public Defender’s point of view in his dissent to the Joint Committee report, a perspective shared by members of the defense

bar, but sees the issue of peremptory challenges from slightly different vantage points, namely 1) the participation of racial/ethnic minorities in the justice system through jury service and 2) the right to a speedy trial and jury of one's peers, noting that a peer is not defined legally by race/ethnicity. The jury selection service functionally speaking is not working as intended and is not in compliance with the 1993 operating standards for the Criminal Division.

- The proposed changes seem, on the one hand, like a reasonable starting point, but the Committee also believes that eliminating peremptory challenges could prove beneficial on multiple fronts. For example, it could improve caseload management and would eliminate the issue of *Batson*<sup>10</sup> challenges. The Committee on Minority Concerns [having completed] its GIS Jury Pool Study looks forward to continuing to assess the prevalence and impact of minority participation on seated juries.

The Committee on Minority Concerns stands ready to continue to assist the Judiciary in its ongoing work to realize these system reforms in order to provide a more fair and accessible system of pre-trial release to defendants within the criminal justice system.

The SCCMC recognizes that as a consequence of the reform law there will be a period of time when the Courts are processing cases under two different legal frameworks/timelines and is aware that these parallel systems will be in place for some time to come. The Administrative Office of the Courts has been proactive in addressing this reality and the Committee encourages a continuation of these efforts particularly as new judges and professionals come into the system to ensure that they are well-equipped to address the requirements of both systems.

In its initial commentary regarding the final report of the Joint Committee on Criminal Justice, the SCCMC expressed strong support for the enactment of speedy trial guarantees. With the specification of fixed timelines for persons who are detained and no timelines for persons released, the SCCMC notes concern that this other “dual track” could give rise to constitutional challenges given the lack of speedy trial protections for persons who are released, which under the Bail Reform Law are expected to be the vast majority of defendants. The SCCMC is concerned

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<sup>10</sup> *Batson v. Kentucky*, 476 U.S. 79 (1986)

that in order to meet the required timelines for defendants subject to speedy trial protections the cases of persons released may be extensively delayed.

## **B. Reentry Issues**

With Criminal Justice Reform underway, the Committee is aware that there are related criminal justice issues that the Judiciary will be addressing so that the goals and objectives of systems improvement expected from criminal justice reform are not diverted. The numerous issues surrounding reentry fall into this category, and the Committee believes it is timely and necessary for attention to be paid to the broad spectrum of reentry issues insofar as they intersect with the Courts.

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

This statement exemplifies the position taken by the Supreme Court Committee on Minority Concerns in the context of its re-entry related discussion in its 2007-2009 biennial report. There the Committee noted that since disenfranchisement occurs by the definitive act of a judge's sentence information regarding re-enfranchisement should be made available by the Court.

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.

In its initial information gathering on this subject, the Committee on Minority Concerns learned of a number of issues directly related to court matters wherein the Judiciary can play a

meaningful role in removing/reducing some significant barriers to re-entry. While the Committee's work on this topic and these issues is not complete and will continue in the next term, the Committee presents its preliminary findings here to advance awareness and to substantiate the basis for its recommendation that the Court establish an internal Task Force or Working Group to examine these matters in greater depth.

#### **RECOMMENDATION 2017:05**

The Committee recommends that the Judiciary establish a working group on reentry issues to address relevant court-related procedural matters, including but not limited to child support issues and commutation credit. The Committee recommends that the working group include, at minimum, representation from Criminal Practice, Probation Services, Family Practice, Civil Practice, Municipal Practice, Communications and Community Relations (e.g., Minority Concerns, Access and Fairness, Publications), and selected representatives from New Jersey's various reentry support service programs.

#### **Child Support Obligations/Accumulation of Arrearages**

The Committee on Minority Concerns, recognizing the complex set of intersecting issues that face community members returning from incarceration.<sup>11</sup> 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. Thus, litigant education as a part of the Probation Division's mission could help identify and prevent the unnecessary and preventable accrual of arrearages during incarceration.

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<sup>11</sup> Minority Concerns Program staff obtained background information from the Offices of the Executive Director and General Counsel of the New Jersey Reentry Corporation (July 2015 and January 2017).

Indeed, since the Judiciary's Probation Division prepares pre-sentence reports and also handles Child Support Enforcement, the addition of one question to the AOC's plea form inquiring about any existing child support obligation(s) would provide the Court with notice of the obligation and the opportunity to address the child support matter(s) in the Family Part so that the obligation could be adjusted prospectively (suspended to \$1/day). This prospective step is critical because many defendants are unaware at the time of sentencing and even beforehand that they may need to request a child support modification.

A recent rule change by the United States Department of Health and Human Services "brings the issue to a new level as the newly instituted rule change requires states to notify all parents incarcerated for more than six months of their right to ask the child support agency for a temporary reduction in payments."<sup>12</sup> A study by the Marshall Project (October 2015) indicated that

many states have long considered incarceration a form of 'voluntary' impoverishment, and therefore not a valid excuse for missing child-support payments. But jobs in state prisons pay a median wage of about 20 cents an hour, meaning that most incarcerated parents cannot feasibly pay the full amount of their child-support obligation — and end up tens of thousands of dollars in debt by the time they get out. (The best estimates indicate that one in five prisoners in the U.S. has a child-support order.) ... The new rule ... is intended to keep these mostly-poor fathers out of severe debt so they are less tempted back into crime after they are released.

The Committee highlights the following points in terms of the new regulations applying to the New Jersey context:

- Under the new regulations, specifically revised 45 C.F.R. §303.8, states must either *sua sponte* initiate a review of a child support order upon receipt of information that the non-custodial parent will be incarcerated for 6 months or

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<sup>12</sup> See related article at <https://www.themarshallproject.org/2016/12/20/child-support-relief-coming-for-incarcerated-parents#.9vrTZjw4K>.

longer, or provide notice to both parents within 15 days of the incarcerated parent's right to seek review of a child support order.

- Additionally, revised 45 C.F.R. §302.56(c)(3) makes it clear that "incarceration may not be treated as voluntary unemployment in establishing or modifying support orders."
- By requiring states to automatically review child support orders upon a parent's incarceration, or provide notice of the right to seek modification, revised 45 C.F.R. §303.8 makes it an affirmative obligation [of] the state to give an incarcerated parent the earliest possible opportunity to file a motion for modification, and thus suspend the accrual of arrears.

The New Jersey Child Support Guidelines, under R. 5:6A, do not address the issue of parental incarceration. While there is consensus in case law (*Halliwell v. Halliwell*, 741 A.2d 638 (App. Div. 1999); *Kuron v. Hamilton*, 752 A.2d 752 (App. Div. 2000)) that incarceration for 1 year or longer should not be deemed to be voluntary unemployment, there is no consensus as to whether arrears should accrue during incarceration. In light of the prohibition on retroactive modification of arrears already accrued contained in N.J.S.A. 2A:17-56.23(a), Courts can suspend the accrual of arrears if the incarcerated parent files a timely motion for modification, i.e., motion is filed while parent is incarcerated, and any qualifying adjustments are made only prospectively. Courts also have the authority to suspend support altogether and/or enforcement pursuant to R. 5:7-10. However, if no motion is filed or if a motion is filed only after release, the incarcerated parent may not receive any relief from arrears.

Accumulated child support obligations present a serious financial burden for individuals returning to civic life after a period of incarceration. It can create significant barriers to

employment and housing, which can seriously exacerbate one's ability to address existing child support arrearages and may contribute to the further accumulation of arrearages. Consequently, the importance of educating affected constituencies about the prospective obligation to address child support obligations remains significant. The newly instituted federal rules provide a valuable tool in establishing notification and timeframe requirements; yet the work of educating, informing, and communicating this information remains in the hands of a variety of system stakeholders and service providers.

A valuable opportunity exists, in light of the new federal rule, for the New Jersey Courts to be at the forefront of proactively addressing child support issues in ways that will meaningful contribute to the successful reentry efforts of the thousands of New Jersey residents returning home each year seeking to rebuild their lives along positive paths, most of which include addressing child support obligations and either becoming or continuing their roles as engaged parents. The Committee on Minority Concerns urges the Court to both establish a reentry task force or working group and to directly address the administrative aspects of child support enforcement that are within the Court's purview. One way for the New Jersey Judiciary to take an effective leadership role in addressing the spirit of the new regulation would be to include a standard notification about child support on the record and in writing at sentencing hearings in applicable cases similar to the general immigration noticed proffered at first appearances and plea hearings.

As a future step, the Court may also wish to consider a pilot program, incorporating the successful elements of Fugitive Safe Surrender, that would enable child support arrearages – in the absence of a warrant – to be addressed. Initiatives such as this are appropriate considerations for a re-entry task force or working group and justify its creation.

## **Commutation Credits**

The issue of commutation credits relates to the Committee's longstanding interest in sentencing issues. The way that commutation credits work disproportionately impacts the poor and racial/ethnic minorities. The outcome of the systemic disparity can result in a difference of years between the expected/projected release and actual release dates, rendering a measurable impact not only on defendants, but also on their families and especially children. This issue is also a particular challenge for inmates subject to New Jersey's No Early Release Act (NERA).

One challenge is that New Jersey law applies assumed credits based on calculation of the state prison portion of a sentence at the start of sentence, subject to loss based on "bad behavior" and similar conduct whereas the federal system and many other state jurisdictions have prisoners earn commutation credits as they go. New Jersey employs a formula of "reverse application." See N.J.S.A. 30:4-140.

The second challenge is that credits under the statute only apply for time in state prison so there is no formula for persons held or serving time in county correctional facilities. As a result, individuals who take a plea and cooperate with the State can actually spend more time in custody overall than if they had a trial and had been sentenced by a judge because sentencing for cooperators is typically held until all the matters of all co-defendants are completed. In addition, since there are two categories of credits, namely work and custody, individuals in county facilities often would never qualify for work credits since there routinely is no work option. This aspect has a particularly negative impact within urban communities. See N.J.S.A. 30:4-91

Judges have the discretion to reduce a sentence by 1½ to 2 years to accommodate/adjust for these disparities, but it appears that practices vary from vicinage to vicinage, and sometimes from judge to judge within a vicinage. So it would be beneficial to have an AOC directive or



similar guidance memo that clarifies the judges' role and ability to make these adjustments in sentencing. The authority of N.J.S.A. 39:5-36, which converts fines to credits at a rate of \$50 per day, may also be helpful to include in such a directive/guidance memo as a means to remedy the systemic disparities manifesting in individual cases.

### **Driving Privileges**

Restoring a suspended driver's license triggers a \$100 restoration fee that can be a major obstacle for someone rebuilding his/her life after a period of incarceration. When the \$100 fee, which the Motor Vehicle Commission must charge in the face of a restoration, is an obstacle, individuals are unable to comply with other Court-imposed requirements, such as securing a job, participating in outpatient treatment, and other transportation-related issues. The inability to drive lawfully can impact seriously an individual's ability to work and sustain compliance with child support obligations. Procedurally speaking, vacating the suspension rather than ordering restoration of driving privileges eliminates the issue of the \$100 restoration fee. This may be another issue where a memorandum or directive advising judges who handle child-support related driving suspensions of the option to vacate a suspension.

### **Engaging Technology and Developing Judicial Resources to Support Successful Re-Entry**

The Judiciary, via Probation Services and perhaps in partnership with the Parole Board, should explore the development of an App to assist returning citizens and re-entry program providers with identifying relevant current resources for clients. It may be helpful to develop a "Re-Entry Benchbook" with relevant information that would be helpful across the divisions. This is a project that could effectively be undertaken by a Re-Entry Task Force or Working Group.

In some vicinages it has been noted that judges are more progressive in exercising discretion to remedy the inequities and unnecessary obstacles faced by returning citizens.

However, the lack of consistency across the vicinages poses an issue when clients are not represented by attorneys who may have better understanding of available remedies. Not seeking to restrict judicial discretion in this regard, the SCCMC finds that an AOC directive or advisory memo informing judges of the range of appropriate options available to them to address commonly occurring issues facing returning citizens is essential.

The SCCMC is hopeful that this discussion will generate a rich dialogue in the Judiciary practice areas and program areas as criminal justice reform continues to unfold. Moreover, at the very minimum, it is the collective hope that this dialogue will lead to improved successes and better outcomes for returning citizens.

## 2015-2017 Supreme Court Committee on Minority Concerns

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*+ The members and staff of SCCMC acknowledge the passing of Ronald E. Calissi, Esq. in September 2016. Mr. Calissi served as an active and engaged member of the SCCMC for several terms, always reflecting a deep and genuine commitment to its mission and mandate.*